

EU-Japan EPA – The Agreement in Principle

6 July 2017

This document summarises the negotiating results of the Economic Partnership Agreement between the EU and Japan at the time of the agreement in principle in July 2017. As the agreement in principle does not correspond to the end of the negotiating process, the description of the results achieved should not be considered as final. Some chapters still need some fine-tuning, while for some others some issues are still open and remain to be settled before the actual finalisation of the negotiations. Any agreement referred to in this text is to be considered ad referendum and should not be taken as being in all cases the definitive position of the EU or Japan.

This document presents the outcome of negotiations for an agreement in principle, and is sent to Member States and the European Parliament for information, but is not yet confirmed by the Leaders of the EU and Japan. Once the agreement in principle will be confirmed by Leaders, this document will be immediately published.

This is not a legal text.

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NB: Some chapters of this agreement are still under negotiations. On **investment**, while some parts such as investment liberalisation were agreed in principle, there is still no agreement on the whole chapter, as the issue of investment dispute resolution remains fully open. The EU has tabled its reformed investment court system on the table in the negotiations with Japan. The EU continues to insist that there can be no return to old-style ISDS. Under no conditions can old-style ISDS provisions be included in the agreement. More discussions will be required to arrive at a conclusion on this in the next months.

On **regulatory cooperation**, the EU has tabled an initial proposal but further discussions are still needed. The objective will be to promote voluntary cooperation to improve the quality of regulation through adequate consultation and cooperation mechanisms. The cooperation would not, in any way, affect the right of either the EU or Japan to define or regulate their own levels of protection in pursuit of public policy objectives or to provide services of general interest.

1) Tariffs- Trade in Goods Market Access

Japan will liberalise 91% of its imports from the EU at entry into force. At the end of the staging period 99% of its imports from the EU will be liberalised, while the remaining imports (1%) will be partly liberalised through quotas and tariff reductions (in agriculture). In terms of lines, Japan fully liberalises 86% of its tariff lines at EIF, going up to 97% after 15 years.

The overall level of liberalisation of the EU is set at 99% with 96% of its lines eliminated at EIF. In terms of imports the EU liberalises only 75% at EIF, but rising over 15 years to close to 100%. Tariff lines on automobiles will be fully liberalised in 7 years, car parts varying from EIF to 7 years.

The only full exclusions are the mutual exclusion for rice and seaweeds.

The disparity in terms of levels of liberalization on both sides is justified by the commitments undertaken under this agreement by Japan to eliminate non-tariff barriers to EU exports, notably virtually total alignment on international standards in the automobile sector.

Agricultural and processed agricultural goods

Around 85% of tariff lines concerning EU agri-food products exported to Japan will be allowed to enter duty-free over time, corresponding to 87% of current exports value for agricultural products.

Pigmeat is the first agricultural export to Japan (2016 trade value: 1,214 million euro). Japan applies an articulated import scheme, which includes both an ad valorem duty and a specific including a gate price of 524 yen/kg (=4.15 euro). Japan will maintain this scheme, but will reduce the tariffs considerably. The 4.3% ad valorem duty for high value cuts will be phased out over 10 years. The specific duty for low value cuts will be reduced from 482 yen/kg (3.82 euro) to just 50 yen/kg (= 40 cent) within 10 years. The Japanese pig meat sector will be safeguarded during the liberalisation phase, by means of volume based safeguard clauses applying to high value meat (pork prices above 399yen/kg) and low value meat (pork prices < 399yen/kg).

Wines and aromatised wines, which are currently subject to a 15% tariff, will be liberalised at entry into force (EIF) as well as most of other alcoholic beverages (except some traditional Japanese drinks such as shochu and sake). This is the EU's second most important agricultural sector for exports to Japan after pigmeat. EU exports amounted to 1 billion euro on average in the period 2014-16. This concession (wines liberalised at EIF) has never been granted by Japan so far. It will allow wine and spirits EU industry to compete on equal footing with other competitors (in particular Chile) as soon as the agreement enters into force.

In addition **Japan undertook to accelerate the approval of 35 EU additives** and processing aids used in wines within 5 years after entry into force, including 20 priority ones at entry into force, or within 2 years after EIF. A dedicated budget is to be allocated by Japan to facilitate the process.

For **cheese and dairy products** significant market access improvements were agreed for EU's core export products to Japan. The agreement will provide for full liberalisation of tariffs for hard cheeses (eg. parmesan, fontina, gouda, cheddar...). Tariffs of up to 28.9% will be eliminated over 15 years. A tariff rate quota will grant meaningful access for other cheeses like fresh and processed cheese including mozzarella, blue veined cheese and soft cheeses such as camembert, brie and feta. The tariff rate quota will cover fully EU's current export and will be growing over time in line with the growing cheese consumption in Japan.

