



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.

2 Definition of a Free Trade Agreement and an Economic Partnership Agreement

The EPA is a Free Trade Agreement (FTA). An FTA is an international agreement which removes or reduces tariff and non-tariff barriers to trade and investment between partner countries.

Trade and investment barriers can make it more difficult and costly to either trade or invest overseas. By removing or reducing these barriers, FTAs facilitate the operation of businesses and enable consumers greater choice and affordability in the products they wish to purchase.

FTAs aim to reduce trade barriers between partner countries. In general, barriers can be of two types:

- **Tariffs** – duties that are levied as goods cross borders (equivalent to a tax on a good); and
- **Non-tariff measures** – rules and regulations that limit the import supply of a product (such as tariff rate quotas) or that involve certain requirements to be met in order to trade.

Trade barriers increase the cost and complexity for businesses to trade or invest overseas. Reducing these barriers can facilitate the flow of goods and services.

FTAs do not prevent governments from regulating in the public interest – for example, to protect consumers, the environment, animal welfare and health and safety. Equally, FTAs do not require governments to privatise any service or prevent governments from expanding the range of services they supply to the public. For example, the UK Government has been clear about its commitment to protecting public services, particularly including the National Health Service (NHS). No future free trade agreement would limit the UK and devolved governments' ability to make decisions concerning the running of the NHS.

2.1 Scope of the Economic Partnership Agreement with Japan

FTAs can vary in scope and level of ambition. More shallow agreements focus on trade in goods and the elimination of tariffs. More recently, the content of FTAs has deepened, to include provisions addressing trade in services, subsidies, investment, labour and the environment. FTAs increasingly address domestic policies inhibiting trade and investment, commonly known as “behind the border” barriers.¹

In June 2018, the House of Commons voted in favour of the UK supporting the EU signature of the EPA. Following ratification, the EPA entered into force on the 1st February 2019. It included the UK as a Member State of the EU. When the UK leaves the European Union, unless there is an implementation period agreed with the EU, the UK will be trading with Japan on WTO terms without the coverage of the EU-Japan EPA.

The EU Japan EPA is made up of 23 chapters, plus annexes. Table 1 lists some of the key themes covered by the EPA. This information note will explore each of these. An Annex at the bottom of the document explains how the EPA is structured. The full text of the EU-Japan EPA is available online on the website of the [Official Journal of the European Union](#).

¹ Behind the border policies include “competition policy, intellectual property rights and other regulatory issues” (Matoo et al 2017). These policies are likely to generate greater trade creation compared to shallow trade agreements.

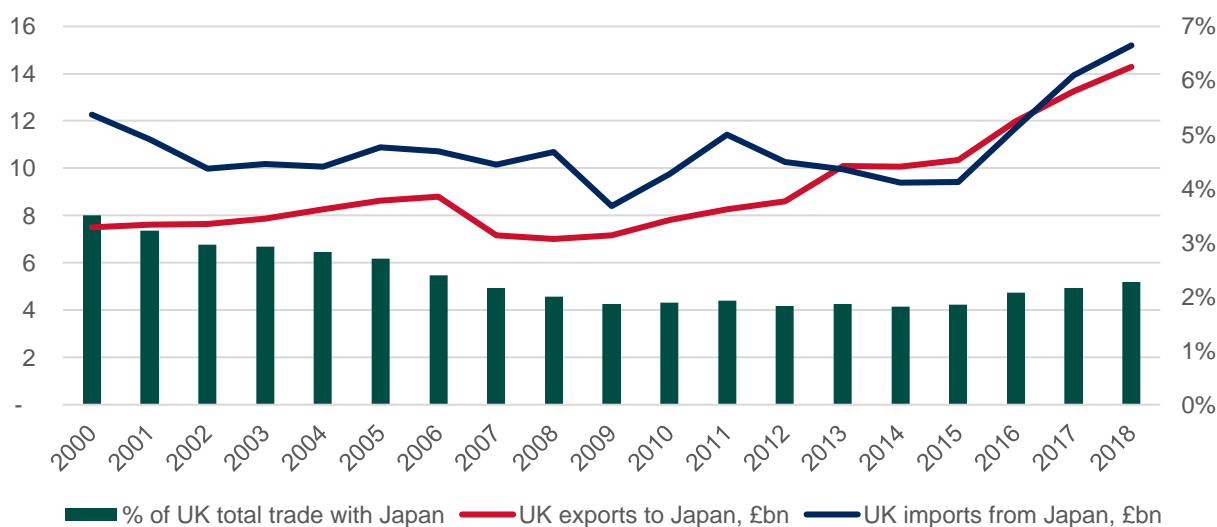
Table 1: Areas covered by the EU-Japan EPA

Area	Location in the EPA
General and structural provisions	Chapter 1 (General) Chapter 22 (Institutional Provisions) Chapter 23 (Final Provisions)
Goods, Customs, Rules of Origins and Trade Remedies	Chapter 2 (Goods) Chapter 3 (Rules of Origin) Chapter 4 (Customs) Chapter 5 (Trade Remedies) Chapter 19 (Agricultural Cooperation)
Services, including digital and e-commerce	Chapter 8 (Services)
Cross-border investment, including capital movements	Chapter 9 (Capital Movements) Chapter 8 (Section B, Investment Liberalisation)
Regulations and standards	Chapter 6 (Sanitary & Phytosanitary Measures) Chapter 7 (Technical barriers to trade) Chapter 15 (Corporate Governance) Chapter 16 (Trade & Sustainable Development) Chapter 17 (Transparency) Chapter 18 (Good Regulatory Practices)
Competition provisions, including procurement	Chapter 10 (Procurement) Chapter 11 (Competition) Chapter 12 (Subsidies) Chapter 13 (State Owned Enterprises)
Intellectual Property	Chapter 14 (Intellectual Property)
Small & Medium Sized Entities (SMEs)	Chapter 20 (SMEs)
Disputes	Chapter 21 (Dispute Settlement)

2.2 Trade Between the UK and Japan

Japan is the world's 3rd largest economy and the UK's 4th largest non-EU trading partner (and 11th globally). Total trade between the two countries was worth around £29.5 billion in 2018, with over half being goods trade. UK exports to Japan have been on an upward trend – growing from £7.5 billion in 2000, to £14.3 billion in 2018. UK imports from Japan have also been increasing – growing from £12.3 billion in 2000, to £15.2 billion in 2018.

Chart 1 – UK exports to and imports from Japan and UK, £ bn, and % of total UK trade



Source: DIT Analysis, Office for National Statistics (ONS), UK total trade: all countries, non-seasonally adjusted.

2.3 Economic outlook for Japan and the United Kingdom

Japan and the United Kingdom together make up 6.5% of global GDP and have a combined population of around 200 million people. Value added as a percentage of GDP can be used as a measure of the relative contribution of a sector towards overall economic output in an economy. Table 2 shows that both Japan and the United Kingdom share similar services and agricultural trade in value added as percentage of GDP, whereas Japan has a higher percentage trade in value added in industry than the UK.

Table 2: Economic Indicators (2017)

Economic Indicator	United Kingdom	Japan
GDP (PPP, constant 2011 intl. \$)	\$2,633 billion	\$4,946 billion
GDP per capita (constant 2011 PPP \$)	\$39,884	\$39,011
Trade (% GDP)	61%	34%
Population	66 million	127 million
Industry, value added (% GDP) ²	20%	29%
Services, etc., value added (% GDP) ³	79%	69%
Agriculture, value added (% GDP) ⁴	1%	1%

Source: World Bank Development Indicators. Retrieved in May 2019. ONS, GDP output approach – low-level aggregates. Retrieved in August 2019 (data is for 2017 unless otherwise stated).

The UK is an open economy with trade (imports plus exports) comprising 61-63% of GDP.⁵ Japan's GDP is relatively more dependent upon household consumption (55.5%) and investment in fixed capital (24%).

² Industry value added represents the contribution of the industrial sector (including construction) to aggregate GDP.

³ Services value added represents the contribution of the services sector to aggregate GDP.

⁴ Agriculture value added represents the contribution of the services sector to aggregate GDP.

⁵ The figures refer to two different sources. According to the World Bank Development Indicators, UK total trade (in goods and services) as a percentage of GDP is 61%. According to the Office for National Statistics, UK total trade (in goods and services) as a percentage of GDP is 63%. Both estimates refer to 2017 data.

