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**Committee on Regional Trade Agreements**

**FACTUAL PRESENTATION**

**ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN  
(GOODS AND SERVICES)**

*Report by the Secretariat*

This report, prepared for the consideration of the Economic Partnership Agreement between the European Union and Japan, has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The factual presentation reproduces as closely as possible the terminology used in the Agreement and in the comments provided and does not imply official endorsement or acceptance by the Secretariat of such terminology. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671) and thus does not imply any value judgement by the Secretariat regarding the contents of the Agreement.

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### Key Facts

<b>Parties to the Agreement:</b>	European Union and Japan
<b>Date of Signature:</b>	17 July 2018
<b>Date of Entry into Force:</b>	1 February 2019
<b>Date of Notification:</b>	14 January 2019
<b>Full implementation:</b>	1 April 2038

## 1 TRADE ENVIRONMENT

1.1. The Agreement between the European Union and Japan for an Economic Partnership (hereinafter referred to as "the Agreement") is one of the EU's 43 RTAs and Japan's 17th RTAs as notified to the WTO<sup>1</sup>. In 2017, Japan's GDP was estimated at EUR 4.26 trillion, while that of the EU was EUR<sup>2</sup> 15.3 trillion<sup>3</sup>. Averaged over the period 2015-17, the Parties' trade (goods and services) to GDP ratio was 17.1 for both Japan and for the EU.

### 1.1 Merchandise trade

1.2. In 2017, the EU's merchandise exports amounted to EUR 1.8 trillion (15.22% of global exports and second largest exporter to the world). Imports amounted to EUR 1.87 trillion (14.72% of global imports and second largest importer). In the same year Japan's merchandise exports amounted to EUR 619 billion (3.94% of global exports, 4<sup>th</sup> largest global exporter) and imports amounted to EUR 595 billion, (3.73% of global imports, 4<sup>th</sup> largest global importer). For both Parties, manufactures represent the main commodity group traded (81.8% of EU exports and 67.4% of imports; 87.3% of Japan's exports and 61.9% of imports).

1.3. Based on 2018 trade data, Japan was the EU's 7 largest source for imports (representing 3.4% of the EU's total imports) and 5th largest export destination (3.4% of the EU's total exports). The EU was Japan's 2nd largest source of imports (representing 11.7% of Japan's total imports) and 3rd largest export destination (11.3% of Japan's total exports).<sup>4</sup>

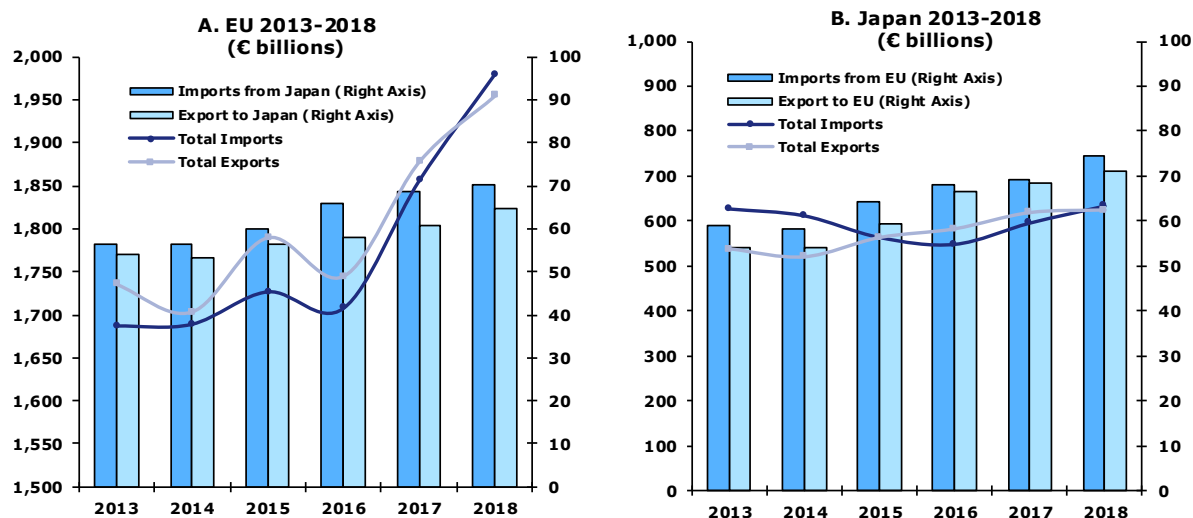
1.4. Chart 1.1 summarizes the trends in global and bilateral trade of the Parties for the period 2013-2018. The EU experienced a trade surplus with the world during the first part of the period between 2013 and 2017, then reversed the trend since 2018. The evolution of Japan's global trade shows a global trade deficit between 2013 and 2015, followed by a trade surplus for 2016 and 2017, with an emerging deficit at the end of the period. Overall trade showed steady increases, although in the case of Japan there was a reduction in the middle of the period. On bilateral trade the data appear to indicate a steady trade deficit for both Parties during this period.

<sup>1</sup> RTAs in goods and services counted as one and only agreements in force, notified to the WTO.

<sup>2</sup> EUR USD exchange rate for 2017 0.887397421.

<sup>3</sup> Source WTO Trade Profiles 2017 data.

<sup>4</sup> Source Eurostat for EU and UNSD-Comtrade for Japan.

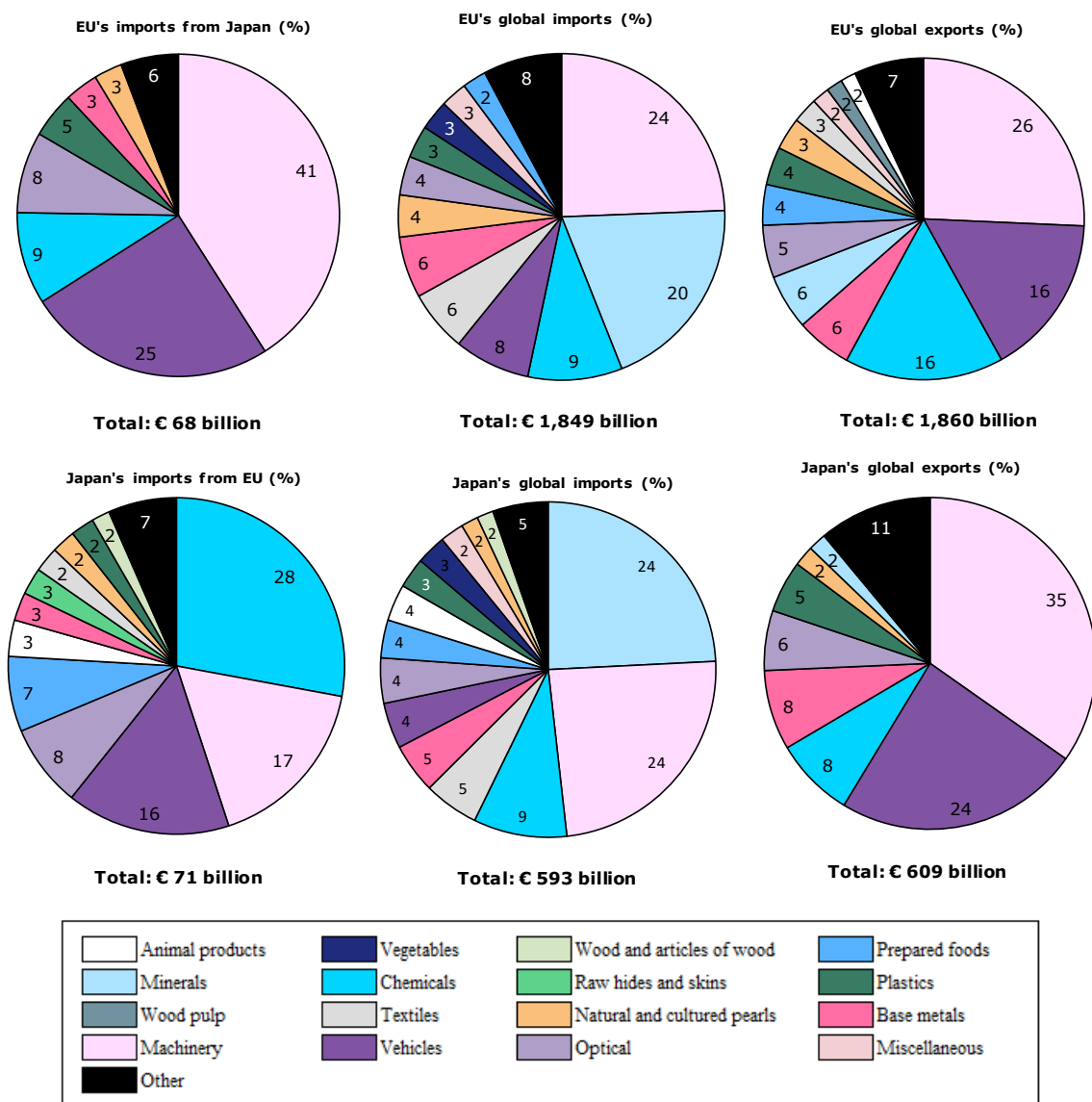
**Chart 1.1 EU-Japan: Merchandise bilateral trade and with world (2013-2018)**

Japan: Exchange rate EUR per USD are : 0.753 (2013), 0.753730737 (2014), 0.901658962 (2015), 0.904035128 (2016), 0.887397421 (2017), 0.847186371 (2018).

Source: Eurostat and UNSD Comtrade database.

1.5. The commodity structure of trade between the EU and Japan, as well as both Parties' global trade during the period 2013-2017 are shown in Chart 1.2 on the basis of Harmonized System (HS) sections using the same statistics as shown in the previous Chart. The majority of the EU's imports from Japan were machinery and mechanical appliances (41.7%) and vehicles, aircraft and vessels (24.1%) and products of chemical or allied industries (9.3%). These products corresponded to 24.3%, 7.5% and 9.5% of the EU's global imports and 34.5%, 24.2% and 7.6% of Japan's global exports.

1.6. The three commodities most imported by Japan from the EU were products of chemical or allied industries (29.2%), machinery and mechanical appliances (16.7%) and vehicles, aircraft and vessels (15.1%). Those products were respectively 9.0%, 24.3% and 4.4% of Japan's global imports. The same products corresponded to 25.7%, 16.6% and 15.8% of the EU's global exports.

**Chart 1.2 EU-Japan: Product composition of merchandise trade, by HS Section (2016-2018)**

Japan - Exchange rate EUR per USD are: 0.904035128 (2016), 0.887397421 (2017), 0.847186371 (2018).

Source: Eurostat and UNSD Comtrade database.

## 1.2 Trade in services and investment

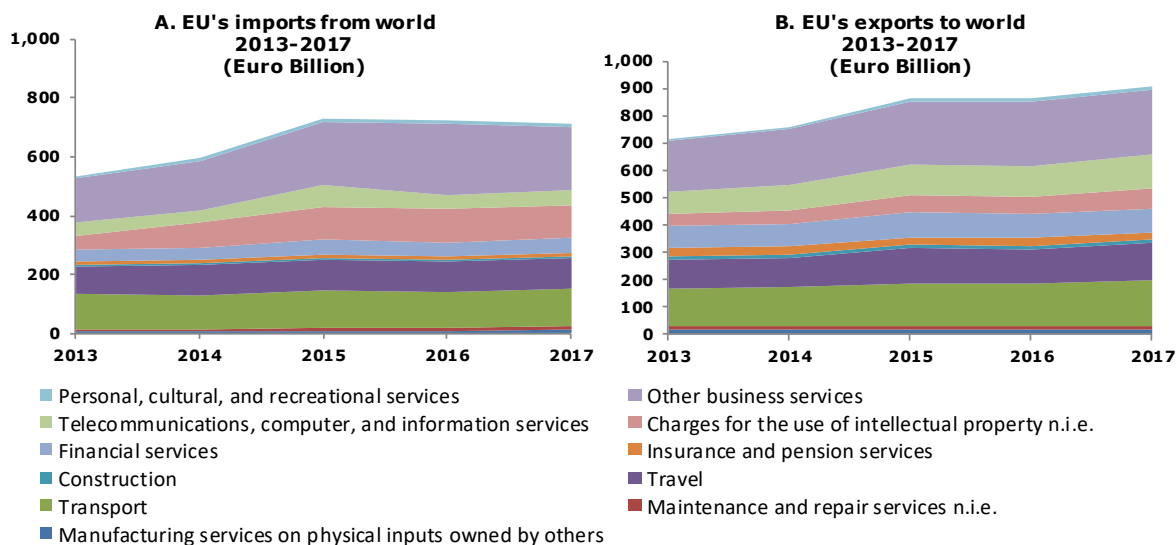
1.7. In 2017, the EU's shares of total commercial services exports and imports were 25.23% and 20.43% respectively, while Japan's corresponding shares were 3.41% and 3.72% respectively. With total commercial services exports of EUR 880 billion and imports of EUR 710 billion, the EU was ranked top globally for both exports and imports of commercial services. In the same year Japan was ranked 5<sup>th</sup> and 4<sup>th</sup>.<sup>5</sup>

1.8. Chart 1.3 below shows the EU's trade in commercial services with the world (based on the period 2013-2017). Chart 1.4 shows the EU's trade in commercial services with Japan. Chart 1.5 displays Japan's trade in commercial services with the world. For the EU, both imports and exports are dominated by other business services, transport and travel services. The data show an overall surplus in trade in commercial services with the rest of the world and Japan. For Japan during the same period, imports were dominated by other business services, travel and transport, while exports

<sup>5</sup> Excluding intra-EU trade.

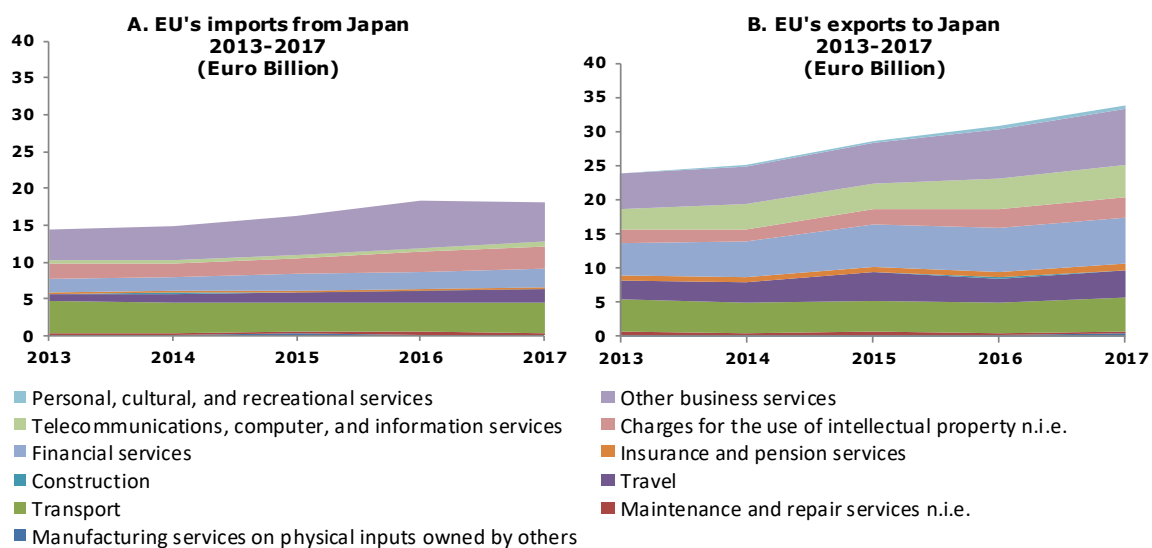
were led by charges for the use of Intellectual property, other business services, transport and travel. It maintained an overall deficit with the EU and with the rest of the world during this period.

**Chart 1.3 European Union: Trade in commercial services with world, 2013-2017**

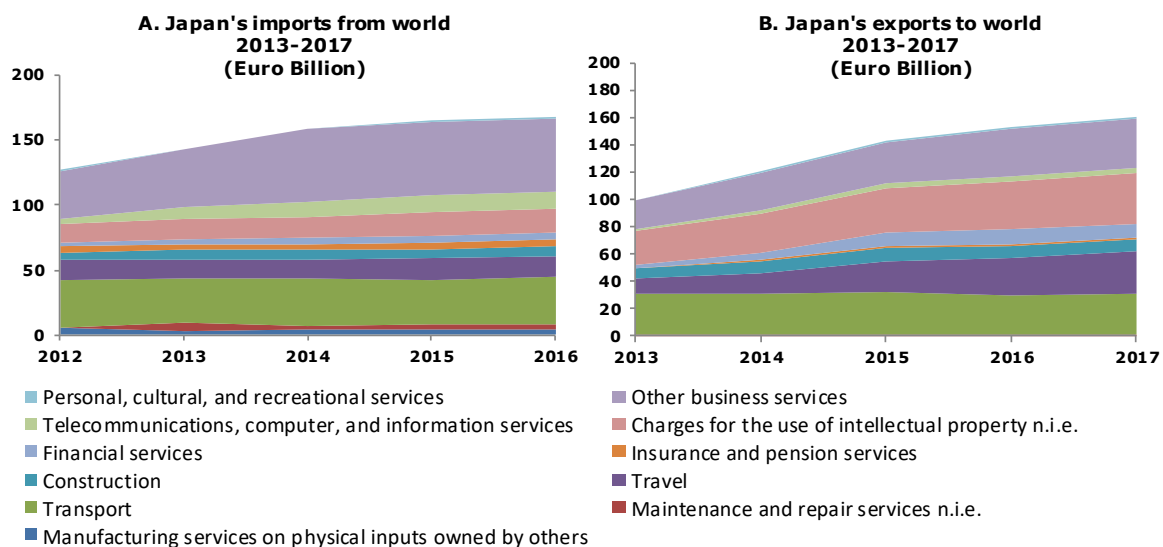


Source: EuroStat database based on BPM6.

**Chart 1.4 European Union: Trade in commercial services with Japan, 2013-2017**



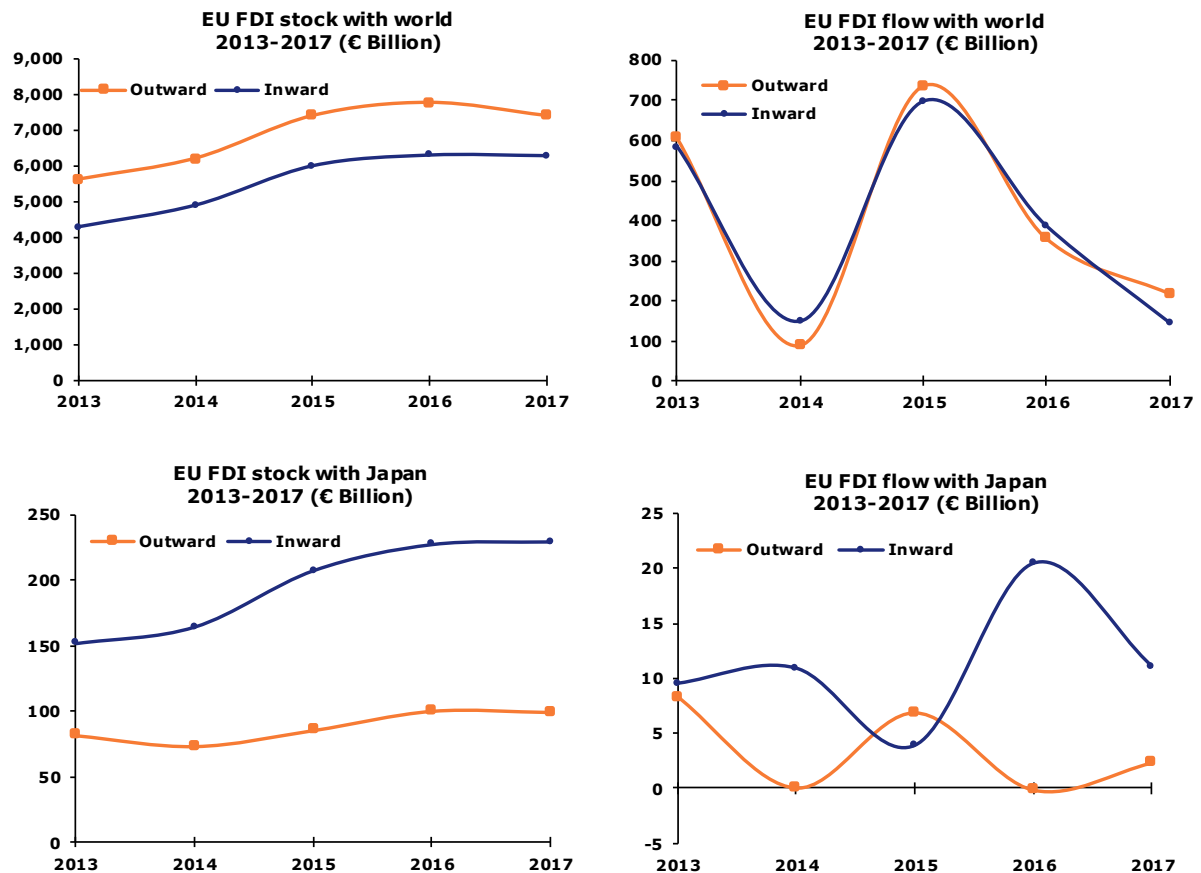
Source: EuroStat database based on BPM6.

**Chart 1.5 Japan: Trade in commercial services with world, 2013-2017**

Note: Data for 2017 is WTO's estimate.  
 USD to Euro exchange rates were used as 0.753(2013), 0.753730737(2014), 0.901658962(2015), 0.904035128(2016), and 0.887397421(2017).

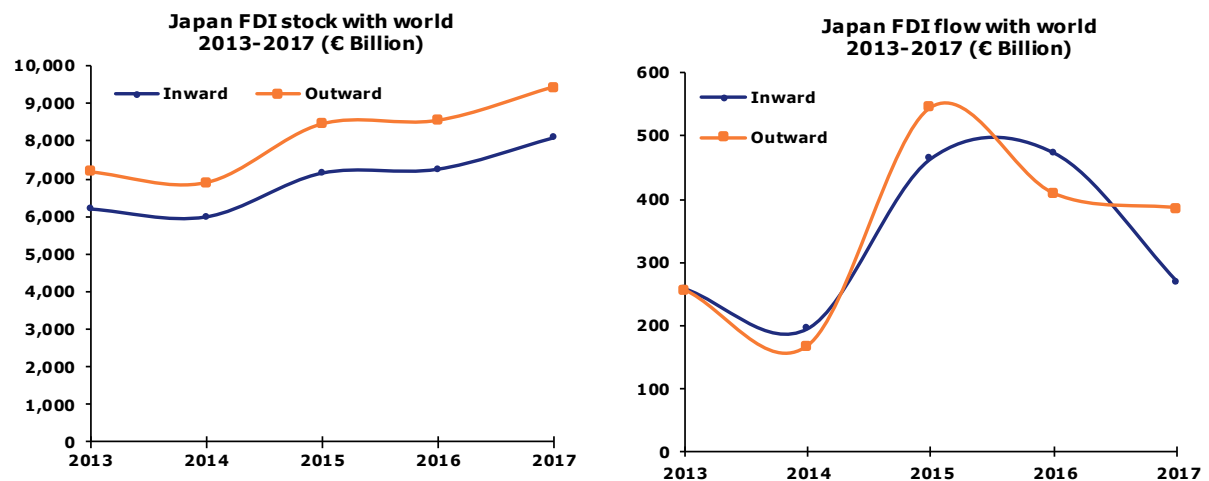
Source: WTO Statistics database based on BPM6.

1.9. Chart 1.6 below shows the EU's foreign direct investment stocks and flows with the world and with Japan during 2013-2017, while Chart 1.7 depicts the same data for Japan. FDI stocks, both inward and outward, have grown steadily for the EU and for Japan. Both Parties maintained a net surplus (for the period (2013-2017) in FDI stocks while net investment by Japan in the EU grew during this period.

**Chart 1.6 EU: FDI stock and flow with world and Japan, 2013-2017**

Note: Based on BPM6.

Source: Eurostat.

**Chart 1.7 Japan: FDI stock and flow with world, 2013-2017**

Source: UNCTAD.

## 2 CHARACTERISTIC ELEMENTS OF THE AGREEMENT

### 2.1 Background Information

2.1. The Agreement was signed on 17 July 2018 and notified to the WTO on 14 January 2019 under Article XXIV:7(a) of the GATT 1994 and Article V:7(a) of the GATS (see document WT/REG396/N/1 - S/C/N/921).

2.2. Article 23.3 governs the entry into force of the Agreement. Both Parties notified to each other the completion of their respective applicable legal requirements and procedures for entry into force of the Agreement in December 2018.

2.3. The text of the Agreement, together with its annexes, is available on the Parties' official websites:

**European Union:** [http://publications.europa.eu/resource/cellar/5805924c-09a3-11e9-81b4-01aa75ed71a1.0006.01/DOC\\_1](http://publications.europa.eu/resource/cellar/5805924c-09a3-11e9-81b4-01aa75ed71a1.0006.01/DOC_1)

**Japan:** [https://www.mofa.go.jp/ecm/ie/page4e\\_000875.html](https://www.mofa.go.jp/ecm/ie/page4e_000875.html)

2.4. The Agreement has 23 Chapters and 19 Annexes, all of which form an integral part of the Agreement (Table 2.1).

**Table 2.1 Structure of the Agreement**

<b><i>Titles, Chapters</i></b>	<b><i>Title/description</i></b>
Preamble	
Chapter 1	General provisions
Chapter 2	Trade in goods
Chapter 3	Rules of Origin and Origin Procedures
Chapter 4	Customs Matters and Trade Facilitation
Chapter 5	Trade Remedies
Chapter 6	Sanitary and Phytosanitary Measures
Chapter 7	Technical Barriers to Trade
Chapter 8	Trade in Services, Investment Liberalization and Electronic Commerce
Chapter 9	Capital Movements, Payments and Transfers and Temporary Safeguard Measures
Chapter 10	Government Procurement
Chapter 11	Competition Policy
Chapter 12	Subsidies
Chapter 13	State Owned Enterprises, Enterprises granted special rights or privileges and designated monopolies
Chapter 14	Intellectual Property
Chapter 15	Corporate Governance
Chapter 16	Trade and Sustainable Development
Chapter 17	Transparency
Chapter 18	Good Regulatory Practices and Regulatory Cooperation
Chapter 19	Cooperation in the field of Agriculture
Chapter 20	Small and Medium-sized enterprises
Chapter 21	Dispute Settlement
Chapter 22	Institutional Provisions
Chapter 23	Final Provisions
<b>Annexes</b>	
Annex 2-A	Tariff Elimination and reduction
Annex 2-B	List of Goods referred to in Articles 2.15 and 2.17
Annex 2-C	Motor Vehicles and Parts
Appendix 2-C-1	UN Regulations Applied by Both Parties
Appendix 2-C-2	UN Regulations Applied by one of the Parties and not yet considered by the other Party
Annex 2-D	Facilitation of Shochu Export
Annex 2-E	Facilitation of Wine Product Export
Annex 3-A	Introductory Notes to Product Specific Rules of Origin
Annex 3-B	Product Specific Rules of Origin
Annex 3-B-1	Provisions Related to Certain Vehicles and Parts of Vehicles
Annex 3-C	Information referred to in Article 3.5
Annex 3-D	Text of the Statement on Origin
Annex 3-E	On the Principality of Andorra
Annex 3-F	On the Republic of San Marino
Annex 6	Food Additives

<b>Titles, Chapters</b>	<b>Title/description</b>
Annex 8-A	Regulatory Cooperation on Financial Regulation
Annex 8-B	Schedules for Chapter 8
Annex 8-C	Understanding on Movement of Natural Persons for Business Purposes
Annex 10	Government Procurement
Annex 14-A	Laws and Regulations of the Parties related to Geographic Indications
Annex 14-B	List of Geographic indications
Annex 23	Joint Declaration

### 3 PROVISIONS ON TRADE IN GOODS

3.1. Chapter 2, sections A-D of the Agreement concern trade in goods. Other Chapters (see below) apply horizontally to trade in goods.