For **other dairy products** like whey, mineral concentrated whey, whey infant formula, and whey permeate) the agreement provides for a duty free Tariff Rate Quota (TRQ), for whey products with specific protein content tariffs will be reduced by 70%. For Skimmed milk powder (SMP) for feeding – an important export interest for the EU dairy industry - tariffs will be reduced by 95%. In addition a

sizeable quota for SMP/butter and condensed milk will give us preferential access besides the existing WTO quota.

There will be a considerable improvement of market access conditions for EU's **exports for bovine meats including veal**. The agreement will foresee a tariff reduction over time (from the initial 38.5% to 9% with an initial cut bringing the tariff down to 27.5%) and a volume based safeguard functioning on a model similar to the one agreed by Japan in the TPP. The EU export potential is fully reflected in the size of the safeguard which will disappear in 15 years if not used over four consecutive years.

For **food and processed agricultural products (PAPs)**, this agreement will achieve liberalisation of key PAPs such as pasta (in 10 years), chocolates (10 years), pure cocoa powder (EIF), candies (10 years), confectionary (10), biscuits (5 to 10 years), starch derivatives (5 to 10 years), egg albumin (EIF), prepared tomato and sauce (5 years), lactose and lactose syrup (EIF), gelatin (EIF to 15 years), etc.

Malt and potato starch will get a meaningful duty free TRQ. For other important agricultural products (beside dairy and beef sectors): significant quotas (duty free or with reduced duty) have been agreed, also ensuring meaningful new market access.

Rules of Origin have been designed with thresholds on non-originating materials (i.e. the maximum percentage of imported ingredients) which ensure appropriate balance between the interests of EU agricultural producers and those of the EU food industry and ensuring that tariff concessions can be fully used by EU exporters.

Industrial goods

Full liberalisation was agreed in all sectors beginning with chemicals, plastics, cosmetics and textiles and clothing, where the EU is very competitive.

For leather and shoes, the quota system that was significantly hampering EU exports will be abolished at EIF. Besides, the tariffs on shoes will be reduced from 30% to 21% at EIF and the remaining tariffs will then be eliminated over 10 years. Tariffs on key leather products such as handbags will be eliminated over 10 years, while traditionally very much protected products with very high tariffs, such as sports shoes and ski boots, will be liberalised over 10 years.

Forestry

Tariffs on all wood products will be fully eliminated with 7 years staging for the most important EU priorities. Other wood products will be liberalised immediately, while some less important lines at 10 years.

Fish products

Quotas will no longer be applied and tariffs will all be eliminated. For blue fin tuna, EU's most important export, tariffs will be eliminated over 5 years.

Anti-Fraud Clause

The EU and Japan agreed, on the basis of a proposal by the EU, to introduce in the agreement, customs anti-fraud provisions. It provides for a possibility to withdraw tariff preference in case of fraud and refusal to co-operate while ensuring that legitimate traders are not adversely affected.

The anti-fraud clause is a necessary pre-condition for the EU to grant tariff preference to any third country.

Cooperation on agriculture, forestry, fisheries and food

Japan and the EU agreed on a chapter covering cooperation in the field of Agriculture, Forestry, Fisheries and Food.

The objective of this chapter is to enable the EU and Japan to promote trade in agriculture, forestry, fisheries and food through exchange of technical information and best practices regarding sustainable agricultural policies and the use of technology and innovation, as well as to provide safe and high quality food products for consumers in Japan and the EU.

The cooperation chapter will include notably promotion of trade and cooperation on regulatory issues linked to food industries, improvement of farm management, productivity and competitiveness, cooperation in production and technology, cooperation on agricultural quality policies, and rural development.

The organisation of the cooperation activity will be dealt by a specialised committee on agriculture.

2) Non-Tariff Measures, NTMs

NTMs

Both sides finalised the technical work on the on the NTM issues identified by both sides at the beginning of the negotiating process. Solution were identified by the relevant regulatory authorities, as well as specific and timed modalities for the completion of the work for those issues where a solution has not been implemented yet. In terms of implementation, by the end of 2017 most if not all solutions identified by both parties should be implemented, with possibly only four remaining issues, in the area of Sanitary and Phytosanitary measures, for which implementation depends on submitting the relevant applications or providing missing replies to legitimate requests for information by regulatory authorities.

Auto annex

The NTM auto annex has solved all issues mentioned by industry, and was developed in close consultation with industry associations. It covers a very substantial part of UNECE (United Nations Economic Commission for Europe) Regulations – most of which will be in force at entry into force (as a result of the work undertaken under the NTM list for cars, the implementation is already under way by the relevant Japanese regulators). It covers passenger cars, and commercial vehicles like buses and trucks of all sizes as well as motor cycles. The auto annex, together with the NTM work concluded, should lead to the removal of all regulatory barriers for accessing the Japanese car market. The annex includes robust cooperation procedures and obligations to ensure that this state of affairs can be maintained over time. On domestic regulatory measures a special consultation procedure was defined. The limits of these obligations were defined by the EU's need to maintain its regulatory autonomy in areas related, for instance to environmental measures, but also measures on new technologies like autonomous driving or electric cars.

