Agreement on Transparency in Matters Related to International Trade and Investment between the United States of America and Mongolia

The Government of the United States of America (United States) and the Government of Mongolia (Mongolia) ("the Parties"):

Recognizing their strong partnership, and desiring to strengthen their close economic relations;

Affirming their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the *Marrakesh Agreement Establishing the World Trade Organization*; and

Desiring to promote transparency and to prevent and address bribery and corruption in matters related to international trade and investment;

Have *agreed*, as follows:

ARTICLE 1: SCOPE

This Agreement applies to any measures adopted or maintained by a Party affecting trade in goods or cross-border trade in services (other than financial services) or relating to bilateral investment, trade in financial services, or intellectual property rights.

ARTICLE 2: PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application covered by this Agreement are promptly 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, each Party shall:

   (a) publish in advance any such measures that it proposes to adopt; and

   (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

3. With respect to proposed regulations of general application of its central level of government respecting any matter covered by this Agreement that are published in accordance with paragraph 2(a), each Party:

(a) shall publish the proposed regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets;

(b) should in most cases publish the proposed regulations not less than 60 days before the date public comments are due; and

(c) shall include in the publication an explanation of the purpose of and rationale for the proposed regulations.

4. With respect to regulations of general application covered by this Agreement that are adopted by its central level of government, each Party:

(a) shall publish the regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets;

(b) shall publish an explanation of the purpose of and rationale for the regulations in its official journal or in a prominent location on an official government Internet site; and

(c) shall address significant, substantive comments received during the comment period and explain substantive revisions that it made to the proposed regulations in its official journal or in a prominent location on an official government Internet site.

5. Each Party shall publish an English language version of:

(a) an explanation of the purpose of and rationale for any proposed measure covered by paragraph 2(a), at the same time it publishes such proposed measure in a language other than English; and

(b) any measure covered by this Agreement no later than 90 days after it first publishes such measure in a language other than English.

6. When a Party provides an opportunity to comment on proposed measures, it shall allow interested parties to submit comments solely in English.

ARTICLE 3: PROVISION OF INFORMATION

On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any measure or proposed measure that the requesting Party considers might be covered by this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

ARTICLE 4: ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures covered by this Agreement to particular persons, goods, or services of the other Party in specific cases, that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with the Party's procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its law.

ARTICLE 5: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by the Party's law, the record compiled by the office or authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

ARTICLE 6: TRANSPARENCY WITH REGARD TO FINANCIAL SERVICES

1. This Article applies to measures by a Party relating to trade in financial services and investments in a financial services supplier.

2. In lieu of paragraphs 2 through 4 of Article 2, each Party, to the extent practicable:

(a) shall publish in advance any regulations of general application relating to the subject matter of this Article that it proposes to adopt and the purpose of the regulation;

(b) shall provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and

(c) should at the time it adopts final regulations, address in writing significant, substantive comments received from interested persons with respect to the proposed regulations.

ARTICLE 7: ANTI-CORRUPTION

1. The Parties reaffirm their resolve to eliminate bribery and corruption in international trade and investment.

2. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of the Party or a person who performs public functions for the Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of the Party intentionally to offer or grant, directly or indirectly, to a public official of the Party or a person who performs public functions for the Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of the Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of the Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

3. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 2.

4. Each Party shall adopt or maintain appropriate measures to protect individuals who, in good faith, report acts of bribery described in paragraph 2.

5. The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall endeavor to work jointly to encourage and support appropriate initiatives in relevant international fora.

ARTICLE 8: EXCEPTIONS

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. Nothing in this Agreement shall be construed:

   (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or.

   (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.

3. Notwithstanding any other provisions of the Agreement, a Party shall not be prevented from adopting or maintaining 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 financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

4. Nothing in this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions of admission for temporary entry.

5. Nothing in this Agreement shall apply to measures taken in pursuit of monetary and related credit policies or exchange rate policies.