3.2. A Committee on Trade in Goods is established under Article 22.3 and noted in Article 2.34. The Committee is empowered to review and monitor the implementation and operation of the Chapter and to report the findings of the Committee to the Joint Committee established pursuant to Article 22.1 *inter alia* to monitor implementation and operation of the Agreement (see Section 5.5 below). A Working Group on Wine is established under Article 22.4 and described in Article 2.35. A Committee on Cooperation in the Field of Agriculture is established pursuant to Article 22.3 of the Agreement.<sup>6</sup> A Working Group on Motor Vehicles and Parts is also established under the auspices of the Committee on Trade in Goods as stated in Article 22.4.

#### 3.1 Import duties and charges, and quantitative restrictions

##### 3.1.1 General provisions

3.3. The Parties agree to give national treatment to the goods of the other Party, in Article 2.7, and Article III of the GATT 1994 is incorporated into and made part of the Agreement *mutatis mutandis*.

3.4. The Parties agree in Article 2.8 to reduce or eliminate customs duties on originating goods of the other Party in accordance with each Party's schedule contained in Annex 2-A to the Agreement. If a Party reduces its most favoured nation applied duty rate below the rate provided in Annex 2-A, the lower duty rate shall be applied to originating goods of the other Party (Article 2.8.2). The Parties also agree to review tariffs on certain products listed in their tariff schedules in the fifth year following the date of entry into force of the Agreement or in a year in which the Parties otherwise agree, whichever comes first (Article 2.8.3). The aim of the review is to improve market access conditions.

3.5. Article 2.8.4 provides that if a Party grants a more favourable tariff rate, higher quota volume or any other more favourable treatment than that provided under the Agreement to a third country in a manner that affects the balance of either Party's market for such goods, the Parties shall undertake a review with a view to ensure the other Party obtains at least the same preference.

3.6. The Parties shall not adopt or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party except in accordance with Article XI of the GATT 1994. Article XI of the GATT 1994 is incorporated into and made part of the Agreement, *mutatis mutandis* (Article 2.15.1).

3.7. Article 2.9 contains provisions on goods re-entered after repair and alteration. Temporary duty-free admission of goods is permitted under Article 2.10. Each Party shall permit duty free temporary admission of goods into its customs territory for certain goods, such as goods for display or use at exhibitions, professional equipment, commercial samples and containers and pallets and other goods listed in Article 2.10 (a)-(i).

3.8. Article 2.13 concerns standstill, and the Parties agree to not increase any customs duty on originating goods of the other Party from the rate to be applied in accordance with Annex 2-A. Article 2.13.2 clarifies that a Party may raise a customs duty to the level set out in the Schedule of the EU in Section B of Part 2 of Annex 2-A and the Schedule of Japan in Section D of Part 3 of Annex 2-A for the respective year, following a unilateral reduction of customs duty.

<sup>6</sup> To discharge the functions set out in Article 19.5 of the Agreement.

3.9. Article 2.19 and Annexes 2-C and 2-D concern non-tariff measures (NTMs). Article 2.19.1 provides that specific commitments relating to NTMs on goods by each Party are set out in Annexes 2-C and 2-D.<sup>7</sup> In Article 2.19.2 the Parties have agreed that after 10 years from the date of entry into force of the Agreement, on request of a Party, they shall evaluate whether issues resulting from NTMs on goods can be addressed effectively within the framework of the Agreement. As a result of this evaluation, the Parties shall enter into consultations to consider broadening the scope of existing commitments of mutual interest on NTMs on goods, including on cooperation. On the basis of those consultations, the Parties may agree to enter into negotiations of mutual interest. Article 16 of the Annex provides that the Parties shall refrain from nullifying or impairing the market access benefits accruing to the other Party under the Annex.

### **3.1.2 Liberalization of trade and tariff lines**

3.10. Each Party shall reduce or eliminate its customs duties on goods originating in the other Party in accordance with Annex 2-A to the Agreement (Article 2.4). "Customs duties" are defined in Article 2.4 as any duty or charge of any kind imposed on or in connection with the importation of a good including any form of surtax or surcharge imposed on or in connection with importation, with exclusions set out in Article 2.4(a)-(c).

### **3.1.3 Liberalization schedule**

3.11. Annex 2-A, in its General Notes, provides that for the purposes of Article 2.8, each Party shall entirely eliminate customs duties on originating goods of the other Party on the date of entry into force of the Agreement, unless otherwise provided in Annex 2-A. The equal annual instalments under the Annex are to be applied with the reduction for the first year to take place on the date of entry into force of the Agreement, and the subsequent annual reductions taking place on the first day of each following year. According to the Parties, for Japan's Schedule, the subsequent years (i.e. years after the first reduction upon entry into force) start on 1 April. Hence in 2019 Japan entered into the second year.

3.12. In their respective Annex 2-A Schedules the Parties have agreed the following staging for tariff reductions in certain goods.

- Customs duties for category "A" are eliminated upon entry into force of the Agreement;
- Duties for category "B" (B3-B21) are subject to phased elimination, (from four equal instalments for category B3 to 22 instalments for B21);
- Duties for category EU10 shall remain at the base rate from year 1 to year 7 and be eliminated in four equal instalments from the first day of year 8;
- Goods in category "X" are excluded from reduction or elimination commitments;
- Duties for category "R" (with an agricultural element "EA" or specific duty) are subject to reductions in 4-11 equal instalments and with provision in each Party's schedule for adjustments to the specific component of any applicable duty;
- Goods in category "S" are subject to review in accordance with Article 2.8.3 and 2.8.4;
- Goods subject to TRQ are dealt with in Section B of the Party's Annex 2-A schedule;
- Goods in categories "Xb", "Xq1", "Xq2" and "X" are exempt from reduction and elimination commitments; and
- Goods in category "SG-n" (agricultural safeguards) are subject to section C of Annex 2-A.

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<sup>7</sup> Annex 2-D (one paragraph) concerns the facilitation of Shochu Exports, see below.

3.13. According to the Parties, the base rates of customs duties set out in the Parties Schedules do not necessarily reflect their most-favoured nation (MFN) rates in effect in 2019, prior to the entry into force of the Agreement.

### 3.1.3.1 The EU

3.14. The EU's applied tariff in 2019 comprised 9,533 lines at the HS eight-digit level (HS 2017). 89.2% (8,502 lines) were *ad valorem* and 10.82% of lines (1,031 lines) were non-*ad valorem*.<sup>8</sup>

3.15. Table 3.1 below shows tariff elimination by the EU under the Agreement. In 2019 2,455 of the EU's tariff lines were duty free on an MFN basis, representing 25.8% of the EU's tariff, and corresponding to 39% of the EU's imports from Japan during the period 2016-2018. Immediately following the entry into force of the Agreement, a further 6,676 lines (70.0% of the EU's tariff) also became duty-free for imports from Japan. This resulted in 95.8% of the EU's tariff becoming duty-free, corresponding to 80% of the EU's total imports from Japan during 2016-2018. By 2028, following ten years of implementation, a further 203 tariff lines will be liberalized. At the end of the implementation period 87 lines will remain dutiable, representing 0.9% of the EU's tariff corresponding to a negligible part of the EU's value of imports from Japan during 2016-2019.

**Table 3.1 EU:**  
**Tariff elimination commitments under the Agreement and corresponding average trade**

Duty phase-out period	Number of lines	% of total lines in EU's tariff schedule	Value of EU's imports from Japan (2016-2018) <sup>a</sup> Euro million	% of EU's total imports from Japan (2016-2018)
2019 (MFN)	2,455	25.8	22,196.9	39.0
2019	6,676	70.0	24,466.3	43.0
2022	63	0.7	3,870.5	6.8
2024	53	0.6	844.2	1.5
2026	87	0.9	5,141	9.0
2029	19	0.2	169.8	0.3
2031	44	0.5	168.1	0.3
2034	49	0.5	0.1	0.0
Remain dutiable	87 <sup>b</sup>	0.9	21.9	0.0
<b>TOTAL</b>	<b>9,533</b>	<b>100.0</b>	<b>56,878.9</b>	<b>100.0</b>

a Import coverage is from HS chapters 1-97.

b 29 tariff lines (0702.00.00, 0707.00.05, 0709.91.00, 0709.93.10, 0805.10.22, 0805.10.24, 0805.10.28, 0805.21.10, 0805.21.90, 0805.22.00, 0805.29.00, 0805.50.10, 0806.10.10, 0808.10.80, 0808.30.90, 0809.10.00, 0809.21.00, 0809.29.00, 0809.30.10, 0809.30.90, 0809.40.05, 2009.61.10, 2009.69.19, 2009.69.51, 2009.69.59, 2204.30.92, 2204.30.94, 2204.30.96, 2204.30.98) are subject to an Entry Price system.

Note: 44 tariff lines<sup>9</sup> under the Excluded category reflect the MFN 2019 duties. This process is in accordance with the methodology applied by the Secretariat across all FPs where it aims to assess the margins of preference in reference to the MFN duties as of entry into force. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by EU.

3.16. Table 3.2 shows the EU's tariff elimination by HS section. The 87 lines excluded from tariff elimination are found in HS Sections I (live animals), II (vegetable products) and IV (prepared food). These Sections (I, II, and IV) correspond to HS Chapters 02, 07, 08, 10, 11, 18, 19, 20, 21 and 22. Average tariffs on the lines remaining subject to duties range from 4.9% for HS Section IV to 10.3% for HS Section I. Tariff liberalization by HS Chapter set out in Chart 3.1 shows that preferential duties

<sup>8</sup> 645 lines specific, 255 compound, 102 mixed and 29 "other" duties.

<sup>9</sup> 0106.12.00, 0208.40.10, 0208.40.80, 0210.92.10, 0507.90.00, 1006.10.10, 1006.10.30, 1006.10.50, 1006.10.71, 1006.10.79, 1006.20.11, 1006.20.13, 1006.20.15, 1006.20.17, 1006.20.92, 1006.20.94, 1006.20.96, 1006.20.98, 1006.30.21, 1006.30.23, 1006.30.25, 1006.30.27, 1006.30.42, 1006.30.44, 1006.30.46, 1006.30.48, 1006.30.61, 1006.30.63, 1006.30.65, 1006.30.67, 1006.30.92, 1006.30.94, 1006.30.96, 1006.30.98, 1006.40.00, 1102.90.50, 1103.19.50, 1103.20.50, 1104.19.91, 1212.21.00, 1212.29.00, 1904.10.30, 1904.20.95, 1904.90.10.

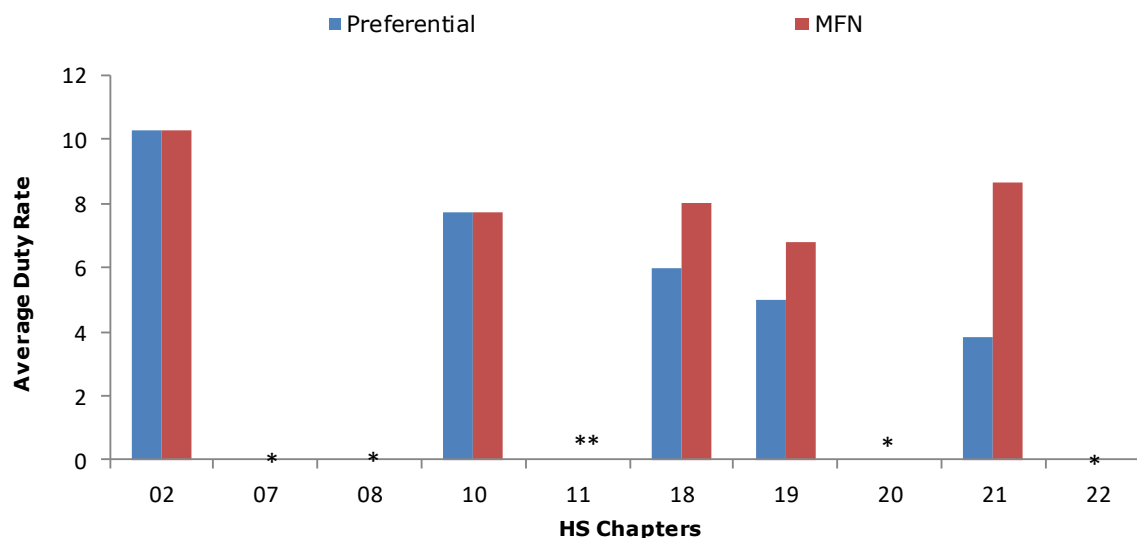
for imports from Japan are lower than the corresponding MFN average duties in Chapters 18 (6% compared to the average MFN rate of 8%), 19 (5% and 6.8%) and 21 (3.8% and 8.7%). Chapters 7, 8 and 20 contain tariff lines under the entry price system while Chapter 11 contains specific duties.

**Table 3.2 EU:**  
**Tariff elimination under the Agreement, by HS Section**

HS Section	MFN Average %	No. of lines	Duty-free lines under the MFN 2019	Number of duty-free lines under the Agreement							Remain dutiable	Avg. Final Tariff (Dutiable)
				2019	2022	2024	2026	2029	2031	2034		
I	9.6	955	106	784			18			44	3	10.3
II	5.6	554	142	357							55	7.7
III	5.9	129	23	106								
IV	14.2	867	93	738			2			5	29	4.9
V	0.8	233	170	63								
VI	4.3	1,225	315	905	4		1					
VII	4.6	301	64	230	3		1	3				
VIII	3.1	130	45	85								
IX	2.2	234	118	116								
X	0.0	195	195									
XI	8.0	1,147	40	1,107								
XII	8.2	106	2	90				14				
XIII	4.0	234	32	198	3	1						
XIV	0.6	56	45	11								
XV	1.8	955	499	446	1	9						
XVI	2.0	1,370	347	958	35	19	9	2				
XVII	5.2	286	31	123	16	16	56		44			
XVIII	1.9	313	120	186	1	6						
XIX	2.2	22	4	18								
XX	2.6	214	57	155		2						
XXI	0.0	7	7									
<b>Total</b>	<b>5.0</b>	<b>9,533</b>	<b>2,455</b>	<b>6,676</b>	<b>63</b>	<b>53</b>	<b>87</b>	<b>19</b>	<b>44</b>	<b>49</b>	<b>87</b>	<b>5.6</b>

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.  
Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by EU and IDB-WTO.

**Chart 3.1 EU: Average of dutiable rates, by HS Chapter**

\* Tariff lines subject to Entry Price system only. \*\* Tariff lines subject to Specific rates only.

Note: Based on the HS 2017 nomenclature.  
For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included.

Source: WTO estimates based on data provided by EU and IDB-WTO.

### 3.1.3.2 Japan

3.17. Japan's applied tariff in 2018 consisted of 9,191 lines at the 8-digit level, 92.86% were *ad valorem* and 656 lines were non-*ad valorem*.

3.18. Table 3.3 below shows tariff elimination commitments by Japan under the Agreement. In 2019, 3,707 lines were duty free on an MFN basis (40.33% of Japan's total tariff), corresponding to 72.7% of Japan's imports from the EU during the period 2016-2017. Immediately following the entry into force of the Agreement, an additional 4,093 lines representing (44.5% of Japan's tariff) also became duty free for imports from the EU.<sup>10</sup> This resulted in 84.8% of Japan's tariff becoming duty free for imports from the EU, corresponding to 89.5% of Japan's imports from the EU during the period 2016-2017. Following ten years of implementation a further 885 lines are to become duty free. At the end of the liberalization period in 2033, 390 lines will remain dutiable, corresponding to 4.2% of Japan's tariff, representing EUR 479,000,000 and 0.7% of Japan's imports from the EU during 2016-2017.

<sup>10</sup> As of February 2019, the date of entry into force of the Agreement. As of April 2019 a further 12 lines, 0.1% of Japan's tariff, representing 79,100,000 EUR and 0.1% of Japan's imports from the EU became duty free under the Agreement.

**Table 3.3 Japan: Tariff elimination commitments under the Agreement and corresponding average trade**

Duty phase-out period	Number of lines	% of total lines in Japan's tariff schedule	Value of Japan's imports from EU (2016-2017) <sup>a</sup> Euro million	% of Japan's total imports from EU (2016-2017)
2019 (MFN)	3,707	40.3	50,454.4	72.7
2019 (February)	4,093	44.5	11,691.9	16.8
2019 (April)	12	0.1	79.1	0.1
2023	259	2.8	1,304.1	1.9
2025	80	0.9	950.9	1.4
2026	36	0.4	9.4	0.0
2027	8	0.1	1,357.0	2.0
2028	502	5.5	2,900.3	4.2
2030	7	0.1	4.0	0.0
2031	3	0.0	0.1	0.0
2033	94	1.0	184.6	0.3
Remain dutiable	390	4.2	479.1	0.7
<b>TOTAL</b>	<b>9,191</b>	<b>100.0</b>	<b>69,414.9</b>	<b>100.0</b>

a Import coverage is from HS chapters 1-97 and imports under the in-quota tariff lines are excluded.<sup>11</sup>

Note: Tariff lines subject to in-quota rates (both MFN and under Agreement) are excluded in the computation. For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included. Tariff lines under the Excluded category reflect the MFN 2019 duties. This process is in accordance with the methodology applied by the Secretariat across all FPs where it aims to assess the margins of preference in reference to the MFN duties as of entry into force. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by Japan and IDB-WTO.

3.19. Table 3.4 shows Japan's tariff elimination under the Agreement by HS Section. The 390 lines excluded from tariff elimination once implementation is completed are found in HS Sections I (live animals, II (vegetable products) and IV (prepared food). These Sections (I, II, and IV) correspond to HS Chapters 02, 04, 07, 10, 11, 12, 17, 18, 19, 20 and 21. Average tariffs on the lines remaining subject to duties range from 19.8% for HS Section II to 26.2% for HS Section IV. As set out in Chart 3.1 average tariffs in a number of HS Chapters are lower than their corresponding MFN duties. The greatest differences are found in HS Chapters 2 (average preferential rate of 8.5% compared to the MFN average of 37.7%), 4 (25.2% and 28.6%), 17 (44.4% and 49.5%) and 21 (24.6% and 27.6%).

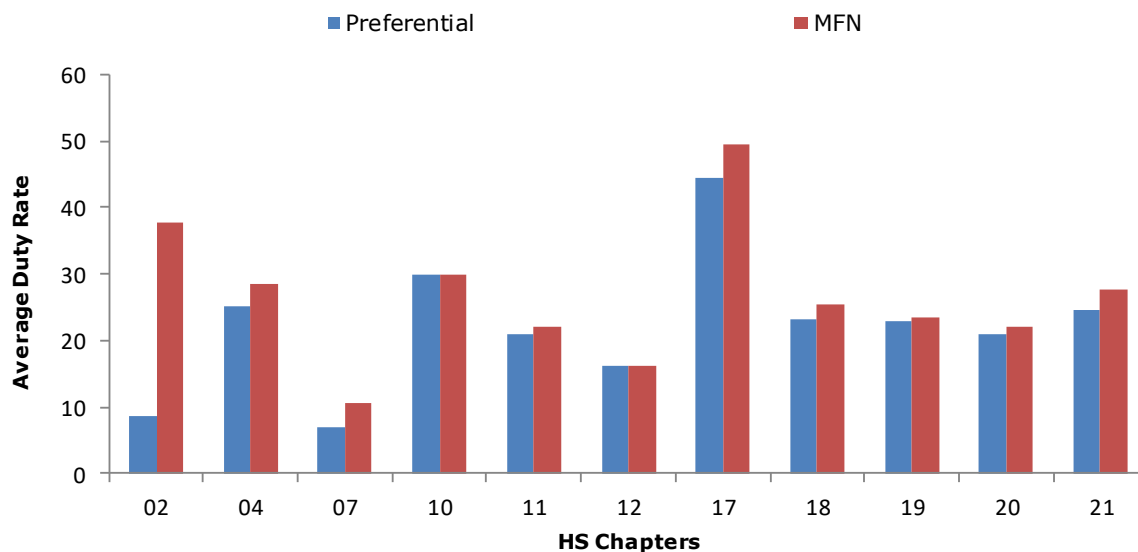
<sup>11</sup> The last year of implementation period is 2038 for one tariff line (210690122) a MFN in-quota tariff line but also part of tariff liberalization under the Agreement. As all in-quota tariff lines are excluded, that tariff line is not tracked in the table above.

**Table 3.4 Japan: Tariff elimination under the Agreement, by HS Section**

HS Section	MFN Average %	No. of lines	Duty-free lines under MFN 2019	Number of duty-free lines under the Agreement										Remaining dutiable lines	Avg. Final Tariff (Dutiable)
				2019 (Feb)	2021	2023	2025	2026	2027	2028	2030	2031	2033		
I	9.1	762	119	297	1	20	2	30	8	119	6	3	28	129	22.7
II	6.0	597	183	228	1	57	10			24				94	19.8
III	3.6	89	22	31	2	23	1	1		9					
IV	16.3	815	73	215	8	155	25	5		148			19	167	26.2
V	0.7	249	168	80						1					
VI	1.9	1,131	406	716		4				3			2		
VII	2.3	287	99	188											
VIII	10.5	193	65	3						99			26		
IX	3.2	322	121	129			42			30					
X	0.0	167	167												
XI	6.2	1,851	87	1,759						4	1				
XII	16.6	104	5	23						57			19		
XIII	1.2	164	99	63						2					
XIV	1.4	75	53	22											
XV	0.9	846	609	237											
XVI	0.0	924	917	7											
XVII	0.1	162	161	1											
XVIII	0.2	258	249	6						3					
XIX	6.9	22		22											
XX	1.7	166	97	66						3					
XXI	0.0	7	7												
<b>Total</b>	<b>4.8</b>	<b>9,191</b>	<b>3,707</b>	<b>4,093</b>	<b>12</b>	<b>259</b>	<b>80</b>	<b>36</b>	<b>8</b>	<b>502</b>	<b>7</b>	<b>3</b>	<b>94</b>	<b>390</b>	<b>24.0</b>

Note: Tariff lines subject to in-quota rates (both MFN and under Agreement) are excluded in the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Tariff lines under the Excluded category reflect the MFN 2019 duties. This process is in accordance with the methodology applied by the Secretariat across all FPs where it aims to assess the margins of preference in reference to the MFN duties as of entry into force. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by Japan and IDB-WTO.

**Chart 3.2 Japan: Average of dutiable rates, by HS Chapter**

Note: Based on the HS 2017 nomenclature. Tariff lines subject to in-quota rates are excluded in the computation; for the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included.

Source: WTO estimates based on data provided by Japan and IDB-WTO.

### 3.1.4 Tariff rate quotas

3.20. Some of Japan's market access commitments take the form of tariff rate quotas (TRQs) identified in Annex 2-A to the Agreement. The EU has no TRQs under the Agreement.

3.21. In Annex 2-A, Part 3, Tariff elimination and reduction – Japan, Section A Notes for the Schedule of Japan, the Headnote provides in paragraph (xx) that customs duties on originating goods classified under the tariff lines indicated with "TRQ" shall be governed by the terms of tariff rate quota applicable to that tariff line, as set out in Section B. Section B provides rules for aggregate quota quantity during the years following entry into force of the Agreement, in-quota duty rates, rates of applicable duty in excess of the quota quantity and administration of quotas.

3.22. Section B lists TRQs covering 25 groups of products imported from the EU, six of which are TRQs established outside Japan's WTO TRQ. The products covered are:

- TRQ-1 wheat products<sup>12</sup>, with the quota quantity increasing from 100 metric tonnes in year 1 to 200 MT in year six;
- TRQ-2 mixes and doughs and cake mixes, with the quota quantity increasing from 10,400 MT in year 1 to 14,200 MT in year six;
- TRQ-3 food preparations made primarily of wheat, with the quota quantity increasing from 2,000 MT in year 1 to 3,000 MT in year six;
- TRQ-4 wheat flour, pellets, rolled and food preparations<sup>13</sup>, with the quota quantity increasing from 3,700 MT in year 1 to 4,200 MT in year 6;

<sup>12</sup> TRQ-1 shall be established outside the TRQ set out in Japan's Schedule to the WTO Agreement and administered by MAFF as a state trading enterprise using a simultaneous buy-sell (SBS). The amount of the mark-up shall not exceed the amount permitted for the goods under Japan's Schedule to the WTO Agreement (note 2(d) to Section B of Annex 2-A).

<sup>13</sup> TRQ-4 shall be established outside the TRQ set out in Japan's Schedule to the WTO Agreement and administered by MAFF as a state trading enterprise using a simultaneous buy-sell (SBS) mechanism. According to the Parties, importers and domestic users participate in pairs in competitive bidding conducted by MAFF. MAFF purchases imported items from the importer, and simultaneously sells it to the domestic user in pair at contract prices. The amount of the import mark-up shall not exceed the amount permitted for the goods under Japan's Schedule to the WTO Agreement (note 5(d) to Section B of Annex 2-A).

- TRQ-5 wheat<sup>14</sup>, with the quota quantity increasing from 200 MT in year 1 to 270 MT in year 9;
- TRQ-6 udon, with the quota quantity set at 10 MT per year;
- TRQ-7 barley flour, groats and pellets<sup>15</sup>, with the quota quantity increasing from 100MT in year 1 to 200 MT in year six;
- TRQ-8 food preparations of barley<sup>16</sup>, with the quota quantity increasing from 100 MT to 200 MT in year six;
- TRQ-9 barley<sup>17</sup>, with the quota quantity set at 30 MT per year;
- TRQ-10 malt, with the quota quantity set at 185,700 MT per year;
- TRQ-11 coffee, tea mixes, food preparations and doughs, with the quota quantity increasing from 1,270 MT in year 1 to 1,780 in year 11;
- TRQ-12 food preparations, with the quota quantity increasing from 150 MT in year 1 to 225MT in year 11;
- TRQ-13 glucose and fructose, with the quota quantity increasing from 1,780 MT in year 1 to 5,340 MT in year 11;
- TRQ-14 food preparations, with the quota quantity increasing from 3,500 MT in year 1 to 7,000 MT in year 11;
- TRQ-15 food preparations containing more than 50% of sucrose and cocoa powder, with the quota quantity increasing from 100 MT in year 1 to 130 MT in year 11;
- TRQ-16 sugar, with the quota quantity set at 500 MT per year;
- TRQ-17 starch, with the quota quantity increasing from 6,400 MT in year 1 to 7,150 MT in year six;
- TRQ-18 prepared edible fats and oils, with the quota quantity increasing from 360 MT in year 1 to 560 MT in year 11;
- TRQ-19 food preparations containing cocoa, with the quota quantity set at 580 MT per year;
- TRQ-20 food preparations containing cocoa (for the preparation of chocolate), with the quota quantity increasing from 440 MT in year 1 to 1,300 MT in year 11;
- TRQ-21 evaporated milk, with the quota quantity increasing from 780 MT in year 1 to 2,500MT in year 6;
- TRQ-22 whey, with the quota quantity increasing from 6,200 MT in year 1 to 9,400 in year 11;
- TRQ-23 butter, skimmed milk powder, milk powder, butter milk powder and condensed milk, with the quota quantity increasing from 12,857 MT in year 1 to 15,000 MT in year six;
- TRQ-24 milk powder (for the preparation of chocolate), with the quota quantity increasing from 5,242 MT in year 1 to 15,940 MT in year 11; and
- TRQ-25 cheeses with the quota quantity increasing from 20,000 MT in year 1 to 31,000 MT in year 16.