Special attention was paid to establish robust compliance provisions similar to the one agreed under the EU-Korea FTA. In addition, it contains a safeguard clause, allowing the EU to reintroduce tariffs in case Japan stops applying UNECE Regulations or reinstalls removed NTMs (or develops new ones). In particular, the safeguard would allow to snapback tariffs on the affected products quasi automatically. The most important feature is however the cooperation in-built in the annex, which allows to ensure joint work in international standard setting fora. This is also the main reason why the safeguard is limited to 10 years. It can be expected that all UNECE Regulations will have been updated in accordance with the cooperation obligations.

Hydrogen Fuelled Cars

The solution includes ordinary sales of vehicles. A hydrogen fuelled car type-approved in the EU would be accepted and "type approved" in Japan by the Ministry of Economy, Trade and Industry (METI) with no further alterations and with very limited labelling obligations on the hydrogen pressure tank, such as nominal pressure and date of expiration. This solution has direct market access consequences since manufacturers can continue to use their current European materials and would not need to source the special Japanese steel at a much higher cost. No Japanese approval procedure is required. Experts would expect a delay of almost 3 years to run the required test through the normal procedure if this solution had not been developed. This bilateral solution will remain in place until the completion of the GTR (Global Technical Regulation) phase 2 under UNECE 1998 Agreement. Phase 2 has been relaunched in May and industry does not expect a final result before 2025. Furthermore, EU manufacturers that are not yet as far advanced in the development of this technology of the future can, thanks to the specific and much lighter conditions, import hydrogen fuelled cars for testing and validation purposes and use the Japanese infrastructure of hydrogen filling stations to fine-tune their cars. A practical result is also that EU manufacturers can also showcase their innovative vehicles at the Tokyo Olympics as an additional possibility.

Food Additives

Substantial progress was made also on the issue of approval of food additives, ensuring transparency and predictability in terms standard processing times. Most of the new guidelines are now also already published in English. Japan has agreed on guidelines, published on the Internet, setting a standard processing period of 2 years - very similar to the EU timelines. In cases of an application for the extension of use of an approved food additive, this time period would be further reduced. Approval of three additives can be expected in the foreseeable future thanks to applications financed by an EU pilot project. However, approval of other food additives will be hampered by the unwillingness of EU industry to apply (and bearing in mind that an application supported by adequate scientific evidence is required by any food safety authority, including EFTA).

EU-Japan MRA - GMP (Good Manufacturing Practice) Pharma Annex: expansion of product scope

Both sides have finalised the work to expand the coverage of the Mutual Recognition Agreement on Good Manufacturing Practice to new pharmaceutical products. This is a major achievement after numerous attempts and years of discussion. It will bring immediate and substantial benefits to our pharmaceutical industries for which Japan is one of the key markets. This expansion would also include active pharmaceutical ingredients and biological pharmaceuticals, including immunologicals and vaccines. The Parties aim to complete all the formal procedures in the next few weeks, which would allow the entry into force of the new expanded product scope.

3) Rules of Origin (RoO)

The Chapter on Rules of Origin and Origin Procedures consists of General Provisions in three sections (Section A: Rules of Origin, Section B: Origin Procedures and Section C: Miscellaneous) as well as Annexes: including Introductory Notes, Product Specific Rules, Text of the Statement on origin, Provisions on Andorra and San Marino.

General Provisions

Section A: Rules of Origin: The requirements for originating products include the key provisions of the absorption rule and the principle of territoriality. The provision on cumulation allows for both bilateral and full cumulation between the Parties. The EU traditional provision on insufficient operations applying as a limit to both product specific rules and cumulation is kept. Accounting segregation may be applied but only for materials and not for final products. The so called 'non-alteration' rule stipulates the activities which may be undertaken in respect of originating products in a

non-Party such as operation to preserve the products, storage, splitting of consignments, exhibitions, etc.

Duty drawback is not prohibited.

Section B: Origin Procedures: The claim for preferential tariff treatment shall be based either on a statement on origin by the exporter/producer, or the importer's knowledge.

The verification of a claim for preferential tariff treatment starts with a request to the importer to provide information. Customs authorities may request administrative cooperation to obtain information in the exporting Party. Direct visits by the customs authorities of the importing party to an exporter/producer in the exporting party shall not be allowed for the verification. In the case of suspected irregularities and fraud, the customs authorities of the parties shall provide each other mutual administrative assistance on the basis of the existing agreement between the EU and Japan.

The customs authorities of the importing party shall be entitled to deny preferential tariff treatment under precisely stipulated conditions.

Section C: Miscellaneous: Section C provides specific provisions concerning Ceuta and Melilla; the rules of the functions of the Committee(s) under the agreement as well as transitory provisions. The standard provisions on Andorra and San Marino are also included.

The Product Specific Rules of Origin (PSR)

All PSR were agreed on the basis of the condition that they would allow EU exporters to qualify for tariff reductions negotiated under the agreement.