In 2017, Japanese exports of goods and services as a share of GDP make up 17.7%, whereas imports of goods and services as a share of GDP is 16.8%.⁶

2.4 The Economic Impact of Free Trade Agreements

In general, FTAs are expected to enhance economic growth and prosperity by:

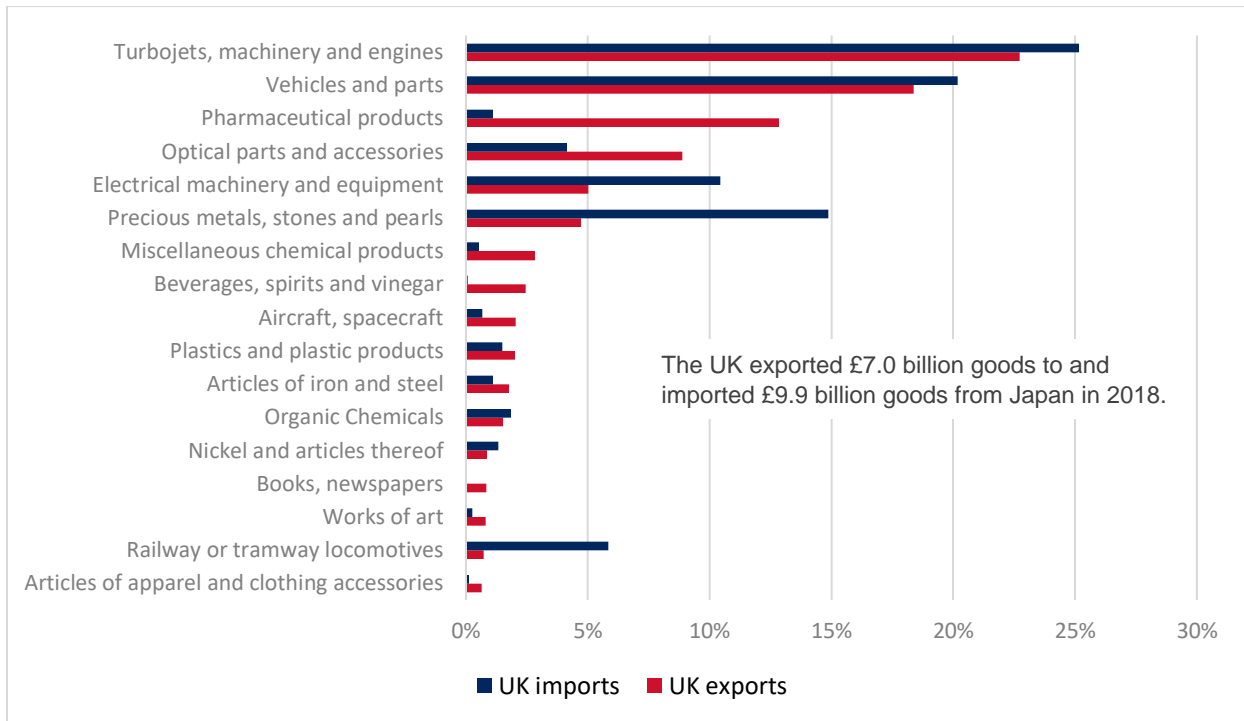
- Increasing import and export flows;
- Increasing investment flows (both outward and inward);
- Enhancing productivity through a more efficient allocation of resources, greater openness to international competition and supporting the formation of international production networks.

⁶ [CIA World Factbook - Japan](#)

3 Trade in Goods

In 2018, 49% of total UK exports to Japan were goods. The three goods sectors in which the UK exported the most to Japan in this three-year period were turbojets, machinery and engines; vehicles; and pharmaceutical products. The three goods sectors in which the UK imported the most from Japan are turbojets; vehicles; and pearls and precious metals (chart 2).

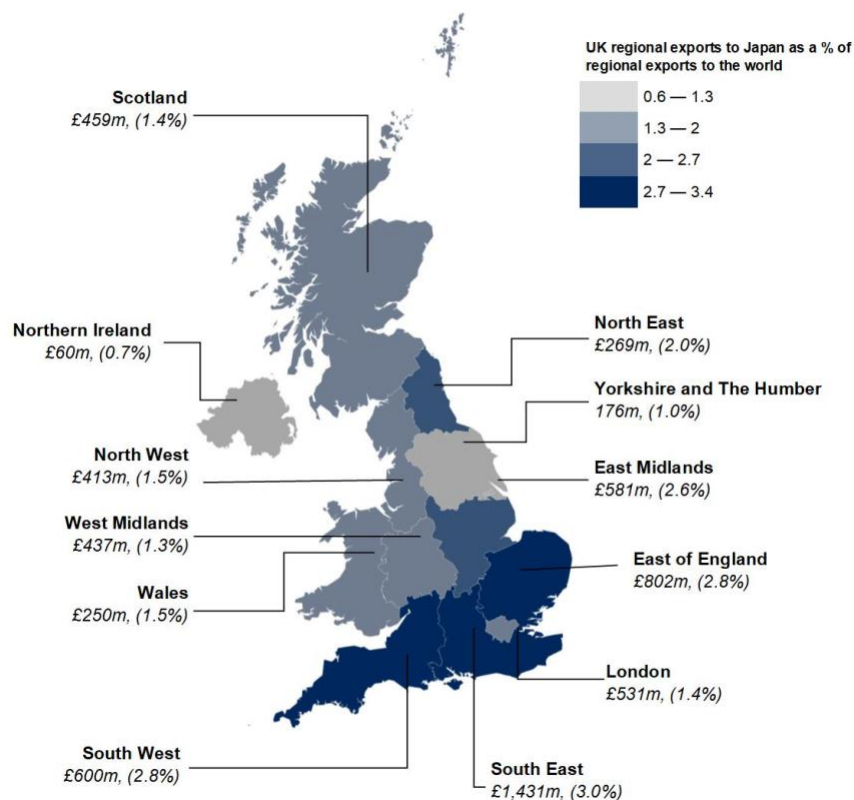
Chart 2 – Sector shares of UK goods exports and imports to/from Japan as a proportion of total goods exports and imports to/from Japan (average shares 2016-18)



Source: DIT Analysis, HMRC Regional Trade Statistics. Sectors classified according to Harmonized System Chapters.

Currently, the nations and regions sending the highest proportion of total UK goods exports to Japan are the South East (23%), followed by the East of England (13%) and the South West (10%). Northern Ireland (1%), Yorkshire and the Humber (3%) and Wales (4%) export a lower proportion of total UK goods exports to Japan. Chart 3 shows each nation or region’s share of total goods exports that are destined to Japan, as well as total goods exports to Japan. Trade flow data refers to 2018, before the EPA had been brought into effect.

Chart 3 – UK regional goods exports to Japan as a share of regional goods exports to the world, 2018



Source: DIT Analysis, HMRC Regional Trade Statistics

FTAs can liberalise trade in goods by addressing border barriers, by:

- **Lowering costs:** Reducing tariffs between countries can increase opportunities for businesses that export and import, and improve choice for consumers. Tariff liberalisation may be immediate or phased over several years.
- **Providing greater certainty:** Countries sometimes apply lower tariffs than those they have committed to in their WTO schedules. FTAs can remove or reduce the gap between the maximum tariffs countries have committed to and the tariffs they apply in practice. This means that exporters and importers do not face the risk of tariffs suddenly being raised.
- **Making trade easier:** FTAs can streamline customs procedures within partner countries to facilitate the entry of goods, reduce administrative costs and reduce delays. These measures reduce the costs of trade and allow production to take place across borders.

They also do this by addressing ‘behind-the-border’ barriers to goods trade, such as by removing or reducing non-tariff barriers and improving policy cooperation on non-tariff measures. This can reduce the cost of trading products internationally. This can both increase the number of exporters and also increase the value of trade undertaken by existing exporters and importers.

3.1 Provisions Facilitating Trade in Goods in the EU-Japan EPA

The EPA allows for cheaper and easier trade in goods between the EU and Japan than they would have without the agreement.

The successful liberalisation of trade in goods is dependent on various components, each of which are a feature of an FTA. These include tariff liberalisation, Rules of Origin that determine which products qualify for preferential treatment, customs procedures which allow for the facilitation of trade, and special treatments for agricultural products.

