



Customs Flash Belgium

EU and Japan finalise negotiations on Economic Partnership Agreement

Introduction

On 8 December 2017, EU Trade Commissioner Cecilia Malmström and Japanese Foreign Minister Taro Kono announced the successful conclusion of the remaining negotiations for the EU-Japan Economic Partnership Agreement (EPA).

The [20 July 2017 Customs Flash](#) already reported that the EU and Japan had reached an overall political agreement, but that a few remaining issues still needed to be clarified.

Now that negotiations have been concluded and the main parts of the text have been [published on the EU trade website](#), both parties can start their internal ratification procedures. The agreement text will first undergo legal verification and will then be translated from English to all official EU languages and Japanese. Subsequently, the agreement will require formal approval by both the Japanese government and the Council of the EU, followed by ratification in the Japanese and European parliaments, and finally, Member State approval.

Ratification will establish the biggest bilateral trade agreement ever negotiated by the EU, with a planned entry into force before 2019, which will mark the end of the Juncker Commission mandate.

What is in the agreement?

The EPA will ensure and regulate the following points between the EU and Japan:

- Market access for goods, services and investments in respective territories
- Breaking down non-tariff measures
- Promote sustainable development
- Harmonise rules on intellectual property rights
- Protection of geographical indications

Outstanding issues in July's political agreement were commitments on services, final provisions on the protection of EU and Japanese Geographical Indications (GIs), chapters on regulatory cooperation/practices and transparency, and the inclusion of commitments from the Paris agreement in the trade and sustainable development chapter. Negotiators on both sides required clarifications on several minor elements in the agreement before signing off on them.

Consequently, the below commitments have been made.

Goods

The EU-Japan EPA removes almost all customs duties for imports on both sides. This will especially benefit European producers of food products since Japan currently imposes import duties of nearly 40% on beef, up to 30% on chocolate, 15% on wine and up to 30% on cheese. Japan benefits from the elimination of high EU tariffs on vehicles (10%), electrical machinery (up to 14%) and agricultural products such as rice and sugar.

However, some of these reductions and eliminations will only take place gradually in accordance with the schedules that both parties have set out in the annexes to the agreement (these annexes are not publicly available yet). For the automotive sector, for example, the EU negotiated a transitional period before effectively opening up its market to Japanese producers.

The importer claiming preferential treatment under the EU-Japan EPA can prove the preferential origin of goods either through a statement on origin, made out by and under the responsibility of the exporter, or through any other piece of information clearly demonstrating that the good has preferential origin. In both cases, proof needs to be included in the customs import declaration.

Services

Both parties have agreed to liberalise progressively the services markets to service providers of the other party. Annex I to the Services chapter will list existing non-conforming measures of both parties, which may continue to exist. In annex II of the parties' schedules, they will list the sectors for which they maintain the right to adopt protectionist measures. All other sectors will become (more) accessible.

Although the annexes have not been published yet, the EU and Japan already disclosed that the financial services,

telecommunications, e-commerce, distribution and transport markets will be liberalised. At the same time, parties retain the ability to regulate markets to achieve legitimate policy objectives, such as the protection of public health, safety, consumer protection etc. Public services such as health care and state funded education remain completely unaffected.

Non-tariff barriers

Both Japanese and European economic operators suffer from non-tariff barriers to trade in each other's markets. The main examples are national legislation imposing specific technical requirements for products, and unpredictable or arbitrary regulations in the automotive, chemical and food processing sectors. Both parties also maintain lengthy and non-transparent access procedures, making it difficult for foreign traders to do business.

The Transparency chapter in the agreement obliges both parties to be predictable, impartial and transparent in the requirements they impose on economic operators. This chapter applies to all other chapters in the agreement.

The chapter on good regulatory practices and regulatory cooperation contains provisions that aim to promote transparent, compatible and predictable regulatory measures among both parties, but without affecting their right to define their own levels of protection or to adopt measures in accordance with their legal framework.

The agreement also reaffirms the commitments undertaken by both parties in the WTO Agreement on Technical Barriers to Trade and the WTO Agreement on Sanitary and Phytosanitary measures. These agreements ensure the safety of products and foodstuffs, while ensuring that Member States do not use these rules to affect trade arbitrarily.

Furthermore, the agreement between the EU and Japan does not affect internal levels of protection for foods and products, which are very high for both parties.

Trade and sustainable development

The Chapter on trade and sustainable development sets high standards for labour conditions (based on the ILO), recognises the importance of environmental protection in its many forms and reaffirms the party's commitments to the applicable multilateral agreements; the Paris Agreement amongst others. The EU and Japan also vow to take action and implement additional measures on sustainable development and climate change. The commitments are limited by both parties' rights to determine their own sustainable development policies and establish their own levels of protection, as long as these measures are not used in a manner that would arbitrarily or unjustifiably discriminate against the other party, or serve as a restriction on international trade.

When it comes to intellectual property protection, both the EU and Japan already have well-established rules. The agreement recognises both protection systems, but brings them together in the agreement under one set of provisions. This chapter

also ensures the protection of both EU and Japanese GIs in the other party's market.

Investment dispute settlement

The investment dispute mechanism for the agreement has been excluded to ease the ratification process. The EU wants to include its own model with the Investment Court System (ICS), while Japan prefers to stick to the ISDS model. In September 2017, Belgium submitted a request to the Court of Justice of the European Union (CJEU) to issue an Opinion on the compatibility of the ICS, with the CJEU's exclusive competence to provide a final interpretation of EU law to receive further clarification on the matter.

What does it mean for you?

Economic operators in the EU who do business in Japan or who see opportunities to do so, and vice versa, will be given a tool to optimise their supply chains and increase business opportunities between the two parties. Nowadays, EPA benefits extend far beyond the traditional lowering of duties, and create a level playing field for companies operating in different markets. The benefits are a combination of financial savings, increased competitiveness and ease of doing business.

What to do?

Companies can prepare with a Free Trade Agreement review. Deloitte's Global Trade Advisory team can (re)assess the usage of trade preference schemes, determine where the new EPA can add value to a company's trade processes and address potential supply chain optimisations.

It should be noted that once the EU-Japan EPA enters into force, EU companies aiming to benefit from this agreement and issue preferential statements of origin for their export transactions to Japan will have to be registered under the new REX (Registered Exporter) system.

The Global Trade Advisory team will monitor the latest developments around the EU-Japan EPA and will provide updates accordingly.

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