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Committee on Regional Trade Agreements

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

QUESTIONS AND REPLIES

The following communication, dated 8 October 2019, is being circulated at the request of the delegations of the European Union and Japan.

Questions from the delegation of Canada

Import duties and charges, and quantitative restrictions

General provisions

1.1. Paragraph 3.5 of the factual presentation states: "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."

How will Parties determine whether tariff preference granted to a third country in an international agreement affects the balance in the European Union's or Japan's market of such goods?

Response from the delegation of the European Union

If a Party deems that a tariff preference granted by the other Party to a third country undermines the market access obtained in the Economic Partnership Agreement, this will trigger an immediate re-negotiation of the specific tariff lines affected.

Response from the delegation of Japan

In such cases, according to Article 2.8.4 of the EU-Japan EPA, the Parties shall, with a view to ensuring that the other Party obtains at least the same preference, commence such a review within three months of the date of entry into force of the international agreement between the European Union and that third country or between Japan and that third country, and will conduct the review with the aim of concluding it within six months of the same date.

1.2. Article 10.8: Technical specifications of the Agreement lists conditions to respect when applying environment-friendly technical specifications.

Noting that Article X-Technical Specifications and Tender Documentation in the revised WTO Agreement on Government Procurement (GPA) applies, what is the rationale for specifying which conditions the Parties must respect when applying environment-friendly technical specifications?

Response from the delegation of the European Union

The text goes into more detail than the GPA.

Response from the delegation of Japan

GPA Article X.6 provides that "For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment". In this respect, Article 10.8 of the EU-Japan EPA goes into more details than the GPA in specifying its technical specification based on the spirits of the GPA Article X.6.

1.3. Article 10.9: Test reports of the Agreement states: "Each Party, including its procuring entities, may require that interested suppliers provide a test report issued by a conformity assessment body or a certificate issued by such a body as a means of proof of conformity with the requirements or the criteria set out in the technical specifications, the evaluation criteria or any other terms or conditions."

a. Noting that the GPA Article X-Technical Specifications and Tender Documentation applies, what is the rationale for including these more prescriptive provisions?

Response from the delegation of the European Union

The text goes into more detail than the GPA. It highlights the legitimacy of requesting test reports or certificates, but links these practices to conditions. In particular, a link is made to an existing Agreement between Japan and the EU on mutual recognition of technical standards. The scope of that Agreement is limited at this time, but may become wider in the future.

Response from the delegation of Japan

The Agreement on Mutual Recognition between the European Community and Japan, done at Brussels on 4 April 2001, is effective, Article 10.9 of the EU-Japan EPA intends to make the best use of that Agreement.

b. How is this Article implemented and under which circumstances is a test report required?

Response from the delegation of the European Union

Procuring entities are free to determine whether a test report is required, provided it has to do with the subject matter of the procurement.

Response from the delegation of Japan

Procuring entities may determine when a test report is required, as long as it has to do with the subject matter of the procurement.

c. Where will the relevant information regarding the test reports as well as the Parties' legislation and conformity assessment procedures and bodies be published?

Response from the delegation of the European Union

The Agreement does not mention the publication of relevant information.

Response from the delegation of Japan

The EU-Japan EPA does not provide the publication of relevant information.

1.4. Article 10.10: Environmental conditions of the Agreement states: "Procuring entities may lay down environmental conditions relating to the performance of a procurement, provided that those conditions are compatible with the rules established by this Chapter and are indicated in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation."

Noting that the GPA Article X-Technical Specifications and Tender Documentation applies, what is the rationale for including these more prescriptive provisions?

Response from the delegation of the European Union

The Agreement clarifies that environmental conditions are a legitimate and indeed recommendable practice. They should however not be used with the intention of discriminating suppliers from the other Party.

Response from the delegation of Japan

As the GPA Article X.6 provides that "For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment", the Article 10.10 of the Agreement provides more specific and concrete conditions based on the spirits of the GPA Article X.6.

1.5. Article 10.13: Collection and reporting of statistics of the Agreement states: "Each Party shall communicate to the other Party available and comparable statistical data relevant to the procurement covered by Part 2 of Annex 10."

Will the statistics be published on an official website and will they be accessible to the public?

Response from the delegation of the European Union

The Agreement does not contain any obligation for the Parties to publish these statistics, which are additional to the reporting requirements of the GPA.

Response from the delegation of Japan

The EU-Japan EPA does not contain any more obligation for the Parties to publish these statistics than the reporting requirements of the GPA.

1.6. Article 10.15: Cooperation of the Agreement states: "The Parties shall endeavour to cooperate with a view to achieving enhanced understanding of their respective government procurement markets. The Parties also recognise that the involvement of related industries of the Parties, through means such as dialogues, is important for that purpose."

What are the key priorities and projects that the Parties plan to undertake to fulfil their commitments under Article 10.15?

Response from the delegation of the European Union

The key project currently most in view is the Railways Industrial Dialogue between the two parties. Other such events might be organized in the future.

Response from the delegation of Japan

In light of the Article 10.15 of the EU-Japan EPA, Japan and the EU conduct EU-Japan Railway Industrial Dialogue.

Question from the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu

Provisions on trade in goods

Bilateral safeguards

1.7. Paragraph 3.54: Article 5.5 sets out notification obligations for the Party intending to impose a safeguard 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.

Are notification documents as set out in Articles 5.5 and 5.7.2 regarding bilateral safeguard measures available to the public? If not, can a Member of the WTO other than Parties to this Agreement gain access to all the information? Can a Member of the WTO other than Parties to this Agreement apply for access to part of the information, such as evidence regarding a crisis in the domestic industry, evidence regarding serious injury or threat of serious injury to the domestic industry, or details of the provisional measure?

Response from the delegation of the European Union

The obligations of notification under Article 5.5. and 5.7.2. are strictly bilateral. The findings of the investigation should however be published according to Article 5.4.1. and therefore available to other WTO Members at this stage.

Response from the delegation of Japan

The Government of Japan publishes the information on findings of investigations in its official gazette. Such information includes, for example, the decision of the initiation, the description of the product involved, the proposed date of introduction and expected duration, and description of the proposed measures.

Questions from the delegation of Switzerland

Competition policy

1.8. Article 11.5 (Procedural fairness) provides that each Party shall respect the principle of procedural fairness.

Could the Parties provide further precision on the field of application of this provision? Which procedural rules are included in this provision?

Response from the delegation of the European Union

Under Article 11.6 of the EU-Japan EPA both sides have taken a commitment to respect the principles of procedural fairness in the enforcement of their respective competition legislations as referred to in Article 11.3. For the EU this means competition provisions of the Treaty of the Functioning of the European Union together with secondary legislation implementing the Treaty provisions on competition.

Response from the delegation of Japan

Under Article 11.6 of the EU-Japan EPA, each Party shall treat enterprises in a fair manner, irrespective of the nationality or type of ownership of the enterprises. For Japan, this procedures of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and its implementing regulations will be referred.

1.9. Article 11.8 (Enforcement cooperation), paragraph 2, foresees that competition authorities may exchange or otherwise communicate information, within the framework of the Agreement of 2003 between the Parties concerning cooperation on anticompetitive activities.

Does it mean the Parties could exchange confidential information, and if yes, could they exchange it even without the consent of the undertakings concerned?

Response from the delegation of the European Union

The Agreement of 2003 between the Parties concerning cooperation on anticompetitive activities, which the EU-Japan EPA refers to, allows the competition authorities of the Parties to exchange confidential information, if the persons, who have provided confidential information in connection with enforcement activities of the Parties, consent to such exchange.

Response from the delegation of Japan

The Agreement between the European Community and the Government of Japan concerning cooperation on anticompetitive activities, done at Brussels on 10 July 2003, which the EU-Japan EPA refers to, allows the competition authorities of the Parties to exchange confidential information, if the persons, who have provided confidential information in connection with enforcement activities of the Parties, consent to such exchange (See Article 4.4 of that Agreement).

Questions from the delegation of Thailand

Provisions on trade in goods

Liberalization schedule

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

- **Goods in category "X" are excluded from reduction or elimination commitments; (...)**
- **Goods in categories "Xb", "Xq1", "Xq2" and "X" are exempt from reduction and elimination commitments; (...)**

According to Annex 2-A, the Parties have agreed to reduced or eliminate tariff of goods divided in categories. There are goods in the category "X" that are excluded from reduction or elimination commitments. Furthermore, there are goods in categories "Xb", "Xq1", "Xq2" and "X", which are also exempt from reduction and elimination commitments.

Please clarify why goods exempted from reduction and elimination commitments are divided into 4 categories, "X", "Xb", "Xq1", and "Xq2". What are the criteria used to distinguish one from another?

Response from the delegation of the European Union

The details of the category "X" of goods that are excluded from reduction or elimination commitments are described under section A of part 3 of Annex 2-A. They refer to tariff lines excluded from any commitment. The sub-letters or figures give additional information:

"Xb" products remain at the base rate; for "Xq1" or "Xq2" products there is a tariff rate quotas set out either in Japan's Schedule to the WTO Agreement, or by relevant cabinet orders of Japan; and "X" products do not have specific additional information.

Response from the delegation of Japan

Commitments of exclusion in each category are defined as follows:

- Customs duties on originating goods classified under the tariff lines indicated with "Xb" shall be excluded from any commitment of tariff elimination or reduction, and remain at the base rate.

- Originating goods classified under the tariff lines indicated with "Xq1", for which tariff rate quotas are set out in Japan's Schedule to the WTO Agreement, shall be excluded from any tariff commitment under this Agreement.
- Originating goods classified under the tariff lines indicated with "Xq2", for which tariff rate quotas are set out by relevant cabinet orders of Japan, shall be excluded from any tariff commitment under this Agreement.
- Originating goods classified under the tariff lines indicated with "X" shall be excluded from any tariff commitment referred to in paragraph 1 of Part 1 of Annex 2-A and subparagraphs (a) to (yy) of paragraph 1 of Section A of Part 3 of Annex 2-A.

1.11. Paragraph 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 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.

Please explain the "entry price system" used for tariff lines under Chapter 7, 8 and 20 and its difference from *ad valorem* and specific duties.

Response from the delegation of the European Union

In accordance with EU WTO commitments, the entry price system applies to a limited number of fruits, vegetables and products thereof like some juices (please refer to Annex 2 of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff¹).

It consists in a two-tiered tariff. When the border price of imports into the EU is above the entry price for a product concerned, the said product is subject to an *ad valorem* tariff, whereas imports priced below the entry price level must pay a specific tariff on top of the *ad valorem* tariff. The amount of the specific tariff depends on the relationship between the entry price level and the border price for the shipment: the cheaper is the product, the higher is the specific tariff applied, with the aim to obtain a resulting price equal to the entry price. Thus, when the ratio border price/entry price ranges between 92% and 100%, the importer pays the difference between them (rounded in 2% steps). If the rate is lesser than 92%, the specific duty levied is a maximum tariff equivalent (MTE) according to WTO commitments.

To ease the implementation of the system, the European Commission calculates and publishes the Standard Import Value (SIV) each day for relevant products and origin, as a valuation of the border price of imports. Details of the calculation of the SIV are laid down in Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables Regulation 3223/94.²

Finally, applicable entry price levels, *ad valorem* and different duties are fixed for a said product according to the season in the year. Some products may even not be subject to the entry price system during certain periods in the year.

Response from the delegation of Japan

Entry Price System is the EU system.

¹ OJ L 301, 31.10.2006, p. 1.

² OJ L337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1212/2007 (OJ L 274, 18.10.2007, p. 7).

Export duties and charges, and quantitative restrictions

1.12. Paragraph 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.

Please specify the obligations under the Agreement on Import Licensing that are also applicable to export licensing procedures under Article 2.17.

Response from the delegation of the European Union

Paragraph 2 of Article 2.17 of the EU-Japan Economic Partnership Agreement provides that:

"Each Party shall adopt or maintain export licensing procedures in accordance with paragraphs 1 to 9 of Article 1 and with Article 3 of the Agreement on Import Licensing Procedures. A Party may adopt or maintain export licensing procedures in accordance with Article 2 of the Agreement on Import Licensing Procedures. To that end, those provisions of the Agreement on Import Licensing Procedures are incorporated into and made part of this Agreement, mutatis mutandis, and shall apply to export licensing procedures between the Parties."

The above text of Article 2.17 states that both Parties will apply to their export licensing procedures the following provisions of the GATT 1994 Agreement on Import Licensing Procedures: paragraphs 1–9 of Article 1, Articles 2 and 3.

As mentioned in the second sentence of the above-quoted Article 2.17, these three provisions on Import Licensing Procedures shall apply also to export licensing procedures between the parties.

Response from the delegation of Japan

Paragraphs 1 to 9 of Article 1 and Article 3 of the Agreement on Import Licensing Procedures can be referred.

Special safeguards

1.13. Paragraph 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). 22 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.

According to paragraph 3.56 and footnote 22, it is stated that the agricultural safeguard measures will apply to pork "SG2 (pork)", however "SG2" is not listed in Table 3.5: depicting Japan's quantity and price-based agricultural safeguards. Please clarify how the agricultural safeguard measures apply to pork.

Response from the delegation of the European Union

SG2 applies to certain pork tariff lines. See below Table 3.5., which has been amended for more clarity. Description on how the agricultural safeguard applies to pork is done in sub-section 3 of section C of part 3 of Annex 2-A.

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.	SG2 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, 160241.011, 160241.019, 160242.011, 160242.019, 160249.210, 160249.220.	Additional duty	11 years	Years 1-2 115% of annual aggregate imports (3 yr maximum) to 121% in year 11	SG3 85% of base rate from year 1 to 45% 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)

HS line number (Product description)	Safeguard	Timeframe	Trigger	Additional duty
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.

Response from the delegation of Japan

Pork products classified under "SG2" are from HS 020311.020 to 020649.099 listed in the second row of Table 3.5.

Anti-dumping and countervailing measures

1.14. Paragraph 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.

- a. **According to Article 5.13 "Consideration of public interest", Thailand would like the European Union and Japan to clarify the public interest provision procedures as how and when 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 on the potential impact of a duty on them. Will this topic be mentioned in the notice of the initiation of an anti-dumping or a countervailing investigation? What is the time period for interested parties to present their opinions?**

Response from the delegation of the European Union

The EU domestic laws and regulations to which Article 5.13 makes reference are Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union³, in particular Article 21 thereof for anti-dumping investigations, and Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union⁴, in particular Article 31 thereof for countervailing duty investigations. In line with the abovementioned legislation, the invitation and the procedures for the interested parties to provide their views for the assessment of the public interest always forms part of the notice of

³ <https://eur-lex.europa.eu/eli/req/2016/1036/oj/eng>.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1568378840496&uri=CELEX:32016R1037>.

initiation. The deadline for providing such information is typically set to 37 days of the date of publication of the relevant notice of initiation, unless otherwise specified.

Response from the delegation of Japan

In Japan, "THE GUIDELINES FOR PROCEDURES RELATING TO ANTI-DUMPING DUTY" and "THE GUIDELINES FOR PROCEDURES RELATING TO COUNTERVAILING DUTY" provide that the time period for interested parties to present their opinions is for four months from the beginning of the investigation.

- b. According to Article 5.14 "Anti-dumping investigation", please clarify whether the notification for the initiation of an anti-dumping investigation at least 10 days in advance of the initiation of such investigation would be the practice only between the European Union and Japan under this Agreement or a general practice for all WTO Member Countries.**

Response from the delegation of the European Union

The deadline of 10 days before initiation for the notification foreseen under Article 5.14 is applicable only between the Parties to the agreement.

Response from the delegation of Japan

The said "at least 10 days" practice under Article 5.14 of the EU-Japan EPA is applied only between the European Union and Japan.

Subsidies and State-aid

1.15. Paragraph 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.

Article 12.7 specifies 2 cases of prohibited subsidies under the Agreement. Please clarify how the 2 cases fall within the scope of the prohibited subsidies established under the WTO Agreement on Subsidies and Countervailing Measures (export and local content subsidies)

Response from the delegation of the European Union

The two types of subsidies specified in the Agreement are covered by the ASCM, but are not prohibited by the ASCM. The ASCM only prohibits two other types of subsidies (subsidies related export performance and local content).

The two prohibitions specified in the Agreement apply to Japan and the EU in addition to the prohibitions set in the ASCM.

Response from the delegation of Japan

The two cases of prohibited subsidies specified in the EU-Japan EPA apply to the Parties in addition to prohibitions set in the WTO Agreement on Subsidies and Countervailing Measures.

Provisions on trade in services and investment

1.16. Paragraph 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).

Would there be an opportunity for either local or foreign investors, who might be affected from the regulatory measures, to participate in the process or to be informed before adopting them? What would be the process? Please elaborate.

Response from the delegation of the European Union

Such issues are covered for instance in chapter 17 (Transparency).

Response from the delegation of Japan

Such issues are covered in Chapter 17 (Transparency). Other than that, regulatory measures may be publicly available through the implementation of Articles 8.29-8.32 (Domestic regulation) and 8.33-8.35 (Provisions of general applications).

National treatment and MFN

1.17. Paragraph 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.

Under area concerning investment, it contains "in like situations" while it has not been mentioned in the area concerning cross border trade in services. Please clarify whether the obligation concerning investment is designed to be narrower than cross border trade in services or not as there is no qualifier in comparison for cross border trade in services "in like situations".