3.1.1 Tariffs

Tariffs are customs duties on imported goods.⁷ Tariffs are normally applied on a Most Favoured Nation (MFN) basis. This means that there can be no discrimination or favouritism in duties applied to goods from any World Trade Organisation member, unless there is a preferential trade agreement. The simple average applied MFN tariff on Japanese goods imported into the UK/EU is 6%. For UK goods exported to Japan, this tariff is 4%. However, on a trade-weighted basis (which accounts for the specific value of bilateral UK-Japan trade in different sectors), the average tariff is 2% for Japanese goods imported into the UK and 1% for UK goods exported to Japan.⁸

The EU-Japan EPA reduces duties levied on both UK and Japanese importers. Total annual tariff reductions on Japanese imports are estimated to be between £164 million and £308 million per year when moving from MFN to EPA tariff regimes.⁹ Businesses, in particular, could face annual tariff savings from liberalisation of intermediate goods of between £117 million and £160 million. Total annual tariff reductions on UK exports are estimated to be between £32 million and £37 million per year when moving from MFN to EPA tariff regimes. The difference in annual duty savings between UK exports and imports reflects different tariff schedules, with Japan having historically lower MFN rates.

The EU-Japan EPA does not remove all tariffs immediately. Some are removed gradually over several years, in a process called “staging” or “phasing”. This is to allow industry sufficient time to adjust to the change in prices. Other tariffs are removed only partially, some are removed only for a certain quantity of goods (“tariff rate quotas” or “TRQs”), whilst others are not removed at all. The parties of an agreement make “schedules of concessions” setting out how they will remove tariffs.¹⁰

Examples of goods not liberalised fully from the entry into force of the EPA include, but are not limited to, the products shown in the list below:¹¹

	<i>EU</i>	<i>Japan</i>
<i>Staged</i>		
	<ul style="list-style-type: none"> • Fish • Tyres • Cars and motorcycles • Trains • Monitors and Televisions 	<ul style="list-style-type: none"> • Fish • Fruit • Wood • Waterproof footwear
<i>Tariff Rate Quota</i>		
	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Certain cheeses • Sugar

⁷ Some countries also have export duties on certain products, though neither the EU nor Japan maintain them. Article 2.12 of the EPA reaffirms that they shall not be applied between the EU and Japan in the future.

⁸ Simple average tariffs represent the mean average across all HS chapters. A trade weighted tariff accounts for patterns of trade. World Integrated Trade Solution database, MFN, 2017.

⁹ The estimate compares the difference in estimated duties levied under an MFN and EPA basis. The range presented reflects the progressive staging of tariff liberalization agreed under the EPA over a 15-year term.

¹⁰ See Annex 2-A

¹¹ See Annex 2-A for a complete list. Some types of goods appear across several categories of treatment.

Partial tariff elimination

- Cocoa powder
- Ice cream
- Malt extract
- Beef
- Pork
- Chocolate

Excluded from liberalisation

- Whale and dolphin
- Seaweed
- Rice grains and flours
- Rice
- Various cereal grains and flours
- Leather
- Shoes

The EPA does not completely remove all tariffs. In particular, tariffs are retained in the agriculture sector with several agricultural products on both sides protected from full liberalisation. In the EPA, Japan has withheld liberalisation in many typically sensitive products such as beef, pork, dairy and sugar, but also others such as rice, cereals and vegetables. The EU protected a smaller number of agricultural products. Japan has also included 25 separate Tariff Rate Quotas, all of which apply to agricultural goods, such as sugar, starches, cheese, wheat etc. The EU's schedule does not include any TRQs.

Agricultural goods are also covered by safeguard provisions. Safeguards allow a country to lower or remove tariffs on a product, whilst reserving the right to re-apply or increase tariffs in certain agreed circumstances, for instance if a certain volume is imported in the same year. Japan has included safeguards covering beef, pork, processed pork, whey protein concentrate, whey powder, fresh oranges and racehorses. The EU's schedules do not include any safeguards.

Both the EU and Japan are committed to promote further cooperation in the field of agriculture, agreeing to exchange technical information and discuss sustainable agricultural practices.¹² The EU and Japan recognise the need to promote trade in agricultural products, and agree to take measures to improve the business environment for agriculture and foods for businesses from both countries.¹³ A committee is set up to review and discuss issues relating to agricultural cooperation.¹⁴

3.1.2 Rules of Origin

Rules of origin are used to determine where a good originates from. This is not necessarily where they have been shipped from, but where they are deemed to have been produced or manufactured. In order to qualify for preferential tariff rates, a good must "originate" in one of the parties to the agreement. Trade agreements may also allow materials originating and/or processed in a country other than the exporting Party to count towards meeting the specific origin requirements for preferential treatment, a process known as "cumulation".

In the EU-Japan EPA the rules of origin are set out in Chapter 3 and its Annexes. Chapter 3 Section A ("Rules of origin") includes standard rules of origin which are used to determine whether a good is originating, alongside the relevant product-specific rules.

¹² Chapter 19

¹³ Art. 19.3

¹⁴ Art. 19.5-6

The EPA allows for bilateral full cumulation, which means that materials and processing originating in either the EU or Japan can be used to count towards meeting the origin requirements for preferential treatment when exported to the other.¹⁵

Chapter 3 Section B ("Origin procedures") of the EPA sets out the procedures to claim preferential treatment (i.e. to get access to the lower tariff rates).¹⁶ The EPA is based on a self-certification system which means that EU or Japanese importers can claim preferential treatment based on a statement of origin made out by the exporter or based on the importer's own knowledge that the product is originating.¹⁷ It sets out record keeping requirements, as well as specific provisions for small packages.¹⁸ The customs authority into which a product is being imported is permitted to undertake risk-based assessment methods, which can include random selection.¹⁹ There are provisions to enable the EU and Japan to cooperate together as well as assist each other in fighting fraud.²⁰

3.1.3 Customs procedures

The Customs chapter (Chapter 4) of the EPA sets out the expectations for treatment of goods at the border. The objectives of the chapter are to:

- i) Promote trade while ensuring effective customs controls;
- ii) Ensure transparency;
- iii) Ensure that customs and related procedures are predictable, consistent and non-discriminatory;
- iv) Promote simplification and modernisation of customs procedures and practices;
- v) Further develop risk management techniques; and
- vi) Enhance cooperation between the Parties in customs and trade facilitation.²¹

To meet the objectives above, there are specific articles that specify that goods are held in customs for a period no longer than necessary,²² that information on customs procedures should be publicly available (including on the internet),²³ that the EU and Japan guarantee rights of appeal or review following administrative decisions²⁴ and that parties shall maintain risk management systems that enable customs authorities to focus inspection on high risk assignments.²⁵ Reference is made to ensuring consistency with international standards and recommended practices under the World Customs Organization. The chapter also establishes a committee to ensure the cooperation between EU and Japanese authorities in customs (and rules of origin) matters.

¹⁵ Art. 3.5

¹⁶ Art 3.16 – 3.26

¹⁷ Art. 3.16

¹⁸ Art 3.19 - 20

¹⁹ Art. 13.21

²⁰ Art. 3.22 – 3.23

²¹ Art. 4.1

²² Art 4.5

²³ Art 4.3

²⁴ Art 4.8

²⁵ Art 4.9

3.1.4 Trade remedies

Trade remedies are important trade policy tools that allow governments to take remedial action against dumped or subsidised imports,²⁶ or an unforeseen increase of imports which are causing injury, or threatening to cause injury, to their domestic industry.²⁷

The trade remedy provisions are found in Chapter 5. In this chapter, the EU and Japan's rights and obligations under the relevant WTO agreements are reaffirmed, and the Parties commit to provisions that go beyond current WTO obligations, which focus on transparency and due process in trade remedies investigations.

The chapter sets the scope and criteria on which bilateral safeguards can be applied by either side.²⁸ Bilateral safeguards are measures by which a country can apply increased tariffs against all imports of specific products from another country in situations where a surge in imports causes, or threatens to cause, serious injury to the domestic market. This section provides that bilateral safeguards may only be applied during a 10-year transition period and only to the extent necessary, though a bilateral safeguard can be extended provided that the total duration does not exceed 4 years. This section also requires the country seeking to apply bilateral safeguards to follow requirements set out in the WTO Agreement on Safeguards; for example the requirement to publish a Notice of Initiation of an investigation and the need to identify a causal link between increased imports and injury or a threat of injury to domestic industry. There is also to be an investigation prior to applying any safeguard measure.²⁹ Provisional bilateral safeguard measures are permitted in critical circumstances where a delay in taking action would cause damage that would be difficult to repair. Provisional measures must not exceed 200 days and all duties must be refunded if the investigation finds no cause to impose a definitive bilateral safeguard.

