

THE EU-JAPAN AGREEMENT IN PRINCIPLE FOR AN ECONOMIC PARTNERSHIP AGREEMENT AT A GLANCE

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Legal Briefings - By **Lode Van Den Hende and Jérémie Charles**

On 6 July 2017, the European Union ("EU") and Japan announced having reached an "agreement in principle" on a future Economic and Partnership Agreement ("EPA"). The final agreement, which both parties aim to conclude before the end of the year, is expected to boost EU-Japan trade by cutting red tape and scrapping duties.

The EU/Japan trade relationship in a nutshell

Japan is the EU's second largest trading partner in Asia (after China), and sixth largest trading partner overall. In 2016, EU exports to Japan amounted to approximately EUR 58 billion of goods and EUR 28 billion of services. Trade flows between the EU and Japan consist mainly of motor vehicles, machinery, medical instruments, pharmaceuticals and chemicals. Prior to the agreement in principle, the EU and Japan had concluded:

- A Mutual Recognition Agreement for conformity assessment procedures in the fields of telecommunications terminal equipment and radio equipment, electrical products, laboratory practices for chemicals and manufacturing practices for pharmaceutical products (see [here](#));
- An Agreement on Cooperation on Anti-competitive Activities aimed at allowing the effective enforcement of their respective competition rules through promoting cooperation and coordination between their competition authorities (see [here](#));

- An Agreement on Cooperation and Mutual Administrative Assistance to improve cooperation between their customs authorities with a view to facilitate trade flows and increase the efficiency of customs controls (see [here](#)); and
- A Science and Technology Agreement aimed at encouraging, developing and facilitating cooperative activities in the areas of science and technology between the EU and Japan (see [here](#)).

The EPA should provide key benefits for EU/Japanese businesses

In the words of the EU Commissioner for Trade, *"the scale of [the EPA's] ambition, and the combined economic size [of both parties], would make it one of the biggest the world has ever seen."* In the same vein as other agreements concluded recently by the EU, the EPA is indeed meant to go beyond traditional trade issues alone and should cover fields as diverse as corporate governance, competition, sustainable development, data protection, and cooperation on agriculture, forestry, fisheries and food. It should also boost EU-Japan trade in goods and services through the following concessions:

- Elimination of customs duties: Japan should eliminate tariffs on 97% of its imports from the EU once the EPA is fully implemented (in tariff lines), with the remaining tariff lines being subject to partial liberalisation through tariff quotas or tariff reductions (e.g. for certain agricultural products such as soft cheese, whey, or potato starch). Japan's elimination of customs duties is expected to primarily benefit EU exports in the fields of agriculture and food products, electrical machinery, pharmaceuticals, medical devices, motor vehicles, transport equipment, textiles and clothing, and forestry products. The EU should eliminate tariffs on close to 100% of its imports from Japan once the EPA is fully implemented. The disparity in terms of levels of liberalization between the EU and Japan is justified by Japan's commitments to eliminate non-tariff barriers on imports from the EU, notably through total alignment with international standards in the automobile sector.
- Elimination of non-tariff barriers: the negotiations focused on eliminating the main non-tariff barriers identified by both EU and Japanese traders. Examples of non-tariff barriers that should be eliminated currently include those applicable to (i) motor vehicles (through the recognition of the same international standards on product safety and the

protection of the environment, which means that vehicles should be subject to the same requirements in the EU and Japan and should not require testing or certification upon exportation), (ii) food additives (through the adoption of similar guidelines concerning the transparency and standard processing times for approval processes), and (iii) pharmaceutical products (through the expansion of the coverage of the Mutual Recognition Agreement for conformity assessment procedures).

- Liberalisation of services: the EPA should include provisions aimed at liberalising trade in services, in particular as regards (i) postal and courier services (e.g. by aligning rules on border procedures, licences and the independence of the regulators), (ii) telecommunication services (e.g. by enabling any supplier from one party to access and use telecommunication services in the territory of the other party, as well as laying down the ground rules concerning the conditions under which suppliers from one party are allowed to provide their services in the territory of the other party), (iii) international maritime transport services (e.g. by providing for obligations to maintain non-discriminatory access to transport and auxiliary services as well as access to ports and port services); and (iv) financial services (e.g. by strengthening regulatory cooperation through regular information exchange and consultation on forthcoming regulatory initiatives, and by committing to relying on each other's regulatory and supervisory framework where possible).
- Public procurement: the EPA should build on the existing mutual obligations deriving from the WTO Government Procurement Agreement and add a new set of disciplines concerning, for instance, (i) the electronic publication of notices through a single point of access, (ii) the fair treatment of EU construction businesses under the Japanese construction business evaluation system, (iii) the recognition of test reports, or (iv) the possibility of using environmental standards as a selection criteria. In terms of market access, EU companies will also be able to participate on an equal footing with Japanese companies in bids for procurement tenders in the so called Japanese "core cities" (48 cities of around 300,000 to 500,000 inhabitants).

The meaning of an "agreement in principle" and next steps

The agreement in principle does not mean that the negotiating process is completely finalised. Some of the agreement's chapters still require fine-tuning and some issues are still open and remain to be settled before the actual finalisation of the negotiations (e.g. on investment or regulatory cooperation). Although the agreement in principle should provide a clear idea of the type of concessions that both the EU and Japan are willing to make, traders cannot yet rely on its provisions and should therefore wait for the publication of the EPA.

Once the EU and Japan reach a final agreement (which they aim to do before the end of the year), and depending on what it actually covers, the European Commission will decide whether to propose the EPA as an "EU only" agreement (i.e. one that only covers policy areas the EU is responsible for) or a "mixed" agreement (i.e. one that covers areas both the EU and its Member States are responsible for). An "EU only" agreement would need to be approved by (i) the governments of the Member States and (ii) the European Parliament. Conversely, a "mixed" agreement would need to be approved by (i) the governments of the Member States, (ii) the European Parliament, and (iii) the national – and possibly regional – parliaments. In that regard, it is important to bear in mind the EU Courts' recent clarification as to what constitutes an "EU only" agreement as opposed to a "mixed" agreement (see [here](#)), as well as the potential difficulties associated with the approval of "mixed" agreements by national/regional parliaments (e.g. in the framework of the EU-Canada Comprehensive Economic and Trade Agreement, see [here](#)).

Furthermore, the UK will formally be a party to the EPA (provided that it is concluded before the end of the Article 50 TFEU procedure). However, this will likely no longer be the case once the UK leaves the EU. Informed sources have indicated that the EPA will likely not include specific provisions as to how to address the UK's departure from the EU (and consequent withdrawal from the EPA). The impact of the UK's departure from the EU on EU free trade agreements is addressed in more detail in a previous ILO update (see [here](#)).

EU/Japanese businesses should prepare and take action

EU businesses importing from and/or exporting to Japan (and vice versa) should prepare for the entry into force of the EPA. This requires assessing the exact impact of the EPA on their operations (on the basis of the provisions of the agreement in principle), and identifying potential opportunities and challenges deriving therefrom. In addition, UK-based businesses and Japanese businesses trading primarily with the UK should also identify the potential consequences of the UK's likely withdrawal from the EPA upon its departure from the EU, and already consider mitigating actions to remove/reduce any disruptions associated therewith.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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