



Department for
International Trade



Information note for the call for input on a prospective free trade agreement between the United Kingdom and Japan

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1 Introduction

The Department for International Trade (DIT) is the international economic department responsible for securing UK and global prosperity by promoting and financing international trade and investment, as well as championing free trade around the world. The Department is working to establish deeper trade and investment relationships with countries beyond the European Union (EU).

Free Trade Agreements facilitate UK businesses to export to new markets, enable producers and consumers access to a greater range of intermediate and final products at competitive prices. Greater trade liberalisation also has a positive economic impact by increasing innovation, productivity and competition.

The EU-Japan Economic Partnership Agreement (the EPA) entered into force on 1st February 2019. Both countries have agreed to use the EPA as the basis for a future economic partnership, committing to make it 'as ambitious, high standard and mutually beneficial', as well as enhanced in areas of mutual interest. This means there is the possibility of additionality to the existing agreement.

The Government recently published a summary of responses to a Public Consultation on potential accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), of which Japan is a member. This allowed the public to inform us about trading arrangements with Japan and where input was relevant to making enhancements to the EPA this will be utilised. But we are also seeking more specific inputs from stakeholders on improvements to the EPA in a prospective UK Japan FTA.

The aims of this pack are to provide:

- Detailed background evidence to support the call for input;
- Clarity on some of the trade policy terminology referred to in the context of Free Trade Agreements; and
- Information to better understand the existing EPA to guide stakeholders identify priority areas and expected impacts of a prospective UK Japan FTA based on the EPA, including the potential for further ambition or improvements.

Chapter 7 also sets out how the EU and Japan agree to observe good practices in relation to making regulations and standards, and to work to remove TBTs. In particular, it includes a mechanism whereby either the EU or Japan can request that the other recognises regulatory ‘equivalence’ in a particular area.¹¹⁰ The responding party has to ‘positively consider’ this request and, if asked, explain a rejection in writing. It also provides for the for the EU and Japan to share information used to develop a law if the other has an interest in developing something similar.¹¹¹

On ‘standards’ the EPA commits the EU and Japan to encourage their standardising bodies to ensure interested persons within their territory participate in developing standards and to cooperate with the standardising bodies of the other Party in international standardising activities. Both the EU and Japan must allow the other to participate in public consultations on standards.¹¹²

Chapter 7 includes detailed commitments from both the EU and Japan that they will not require product marking or labelling which poses an unnecessary barrier to trade.¹¹³

There are some provisions specific to certain product types, notably:

- Motor vehicles, where both the EU and Japan agree to fully align to international standards developed at the United Nations,
- Pharmaceuticals, where Japan commits to refer to the International Council on Harmonisation of Technical Requirements for Pharmaceutical for Human Use (ICH) and adopt their guidelines, and
- Textiles, where Japan has committed to align with ISO standards, in line with EU practice.¹¹⁴

6.2.3 Corporate Governance

Chapter 15 sets out commitments on corporate governance principles. Corporate governance relates to how companies are controlled and managed. In the EPA, the EU and Japan acknowledge the importance of having a framework in place which is based on transparency, efficiency, trust and integrity.¹¹⁵ The chapter contains commitments on the principles and rules for publicly listed companies. Both the EU and Japan agree to take measures to develop an effective corporate governance framework. The Agreement states that committing to the principles of this Chapter does not limit the ability to develop their own legal, institutional and regulatory framework relating to the governance of publicly listed companies.¹¹⁶ The EU and Japan are to cooperate on matters relating to the development of an effective corporate governance framework.

Either the EU or Japan may provide that some principles or rules do not apply to certain companies, but this can only happen where justifiable on the basis of objective and non-discriminatory criteria. The EU and Japan’s corporate governance frameworks are to include provisions aimed at protecting shareholder rights, as well as provisions aimed at encouraging the disclosure of information regarding the control of a company.¹¹⁷ Both the EU and Japan needs to promote responsible decision-making by boards, and ensure takeovers occur at transparent prices and under fair conditions.¹¹⁸

¹¹⁰ Art. 7.5

¹¹¹ Art 7.5

¹¹² Art 7.7

¹¹³ Art. 7.11

¹¹⁴ Art. 7.6

¹¹⁵ Art. 15.1

¹¹⁶ Art.15.1

¹¹⁷ Art. 15.4

¹¹⁸ Art. 15.5, Art.15.6

The Chapter is not subject to the FTA's dispute settlement procedure.¹¹⁹

6.2.4 Trade and Sustainability

Chapter 16 underlines the EU and Japan's commitments to trade and sustainable development, highlighting their recognition of the linked nature of economic, social and environmental development.¹²⁰ The EU and Japan are to work to ensure that their laws and regulation maintain and improve on a high level of protections, whilst recognising their right to regulate for themselves in this area.¹²¹