The key points for Annex II (Product Specific Rules of Origin) are the following:

Industrial PSR

- **Cars and other vehicles** (HS headings 8701-8705): 45% max NOM (Non-Originating Material).

Exclusively for passenger cars (HS heading 8703) there is a staging period of 6 years, during which the threshold is at 55% max NOM the first 3 years and at 50% max NOM the following 3 years.

There is an enabling clause to discuss extended cumulation for passenger cars (HS heading 8703) with countries with which both Parties have an FTA. This clause is not automatic and permits refusal of a request for extended cumulation without justification.

- **Car parts:**

-For chassis fitted with engines (HS heading 8706) and bodies (HS heading 8707): 45% max NOM, with a staging period of 5 years during which the threshold is at 55% max NOM

-For the rest of car parts (HS headings 8708): 50% max NOM, with a staging period of 3 years where the threshold is at 60% max NOM. There are also alternative rules based on processes for some car parts that are incorporated into a car which do not imply relaxation. A review clause is foreseen for these alternative rules.

Therefore, for the entire automotive sector, final PSRs are the same as in the EU-Korea FTA.

- **Footwear** (HS chapter 64): the parts can be imported provided that that a threshold of 50% max NOM is reached.
- **Articles of leather** (HS chapter 42): parts can be imported provided that that a threshold of 45% max NOM is reached.
- **Textiles and clothing:** the new EU double transformation rules for textiles and clothing has been agreed.

Agricultural products and processed agricultural products

- For processed agricultural products European exporters will be able to continue to export their products as they do now and to benefit from the concessions negotiated in the agreement, in particular by using input not produced in Europe such as cocoa.
- Traditional limitations on non-originating sugar are kept, with thresholds between 20% and 40% max NOM in weight depending on the product. In the case of high sugar content products such as confectionery (HS heading 1704) and chocolate (HS heading 1806) the thresholds are kept at 40% max NOM in weight, and 30% max NOM in weight respectively.
- Limitation on dairy non-originating materials are kept at 10% in weight

4) Services

Trade in services can be found in the Chapter 'Investment, Trade in Services and E-Commerce'. This Chapter contains a number of provisions that apply horizontally to all trade covered by the Chapter such as a provision to reaffirm the Parties' right to regulate, definitions of concepts used throughout the Chapter, rules on a Specialised Committee for Trade in Services, Investment and E-Commerce, a review article and an article with general exceptions.

On the question of **public services**, the EU-Japan Free Trade Agreement, like all other EU free trade agreement, maintains the right of Member States' authorities to keep public services public and it will not require governments to privatise or deregulate any public service at national or local level. Member States' authorities retain the right to bring in to the public sector any privately provided services. Europeans will continue to decide for themselves how they want, for example, their healthcare, education and water delivered.

For **cross-border trade in services** some sectors and issues are specifically excluded from the scope of the text: audio-visual services, maritime cabotage services, air services (other than 5 auxiliary air services), government procurement and subsidies. The text on cross-border services also contains articles on Market Access, National Treatment, Most-Favoured-Nation Treatment and Denial of Benefits. For the scheduling of commitments a negative listing is used (as in CETA). Parties list existing and future measures that do not conform with the obligations under Market Access, National Treatment and Most-Favoured-Nation Treatment in specific Annexes. The cross-border text does not include a specific article on local presence as parties agreed to treat local presence requirements under the Market Access article.

The Agreement includes provisions on **movement of natural persons for business purposes ("mode 4")**. They cover all traditional categories of mode 4 service providers (such as intra-corporate transferees, business visitors for investment purposes, contractual service suppliers, independent professionals) plus two additional profiles that the EU has committed in CETA, namely short term business visitors and investors. In addition, the Agreement includes a Protocol with procedural commitments concerning the entry of service providers in the territory of the Parties. This covers issues such as fees or processing times for entry applications. Finally, Japan and the EU commit to allow the entry of family dependants (spouses or children) of mode 4 service suppliers.

There is also a **regulatory chapter** with several sectoral sections and some horizontal ones. The horizontal ones relate to domestic regulation, mutual recognition and administration of measures.

The text on Domestic Regulation ensures that licensing and qualification requirements and procedures are publicly available, easily understandable, and reasonable so that they do not act as an unfair barrier to trade for EU or Japanese businesses. The text also covers measures relating to technical standards. Like in CETA and other recent FTAs there is no necessity test included. All domestic regulation disciplines only apply to committed sectors and to the extent of the commitments made by the Parties. There is a specific article on administration of measures of general application and an article on Review Procedures of Administrative Decisions. Both articles are inspired by similar provisions in the GATS.

The article on mutual recognition sets out a two-tier track where, in a first stage, industry from both sides works out joint recommendations for a mutual recognition agreement and then, in a second stage, the EU and Japan step in to assess these recommendations against a set of criteria, negotiate a final text and then formally adopt a Mutual Recognition Agreement. Similar framework provisions are included in most of the EU's FTAs.