3.23. The quota quantity for all these products remains at the same level as the quantity in the last year set out in the tables of each category, except for TRQ-25 for which the quantity will be, from the 17<sup>th</sup> year, calculated every five years based on the calculation method set out in subparagraphs 26(a)(ii)(A) to (C) of Section B. According to the Parties, TRQ-25 will grow indefinitely based on domestic consumption of cheeses in Japan as per the calculation method outlined in Section B of Annex 2-A of the Agreement.

3.24. Each TRQ listed in Section B also has specific rules relating to its administration, phase-in and final volumes, whether the TRQ is outside the TRQs contained in Japan's WTO Schedule. TRQs 1, 4,

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<sup>14</sup> TRQ-5 shall be established outside the TRQ set out in Japan's Schedule to the WTO Agreement and administered by MAFF as a state trading enterprise using a SBS mechanism (note 6(d) to Section B of Annex 2-A).

<sup>15</sup> TRQ-7 shall be established outside the TRQ set out in Japan's Schedule to the WTO Agreement and administered by MAFF as a state trading enterprise using a SBS mechanism. The amount of the import mark-up shall not exceed the amount permitted for the goods under Japan's Schedule to the WTO Agreement (note 8(d) to Section B of Annex 2-A of the Agreement).

<sup>16</sup> TRQ-8 shall be established outside the TRQ set out in Japan's Schedule to the WTO Agreement and administered by MAFF as a state trading enterprise using a SBS mechanism. The amount of the import mark-up shall not exceed the amount permitted for the goods under Japan's Schedule to the WTO Agreement (note 9(d) to Section B of Annex 2-A of the Agreement).

<sup>17</sup> TRQ-9 shall be established outside the TRQ set out in Japan's Schedule to the WTO Agreement and administered by MAFF as a state trading enterprise using a SBS mechanism. The amount of the import mark-up shall not exceed the amount permitted for the goods under Japan's Schedule to the WTO Agreement (notes 10 d, f of Section B of Annex 2-A of the Agreement).

5, 7, 8 and 9 cover products which are already subject to TRQs set out in Japan's Schedule to the WTO Agreement. Annex 2 to this Factual Presentation sets out data on the application of these TRQs.

### 3.2 Rules of origin

3.25. Chapter 3 of the Agreement concerns rules of origin and origin procedures.

3.26. Article 3.1 sets out definitions used in the Chapter. Article 3.2 establishes requirements for originating products; per Article 3.2.1 to qualify as originating the goods must be:

(a) wholly obtained or produced products in accordance with Article 3.3,

(b) products produced exclusively from materials originating in that Party, or

(c) products produced using non-originating materials provided they satisfy all applicable requirements of Annex 3-B (Product specific rules of origin).

3.27. In order to meet the requirements under (c) above the product must meet any of the following requirements: a change in tariff classification (CTH), a production process (including a chemical reaction or a biological process), a maximum value of non-originating materials, a minimum regional value content or any other requirement specified in the Annexes 3-A and 3-B.

3.28. If a product has acquired originating status and incorporates non-originating materials, the non-originating materials shall be considered originating when that product is incorporated into another product (Article 3.2.3). An exclusive list of products considered to be wholly obtained is set out in Article 3.3. Article 3.4 provides an exclusive list of operations in relation to a product that constitute insufficient working or processing to non-originating materials.

3.29. Article 3.5 concerns accumulation. Article 3.5.1 provides that a product that qualifies as originating in a Party shall be considered as originating in the other Party if used as a material in the production of another product in the other Party. Production carried out in a Party on a non-originating material may be taken into account for the purpose of determining whether a product originates in the other Party (Article 3.5.2), provided the production goes beyond one or more of the operations referred to in Article 3.4.1 (a)-(q) (Article 3.5.3). Annex 3-C sets out the information that may be requested pursuant to Article 3.5.4.

3.30. Article 3.6 sets a general tolerance for non-originating materials of 10% of the ex-works or fob price in respect of products classified under Chapters 1 to 49 and 64 to 97 of the HS. Textile products are subject to different tolerances which are specified in Notes 6-8 of Annex 3-A (Article 3.6.1(b)).

3.31. Articles 3.8-3.15 contain disciplines on accounting segregation of fungible materials, sets, non-alteration of products declared for home use, returning products, accessories, spare parts, tools and instructional materials, neutral elements, packing materials and containers for shipment and packaging materials and containers for retail sale.

3.32. Section B of Chapter 3 concerns origin procedures. Article 3.16.1 requires that the importing Party shall grant preferential tariff treatment to a product originating in the other Party on the basis of a claim for preferential tariff treatment. The claim shall be based on statement on the origin of the product by the exporter or on the basis of the importer's knowledge that the product is originating (Article 3.16.2). The claim shall be contained in the customs import declaration (Article 3.16.4).

3.33. Article 3.17.1 provides that the exporter is responsible for the correctness of the statement on origin and of the information contained therein. Article 3.17.2 requires a statement on origin using one of the linguistic versions of the text in Annex 3-D, on an invoice or on any other commercial document that describes the originating product in sufficient detail to enable its identification. Article 3.19 requires that the importer claiming preferential tariff treatment and the exporter that made out a statement on origin keep records supporting the claim for a minimum of 3 and 4 years respectively (Article 3.19). Small non-commercial consignments of private persons are accorded less

stringent requirements (Article 3.20). The customs authorities of the importing Party may conduct a verification of origin under conditions set out in Article 3.21.

3.34. Article 3.22 provides that through their customs authority each Party shall cooperate in verifying whether a product is originating and in compliance with Chapter 3. A customs authority may, within 2 years after the importation of a product, request for a verification from the other Party's customs authorities. Article 3.23 requires the Parties to provide mutual assistance in cases of suspected breach of provisions of the Chapter, in accordance with the Agreement between the European Community and the Government of Japan on Co-operation and Mutual Administrative Assistance in Customs Matters, done at Brussels on 30 January 2008 (hereinafter referred to as "CMAA").

3.35. Denial of preferential tariff treatment is permitted under the conditions set out in Article 3.24. Article 3.25 requires each Party to maintain in accordance with their laws and regulations the confidentiality of any information provided to it by the other Party under Chapter 3. Article 3.26 requires the Parties to establish administrative measures and sanctions in accordance with their laws and regulations for persons who provide incorrect information for the purposes of obtaining preferential tariff treatment.

3.36. Article 3.27 states that the term Party does not apply to the Spanish territories of Ceuta and Melilla for the purposes of Chapter 3. While the EU shall apply the same treatment to these territories as applied under the Act of Accession of Spain and Portugal to the EU, Japan shall apply the same customs treatment to products originating in these territories as to the rest of the EU.

3.37. The functions of the Committee on Rules of Origin and Customs Related Matters are established pursuant to Article 22.3 and set out in Article 3.28.2.

3.38. Annex 3-A sets out introductory notes to product specific rules of origin, essentially definitions including the interpretation of Annex 3-B. Annex 3-B contains product specific rules of origin. Appendix 1 to Annex 3-B of the Agreement concerns determination of origin in relation to vehicles and parts of vehicles. Section 2 sets product specific interim thresholds setting out maximum non-originating materials and regional value content (RVC) for vehicles and parts of vehicles, for vehicles of heading 87.03, 84.07, 84.08, 87.06 and 87.07, 87.08, which reduce (and increase in the case of the RVC) over transitional periods.<sup>18</sup> Section 3 applies product specific rules of origin for certain motor vehicles through production process related to certain parts, implementation of which is subject to review upon request from either Party seven years after entry into force of the Agreement (Section 4). Section 5 of Annex 3-B-1 permits the Parties to decide that some or all materials of HS 84.07, 85.44, and 87.08 originating in a third party used in the production in a Party of a product under HS 87.03 are originating under the Agreement provided that: (i) each Party has a FTA under the meaning of GATT Article XXIV with the third party; (ii) an arrangement in force between the Party and the third party on adequate administrative cooperation ensuring full implementation of Section 5 and that Party notifies the other Party of the arrangement; and (iii) the Parties agree on any other conditions. According to the Parties, such an arrangement does not exist at present.

3.39. Annex 3-D provides multilingual model texts for statements of origin.

### **3.3 Export duties and charges, and quantitative restrictions**

3.40. Article 2.12 concerns export duties. The Parties have agreed that neither shall adopt or maintain any duties, taxes, fees or other charges of any kind imposed on goods exported to the other Party. In Article 2.14 on export competition, the Parties affirm their commitment, expressed in the WTO Ministerial Decisions of 19 December 2015 on Export Competition, (WT/MIN(15)/45 and

<sup>18</sup> For motor vehicles under HS 87.03, the maximum non-originating materials used declines from 55% (year 1-3), to 50% (year 4-6) and 45% (year 7 onwards); or the RVC increases from 50% to 55% and 60% during this period. For vehicle parts the norms are maximum non-originating materials of 60% (or RVC 45%) (year 1-3) to 50% (or RVC 55%)(from year 4 onwards) for HS 84.07 and 84.08; and 55% (or RVC 50%)(year 1-5) to 45% (or RVC 60%)(year 6 onwards) for HS 87.06 and 87.07. For parts of vehicles under HS 87.08 the requirements are either a CTH or maximum non-originating materials of 60% or RVC 45% during year 1-3 and CTH or maximum non-originating materials of 50% or RVC 55% as of year 4 onwards.

WT/L/980) to exercise utmost restraint with regard to export subsidies and export measures with equivalent effect.

3.41. In Article 2.15, the Parties have agreed to not adopt or maintain any prohibition or restriction on the export or sale for export any good except in accordance with Article XI of the GATT 1994, which is incorporated into and made part of the Agreement *mutatis mutandis*. If a Party intends to adopt a prohibition on the exportation or sale for export of a good listed in Annex 2-B<sup>19</sup>, it shall seek to limit the prohibition or restriction, provide the other Party with written notice (in advance if possible, in any case within 15 days) and give an opportunity for consultations (Article 2.15.2). Article 2.16 requires that fees and formalities connected with exportation be imposed in accordance with Article VIII and III of the GATT 1994. The Parties are not aware of any step taken in connection with the prohibition on the exportation or sale for export of a good listed in Annex 2-B since the entry into force of the Agreement.

3.42. Article 2.17, on export (and import) licensing procedures restates the Parties obligations under the Agreement on Import Licensing in respect of goods listed in Annex 2-B to the Agreement. The Agreement on Import Licensing is incorporated into the Agreement *mutatis mutandis*.

### **3.4 Regulatory provisions on trade in goods**

#### **3.4.1 Standards**

##### **3.4.1.1 Sanitary and phytosanitary measures**

3.43. Chapter 6 concerns sanitary and phytosanitary measures. The objectives of the Chapter are set out in Article 6.1, and include promoting cooperation between the Parties on the implementation of the SPS Agreement (Article 6.1(b)). In Article 6.4 the Parties affirm their rights and obligations relating to sanitary and phytosanitary measures under the SPS Agreement.

3.44. Article 6.5 requires the mutual notification of the competent authorities and contact points for the matters covered by the Chapter. According to the Parties these notifications have taken place.

3.45. Articles 6.6-6.14 contain provisions on risk assessment, import conditions, import procedures and trade facilitation, audit, procedures for listing of establishments or facilities, adaptation to regional conditions, transparency and exchange of information, technical consultations, taking of emergency measures and the equivalence of measures in the context of the other Party's appropriate level of protection.

3.46. Article 6.15 notes the establishment of a Committee on Sanitary and Phytosanitary Measures pursuant to Article 22.3). The objectives and functions of the Committee are set out in Article 6.15.2 and 6.15.3.

3.47. Article 6.16 notes the exclusion of the dispute settlement mechanism for some provisions: Article 6.6 (risk assessment), Article 6.7.4(b) to (d) (prohibition of discrimination, publication of standard processing period, information requirements limited to what is necessary) and Article 6.14.1 and 2 (equivalence) shall not be subject to dispute settlement under Chapter 21 (Article 6.16).

3.48. Annex 6 to the Agreement covers food additives. The Parties recognize the importance of transparency and predictability with respect to the application and approval procedures for food additives.

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<sup>19</sup> The goods listed in Articles 2.15 and 2.17 are Chapter 25 Salt; sulphur; earths and stone; plastering materials, lime and cement, Chapter 26 Ores, slag and ash, Chapter 27 Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes, Chapter 28 Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes, Chapter 71 Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin, Chapter 72 Iron and steel 73 Articles of iron or steel Chapter 74 Copper and articles thereof, Chapter 75 Nickel and articles thereof, Chapter 76 Aluminium and articles thereof, Chapter 78 Lead and articles thereof, Chapter 79 Zinc and articles thereof, Chapter 80 Tin and articles thereof, Chapter 81 Other base metals; cermets; articles thereof.

### **3.4.1.2 Technical barriers to trade**

3.49. Chapter 7 covers Technical Barriers to Trade. The objectives of the Chapter are described in Article 7.1. Article 7.2 defines the scope of the Chapter.<sup>20</sup> The Parties reaffirm their rights and obligations under the WTO TBT Agreement and incorporate Articles 2-9 and Annexes 1 and 3 of the TBT Agreement into the Agreement *mutatis mutandis* (Article 7.3). Each Party shall take such reasonable measures as are available to it to encourage local government bodies within its territory to encourage observance with the provisions of Articles 7.5 to 7.11 of the Agreement. Article 7.7.3 provides that each Party shall encourage, subject to its laws and regulations, its regional or national standardizing bodies to ensure adequate participation of interested persons within its territory in the standards development process and to allow persons of the other Party to participate in consultation procedures, which are available to the general public, on terms no less favourable than those accorded to its own persons.

3.50. Articles 7.5 to 7.12 contain provisions on technical regulations, international standards, standards, conformity assessment procedures, transparency, market surveillance, marking and labelling and cooperation. Article 7.13 sets out the functions of the Committee on TBT created pursuant to Article 22.3. That Committee is responsible for the effective implementation and operation of Chapter 7. The functions of the Committee are set out in Article 7.13.2. Contact points are required to be notified by Article 7.14. According to the Parties the contact points have been notified between the Parties.

### **3.4.2 Safeguard mechanisms**

3.51. Article 5.2 to 5.10 of Chapter 5 (Trade Remedies) concern safeguard measures.

#### **3.4.2.1 Global safeguards**

3.52. Chapter 5 Section C concerns global safeguard measures. Article 5.9 provides that nothing in the Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards. The provisions of the Section are not subject to dispute settlement under Chapter 21.

3.53. Article 5.10 provides that a Party shall not apply or maintain with respect to the same good at the same time (a) a bilateral safeguard measure set out in Section B of the Chapter, (b) a measure under Article XIX of the GATT 1994 and the Agreement on Safeguards, or (c) a safeguard measure set out in Section C of Part 3 of Annex 2-A.

#### **3.4.2.2 Bilateral safeguards**

3.54. Article 5.2.1 provides that if as a result of the elimination or reduction of a customs duty in accordance with Article 2.8, an originating good from one Party is being imported into the other Party in such increased quantities in absolute terms or relative to domestic production and under such conditions as to cause or threaten to cause serious injury to a domestic industry of the importing Party may adopt measures provided for in Article 5.2.2 to the extent necessary to prevent or remedy the serious injury to the domestic industry of the importing Party and to facilitate the adjustment of the domestic industry. Article 5.2.2 provides that a bilateral safeguard measure may consist of: the suspension of any further duty reduction provided for in Chapter 2 of the Agreement, or the increase of the rate of customs duty on the originating good to a level not exceeding the lesser of (i) the MFN applied rate of duty in effect on the day of application of the bilateral safeguard, and (ii) the MFN applied rate of duty in effect on the day prior to the entry into force of the Agreement. Under Article 5.3, no bilateral safeguard measure shall be adopted for a period of more than two years but it may be extended as necessary provided that the total period, including extensions, does not exceed four years. Bilateral safeguards may only be applied during the transition period.<sup>21</sup> Article 5.4 requires the conduct of an investigation prior to imposition of a

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<sup>20</sup> The Chapter does not apply to purchasing specifications by a governmental body for its production or consumption requirements or sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement (Article 7.2.3).

<sup>21</sup> The transition period is defined as the period beginning on the date of entry into force of the Agreement and ending ten years after the date of completion of tariff reduction or elimination on that particular good in accordance with the Party's schedule in Annex 2-A.

bilateral safeguard measure which must be completed within one year following its date of initiation. Article 5.5 sets out notification obligations for the Party seeking to impose a measure. Consultations on and possible compensation for a bilateral safeguard are provided for in Article 5.6. Provisional measures are permitted, under certain conditions, in Article 5.7 for up to 200 days as in Article 6 of the WTO Agreement on Safeguards.

### 3.4.2.3 Special safeguards

3.55. Article 2.5 provides that originating agricultural goods shall not be subject to any duties applied by the other Party pursuant to a special safeguard measure taken under the Agreement on Agriculture. Article 2.5.2 provides that agricultural safeguard measures on originating agricultural goods under the Agreement may be taken in accordance with Section C of Part 3 of Annex 2-A. According to the Parties, only Japan may take agricultural safeguards under the Agreement.

3.56. Section C, Sub-section 1 of Annex 2-A sets out the notes for the use of agricultural safeguard measures for Section C, including (a) the originating agricultural goods that may be subject to agricultural safeguard measures pursuant to paragraph 2 of Section A; (b) the trigger levels for applying such measures; and (c) the maximum rate of customs duty that may be applied in each year for each such good. Sub-section 2 of Section C sets out agricultural safeguard measures for beef, sub-sections 3 for pork, and 4 for processed pork, 5 for whey protein concentrate, 6 for whey powder, 7 for fresh oranges, and 8 for race horses (see Table 3.5 below).<sup>22</sup> Under Section C, Japan may, as an agricultural safeguard measure, increase the rate of customs duty on an originating agricultural good to a level not exceeding the lesser of (a) the most-favoured-nation applied rate of customs duty in effect at the time of the application of the agricultural safeguard measure; (b) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; and (c) the rate of customs duty set out in this Section.

**Table 3.5: Japan quantity and price-based agricultural safeguards**

HS line number (Product description)	Safeguard	Timeframe	Trigger	Additional duty
020110.000, 020120.000, 020130.010, 020130.020, 020130.030, 020130.090, 020210.000, 020220.000, 020230.010, 020230.020, 020230.030, 020230.090, 020610.020, 020629020	Additional duty	15 years from entry into force During any four consecutive years after year 16, Japan shall not apply any further agricultural safeguard measures.	43,500MT (year 1) to 50,500 MT (year 10) additional 385 MT per year (years 11-15), than previous year plus 770MT (year 16 onwards?)	SG1* Year 1: 38.5% to 18% year 15 then 1% less or same rate depending on whether measure applied in previous year; SG1** same but 39% first year
020311.020, 020311.030, 020311.040, 020312.021, 020312.022, 020312.023, 020319.021, 020319.022, 020319.023, 020321.020, 020321.030, 020321.040, 020322.021, 020322.022, 020322.023, 020329.023, 020329.021, 020329.022, 020630.093, 020630.092, 020630.099, 020649.092, 020649.093, 020649.099	Additional duty	11 years	The level is decided under the conditions set out in sub-section 3.1.	The additional duty is decided under the conditions set out in sub-section 3.2.
021011.010, 021011.020, 021012.010, 021012020, 021019.010, 021019.020, 021099.011, 021099.019,	Additional duty	11 years	Years 1-2 115% of annual aggregate	SG3 85% of base rate from year 1 to 45% in year 11

<sup>22</sup> The products in respect of which a safeguard may be used are marked with "SG1\*", "SG1\*\* (beef)", "SG2 (pork)", "SG3 (processed pork)", "SG4\* (whey protein concentrate)", "SG4\*\* (whey powder)", "SG5 (fresh oranges)" or "SG6 (race horses)" in the Column "Note" in the Schedule of Japan.

HS line number (Product description)	Safeguard	Timeframe	Trigger	Additional duty
160241.011, 160241.019, 160242.011, 160242.019, 160249.210, 160249.220.			imports (3 yr maximum) to 121% in year 11	
040410.129, 040410.139, 040410.0149, 040410.169, 040410.179, 040410.189	Additional duty	20 years During any three consecutive years after year 21, Japan shall not apply any further agricultural safeguard measures.	2000 MT (year 1) to 7,438 MT (year 20), from year 21 previous trigger level plus 573 MT.	SG4* 29.8% plus 120 yen/kg in year 1 to 13.4% plus 75 yen/kg in year 20, then reduced by 1.9% plus 10.7 yen/kg (if not applied in previous year), or 1% plus 5 yen/kg (if applied in previous year.)
040410.129, 040410.139, 040410.149, 040410.169, 040410.179, 040410.189	Additional duty	15 years During any two consecutive years after year 16, Japan shall not apply any further agricultural safeguard measures.	2300 MT in year 1 to 5,190 in year 15, from year 16 previous trigger level plus 458 MT	SG4** 29.8% plus 75 yen/kg (year 1), to 13.4% plus 30 yen/kg from year 11-15, then reduced by (if not applied in previous year) 2% plus 4 yen/kg, or (if applied in previous year) 1% plus 2 yen/kg
080510.000, - If imported from 1 December to 31 March	Additional duty	7 years	If imports exceed 2000 MT	SG5 28% (from year 1 to 4), to 20% (from year 5 to7)
010129.290	Additional duty	15 years	If the CIF import price per good is less than 90% of the trigger price (the trigger price shall be that agreed under paragraph 4, or 10.7 million yen if no specific agreement.)	SG6 30% of the difference between MFN duty and the duty under the Agreement (if CIF import price greater than 10% but less than or equal to 40% of the trigger price), or 50% of the difference between the MFN duty and the duty under the Agreement (if difference between CIF import price greater than 40% but less than or equal to 60%). 70% of the difference between the MFN duty and the duty under the Agreement (if difference greater than 60% but less than or equal to 75% of the trigger price); and the difference between the MFN duty and duty under the Agreement (if difference between CIF import price and trigger price is greater than 75%)

Source: The Agreement.

3.57. The Parties agreed that Japan shall implement any agricultural safeguard measure in a transparent manner, and within 60 days of the date of imposing the agricultural safeguard measure, notify and provide the European Union with data concerning the measure. Japan shall, on written request of the European Union, respond to specific questions from, and provide information to, the European Union, including by e-mail, teleconference, video-conference and in person, regarding the application of the measure. However, no agricultural safeguard measure may be applied or maintained on or after the date on which the rate of customs duty referred applicable to the good becomes zero.

#### **3.4.2.4 Balance of payments safeguards**

3.58. Article 2.20 concerns restrictions to safeguard the balance of payments. Article 2.20.1 provides that nothing in the Agreement shall be construed as preventing a Party from taking any measures for balance-of-payments purposes. If a Party takes such measures it shall do so in accordance with Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. In addition, Article 2.20.2 provides that nothing in this Agreement shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund.

#### **3.4.2.5 Other safeguards**

3.59. A safeguard mechanism for motor vehicles under Article 18 of Annex 2-C permits a Party to suspend equivalent concessions or other obligations in the event that the other Party does not apply or ceases to apply a UN Regulation in Appendix 2-C-1. The measure remains in place until the completion of an expedited dispute settlement procedure under Article 19 of the Annex (see section 3.5.3 below).

#### **3.4.3 Anti-dumping and countervailing measures**

3.60. Chapter 5 covers Trade Remedies. Section D concerns Anti-Dumping and Countervailing Measures. In Article 5.11 the Parties reaffirm their rights and obligations under the WTO Agreements on Anti-Dumping and Subsidies and Countervailing Measures (SCM). Chapter 3 of the Agreement (Rules of Origin) shall not apply to anti-dumping and countervailing measures under the Agreement (Article 5.11.3).

3.61. Article 5.12 concerns transparency and disclosure of essential facts under the Agreement. Article 5.12.1 requires each Party to conduct anti-dumping and countervailing duty investigations in a fair and transparent manner and based on the WTO Agreements on Anti-Dumping and SCM. Prior to application of provisional measures under Article 7 of the Agreement on Anti-Dumping or Article 17 of the SCM Agreement and in any case prior to the making of a final determination, each Party shall ensure full disclosure of the essential facts which form the basis for the decision on whether to apply provisional or definitive measures. Such disclosure shall be made in writing and take place in sufficient time for interested parties to defend their interests (Article 5.12.2). The essential facts required to be disclosed are described in Article 5.12.3.

3.62. In a case where an investigating authority of a Party intends to make use of the facts available pursuant to Article 6.8 of the Agreement on Anti-Dumping, the investigating authority shall inform the interested party of its intentions to do so and give a clear indication of the reasons it seeks to use the facts available.

3.63. Article 5.13 contains a public interest provision which requires the investigating authority of the importing Party to provide opportunities for producers in the importing Party, importers and industrial users of the good and representative consumer organizations to submit their views in writing in relation to the anti-dumping or countervailing duty investigation including concerning the potential impact of a duty on their situation.

3.64. Section D is not subject to dispute settlement under Chapter 21 of the Agreement (Article 5.11.2).

#### **3.4.4 Subsidies and State-aid**

3.65. Chapter 12 of the Agreement (Articles 12.1 to 12.10) concerns subsidies. Article 12.3.1 provides that the Chapter applies to specific subsidies to the extent they are related to economic activities.<sup>23</sup> Definitions used in the Chapter are set out in Article 12.2: economic activities are defined as activities pertaining to the offering of goods and services in a market, and "subsidy" and "specific

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<sup>23</sup> Footnote 1 to Chapter 12 clarifies that education provided under the domestic educational system of each Party shall be considered as a non-economic activity.

subsidy" are defined by reference to Articles 1.1 and 2 of the WTO Agreement on Subsidies and Countervailing Measures respectively (SCM Agreement).

3.66. Exclusions to the coverage of the Chapter are set out in Article 12.3.2-8. The Chapter does not apply to subsidies granted to enterprises entrusted by the government with the provision of services to the general public for public policy objectives (Article 12.3.2). It does not apply to subsidies granted to compensate damage caused by natural disasters or other exceptional occurrences (Article 12.3.3). Articles 12.5 and 12.6 (notifications to the other Party concerning specific subsidies and consultations on subsidies considered by a Party to have a significant negative effect on trade or investment interests respectively) do not apply to subsidies with a cumulative amount or budget of which is less than 450,000 special drawing rights (SDR) per beneficiary for a period of 3 consecutive years (Article 12.3.4). Articles 12.6 and 12.7 (prohibited subsidies) do not apply to subsidies related to trade in goods covered by Annex 1 to the Agreement on Agriculture and subsidies related to trade in fish and fish products (Article 12.3.5). Article 12.7 does also not apply to subsidies granted temporarily to respond to a national or global economic emergency (Article 12.3.6).<sup>24</sup> The Chapter does not apply to audio-visual services (Article 12.3.7) or subsidies granted by sub-central levels of government of each Party (Articles 12.3.7 and 8).

3.67. Article 12.4 provides that nothing in the Chapter shall affect the rights and obligations of either Party under the SCM Agreement, Article XVI of the GATT 1994 and Article XV of GATS. Article 12.5 sets out a mechanism for notifications, and in Article 12.5.3 notes that the notification obligation in relation to services only applies to certain listed sectors (on subsidies in services see also section 4.5.3 below).