Response from the delegation of the European Union

The comparison is qualified in both cases. The non-discrimination provisions in investment liberalization section use the "like situations" test to reflect the usual approach in investment agreements based on the existing treaty practice and case law. The non-discrimination provisions in the section on cross border trade in services use the "like services/like suppliers" test to reflect the GATS approach.

Response from the delegation of Japan

Investment section and CBTS (cross border trade in services) section have different scopes respectively so that it is not easy to find whether one is narrower or not. Generally speaking, the term "like services or service suppliers" in NT clause of CBTS section has the function to narrow its scope, which is same as the GATS approach.

MFN and horizontal commitments

1.18. Paragraph 4.31: Annex I also sets out MFN exemptions by individual EU Member States for the provision of certain business services (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) 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.

Could you please elaborate more on reservations made with respect to existing measure applicable to "the use of land"?

Response from the delegation of the European Union

In Annex I there are reservations on the "acquisition of real estate" where the existing measures are described and full references are provided with regard to the legislation in place in each of the concerned EU Member States, i.e. Latvia, Romania, Germany and Spain.

Sector specific commitments**1.19. 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				Investment	
		Trade in services			Reserved sectors (Annex II)	Existing measures (Annex I)	Reserved sectors (Annex II)
		Compared to GATS	Existing measures (Annex I)	Reserved sectors (Annex II)			
1. BUSINESS SERVICES							
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	
2. COMMUNICATION SERVICES							
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	

According to the Table 4.2, Japan excluded audiovisual services sub-sector from its schedule of specific commitments, whereas Japan has partially committed this sub-sector in Japan's schedule of commitment under the GATS. Please clarify the reason and whether Japan has taken a step back on the liberalization regarding audiovisual services.

Response from the delegation of the European Union

In the EU-Japan EPA, audiovisual services are carved-out in a reciprocal manner through a dedicated provision in the text of the Agreement, which was based on the EU approach. See Section B Article 8.6.2 (c) and Section C Article 8.14.2 (d).

Response from the delegation of Japan

Audiovisual services are excluded from the scope of the EU-Japan EPA pursuant to Articles 8.6.2 (c) and 8.14.2(d) as a result of the negotiations.

Domestic regulation

1.20. Paragraph 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.

What are the existing judicial, arbitral or administrative tribunals or procedures which provide for a prompt review of administrative decisions, and how can the investors get accessed to them? Please clarify.

Response from the delegation of the European Union

Reference is made to the tribunals and procedures in place in each EU Member State according to its domestic legislation, as well as the ones available at the EU level based on EU law and in particular the Treaty on the Functioning of the EU (see for instance article 263).

Response from the delegation of Japan

For Japan, reference is made to the tribunals and procedures in place pursuant to relevant provisions under the Administrative Case Litigation Act, the Administrative Complaint Review Act and other laws and regulations of Japan.

General provisions of the agreement**Intellectual property rights**

1.21. Paragraph 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.59 In Annex 14-A the Parties list their laws concerning GIs (EU in Annex 14-A Part 1, Japan in Part 2).

Thailand would like to seek clarification on how the European Union and Japan protect non-agricultural GI products originating in the territories of the Contracting Parties of the Economic Partnership Agreement between the European Union and Japan (Goods and Services).

Response from the delegation of the European Union

As stated in paragraph 3 of Article 14.22 of the Agreement, each party protects only GIs that fall under the scope of their legislation listed under Annex 14-A.

Response from the delegation of Japan

For Japan, the competent authority protects GI products for wine, spirits and other alcoholic beverages ("liquor") originating in the EU by the administrative action such as direction, public notice, order, penalty and revocation of liquor licence in accordance with its relevant laws and regulations.

In case the producer or distributor uses GIs for liquor illicitly, the competent authority: (a) makes a direction to stop illicit use of GIs; (b) if the user concerned does not stop illicit use, notices to the public or orders to stop illicit use of GIs; (c) if the user concerned does not stop illicit use, imposes penalty. Once the penalty is imposed on the producer or the distributor, the district director of the tax office may revoke liquor licence of the producer or the distributor.

1.22. Paragraph 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 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.

Please clarify if the Agreement has any mechanism for updating changes made to the list of GIs as annexed to the Economic Partnership Agreement between the European Union and Japan (Goods and Services).

Response from the delegation of the European Union

The provision for amendment of the lists of GIs are in Article 14.30 of the Agreement.

Response from the delegation of Japan

The provisions regarding amendment of the lists of GIs are in Article 14.30 of the EU-Japan EPA.