The text further contains a regulatory text on **postal and courier service**. The text includes definitions, a provision on universal service obligations (including rules to prevent anti-competitive practices), an article on border procedures, licences and on the independence of the regulator. These provisions will ensure a level playing field between EU suppliers of postal and courier services and their Japanese competitors, such as Japan Post.

The section on **telecommunication services** covers, in general terms, all the provisions typically included by the EU in its trade agreements. The provisions can be broadly divided into three groups. Firstly, articles establishing a "level playing field", which enable any service supplier of one Party to be able to access and use telecommunications services in the territory of the other Party, and which lay down the ground rules relative to the terms in which providers of telecommunications services from one Party are allowed to provide their services in the territory of the other Party. Secondly, provisions on how the Parties deal with telecommunications services providers that have significant market power. Thirdly, articles disciplining a set of other relevant aspects in the telecommunications sector, such as the assignment of scarce resources, rules on the establishment of universal service obligations, on number portability and on mobile roaming, provisions safeguarding the confidentiality of communications and traffic information of internet users, and the Parties' relationship to relevant international organisations in the sector.

The Chapter on **international maritime transport services** contains obligations to maintain open and non-discriminatory access to international maritime services (transport and auxiliary services) as well as access to ports and port services. It also includes various definitions to better specify the scope of the commitments contained in the schedules.

The **financial services** section contains specific definitions, exceptions and disciplines on new financial services, self-regulatory organisations, payment and clearing systems and transparency. It also includes specific rules on insurance services provided by postal entities. Many of these provisions are based on rules that have been developed in the framework of the WTO. They are necessary to address specificities of the financial services sector and complement market access and national treatment disciplines in the horizontal chapter.

The text further contains a dedicated part on **regulatory cooperation for financial services** and establishes a so-called Financial Regulatory Forum. The Forum will take over the role of the current regulatory dialogue between the financial service regulators of the EU and Japan. Via the Forum the EU and Japan will regularly exchange information and consult each other on forthcoming regulatory initiatives including the implementation of international standards in financial services. Both parties will also endeavour to rely on each other's regulatory and supervisory framework where possible.

The **e-commerce text** covers all trade done by electronic means. It reflects the interests that both European and Japanese companies and consumers have in digital trade, while fully safeguarding legitimate policy objectives.

The chapter contains articles on the non-imposition of customs duties on electronic transmissions, source codes, domestic regulation, the principle of no prior authorisation, conclusion of contracts by electronic means, electronic authentication and electronic signatures, consumer protection and unsolicited commercial electronic messages.

Both sides also agreed to maintain a dialogue on regulatory issues of electronic commerce to share information and experience, including on related laws, regulations and their implementation, and best practices with respect to the issues such as consumer protection, cyber-security, combatting spam, the recognition of certificates of electronic signatures issued to the public, the challenges for small and medium enterprises in the use of electronic commerce, the facilitation of cross-border certification services, intellectual property and e-government.

The agreement in principle does not include any substantive provisions on flows of personal data. There is a review clause whereby both sides undertook to look again at the issue after three years.

5) Corporate governance

For the first time in EU agreements, the EU-Japan FTA will include provisions on **corporate governance to be included in a specific chapter**. These provisions are inspired from the OECD Code on corporate governance and reflect the EU's and Japan's best practices and rules in this area. Corporate governance is an essential tool to attract and encourage sustainable investment by promoting well-functioning markets and sound financial systems based on transparency, efficiency, trust and integrity. The EU and Japan commit to adhere to key principles and objectives with regard to their corporate governance framework, notably: transparency and disclosure of information regarding publicly listed companies; accountability of the management towards shareholders; responsible decision-making based on an objective and independent standpoint; effective and fair exercise of shareholders' rights; transparency and fairness in takeover transactions.

6) Procurement

In terms of rules, the text of the Chapter builds on the existing mutual obligations deriving from the WTO Government Procurement Agreement, and adds a new set of disciplines. These comprise rules regarding the electronic publication of notices through a single point of access, the fair treatment of EU construction businesses under the Japanese construction business evaluation system (keishin), the recognition of test reports, the possibility of using environment standards as selection criteria, and additional standards for domestic review procedures.

In terms of new market access, the most important element is that Japan accepted to commit the procurement of so-called “core cities” (48 cities of around 300.000 inhabitants, representing some 15% of Japan’s population) under a non-discrimination regime and the EU agreed to reciprocate by like commitment at sub-central level. Both sides also commit hospitals and academic institutions that until now were exempted from their respective GPA commitments.

On railways, JP agreed to withdraw the “operational safety clause” and thus opens safety relevant railways procurement for all railways procurement above a value of 400K SDR (special drawing rights: 1 SDR is roughly 1 euro). For this commitment, a transition period of maximum one year after entry into force will apply. In turn, EU opens procurement of railways facilities in the sector of overland railways, and rolling stock in the area of urban railways for an amount corresponding to the estimated value of Japanese contracts “freed” by the removal of the operational safety clause.