3.68. Article 12.6 sets out a consultation mechanism in the event a Party considers that a subsidy of the other Party has or could have a significant negative effect on its trade or investment interests under the Chapter (12.6.1). The Party receiving the request for consultation shall consider to provide information about the subsidy. Information that can be requested by the requesting Party is described in Article 12.6.2. If after consultations the requesting Party still considers that the subsidy has or could have a significant negative effect on its trade or investment interests, the requested Party shall accord sympathetic consideration to the concerns raised and any solution shall be considered feasible and acceptable by the requested Party (Article 12.6.5).

3.69. Article 12.7 establishes that legal or other arrangements whereby a government or public body is responsible for guaranteeing debts or liabilities of an enterprise without any limitation as to the amount or duration of a guarantee (Article 12.7(a)) and subsidies for restructuring an ailing or insolvent enterprise without the enterprise having to prepare a credible restructuring plan (Article 12.7(b)) that have or could have a significant negative effect on trade or investment between the Parties are prohibited subsidies under the Chapter.

3.70. Article 12.8 provides in full that each Party shall ensure that enterprises use subsidies only for the specific purpose for which the subsidies were granted.

3.71. In Article 12.9 provides that the general exceptions of Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of the Agreement, *mutatis mutandis*. Article 12.10 provides that Article 12.6.5 (if the requesting Party, after the consultations, still considers that the subsidy has or could have a significant negative effect on its trade or investment interests, the requested Party shall accord sympathetic consideration to the concerns of the requesting Party. Any solution shall be considered feasible and acceptable by the requested Party) is not subject to dispute settlement under Chapter 21 of the Agreement.

3.72. Chapter 13 of the Agreement (Articles 13.1-13.8 concerns state-owned enterprises, enterprises granted special rights or privileges and designated monopolies). Definitions used in the Chapter are set out in Article 13.1, and the scope of the Chapter is described in Article 13.2. Article 13.2.1 notes that the Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies engaged in commercial activities. Where they engage

<sup>24</sup> Footnote 2 to Chapter 12 provides that such an emergency shall be understood as one that affects the whole economy of a Party, for the EU this means the whole of the EU economy or at least one of the Member States of the EU.

in both commercial and non-commercial activities only the commercial activities are covered by the Chapter.

3.73. Exclusions to the coverage of the Chapter or a specific Article appear in Articles 13.2.3-8, and include situations where covered enterprises act as procuring entities covered either under each Party's annexes to Appendix I to the GPA or under Part 2 of Annex 10 of the Agreement conducting procurement for governmental purposes and not with a view to commercial resale or with a view to use in the production of a good or in supply of a service for commercial sale. Covered enterprises are also excluded from coverage of the Chapter if in any one of the 3 previous consecutive fiscal years the annual revenue derived from the commercial activities was less than 200 million SDR (Article 13.2.5). Article 13.2.6 provides that Article 13.5 does not apply with respect to the supply of financial services by state-owned enterprises pursuant to a government mandate which supports exports or imports (Article 13.2.6(a)) or private investment outside the territory of the Party (Article 13.2.6(b)). Article 13.2.7 provides that Article 13.5 does not apply to a covered enterprise to the extent it makes purchases and sales of a good or a service pursuant to any existing non-conforming measure set out in the Parties' Schedule in Annex I to Annex 8-B (Article 13.2.8(a)) and any non-conforming measure set out in the Party's Schedule in Annex II to Annex 8-B (Article 13.2.8(b)).

3.74. In Article 13.3 the Parties affirm their rights and obligations under paragraphs 1 to 3 of Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 as well as under paragraphs 1, 2 and 5 of Article VIII of GATS.

3.75. Article 13.5.1 requires each Party to ensure that each of its covered enterprises act in accordance with commercial considerations (Article 13.5.1(a) and accords non-discriminatory treatment (Articles 13.5.1(b) and (c)). In Article 13.6.1 the Parties agree to respect and make best use of relevant international standards including, *inter alia*, the OECD Guidelines on Corporate Governance of State-Owned Enterprises. Article 13.6.2 sets out independence and impartiality obligations for any regulatory body exercising a regulatory function over covered enterprises. Article 13.7 defines an information exchange process if a Party has reason to believe that its interests under the Chapter are being adversely affected by the commercial activities of a covered enterprise of the other Party.

3.76. Article 13.8 provides that the general exceptions of Article XX of GATT 1994 and Article XIV of GATS are incorporated into and made part of the Agreement, *mutatis mutandis*.

### **3.4.5 Customs-related procedures**

3.77. Chapter 4 concerns customs matters and trade facilitation. Article 4.1 lists the objectives of the Chapter and Article 4.2 the scope of the Chapter. Articles 4.3-4.13 concern transparency, procedures for import, export and transit, release of goods, simplification of customs procedures, issuance of advance rulings, appeal and review of administrative decisions, risk management, post-clearance audit, transit and transshipment, customs cooperation and temporary admission. Nothing in the Chapter shall affect the Parties' rights and obligations under Chapters 6 and 7 (SPS and TBT) of the Agreement and in the case of any inconsistency, the provisions in these chapters shall prevail to the extent of the inconsistency.

3.78. Transparency provisions require the Parties to publish their customs legislation and other trade related laws and regulations as well as general administrative procedures and relevant information of general application related to trade, including as appropriate on the Internet. Customs legislation, other trade-related laws and regulations and general administrative procedures related to trade should be made available as early as possible before their entry into force except in certain situations. The Parties shall also designate enquiry points and provide for regular consultations between their customs authorities and other trade related agencies and traders or other stakeholders.

3.79. With regard to the procedures for import, export and transit the Parties agree to adopt or maintain measures granting favourable treatment prior to the release of goods to traders or operators fulfilling criteria specified in their laws and regulations to promote the use of advanced systems including those based on information and communication technology to facilitate the exchange of electronic data and to work towards further simplification of customs procedures. They agree to issue advance rulings setting forth the treatment to be provided to the goods concerned.

3.80. The Parties also guarantee the right of appeal or review (including administrative and judicial) to any person to whom an administrative decision has been addressed by the customs authorities or other trade related agencies.

3.81. Article 4.14.1 establishes the responsibility of the Committee on Rules of Origin and Customs Related Matters established pursuant to Article 22.3 for the effective implementation and operation of the Chapter and the customs-related matters of Chapter 2 and of Article 14.51 as well as the other responsibilities specified in Article 3.28.1. Article 4.14.2 requires, as a general rule<sup>25</sup>, that the Committee hold joint meetings with the Joint Customs Cooperation Committee ("JCSS") pursuant to the CMAA, unless the joint meetings are not necessary.

### **3.4.6 Other regulations**

#### **3.4.6.1 Good regulatory practices and regulatory cooperation**

3.82. Chapter 18, Articles 18.1-18.19 concerns good regulatory practices and regulatory cooperation. The objectives of the Chapter are set out in Article 18.1, to promote cooperation between the Parties with the aim of enhancing bilateral trade and investment. Article 18.1.2 provides that nothing shall affect the right of a Party to define or regulate its own levels of protection in areas such as public health, human, animal and plant life and health, occupational health and safety, labour conditions, the environment (including climate change) consumers, social protection and social security and other public policy objectives specified in the Article. Per Article 18.1.4 provides that regulatory measures shall not constitute a disguised barrier to trade.

3.83. The Parties agreement on good regulatory practices is described in sub-section 2 of Section A of Article 18. The provisions include agreement to make publicly available descriptions of the processes and mechanisms used by the regulatory authority to prepare, evaluate and review its regulatory measures; make publicly available at least once a year a list of its planned major regulatory measures together with a brief description of their scope and objectives; provide for public consultation when preparing major regulatory measures; and endeavour to systematically carry out an impact assessment of major regulatory measures under preparation.<sup>26</sup>

3.84. Sub-section 3 of Section A of Article 18 concerns regulatory cooperation. In sub-section 4 the functions of the Committee on Regulatory Cooperation (established pursuant to Article 22.3) are described. In Article 18.15 the Parties have agreed to establish contact points for exchange of information in accordance with Article 18.16 (exchange of information on planned or existing regulatory measures). According to the Parties, the Committee has not met yet. The contact points under Article 18.15 have been established, for the EU, the European Commission, DG TRADE, and for Japan the Ministry of Foreign Affairs.

3.85. Chapter 18 is not subject to dispute settlement under Chapter 21 (Article 18.19).

### **3.5 Sector-specific provisions on trade in goods**

#### **3.5.1 Agriculture**

3.86. Chapter 19 concerns cooperation in the field of Agriculture. In Article 19.1 on objectives provides that the Parties aim at promoting cooperation on sustainable agriculture, including rural development and the exchange of technical information and best practices for providing safe and high-quality foods for consumers in the EU and Japan. Article 19.2 sets out the scope of the Chapter. In Article 19.3 the Parties agree to improve the business environment for persons of the other Party conducting business activities in the former Party. The Committee on Agriculture (established under Article 22.3) shall be responsible for the effective implementation of the Chapter. According to the Parties, the Committee has not met yet. The provisions of the Chapter are not subject to dispute settlement under Chapter 21.

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<sup>25</sup> According to the Parties, there can be cases where meetings can be held separately.

<sup>26</sup> The regulatory authority shall also maintain processes or mechanisms to promote periodic retrospective evaluations of regulatory measures in force.

### 3.5.2 Wine and Shochu

3.87. Section C, Articles 2.23-2.31 of the Agreement concern the facilitation of exports of wine between the Parties. Article 2.23 provides that the section only applies to wine products classified under the heading 22.04 of the Harmonized System. Article 2.25 of the Agreement concerns phase one of authorisation of oenological practices. Article 2.25.1 provides that from the date of entry into force of the Agreement, the EU shall authorize the importation and sale of wine products from Japan in accordance with the definitions, practices and restrictions set out in Sections A and B of Part 2 of Annex 2-E. Article 2.25.2 similarly provides that Japan will authorize the importation and sale of wine products originating in the EU in accordance with the definitions, practices and restrictions referred to in Part 1 of Sections A and B of Annex 2-E. Authorisation of oenological practices, phase 2 and 3 are covered by Article 2.26 and 2.27 respectively. Article 2.28 on self-certification, requires that an authentic certificate established by a producer shall suffice as documentation evidencing that the requirements for importation and sale of wine products in the EU. Reviews and consultations on the implementation of Articles 2.26 and 2.27 are provided for in Article 2.29.

3.88. In Annex 2-D, titled Facilitation of Shochu Export the Parties agreed that single distilled shochu (as defined under Japan's Liquor Tax Law) shall be allowed to be placed on the EU market in bottles of 720ml and 1800ml volume.

3.89. Annex 2-E Part 1 sets out rules for the facilitation of wine product export from the EU to Japan. Part 1 of Section A of the Annex lists the EU's laws and regulations referred to in Article 2.25, Section B concerns Article 2.25, Section C concerns Article 2.26 and Section D concerns Article 2.27. In Part 2 of Annex 2-E Japan lists its laws and regulations. Section A and B list the laws and regulations referred to in Article 2.25, Section C Article 2.26, and Section D Article 2.27.

### 3.5.3 Motor vehicles

3.90. Annex 2-C sets out 20 Articles concerning motor vehicles and parts. Article 1 contains definitions, including "WP.29", the World Forum for the Harmonisation of Vehicle Regulations, acting within the framework of the United Nations and the Economic Commission for Europe. The Annex applies to all products of motor vehicles, their parts and equipment regulated by two prior UN Agreements, in 1958 and 1998. The Annex excludes products used exclusively for agriculture or forestry. The objectives of the Annex to Article 3 are, to promote high levels of safety, environmental protection, energy efficiency and anti-theft performance of motor vehicles, to facilitate trade between the Parties through regulatory cooperation and elimination of NTMs; to enhance the international harmonization of requirements in the context of WP.29 and the mutual recognition of type approvals and to achieve convergence of regulatory requirements of the Parties through application of UN Regulations and global technical regulations. In Article 14 the Parties agree to not prevent or unduly delay the placing on their markets of new technologies or features that are not yet regulated, unless there are duly substantiated risks. Provisions on amendments to, establishment of and cessation of application of relevant UN Regulations are set out in Articles 6-8. The Parties have agreed to update Appendices to the Annexes periodically.

3.91. Article 10 concerns international whole vehicle type approvals under UN Regulation No. 0 which the Parties commit to accept. The Parties agree to cooperate in the implementation of UN Regulation No. 0 to facilitate its worldwide use and to cooperate in enlarging the coverage of the Regulation. In Article 12 the Parties agree on disciplines on the introduction of domestic technical regulations. A consultation procedure on introduction or amendment of domestic technical regulations is set out in Article 13. Regulatory exceptions to the disciplines contained in the Annex are permitted under Article 15, for urgent and compelling risks for human health, safety or the environment. A joint cooperation procedure is set out in Article 17, in which the Parties agree to cooperate on any matters concerning covered products.

3.92. Article 19 sets out an accelerated dispute settlement mechanism for Annex 2-C which modifies Chapter 21 on dispute settlement.

3.93. Article 20.2 of Annex 2-C sets out the functions of the Working Group on Motor Vehicles and Parts established pursuant to Article 22.4.1 of the Agreement. According to the Parties, the Working Group has not yet met. Appendix 2-C-1 of the Agreement lists 77 UN Regulations applied by both

Parties concerning motor vehicles. Appendix 2-C-2 lists 4 UN Regulations concerning motor vehicles which are applied by one of the Parties and not yet considered by the other Party.

3.94. A safeguard mechanism for motor vehicles under Article 18 of Annex 2-C permits a Party to suspend equivalent concessions or other obligations in the event that the other Party does not apply or ceases to apply a UN Regulation in Appendix 2-C-1. The measure remains in place under the completion of an expedited dispute settlement procedure under Article 19 of the Annex.

## **4 PROVISIONS ON TRADE IN SERVICES AND INVESTMENT**

4.1. Chapter 8 of the Agreement contains disciplines on trade in services, investment liberalisation, and electronic commerce. Section A, Articles 8.1-8.5<sup>27</sup> concern General Provisions. Section B, Articles 8.6-8.13 concern Investment Liberalization, Section C, Articles 8.14-8.19 concern cross border trade in services. Section D, Articles 8.20-8.28, and Annex 8-B<sup>28</sup> and Annex 8-C concern entry and temporary stay of natural persons. Section E, Articles 8.29-69 and Annex 8-A concern regulatory framework.<sup>29</sup> The first four Articles of Section E concern domestic regulation. Section F, Articles 8.70-8.81, concern Electronic commerce.

### **4.1 Scope and definitions**

4.2. In Article 8.1 of the Agreement the Parties affirm their commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties and also agree to create arrangements for the progressive and reciprocal liberalization of trade in services and investment and for cooperation on electronic commerce. Definitions used in the Chapter are set out in Article 8.2.

4.3. The Parties affirm their right to adopt regulatory measures necessary to achieve legitimate policy objectives, such as protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity (Article 8.1.2). They agree that the Chapter does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, residence or employment (Articles 8.1.3-4).

4.4. The section on investment liberalization does not apply to cabotage in maritime transport services or air services or related services in support of air services other than those listed in Article 8.14.2(b)(i)-(iv) and audio-visual services (Article 8.6.2). Article 8.14.2 provides that the section on cross border trade in services does not apply to cabotage in maritime transport services or air services or related services in support of air services other than those listed in Article 8.14.2(b)(i)-(iv), government procurement, audio-visual services, and subsidies as defined and provided in Chapter 12 of the Agreement. Government procurement and subsidies are also carved out from the investment and liberalization section by virtue of Article 8.12.5 and 6.

4.5. The Parties have taken a "negative list" approach to scheduling commitments in investment and cross border trade in services. Annexes I and II to Annex 8-B, respectively, contain reservations in relation to existing measures of the Parties<sup>30</sup>, and reservations in relation to future measures of the Parties. Annex III concerns business visitors for establishment purposes, intra-corporate transferees, investors and short-term business visitors, and Annex IV concerns contractual service providers and independent professionals.

### **4.2 Denial of benefits**

4.6. Article 8.13 provides that a Party may deny the benefits of the section to an entrepreneur of the other Party that is a juridical person of the other Party and its covered enterprise if that juridical

<sup>27</sup> On Non-conforming measures, see the Parties Annexes I and II to Annex 8-B.

<sup>28</sup> On commitments for entry and temporary stay of natural persons, see the Parties Annexes III and IV to Annex 8-B.

<sup>29</sup> Sub-section 1 concerns Domestic regulation, 2 concerns Provisions of general application, 3 Postal and Courier services, 4 Telecommunications services, 5 Financial services, 6 International maritime transport services.

<sup>30</sup> Annex I to Annex 8-B contains lists of measures that do not conform with obligations imposed by: (a) Article 8.7 or 8.15; (b) Article 8.8 or 8.16; (c) Article 8.9 or 8.17; (d) Article 8.10; or (e) Article 8.11.

person is owned or controlled by a natural or juridical person of a third country and the denying Party adopts or maintains measures in relation to the third country that (a) are related to the maintenance of international peace and security, including the protection of human rights, and (b) prohibit transactions with that juridical person or its covered enterprise or would be violated or circumvented if the benefits of this Section were accorded to them. Article 8.19 concerns denial of benefits in relation to service suppliers and services and is of identical effect.

### **4.3 General provisions on trade in services and investment**

4.7. Chapter 8 contains provisions on services and investment which are summarized below but also relate to Annexes 8-A, Annex 8-B and 8-C to the Agreement.

4.8. On services, Article 8.18 provides that Article 8.15 (market access) Article 8.16 (national treatment) and Article 8.17 (MFN treatment) do not apply to any existing non-conforming measure that is maintained by a Party in its Schedule in Annex I to Annex 8-B (Existing Measures, Article 8.18.1(a)). For the EU, the exclusion applies at the level of the EU, the central Government of a Member State, a regional government of a Member State, or a local government. For Japan, the exclusion applies at the level of central Government, a prefecture and a local government. Amendments of or modifications to existing non-conforming measures under Article 8.18.1(a) are also covered, provided that the amendment or modification does not decrease the conformity of the measure (Article 8.18.1(c)). Further, Articles 8.15 to 8.17 do not apply to any measure by a Party with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex II to Annex 8-B (Future Measures, Article 8.18.2).

4.9. On investment, Article 8.12 provides that Articles 8.7 (market access), 8.8 (national treatment), 8.9 (most-favoured-nation treatment), 8.10 (senior management and boards of directors) and 8.11 (prohibition of performance requirements) do not apply to an existing non-conforming measure that is maintained by a Party as set out in its Schedule to Annex I to Annex 8-B (Existing Measures, Article 8.12.1(a)). For the EU, the exclusion applies at the level of EU, central government of a member state level, a regional government of a member state or a local government. For Japan, the exclusion applies at the central government level, a prefecture and a local government level. Amendments of or modifications to any non-conforming measure under Article 8.12.1(a) are also covered, provided that the amendment or modification does not decrease the conformity of the measure (Article 8.12.1(c)). Further, Articles 8.7-8.11 do not apply to any measure with respect to sectors, sub-sectors or activities as set out in a Party's Schedule in Annex II to Annex 8-B (Future Measures, Article 8.12.2).

#### **4.3.1 Market access**

4.10. In respect of services, in Article 8.15 the Parties agree not to maintain or adopt (either on the basis of a territorial subdivision or on the basis of its entire territory) measures that impose limitations on the number of service suppliers, the total value of service transactions or assets, the total number of service operations or total quantity of service output, or restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

4.11. On investment, Article 8.7 provides that a Party shall not maintain or adopt with regard to market access (through establishment or operation by an entrepreneur of the other Party or by a covered enterprise) measures that impose limitations on the number of enterprises, the total value of transactions or assets through numerical quotas or an economic needs test, the total number of operations or the total quantity of output, participation of foreign capital, or total number of natural persons that may be employed in a sector or enterprise. A Party shall not restrict nor require specific types of legal entity or joint venture through which an entrepreneur of the other Party may perform an economic activity (Article 8.7(b)).

#### **4.3.2 National treatment and MFN**

4.12. On cross border trade in services, Article 8.16 requires each Party to 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. This requirement can be met by providing formally identical or formally different treatment to the treatment it provides to like services or suppliers of the other Party.

4.13. In Article 8.17 each Party shall accord to services and service suppliers of the other Party treatment no less favourable than they accord to like services and service suppliers of a third country.

4.14. Concerning investment, Article 8.8 provides that each Party shall accord to entrepreneurs and covered enterprises of the other Party treatment no less favourable than it accords, in like situations, to its own entrepreneurs and their enterprises in its own territory with respect to establishment and operation in its territory (Article 8.8.1 and 8.8.2). Article 8.8.3 provides that the Parties may establish statistical or information requirements in connection with the covered enterprises provided that such requirements do not constitute a means to circumvent the Party's national treatment obligations.

4.15. Article 8.9 requires each Party to accord treatment no less favourable to entrepreneurs and to their enterprises and covered enterprises of the other Party than that it accords to entrepreneurs of a third country and their covered enterprises with respect to establishment and operation in its territory.

#### **4.3.3 Commercial presence**

4.16. Commercial presence is covered by the investment liberalization section. Thus Article 8.6 of Section B of Chapter 8 provides that the Section applies to measures by a Party with regard to the establishment or operation of economic activities by entrepreneurs of the other Party and their covered enterprises (Article 8.6.1).

4.17. Article 8.15(a)(i) requires a Party to not adopt or maintain measures which require a service supplier of the other Party to establish or maintain any form of enterprise or to be resident in the territory of the Party as a condition for the cross-border supply of a service.

#### **4.3.4 Prohibition of performance requirements**

4.18. In Article 8.11 the Parties have agreed to prohibit performance requirements, a definitive list of which are contained in Articles 8.11.1 and 2.

#### **4.3.5 Movement of natural persons**

4.19. Annex 8-C contains each Party's understanding on the movement of natural persons for business purposes. Section D of Chapter 8 concerns entry and temporary stay of natural persons. Article 8.20 sets the scope of the section. The Parties note their common desire to facilitate the entry and temporary stay of natural persons for business purposes on a reciprocal basis, and to ensure transparency of the process. The section applies to measures by a Party affecting the entry into that Party of business visitors (natural persons) of the other Party<sup>31</sup> and measures affecting their business activities during the temporary stay in the former Party.

4.20. In Article 8.21 definitions of key terms used in the section are set out, such as business visitors for establishment purposes, contractual service suppliers, independent professionals, intra-corporate transferees and investors. Article 8.22.1 provides that a Party shall grant entry and temporary stay to natural persons of the other Party for business purposes, in accordance with Section D of Chapter 8 and Annexes III and IV of Annex 8-B.

4.21. Article 8.23 sets out obligations of the Parties regarding transparency, including the requirement to make publicly available information on categories of visas available, including information on documentary requirements, application fees and the maximum length of stay permitted under each type of authorization.

4.22. Article 8.24.2(a) provides that the obligations of Articles 8.7 to 8.11 of the Agreement<sup>32</sup> (subject to Article 8.6 and 8.12 as applicable) are incorporated into the section and apply to the

<sup>31</sup> The persons covered by the section "...are business visitors for establishment purposes, intra-corporate transferees, investors, contractual service suppliers, independent professionals and short-term business visitors...".

<sup>32</sup> On investment, the cited provisions concern market access, national treatment, MFN, senior management and boards of directors, performance requirements.

measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of business visitors. Article 8.24.2(b) mirrors this in respect of services and services suppliers in principle, providing that the obligations of Articles 8.15 (market access) and 8.16 (national treatment) (subject to Article 8.14 and 8.18 as applicable) are incorporated into and apply to all measures affecting treatment of natural persons present in the territory of the other Party under the categories of contractual service providers and independent professionals for all sectors listed in Annex IV to Annex 8-B and short term business visitors in accordance with Annex III of Annex 8-B. Likewise, the obligations set out in Article 8.17 (MFN) are subject to Article 8.14 (scope) and 8.18 (non-conforming measures) is also incorporated into the section, in respect of contractual service suppliers and independent professionals and short term business visitors.

4.23. Article 8.25 concerns business visitors for establishment purposes, intra-corporate transferees and investors. The Parties agree to grant entry and temporary stay to business visitors for establishment purposes, intra-corporate transferees and investors of the other party in accordance with Annex III to Annex 8-B, and not to maintain economic needs test limitations on the total number of natural persons participating in the sector or subsector. Article 8.26 concerns contractual service suppliers and independent professionals and requires each Party to grant entry and temporary stay to contractual service suppliers and independent professionals in accordance with Annex IV to Annex 8-B. Short term business visitors are dealt with in Article 8.27, by reference to Annex III of Annex 8-B. Under commitments made by the Parties in Annex III to Annex 8-B, the permissible length of stay in the EU is up to 90 days in any six-month period for business visitors for establishment purposes and short-term visitors; up to three years with the possibility of extension for intra-corporate transferees; and up to one year for investors, while individual EU Member States set forth additional conditions. The permissible length of stay in Japan for business visitors for establishment purposes and for short term business visitors is up to 90 days; and up to five years for intra-corporate transferees and investors.

4.24. Annex III of Annex 8-B contains reservations for both the EU and Japan concerning the entry and temporary stay of natural persons. Paragraph 1 of the Schedule of the EU under Annex III of Annex 8-B provides that Articles 8.25 and 8.27 do not apply to any existing non-conforming measure listed in the Schedule, to the extent of the non-conformity. Paragraph 2 of the Schedule provides that a measure listed in this Schedule may be maintained, continued, promptly renewed, or amended, provided that the amendment does not decrease the conformity of the measure with Article 8.25 or 8.27 of the Agreement as it existed immediately before the amendment.

4.25. Annex IV to Annex 8-B concerns contractual service suppliers and independent professionals with Schedules for both Parties, and an Appendix IV for Japan. The EU Schedule provides that the EU shall allow the supply of services in its territory by contractual service suppliers or independent professionals of Japan through the presence of natural persons in accordance with Article 8.26 (contractual service providers and independent professionals) in respect only of the sectors listed in the Schedule<sup>33</sup>, and by reference to the limitations listed in paragraph 16. Japan's Schedule on contractual service suppliers and independent professionals covers activities which require technology or knowledge at an advanced level pertinent to natural sciences (paragraph 1(a) of Annex IV), researchers in universities, an equivalent educational institution or colleges of technology (paragraph 1(b)), particular kinds of legal services (1(c) and (d)), accounting, auditing and bookkeeping services (1 (e) and taxation services (1 (f)). According to the Parties, to enhance the clarity of specific commitments, limitations to these business activities are specified in Appendix IV to Annex 8-B<sup>34</sup>.

## **4.4 Liberalization commitments**

### **4.4.1 The European Union**

#### **4.4.1.1 MFN and horizontal commitments**

4.26. Under the GATS, the EU has scheduled extensive commitments in a large number of sectors, subject, in certain cases, to limitations by all or some individual EU Member States. The EU did not

<sup>33</sup> Listed in paragraph 10 and paragraph 13 to the EU's Schedule to Annex IV of Annex 8-B.

<sup>34</sup> According to the Parties, Appendix IV is indicated to enhance the clarity of the description of specific commitments but shall not be construed as being a part of the specific commitments.

make commitments, *inter alia*, for certain professional services related to medical and paramedical sub-sectors, postal and audio-visual services, some recreational and cultural and sporting services and some activities in transport services.

4.27. Under the Agreement, all sectors are covered through the use of a negative list approach. However, as under the GATS, audio visual services are carved-out from the liberalization commitments (Article 8.14). Moreover, non-conforming measures adopted either at the EU level or at the level of a regional government of an EU Member State, are listed in Annexes I and II to the Agreement.

4.28. Under the GATS, the EU took a number of MFN exemptions in areas such as audio-visual services; a variety of transport services; news and press agency services and publishing; and financial services.<sup>35</sup> A number of MFN exemptions were also registered for all sectors and with respect to, *inter alia*, existing and future bilateral agreements either between certain EU Member States (Finland restrictions on ownership of land in certain areas) or between certain EU Member States and third-parties.

4.29. Under the Agreement, MFN treatment commitments for investment are referred to in Article 8.9 and Article 8.17 for cross-border trade in services. Applicable MFN exemptions are listed in Annexes I and II to Annex 8-B.

4.30. Under Annex I to Annex 8-B, investment liberalisation, the EU lists one existing non-conforming (national treatment) measure applicable in all EU Member States; companies or firms, including those with investors from Japan, can only benefit from national treatment under the Treaty on the Functioning of the EU if they were formed in accordance with the laws and regulations of a Member State and registered within the EU. Such treatment is not provided to branches or agencies of companies or firms established outside the EU. A second all EU reservation for both investment liberalization (market access, national treatment) and cross border trade in services (market access, national treatment) concerns disposal at the Member State level of equity interests in an existing State enterprise or an existing Government entity (privatisation). A partial reservation in respect of Article 8.10 allows an EU Member State to impose nationality requirements on senior management, members of the boards of directors or any measure limiting the number of suppliers. The EU has taken reservations in relation to 17 sectors.<sup>36</sup>

4.31. Annex I also sets out MFN exemptions by individual EU Member States for the provision of certain business services<sup>37</sup> and some road transport services (freight and passengers). Reservations are also made with respect to existing measures applicable to the acquisition and use of land.

4.32. In Annex II a broad EU reservation is also introduced with respect to services considered as public utilities at a national or at a local level. Sectors generally considered as falling under the category of public services, such as health, education, and social services, also remain mainly reserved under the Agreement (as under the GATS). The EU Schedule in Annex II lists 23 sectors covered by reservations on future non-conforming measures<sup>38</sup> in all EU Member States (Annex II).

<sup>35</sup> Based on the EU(12) list of MFN exemptions (in document GATS/EL/31, dated 15 April 1994). MFN exemptions have also been scheduled by the 17 countries which acceded to the EU since 1995.

<sup>36</sup> Reservation No. 1 – All sectors; Reservation No. 2 – Professional services (all professions except health related); Reservation No. 3 – Professional services (health related professions and retail of pharmaceuticals); Reservation No. 4 – Research and development services; Reservation No. 5 – Real estate services; Reservation No. 6 – Business services; Reservation No. 7 – Communication services; Reservation No. 8 – Distribution services; Reservation No. 9 – Education services; Reservation No. 10 – Environmental services; Reservation No. 11 – Financial services; Reservation No. 12 – Health services and social services; Reservation No. 13 – Tourism and travel related services; Reservation No. 14 – Recreational, cultural and sporting services; Reservation No. 15 – Transport services and services auxiliary to transport services; Reservation No. 16 – Energy related activities; and Reservation No. 17 – Agriculture, fishing and manufacturing.

<sup>37</sup> Legal services, patent agents, accounting, auditing, taxation advisory services, architecture, retail of pharmaceuticals, medical services, translation and interpretation, engineering, technical testing and analysis services, veterinary services and real estate services.

<sup>38</sup> List of reservations as specified in Annex II are as follows: Reservation No. 1 – All sectors; Reservation No. 2 – Professional services – legal services; Reservation No. 3 – Professional services – health related and retail of pharmaceuticals; Reservation No. 4 – Business services – research and development services; Reservation No. 5 – Business services – real estate services; Reservation No. 6 – Business services – rental or leasing services; Reservation No. 7 – Business services – collection agency services and credit

Reservations by Member States in areas such as recreational, cultural and sporting services (covering activities related to the cultural industry, and gambling for instance); and fishing, aquaculture and support services, or some air transport services. In several cases, the reservation is related to preferential treatment that may be granted as a consequence of existing or future bilateral agreements between the EU, or some of its Member States, and third-parties.<sup>39</sup> Reservations are also registered by individual EU Member States in areas such as transport (essentially maritime, including cabotage<sup>40</sup>; road and rail); health and social services, some rental or leasing of vessels with respect to chartering; and tourism and travel-related services.

4.33. Under the Agreement, as under the GATS, besides the above-mentioned limitations, the EU has, *inter alia*, a horizontal "public utilities carve-out"<sup>41</sup>, limitations on the form of certain legal entities, and possible preferential treatment for the right of establishment resulting from existing or future bilateral agreements. Moreover, under the Agreement, the EU also replicates the horizontal reservations under the GATS by individual EU Member States concerning other conditions for commercial presence (mode 3), acquisition of real estate, services performed in connection with defence and national security, or cooperation initiatives between certain EU Member States and between certain EU Member States<sup>42</sup> and third-parties.<sup>43</sup>

#### 4.4.1.2 Sector specific commitments

4.34. The following section identifies some of the main differences, by sector, between the EU's GATS schedule and its sector-specific commitments under the Agreement. It should also be read in conjunction with Annexes I, and II of the Agreement. There is also, as yet, no certified consolidated EU (28) list of Specific Commitments, to take into account the latest EU enlargements.

4.35. The EU's Schedule under the Agreement, which is based on a negative list approach, clarifies that its reservations are without prejudice to its rights and obligations under the GATS (GATS as floor reservation). Its commitments under the Agreement are improved as compared to its GATS commitments. Moreover, a number of GATS reservations, essentially those by individual Member States, are withdrawn under the Agreement.

**Table 4.1: EU: comparison between GATS and Agreement specific commitments**

Sectors / Sub-sectors	GATS	FTA				
		Compared to GATS	Trade in services		investment	
			Existing Measures (Annex I)	Reserved sectors (Annex II)	Existing Measures (Annex I)	Reserved sectors (Annex II)
<b>1. Business services</b>						
A. Professional Services	Partial	Improved	Partial	Partial	Partial	Partial
B. Computer and Related Services	Partial	Improved	Full	Full	Full	Full
C. Research and Development Services	Partial	Improved	Partial	Partial	Partial	Full
D. Real Estate Services	Partial	Improved	Partial	Partial	Partial	Partial
E. Rental/Leasing Services without Operators	Partial	Improved	Partial	Partial	Partial	Partial
F. Other Business Services	Partial	Improved	Partial	Partial	Partial	Partial

reporting services; Reservation No. 8 – Business services – placement services; Reservation No. 9 – Business services – security and investigation services; Reservation No. 10 – Business services – other business services; Reservation No. 11 – Telecommunication; Reservation No. 12 – Construction; Reservation No. 13 – Distribution services; Reservation No. 14 – Education services; Reservation No. 15 – Environmental services; Reservation No. 16 – Financial services; Reservation No. 17 – Health and social services; Reservation No. 18 – Tourism and travel related services; Reservation No. 19 – Recreational, cultural and sporting services; Reservation No. 20 – Transport services and auxiliary transport services; Reservation No. 21 – Agriculture, fishing and water; Reservation No. 22 – Energy related activities; and Reservation No. 23 – Other services not included elsewhere.

<sup>39</sup> For example the Stabilisation EU-Swiss Confederation bilateral agreements, Deep and Comprehensive Free Trade Agreements, and measures concerning Nordic countries.

<sup>40</sup> In the notes to the EU section of Annex II to Annex 8-B, paragraph 11 provides that measures affecting cabotage are excluded from the scope of section B of Chapter 8, per Article 8.6.2(a), and from section C by Article 8.14.2(a).

<sup>41</sup> The EU commitments are without prejudice to the existence of public monopolies or exclusive rights granted to private operators. The reservation does not apply to telecommunications and to computer and related services under the Agreement.

<sup>42</sup> For instance cooperation established between the Nordic countries.

<sup>43</sup> For instance cooperation between Portugal and Portuguese speaking third-parties.

Sectors / Sub-sectors	GATS	FTA				
		Compared to GATS	Trade in services		Investment	
			Existing Measures (Annex I)	Reserved sectors (Annex II)	Existing Measures (Annex I)	Reserved sectors (Annex II)
<b>2. Communication services</b>						
A. Postal services	---	New	Partial	Full	Partial	Full
B. Courier services	Partial	Improved	Partial	Full	Partial	Full
C. Telecommunication services	Partial	Improved	Full	Full	Full	Full
D. Audiovisual services	---	---	---	---	---	---
E. Other	---	New	Full	Full	Full	Full
<b>3. Construction and related engineering services</b>						
A. General construction work for buildings	Partial	Improved	Full	Partial	Full	Full
B. General construction work for civil Engineering	Partial	Improved	Partial	Partial	Partial	Full
C. Installation and assembly work	Partial	Improved	Full	Partial	Full	Full
D. Building completion and finishing work	Partial	Improved	Full	Partial	Full	Full
E. Other	Partial	Improved	Full	Partial	Full	Full
<b>4. Distribution services</b>						
A. Commission agents' services	Partial	Improved	Partial	Partial	Partial	Partial
B. Wholesale trade services	Partial	Improved	Partial	Partial	Partial	Partial
C. Retailing services	Partial	Improved	Partial	Partial	Partial	Partial
D. Franchising	Partial	Improved	Full	Full	Full	Full
E. Other	---	Improved	Full	Full	Full	Full
<b>5. Education services</b>						
A. Primary education services	Partial	Similar	Partial	Partial	Partial	Partial
B. Secondary education services	Partial	Similar	Partial	Partial	Partial	Partial
C. Higher education services	Partial	Similar	Partial	Partial	Partial	Partial
D. Adult education	Partial	Similar	Partial	Partial	Partial	Partial
E. Other education services	Partial	Similar	Full	Partial	Partial	Partial
<b>6. Environmental services</b>						
A. Sewage services	Partial	Improved	Full	Partial	Full	Partial
B. Refuse disposal services	Partial	Improved	Partial	Partial	Full	Partial
C. Sanitation and similar services	Partial	Improved	Full	Partial	Full	Partial
D. Other	Partial	Improved	Partial	Partial	Full	Partial
<b>7. Financial services</b>						
A. All insurance and insurance-related services	Partial	Improved	Partial	Partial	Partial	Partial
B. Banking and other financial services	Partial	Improved	Partial	Partial	Partial	Partial
C. Other	---	Improved	Partial	Partial	Partial	Partial
<b>8. Health related and social services</b>						
A. Hospital services	Partial	Similar	Partial	Partial	Partial	Partial
B. Other Human Health Services	Partial	Improved	Partial	Partial	Partial	Partial
C. Social Services	Partial	Similar	Partial	Partial	Partial	Partial
D. Other	Partial	Improved	Full	Full	Partial	Partial
<b>9. Tourism and travel related services</b>						
A. Hotels and restaurants (including catering)	Partial	Improved	Partial	Full	Partial	Full
B. Travel agencies and tour operators Services	Partial	Improved	Partial	Full	Partial	Full
C. Tourist guides services	Partial	Improved	Partial	Partial	Partial	Partial
D. Other	Partial	Improved	Partial	Full	Partial	Full
<b>10. Recreational and cultural and sporting services</b>						
A. Entertainment services	Partial	Improved	Full	Partial	Full	Partial
B. News agency services	Partial	Improved	Full	Partial	Full	Partial
C. Libraries, archives, museums and other cultural services	Partial	Improved	Full	Partial	Full	Partial
D. Sporting and other recreational services	Partial	Improved	Partial	Partial	Partial	Partial
E. Other	---	New	Full	Full	Full	Full
<b>11. Transport services</b>						
A. Maritime Transport Services	Partial	Improved	Partial	Partial	Partial	Partial
B. Internal Waterways Transport	Partial	Improved	Partial	Partial	Partial	Partial
C. Air Transport Services	Partial	Improved	Full	Partial	Full	Partial
D. Space Transport	---	Similar	Full	---	Full	---
E. Rail Transport Services	Partial	Improved	Partial	Partial	Partial	Partial
F. Road Transport Services	Partial	Improved	Partial	Partial	Partial	Partial
G. Pipeline Transport	Partial	Improved	Partial	Partial	Partial	Partial
H. Services auxiliary to all modes of transport	Partial	Improved	Partial	Partial	Partial	Partial
I. Other Transport Services	Partial	Improved	Partial	Full	Partial	Full
<b>12. Other services not included elsewhere</b>	Partial	Improved	Full	Partial	Partial	Partial

General Note: MFN and Horizontal limitations, as well as Mode 4 commitments/limitations not considered.

Full: Specific commitments not subject to limitation(s) under market access or national treatment, under any of the three modes.

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Partial:	Specific commitments subject to some limitation(s) under market access or national treatment, under any of the three modes.
---:	No specific commitment (under GATS), or full reservation (under the Agreement).
New:	New commitments (full or partial, with or without limitations) which can, in most but not all cases, be seen as "improved".
Improved:	Overall improved commitments made under the Agreement compared to those under the GATS.
Similar:	Similar commitments; though possibly, in individual cases, with limited improvements and/or limited additional reservations.
Source:	Draft Consolidated GATS Schedule of Specific Commitments (S/C/W/273/Suppl.1), communicated by the EU (in 2006), which does not cover the result of the 2007 and further EU enlargements, and Annex 8-B to the Agreement.

#### **4.4.1.2.1 Business services**

4.36. In comparison to the EU's GATS commitments, under the Agreement the EU's commitments are broadened. With only a few reservations with respect to the EU as a whole, individual EU Member States register several existing and future non-conforming measures. Compared to the EU's GATS commitments, reservations on some sub-sectors are lifted, simplified or reduced. In computer and related services, no reservations are listed. A number of other business services, for example advertising, market research and public opinion polling, management consulting, maintenance and repair of equipment, building-cleaning, photographic, and packaging services are not restricted.

#### **4.4.1.2.2 Communication services**

4.37. Commitments are made for postal and courier services, (unbound under the GATS). Full commitments are made in telecommunication services (partly unbound and partly committed with some limitations under the GATS), without limitations under the Agreement. While audio-visual services are unbound under the GATS, the entire subsector is carved-out of Cross Border Trade in Services.

#### **4.4.1.2.3 Construction and related engineering services**

4.38. While under the GATS, partial commitments with limitations are made, under the Agreement only a few reservations are set out for existing measures. On construction services, one Member State retains a reservation in relation to future measures for construction design.

#### **4.4.1.2.4 Distribution services**

4.39. Though coverage under the Agreement is improved, as compared to the GATS, a number of existing and future non-conforming measures remain listed in most sub-sectors, for example the distribution of alcoholic beverages, tobacco products, pharmaceutical goods and some energy products.

#### **4.4.1.2.5 Educational services**

4.40. Similar to the GATS, where only private education services are committed subject to reservations by EU Member States; under the Agreement, the sector is also covered only for private education services - excluding publicly funded education services. Several specific Member State and general reservations for future measures with respect to pre-primary, primary, secondary, higher, and adult education services are listed. In addition, there is a range of market access and national treatment reservations pertaining to current measures. The broad "public utilities" carve-out may also apply to education services.

#### **4.4.1.2.6 Environmental services**

4.41. Similar to its GATS commitments, the EU makes commitments for all environmental services sub-sectors. While removing some cross-border supply limitations, the EU keeps some non-conforming measures for the sector. Existing non-conforming measures are listed for certain services for processing and recycling of used material and waste, and for the protection of ambient air and

climate. Some EU Member States reserve their rights to take measures for waste management, including sewage, refuse disposal, and sanitation services. Activities with respect to soil management are also reserved.

#### **4.4.1.2.7 Financial services**

4.42. Building upon its GATS commitments, the coverage of the EU's commitments under the Agreement is enlarged while certain limitations remain at the member state level in relation to different forms of insurance (for example direct insurance, reinsurance and retrocession, and related services). In addition to the specific reservations of individual EU Member States, the EU as a whole reserves the right to adopt or maintain any measure requiring a financial institution, other than a branch, when establishing in a member State of the EU to adopt a specific legal form on a non-discriminatory basis. On Banking and other financial services, a number of EC directives are noted as existing measures<sup>44</sup>, and several member states have listed reservations on the supply of banking and other financial services with respect to investment and cross border trade in services, concerning market access and national treatment.

#### **4.4.1.2.8 Health related and social services**

4.43. The sector is partially committed under the GATS. The EU Schedule clarifies that only commitments made with respect to privately funded health services are covered under the Agreement. It also clarifies that the EU reserves the right to adopt or maintain any measure with regard to the supply of all health services which receive public funding or State support in any form and are therefore not considered to be privately funded. It also reserves the right to adopt or maintain any measure regarding human health services. Among the measures that remain applicable in some EU Member States, are certain nationality or residence requirements for providing certain health and social services.

4.44. Under the Agreement, the EU maintains a broad reservation to adopt or maintain any measure with respect to health and social services established or maintained for public purposes. A number of member states have retained the right to restrict privately funded social services.

#### **4.4.1.2.9 Tourism and travel related services**

4.45. The sector is largely covered under the GATS. Under the Agreement, the EU improves its commitments, while some EU Member States retain a right to introduce certain conditional restrictions, for example requiring that tourist guides are nationals of an EU member state.

#### **4.4.1.2.10 Recreational, cultural and sporting services**

4.46. The sector is partially covered with limitations under the GATS; these limitations are maintained in the Agreement, essentially at the level of some EU Member States, to cover both existing and possible future restrictive measures. A broad reservation is made with respect to the supply of library, archive, museum, and other cultural services. The right of most EU Member States is also reserved, for instance, with respect to measures requiring establishment and restriction applicable to the cross-border supply of entertainment services, including theatre, live bands, circus and discotheque services. Reservations are made by most EU Member States for gambling. Existing companies publishing certain publications are also subject to residency requirements by three EU Member States.

#### **4.4.1.2.11 Transport services**

4.47. While only partial commitments are made in the GATS, in most sub-sectors except space transport (unbound under GATS and kept similarly reserved under the Agreement through the full reservation listed in Annex II to the Agreement), the coverage is improved under the Agreement. A large number of specific reservations (existing and future) are nevertheless listed for most sub-sectors. The EU Schedule also clarifies that the commitments do not apply to services that may be classified under public transport services.

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<sup>44</sup> Directive 2009/65/EC and Directive 2011/61/EU.

#### 4.4.1.2.12 Energy services

4.48. The EU and individual member states list investment and cross border trade in services reservations on future investment and cross border trade in services in respect of foreign ownership of oil and gas pipelines and electricity transmission systems, with some member states also listing measures concerning nuclear power and related services such as processing of nuclear fuel and waste.

#### 4.4.1.2.13 Other services not included elsewhere

4.49. Reservations are retained by some EU Member States in relation to other services not included elsewhere; for example funeral and cremation services as well as auction services. New services not covered by the industry classification are also reserved.

### 4.4.2 Japan

#### 4.4.2.1 MFN and horizontal commitments

4.50. The following section identifies some of the main differences, by sector, between Japan's GATS schedule ("positive list") and its sector-specific commitments under the Agreement ("negative list"). It should also be read in conjunction with Annexes I and II of the Agreement.

4.51. Under the GATS, Japan took commitments in 42 out of 45 services sectors<sup>45</sup>. It did not make commitments, *inter alia*, on certain specific sectors: postal and courier services; and some audio-visual services; some health and social services; space and some rail transport services.

4.52. Japan's scheduled GATS horizontal exemptions (market access and national treatment) concern mode 4 generally.

4.53. Under the Agreement, as a negative list approach is chosen, as a principle, all services sectors are covered unless non-conforming measures are scheduled. Under the Agreement, MFN treatment commitments for investment are referred to in Article 8.9 and Article 8.17 for cross-border trade in services. Reservations for existing measures are listed in Annex I and reservations for future measures in II of Annex 8-B. Japan has listed reservations in relation to Article 8.17 for existing measures in Annex I: reservation 42 on Freight Forwarding Business (excluding freight forwarding business using air transportation); 48 and 50 on Water Transport.

4.54. In respect of reservations for future measures in Annex II Japan has listed reservations under the following numbers: 3, All sectors (unrecognised or technically unfeasible); 8 Energy (electricity utility, gas utility, and nuclear energy); 11 Fisheries (marine and inland waterways); 12 Land acquisition and purchase and leasing; 13 Public law enforcement and correctional services and social services; 15, All sectors (exceptions to MFN treatment under a pre-existing agreement); 17 Transport (air transport); and 18, Transport (water transport services including cabotage).

#### 4.4.2.2 Sector specific commitments

4.55. Under the Agreement, Japan has retained an exemption on investment by EU entrepreneurs and investors in the transfer of equity interests in, or the assets of a state enterprise or government entity. Japan retains a reservation on all sectors in relation to investment in, or the supply of telegraph services, betting and gambling, manufacture of tobacco products, bank notes and coinage and postal services.

4.56. Under Annex I to Annex 8-B on existing measures, Japan, like the EU, notes that measures affecting cabotage are not listed in the Schedule as they are excluded from the scope of Section B of Chapter 8. Japan lists 54 reservations. One broad reservation at the central government level concerns application of a prior notification and screening procedure to foreign investors in relation

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<sup>45</sup> Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/JPN), prepared by the Secretariat (in 2003).

to investments in agriculture, forestry and fisheries and related services<sup>46</sup>, in order to determine if the investment is likely to cause a situation in which a significant adverse effect is brought to the smooth operation of the Japanese economy. Japan has also listed existing prior approval national treatment restrictions on investment in the drugs and medicine sector and leather and leather product manufacturing, as well as in the oil and security guard services sectors.

4.57. In Annex II to Annex 8-B Japan's Schedule sets out its reservations for future limitations on investment and cross border trade in services. Japan lists 18 reservations in Annex II, ranging from all sectors to transport and business services. One reservation 15, on all sectors, concerns the Trans-Pacific Partnership Agreement ("TPP"). Japan reserves the right to provide less than most favoured nation treatment to services, service suppliers, enterprises and entrepreneurs of the EU (compared to a third country), provided that Japan is obliged to accord such favoured treatment to a third country due to a pre-existing Agreement, except for the TPP. Japan notes that provided the TPP Agreement is in force on or prior to the date of entry into force of the Agreement, with respect to the treatment accorded to a TPP party irrespective of whether Japan is a party to the pre-existing agreement, no less favourable treatment will be accorded to EU services, service suppliers, enterprises and entrepreneurs (compared to a TPP member).

**Table 4.2 Japan: comparison between the GATS and the Agreement specific commitments in trade in services (excluding mode 4)**

Sector/Sub-sector	GATS	FTA				
		Trade in services			Investment	
		Compared to GATS	Existing measures (Annex I)	Reserved sectors (Annex II)	Existing measures (Annex I)	Reserved sectors (Annex II)
<b>1. BUSINESS SERVICES</b>						
A. Professional services	Partial	Similar	Partial	Partial	Partial	Partial
B. Computer and related services	Full	Same	Full	Full	Full	Full
C. Research and development	Partial	Improved	Partial	Partial	Partial	Partial
D. Real estate	Partial	Similar	Partial	Partial	Partial	Partial
E. Rental/Leasing services without operators	Partial	Similar	Partial	Partial	Partial	Partial
F. Other	Partial	Similar	Partial	Partial	Partial	Partial
<b>2. COMMUNICATION SERVICES</b>						
A. Postal	-	Improved	Full	Partial	Full	Partial
B. Courier	-	Improved	Full	Full	Full	Full
C. Telecommunication	Partial	Improved	Partial	Partial	Partial	Partial
D. Audiovisual	Partial	Excluded	Excluded	Excluded	Excluded	Excluded
E. Other	-	Improved	Partial	Partial	Partial	Partial
<b>3. CONSTRUCTION AND RELATED ENGINEERING SERVICES</b>						
A. General construction work for buildings	Partial	Similar	Partial	Full	Full	Full
B. General construction work for civil engineering	Partial	Similar	Partial	Full	Full	Full
C. Installation and assembly work	Partial	Improved	Full	Full	Full	Full
D. Building completion and finishing work	Partial	Improved	Full	Full	Full	Full
E. Other	Partial	Similar	Partial	Partial	Partial	Partial
<b>4. DISTRIBUTION SERVICES</b>						
A. Commission agents' services	Partial	Improved	Full	Full	Full	Full
B. Wholesale trade services	Partial	Similar	Partial	Full	Partial	Full
C. Retailing services	Partial	Similar	Partial	Full	Partial	Full
D. Franchising	Partial	Similar	Full	Full	Full	Full
E. Other	---	Improved	Full	Full	Full	Full
<b>5. EDUCATION SERVICES<sup>47</sup></b>						

<sup>46</sup> The reservation concerns Agriculture, Forestry and Fisheries, and Related Services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in reservation No. 11 in the Schedule of Japan in Annex II to Annex 8-B).

<sup>47</sup> Formal education systems must be established by school juridical persons.

Sector/Sub-sector	GATS	FTA				
		Trade in services			Investment	
		Compared to GATS	Existing measures (Annex I)	Reserved sectors (Annex II)	Existing measures (Annex I)	Reserved sectors (Annex II)
A. Primary education services	Partial	Similar	Partial	Partial	Partial	Partial
B. Secondary education services	Partial	Similar	Full	Partial	Partial	Partial
C. Higher education services	Partial	Similar	Partial	Full	Partial	Full
D. Adult education services	Partial	Improved	Full	Full	Full	Full
E. Other education services	---	Improved	Full	Full	Full	Full
<b>6. ENVIRONMENTAL SERVICES</b>						
A. Sewage services	Partial	Similar	Partial	Full	Partial	Full
B. Refuse disposal services	Partial	Improved	Full	Partial	Full	Partial
C. Sanitation and similar services	Partial	Similar	Full	Full	Full	Full
D. Other	Partial	Similar	Full	Full	Full	Full
<b>7. FINANCIAL SERVICES</b>						
A. All insurance and insurance-related services	Partial	Similar	Partial	Partial	Partial	Partial
B. Banking and other financial services	Partial	Similar	Partial	Partial	Partial	Partial
C. Other	---	Similar	Partial	Partial	Partial	Partial
<b>8. HEALTH RELATED AND SOCIAL SERVICES</b>						
A. Hospital services	Partial	Improved	Full	Full	Full	Full
B. Other human health services	---	Improved	Full	Full	Full	Full
C. Social services	---	Improved	Partial	Partial	Partial	Partial
D. Other	---	Improved	Partial	Partial	Partial	Partial
<b>9. TOURISM AND TRAVEL RELATED SERVICES</b>						
A. Hotels and restaurants	Partial	Improved	Full	Full	Full	Full
B. Travel agencies and tour operators	Full	Same	Full	Full	Full	Full
C. Tourist guides	Partial	Improved	Full	Full	Full	Full
D. Other	---	Improved	Full	Full	Full	Full
<b>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES</b>						
A. Entertainment services	Partial	Improved	Full	Full	Full	Full
B. News agency services	Full	Similar	Full	Full	Full	Full
C. Libraries, archives, museums and other cultural services	Partial	Improved	Full	Full	Full	Full
D. Sporting and other recreational services	Partial	Similar	Full	Full	Full	Full
E. Other	---	Improved	Full	Full	Full	Full
<b>11. TRANSPORT SERVICES</b>						
A. Maritime Transport services	Partial	Improved	Partial	Partial	Partial	Partial
B. Internal waterways transport	Partial	Improved	Partial	Partial	Partial	Partial
C. Air transport services	Partial	Improved	Partial	Partial	Partial	Partial
D. Space transport services	---	Improved	Partial	Partial	Partial	Partial
E. Rail transport services	Partial	Improved	Partial	Full	Partial	Full
F. Road transport services	Partial	Improved	Partial	Partial	Partial	Full
G. Pipeline transport	Partial	Improved	Partial	Partial	Partial	Partial
H. Services auxiliary to all modes of transport	Partial	Improved	Partial	Partial	Full	Partial
I. Other	---	Improved	Partial	Partial	Partial	Partial
<b>12. OTHER SERVICES NOT INCLUDED ELSEWHERE</b>	---	Improved	Partial	Partial	Partial	Partial

General Note: MFN and Horizontal limitations, as well as Mode 4 commitments/limitations not considered.