There are provisions on labour standards which recognise the importance of using trade to promote productive employment and decent work,¹²² and commit the EU and Japan to align their domestic legislation to international principles for fundamental rights at work. They provide that both parties ensure that no competitive advantage is gained by lowering labour standards or failing to enforce standards. Both also reaffirm their obligations under the International Labour Organisation. There is reference to cooperation in labour matters, such as through exchange of information and best practice. The EPA also reaffirms commitments to implement multilateral environmental agreements, including the Paris Agreement, and commits them to cooperate on using trade to promote the transition to a low emission economy such as encouraging trade and investment in environmental goods and services and renewable energy.¹²³ Further provisions require the EU and Japan to take action on biodiversity and conservation, sustainable forestry, and sustainable fisheries, including tackling illegal economic activity in these areas.¹²⁴

On a general level, they are to take into account scientific information and potential risks when developing trade-related sustainability measures and to act transparently in achieving the objectives of the chapter. They also recognise the importance of reviewing the implementation of the Agreement.¹²⁵ The Agreement establishes the Committee on Trade and Sustainable Development and requires both to consult with civil society advisory groups on issues pertaining to this chapter.¹²⁶ Chapter 16 is not subject to the dispute settlement process for the wider agreement, so to resolve any potential disputes regarding its obligations the EU and Japan can engage in consultations and, if necessary, submit complaints to an expert arbitration panel for a recommendation on how to resolve the issue.¹²⁷

6.2.5 Transparency

The provisions in Chapter 17 commit the EU and Japan to maintaining a transparent and predictable environment for regulation.¹²⁸ Both agree to publish promptly any new or proposed amendment (online if possible). Further, both the EU and Japan will ensure that there is adequate time between the publication of a proposed measure and its entry into force.¹²⁹

Both will respond to specific queries and requests for information within a reasonable period of time, make available to the public the details of their relevant authorities and establish or maintain mechanisms for

¹¹⁹ Art. 15.7

¹²⁰ Art 16.1

¹²¹ Art 16.2

¹²² Art. 16.3

¹²³ Art 16.3 – 16.5

¹²⁴ Art 16.6 – 16.8

¹²⁵ Art 16.11

¹²⁶ Art 16.12 - 16

¹²⁷ Art 16.17 - 19

¹²⁸ Art. 17.2

¹²⁹ Art. 17.3: The publication clause relates to measures of general application.

responding to enquiries.¹³⁰ The EU and Japan also agree that no response to a query will be legally binding and will be for information purposes only.

Both the EU and Japan have committed to administering all measures in a consistent, objective, impartial and reasonable manner and to provide reasonable notice and relevant legal information to those affected by administrative proceedings.¹³¹

They have also agreed to establish or maintain tribunals to deal with the review or appeal of administrative actions or failures to act on matters covered by the Agreement. They both are to ensure that parties affected by proceedings are given adequate opportunity to support or defend their respective positions.¹³² They are also required to cooperate where appropriate in various forums to promote transparency in international trade and investment.¹³³ The Chapter is subject to the FTA's dispute settlement procedure.

6.2.6 Good Regulatory Practices and Regulatory Cooperation

Chapter 18 sets out how good regulatory practices and regulatory cooperation are to be implemented. It does not prevent the EU and Japan setting their level of protections and regulating in areas such as public health, animal health, labour condition, consumers rights.¹³⁴ They both agree to ensure that their regulatory framework allows for internal coordination, for example between government departments or regulators. They commit to publishing how they prepare, evaluate, and review regulatory measures.¹³⁵

To implement good regulatory practices, the EU and Japan will publish a list of planned regulatory measures at least once a year. They will also undertake public consultations when preparing major regulatory measures, and publish the results. The parties encourage each other to use impact assessments of major regulatory measures and to publish their findings. They also agree to maintain processes to review measures in force. Any person can comment on existing regulation.¹³⁶

The regulatory authorities are to exchange information on their good regulatory practices. Both the EU and Japan may propose a 'regulation cooperation activity' to the other. Article 18.3 sets out various principles that the regulatory authorities of both parties shall consider, for example, bilateral cooperation and cooperation with third countries.

A committee is created to enhance and promote good regulatory practices and regulatory cooperation. The committee can invite interested persons to participate. The committee's work includes discussing proposals for regulatory cooperation. Officials, designated as contact points, further facilitate coordination.¹³⁷ The EU and Japan can request information on any regulatory measure, or ask to have their concerns heard. The responding party has 60 days to reply. A possible satisfactory solution to any concern shall be explored in good faith.¹³⁸

They also agree to cooperate on animal welfare in this Chapter.¹³⁹ This commitment on Animal Welfare is contained in a stand-alone section and the rest of the Chapter does not apply to this cooperation. The Chapter also does not apply to financial regulation.¹⁴⁰

¹³⁰ Art. 17.4

¹³¹ Art. 17.5

¹³² Art. 17.6

¹³³ Art. 17.7

¹³⁴ Art. 18.1

¹³⁵ Art. 18.4 – 18.5

¹³⁶ Art.18.6 – 18.10

¹³⁷ Art. 18.14 – 18.15

¹³⁸ Art.18.16 Exchange of information in planned or existing regulatory measures

¹³⁹ Art. 18.17, Animal Welfare

¹⁴⁰ Art. 18.18

The Chapter is not subject to the FTA's dispute settlement procedure.¹⁴¹

¹⁴¹ Art. 18.19

7 Competition provisions and Procurement

Competition provisions are included in Free Trade Agreements to promote a level playing field through fair and free competition for businesses. They prevent unfair competition and provide benefits to consumers. Procurement provisions in FTAs allow trading partners to promote transparency, non-discrimination and competition within their mutual public procurement markets, ensuring that in those procurements covered by the agreement, suppliers from the other party are treated the same as national suppliers.

7.1 Competition and Procurement Provisions in the EPA

7.1.1 Competition

Chapter 11 of the EPA includes provisions which are designed to ensure both the EU and Japan have business environments where there is fair and free competition, and that they are addressed ‘in an effective manner’ to combat anti-competitive practices listed in the chapter.¹⁴²

Competition law is to be applied to all businesses offering goods and services in a market; the EU and Japan can apply exemptions to this in their domestic law so long as these are transparent and limited to those necessary for securing the public interest.¹⁴³ An independent authority is to be maintained by Japan and the EU to enforce competition rules in their territory¹⁴⁴, and that both should apply the law transparently and not discriminate against companies on grounds of nationality or type of ownership.¹⁴⁵ The Agreement acknowledges that there is a common interest in cooperation on competition issues and sets out that the competition authorities of both Japan and the EU are to exchange information on anti-competitive activities.¹⁴⁶ The chapter is not subject to the FTA’s dispute settlement procedure.

7.1.2 Subsidies

Chapter 12 of the EPA relates to rules about government subsidies to business in both goods and services sectors. Subsidies may be necessary to achieve public policy objectives but may also distort markets and have a negative effect on trade and investment.

The Agreement sets out that the EU and Japan can request consultations, if the other thinks a subsidy could have a negative effect on its trade or investment, to discuss the trade effects on its trade or investment.¹⁴⁷

The chapter builds on WTO subsidies prohibitions by further listing a number of additional types of bilaterally prohibited subsidies for the EU and Japan due to their potential to distort trade, including unlimited guarantees of debts.¹⁴⁸ All of these rules aim to create a level-playing field and limit trade distortions. The chapter does not apply to audio-visual services or when national emergencies or exceptional circumstances occur.¹⁴⁹ This Chapter is subject to the FTA’s dispute settlement procedure.

¹⁴² Art. 11.3

¹⁴³ Art. 11.3

¹⁴⁴ Art. 11.4

¹⁴⁵ Art. 11.5 - 7

¹⁴⁶ Art. 11.8

¹⁴⁷ Art. 12.5-12.6

¹⁴⁸ Art. 12.7

¹⁴⁹ Art. 12.3

7.1.3 State-owned enterprises

State-owned enterprise (SOE) provisions in Chapter 13 of the EPA aim to ensure a level playing field between state-owned enterprises and private companies. The provisions apply to enterprises that are engaged in 'commercial activities', but do not apply to any service supplied in the exercise of governmental authority or an enterprise with annual revenue lower than 200 million Special Drawing Rights.¹⁵⁰ State-owned enterprises engaged in 'commercial activities' in both countries are to act in a non-discriminatory fashion and in accordance with commercial considerations, in purchasing or selling goods or services.¹⁵¹ Both the EU and Japan are required by the EPA to make best use of international standards in their regulatory frameworks and to ensure regulators are independent from the companies they regulate.¹⁵² Provisions also ensure transparency and the right of a party to request information should they feel they are being harmed by the other country's SOEs.¹⁵³ These provisions help to enable firms to compete on a level playing field with SOEs. This Chapter is subject to the FTA's dispute settlement procedure.

7.1.4 Procurement

Chapter 10 of the EPA includes specific provisions on government procurement which extend beyond both the EU Member States' and Japanese commitments in the WTO Agreement on Government Procurement (GPA). The EPA therefore gives businesses increased access to tender for contracts with both the EU and Japan committing to treat suppliers to government from the other party in a fair and non-discriminatory manner.

The agreement grants EU and Japanese businesses the ability to benefit from non-discriminatory access to tenders for contracts in each other's railways, hospitals, academic institutions, and electricity distributions sectors. These are sectors that were already covered under the EU's offer to the GPA but were withheld from Japanese suppliers.¹⁵⁴ This means, for example, EU business can now bid for contracts advertised by the publicly owned Tokyo Metro, avoiding the restrictions usually imposed by Japan's Operational Safety Clause, which prevents foreign firms bidding for railway contracts. As in the GPA, whilst Japanese businesses have access to certain contracts (e.g. IT services) in the UK NHS, the agreement does not apply to the procurement of UK healthcare services. This will not change in any future trade deal.

Japan and the EU commit that no discriminatory practices will be operated to the disadvantage of each other's companies in procurements covered by the agreement. Furthermore, Japan commits in the EPA to greater transparency, fairer assessments and increased standards to improve competition between all suppliers, including foreign bidders.¹⁵⁵

¹⁵⁰ Art. 13.2; 200 million Special Drawing Rights (SDRs), about £223 million. The SDR is an international reserve asset, created by the IMF.

¹⁵¹ Art. 13.5

¹⁵² Art. 13.6

¹⁵³ Art. 13.7

¹⁵⁴ Annex 10, Part 2, Section B.

¹⁵⁵ Art. 10.6 - 7

8 Intellectual Property

Intellectual Property (IP) is an increasingly important area within modern FTAs, reflecting shifts in the modern economy. The effective protection and balance of IP is vital for industries trading on their knowledge, innovation, creativity and branding. The UK is widely recognised as a world leader in IP protection, and IP-rich and creative industries make a significant contribution to the UK economy and growth. IP services account for £16.2bn (5.8%) of service exports, and £9.3bn (5.6%) of service imports in terms of the UK's total trade with the world.¹⁵⁶ According to the WTO the global flow of money generated through IP rights reached \$381 billion in 2017. Of this total, \$17 billion went to innovators in the UK and \$42 billion to innovators in Japan.

8.1 Intellectual Property Provisions in the EPA

Chapter 14 contains measures aimed at protecting and enforcing IP rights. The effect is to deepen the protection of IP for both Japan and EU Member States.

In the Chapter, both the EU and Japan agree on principles of promoting innovation and creativity while providing effective and transparent IP protection. They both reaffirm commitments to several international treaties on IP and commit to making all reasonable efforts to ratify or accede to six international agreements that set minimum standards of protection,¹⁵⁷ harmonise rules for processing and registering IP rights, provide international registration systems and introduce frameworks for specific issues.

8.1.1 Standards

In Section B, it sets out minimum standards for IP laws for both the EU and Japan, building on the base protections under the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).¹⁵⁸ For copyright and related rights, the agreement sets the term of protection to 70 years after death for authors, no less than 50 years after performance for performers, no less than 70 years after publication for phonograms (at least 50 years without publication) and no less than 50 years after the first transmission for broadcasts. This allows rights-holders to authorise, or prohibit, direct or indirect reproductions of their work and distribution, including via wireless communication. The EU and Japan agree to continue discussion on protection of the use of phonograms and artist resale rights.¹⁵⁹

8.1.2 Trade marks

For trade marks,¹⁶⁰ the agreement sets out what acts are deemed as infringements,¹⁶¹ and affirms the importance of WIPO's 1999 Joint Recommendation Concerning Provisions on the Protection of Well-Known marks.¹⁶²

¹⁵⁶ ONS Pink Book, 2018.

<https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/unitedkingdombalanceofpaymentssthepinkbook/2018>

¹⁵⁷ Art. 14.3

¹⁵⁸ An international legal agreement between all the members of the World Trade Organization (WTO), which sets down minimum standards for the regulation by national governments of many forms of intellectual property (IP).

¹⁵⁹ Articles 14.8-14.17

¹⁶⁰ A trademark (also written trade mark or trade-mark) is a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products or services of a particular source from those of others

¹⁶¹ Art. 14.20

¹⁶² <https://www.wipo.int/edocs/pubdocs/en/marks/833/pub833.pdf>

8.1.3 Geographical Indications

Geographical Indications specify the origin of a good, where its quality, reputation or other characteristic is essentially attributable to its where it comes from. The agreement states that the EU and Japan's registration system must publicise registered GIs, confirm that an application for a GI meets the requirements for GI protection, include an opposition procedure allowing interested parties to oppose the registration of the GI, and to also allow for GI cancellation. All GIs are afforded a high level of protection from imitation, even if the true origin is indicated, the GI name is used in translation or accompanied by expressions such as 'style'. Food products are also broadly prevented from indicating a misleading geographical origin. Homonymous GIs (which refers to products spelled or pronounced alike but which originate in different places) can be protected, with details determined by each party. Under this agreement a prior existing trade mark does not necessarily prevent the protection of a GI. For GIs protected through the agreement, there are transitional periods for producers who were previously selling similar products that do not meet the requirements of the GI, as long as the product's true geographical origin is clearly stated. This means that, for example, existing producers of products sold as Scotch Whisky in Japan which do not originate in Scotland will be allowed for the duration of the transitional period, as long as their non-Scottish origin is clearly stated.¹⁶³

Annex 14-A sets out the EU and the Japanese domestic systems for GI protection. A list of EU and Japanese GIs which are protected by the other is included in Annex 14-B. The Annex also allows for amendment of these GIs in certain circumstances. The following UK GIs are included: Scottish farmed salmon, West country farmhouse cheddar, Stilton White cheese, Stilton Blue cheese, Scotch Whisky, Irish Cream, Irish Whiskey. The agreement protects 48 Japanese agricultural GIs and 8 Japanese wine/spirit GIs.

8.1.4 Industrial designs, patents and trade secrets

Under the agreement, the EU and Japan have agreed to the protection of industrial designs, including their parts and components which remain visible during normal use, for a term of no less than 20 years.¹⁶⁴ The owner may request the design remains unpublished for a period. Unregistered appearances of products, be they industrial or otherwise, are protected for at least three years.¹⁶⁵

For patents, the EU and Japan agree to continue cooperating on harmonising international law on patents (on topics including grace periods, prior user rights and publication of pending patent applications).¹⁶⁶ The maximum term of patent extension to compensate for the time when a patented invention cannot be worked, due to marketing approval process, is 5 years for pharmaceutical and agricultural chemical products.¹⁶⁷ The EU and Japan have committed to a minimum of six years data exclusivity for pharmaceutical products and ten years for agricultural chemical products.¹⁶⁸

The agreement defines a trade secret and sets out which type of conduct is and is not contrary to honest commercial practices.¹⁶⁹ Both the EU and Japan agree to make appropriate remedies available against cybersquatting for their country-code top level domain.

¹⁶³ Articles 14.22-14.30

¹⁶⁴ Article 14.31

¹⁶⁵ Article 14.31

¹⁶⁶ Articles 14.33

¹⁶⁷ Art. 14.35

¹⁶⁸ Article 14.37

¹⁶⁹ Article 14.36

8.1.5 Enforcement

Section C sets out provisions relating to the enforcement of IP rights.¹⁷⁰ In the EPA these are civil (non-criminal) remedies and include allowing authorities to preserve evidence in infringement cases, ordering infringers to provide information, interim injunctions to prevent imminent infringement and seize suspected infringing goods (including blocking bank accounts), destroying infringing goods or manufacturing materials, and ordering the infringer to pay the right holder compensatory damages and court costs. For trade secrets, extra provisions are included to prevent the disclosure of confidential information during civil judicial proceedings. Border measures mentioned include measures to suspend and destroy infringing goods. There is no obligation in relation to border measures for small quantities of non-commercial goods.

8.1.6 Cooperation

Section D relates to cooperation and institutional arrangements, and the EU and Japan recognise the importance of information exchange on a variety of areas to promote IP regulatory frameworks and international harmonisation.¹⁷¹ It sets up an IP committee, responsible for the effective implementation and operation of the chapter, including amendments to the GI Annex. The customs and rules of origin committees may also cooperate on infringing goods. Dispute settlement applies to all of the IP chapter except Article 14.52 which relates to cooperation.

¹⁷⁰ Art. 14.40 – 14.51

¹⁷¹ Art. 14.42 – 14.55

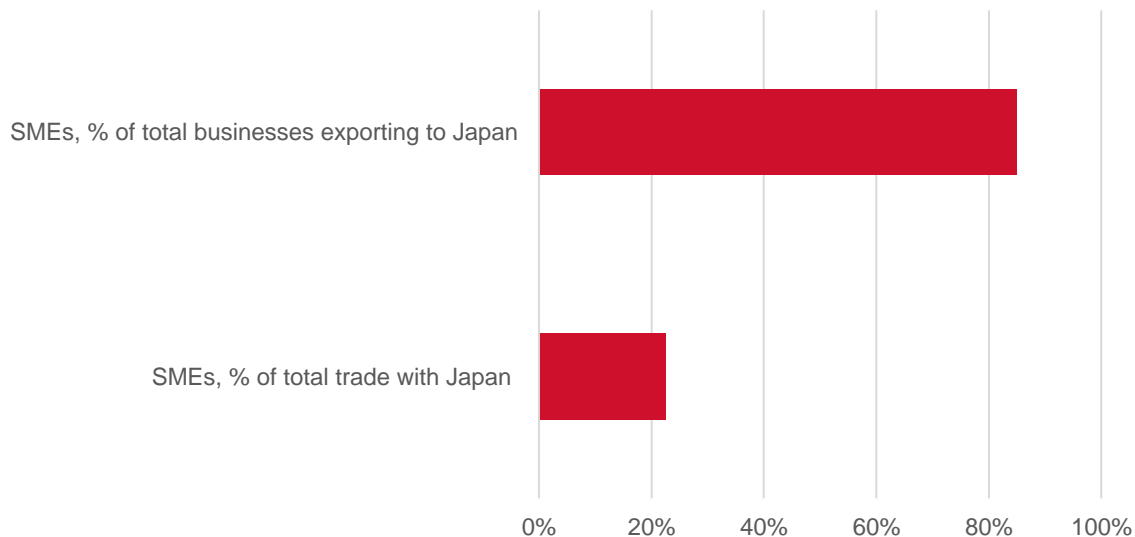
9 SME Provisions

9.1 Overview of SMEs and UK-Japan Trade

In the UK, SMEs (small and Medium-sized Enterprises) are generally understood as firms employing fewer than 250 employees. SMEs typically face larger impacts from trade barriers than bigger firms, particularly where trade barriers represent fixed costs to businesses. For example: burdensome regulatory and non-tariff measures.

SMEs make up a high proportion of UK businesses exporting to Japan and are important to the UK economy. In 2018, SMEs made up over 99% of the total number of private sector businesses, representing 60% of employment and 52% of private sector turnover.¹⁷² In total, 7,900 VAT registered SMEs exported to Japan and 5,200 VAT registered businesses imported from Japan in 2017.¹⁷³

Chart 11 – Proportion of total businesses exporting to Japan and proportion of goods trade with Japan by SMEs



Source: HMRC using Trade in Goods (ONS) and Inter-Departmental Business Register (IDBR).

9.2 SMEs in the EPA

Chapter 20 contains measures aimed at helping SMEs, although the benefits are available to all businesses. There are two elements to this cooperation.

First, the EU and Japan both agree to create free-to access websites, which will explain the parts of the EPA relevant to SMEs. The websites should provide information SMEs would need to trade and invest. This includes information on:

- custom procedures,
- technical regulations,
- how to register a company.

¹⁷² BEIS Business Population Estimates (BPE, 2018)

¹⁷³ HMRC using Trade in Goods (ONS) and Inter-Departmental Business Register (IDBR).

There will also be a searchable database that allows businesses to find out what tariffs, custom duties, or other charges apply to their products. This will be available in English.¹⁷⁴

Second, the EPA provides that officials on both sides should be designated as contact points, to encourage cooperation. These officials would review the other side's SME website. They can also suggest additional ways to collaborate and exchange information.¹⁷⁵ The SME Chapter is not subject to the FTA's dispute settlement procedure.¹⁷⁶

There are also commitments aimed at SMEs in other parts of the EPA.¹⁷⁷ These are specific commitments to consider the needs of SMEs when:

- simplifying customs procedures,
- developing the use of electronic commerce,
- discussing intellectual property issues,
- providing a transparent regulatory regime,
- undertaking impact assessments for proposed new regulations.

¹⁷⁴ Art. 20.2

¹⁷⁵ Art. 20.3

¹⁷⁶ Art. 20.4

¹⁷⁷ Article 4.6 Simplification of Customs Procedures, Article 8.80 Cooperation on Electronic Commerce, Article 14.52 Cooperation, Article 17.2 Transparent Regulatory Environment, Article 18.8 Impact Assessment

10 State-to-state dispute settlement

Chapter 21 sets out a state-to-state dispute settlement (SSDS) system to resolve disputes between the EU and Japan. SSDS is invoked by a government when it considers that there has been a breach of obligations under the EPA, and it has not been possible to resolve the dispute informally. SSDS is only available to governments. The chapter does not relate to investor-state dispute settlement (ISDS), which is not part of the EPA.

The chapter sets out the procedures to be followed in a dispute between the EU and Japan and is modelled on the World Trade Organization's (WTO) dispute settlement mechanism. The provisions of the chapter can be divided into three parts:

- The first relates to procedures to be followed before a dispute reaches the stage of formal adjudication. The EU and Japan have agreed to endeavour to resolve any dispute through consultations, with a view to reaching a mutually agreed solution, before the dispute is submitted for arbitration.¹⁷⁸ If consultations fail to resolve a dispute, the chapter sets out how the EU and Japan can move to formal arbitration.¹⁷⁹
- The second relates to arbitration procedures. It sets out how proceedings will take place, and timelines within which arbitration panels need to issue their decisions.¹⁸⁰
- The third part relates to compliance with arbitration panels' decisions. It also allows the EU and Japan to retaliate against each other should the one found in breach of its obligations under the EPA not comply with the panel's decision.¹⁸¹

The EU and Japan have agreed that the SSDS chapter applies to the settlement of any dispute between them under the EPA, unless it says otherwise. The following are not subject to SSDS:

- Global Safeguard Measures (Art. 5.9);
- Anti-Dumping and Countervailing Measures (Art. 5.11.2);
- Certain provisions in the Sanitary and Phytosanitary Measures chapter (Art. 6.16.1);
- Competition Policy (Art. 11.9);
- Corporate Governance (Art. 15.7);
- Trade and Sustainable Development (16.17.1);
- Good Regulatory Practices and Regulatory Cooperation (18.9);
- Cooperation in the field of Agriculture (18.8); and
- Small and Medium-Sized Enterprises (20.4).

¹⁷⁸ Art. 21.5

¹⁷⁹ Art. 21.7

¹⁸⁰ Art. 21.7 – 21.24

¹⁸¹ Art. 21.22

11 Annex A

11.1 The Institutional Structure of the EU–Japan Economic Partnership Agreement

11.1.1 How the Agreement operates

The EU-Japan EPA follows a standard chapter format for an EU FTA. The agreement is introduced by a Preamble, that includes joint statements by the parties that demonstrate the economic and political purpose and value of the agreement. The objectives of the EU-Japan EPA are to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the EU and Japan.

Chapter 22 sets out Institutional Provisions. These set up a series of committees to continuously monitor the implementation, operation and impact of the Agreement. They entail representatives of both sides, including government officials or agencies in charge of the issues to be addressed, meeting for regular dialogue to highlight issues of interest or to resolve issues at an early stage. Institutions can play a role at the formal level in preventing or resolving disputes.

The EPA establishes a joint committee that has as its main task to, review, supervise and facilitate the implementation and application of the Agreement.¹⁸² The joint committee is comprised of representatives of the EU and of Japan who will meet once a year or in urgent cases at the request of either side. The Joint Committee is co-chaired by a representative of Japan at ministerial level and the relevant Member of the European Commission, or their respective delegates.