7) Intellectual property Rights (IPR)

The IPR Chapter builds on the provisions of WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and is strongly based on the existing EU standards for IPR protection and enforcement.

It includes detailed provisions on copyright, providing for improved copyright protection. For the first time in a major agreement the IPR Chapter provides rules on trade secrets, which are very similar to those in the EU. Other important results in the Chapter include: (i) minimum common rules for patent term extension (including duration: "maximum 5 years") for pharmaceutical and plant protection product patents, (ii) minimum common rules (including duration) for regulatory test data protection for pharmaceuticals ("no less than 6 years") and (iii) also regulatory test data protection for plant protection

products ("at least 10 years"). Notably, the Chapter also provides select targeted rules regarding trademarks (on preparatory acts deemed as infringement) and those concerning protection of product appearance (in particular by unregistered design or under unfair competition rules).

On IPR enforcement the Chapter includes high standard civil enforcement rules, along with rules on border measures concerning not only imports but also exports and transit, covering a broad range of IPRs.

8) Geographical Indications

The agreement contains the following provisions:

- High level of protection for EU GIs: TRIPS art 23 for more than 200 foodstuffs and wines and spirits EU GIs to be protected under the FTA.
- Direct protection of GIs under the FTA and removal of all associated charges or taxes for any user registration.
- Protection of GIs in relationship with trade marks (TMs): rejection of subsequent TMs in the other Party's system, also in the case of GIs which have only been published, while coexistence with pre-existent TM is addressed.
- Administrative enforcement of protection in addition to enforcement on request and civil remedies.
- Phasing out of prior uses identified on the Japanese market within 5 years after entry into force of the Agreement for alcoholic beverages, and within 7 years for foodstuff GIs.
- Possibility to add new GIs to list of GIs protected under the agreement.

9) Competition, Subsidies, State Owned Enterprises (SOEs)

Competition

The Competition Chapter establishes a number of important principles that ensure that both sides commit to maintain comprehensive competition rules and the necessary authorities to implement these laws in a transparent and non-discriminatory manner. The agreement also foresees continued cooperation between the competition agencies.

The Competition Chapter is an important addition to the Agreement and ensures that both sides commit to promoting competition to the benefit of all market participants and especially the consumers and private citizens.

In more details, the parties have agreed on the following rules:

- both sides will commit to have competition laws which address anticompetitive practices (this list is adapted to the legal framework of each of the parties) in a non-discriminatory manner on all enterprises. Exceptions from the competition laws are allowed, provided that they are transparent and limited to public interest
- both sides commit to maintain competition authorities competent to enforce the competition laws
- both sides have taken a commitment to respect the principles of procedural fairness and transparency of their procedures

- Finally, provisions on cooperation foresee continued cooperation efforts between the competition agencies.

The provisions are outside the bilateral dispute settlement mechanism as an established practice in the field on competition law negotiations.

The negotiation outcome adds to the list of bilateral agreements where trading partners have committed to respect, safeguard and promote the process of competition. While competition rules do not contribute to market access as such, they for their part will help to safeguard a level playing field and ensure that competitive conditions on the market will make market access successful and boost investor confidence.

On **Subsidies** the outcome extends also to services and adds to the existing multilateral rules on goods subsidies.

Japan has agreed to give more information on subsidies provided to goods and services, at all levels of government. Consultation provisions will allow the Parties to raise issues and ask additional information if they suspect that a specific subsidy could have a significantly negative effect on their trade or investment interests. Both sides have also agreed to explore possible solutions if the concerns of the other side are confirmed. Finally, both sides have agreed to prohibit two types of subsidies that are considered to be specifically harmful for trade and investment: (a) unlimited guarantees; and (b) subsidies for restructuring ailing enterprises without having prepared a credible restructuring plan.

It was also agreed that these prohibitions do not apply to sub-central levels of government. A threshold of 450,000 SDR (Special Drawing Rights) per beneficiary over a period of three consecutive years applies for the notification and consultations provisions to allow the Parties to concentrate on the potentially most distortive subsidies. Finally, the rules on transparency also apply to subsidies in the field of agriculture and fisheries. The Audio-Visual services sector is excluded

These are important achievements in levelling the playing field between EU and Japanese enterprises. The negotiated outcome will allow both Parties to continue providing aid to public services and nothing in the Agreement will prevent EU member states from continuing subsidising services of general economic interest.

On **SOEs (State Owned Enterprises)**, the agreement will ensure that SOEs, enterprises granted special rights or privileges and designated monopolies are not allowed to discriminate between EU and Japanese goods, services and enterprises when buying and selling on commercial markets. They will also have to act as private enterprises on the market. Public services are fully safeguarded under the rules, corresponding to the objectives of both sides to ensure the continuing provision of high level public services.

The SOE rules are meant to ensure that enterprises owned or controlled by governments do not benefit from undue favourable treatment on commercial markets. The rules therefore aim to ensure that there is a level playing field between public and private companies. This will contribute to fair competition on the market based on merit, efficient allocation of resources, and will have a favourable effect on investor confidence.