6. Nothing in this Agreement shall apply to taxation measures. Taxation measures do not include:

   (a) any customs or import duty or a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation;

(b) any antidumping or countervailing duty that is applied pursuant to a Party's law; or

(c) any fee or other charge in connection with importation commensurate with the cost of services rendered.

However, taxation measures include any charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part.

ARTICLE 9: POINTS OF CONTACT

Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons and the other Party regarding measures of general application covered by this Agreement.

ARTICLE 10: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter covered by this Agreement by delivering to the other Party a written notification setting out the reasons for the request, including identification of the measure or other matter at issue. The other Party shall reply promptly to the request and enter into consultations in good faith. Consultations shall be limited in scope to the obligations set forth in Articles 2 through 9 of this Agreement and shall not extend to the substance of any measure at issue.

2. Each Party shall:

(a) provide sufficient information in the consultations to enable a full examination of the matter subject to consultations; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

3. A Party may request the other Party to make available during consultations under this Article personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

ARTICLE 11: DEFINITIONS

1. For purposes of this Agreement:

act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice;

investment has the same meaning as "investment" under the *Treaty Between the United States of America and Mongolia Concerning the Encouragement and Reciprocal Protection of Investment*;

central level of government means:

(a) for Mongolia, the Government of Mongolia; and

(b) for the United States, the federal level of government;

cross-border trade in services means the supply of a service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party;

days means calendar days;

financial service has the same meaning as in paragraph 5(a) of the Annex on Financial Services to the General Agreement on Trade in Services;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

intellectual property rights means those categories of intellectual property that are within the scope of Sections 1 through 7 of Part II of the *Agreement on Trade-Related Aspects of Intellectual Property Rights*;

measure means any law, regulation, procedure, requirement, or practice;

natural person of the other Party means:

(a) with respect to Mongolia, "national of Mongolia" as defined in the Law on Nationality; and

(b) with respect to the United States, "national of the United States" as defined in the Immigration and Nationality Act;

person means a natural person or a juridical person, with that term having the same meaning as under Article XXVIII, paragraph (l), of the *General Agreement on Trade in Services*, subject to subparagraph (b) of this Agreement;

person of the other Party means a natural person of the other Party or a juridical person of the other Party, with that term having the same meaning as **juridical person of another Member** under the Article XXVIII, paragraphs (m) and (n) of the *General Agreement on Trade in Services*, subject to subparagraph (b) of this Article;

procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for government purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government;

public enterprise means any entity,

(a) in which the government exercises beneficial ownership of more than 50 percent of the equity interest in the enterprise, or

(b) for which the government has the power to name a majority of the enterprise's directors or otherwise to legally direct its actions,

and includes any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

public official means any official or employee of a Party at the central level of government, whether appointed or elected; and

publication or **publish**, unless otherwise specified, includes placing a document on a publicly accessible government Internet site.

2. For purposes of this Article, paragraphs (l), (m), and (n) of Article XXVIII of the *General Agreement on Trade in Services* are incorporated into and made a part of this Agreement, with "Member" being read as "Party" and "or any other Member" being deleted.

ARTICLE 12: FINAL PROVISIONS

1. The Parties affirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the *Marrakesh Agreement Establishing the World Trade Organization*.

2. For greater certainty, this Agreement shall not be construed to derogate from any international legal obligation between the Parties that provides for more favorable treatment of goods, services, investments, or persons than that provided for under this Agreement.

3. This Agreement shall be interpreted in accordance with customary rules of interpretation of public international law.

4. The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.

5. This Agreement shall enter into force 60 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or on such other date as the Parties may agree.

6. This Agreement shall terminate 180 days after the date either Party notifies the other Party in writing that it wishes to terminate the Agreement.

DONE at New York, this 24th day of September, 2013, in duplicate, in the English and Mongolian languages, each text being equally authentic.

FOR THE GOVERNMENT OF	FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:	MONGOLIA: