



## **Report of the 16th EU-Japan FTA/EPA negotiating round**

**Tokyo, 11-20 April 2016**

The 16th round of the EU-Japan FTA/EPA negotiations took place on 11-20 April in Tokyo.

The talks were led on the EU side by Deputy Director General Mauro Petriccione, DG Trade. The Japanese delegation was led for the second time by a new chief negotiator, Ambassador Koji Haneda.

The negotiations were divided, as during the previous rounds, between the various Working Groups which covered the following areas: 1) Trade in goods (including Market Access, General Rules and Trade Remedies); 2) Non-Tariff Measures and Technical Barriers to Trade; 3) Rules of Origin; 4) Customs and Trade Facilitation; 5) Sanitary and Phytosanitary Measures; 6) Trade in Services; 7) Investment; 8) Procurement; 9) Intellectual Property (including Geographical Indications); 10) Competition Policy; 11) Other issues (General and Regulatory Cooperation, Business Environment, Animal Welfare); 12) Trade and Sustainable Development; 13) Dispute Settlement; 14) General, Institutional and Final Provisions and Transparency.

Below is a summary of the subject matters that were discussed during the 16th negotiating round:

### **1. Trade in Goods**

#### **1.1 Market access**

On market access, meetings took place on agriculture, industrial goods, tobacco and spirits/wine, fisheries and forestry. On agriculture, discussions took place with relevant Ministries on agricultural and processed agricultural products (food and drink) without leading to breakthrough. On fisheries, in a mixed session of the committees for market access and rules of origin, discussion took place on rules of origin for Bluefin Tuna. The discussion focussed on Japan's 3.5% tariff for this most important export product and on the rules of origin to be applied. On industrial goods the discussion focused on a number of products not covered in the EU's first offer, including car parts, other vehicles (motorcycles) and rubber products. Leather goods and shoes were also discussed as well as wines. On tobacco, once more rules of origin play an important role in relation to the EU's request for a permanent

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binding of Japan's applied 0% on tobacco. In forestry, the Japanese side explained the working of some of their safeguard clauses. The EU is in favour of discussing the application of special safeguards in a more horizontal way. The importance of "parallelism" between tariffs and NTMs, in particular in the car sector was also underlined.

## **1.2 Rules for Trade in Goods**

Very slow progress was made even though no fundamental differences of view exist. However, differences of views remain on the standstill clause and both parties cannot for the moment agree to stating the objective of "progressive and reciprocal elimination of tariffs". No progress was made on issues such as origin marking, although in practice Japan already accepts "EU" as origin.

## **1.3. Trade Remedies**

No significant progress was made during this round. The discussion on bi-lateral safeguard clause did not progress given its links with elements under discussion in the trade in goods chapter.

## **2. Non-Tariff Measures and Technical Barriers to Trade**

On **NTM SPS** related issues discussion focused on how to accelerate the Japanese approval process.

On NTM autos, the issue of parallelism was discussed with the EU arguing that it was however dangerous to link too closely the negotiations on tariffs and NTMs as it would imply no more progress on the NTM front until the stalemate on tariff is lifted. On the Auto annex, the EU stressed that it should normally be easy to progress on the first appendix which would simply consist in incorporating UNECE regulations that Japan had already adopted. The second appendix would include the commitments agreed in the second list of NTMs. As regards the third exhibit that would commit the parties to agree on a work plan with indicative timeframes, it was probably too early to engage in discussions until we got more clarity on the status of the tariff negotiations.

Furthermore, good discussions were held on the Belgian beer and the Japanese shochu issues.

On TBT, the discussions took place in a positive and constructive atmosphere. Several articles were discussed with limited but reasonable progress. However, on the important issue of international standards significant progress was made with only one issue remaining open. New common text was developed on transparency and joint cooperation for the first time for further consideration. We discussed the Japanese proposal for the terms of reference of a TBT Sub-Committee. EU committed to provide comments on its proposal before the next meeting. On the two Japanese requests, we analysed the issue of uniform application in a

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positive spirit with some good ideas for drafting a text. We also had a short but useful exchange on the question of designation of CABs (Conformity Assessment Bodies) across borders. Japan explained its internal dynamics on it and suggested to continue the discussion in the next round.

### **3. Rules of Origin**

In Section A EU and Japan jointly reviewed the provisions for essential origin requirements (wholly obtained, sufficient production etc.). On the provision for products wholly obtained, both sides examined a limited number of outstanding issues including aquaculture. On value calculation methods both sides reiterated that they would insist on their respective methods.. EU side provided an explanation on the application of the tolerance rule. Both sides agreed on the text on Unit of qualification and finalised the drafting of the provision on non-alteration. Both sides further discussed the sets rule proposed by the EU side.

In Section B both sides continued the final legal revision of the agreed text. The parties discussed options to solve the only outstanding issue on 'certification of origin' by Japanese Chambers of Commerce.

Regarding PSR both sides examined possible drafting conventions which should result in a simplified and unified presentation.. Further information was exchanged on the horizontal processing rules (providing for bio-technological processing rules to confer originating status) with Japan requesting examples, and the reason why the EU did not propose the chemical reaction rule for petroleum oils of heading 2710 and the reason for the exclusion of bio-diesel for this heading. Parties also further discussed PSR for HS Chapters 18, 19 and 20, 22, 24, 25 and 72.

### **4. Customs and Trade Facilitation**

The EU and Japan consolidated and merged articles on Scope and objectives and Customs cooperation. Parties will examine the new texts before the next round of negotiations.

Parties also agreed the substance of articles on Transparency, Customs procedures, Simplification of Customs Procedures, Fees and charges (which was consolidated in the Transparency article), with the exception of the issue of scope of the entire chapter, which remains to be agreed upon.

The EU presented its proposal for the article on Temporary Admission during the Trade in Goods and CTF joint session.

Parties exchanged views on the structure and functions of the Specialized Committee on Customs.

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## **5. Sanitary and Phytosanitary Measures**

The text was revised and a compromise was reached on the “Application of import conditions to the entire territory of the exporting party and in a consistent manner” to the satisfaction of the Commission.

Positive results have been achieved on clearing and agreeing articles on “Transparency” and on “Technical consultation”. The texts on “Equivalence” and “Subcommittee on SPS” are close to be entirely agreed.

## **6. Services**

During the Services negotiations dedicated sessions were held on the following topics: telecom, mode 4, cross-border trade in services, postal & courier services, financial services. In addition, a joint session with the Investment working group was held. Overall, good progress could be made during this round. Several chapters of the Services text are now close to conclusion.

In the joint Services/Investment session parties discussed the common elements of the text such as general provisions and definitions. A useful discussion took place on the possible wording and placement of a right to regulate provision. Regarding the offers for services and investment, Japan explained in detail the functioning of its prior notification and investment screening mechanism in certain sectors.

Very good progress could be achieved on the telecommunication services text i.a. on the article dealing with the resolution of telecom disputes. A further discussion took place on regulatory approaches to regulation and the obligations of major suppliers. Other issues on which progress could be made were licensing and international mobile roaming. For mode 4, parties went through the entire text. The consolidation of the text is now entering the final stage with only a few outstanding issues left. The EU called for a revised mode 4 offer by Japan at least of the same level of ambition as Japan’s offer in TPP. Good progress could also be made on the cross-border trade in services text, which is now also close to finalisation. Discussion focused mainly on the scope article, market access, national treatment and the issue of denial of benefits. Parties continued to discuss the text on postal/courier services with a key focus on the universal service and the prohibition of anti-competitive practices. In the financial services sessions, good progress could be made on many articles. The text on regulatory cooperation is now almost fully agreed with the exception of the scope article. An interesting exchange took place on insurance services provided by postal entities and mutual cooperatives.

Parties further agreed to continue the discussions with regard to air and maritime transport after the round through videoconference.

Limited progress was made on e-commerce, although the Parties engaged constructively on the EU proposals on prior authorisation and electronic contracts. There was also useful draft

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consolidation of the spam article. Difficulties remain on the definitions of electronic signature and electronic authentication.

## **7. Investment (including Investment Dispute Resolution) and corporate governance**

On investment dispute resolution, there was a discussion aiming at bringing further clarifications about the interplay between the EU's proposal for an Investment Court System (ICS) and the ICSID Convention. Discussions then focused on definitions, alternative dispute resolution, consultations before submitting claims, and the determination of the respondent for claims brought against the European Union or Member States of the Union. Exchanges also took place about how to address possible ethic rules applicable to adjudicators under the agreement.

Overall, good progress was made during the 16th round on investment and related issues. The text was further consolidated with regard to market access and national treatment. Possible compromises were explored with regard to performance requirements, non-conforming measures, MFN as well as the investment protection standards. Some of these issues are very complex and both sides agreed that the discussions should continue in order to identify appropriate solutions. Good progress was made on the investment-related definitions, in particular the definitions of investment, covered investment and establishment. The EU's proposal for a right to regulate article was also explained and discussed, including its purpose, content and placement, as well as its relation with other articles in the agreement.

On corporate governance, further progress was made and the discussions were constructive. The EU side has proposed more clarifications in the definitions to facilitate the agreement on the operational provisions. Both sides have explored ways to further approach positions.

## **8. Government Procurement**

Much time was spent on addressing Japan's reaction to the EU's revised request on market access, which had been submitted last round. It was clarified that the revised request had been drafted with the purpose of clarifying the original request, not with the purpose of changing it. Its high level of ambition corresponds to what the EU is able and willing to offer. If the Japanese level of ambition is lower, the EU will adapt – but there was no intention on the EU side to consider Japan's current "revised offer" as the last word, or to adapt the revised request to a lower level of ambition.

On railways, there is wide convergence on the ToR for the Technical Experts Group, as well as on the institutionalisation of cooperation on technical standards under the roof of the EPA. On market access in the area of railways discussions continued on coverage and on the removal of the operational safety clause (OSC).

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On rules, there was agreement on several points (relating to conditions for participation, technical requirements, and standstill – although in all the provisions concerned important parts remain to be discussed. In any case these minor steps forwards helped to improve the atmosphere. It was furthermore agreed to switch to the "architectural" approach originally proposed, as this would lead to a leaner text and render the achievements of this negotiation more visible.

## **9. Intellectual Property Rights (including Geographical Indications)**

On **IPR** we were able to further consolidate the text in some areas (notably general provisions and trademarks) and reach a preliminary agreement on some provisions regarding copyright, designs and civil enforcement. The progress is slow but steady. Nevertheless, a lot of work still remains to be done. The EU presented merged (compromise) text on IPR Border measures and explained the origin of each provision. The EU is seeking confirmation from Japan by the next round that work can proceed on the basis of this text and both parties abandon their respective initial text proposals. Issues related to patent term extension, regulatory data protection and ISP liability, were also further discussed. Considerable amount of time was also devoted to discussing potentially stronger provisions on trademarks. Discussion continued on extended cooperation provisions as proposed by the EU. On copyright issues, the EU is seeking to confirm the copyright term extension to life + 70 years in the IPR Chapter text, regardless of TPP fate. During the discussion the EU also reiterated its interest in the public performance right.

On **Geographical Indications (GIs)** the discussion focused on the existence or not of conflicting names with EU foodstuff GIs (prior uses and generic terms, the existence of conflicts with TM was discussed during previous round). The most problematic conflicts are to be discussed further. Japan also presented a list of its own GIs to be protected under the FTA. On the text for Geographical Indications, both sides reviewed the draft text without agreeing on substantial changes.

No progress was made as regards the discussion on alcoholic beverages.

## **10. Competition**

As regards Antitrust and mergers, the two sides had agreed in principle at the 11th round. In this round the last remaining minor issues were addressed and the Antitrust and mergers Chapter may be regarded as provisionally closed. On Subsidies, incremental progress was made in several respects. For prohibited subsidies, several constructive proposals were made to ameliorate the text. However, major divergences remain. Differences remain on the scope of the Chapter, including on the question of reporting requirements for subsidies to services. The EU and Japan have yet to agree on a consultations mechanism. The two sides also disagree on the issue of dispute settlement. On SOEs, incremental progress was made on several minor issues, but major differences remain in key areas, notably the definition of SOE, and the inclusion of enterprises granted special rights or privileges. Discussions continued on the levels of government (relevant for both the Subsidies Chapter and the SOEs Chapter) and the Japanese side made a number of clarifications.

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## **11. “Others”**

### **11.1 Business Environment, General and Regulatory Cooperation**

In the working group on Business Environment the EU provided feedback from internal consultations on the Japanese proposal, highlighting concerns over the use of words like "interoperability of systems". Japan took note of EU suggestions. The EU also gave an advance warning on the fact that provisions on SMEs would soon be tabled.

### **11.2 Animal Welfare**

Internal consultations are still needed on the scope and on the possibility to create an ad hoc working group.

## **12. Trade and Sustainable Development**

Discussions proceeded in a constructive atmosphere and the Parties confirmed their desire to fast-track the TSD Chapter. Good progress was realised on the substance, with an additional two articles being closed, namely article 7 on timber and article 14 on the domestic advisory groups. An additional five articles are close to completion: article 4 on multilateral environmental agreements; article 5 on trade and investment favouring sustainable development; article 6 on biodiversity; article 8 on fisheries; and article 12 on cooperation. At the same time, the stalemate continued on the sensitive reference to the ratification of fundamental ILO conventions in article 3.

An important development was that Japan tabled a proposal regarding the TSD Chapter's dispute settlement mechanism. Unfortunately the proposed approach is very weak, in the EU's view.

Looking ahead, the parties agreed to hold a videoconference in May or June to discuss those articles that are very close to finalisation. The EU also said it would provide inter-sessional feedback on Japan's dispute settlement proposals.

## **13. Dispute Settlement**

Both sides finalised the first reading of the Rules of Procedure for the arbitration panel. They agreed on numerous detailed procedural rules which should govern the bilateral dispute settlement procedure.

Both sides further continued their work on the Dispute settlement Chapter, in particular with respect on the qualification of the arbitrators.

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#### **14. Transparency, General, Institutional and Final Provisions**

**Transparency:** EU and Japan reviewed the few remaining provisions where compromise was still needed. The main discussion focused on the article on administration of measures of general application for which Japan presented a revised proposal. EU and Japan will come back to the text of the article at the next round.

**Regulatory Cooperation:** EU presented orally a proposal for update of the regulatory cooperation chapter. Discussions focused on the need to focus on forward-looking cooperation and not on "trouble-shooting" as well as on the role of the business community in the regulatory cooperation.

**Institutional Provisions:** EU and Japan continued the constructive discussions from previous rounds and further consolidation of the text of the chapter was achieved.

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*Corrected version*