10) Trade Remedies

The agreement has confirmed the right of both parties to apply trade defence instruments according to the WTO rules. The agreement has also defined some additional rules ensuring transparency and right of defence during the trade remedy investigations.

Both parties have also agreed on a bilateral safeguard clause by which preferences can be temporarily suspended in order to allow a domestic industry to adjust to any significant and unexpected increase of imports resulting from the elimination or reduction of the customs duties.

11) Technical barriers to Trade (TBT)

The TBT Chapter follows the lines of our model used in other FTAs. The most salient feature is the naming of international standard setting bodies – a major point of difference with Japan until now. Because of this and in combination with the NTM list solutions, this TBT Chapter effectively addresses the issues that in other agreements have needed NTM sectoral Annexes on electronics, on pharmaceuticals, on textiles, and even on chemicals. It also refers to the Codex Alimentarius which is important for the labelling issues regarding agricultural products and also include a reference to ICAO for aeronautical products. A special article addresses issues of marking. With regard to conformity assessment procedures, the suppliers declaration of conformity is included together with the principle of risk based assessment procedures proportional to the risks. The Parties are open to suggestions for further annexes to the MRA.

12) Customs and Trade Facilitation (CTF)

The objectives of the chapter are twofold: to facilitate trade and to promote customs cooperation on a bilateral and multilateral basis.

The chapter aims at the modernisation and simplification of rules, requirements, formalities and procedures related to import, export and other regimes including transit, in order to ensure efficiency and proportionality. A reference to the recognition of the implementation of international rules and standards, such as WTO provisions and WCO instruments is included.

Cooperation on customs matters aims at increasing the efficiency of customs controls, at lessening the burden for traders and at increasing security and safety. The EU obtained the commitment that the provisions will apply to any agencies in charge of border controls or to any competent authorities as defined by the Parties. Some justified limitations were agreed due to the nature and purpose of the measures or controls at stake. These limitations refer to SPS and TBT chapters in case of inconsistency with the CMTF chapter, as well as to some precautionary clauses regarding environment, health, etc.

The chapter also ensures transparency of legislation and procedures, including setting up a mechanism of consultations between the administrations and the business community. Transparency of fees and charges is also part of the chapter while the general provisions on fees and charges are included in the Trade in Goods Chapter.

Other main elements included in the chapter:

- provide for the immediate release of goods as soon as compliance has been ensured;
- issue advance rulings on tariff classification or origin of a good;
- procedures to guarantee the right of appeal or review against administrative actions of customs or other authorities affecting import, export or transit;
- application of risk management on the basis of selective criteria with the main focus on high-risk consignments thereby expediting release of low-risk consignments;
- application of post-clearance audit;
- enhance cooperation on exchange of information and on trade facilitation partnership programmes.

Provisions on goods re-entered after repair or alteration, temporary admission of goods and on customs valuation are in the Trade in Goods Chapter.

The chapter also establishes a specialised committee for all customs related issues in order to ensure coherence with the activity of the already existing Joint Customs Cooperation Committee (established under the EU-Japan Custom Cooperation and Mutual Administrative Agreement (CCMAAA)). The Chapter foresees joint meetings for these two committees.

In addition, the chapter refers to the Protocol on Mutual Administrative Assistance in Customs Matters (under the existing CCMAAA) that will allow exchanges of information ensuring a correct application of customs legislation and prevent customs violations.

13) State to State Dispute Settlement Mechanism (DSM)

The objective of the Dispute Settlement Chapter (DS Chapter) is to ensure that rights and obligations under the Agreement are fully observed. It provides for an effective, efficient and transparent mechanism for avoiding and solving disputes between the Parties.

The DS Chapter is accompanied by the Rules of Procedure for the Panel which contain detailed rules on the panel proceedings, the Code of Conduct for the Panellists and the Mediation Mechanism.

The DS Chapter provides for:

- 1) An effective, efficient, swift and transparent mechanism for avoiding and settling disputes between the Parties in relation to violation complaints.
- 2) A pre-established list of panellist (roster) from which the panellists could be automatically appointed in case the Parties cannot reach an agreement on the composition of a panel. In consequence, no Party could obstruct the proceedings when a dispute arises.
- 3) Highly qualified, experienced and independent panellists. This is especially important as there is no appellate review stage.
- 4) Streamlined and clearly defined compliance and post-compliance stages of the proceedings.
- 5) A well-defined Mediation Mechanism which should in practice encourage the Parties to reach a mutually acceptable solution to a problem by using these less formalised proceedings.
- 6) An elaborated Code of Conduct for the panellists in order to ensure their full independence and impartiality.

14) Sanitary and Phytosanitary Measures (SPS)

The EU Japan SPS Chapter will improve predictability of trade for all agricultural products; not only for products already traded but also for new products. However, it will not lower safety standards or require parties to change their domestic policy choices on matters such as the use of hormones or genetically modified organisms (GMOs).

