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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 F

ELECTRONIC COMMERCE

Article 1

Objective and General Provisions

1. The Parties recognise that electronic commerce contributes to economic growth and increases trade opportunities in many sectors. The Parties also recognise the importance of facilitating the use and development of electronic commerce.
2. The objective of this Section is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties.
3. The Parties recognise the principle of technological neutrality in electronic commerce.
4. This section shall apply to measures that affect trade by electronic means.
5. The provisions in this section shall not apply to gambling services, broadcasting services, audio-visual services, services of notaries or equivalent professions and legal representation services.

6. In the event of any inconsistency between this section and any other chapter of this Agreement, the other chapter prevails to the extent of the inconsistency.

Article 2 Definitions

For the purposes of this section:

(a) “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and fulfils the following requirements:

- (i) it is used by a person to confirm that the electronic data to which it relates has been created or signed, in accordance with each Party’s laws and regulations, by that person; and
- (ii) it confirms that information in the electronic data has not been altered.

(b) “electronic authentication” means the process or act of verifying the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication.

Article 3 Customs Duties

The Parties shall not impose customs duties on electronic transmissions.

Article 4 Source Code

1. Neither Party may require the transfer of, or access to, source code of software owned by a person of the other Party.^{1 2}

2. Nothing in this Article shall affect:

- a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition laws;
- b) requirements by a court, administrative tribunal or administrative authority with respect to intellectual property protection and its enforcement to the extent that source codes are covered by the intellectual property protection; and

¹ Nothing in this paragraph shall prevent the inclusion or implementation of terms and conditions related to the transfer of or granting of access to source code in commercially negotiated contracts, or the voluntary transfer of or granting of access to source code for instance in the context of government procurement.

² For greater certainty, "source code of software owned by a person of the other Party" includes source code of software contained in a product.

- c) the right of a Party to take measures in accordance with Article 3 of the Government Procurement Agreement.

3. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures which are not consistent with paragraph 1, in accordance with [Article 1 (General Exceptions) of Section G (Exceptions), Article [X] (Security Exceptions) of Chapter 22 (Institutional and Final Provisions) and Article 8 (Prudential Carve out) of Sub-section 5 (Financial Services) of Section E (Regulatory Framework)].³

Article 5 Domestic Regulation

Each Party shall ensure that all its measures of general application affecting electronic commerce are administered in a reasonable, objective, and impartial manner.

Article 6 Principle of no prior authorisation

1. The Parties will endeavour not to impose prior authorization nor any other requirement having equivalent effect on the provision of services by electronic means.

2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

Article 7 Conclusion of contracts by electronic means

Neither Party shall adopt or maintain measures regulating electronic transactions that:

a) deny the legal effect, validity or enforceability of a contract, solely on the grounds that it is concluded by electronic means; or

b) otherwise create obstacles for the use of electronic contracts,

unless such measures are provided for in its laws and regulations.

Article 8 Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its laws and regulations, each Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

³ These measures include measures to ensure security and safety, for instance in the context of a certification procedure.

2. Neither Party shall adopt or maintain measures regulating electronic signature and authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or

(b) prevent parties to electronic transactions from having the opportunity to establish before judicial or administrative authorities that their electronic transactions comply with any legal requirements with respect to electronic signature and authentication.

3. Notwithstanding paragraph 2, each Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

Article 9 Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures applicable to electronic commerce as well as measures conducive to the development of consumer confidence in electronic commerce.

2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.

3. The Parties recognise the importance of adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

Article 10 Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; and

(b) require the prior consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages.

2. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable recipients to request cessation free of charge and at any moment.

3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

Article 11
Cooperation on Regulatory Issues of E-commerce

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora to promote the development of electronic commerce.

2. The Parties agree to maintain a dialogue on regulatory issues of electronic commerce with a view to sharing information and experience, as appropriate, including on related laws, regulations and their implementation, and best practices with respect to electronic commerce in relation to, *inter alia*:

- (a) consumer protection,
- (b) cyber-security,
- (c) combatting unsolicited commercial electronic messages,
- (d) the recognition of certificates of electronic signatures issued to the public,
- (e) the challenges for small and medium enterprises in the use of electronic commerce,
- (f) the facilitation of cross-border certification services,
- (g) intellectual property
- (h) electronic government

Article 12
Free Flow of Data

The Parties shall reassess the need for inclusion of an article on the free flow of data within three years of the entry into force of this Agreement.