The joint committee is in charge of supervising the work of all specialised committees and working groups established under the agreement.¹⁸³ The joint committee also provides a forum for discussion of issues between the EU and Japan and would play a key role in any dispute process. Specialised committees are responsible for the monitoring and review of specific chapters of the Agreement and are attended by government officials.¹⁸⁴ Working groups have a narrower remit than specialised committees and work through technical issues within a chapter and can be used to bring attention to, or resolve, anything that was not concluded at negotiation stage.¹⁸⁵ Contact points are set up within this agreement to facilitate open dialogue.¹⁸⁶

Within the Agreement, in order to ensure exchange of information between parties,¹⁸⁷ the EU-Japan EPA sets out that both the EU and Japan shall annually exchange import statistics for the most recent calendar year available.

Review provisions provide impetus for the evolution of an FTA, ensuring the EU and Japan return to the agreement with a view to improving the existing deal. Review provisions can cover the whole agreement or just specific chapters. For instance, in this Agreement the General Review Provision¹⁸⁸ states that the EU and Japan shall undertake a general review in the 10th year following the date of entry into force of the Agreement.¹⁸⁹

¹⁸² Art. 22.1

¹⁸³ Art. 22.3: Committee on Trade in Goods; Committee on Trade in Services, Investment Liberalisation and Electronic Commerce; Committee on Government procurement; Committee on Trade and Sustainable Development; Committee on Sanitary and Phytosanitary Measures; Committee on Rules of Origin and Custom-Related Matters; Committee on Intellectual Property; Committee on Regulatory Cooperation; Committee on Technical Barriers to Trade and Committee on Cooperation in the Field of Agriculture.

¹⁸⁴ Article 22.3.

¹⁸⁵ Article 22.4

¹⁸⁶ Article 22.6

¹⁸⁷ Art. 2.32

¹⁸⁸ Article 23.1

¹⁸⁹ Article 23.1

11.1.2 Territorial Application

Territorial application provisions in a treaty set out the territories to which the treaty applies and how it applies to them.¹⁹⁰

The EU-Japan EPA applies to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union apply. For the UK, including the Devolved Administrations, the EU-Japan EPA applies in its entirety. The EU-Japan EPA also applies in part to certain territories for whose international relations the UK is responsible:

- a) for the Crown Dependencies (Guernsey, Isle of Man, Jersey), broadly, it is only the provisions relating to tariffs and trade in goods which apply;
- b) for Gibraltar, broadly, it is the provisions which do not relate to customs or goods which apply.

¹⁹⁰ Art. 1.3

12 Annex B

12.1 Glossary

| Term | Definition/Description |
|-------------------------------------|--|
| Accession | Means to join or become a part of – e.g. accession to an international trade agreement by new members, accession to an international organisation or a state's accession to a multilateral treaty already negotiated and signed by other states. |
| Anti-dumping duty | Under WTO rules, countries can counteract the practice of 'dumping' by imposing additional duties on imported goods found to be 'dumped' and causing injury to domestic producers. |
| Bilateral agreement | An agreement negotiated between two sides. |
| Commercial presence | In the services trade context, refers to having an office, branch or subsidiary in a foreign country. It refers to mode 3 supply of services (see also Mode of Supply for services). |
| Competition | Ensuring businesses are treated fairly in each other's markets, including the application of competition law, the role of state-owned enterprises and the use of state aid and subsidies. |
| Countervailing Measure (CVM) | Additional duties that WTO rules authorise countries to impose on imported goods to offset state subsidies received in the country of export after having conducted a domestic investigation and establishing that the subsidised imports are causing injury to the domestic industry. |
| Cumulation | When determining the origin of goods for customs purposes, this means the capacity to include materials and/or processing from other countries as qualifying content in determining if an imported good is an 'originating good' and consequently qualifies for preferential tariff treatment. |
| Customs authority | A government body that administers laws and regulations relating to goods crossing a border, particularly import, export, movement and storage of goods. This can be by: 1) Collecting duties and taxes. 2) Controlling import & export of restricted goods, e.g. animals, and weapons. |

| Term | Definition/Description |
|---|--|
| | In the UK, Customs functions are undertaken by HM Revenue & Customs and Border Force. |
| Customs Duty | A charge imposed by a country on the import or export of goods. |
| Customs procedures | Processes and procedures applied by customs authorities to control the export, import and transit of goods. Their improvement and simplification may lower costs and facilitate trade. |
| Dispute settlement | The term is commonly used in reference to the formal state to state mechanism for resolving disputes where one or more parties consider that there has been a breach of obligations under the relevant international trade agreement and it has not been possible to resolve the dispute informally. |
| Domestic support | Where a country acts to maintain producer prices at levels above those dominant in international trade. |
| Dumping | Dumping occurs when goods are exported at a price less than their 'normal value', generally meaning they are exported for less than they are sold in the domestic market or are sold in export markets below the cost of production. WTO rules authorise action to counteract the practice of dumping when dumped imports are shown to cause injury to domestic producers. |
| Electronic commerce (e-commerce) | Production, advertising, sale and distribution of products via telecommunications networks. |
| Foreign Direct Investment (FDI) | Investment by an entity in a foreign operation, or establishment of a new operation in another country. |
| Free Trade Agreement (FTA) | A treaty among two or more countries to form a free trade area. This means having zero tariffs (or reduced tariffs) and reducing other regulatory restrictions on trade in substantially all goods and/or services. |
| Geographical Indications (GIs) | An identification of a product from a particular country, region or locality where a given quality, reputation or another characteristic of the product is essentially attributable to the place where it is produced. For instance, 'Scotch Whisky' or 'West Country Farmhouse Cheddar Cheese' are UK GIs. |
| Government procurement | Procurement by government or other public entities of goods and services from the private sector. This usually covers both goods and |