The section on global safeguards reaffirms WTO rules, and places limitations on the application of safeguards to prevent different types of safeguards being applied at the same time to the same good.³⁰ Global safeguards are measures by which a country can apply increased tariffs against all imports of specific products from all countries in situations where a surge in imports causes, or threatens to cause, serious injury to the domestic market. Global safeguard measures must be applied to all countries, unless there is a carve-out agreed in an FTA.³¹ Global safeguards are not subject to the EPA's dispute settlement mechanism found in Chapter 21.

A final section reaffirms WTO rules on anti-dumping and countervailing measures³² and provides that these measures are not subject to the EPA's dispute settlement mechanism in Chapter 21.

3.1.5 Other provisions facilitating trade in goods

The text of the EPA also contains several other provisions for facilitating trade in goods. Some articles, such as the one ensuring import and export licensing procedures are fair and transparent,³³ reaffirm or

²⁶ 'Dumping' takes place if an overseas exporter exports its products to the UK at a price lower than the sale price of the products in their domestic market. 'Subsidisation' against which trade remedies can be applied is where a foreign government provides financial contribution to specific industries or companies which confers a benefit, and which has adverse effect on domestic producers in the importing country.

²⁷ 'Injury' is defined as a significant overall impairment in the position of a domestic industry.

²⁸ Articles 5.2 - 5.8

²⁹ Art. 5.4

³⁰ Articles 5.9 - 5.10

³¹ WTO rules also allow imports from developing countries to be exempted when certain criteria are met.

³² Chapter 5, Section D Articles 5.11-5.14

³³ Article 2.17

expand on existing WTO commitments and are common features of FTAs.³⁴ Other frequently appearing elements of FTA Goods chapters include:

- Provisions allowing goods temporarily to be brought into a territory with duty free access.³⁵
- An article ensuring equal market access for new and remanufactured goods, which could be, for example, printer cartridges which are comprised of both used and new components with an as new warranty, though the latter may need to be labelled as such.³⁶

Others are more specific to the EU-Japan EPA and are not necessarily included in other agreements. These include:

- **Special measures concerning the management of preferential tariff treatment**³⁷: These are measures for when there are systematic breaches in customs legislation and talks to resolve them fail. In this instance either the EU or Japan are able to temporarily suspend preferential tariffs for 6 months with the ability for extension. This is seen in a few other EU FTAs such as the agreement with Canada.
- **Provisions for motor vehicles and parts**³⁸: This focusses on the harmonisation of standards, using UN regulations in the production of motor vehicles and their parts. The EU and Japan are able to request consultations where the other introduces or amends a technical regulation and sets out a dispute settlement procedure in the event that there is no agreement.³⁹ They also commit to cooperate on the content of the agreement, and provide each other responses to questions asked by the other.⁴⁰ The annex includes a safeguard where, during the first 10 years of the agreement, either the EU or Japan may suspend some concessions or obligations in the event of the other failing to apply the regulations.⁴¹
- **Facilitation of wine product export**⁴²: This article allows, through a phased process, the mutual authorisation of oenological (wine making) practices, and reduces the certifications and checks required for export between the EU and Japan.

³⁴ This article builds on the WTO Import Licensing Agreement to include export licenses as well.

³⁵ Article 2.10

³⁶ Article 2.18

³⁷ See Chapter 2, Article 2.33

³⁸ Annex 2-C, Art. 4 onwards

³⁹ Annex 2-C, Art. 13

⁴⁰ Annex 2-C, Art.17

⁴¹ Annex 2-C Article 18

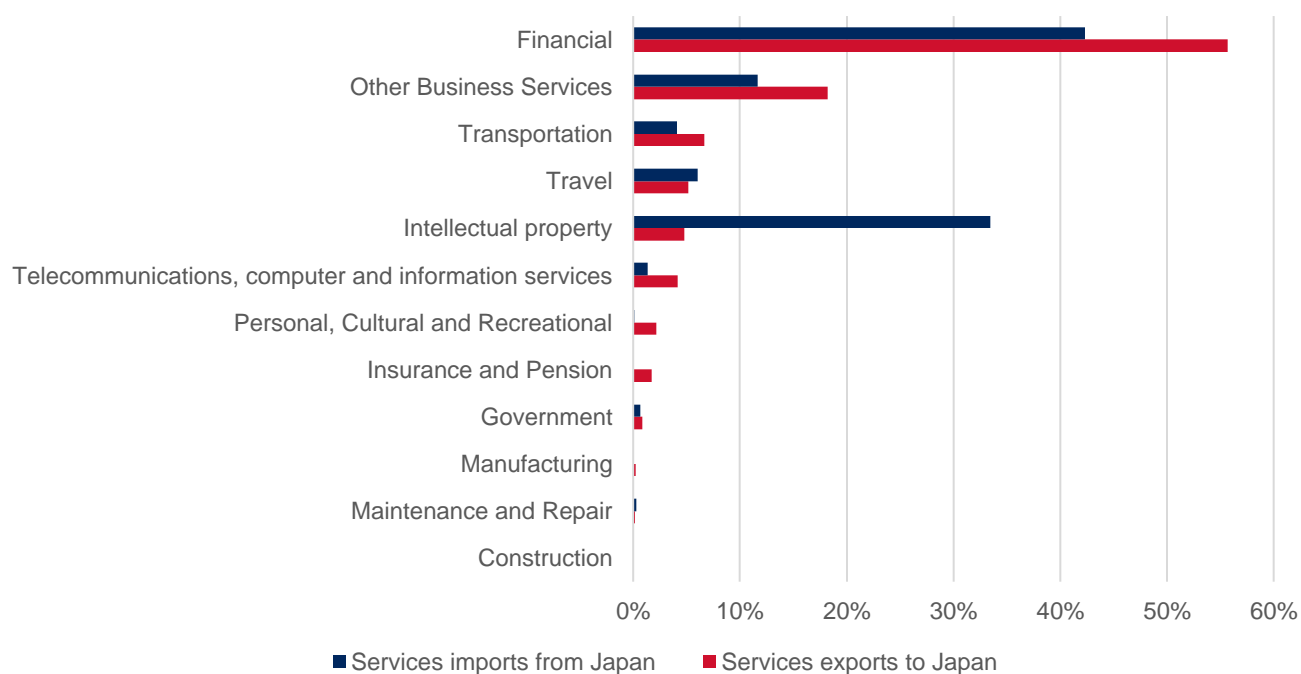
⁴² Chapter 2 Section C

4 Trade in Services

Trade in services is important for both the UK and Japan. In 2018 more than half of UK exports to Japan were in services. The UK's total services trade with Japan – imports plus exports – has more than doubled in the last decade from £5.8 billion in 2008 to £12.6 billion in 2018, before the EPA came into force.⁴³

51% of total UK exports to Japan in 2018 were services.⁴⁴ Chart 5 below shows that the most important sectors for bilateral services trade between Japan and the UK are financial services, “other business services” and transportation services. “Explicitly charged and other financial services” includes financial intermediaries that charge for their services explicitly via commissions and fees. “Other business services” covers professional services, including auditing, accounting and legal services. The pattern of the UK's exports to Japan is broadly mirrored by the pattern of Japan's exports to the UK.

Chart 5 – Sector shares of UK services exports and imports to/from Japan as a proportion of total services exports and imports to/from Japan (average shares 2016-18)



Source: DIT Analysis, ONS (2019), UK trade in services: service type by partner country, non-seasonally adjusted. Access date: 30th July 2019.

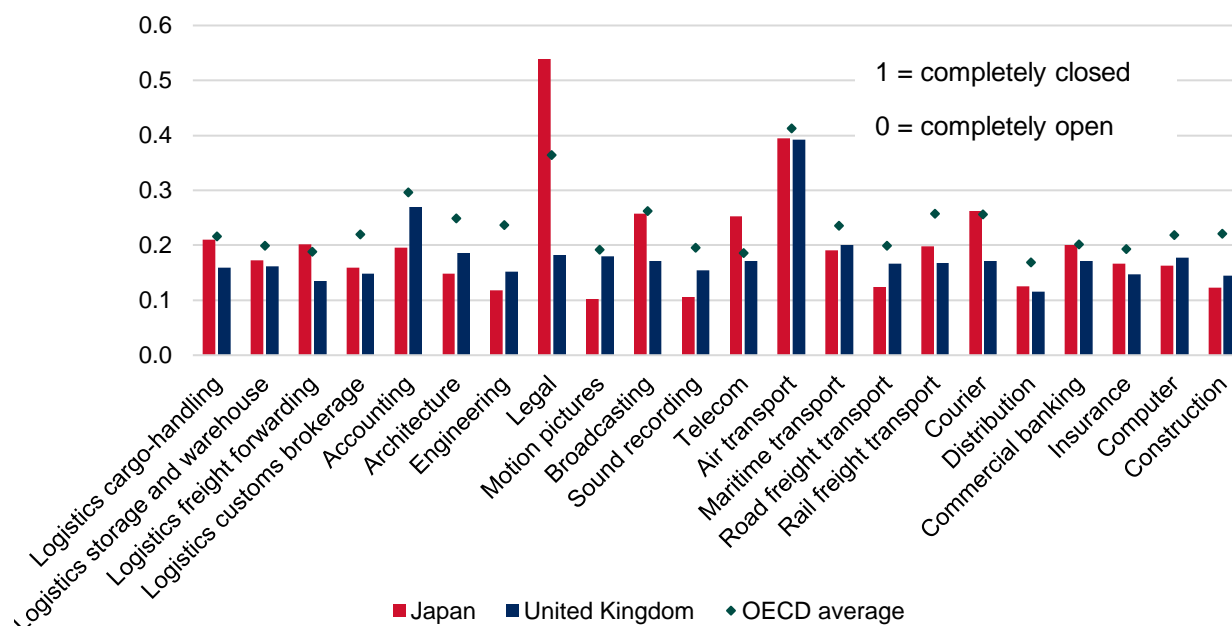
Barriers are also present in the services sector, albeit they are not as visible as tariffs on goods trade. These barriers constitute a restriction on the free flow of services between the UK and Japan.

The OECD's Services Trade Restrictiveness Index (STRI) provides a measurement of regulatory restrictions to trade in services across 22 sectors, with 0 representing a sector which is completely open to foreign service suppliers and 1 representing one which is closed. According to the STRI, the sectors with the highest levels of restrictiveness in Japan are legal, air transport, courier and broadcasting. By type of restriction, the restrictions in Japan are highest in foreign entry (e.g. equity restrictions on business ownership) and transparency of regulations.

⁴³ ONS (2018), UK total trade: all countries, non-seasonally adjusted (access date: 9th May 2019).

⁴⁴ ONS (2019), UK total trade: all countries, non-seasonally adjusted (access date: 9th May 2019).

Chart 6 – Services Trade Restrictiveness Index (STRI) in the UK and Japan



Source: OECD Services Trade Restrictiveness Index (STRI), 2018

From an economic perspective, FTAs liberalise trade in services through three channels:

- **Lowering barriers and levelling the playing field:** Liberalising services trade by lowering barriers allows for greater market access for foreign services suppliers.
- **Providing greater certainty:** ‘Locking-in’ currently applied levels of market access ensures greater certainty for businesses and encourages new exporters to incur the fixed, sunk costs required to export their services.
- **Reducing costs:** Regulatory alignment and transparency can reduce the ‘compliance costs’ associated with meeting regulatory requirements of a trading partner’s regime to enable trade in services.

4.1 Provisions in the EU-Japan EPA Facilitating Trade in Services

Services trade at the WTO is defined through four categories that cover the “Modes of Supply”. The EU and Japan take commitments to liberalise sectors across these “Modes of Supply”.

- **Mode 1 - cross-border trade:** 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 - temporary movement of natural persons:** 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).

4.1.1 Trade in services – general provisions and Annexes

Section C of Chapter 8 adopts definitions similar to the WTO definitions, and covers ‘Mode 1’ and ‘Mode 2’.⁴⁵

In the EPA there are provisions that mean that the EU or Japan cannot impose numerical limits on the amount of services trade, which includes limits on the number of companies supplying services or the number of transactions undertaken by service suppliers. This means that there is greater market access for both the EU and Japan.⁴⁶ It also sets out that the EU and Japan cannot discriminate against the service suppliers of the other. This is called ‘National Treatment,’ and gives companies a level playing field.⁴⁷

The agreement sets out that the right to transport cargo on ships between two points within each Party’s territory, air services (other than for auxiliary air services), government procurement, audio-visual services and subsidies are specifically excluded from the scope of cross-border trade in services section.⁴⁸

The EU and Japan list the measures which do not conform to the obligations above in the agreement in one Annex and the areas to which they do not apply the obligations in a second Annex. These Annexes take the form of lists, varying from EU Member State to EU Member State and from Japan, which mean that the obligations set out in the chapter do not apply. For instance:

- The EU has listed reservations in Annex I on legal services against Market Access and National Treatment obligations, and states that for the provision of legal services across the EU persons are required to register with a member state, or to complete a period of training.⁴⁹
- The EU has also listed reservations in Annex II on education services against Market Access and National Treatment obligations, and states that the EU retains the right to adopt any measure with respect to all educational services, which receive public funding or State support in any form, in the future.

Chapter 8 does not apply to services supplied or activities performed in the exercise of governmental authority (that is, neither on a commercial basis nor subject to competition).⁵⁰ The Agreement also preserves the right of EU and Japan to regulate public services in the public interest and does not stop the them choosing how public services are delivered.

4.1.2 Mode 4 – Movement of people for business services

The EPA includes commitments on the temporary movement of people for the purposes of business (‘Mode 4’) in Section D of Chapter 8.⁵¹ The UK’s commitments on Mode 4 include allowing visitors who are intra-corporate transferees (ICTs), business visitors responsible for establishing a commercial presence (such as setting up a local office), people who are working under a contract and independent professionals, for a temporary period.

⁴⁵ Chapter 8, Section C

⁴⁶ Art. 8.15

⁴⁷ Art. 8.16

⁴⁸ Art. 8.14

⁴⁹ Annex 8-B I, Reservation No 2

⁵⁰ Art. 8.2(r) and (s)

⁵¹ Chapter 8, Section D, Annex 8-B III and IV and Annex 8-C

Japan includes at least as liberal commitments in each of the above categories within its schedules. Japan includes additional commitments on ‘investors’ and ‘short-term business visitors.’ The EPA also provides for ICT service suppliers from the EU to stay for a period of up to five years in Japan.

4.1.3 Domestic Regulation

The EU-Japan EPA contains domestic regulation provisions which ensure that, apart from where the EU and Japan have said they don’t apply in the Annexes, they are to ensure that measures affecting the supply of services, including technical standards, are administered in a reasonable, objective and impartial manner.⁵² The EU and Japan commit to making licensing procedures, or qualification requirements that may act as a trade barrier, timely, easily understandable and accessible. This includes clear and objective review procedures.⁵³

4.1.4 Financial Services

The financial services sub-section contains provisions that are tailored to the specific regulatory requirements of the financial services sector and go with the general provisions in other sections of the chapter, in particular market access⁵⁴ and National Treatment.⁵⁵ The financial services sub-section contains articles on allowing the provision of new financial services,⁵⁶ access to payment and clearing systems,⁵⁷ ensuring National Treatment when requiring use of self-regulatory organisations,⁵⁸ maintaining transfers of information, providing publicly available information on licencing requirements (transparency)⁵⁹ and a carve-out to allow the Parties to take actions for prudential reasons.⁶⁰ An additional commitment is made on the supply of insurance services by postal insurance entities to ensure a level playing field in the provision of this service.

Annex 8-A on Regulatory Cooperation on Financial Regulation sets out commitments regarding regulatory cooperation on financial services and ongoing regulatory dialogue and establishes a Joint Financial Regulatory Forum. The EU and Japan make ‘best endeavours’ commitments to ensure implementation of internationally agreed standards, discuss forthcoming regulatory initiatives and, where possible, rely on each other’s rules and supervisory frameworks. The Forum will meet at least once a year.

