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The texts will be finalised upon signature and become binding upon the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

Japan-EU EPA/FTA

Consolidated Text

(Status 7 December 2017)

## **CHAPTER 8**

### **TRADE IN SERVICES, INVESTMENT LIBERALISATION AND ELECTRONIC COMMERCE**

#### **SECTION C CROSS-BORDER TRADE IN SERVICES**

##### **Article 1 Scope**

1. This Section shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale, or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and the use of services offered to the public generally, in connection with the supply of a service;

2. This Section shall not apply to:

- (a) cabotage in maritime transport services<sup>1</sup>

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<sup>1</sup> For the EU, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national cabotage in maritime transport

- (b) air services or to related services in support of air services<sup>2</sup>, other than the following:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from services;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services; and
  - (iv) ground handling services;
- (c) government procurement;
- (d) audio-visual services;
- (e) subsidies, which are defined and dealt with in (Competition) Chapter

## **Article 2**

### **Market Access**

Neither Party shall maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory measures that impose:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test<sup>3</sup>;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

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services under this Section covers transportation of passengers or goods between a port or point located in a Member State of the EU and another port or point located in that same Member State of the EU, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in a Member State of the EU.

<sup>2</sup> For greater certainty, this Section shall not apply to any service using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

<sup>3</sup> Subparagraph (a) includes measures which require a service supplier of the other Party to establish or maintain any form of commercial presence or to be resident in its territory as a condition for the cross-border supply of a service.

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

and

(d) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

### **Article 3 National Treatment**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, to its own like services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.
4. Nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages, which result from the foreign character of the relevant services or service suppliers.

### **Article 4 Most-Favoured-Nation Treatment**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than the treatment it accords to like services and service suppliers of a non-Party.
2. Paragraph 1 shall not be construed to oblige a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from:
  - (a) an international agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation.
  - (b) existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of the General Agreement on Trade in Services or its Annex on Financial Services.

## Article 5

### Non-Conforming Measures

1. Articles 2 (MA), 3 (NT) and 4 (MFN) do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at a level of:
    - (i) with respect to the European Union:
      - (A) the European Union, as set out in its Schedule in Annex I;
      - (B) the national government of an EU Member State, as set out in its Schedule in Annex I;
      - (C) a provincial, territorial or regional government of an EU Member State, as set out in its Schedule in Annex I; or
      - (D) a local government, other than government referred to in (i)(C); and
    - (ii) with respect to Japan:
      - (A) the central government, as set out in its Schedule in Annex I;
      - (B) a prefecture, as set out in its Schedule in Annex I;
      - (C) a local government other than a prefecture;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment or modification to any non-conforming measure referred to in subparagraph (a), provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification, with Articles 2 (MA), 3 (NT) and 4 (MFN).
2. Articles 2 (MA), 3 (NT) and 4 (MFN) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex II.

## Article 6

### Denial of Benefits

A Party may deny the benefits of this Section to a service supplier of the other Party that is an enterprise of the other Party and to services of that service supplier if the enterprise is owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party that:

- (a) are related to maintenance of international peace and security, including the protection of human rights; and
- (b) prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Section were accorded to the enterprise or to its services.

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