Full: Specific commitments not subject to limitation(s) under market access or national treatment, under any of the three modes.

Partial: Specific commitments subject to some limitation(s) under market access or national treatment, under any of the three modes.

- : No specific commitment (under GATS), or full reservation (under the Agreement).
- New: New commitments (full or partial, with or without limitations) which can, in most but not all cases, be seen as "improved".
- Improved: Overall improved commitments made under the Agreement compared to those under the GATS.
- Similar: Similar commitments; though possibly, in individual cases, with limited improvements and/or limited additional reservations.
- Excluded: Sector or subsector excluded from the coverage.
- Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/JPN), prepared by the Secretariat (in 2003), and Annex 8-B to the Agreement. The comparison only concerns modes 1-3, market access, national treatment, and additional commitments; it does not concern commitments under mode 4.

#### **4.4.2.2.1 Business services**

4.58. Japan has listed reservations in relation to provision of private job placement services. Like its GATS commitments, Japan has retained a market access restriction on investment in and cross border supply of legal services, patent, notarial, accounting and scrivener services, surveying, aircraft registration. Restrictions are also listed in relation to services incidental supply of water for retail consumers. Japan has also reserved existing limitations on employment services, credit collection services, construction services, sellers of alcoholic beverages, wholesale sellers of agricultural products and mining.

#### **4.4.2.2.2 Communication services**

4.59. Under the GATS, Japan mostly opened its telecommunications services. Under the Agreement, Japan retains a reservation in relation to broadcasting to adopt or maintain any measure relating to investments and the supply of those services. The limits on foreign investment in NTT of 20% under the GATS is relaxed to 33.3%.

#### **4.4.2.2.3 Construction services**

4.60. Japan took a partial commitment in this sector under the GATS. Under the Agreement Japan limits its commitment under the sector by listing existing restrictions on cross border trade in services, in relation to construction (public and private) and demolition and recycling of construction materials.

#### **4.4.2.2.4 Education services**

4.61. Under the Agreement, Japan has noted reservations on higher education services which mirror its GATS requirement that providers of education services be school juridical persons. In relation to primary and secondary education services, as in the GATS commitments Japan reserves the right to adopt or maintain any measure relating to investments or the supply of primary and secondary education services.

#### **4.4.2.2.5 Financial Services**

4.62. Under the Agreement, in relation to financial services, Japan has listed several future reservations. Within the context of Article 8.65, Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence. Japan reserves the right to apply non-discriminatory limitations concerning the admission to the market of new financial services, consistent with a regulatory framework aimed at achieving those prudential objectives. Securities firms are allowed to deal in securities defined in the relevant laws of Japan, and banks are not allowed to deal in those securities except as provided for in those laws; and a reservation concerning services supplied in the territory of the European Union to the service consumer in Japan without any active marketing from the service supplier, as the Parties consider such services to be supplied under subparagraph (d)(ii) of Article 8.2. Japan has also noted that the deposit insurance system does not cover deposits taken by branches of foreign banks.

4.63. On insurance, under the Agreement, Japan keeps its existing GATS restriction providing that commercial presence be required for certain insurance contracts.

#### **4.4.2.2.6 Transport services**

4.64. Under Japan's GATS commitments Maritime Transport is unbound (and MFN treatment has not entered into force as per the Annex on Negotiation of Maritime Transport Services). On shipping Japan has listed an existing reservation on investment and cross border trade in services in respect of international maritime transport services (passenger and freight). Japan has also listed an existing restriction of a prior notification requirement on railway transport. Japan also lists restrictions on investment and cross border supply of many types of road transport (omnibus, taxicab, trucking, freight, passenger transport).

4.65. Like the EU, in paragraph 5 to its Schedule Japan notes that maritime transport services measures affecting cabotage in maritime transport services are not listed in the Schedule, as those services are excluded from the scope of Section B of Chapter 8, pursuant to subparagraph 2(a) of Article 8.6 and Section C of Chapter 8, pursuant to subparagraph 2(a) of Article 8.14. Japan has also listed an existing restriction of a prior notification requirement on coastwise ship leasing for water transport, as well as a restriction on the entry of foreign flagged ships into Japanese ports that are not open to foreign commerce.

#### **4.4.2.2.7 Energy services**

4.66. Japan retains exemptions on investment and cross border supply of energy (electricity, gas, nuclear) reserving the right to adopt or maintain any measure relating to investments or the supply of services in the energy industry comprising electricity utilities, gas utilities and nuclear energy industry.

### **4.5 Regulatory provisions**

#### **4.5.1 Domestic regulation**

4.67. Section E of Chapter 8 sets out provisions concerning the regulatory framework. Sub-section 1 of section E, Articles 8.29-32 deals with Domestic Regulation.

4.68. Article 8.29 sets out the scope and definitions used in the sub-section. The sub-section applies to measures by a Party relating to licensing requirements and procedures, qualification requirements and procedures and technical standards (on services) that affect (a) cross border trade in services, (b) establishment or operation<sup>48</sup> or (c) the supply of a service through the presence of a natural person in the territory of the other Party, in accordance with Article 8.24. Article 8.29.2 clarifies that the sub-section does not apply to licensing requirements and procedures, qualification requirements and procedures and technical standards pursuant to a non-conforming existing or future measure that does not conform to the market access or national treatment obligations.

4.69. Article 8.30 provides that measures relating to licensing requirements and procedures and qualification requirements and procedures shall be based on criteria of clarity, objectivity, transparency, advance public availability and accessibility. Licensing and qualification procedures shall be as simple as possible, and not be a restriction on the supply of a service or pursuit of economic activity. Any fee for the application shall be reasonable, transparent and not in itself restrict the supply of a service or economic activity (Article 8.31.2). Applications shall be processed within a reasonable period of time (Article 8.31.4-5). Article 8.32 provides that the Parties have agreed to encourage their competent authorities, when adopting technical standards, to adopt standards developed through an open and transparent process.

4.70. Article 8.33, in sub-section 2 of section E, requires each Party to ensure that all measures of general application are administered in a reasonable, objective and impartial manner. This provision does not apply to measures listed in Annexes I and II of Annex 8-B to the Agreement (existing and future non-conforming measures) (Article 8.33.2). Article 8.34 requires each Party to maintain judicial, arbitral or administrative tribunals or procedures which provide for a prompt review of administrative decisions that affect cross border trade in services, establishment or operation or the supply of a service through the presence of a natural person.

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<sup>48</sup> As defined in Article 8.2(i) or operation as defined Article 8.2(p).

#### 4.5.2 Recognition

4.71. Article 8.35 of the Agreement concerns mutual recognition. Article 8.35.1 notes that nothing in the section shall prevent a Party from requiring that natural persons must possess necessary qualifications or professional experience specified in the territory where the service is supplied. Each Party shall encourage professional bodies in its territory to provide joint recommendations on mutual recognition to the Committee for the purpose of assisting entrepreneurs and service suppliers to meet the criteria for authorisation, licensing, operation and certification in the field of professional services. A joint recommendation in this regard shall be reviewed by the Committee, in order to assess the extent to which standards and criteria applied by each Party for mutual recognition are converging and the potential economic value of a mutual recognition agreement (Article 8.35.3). The Committee shall establish the necessary steps for the Parties to negotiate a mutual recognition agreement where certain requirements are met. According to the Parties the Committee has not yet met.

#### 4.5.3 Subsidies (services)

4.72. Chapter 12 of the Agreement concerns subsidies, including subsidies in services. The scope of the Chapter is set out in Article 12.3. The Chapter applies to specific subsidies<sup>49</sup> to the extent they are related to economic activity.<sup>50</sup> Exclusions listed in Article 12.3 clarify that the Chapter does not apply to subsidies to enterprises entrusted by the Government with the provision of services to the general public for public policy objectives, nor to subsidies to compensate for damage caused by natural disasters or other exceptional occurrences. The Parties have agreed that nothing in the Chapter affects the rights and obligations of either Party under the WTO Subsidies and Countervailing Measures Agreement ("SCM Agreement"), Article XV and Article XVI of GATS (Article 12.4). Article 12.5.1 requires the Parties to notify the other Party of the legal basis, form, amount or budget and, where possible the name of the recipient of any specific subsidy granted or maintained. The notifications shall be made every 2 years, with the first notification no later than 3 years from the date of entry into force of the Agreement. If a Party makes publicly available on an official website the information specified in Article 12.5.1, the notification pursuant to Article 12.5.1 shall be deemed to have been made. If a Party notifies subsidies pursuant to Article 25.2 of the SCM Agreement the Party shall be considered to have met the requirement of Article 12.5.1 with respect to such subsidies (Article 12.5.2).

4.73. Article 12.5 provides that with regard to subsidies related to services, Article 12 only applies to subsidies concerning architectural and engineering services, banking services, computer services, construction services, energy services, environment services, express delivery services, insurance services, telecommunication services and transport services sectors. Consultations may be held between the Parties if one Party considers that a subsidy of the other Party has or could have a significant negative effect on its trade or investment interests under the Chapter (Article 12.6). The Party receiving a request for consultations on its subsidy may be asked to provide information on the subsidy of the type described in Article 12.6.2(a)-(g) and shall consider whether to provide the information (Article 12.6.2). If a Party declines to provide the information, it shall provide a written explanation (Article 12.6.4). If after consultations the requesting Party still considers that the subsidy has or could have a negative effect on its trade or investment interests, under this Chapter, the requested Party shall accord sympathetic consideration to the concerns of the requesting Party. Article 12.6.5 is not subject to dispute settlement under Chapter 21 of the Agreement.

4.74. Articles 12.7 provides that certain kinds of subsidies are prohibited under the Agreement. The kinds of subsidies proscribed by the Agreement are mainly related to provision of funding that would permit continued competitive activity on a non-economic basis.

4.75. Article 12.9 provides that Article XX of the GATT 1994 and Article XIV of the GATS are incorporated into and made part of the Agreement, *mutatis mutandis*.

<sup>49</sup> A measure that fulfils the conditions set out in Articles 1.1 and 2 of the WTO Agreement on Subsidies and Countervailing Measures (Article 12.2(b) and (c) of the Agreement).

<sup>50</sup> Education provided under the domestic educational system of each Party shall be considered as a non-economic activity per footnote 1 to Article 12.3.1.

#### **4.5.4 Safeguards**

4.76. Although according to the Parties the Agreement contains no provisions on safeguards in relation to services or investment, Article 9.4 sets out temporary safeguard measures and restrictive measures with regard to capital movements, payments or transfers which the EU may adopt or maintain.

### **4.6 Sector specific provisions on trade in services**

#### **4.6.1 Financial services**

4.77. Articles 8.58-67 and Annex 8-A of the Agreement contain rules in relation to Financial Services. They apply to the measures of a Party affecting trade in financial services. Definitions used in the sub-section of the Chapter are set out in Article 8.59, and reflect the definitions found in paragraph 5 of the WTO Annex on Financial Services.

4.78. Under Article 8.60 each Party permits financial services suppliers of the other Party established in its territory to offer any new financial service, although a Party may determine the juridical form through which the service may be supplied and require authorisation for the supply of the service. If required, an authorisation may be refused for prudential reasons.

4.79. The Parties shall ensure that they grant to established financial service suppliers of the other Party access to payment and clearing systems, as well as access to official funding and refinancing facilities available in the normal course of business on a national treatment basis (Article 8.61). In Article 8.62 the Parties agree that if a Party requires financial service providers to have membership of or participate in the operations of self-regulatory organisations, the Parties will ensure that those organisations accord national treatment to the financial service providers of the other Party. If transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of business by a financial service supplier, the Parties shall not take measures to prevent those transfers (Article 8.63).

4.80. In Article 8.64 the Parties have agreed obligations on effective and transparent regulation on licences for supply of a financial service (8.64.1), on timely notification of any requirements of additional information for processing of applications (8.64.2), and on publication or dissemination of rules of general application (Article 8.64.3). Article 8.65 permits the Parties to take measures for prudential reasons. In Article 8.66 the Parties have agreed disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered do not include the supply of insurance services relating to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.

#### **4.6.2 Postal and courier services**

4.81. Articles 8.36-8.40 concern postal and courier services. As set out in Article 8.36.1, the sub-section applies to measures by a Party affecting trade in postal and courier services. Article 8.37, on universal service, provides that each Party has the right to define the kind of universal service obligation it wishes to maintain. That obligation is not per se regarded as anti-competitive, provided that it is administered in a transparent, non-discriminatory and competitively neutral manner and is not more burdensome than necessary for the kind of universal service defined by the Party, with regard to all suppliers subject to the obligation. Per Article 8.37.3, each Party shall ensure that a supplier of postal and courier services in its territory subject to a universal service obligation under its laws and regulations does not engage in certain kinds of anti-competitive activity, like cross-subsidisation, as described in Article 8.37.3(a) and (b).

4.82. Article 8.39 on licences provides that each Party may require a licence for the supply of a postal or courier service and if it does so, it shall make publicly available the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and the terms and conditions of the licence. In the event of a decision to reject a licence application the competent authority shall upon request inform the applicant of the reasons for rejection. Each Party shall upon request inform the applicant of the reasons for the rejection of the licence. An appeal process shall be available to applicants whose licence application has been rejected. Article 8.40 requires each Party to the regulatory body for postal and courier services is independent.

### 4.6.3 Telecommunications

4.83. Articles 8.41-8.57 concern Telecommunication services. Article 8.41 provides that the sub-section sets out the principles for the regulatory framework for all telecommunications services and applies to all measures by a Party affecting trade in telecommunication services, consisting of the conveyance of signals, *inter alia* transmission of video and audio signals (irrespective of the types of protocols and technologies used) through public telecommunication transport networks. The sub-section does not apply to measures affecting broadcasting services and services providing or exercising editorial control over content transmitted using telecommunications transport networks and services.

4.84. Article 8.43 sets out the approaches to regulation. The Parties recognise that a Party may engage in direct regulation either in anticipation of an issue that it expects may arise or to resolve an issue that has already risen in the market, or, rely on the role of market forces, particularly with respect to market segments that are competitive or that have low barriers to entry (Article 8.43.2). However a Party that refrains from regulation remains subject to the obligations under the sub-section. Article 8.44 on access and use provides that each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications transport networks and services on terms and conditions which are reasonable, non-discriminatory, and no less favourable terms than those which the supplier of public telecommunications transport networks provides and services provides for its own like services in like circumstances. This obligation is further detailed in Article 8.44.2-5.

4.85. Provisions on number portability, resale, enabling use of network facilities and interconnection, and obligations relating to major suppliers are set out in Articles 8.45-8.48. The obligations in relation to the structure and functional independence of the Parties regulatory authorities is set out in Article 8.49 of the Agreement. Articles 8.50-8.57 concern universal service obligation, authorisation to provide telecommunications networks and services, allocation of and use of scarce resources, transparency, resolution of telecommunications disputes, relation to international organisations, confidentiality of information and international mobile roaming.

### 4.6.4 Maritime transport

4.86. Article 8.68-8.69 of the Agreement provide the principles of the regulatory framework for the provision of international maritime transport services pursuant to sections B-D of the Chapter (Investment, cross border trade in services, entry and stay of natural persons) and applies to measures by a Party affecting trade in international maritime transport services. Definitions relating to international maritime services are set out in Article 8.68.2. Article 8.69 provides that without prejudice to non-conforming measures referred to in Articles 8.12 (non-conforming measures in investment) and 8.18 (non-conforming measures in cross border trade in services), each Party shall respect the principles set out in Article 8.69 (a)-(d).

## 5 GENERAL PROVISIONS OF THE AGREEMENT

### 5.1 Transparency

5.1. Chapter 17, Articles 17.1-8 of the Agreement concern transparency. Article 17.2 requires each Party to provide for a transparent regulatory environment which is effective and predictable for persons including economic operators, especially small and medium-sized enterprises. Article 17.3, (similar to the requirements of Article X of the GATT 1994) requires that when introducing or changing measures of general application, the Parties shall promptly publish measures of general application or make them otherwise publicly available together with an explanation of their objective and rationale, by electronic means if possible, and endeavour to allow for a reasonable interval between the time when they are published or made publicly available and the time when they enter into force (except in duly justified cases). Article 17.4 concerns enquiries, requiring each Party to respond within a reasonable period of time to specific questions from the other Party with respect to its measures of general application, and envisaging the establishment of mechanisms for responding to enquiries from individuals or companies. In Article 17.5.1 the Parties agree to administer all its measures of general application in a consistent, objective, impartial and reasonable manner.

## 5.2 Current payments and capital movements

5.2. Chapter 9 of the Agreement concerns capital movements, payments and transfers and temporary safeguard measures. Under Article 9.1, the Parties agree to allow any payments and transfers in freely convertible currency with regard to transactions on the current account of the balance of payments which fall within the scope of this Agreement. The Parties also agree to allow the free movement of capital for the purpose of liberalisation of investments and other transactions as provided for in Chapter 8 of the Agreement (Article 9.2.1).

5.3. Article 9.4.1 provides that in exceptional circumstances of serious difficulties for the operation of the EU's economic and monetary union or threat thereof, the EU may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding 6 months. Any such measures shall be limited to the extent that is strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between Japan and a third country in like situations.

5.4. Article 9.4.2 permits the Parties to adopt or maintain restrictive measures with regard to capital movement, payments or transfers, (a) in the event of serious balance of payments or external financial difficulties, or threat thereof, or (b) if, in exceptional circumstances, capital movements, payments or transfers cause or threaten to cause serious macroeconomic difficulties related to monetary and exchange rate policies. Article 9.4.3 sets out additional requirements for any such measures, such as compliance with the Articles of Agreement of the International Monetary Fund, be temporary and be phased out progressively as the situation improves, be non-discriminatory compared to third countries in like situations.

5.5. Article 9.4.4 provides that in the case of trade in goods, each Party may adopt restrictive measures pursuant to Article 2.20 for balance-of-payments purposes. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments, in accordance with Article XII of GATS (Article 9.4.5). Any restrictions adopted pursuant to the Article shall be the subject of prompt consultations in the Committee on Trade in Services, Investment Liberalization and Electronic Commerce established pursuant to Article 22.3, unless consultations are held in other fora (Article 9.4.7).

## 5.3 Exceptions

### 5.3.1 General exceptions

5.6. Article 2.22 (trade in goods) concerns general exceptions. Article 2.22.1 provides that Article XX of the GATT 1994 is hereby incorporated into and made part of the Agreement, *mutatis mutandis*. In Article 2.2.2 the Parties have agreed that if a Party intends to take any measures in accordance with subparagraphs (i) and (j) of Article XX of the GATT 1994, the Party shall (a) provide the other Party with all relevant information; and (b) upon request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to such measure, with a view to seeking a mutually acceptable solution.

5.7. Article 8.3 of the Agreement provides that Article XX of the GATT 1994 is incorporated into Section B of Chapter 8 of the Agreement (concerning investment), *mutatis mutandis*. The Parties have also provided in Article 8.3.2(d) that measures inconsistent with national treatment on investment and services may be permitted provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of economic activities, entrepreneurs, services or service suppliers of the other Party. Article 8.3.2 also sets out general exceptions for trade in services similar to the general exceptions of Article XIV of the GATS. Article 8.3.2 applies to investment liberalization.

5.8. Article 12.9 (Subsidies) provides that for the purposes of the Chapter, Article XX of the GATT 1994 and Article XIV of GATS are incorporated into and made part of the Agreement, *mutatis mutandis*.

5.9. Article 13.8 (State owned enterprises, enterprises granted special rights or privileges and designated monopolies) provides that for the purposes of the Chapter, Article XX of the GATT 1994

and Article XIV of GATS are hereby incorporated into and made part of the Agreement, *mutatis mutandis*.

### **5.3.2 Security exceptions**

5.10. Article 1.5.1 of the Agreement concerns security exceptions, and mirrors Article XXI of the GATT 1994, while applying to the entire Agreement (including in this instance, trade in services). Article 15.2 provides that notwithstanding paragraph 1, (a) for the purposes of Chapter 10, Article III of the GPA applies; and (b) for the purposes of Chapter 14, Article 14.54 (incorporating Article 73 of the TRIPS Agreement) applies.

5.11. Article 14.54 (intellectual property) titled "Security exceptions" provides that for the purposes of the Chapter, Article 73 of the TRIPS Agreement is hereby incorporated into and made part of the Agreement, *mutatis mutandis*.

### **5.4 Accession and Withdrawal**

5.12. Articles 23.3 and 23.4 respectively concern entry into force of the Agreement and termination of the Agreement (the latter permitted upon 6 months written notice by one Party to the other). Article 23.7 concerns future accessions to the EU. Under Article 23.7.1, in the event of a future accession to the EU, the EU shall notify Japan of any request for accession to the EU and of information regarding any matter covered by the Agreement under Article 23.7.2(a) and take into account any concerns expressed by Japan. (23.7.2(b)).

### **5.5 Institutional framework**

5.13. Article 22.1 establishes a Joint Committee comprising representatives of both Parties. The Committee shall meet within three months of the date of entry into force of the Agreement. According to the Parties the Joint Committee met on 10 April 2019 in Tokyo.

5.14. The meetings of the Joint Committee shall take place in the EU or Japan alternately, unless otherwise agreed. Article 22.1.4 sets out the mandated functions of the Committee. The Committee shall review and monitor the implementation and operation of the Agreement and if necessary, make recommendations to the Parties, supervise the work of all specialised committees, working groups and other bodies under the Agreement, seek to resolve problems that may arise under the Agreement or resolve disputes regarding the interpretation or application of the Agreement and consider any other matter of interest under the Agreement. The Committee is also required to adopt its own rules of procedure as well as the rules of procedure of a panel, the code of conduct for arbitrators and the mediation procedure at its first meeting. At its first meeting the Committee adopted those rules and the code of conduct at its first meeting on 10 April 2019.

5.15. Article 22.1.5 permits the Joint Committee to establish or dissolve specialised committees<sup>51</sup>, working groups or other bodies and allocate responsibilities to them, provide information on issues under the Agreement to the public, recommend to the Parties any amendments to the Agreement or adopt decisions to amend the Agreement under Article 23.2.4, adopt interpretations of the Agreement and any other action in the exercise of its functions as may be agreed by the Parties.

5.16. Article 22.3.1 establishes several specialised committees under the auspices of the Joint Committee. Committees on Trade in Goods, on Rules of Origin and Customs-Related matters, on Sanitary and Phytosanitary Measures, on Technical Barriers to Trade, on Trade in Services, on Investment Liberalization and Electronic Commerce, on Government Procurement, on Intellectual Property, on Trade and Sustainable Development, on Regulatory Cooperation and on Cooperation in the Field of Agriculture. The existence of a specialised committee does not prevent a Party from bringing any matter directly to the Joint Committee (Article 22.3.8). According to the Parties, the Committee on Rules of Origin and Customs-Related matters met on 26 June 2019.

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<sup>51</sup> According to the Parties no such specialised committees or bodies have so far been created by the Joint Committee.

5.17. Working Groups on Wine and on Motor Vehicles and Parts are established in Article 22.4.1. The functions of the Groups are set out in Article 2.35 and Article 20 of Annex 2-C. According to the Parties the Working Group on Wine met on 1 February 2019.

## 5.6 Dispute settlement

5.18. Chapter 21, Articles 21.1-30 set out the process for dispute settlement under the Agreement. The rules in the Chapter closely follow the structure of the WTO dispute settlement mechanism at the panel stage.

5.19. Article 21.27 contains a choice of forum provision. When a dispute arises under the Agreement and a substantially equivalent obligation under any other international agreement, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute. Once a choice has been made, the complaining Party may not initiate dispute settlement proceedings unless the forum selected fails to make findings on the issues in dispute for jurisdictional or procedural reasons. Article 21.27.4 provides that nothing in the Agreement precludes a Party from implementing the suspension of concessions or other obligations authorized by the DSB. A Party shall not, however, invoke the WTO Agreement to preclude the other Party from suspending concessions or other obligations under the covered provisions.

5.20. Section B of Chapter 21 deals with the consultations and mediation phases of a dispute. Prior to a request for consultations or mediation, information may be requested of the other Party (Article 21.4). Consultations are governed by Article 21.5. Mediation, at any time, is permitted under Article 21.6. A procedure on mediation is to be adopted at the first meeting of the Joint Committee established pursuant to Article 22.1.4(f). A mediation procedure may continue in parallel to a panel procedure.

5.21. The establishment of a panel is regulated by Article 21.7. A request for establishment of a panel shall explicitly identify (a) the measure at issue, (b) the legal basis specifying the relevant covered provisions in such a way as to clearly present how such measure is inconsistent with those provisions and (c) the factual basis for the complaint. The process for composition of the panel of arbitrators is set out in Article 21.8. The required qualifications of arbitrators are described in Article 21.10. Article 21.12 concern the functions of panels. The terms of reference of the panel are specified in Article 21.13. The framework for panel proceedings are described in Article 21.15, and provide for hearings, interim and final reports<sup>52</sup>, decision taking, and the binding nature of panel decisions for the Parties. Per Article 21.30, panel proceedings shall take place pursuant to the Rules of Procedure of a Panel and the Code of Conduct for Arbitrators to be adopted by the Joint Committee at its first meeting pursuant to Article 22.1.4(f).

5.22. The Party complained against shall take any measure necessary to comply promptly and in good faith with the final report issued pursuant to Article 21.19 (Article 21.20). A review of the compliance of the complained against Party with the final report shall, upon request, be examined by the original panel (Article 21.21.2-4). Temporary remedies may be applied in the event of non-compliance with the panel report under Article 21.22. Article 21.22.3 permits the complaining Party to suspend concessions or other obligations, pursuant to the requirements specified in Article 21.22.4 and which may include sectors other than those in which the panel has found nullification or impairment. Article 21.23 provides for a compliance review after the adoption of any temporary remedies.

5.23. Article 21.24 permits the panel to suspend panel proceedings upon the request of the Parties for a period not exceeding 12 months. If the proceedings are suspended the relevant time periods provided for the panel process shall be suspended for the period of time for which the panel proceedings are suspended. The Parties may also agree to terminate the proceedings of the panel by joint agreement notified to the Chairperson of the panel.

5.24. Settlement of the dispute through a mutually agreed solution is permitted under Article 21.26. If a mutually agreed solution is reached during a panel proceeding or mediation procedure, the Parties shall jointly notify the agreed solution to the Chairperson of the panel or the mediator, who

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<sup>52</sup> See also Article 21.18 on interim reports of the panel and Article 21.19 on final reports of the panel.

shall terminate the proceedings. Each Party shall take measures required to ensure the mutually agreed solution is implemented in the time-period provided.

5.25. Article 21.25.1 provides that each Party shall (a) designate an office which will be responsible for the administration of the dispute settlement procedure under the Agreement, (b) be responsible for the costs and operations of that office, and (c) notify the other Party of the office's location and contact information no later than 3 months from the entry into force of the Agreement. Article 21.25.2 permits the Parties to jointly entrust an external body with providing administrative support for the dispute settlement procedure. Article 21.29 provides that the Parties shall meet the expenses and remuneration of the arbitrators in equal shares in accordance with the Rules of Procedure.

5.26. Annex 2-C on Motor Vehicles and Parts provides in Article 13 for a consultation procedure in relation to amendment or introduction of new domestic technical regulations. In the event that the Parties fail to agree a solution the complaining Party may have recourse to the dispute settlement procedures under Article 21 of the Agreement. Under Article 19 of Annex 2-C, an accelerated timeline for Article 21 dispute settlement procedure is created, shortening all intervals set out in Article 21 and providing that disputes in relation to the interpretation or application of the Annex is a matter of urgency.

5.27. Annex 8-A (regulatory cooperation on financial services) provides in Articles 22-26 for a technical mediation process and exclude application of the dispute settlement procedure under Article 21 of the Agreement.

5.28. Article 12.6 (subsidies) provides for a consultation process in the event that a Party considers a subsidy has or could have a significant negative effect on its trade or investment interests. Article 12.10 specifically excludes the application of Chapter 21's dispute settlement process to matters under Chapter 12.

5.29. Article 14.55 (intellectual property) provides that Article 14.52 (on intellectual property cooperation between the Parties) shall not be subject to dispute settlement under Chapter 21.

5.30. Article 16.17 (trade and sustainable development) provides that in the event of a dispute in relation to Chapter 16, the Parties may not make use of Chapter 21 and instead must use the procedures set out in Article 16.18. Article 16.18 sets out a consultation process leading to consideration of the matter by the Committee on Trade and Sustainable Development. In the event of an unresolved dispute, a Party may request the Committee to establish a panel of experts to examine the matter (Article 16.18). The independent panel's composition, functioning and procedures are described in Article 16.18.

## **5.7 Relationship with other agreements concluded by the Parties**

5.31. Article 1.9 provides that the existing agreements between the EU or its Member States and Japan are not superseded or terminated by this Agreement. In Annex 23 to the Agreement the EU notes that some of the third parties that have established a customs union with the EU to align their trade regime with the EU have an obligation to conclude preferential agreements with countries that have entered into preferential agreements with the EU. The Parties recall that Japan has already entered negotiations with one of those countries with a view to concluding a bilateral agreement establishing a free trade area in accordance with Article XXIV. The EU invites Japan to conclude these negotiations as soon as possible.

5.32. Table 5.1 below shows the Parties' RTAs in force, notified and non-notified, other than the Agreement.

**Table 5.1 European Union and Japan: Participation in other RTAs (notified and non-notified in force), as of 16 July 2019**

RTA Name	Date of entry into force	Coverage	GATT/WTO Notification	
			Year	WTO Provision
EUROPEAN UNION				
EU - Canada	21-Sep-17	Goods & Services	2017	GATT Art. XXIV & GATS Art. V
EU - Colombia and Peru - Accession of Ecuador	01-Jan-17	Goods & Services	2017	GATT Art. XXIV & GATS Art. V
EU - Ghana	15-Dec-16	Goods	2017	GATT Art. XXIV
EU - SADC <sup>a</sup>	10-Oct-16	Goods	2017	GATT Art. XXIV
EU - Côte d'Ivoire	03-Sep-16	Goods	2008	GATT Art. XXIV
EU - Georgia	01-Sep-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
EU - Republic of Moldova	01-Sep-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
EU - Cameroon	04-Aug-14	Goods	2009	GATT Art. XXIV
EU - Ukraine	23-Apr-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
EU - Central America <sup>b</sup>	01-Aug-13	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
EU - Colombia and Peru	01-Mar-13	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
EU - Eastern and Southern Africa States Interim EPA	14-May-12	Goods	2012	GATT Art. XXIV
EU - Republic of Korea	01-Jul-11	Goods & Services	2011	GATT Art. XXIV & GATS Art. V
EU - Serbia	01-Feb-10	Goods	2010	GATT Art. XXIV
	01-Sep-13	Services	2013	GATS Art. V
EU - Papua New Guinea / Fiji	20-Dec-09	Goods	2011	GATT Art. XXIV
EU - CARIFORUM States EPA	29-Dec-08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
EU - Bosnia and Herzegovina	01-Jul-08	Goods	2008	GATT Art. XXIV
	01-Jun-15	Services	2016	GATS Art. V
EU - Montenegro	01-Jan-08	Goods	2008	GATT Art. XXIV
	01-May-10	Services	2010	GATS Art. V
EU - Albania	01-Dec-06	Goods	2007	GATT Art. XXIV
	01-Apr-09	Services	2009	GATS Art. V
EU - Algeria	01-Sep-05	Goods	2006	GATT Art. XXIV
EU - Egypt	01-Jun-04	Goods	2004	GATT Art. XXIV
EU - Lebanon	01-Mar-03	Goods	2003	GATT Art. XXIV
EU - Chile	01-Feb-03	Goods	2004	GATT Art. XXIV
	01-Mar-05	Services	2005	GATS Art. V
EU - Jordan	01-May-02	Goods	2002	GATT Art. XXIV
EU - San Marino	01-Apr-02	Goods	2010	GATT Art. XXIV
EU - North Macedonia	01-Jun-01	Goods	2001	GATT Art. XXIV
	01-Apr-04	Services	2009	GATS Art. V
EU - Mexico	01-Jul-00	Goods	2000	GATT Art. XXIV
	01-Oct-00	Services	2002	GATS Art. V
EU - Israel	01-Jun-00	Goods	2000	GATT Art. XXIV
EU - Morocco	01-Mar-00	Goods	2000	GATT Art. XXIV
EU - South Africa	01-Jan-00	Goods	2000	GATT Art. XXIV
EU - Tunisia	01-Mar-98	Goods	1999	GATT Art. XXIV
EU - Palestinian Authority	01-Jul-97	Goods	1997	GATT Art. XXIV
EU - Faroe Islands	01-Jan-97	Goods	1997	GATT Art. XXIV
EU - Turkey	01-Jan-96	Goods	1995	GATT Art. XXIV
European Economic Area (EEA)	01-Jan-94	Services	1996	GATS Art. V
EU - Andorra	01-Jul-91	Goods	1998	GATT Art. XXIV
EU - Syria	01-Jul-77	Goods	1977	GATT Art. XXIV
EU - Norway	01-Jul-73	Goods	1973	GATT Art. XXIV
EU - Iceland	01-Apr-73	Goods	1972	GATT Art. XXIV

RTA Name	Date of entry into force	Coverage	GATT/WTO Notification	
			Year	WTO Provision
EU - Switzerland - Liechtenstein	01-Jan-73	Goods	1972	GATT Art. XXIV
EU – Overseas Countries and Territories (OCT)	01-Jan-71	Goods	1970	GATT Art. XXIV
EU - Armenia <sup>d</sup>	01-Jun-18	Goods	Not notified	
EU - Kosovo	01-Apr-16	Goods	Not notified	
JAPAN				
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) <sup>c</sup>	30-Dec-18	Goods & Services	2018	GATT Art. XXIV & GATS Art. V
Japan - Mongolia	07-Jun-16	Goods & Services	2016	GATT Art. XXIV & GATS Art. V
Japan - Australia	15-Jan-15	Goods & Services	2015	GATT Art. XXIV & GATS Art. V
Japan - Peru	01-Mar-12	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
India - Japan	01-Aug-11	Goods & Services	2011	GATT Art. XXIV & GATS Art. V
Japan - Viet Nam	01-Oct-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Japan - Switzerland	01-Sep-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Japan - Philippines	11-Dec-08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
ASEAN - Japan	01-Dec-08	Goods	2009	GATT Art. XXIV
Brunei Darussalam - Japan	31-Jul-08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
Japan - Indonesia	01-Jul-08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
Japan - Thailand	01-Nov-07	Goods & Services	2007	GATT Art. XXIV & GATS Art. V
Chile - Japan	03-Sep-07	Goods & Services	2007	GATT Art. XXIV & GATS Art. V
Japan - Malaysia	13-Jul-06	Goods & Services	2006	GATT Art. XXIV & GATS Art. V
Japan - Mexico	01-Apr-05	Goods & Services	2005	GATT Art. XXIV & GATS Art. V
Japan - Singapore	30-Nov-02	Goods & Services	2002	GATT Art. XXIV & GATS Art. V

- a The Agreement has been provisionally applied between Botswana, Eswatini, Lesotho, Namibia, South Africa and the EU as from 10 October 2016; and between Mozambique and the EU as from 4 February 2018. The Agreement will enter into force after it has been ratified by all the Parties.
- b The notifications made in February 2013 (see WT/REG332/N/1 and S/C/N/680) stated that: "Provisional application of the Agreement by all signatory parties is expected in the course of the second quarter 2013"; Further notifications to confirm the dates of entry into force between the EU and Central American countries are awaited.
- c Dates of entry into Force: 30 December 2018 for Australia, Canada, Japan, Mexico, New Zealand, Singapore and 14 January 2019 for Viet Nam. For the rest of the Parties, entry into force would be in accordance with Article 3 (Entry into Force), paragraph 2, of the CPTPP.
- d The EU-Armenia FTA does not provide for preferential tariff liberalization in trade in goods but has other goods provisions.

Source: WTO Secretariat. Further information may be found in the WTO Database on RTAs: <http://rtais.wto.org>.

## 5.8 Government procurement

5.33. Chapter 10 concerns Government procurement. Article 10.1 incorporates the WTO's Agreement on Government Procurement (GPA) into the Chapter, *mutatis mutandis*. Chapter 10 contains additional rules applicable to both procurement covered by each Party's annexes to Appendix I to the GPA and the procurement covered by each Party's annexes to Appendix I to the

GPA and the procurement covered by Part 2 of Annex 10 to the Agreement. Section A of Part 2 Annex 10 contains the commitments of the European Union, Section B Japan.

5.34. Article 10.4 requires that notices of intended or planned procurement under Article VII of the GPA shall be directly accessible by electronic means, free of charge, through a single point of access on the Internet. Article 10.5 concerns the conditions for participation by suppliers established in the other Party in a tendering procedure on the grounds that the supplier must be a legal or a natural person. Article 10.6 concerns qualifications for suppliers. Article 10.6.2 lists indicators for evaluation that may be examined when reviewing an EU supplier seeking to tender for construction work in Japan. Article 10.7 permits selective tendering, provided that the number of suppliers is sufficient to ensure competition without compromising the operational efficiency of the procurement system. Article 10.8-13 deal with technical specifications, test reports, environmental conditions, treatment of tenders and awarding of contracts, domestic review procedures and collection and reporting of statistics.

5.35. Article 10.14.1 provides that a Party may modify or rectify its commitments under Part 2 of Annex 10. Under Article 10.14.2, if a Party modifies or rectifies its Annexes to Appendix I to the GPA, effective pursuant to Article XIX of the GPA it shall automatically become effective for the purposes of this Agreement.

5.36. Article 10.16 provides that the Committee on Government Procurement established under Article 22.3 is responsible for the effective implementation and operation of the Chapter. The functions of the Committee are set out in Article 10.16.2.

5.37. Part 1 of Annex 10 are rules and procedures provided for in the provisions of the GPA which apply *mutatis mutandis*, to procurement covered by Part 2 of Annex 10. Part 2 concerns the scope of application.

5.38. For the EU, the chapeau in Section A of Part 2 of on Annex 10 provides that Chapter 10 applies in addition to the procurement covered by the annexes of the EU to Appendix I to the GPA, to the procurement covered by section A (other than procurement by the entities set out in paragraph 2(b) of Section A). The Notes to Annexes 1 to 7 of the EU's annexes to Appendix I to the GPA also apply to procurement covered by Section A.

5.39. For Japan, the chapeau in Section B of Part 2 of Annex 10 provides that Chapter 10 applies to procurement covered by the annexes of Japan to Appendix I to the GPA, other than procurement set in paragraph 2 of Section B. The Notes in Annex 1 to 7 of Japan's Annexes to Appendix 1 to the GPA also apply to procurement covered by Section B.

5.40. The commitments of the Parties under the Agreement build upon those they have under the GPA (both Parties are party). While under the Agreement, their thresholds are basically the same as those under the GPA, under Annex 10 of the Agreement the scope of entities subject to commitments is expanded compared to the specific entities listed in each Party's Annex 1 (Central Government), Annex 2 (Sub-Central entities) and Annex 3 (Other Entities) of Appendix I to the GPA.<sup>53</sup>

5.41. In the case of the EU, other entities now include bodies governed by public law that are hospitals or universities, an expansion in comparison to Annex 3 of the GPA.<sup>54</sup> Annex 10 also includes

<sup>53</sup> In Annex 10, which builds on and expands the Parties commitments under the GPA, the EU lists 13 central government entities in respect of Bulgaria, France, Luxembourg and Slovakia.

<sup>54</sup> For example, under the revised GPA only the following entities are covered by the EU's commitments: "All contracting entities whose procurement is covered by the EU utilities directive which are contracting authorities (e.g. those covered under Annex 1 and Annex 2) or public undertakings and which have as one of their activities any of those referred to below or any combination thereof: the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such networks; the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks; the provision of airport or other terminal facilities to carriers by air; the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway; the provision or operation of networks providing a service to the public in the field of transport by urban railway, automated systems, tramway, trolley bus, bus or cable. the provision or operation of networks providing a service to the public in the field of transport by railways."

commitments on procurement of railway-related goods and services.<sup>55</sup> The EU also adds commitments on services sectors procurement that broaden the commitments listed under Annex 5 of the EU Appendix.

5.42. The EU also opens up procurement for the following services, in addition to the services listed under Annex 5 of the European Union to Appendix I to the GPA: (a) for entities covered under Annex 1 of the European Union to Appendix I to the GPA or under paragraph 1 of the Section: Food serving services and Beverage serving services (CPC 642, 643); Telecommunications related services (CPC 754); Photographic services (CPC 87501 to 87503, 87505, 87507, 87509); Packaging services (CPC 876); Other business services (CPC 87901, 87903, 87905 to 87907); (b) for entities covered under Point 1 of Annex 2 of the European Union to Appendix I to the GPA or under paragraph 2 of the Section: Beverage serving services (CPC 643); General management consulting services (CPC 86501); Financial management consulting services (except business tax) (CPC 86502); Marketing management consulting services (CPC 86503); Human resources management consulting services (CPC 86504); Production management consulting services (CPC 86505); Other management consulting services (CPC 86509); and (c) for all covered entities: Real estate services on a fee or contract basis (CPC 8220).

5.43. Japan's commitments are set out in Section B of Part 2 of Annex 10. Whilst the thresholds for tender in principle remain unchanged from those under the GPA, Japan has expanded the scope of covered entities in comparison to its commitments in Annex 2 to Appendix I to the GPA. In paragraph 1 of Section B of Part 2 of Annex 10, Japan notes that in addition to procurement by sub-central entities listed in Annex 2 to Appendix I of the GPA, Japan includes (a) procurement by Kumamoto-shi and (b) procurement by local independent administrative agencies of goods and services, as specified in Japan's Annexes 4 to 6 to Appendix I of the GPA. In relation to (b), Japan also lists 89 entities such as hospitals and universities captured by the new commitment as of 1 February 2018 for reference purposes.

5.44. Japan also includes in sub-paragraph (c) of paragraph 2 in Section B of Part 2 of Annex 10 procurement related to the production, transport or distribution of electricity by sub-central entities listed in Japan's Annex 2 to Appendix I to the GPA as well as by Kumamoto-shi, with the same thresholds set out in that Annex will be covered by the Agreement. A list of 28 covered sub-central government entities that as of 1 February 2018 is contained for reference purposes in sub-paragraph (c). In paragraph 2, Japan also includes procurement by "Core Cities"<sup>56</sup> in which suppliers of the EU<sup>57</sup> will be accorded treatment no less favourable than that accorded to locally established suppliers including, if and where such exist, access to any review procedures available to locally established suppliers. Any obligations in Chapter 10 of the Agreement other than that described in the preceding sentence do not apply to Core Cities of Japan.

5.45. Japan also expressly retains a temporary reservation in respect of procurement of goods and services related to the operational safety of transportation.<sup>58</sup> In note (d) to paragraph 2, Japan expressly provides that the commitments in the paragraph do not apply to the procurement of construction services (CPC 51).

5.46. In respect of Japan's commitments in Group B of its Annex 3 to Appendix I to the GPA for "Other Entities" Japan lowers the threshold to 100,000 SDR for goods and services. Architectural, engineering and other technical services related to construction services are excluded from this lowered threshold (which in Japan's GPA commitments is 4,500,000 SDR). In respect of Group B of Japan's Annex 3 to Appendix I of the GPA, Japan adds 6 entities whose procurement of goods and services is opened to EU suppliers.

5.47. Japan also provides access to procurement related to the operational safety of transportation by Hokkaido Railway Company, Japan Freight Railway Company, Japan Railway Construction,

<sup>55</sup> With a listing of the products subject to the commitment defined by reference to "CPV", Common Procurement Vocabulary as defined by Regulation (EC) No 213/2008 of 28 November 2007.

<sup>56</sup> As defined by paragraph 1 of Article 252-22 of Japan's Local Autonomy Law (Law No. 67 of 1947).

<sup>57</sup> Note (e) provides as follows: "...supplier of the European Union" means, in case of a juridical person, a juridical person of the European Union. In case where the supplier is a juridical person owned or controlled by a natural or juridical person of a third country or Japan, and that person would substantively benefit from this paragraph and undermine the attainment of the objectives of Chapter 10, Japan may deny the benefits of this paragraph to that supplier".

<sup>58</sup> Until one year after the date of entry into force of the Agreement, or 6 July 2019, whichever is later.

Transport and Technology Agency, Shikoku Railway Company and Tokyo Metro Co., Ltd. with the commitment entering into force one year after entry into force of the Agreement, or 6 July 2019, whichever is the later.

5.48. For services, in paragraph 5 of Section B of Part 2 of Annex 10, Japan expands the services listed in Annex 5 of its GPA commitments, with the addition of 21 service sectors for procurement by entities listed in Japan's Annex I to Appendix + of the GPA. Japan also includes procurement in 11 service sectors by entities listed in Japan's Annex 2 to Appendix I of the GPA and Kumamoto-shi.

## 5.9 Intellectual property rights

5.49. Chapter 14 of the Agreement concerns intellectual property. Article 14.1.3 provides that "intellectual property" means all categories of intellectual property that are covered by Articles 14.8 to 14.39 of the Chapter or Sections 1 to 7 of Part II of the TRIPS Agreement.

5.50. In Article 14.3.2 of the Agreement the Parties reaffirm the obligations under the TRIPS Agreement and 9 other Conventions on intellectual property. Article 14.4 provides that each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property. Each Party shall immediately and unconditionally accord to nationals of the other Party no less favourable treatment than the treatment it accords to nationals of a third country with regard to the protection of intellectual property.

5.51. Article 14.6 concerns procedural matters and transparency. Article 14.6 provides that for the purposes of promoting transparency in the administration of its intellectual property system, each Party shall make all reasonable efforts to take appropriate available measures to publish information on applications for and grant of patents, registration of industrial designs and trademarks (and applications for trademarks), registration of new varieties of plants and geographical indications. The Parties shall also make all reasonable efforts to make available to the public information on measures taken by the competent authorities to suspend the release of goods infringing intellectual property rights as a border measure (Article 14.51).

5.52. Section B of Chapter 14 contains substantive provisions on different categories of intellectual property rights. Sub-section 1 deals with copyright and related rights, with Articles 14.8-10 requiring each Party to provide authors, performers, and producers of the original of their works or of copies thereof and (c) distribution by wire or wireless means.

5.53. Sub-section 2 of Section B concerns trademarks. Article 14.18 provides that each Party shall ensure that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. Article 14.19 requires each Party to provide limited exceptions such as fair use of descriptive terms, but shall take account of the legitimate interest of the owner of the trademark and also third parties.

5.54. In Article 14.21 for the purpose of giving effect to the protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement the Parties affirm the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks.

5.55. Sub-section 3, of Section B, Articles 14.22-30 concerns Geographical Indications (GIs). Article 14.22 provides a definition of GIs which applies to the recognition and protection of GIs for wines, spirits and other alcoholic beverages as well as agricultural products which originate in the Parties.<sup>59</sup> In Annex 14-A the Parties list their laws concerning GIs (EU in Annex 14-A Part 1, Japan in Part 2).

5.56. Article 14.23 provides that each Party shall establish or maintain a system for the registration and protection of GIs in its territory. Article 14.24 concerns the lists of GIs that are annexed to the

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<sup>59</sup> "Geographical indications" are indications which identify a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.

Agreement. Articles 14.24.1 and 2 provide for an opposition procedure in relation to each Party's list of GIs, after which each Party will protect the GIs set out in the other Party's list. Each Party shall, in respect of GIs of the other Party, provide the legal means for interested Parties to prevent in its territory the use of a GI identifying a good for a like good not meeting the applicable requirement of specifications of the GIs (Article 14.25.1(a)). Article 14.28 requires each Party to authorize its competent authorities to take appropriate measures to protect GIs *ex officio* or on request of an interested Party. Article 14.29 deals with exceptions, and it allows to maintain "prior use" of a GI that is listed in Annex 14-B as a GI of the other Party, which may remain for a transitional period of maximum 5 or 7 years, depending on the goods. Articles 14.29.2-5 concern the conditions for transitional use of the concerned GI.

5.57. Sub-section 4 of Section B, Article 14.31 concerns industrial designs. Sub-section 5, Article 14.32 on unregistered appearance of products, provides that the appearance of products may be protected through industrial designs, copyright or unfair competition prevention legislation. Sub-section 6, Articles 14.33-35 concern Patents, Article 14.34 on patents and public health, provides that the Parties recognize the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the WTO Ministerial Conference and the Decision of the WTO General Council of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.

5.58. Subsection 7 of Section B concerns trade secrets and undisclosed test or other data. Article 14.37.1 provides restrictions on the use of undisclosed test data submitted by a prior applicant for a pharmaceutical in respect of a product containing new pharmaceutical ingredients, for a certain period of time from the date of approval of that application (six years currently). Article 14.50 contains particular provisions on the enforcement of protection against misappropriation of trade secrets.

5.59. Sub-section 8 of Section B of Chapter 14 on new varieties of plants provides that each Party shall provide for the protection of new varieties of all plant genera and species in accordance with its rights and obligations under the 1991 UPOV Convention. Sub-section 9 of Section B on unfair competition provides in Article 14.39 that each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention.

5.60. Section C concerns Enforcement. Article 14.40 requires that in addition to their obligations under the TRIPS Agreement, in particular Part III thereof, the Parties shall provide complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. Such measures shall be fair and equitable and not be unnecessarily complicated or costly or entail unreasonable time-limits or unwarranted delays. Article 14.41 provides that each Party shall recognize as persons entitled to seek application of the measures referred to in section C the holders of intellectual property rights, trade secret holders and other person and entities as far as permitted by law. Enforcement of civil remedies is covered by sub-section 2 of the section. Article 14.44 on provisional and precautionary measures, requires the Parties provide that its judicial authorities may order, on request of an applicant, to request an interlocutory injunction to prevent the imminent infringement of an intellectual property right. An interlocutory injunction may be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right. Articles 14.45, 14.46 and 14.47 respectively provide for corrective measures, injunctions and damages. Article 14.48 concerns judicial orders for costs in civil judicial proceedings in favour of the prevailing party in litigation. Sub-section 4 of this section concerns enforcement in relation to border measures requiring the Parties to provide for procedures under which a right holder may submit applications requesting its customs authority to suspend the release of detained goods suspected of infringing listed intellectual property rights.

5.61. Section D concerns cooperation and institutional arrangements. Article 14.52 on cooperation, provides that the Parties shall cooperate on the protection of intellectual property, including by exchange of information on relations of a Party with third countries on matters concerning intellectual property. Cooperation may include exchange of information, sharing of experiences and skills and any other form of cooperation or activities as may be agreed between the Parties.

5.62. A Committee on Intellectual Property is established by Article 22.3. In Article 14.53, the Committee is made responsible for the effective implementation of the Chapter. Its functions are set out in Article 14.53.2.

### 5.9.1 Competition policy

5.63. Chapter 11, Articles 11.1-11.9 deal with competition policy. Article 11.2 provides that each Party shall, in accordance with its laws and regulations, take measures it considers appropriate against anticompetitive practices, in order to achieve the objectives of the Agreement. In Article 11.3 the Parties agree to maintain their competition law to address specific anti-competitive behaviour and practices – part (a) for the EU, and part (b) for Japan. Each Party shall apply their competition law to all enterprises, private and public, engaged in economic activities. A Party may provide exemptions under its competition law provided the exemptions are transparent and do not go beyond what is strictly necessary to achieve the public interest objectives of that Party. (Article 11.3.2). Obligations concerning operational independence, non-discrimination, procedural fairness, transparency and enforcement cooperation are set out in Articles 11.4-11.8. Article 11.9 provides that the provisions of the Chapter are not subject to dispute settlement under Chapter 21 of the Agreement.

### 5.9.2 Environment

5.64. In Chapter 16, Trade and Sustainable Development, Articles 16.4-16.13 concern environment. In Article 16.4 the Parties stress the importance of multilateral environmental agreements as a means of multilateral environmental governance for the international community to address global or regional environmental challenges and each Party reaffirms their commitment to effectively implement the agreements to which they are a party. The Parties agree to exchange views and information on trade-related environmental matters of mutual interest in the meetings of the Committee on Trade and Sustainable Development established pursuant to Article 22.3 and as appropriate in other fora.

5.65. In Article 16.4.4, the Parties recognise the importance of achieving the ultimate objective of the UN Framework Convention on Climate Change, of 9 May 1992 ("UNFCCC") and the Paris Agreement, of 12 December 2015. The Parties reaffirm their commitment to effectively implement them. The Parties agree to cooperate to promote the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development, and the Parties commit to work together to take actions to address climate change towards achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement. In Article 16.5 the Parties recognise the importance of enhancing the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions. In Article 16.6 the Parties recognise the importance of and the role of trade and investment in ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements, notably the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992 and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Floras done at Washington D.C, on 3 March 1973, ("CITES").

5.66. Article 16.7 concerns sustainable management of forests and trade in timber and timber products, wherein the Parties recognize the importance and the role of trade and investment in ensuring the conservation and sustainable management of forests. The Parties agree to (a) encourage conservation and sustainable management of forests and trade in timber and timber products harvested in accordance with the laws and regulations of the country of harvest, (b) contribute to combatting illegal logging and related trade, including trade with third countries, and (c) exchange information and share experiences at bilateral and multilateral levels with a view to promoting the conservation and sustainable management of forests and trade in legally harvested timber and timber products as well as combatting illegal logging.

5.67. Trade in and sustainable use of fisheries resources and sustainable aquaculture are captured in Article 16.8. The Parties recognize the importance and role of trade and investment in ensuring the conservation and sustainable use and management of fisheries resources, safeguarding marine ecosystems and promotion of responsible and sustainable aquaculture (Article 16.8.1). In Article 16.8.2, the Parties restate their commitment to the applicable treaties and organisations relating to law of the sea, fisheries and illegal unreported and unregulated (IUU) fishing.

5.68. In Article 16.9 the Parties agree that when preparing and implementing measures with the aim of protecting the environment or labour conditions that may affect trade or investment, the Parties shall take account of available scientific and technical information, relevant international

standards, guidelines or recommendations, and the precautionary approach. The Parties agreed to convene meetings of domestic advisory groups on economic, social and environmental issues in Article 16.15; in Article 16.16 the Parties have agreed to convene a Joint Dialogue with civil society organisations in their territories.

5.69. A Committee on Trade and Sustainable Development (established pursuant to Article 22.3 of the Agreement) shall be responsible for the effective implementation and operation of all of Chapter 16.<sup>60</sup> The Parties agree to designate contact points to facilitate communications between the Parties on any matter relating to the Chapter. According to the Parties, the Committee has not yet met, and its first meeting is scheduled during the second half of January 2020.

### **5.9.3 Labour**

5.70. Article 16.3, in Chapter 16, Trade and Sustainable Development, concerns international labour standards and conventions. In Article 16.3.1, the Parties recognize full and productive employment and decent work for all as key elements to respond to economic, labour and social challenges. The Parties agree to exchange views and information on trade-related labour issues of mutual interest in the meetings of the Committee on Trade and Sustainable Development established pursuant to Article 22.3 and as appropriate in other fora.

5.71. In Article 16.3.2 the Parties reaffirm their obligations deriving from their ILO membership, and agree to respect, promote and realise in their laws, regulations and practices internationally recognized principles concerning the fundamental rights at work, which are (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the elimination of all forms of forced or compulsory labour, (c) the effective abolition of child labour, and (d) the elimination of discrimination in respect of employment and occupation.

### **5.9.4 Electronic Commerce**

5.72. Provisions on electronic commerce appear in Section F of Chapter 8, Articles 8.70-8.81. Definitions used in the section appear in Article 8.71. In Article 8.72 the Parties agree to not impose customs duties on electronic transmissions. An obligation not to require the transfer of, or access to source code of software owned by a person of the other Party appears in Article 8.73, subject to specific exceptions, including requirements by a court, administrative tribunal or competition authority to remedy a violation of competition law or those by a court, administrative tribunal or administrative authority with respect to the protection and enforcement of intellectual property rights.

5.73. The Parties agree to ensure all its measures of general application affecting electronic commerce are administered in a reasonable, objective and impartial manner (Article 8.74). The Agreement also includes provisions on the principle of no prior authorisation, conclusion of contracts by electronic means, electronic authentication and electronic signature, consumer protection, unsolicited commercial electronic spam in Articles 8.75-79. Cooperation on electronic commerce is foreseen in Article 8.80, the Parties agree to maintain a dialogue on subjects including consumer protection, cybersecurity, combatting unsolicited commercial electronic messages, the recognition of certificates of electronic signatures issued to the public, intellectual property and electronic government. The Parties have a clause for reassessment of the possible inclusion of provisions on the free flow of data in the Agreement.

### **5.9.5 Other**

#### **5.9.5.1 Corporate Governance**

5.74. Chapter 15 (Articles 15.1-15.7) provides the Parties' basic understandings on corporate governance. The objectives of the Chapter are set out in Article 15.1, recognition of the importance of an effective corporate governance framework to achieve economic growth through well-functioning markets and sound financial systems based on transparency, efficiency, trust and

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<sup>60</sup> The Committee on Trade and Sustainable Development is responsible for the effective implementation and operation of the entirety of Chapter 16, e.g. environment, and also labour and cross cutting issues such as corporate social responsibility, (see also section 5.9.3 ).

integrity. Article 15.3 sets out general principles, referring to the importance of the role of the corporate governance framework in providing timely and accurate disclosure on all material matters regarding publicly listed companies within their respective jurisdictions, including the financial situation, performance, ownership and governance of those companies. Article 15.4 sets out rights of shareholders and ownership functions in the corporate governance frameworks. Article 15.5 sets out roles of the board in the corporate governance framework, including provisions aiming at the effective monitoring of management by the company boards from an independent and objective standpoint.

#### **5.9.5.2 Small and medium sized enterprises**

5.75. Chapter 20 of the Agreement covers small and medium sized enterprises (SMEs). The Parties agree to share information through publicly accessible websites including on the text of the Agreement and annexes, in particular the tariff schedules and rules of origin provisions; a summary of the Agreement; and information designed for SMEs that contains provisions and any additional information that a Party considers to be relevant and useful to SMEs. The Parties also agree to provide other relevant information through links on the website including on (a) customs legislation and procedures, (b) laws and regulations concerning intellectual property rights, (c) technical regulations and conformity assessment procedures, (d) sanitary and phytosanitary measures relevant for importation and exportation, (e) publication of notices for government procurement, (f) business registration procedures, and (g) taxes collected during importation. The website shall also link to a database that is electronically searchable by tariff nomenclature code. According to the Parties upon entry into force of the Agreement they designated and exchanged SME contact points for government-to-government cooperation to ensure that SMEs benefit from all provisions of the Agreement.

5.76. The provisions on dispute settlement do not apply to Chapter 20.

## ANNEX 1

1. Table A1.1 shows tariff liberalization by the EU in relation to imports from Japan (by total, agricultural and industrial products). In 2019 the EU's average applied overall MFN rate was 5% (3.7% for industrial products and 10% for agricultural products). 25.8% of the EU's tariff was duty-free on an MFN basis (29.8% for industrial products and 14.4% for agricultural products).

2. At the entry into force of the Agreement (2019), the share of duty-free lines applicable to imports from Japan immediately upon entry into force of the Agreement was 95.8% (96.5% for industrial products and 93.8% for agricultural products). Japan's exporters enjoyed a relative margin of preference of 94% *vis-à-vis* the prevailing MFN tariff; 94.6% for industrial products and 95% for agricultural products. Following ten years of implementation, the share of duty free tariff lines is expected to rise to 97.9% overall, and 99.1% and 94.6% respectively for industrial and agricultural products. During the following years this share of duty-free lines will increase further to reach 99.1% in 2034, (100% for industrial products and 96.5% for agricultural products).

**Table A1.1 EU: Indicators of MFN tariff rates and preferential rates for imports from Japan**

Origin of goods	Year	ALL PRODUCTS			HS Chapters 01-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2019	5.0	6.9	25.8	10.0	12.6	14.5	3.7	5.2	29.8
Japan	2019	0.3	8.0	95.8	0.5	12.0	93.8	0.2	6.5	96.5
	2020	0.3	7.0	95.8	0.4	11.1	93.8	0.2	5.5	96.5
	2021	0.2	6.0	95.8	0.4	10.2	93.8	0.2	4.4	96.5
	2022	0.2	6.2	96.4	0.4	9.4	93.8	0.1	4.5	97.4
	2023	0.2	5.2	96.4	0.3	8.5	93.8	0.1	3.5	97.4
	2024	0.1	5.2	97.0	0.3	7.6	93.8	0.1	3.4	98.2
	2025	0.1	4.2	97.0	0.3	6.8	93.8	0.0	2.4	98.2
	2026	0.1	5.4	97.9	0.2	7.6	94.6	0.0	2.8	99.1
	2027	0.1	4.6	97.9	0.2	6.9	94.6	0.0	2.0	99.1
	2028	0.1	3.9	97.9	0.2	6.1	94.6	0.0	1.3	99.1
	2029	0.0	3.7	98.1	0.2	5.4	94.6	0.0	0.9	99.4
	2030	0.0	3.1	98.1	0.1	4.7	94.6	0.0	0.4	99.4
	2031	0.0	4.0	98.6	0.1	4.0	94.6	0.0	0.0	100.0
	2032	0.0	3.3	98.6	0.1	3.3	94.6	0.0	0.0	100.0
	2033	0.0	2.6	98.6	0.1	2.6	94.6	0.0	0.0	100.0
	2034	0.0	5.6	99.1	0.1	5.6	96.5	0.0	0.0	100.0

a WTO Definition.

Note: For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.  
Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by EU and IDB-WTO.

3. Table A1.2 sets out additional market access opportunities for Japanese exporters to the EU resulting from entry into force of the Agreement for Japan's top 25 global exports, which represented 32.1% of its global exports in 2015-2017, corresponding to 93 lines in Japan's tariff. In 2019, prior to the entry into force of the Agreement, 46 of those lines had duty-free access on an MFN basis. With the entry into force of the Agreement in 2019, a further 33 dutiable items became duty-free for Japanese exporters. The remaining lines will become duty-free in 2024 and 2026. At the end of the implementation period, none of the lines covering Japan's top 25 global exports will be dutiable.

**Table A1.2 EU: Market access opportunities under the agreement for Japan's top 25 exports to the world**

Japan's top export products in 2015 – 2017			Access Conditions to EU's import markets						
HS number and description of the product		Share in global exports (%)	MFN 2019			No. of duty free lines under the agreement			Remain Dutiable
			Average MFN applied rate (%)	No. of duty free lines	No. of duti- able lines	2019	2024	2026	
870340	Motor cars and other motor vehicles principally designed for the transport of <10 persons	4.5	10.0		2			2	
870360	Motor cars and other motor vehicles principally designed for the transport of <10 persons	4.1	10.0		2			2	
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	2.6	10.0		3			3	
870840	Gear boxes and parts thereof, for tractors, motor vehicles for the transport of ten or more persons, motor cars and other motor vehicles principally designed for the transport of persons, motor vehicles for the transport of goods and special purpose motor vehicles	2.4	3.9		4	4			
854239	Electronic integrated circuits	1.5	0.0	3					
854232	Electronic integrated circuits as memories	1.4	0.0	10					
890190	Vessels for the transport of goods and vessels for the transport of both persons and goods	1.3	0.9	1	1	1			
844399	Parts and accessories of printers, copying machines and facsimile machines	1.3	0.0	2					
848620	Machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits	1.2	0.0	1					
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel	1.1	2.0	12	13	13			
870324	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.1	10.0		2			2	
842952	Self-propelled mechanical shovels, excavators and shovel loaders, with a 360° revolving superstructure	0.9	0.0	2					
710812	Gold, incl. gold plated with platinum, unwrought, for non-monetary purposes	0.9	0.0	1					
847989	Machines and mechanical appliances	0.7	1.3	1	3	3			
901380	Liquid crystal devices, n.e.s. and other optical appliances and instruments not elsewhere specified in chapter 90	0.7	1.6	2	1	1			
880330	Parts of aeroplanes or helicopters	0.7	2.7		1	1			
870422	Motor vehicles for the transport of goods, with compression-ignition internal combustion piston engine "diesel or semi-diesel engine" of a gross vehicle weight > 5 t but <= 20 t	0.7	15.8		3			3	
840991	Parts suitable for use solely or principally with spark-ignition internal combustion piston engine	0.7	2.7		1	1			
848690	Parts and accessories for machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays, and for machines and apparatus specified in note 9 c to chapter 84	0.7	0.0	1					

Japan's top export products in 2015 – 2017			Access Conditions to EU's import markets						
HS number and description of the product		Share in global exports (%)	MFN 2019			No. of duty free lines under the agreement			Remain Dutiable
			Average MFN applied rate (%)	No. of duty free lines	No. of duti- able lines	2019	2024	2026	
853690	Electrical apparatus for switching electrical circuits, or for making connections to or in electrical circuits, for a voltage <= 1.000 v	0.7	0.7	2	3	3			
962000	Monopods, bipods, tripods and similar articles	0.7	3.2	1	2	1	1		
854140	Photosensitive semiconductor devices, incl. photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes	0.6	0.0	2					
854231	Electronic integrated circuits as processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits	0.6	0.0	3					
870899	Parts and accessories, for tractors, motor vehicles for the transport of ten or more persons, motor cars and other motor vehicles principally designed for the transport of persons, motor vehicles for the transport of goods and special purpose motor vehicles	0.5	3.7		3	2	1		
852580	Television cameras, digital cameras and video camera recorders	0.5	1.7	2	3	3			
TOTALS		32.1	3.2	46	47	33	2	12	-

Note: For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included.  
Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by EU and UNSD, Comtrade database.

4. Table A1.3 shows tariff liberalization by Japan in relation to imports from the EU (by total, agricultural and industry products). In 2019 Japan's average applied MFN rate was 4.8% overall (3% on industrial, and 10.8% for agricultural products). 40.3% of Japan's tariff was duty free on an MFN basis; 47.8% for industrial products and 17.5% for agricultural products) were duty free. At the time of entry into force of the Agreement (2019), the EU's exporters enjoyed a relative margin of preference of 56.2% *vis-à-vis* the prevailing MFN tariff; 83.3% for industrial products and 29.6% for agricultural products. Following ten years of implementation the share of duty free tariff lines will increase to 94.6% overall, 99.3% for industrial products and 80.3% for agricultural products. This share of duty-free tariff lines will further increase to reach 95.8% in 2033 (100% for industrial products and 82.8% for agricultural products), by which time Japan will have fully implemented the Agreement.

**Table A1.3 Japan: Indicators of MFN tariff rates and preferential rates for imports from EU**

Origin of goods	Year	ALL PRODUCTS			HS chapters 1-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2019	4.8	8.2	40.3	10.8	13.3	17.5	3.0	5.8	47.8
EU	2019 (Feb)	2.1	15.9	84.9	7.6	17.5	51.6	0.5	11.2	95.7
	2019 (April)	1.9	14.6	84.9	7.0	16.1	51.6	0.4	10.2	95.7
	2020	1.8	13.3	84.9	6.4	14.6	51.6	0.4	9.1	95.7
	2021	1.6	12.1	85.0	5.7	13.4	52.1	0.3	8.1	95.7
	2022	1.4	10.8	85.0	5.2	12.0	52.1	0.3	7.0	95.7
	2023	1.2	11.9	87.8	4.5	14.4	63.4	0.2	6.0	95.8
	2024	1.1	10.9	87.8	4.2	13.5	63.4	0.2	5.0	95.8
	2025	1.0	10.8	88.7	3.9	13.3	65.1	0.2	4.6	96.4
	2026	0.9	10.3	89.1	3.7	13.1	66.7	0.1	3.5	96.4
	2027	0.9	9.4	89.2	3.4	12.5	67.0	0.1	2.4	96.4
	2028	0.8	19.5	94.6	3.1	21.4	80.3	0.0	6.5	99.3
	2029	0.8	19.1	94.6	3.1	21.2	80.3	0.0	5.2	99.3
	2030	0.7	19.0	94.7	3.1	21.3	80.6	0.0	3.9	99.3
	2031	0.7	18.8	94.7	3.0	21.3	80.7	0.0	2.6	99.3
	2032	0.7	18.4	94.7	3.0	21.0	80.7	0.0	1.3	99.3
	2033	0.7	24.0	95.8	2.9	24.0	82.8	0.0	0.0	100.0

Note: Tariff lines subject to in-quota rates (both MFN and under Agreement) are excluded in the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Tariff lines under the Excluded category reflect the MFN 2019 duties. This process is in accordance with the methodology applied by the Secretariat across all FPs where it aims to assess the margins of preference in reference to the MFN duties as of entry into force. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by Japan and IDB-WTO.

5. Table A1.4 gives an indication of additional market access in Japan resulting from entry into force of the Agreement for the EU's top 25 global exports, which accounted for 25.7% its global exports in 2017-2018; these corresponded to 90 lines in Japan's tariff at the 6-digit level (HS 2017). In 2019, prior to the entry into force of the Agreement, 54 of these tariff lines already had duty-free access to Japan's market. With the entry into force of the Agreement, a further 36 items became duty-free for exports from the EU.

**Table A1.4 Japan: Market access opportunities under the agreement for EU's top 25 exports to the world**

EU's top export products in 2017 - 2018			Access Conditions to Japan's import markets				
HS number and description of the product		Share in global exports (%)	MFN 2019			No. of duty-free lines under the agreement 2019 (Feb)	Remain Dutiable
			Average MFN applied rate (%)	No. of duty free lines	No. of dutiable lines		
880240	Aeroplanes and other powered aircraft of an of an unladen weight > 15.000 kg	2.6	0.0	1			
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel	1.9	2.2	9	22	22	
870360	Motor cars and other motor vehicles principally designed for the transport of <10 persons,	1.9	0.0	1			
300460	Medicaments containing antimalarial active principles put up in measured doses or in forms or packings for retail sale	1.9	0.0	1			
300490	Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic purposes, put up in measured doses or in forms or packings for retail sale	1.9	0.0	4			
870340	Motor cars and other motor vehicles principally designed for the transport of <10 persons,	1.8	0.0	1			
271012	Light oils and preparations, of petroleum or bituminous minerals which >= 90% by volume "incl. losses" distil at 210°C "astm d 86 method"	1.8	1.3	5	11	11	
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons	1.3	0.0	1			
710813	Gold, incl. gold plated with platinum, in semi-manufactured forms, for non-monetary purposes	1.1	0.0	2			
841191	Parts of turbojets or turbopropellers	0.8	0.0	1			
841112	Turbojets of a thrust > 25 kn	0.8	0.0	1			
300215	Immunological products, put up in measured doses or in forms or packings for retail sale	0.7	0.0	1			
880330	Parts of aeroplanes or helicopters	0.7	0.0	1			
962000	Monopods, bipods, tripods and similar articles	0.6	0.0	1			
854231	Electronic integrated circuits as processors and controllers,	0.6	0.0	6			
711319	Articles of jewellery and parts thereof, of precious metal other than silver	0.6	5.3		3	3	

EU's top export products in 2017 - 2018			Access Conditions to Japan's import markets				
HS number and description of the product		Share in global exports (%)	MFN 2019			No. of duty-free lines under the agreement 2019 (Feb)	Remain Dutiable
			Average MFN applied rate (%)	No. of duty free lines	No. of dutiable lines		
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, incl. switching and routing apparatus	0.6	0.0	2			
870899	Parts and accessories, for tractors, motor vehicles for the transport of ten or more persons, motor cars and other motor vehicles principally designed for the transport of persons, motor vehicles for the transport of goods and special purpose motor vehicles, n.e.s.	0.5	0.0	2			
853710	Boards, cabinets and similar combinations of apparatus for electric control or the distribution of electricity, for a voltage ≤ 1.000 v	0.5	0.0	1			
870840	Gear boxes and parts thereof, for tractors, motor vehicles for the transport of ten or more persons, motor cars and other motor vehicles principally designed for the transport of persons, motor vehicles for the transport of goods and special purpose motor vehicles, n.e.s.	0.5	0.0	1			
710231	Non-industrial diamonds unworked or simply sawn, cleaved or bruted	0.5	0.0	1			
300220	Vaccines for human medicine	0.5	0.0	1			
848180	Appliances for pipes, boiler shells, tanks, vats or the like	0.5	0.0	3			
901890	Instruments and appliances used in medical, surgical or veterinary sciences	0.5	0.0	6			
847989	Machines and mechanical appliances	0.4	0.0	1			
<b>Total</b>		<b>25.7</b>	<b>0.4</b>	<b>54</b>	<b>36</b>	<b>36</b>	<b>-</b>

Note: Tariff lines subject to in-quota rates (both MFN and under Agreement) are excluded in the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included. Tariff lines under the Excluded category reflect the MFN 2019 duties. This process is in accordance with the methodology applied by the Secretariat across all FPs where it aims to assess the margins of preference in reference to the MFN duties as of entry into force. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by Japan, IDB-WTO and UNSD, Comtrade database.

## ANNEX 2

## SUMMARY OF JAPAN'S TARIFF RATE QUOTAS

1. Under the Agreement, only Japan applies tariff rate quotas. Table A2.1 sets out a summary of Japan's Tariff Rate Quotas (TRQs) under the Agreement. Japan's TRQs fall into 25 categories, (spread over multiple tariff lines). Table A2.1 provides detailed information (by tariff line) on the duty rates in and out of quota (as applicable) compared with the applied MFN rates in 2019.

Table A2.1 Japan Tariff Rate Quotas under the Agreement

Tariff Line	MFN Rates	In quota Rates for EU	
		Entry into force	End of implementation
040210129	29.8%+396yen/kg	35% + 130yen/kg	35%
040210212	396yen/kg	25% + 130yen/kg	25%
040210229	21.3%+396yen/kg	25% + 130yen/kg	25%
040221119	25.5%+612yen/kg	Free	Free
040221119	25.5%+612yen/kg	30% + 210yen/kg	30%
040221129	25.5%+1,023yen/kg	Free	Free
040221129	25.5%+1,023yen/kg	30% + 210yen/kg	30%
040221212	425yen/kg	25% + 130yen/kg	25%
040221229	21.3%+425yen/kg	25% + 130yen/kg	25%
040229119	25.5%+612yen/kg	30% + 210yen/kg	30%
040229129	25.5%+1,023yen/kg	30% + 210yen/kg	30%
040229291	29.8%+425yen/kg	35% + 130yen/kg	35%
040291129	25.5%+509yen/kg	Free	Free
040291290	21.3%+254yen/kg	Free	Free
040299129	25.5%+509yen/kg	Free	Free
040299290	25.5%+254yen/kg	Free	Free
040390113	29.8%+396yen/kg	35% + 200yen/kg	35%
040390113	29.8%+396yen/kg	25% + 200yen/kg	25%
040390123	29.8%+582yen/kg	35% + 200yen/kg	35%
040390123	29.8%+582yen/kg	25% + 200yen/kg	25%
040390133	29.8%+1,023yen/kg	35% + 200yen/kg	35%
040390133	29.8%+1,023yen/kg	25% + 200yen/kg	25%
040410125	29.8%+425yen/kg	31.8%	Free
040410125	29.8%+425yen/kg	22.7%	Free
040410135	29.8%+425yen/kg	Free	Free
040410145	29.8%+425yen/kg	Free	Free
040410145	29.8%+425yen/kg	Free	Free
040410165	29.8%+687yen/kg	31.8%	Free
040410165	29.8%+687yen/kg	22.7%	Free
040410185	29.8%+ 687yen/kg	Free	Free
040490118	29.8%+400yen/kg	Free	Free
040490128	29.8%+679yen/kg	Free	Free
040490138	29.8%+1,023yen/kg	Free	Free
040510129	29.8%+985yen/kg	35% + 290yen/kg	35%
040510229	29.8%+1,159yen/kg	35% + 290yen/kg	35%
040520090	29.8%+985yen/kg	35% + 290yen/kg	35%
040590190	29.8%+985yen/kg	35% + 290yen/kg	35%
040590229	29.8%+1,159yen/kg	35% + 290yen/kg	35%
040610020	22.4%	21%	Free
040610090	29.8%	27.90%	Free
040610090	29.8%	27.90%	Free
040620100	40%	37.50%	Free
040630000	40%	37.50%	Free
040640090	29.8%	27.90%	Free
040690090	29.8%	27.90%	Free
100111010	Free	Free	Free
100119010	Free	Free	Free
100191011	20%	Free	Free
100191019	Free	Free	Free
100199011	20%	Free	Free
100199019	Free	Free	Free
100310010	Free	Free	Free
100390019	Free	Free	Free
100860210	Free	Free	Free

Tariff Line	MFN Rates	In quota Rates for EU	
		Entry into force	End of implementation
110100011	12.5	Free	Free
110100091	25%	Free	Free
110290110	25%	Free	Free
110290210	25%	Free	Free
110311010	25%	Free	Free
110319110	20%	Free	Free
110319210	20%	Free	Free
110320110	25%	Free	Free
110320410	20%	Free	Free
110320510	20%	Free	Free
110419111	25%	Free	Free
110419121	20%	Free	Free
110419410	20%	Free	Free
110429111	25%	Free	Free
110429121	20%	Free	Free
110429410	20%	Free	Free
110710029	21.30yen/kg	Free	Free
110720020	21.30yen/kg	Free	Free
110811010	25%	Free	Free
110812091	119yen/kg	Free	Free
110812099	119yen/kg	12.5%	12.5%
110813091	119yen/kg	Free	Free
110813099	119yen/kg	Free	Free
110814091	119yen/kg	Free	Free
110814099	119yen/kg	25%	25%
110819017	119yen/kg	Free	Free
110819018	119yen/kg	25%	25%
110819097	119yen/kg	Free	Free
110819098	119yen/kg	25%	25%
110820090	119yen/kg	Free	Free
170112100	71.80yen/kg	Free	Free
170112200	103.10yen/kg	Free	Free
170113000	35.30yen/kg	Free	Free
170114110	71.80yen/kg	Free	Free
170114190	35.30yen/kg	Free	Free
170114200	103.10yen/kg	Free	Free
170191000	106.20yen/kg	Free	Free
170199100	106.20yen/kg	Free	Free
170199200	103.10yen/kg	Free	Free
170230210	85.7% or 60.90yen/kg, whichever is greater	21.50yen/kg of the sugar portion of originating goods	21.50yen/kg of the sugar portion of originating goods
170230221	21.3%	Free	Free
170230229	50% or 25yen/kg, whichever is greater	Free	Free
170240210	78.5% or 53.70yen/kg, whichever is greater	21.50yen/kg of the sugar portion of originating goods	21.50yen/kg of the sugar portion of originating goods
170240220	50% or 25yen/kg, whichever is the greater	Free	Free
170260210	85.7% or 60.90yen/kg, whichever is the greater	21.50yen/kg of the sugar portion of originating goods	21.50yen/kg of the sugar portion of originating goods
170260220	50% or 25yen/kg, whichever is the greater	Free	Free
170290110	61.9%	Free	Free
170290211	35.4% or 47yen/kg, whichever is the greater	Free	Free
170290219	29.8% or 23yen/kg, whichever is the greater	Free	Free
170290521	114.2% or 89.50yen/kg, whichever is the greater	Free	Free
170290529	50% or 25yen/kg, whichever is the greater	Free	Free
180610110	29.8%	28.4%	14.9%
180610190	29.8%	28.4%	14.9%
180620290	21.3%	Free	Free
180620290	21.3%	20.3%	10.7%
190120131	25%	Free	Free

Tariff Line	MFN Rates	In quota Rates for EU	
		Entry into force	End of implementation
190120141	25%	Free	Free
190120151	25%	Free	Free
190120159	119yen/kg	25%	25%
190120159	119yen/kg	16%	16%
190120222	23.8%	Free	Free
190120232	24%	Free	Free
190120235	23.8%	Free	Free
190120239	23.8%	Free	Free
190120243	16%	Free	Free
190190151	25%	Free	Free
190190161	25%	Free	Free
190190171	25%	Free	Free
190190179	119yen/kg	25%	25%
190190179	119yen/kg	16%	16%
190190211	28%	14%	14%
190190217	23.8%	Free	Free
190190219	29.8%	28.7%	17.9%
190190242	24%	Free	Free
190190247	28%	Free	Free
190190248	28%	Free	Free
190190252	23.8%	Free	Free
190190253	23.8%	Free	Free
190190267	16%	Free	Free
190219092	34yen/kg	Free	Free
190410221	19.2%	Free	Free
190410231	19.2%	Free	Free
190420221	19.2%	Free	Free
190420231	19.2%	Free	Free
190430010	25%	Free	Free
190490210	25%	Free	Free
190490310	25%	Free	Free
200540191	23.8%	Free	Free
200540199	23.8%	Free	Free
200551191	23.8%	Free	Free
200551199	23.8%	Free	Free
200599119	23.8%	Free	Free
210112111	24%	Free	Free
210112112	24%	Free	Free
210112246	29.8%	Free	Free
210120246	29.8%	Free	Free
210690214	25%	Free	Free
210690216	25%	Free	Free
210690221	52.5% or 49.70yen/g, whichever is the greater	Free	Free
210690252	28%	Free	Free
210690253	28%	Free	Free
210690271	28%	Free	Free
210690272	25.5%	Free	Free
210690281	29.8%	Free	Free
210690282	76.50yen/g	Free	Free
210690284	29.8%	28.7%	17.9%
210690291	21.3%	20.3%	10.7%
210690510	29.8%	Free	Free
210690590	29.8%	Free	Free

Source: The Agreement.