On Import conditions, import procedures and trade facilitation the EU and Japan have agreed to ensure that any import procedures including the approval and clearance process are simplified, expedited and completed without undue delays.

As regards import conditions for meat and meat products, the EU and Japan have agreed on procedures for listing of establishments eligible to export to the other party. Both parties have committed that costs for audits shall be borne by the importing party unless otherwise agreed. The EU and Japan have agreed to apply zones or compartments established for disease-free areas in case of outbreaks for animal diseases in their trade. Both parties have committed to exchange views on ways to establish and maintain mutual recognition of health status.

As regards **plant health**, the EU Japan agreement recognises the concepts of pest free areas, pest free places of production and pest free production sites as well as areas of low pest prevalence areas and

protected zones concepts, which they agree to apply to trade between them. The Parties shall also ensure that the procedures for establishing or maintaining phytosanitary import conditions are carried out without undue delays.

As regards **food additives**, the transparencies of the approval process and the requirements for assessment of an application have become more transparent. Both Parties have also committed to publish the timelines for the approval of food additives.

Transparency and exchange of information

Japan and EU commit to ensure transparency on import conditions and control, inspection and approval procedures including details about mandatory administrative steps and expected timelines. This ensures that companies and authorities have better access to information that can affect trade and facilitate the application. By discussing issues and being informed of any changes of regulatory requirements intensively is a useful preventive tool to facilitate trade as the issue could be solved before it becomes a barrier.

Emergency measures

The SPS Chapter allows Parties to take emergency measures which are necessary for the protection of human, animal or plant life or health. In addition, the Parties are required to ensure that the emergency measures are not maintained without scientific evidence. The chapter aims to avoid that the emergency measure does not block trade unnecessarily. It should be applied for the shortest time as possible, and lifted once it is no longer necessary.

Technical consultations and Specialised Committee on SPS measures

To help solve trade irritants the SPS Chapter establishes mechanism under which the parties shall endeavour to avoid disruption of trade and reach a mutually acceptable solution.

In addition, the SPS Chapter establishes a specialised committee on SPS measures. The objective is to enhance communication and co-operation and to serve as a forum to address solutions for trade irritants if the technical consultation has not provided a satisfactory solution.

Audits and Procedure for listing of establishments

The SPS Chapter promotes the auditing system for attaining and maintaining the confidence in the effective implementation of each other's systems. The article on audits also clarifies the communication process (providing audit reports and possibility on commenting the report). The costs for audit should be borne by the importing Party unless otherwise agreed between the Parties.

The Parties have in addition agreed ways to help encourage the facilitation of establishments receiving authorisation to export to the other party. This is consistent with the EU approach called "pre-listing".

Dispute Settlement

If neither the technical consultation nor the Specialised Committee resolves the trade irritant, Parties may use the agreement's dispute settlement. The Parties have agreed which parts of the SPS Chapter would fall under the agreement's dispute settlement mechanism. There remains however the possibility to raise the issue in the WTO Dispute, depending on the nature of the trade barrier.

15) Trade and Sustainable Development

The chapter includes all of the key elements of the EU approach and is in line with the level of ambition of the chapters concluded in other recent EU FTAs. Notably, it provides for:

- commitments to key international instruments on labour and environment:
 - effective implementation of the 4 groups of ILO core labour standards as covered by the 1998 ILO Declaration on Fundamental principles and Rights at Work
 - effective implementation of ratified ILO Conventions

- effective implementation of Multilateral Environmental Agreements – including the UN Framework Convention on Climate Change and the Paris Agreement
- continued and sustained progress towards ratification of non-ratified fundamental ILO Conventions;
- the prohibition of relaxing domestic labour and environmental laws to attract trade and investment;
- commitments to the conservation and sustainable management of natural resources, addressing biodiversity (including combating illegal wildlife trade), forestry (including fighting against illegal logging), and fisheries (including combating illegal, unreported and unregulated (IUU) fishing);
- the promotion of Corporate Social Responsibility and other trade and investment practices supporting sustainable development;
- a dedicated institutional set-up, including mechanisms for the involvement of civil society in the implementation of the chapter, both domestically (consultation of "domestic advisory groups") and jointly ("joint dialogue with civil society");
- a tailored mechanism for the resolution of disputes, including governmental consultations and recourse to an independent panel of experts.

16) SMEs

The objective of this chapter is to enable SMEs to benefit fully from the FTA and to encourage European and Japanese SMEs to trade and to invest more in each other's markets.

The SME chapter commits each Party to transparency regarding access to its own market through sharing information. Access to such information can represent a trade barrier in itself, in particular for small companies. Each Party will therefore provide a specific website with information relevant to SMEs seeking to access its market. The SME Contact Points will manage the Parties' interactions under the SME chapter. They will also address issues relevant to SMEs in numerous policy areas falling under the responsibility of other committees of the FTA. The SME chapter complements the provisions in the other FTA chapters which make doing business easier in both markets.