4.1.5 Professional and Business Services

The EU-Japan EPA contains a regulatory framework section (Chapter 8, Section E). This contains several provisions of general application which relate to Professional and Business Services (PBS), including a sub-section on mutual recognition between competent authorities, regulators or industry associations in different jurisdictions.⁶¹

The mutual recognition article in the EU-Japan EPA sets out a process whereby professional bodies in Japan and the EU are encouraged to provide joint recommendations on mutual recognition, including of professional qualifications (known as MRPQs) to the EU-Japan Joint Committee. MRPQs occur when

⁵² (Chapter 8, Section E, Sub-Section 1 and 2), Art. 8.33

⁵³ Art. 8.31

⁵⁴ Art 8.7

⁵⁵ Art 8.8

⁵⁶ Art. 8.60

⁵⁷ Art. 8.61

⁵⁸ Art. 8.62

⁵⁹ Art. 8.63 – 8.64

⁶⁰ Art. 8.65

⁶¹ Art. 8.35

competent authorities, such as regulators or industry associations in the EU and Japan, agree to recognise each other's qualifications as equivalent. This allows a professional to provide a service in another country without having to retrain. The Committee assesses these recommendations to ensure consistency with the EPA and establishes the steps to negotiate a Mutual Recognition Agreement.⁶²

4.1.6 Transport services

The EPA includes commitments across different types of transport (maritime, aviation, rail and road).⁶³ In maritime services, the EU made Market Access and National Treatment commitments (as outlined above) on services supply, whilst Japan took a reservation excepting its sector from such provisions. The maritime-specific sub-section provides legal certainty on a number of logistical measures,⁶⁴ such as the provision of port services.⁶⁵ These require the EU Member States and Japan to make available a number of services at their ports, such as pilotage, towing, provisioning and fuelling.

In aviation, both Parties made commitments on those auxiliary services included in scope of the Agreement, such as aircraft repair and maintenance, and the selling and marketing of air transport services. In rail services, the EU took a reservation meaning that this sector is excluded from Market Access and national treatment provisions. Both Parties committed to road services trade, generally with requirements for establishment and licensing.

4.1.7 Postal and courier

The cross-border trade in services section, through its Market Access and National Treatment commitments, prohibits Japan and the EU to apply quantitative (numerical) restrictions and discriminatory treatment towards postal and courier service suppliers from the other.⁶⁶ These commitments do not mean that the EU Member States and Japan lose their right to ensure that there is a universal service available to all users in a territory, with set pricing and quality standards – otherwise known as a Universal Service Obligation.

The Postal and Courier Services sub-section contains a number of provisions on Universal Service Obligations, border procedures, licenses and the independence of the relevant regulators.⁶⁷ These provisions safeguard the right to legislate for a Universal Service Obligation and to require licenses to supply postal services, whilst also ensuring a level playing field within both countries through such measures as transparency, and independent, impartial regulators.⁶⁸

4.1.8 Telecommunications

The EPA contains a detailed sub-section on Telecommunication services.⁶⁹ This has the effect of making it easier for telecoms providers of Japan and EU Member states to operate in each other's countries. It

⁶² Art. 8.35

⁶³ These are primarily in Chapter 8, Annex 8-B I and Annex 8-B II

⁶⁴ Chapter 8, Section E, Sub-Section 6

⁶⁵ Art 8.68 – 8.69

⁶⁶ Chapter 8, Section C and Annexes 8-B-I and II

⁶⁷ Chapter 8, Section E, Sub-Section 3

⁶⁸ Art 8.36 – 8.40

⁶⁹ Chapter 8, Section E, Sub-Section 4

does not apply to broadcasting and services providing content transmitted using telecoms services⁷⁰. Both the EU and Japan agree to allow each other's suppliers to access and use the others' telecommunications networks on terms that are reasonable and non-discriminatory.⁷¹ They are still free to take measures to ensure the security and confidentiality of messages, provided this does not amount to unjustifiable discrimination or a disguised trade restriction.⁷² They also have agreed that suppliers in their territory must provide telephone number portability.⁷³

The EU and Japan have agreed provisions which enable the other's suppliers of public telecommunications networks or services to negotiate interconnection for the purpose of providing the networks or services,⁷⁴ which should be agreed on the basis of 'commercial negotiations.'⁷⁵ They are committed to preventing anti-competitive practices by major suppliers, for example through interconnection obligations.⁷⁶

Both the EU and Japan have agreed to ensure that its regulatory authority is legally distinct and independent from telecommunications suppliers.⁷⁷ Japan and EU Member States have the right to maintain universal service obligations. These ensure that basic fixed line services are available at an affordable price to all citizens. They also agreed that all telecoms suppliers are eligible to provide universal service.⁷⁸

The agreement provides that authorisation procedures to provide telecoms services should as far as possible require simple notification or registration, and not a prior decision by the regulatory authority⁷⁹. There are provisions on the allocation of frequencies and scarce resources, resale, transparency, confidentiality, and dispute settlement.⁸⁰ The Agreement also requires the EU and Japan to endeavour to cooperate on promoting transparent and reasonable rates for mobile roaming.⁸¹

4.1.9 Digital trade

Digital trade has notable impacts on the productivity of industries and on the economy as a whole. The OECD (2018) notes that digital trade can lower the cost of trading and increase the scope, the scale and the speed of international trade

As with goods and services, digital trade faces barriers that may hinder trade flows. The OECD Digital STRI captures cross-cutting barriers that affect all type of services traded digitally. The main digital barriers affecting services traded digitally are:

- Infrastructure and connectivity
- Electronic transactions
- Payment system
- Intellectual property rights
- Other digital barriers

⁷⁰ This ensures the regulation of transmission is separate from the regulation of content. This does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society services (Art. 2 of Directive 2002/21/EC)

⁷¹ Art. 8.44

⁷² Art. 8.44.4

⁷³ Art. 8.45. Number portability is defined in Art 8.42(j).

⁷⁴ Art. 8.47.2

⁷⁵ Art. 8.47.1

⁷⁶ Art. 8.48

⁷⁷ Art. 8.49

⁷⁸ Art. 8.50

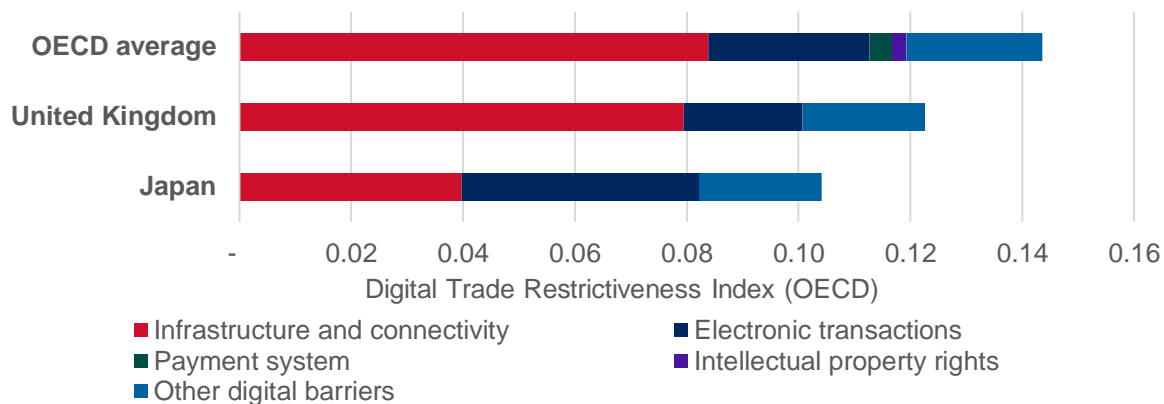
⁷⁹ Art 8.51.1

⁸⁰ Arts. 8.51.2 – 8.46, 8.54 and 8.56

⁸¹ Art. 8.57

Chart 7 illustrates the restrictiveness indices in the area of digital trade for Japan, the United Kingdom and the OECD. According to the STRI, the United Kingdom and Japan have restrictive barriers in Infrastructure and Connectivity, albeit below the OECD average. In 2018, Japan had higher barriers in Electronic transactions relative to the United Kingdom and the OECD average.

Chart 7 – OECD Digital Trade Restrictiveness Index (2018)⁸²



The EPA contains provisions on E-Commerce.⁸³ This covers all measures by the EU and Japan affecting trade by electronic means, with the exception of gambling and betting, broadcasting, audio-visual, notarial (or equivalent) and legal representation services.⁸⁴ It provides that they will not impose customs duties on electronic transmissions⁸⁵ and protects against the forced transfer of, or grant of access to, source code, except in respect of certain legal and administrative proceedings.⁸⁶ It requires the EU and Japan to endeavour not to impose prior authorisation requirements, and to endeavour not to deny the validity of electronic signatures or adopt or maintain measures that deny the legal effect of electronic contracts on the grounds of their electronic form.⁸⁷

The Agreement stresses both Japan and the EU's commitment to maintaining transparent consumer protection measures and the need for cooperation.⁸⁸ It also requires them to adopt or maintain measures to protect against the receiving of unsolicited commercial electronic messages ('spam'), including by requiring the prior consent of recipients to receive such messages.⁸⁹

Section F further affirms the EU and Japan's recognition of the importance of adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of e-commerce users.⁹⁰ They are also committed to 'reassess', within three years of the entry into force of the Agreement, the need to include any provisions on the free flow of data, which are not currently included.⁹¹

⁸² This chart displays scores of individual components of the OECD Digital Trade Restrictiveness Index as an overall measure of digital trade restrictiveness. A country's digital STRI score is between 0 and 1, where 0 is completely open and 1 is completely closed.