| Term | Definition/Description |
|---|--|
| | services, and purchasing, leasing and acquiring by other commercial means. |
| Government Procurement Agreement (GPA) | A plurilateral WTO agreement covering the procurement of goods and services by governments and other public authorities. |
| Import quota | A trade restriction that sets a limit on the quantity of a good that can be imported into a country. Import quotas are generally prohibited by the GATT, other than in limited circumstances. |
| Intellectual Property (IP) | Creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce. These creations are protected by law by a variety of intellectual property rights such as patents, copyright, trade marks, design rights and geographical indications. |
| Market access | Conditions set by governments to control which goods or services can or cannot enter their domestic market. |
| Mode of supply of services | This describes how international trade in services is supplied and consumed. Mode 1: cross - border supply - A service crossing the border (a service supplied in one territory by a service supplier of another country) Mode 2: consumption abroad - A consumer of a service crossing a border (a service supplied in the territory of one country to a service consumer from another country); Mode 3: commercial presence - A service provider establishing a legal presence across a border (a service supplied by a service supplier through commercial presence in the territory of another country); and Mode 4: movement of natural : a service provider crossing a border to a consumer (a service supplied by a service supplier, through the presence of natural persons in the territory of another country). |
| Most Favoured Nation (MFN) | A non-discrimination principle enshrined in many WTO rules that prohibits a WTO member from treating some WTO members more favourably than others. The MFN obligation requires each WTO member, in its trade with all other WTO members, to give the best (“most-favoured”) treatment that it accords in trade with any other WTO member. If, for example, a country lowers tariffs on goods from India, it must also do so on similar |

| Term | Definition/Description |
|---|---|
| | goods from Argentina. Exceptions to the MFN principle exist under WTO law, such as in the form of Customs Unions, Free Trade Agreements, Generalized System of Preferences and certain trade remedies. FTAs often contain their own MFN commitments between the treaty partners. |
| Multilateral agreement | An agreement among several countries. At the WTO, multilateral agreements normally refer to agreements reached by all WTO members. |
| Mutual Recognition of Professional Qualifications (MRPQ) | Enables individuals to have their professional qualifications recognised in a state other than the one in which the qualification was obtained. |
| National Treatment | A non-discrimination principle enshrined in many WTO rules that prohibits a WTO member from treating imported goods or foreign services and services suppliers less favourably than domestic goods or services and services suppliers in its domestic market. The national treatment obligation helps ensure imported goods and services are not unfairly disadvantaged compared with their domestic counterparts. Such obligations may also be included in FTAs between the country parties. |
| Natural persons | Refers to people, as distinct from juridical persons such as companies and organisations. |
| Non-Tariff Barriers (NTBs) or Non-Tariff Measures (NTMs) | Any policy that restricts exports or imports other than a simple tariff. |
| PBS | Professional and business services |
| Quantitative Restrictions (QRs) | Specific limits on the quantity or value of goods that can be imported (or exported) during a specific time period. |
| Rules of Origin (RoO) | Rules used to determine where goods are “from”, for example, where they have been produced or had substantial work done to them. This is used in determining appropriate tariff rates, access to preferential trade arrangements or application of trade sanctions. |
| Safeguard Measures | Actions taken to protect a specific industry from an unexpected build-up of imports. They are generally governed by Article 19 of GATT and the Agreement on Safeguards. |

| Term | Definition/Description |
|---|---|
| Sanitary and Phytosanitary Measures (SPS) | Measures to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants. |
| Small- and Medium-sized Enterprises | In the UK this covers businesses with fewer than 250 employees. |
| Supply chain | The sequence of processes involved in the production and distribution of a good. |
| Tariff Rate Quota (TRQ) | The application of a higher tariff or tax on certain goods once an agreed quota (amount) of imports is reached. |
| Tariffs | Refers to customs duties on imports of goods, levied either as a percentage of value or on the basis of a formula (e.g. 10 per cent or £7 per 100 kg). |
| Technical Barriers to Trade (TBT) | These are regulations, standards, testing and certification procedures applied to imports and exports which could obstruct trade. The WTO's TBT Agreement aims to ensure that these do not create unnecessary obstacles to trade. |
| Trade liberalisation | The removal or reduction of restrictions or barriers to trade. |
| Trade remedies | Measures which allow WTO members to operate a safety net and protect domestic industry from injury caused by unfair trading practices or from injury caused by surges in imports. They are taken in response to subsidies, dumping and import surges. These usually take the form of additional duties on those imports. |
| WTO | The World Trade Organization. |
| WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) | The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is the principal WTO agreement on intellectual property (IP) rights and applies to all WTO members. It covers key types of IP, including copyright, trade marks, geographical indications and patents and provides for the minimum standards of IP protection that each member needs to provide. |

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enquiries@trade.gov.uk