⁸³ Chapter 8, Section F

⁸⁴ Arts 8.70.4 and 8.70.5

⁸⁵ Art 8.72

⁸⁶ Art 8.73

⁸⁷ Arts 8.76-8.77

⁸⁸ Art 8.78

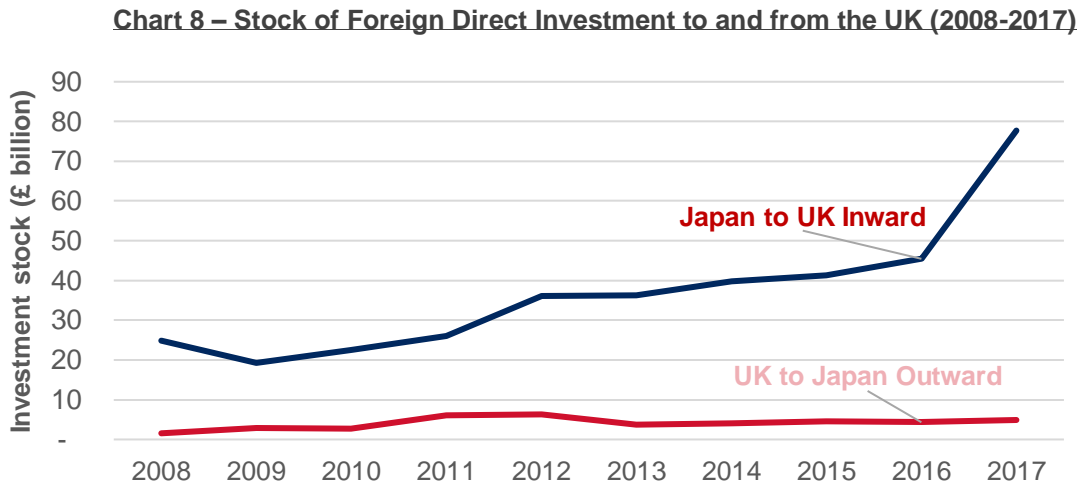
⁸⁹ Art 8.79

⁹⁰ Art 8.78.3

⁹¹ Art 8.81

5 Cross-border Investment

Investment between the UK and Japan is significant.⁹² The stock of FDI from the UK in Japan was £4.8bn in 2017, 12.1% higher than in 2016. In 2017, Japan accounted for 0.4% of the total UK outward FDI stock. The stock of FDI from Japan in the UK was £77.7bn in 2017, 71.0% higher than in 2016. In 2017, Japan accounted for 5.8% of the total UK inward FDI stock.⁹³



Source: Office for National Statistics, 'Outward Foreign Direct Investment (FDI) involving UK companies' (UK to Japan Outward), 2017; 'Inward Foreign Direct Investment (FDI) involving UK companies' (Japan to UK Inward), 2017. Both databases released on 4 December 2018.

Investment restrictions constrain businesses investing in other markets. The OECD's FDI Regulatory Restrictiveness Index assesses the restrictiveness of a country's FDI rules across the four main types of restrictions. These are:

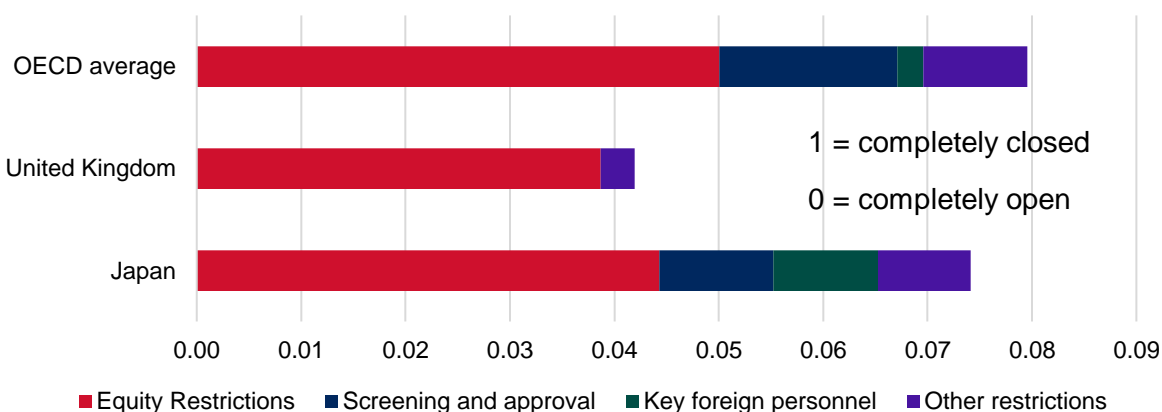
- foreign equity restrictions;
- discriminatory screening or approval mechanisms;
- restrictions on key foreign personnel; and
- operational restrictions.

The index shows that Japan is relatively more restrictive to FDI compared to the United Kingdom. Both score a lower regulatory restrictiveness score compared to OECD countries on average. The majority of Japan's FDI barriers fall under the category of "equity restrictions" on the proportion of a business that can be owned by individuals who are not domestic citizens of the given country. The United Kingdom does not register any barriers on 'screening and approval' and 'key foreign personnel'. In contrast, Japan features higher barriers in 'key foreign personnel' relative to the OECD average. This category includes any obligatory procedures that investors must undergo before obtaining approval for their planned investment.

⁹² Foreign direct investment (FDI) is commonly referred to as an investment made by a person or entity resident in one economy ('direct investor') to either establish or acquire a 'lasting interest' in a business operating in another economy. Some international definitions of FDI state that the 'lasting interest' is deemed to exist if the direct investor acquires at least 10% of equity, or equivalently 10% of the voting rights, of the given company. UK outward FDI stock refers to the total value of UK residents' FDI. UK inward FDI stock refers to the total value of FDI by non-UK resident investors in the UK.

⁹³ Office for National Statistics Outward and Inward Foreign Direct Investment (FDI)

Chart 9: UK and Japanese investment restrictiveness, by type of restriction



5.1 Cross-Border Investment Provisions in the EPA

Chapter 8 contains provisions on investment liberalisation.⁹⁴ These provisions seek to improve market access for businesses by removing barriers to establishing a commercial presence abroad.

They do this by preventing the EU or Japan from placing limitations on the investors of the other. Such limitations include quotas, other numerical limitations (such as amount of foreign capital in an investment, and numbers of natural persons employed in a particular sector) or restrictions of the type of legal entity required for the operation of an investment.⁹⁵ The performance requirement provisions prevent the placing of operational requirements on investors of the other, such as exporting a given level or percentage of goods, or to hire a given percentage of the other's nationals.⁹⁶

In addition, the Senior Manager and Board of Directors provision places limitations on restrictions of key foreign personnel by removing restrictions on nationality requirements of executives, managers and members of boards of directors.⁹⁷ This chapter also includes a Most Favoured Nation provision (MFN) and a National Treatment provision, which aim to create a level playing field for domestic and foreign investors by limiting discriminatory rules.⁹⁸ The MFN provision ensures that where one party (Japan or the EU) offers more favourable treatment to an investor in another country in respect of certain investments, they will give it to investors of the other party to the EPA as well. The National Treatment clause prevents either Japan or the EU giving its investors less favourable treatment than their own.

Together, the provisions in this chapter contribute to investor certainty, and in turn lower costs associated with foreign investment projects and reduce risks for businesses. Addressing risk and uncertainty can be important for companies that may incur significant “sunk” costs when they invest.⁹⁹

There are also provisions relating to cross-border investment in Chapter 9, Capital Movements, Payments and Transfers and Temporary Safeguards Measures. Through the current account provision and capital movements provision, this chapter limits foreign capital restrictions by granting foreign investors the right to free movement of capital for the purpose of investment liberalisation.¹⁰⁰ This is subject to some exceptions,

⁹⁴ Chapter 8, Section B. Trade in Services, Investment Liberalisation and Electronic Commerce

⁹⁵ Art. 8.7

⁹⁶ Art. 8.11

⁹⁷ Art. 8.10

⁹⁸ Art. 8.8 – 8.9

⁹⁹ A sunk cost is a cost that once a business pays can no longer be recovered by any means.

¹⁰⁰ Art 9.1 – 9.2

such as for serious balance of payments difficulties, as set out in the Temporary Safeguard Measures provision.

The Committee on Trade in Services, Investment Liberalisation and Electronic Commerce are responsible for the effective operation of the provisions relating to cross-border investment in Chapter 8 and 9.

6 Regulations and Standards

The EPA seeks to establish clear and mutually advantageous rules governing trade and investment between the Parties and to reduce or eliminate barriers. To achieve this, the EU and Japan have made commitments on regulations and standards in several areas:

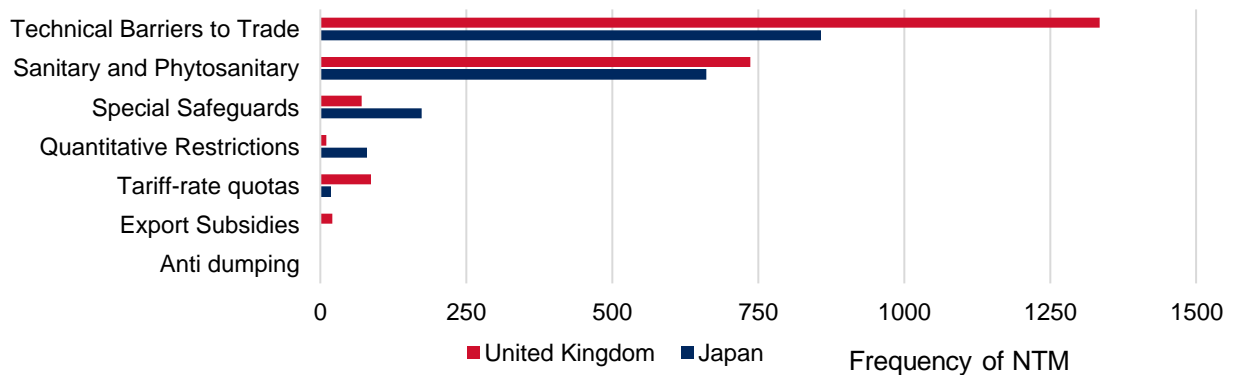
- Sanitary and Phytosanitary measures (Chapter 6)
- Technical Barriers to Trade (Chapter 7)
- Corporate Governance (Chapter 15)
- Sustainability (Chapter 16)
- Transparency (Chapter 17)
- Good Regulatory Practices and Regulatory Cooperation (Chapter 18)

6.1 Regulatory barriers to trade

Where regulations and standards are different, this can lead to regulatory barriers to trade. These can impact trade and investment in both services and goods. Regulatory barriers come in many forms and their impact can be hard to measure, especially in relation to services.

One type of regulatory barrier is a non-tariff measure (NTM), NTMs are all barriers to goods trade that are not tariffs. This includes customs controls and differences in national regulatory regimes. Evidence suggests that most NTMs faced in Japan by UK exporters fall under the categories of Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary measures (SPS). Chart 10 shows the number of non-tariff measures present in the UK and Japan. This does not show what impact, if any, these have on trade.

Chart 10 – Non-tariff measures (NTMs) in the UK and Japan, by frequency¹⁰¹



Source: WTO, *Integrated Trade Intelligence Portal (I-TIP)*. NTMs either initiated or in force on access date (6th August 2019).

6.2 Regulations and Standards Provisions in the EPA

6.2.1 Sanitary and Phytosanitary

Sanitary and Phytosanitary (SPS) measures are measures (e.g. laws, regulations, standards) that aim to ensure food safety and animal and plant health while minimising their negative effects on trade. They ensure that food products placed on the market, including imports, are safe for consumers.

¹⁰¹ Some NTM types may be double counted, as a single measure may have to be notified to various committees.

The SPS chapter of the EPA (Chapter 6) aims to help exporters of the EU or Japan access the market of the other by committing them to:

- improving transparency about their respective SPS provisions;
- exchanging information on laws and regulations related to SPS and which affect trade. ¹⁰²

In the Chapter, both the EU and Japan agree to:

- reaffirm their rights and obligations under the World Trade Organization's (WTO) SPS agreement;¹⁰³
- recognise each other's concepts in line with international standards for controlling animal disease and identifying the health status of animals and plants, while emphasising the primacy of the WTO's SPS Agreement;¹⁰⁴
- recognise regionalisation as a basis for determining whether to allow imports from disease-free areas, underpinned by World Organisation for Animal Health (OIE) codes; regionalisation is a tool used to control diseases and/or maintain safe trade by restricting trade from areas affected by disease, whilst avoiding trade disruptions in goods from unaffected areas.¹⁰⁵

These commitments benefit European agri-food exporters by helping to ensure that their products are not hindered from entering the Japanese market by unjustified SPS trade barriers. The Chapter also includes mechanisms for streamlining procedures for approving food imports from the EU into Japan.¹⁰⁶ This should shorten the time it takes Japan to give such approvals.¹⁰⁷

Japan and the EU have agreed to establish a Committee on Sanitary and Phytosanitary Measures, in order to enhance their implementation of the Chapter, consider SPS matters of mutual interest and enhance communication and cooperation.¹⁰⁸

Articles on risk assessment; the application, period and information requirements of import procedures; and equivalence are excepted from dispute settlement under Chapter 21 of the EPA.¹⁰⁹

6.2.2 Technical Barriers to Trade

'Technical barriers to trade' (TBT) are measures (e.g. laws, standards) relating to product characteristics which create obstacles to trade. Governments often need to make product regulations which, for example, protect human health or safety or the environment. The aim of TBT provisions in a trade agreement is to make sure that Government can continue to implement these measures without discriminating against foreign goods or going further than necessary to achieve their goal.

Chapter 7 of the EPA contains measures aimed at reducing TBTs. The major provisions reflect commitments already made by the EU and Japan as members of the WTO, and the EPA incorporates elements of the WTO's 'TBT Agreement'. The Chapter is generally covered by the EPA dispute settlement arrangements – but those elements of the WTO TBT Agreement which are incorporated are mostly excluded from this in favour of disputes being settled at the WTO itself.

¹⁰² Art. 6.11

¹⁰³ Art. 6.4

¹⁰⁴ Art. 6.3 and Art. 6.7 Import conditions

¹⁰⁵ Article 6.10

¹⁰⁶ Art. 6.7

¹⁰⁷ Article 6.9; Article 6.8 Audit; and Annex 6 Food additives

¹⁰⁸ Art. 6.15

¹⁰⁹ Art. 6.16

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

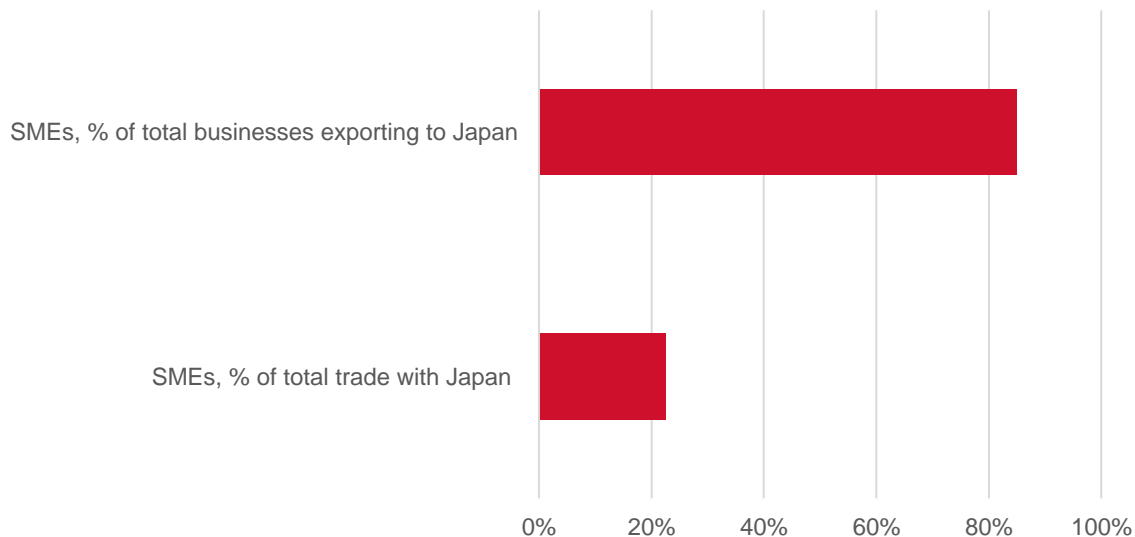
9 SME Provisions

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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