

# THE EUROPEAN UNION-JAPAN ECONOMIC PARTNERSHIP AGREEMENT: BACKGROUND AND CERTAIN ASPECTS

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## Abstract

*The article deals with the Economic Partnership Agreement signed between the European Union and Japan. This can be considered a major initiative in the field of European Union external relations, and a significant expression of the free trade principle in the international arena. The study includes a survey of the background to the Agreement and the EU-Japan relationship in general. Furthermore, certain parts of the Agreement are looked at, including those relating to state-owned enterprises and various services.*

**Keywords:** *European Union, Japan, Economic Partnership Agreement, state-owned enterprises, services.*

## 1. Introduction

The European Union, being an international actor in its own right, has a myriad of agreements with various countries around the world. These vary in terms of the degree to which they intensify and strengthen relations with respective third countries. Some of these agreements relate to the EU's more immediate neighbourhood, while others have been made with states further afield in more distant parts of the world. One recent agreement which the European Union entered into which is particularly noteworthy is the Economic Partnership Agreement with Japan. Here there shall be an overview of the background to both EU-Japan relations in general and the

signing of the Economic Partnership Agreement. Additionally, certain aspects of the Agreement shall be analysed here, including those dealing with state-owned enterprises, postal and courier services, public procurement, international maritime transport services and telecommunication services.

## 2. EU-Japan Relations and the Signing of the Economic Partnership Agreement

In 1959 the then European Economic Community and Japan established official diplomatic relations.<sup>1</sup> From the period of the 1960s to the 1980s certain tensions existed with regards to trade.<sup>2</sup> This included the EEC seeing the economic rise of Japan with

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<sup>1</sup> The Mission of Japan to the European Union: "Japan and the EU: Valuable Partnership for the future", Speech by H.E. Takekazu KAWAMURA Ambassador of Japan to the European Union At the Bulgarian Diplomatic Institute In Sofia, 12 June 2008, [https://www.eu.emb-japan.go.jp/former%20amb%20speeches/bulgaria\\_speeches.html](https://www.eu.emb-japan.go.jp/former%20amb%20speeches/bulgaria_speeches.html) (last access 2019.07.07).

<sup>2</sup> César De Prado: *Towards a Substantial EU-Japan Partnership*, *European Foreign Affairs Review*, 22 no. 4 (2017), 435, [http://cadmus.eui.eu/bitstream/handle/1814/51204/CdP%202017%20EU-JP%20EFAR%2022\\_0401.pdf?sequence=3](http://cadmus.eui.eu/bitstream/handle/1814/51204/CdP%202017%20EU-JP%20EFAR%2022_0401.pdf?sequence=3) (last access 2019.07.07).

suspicion, as the Japanese became competitors to be reckoned with in relation to various products and goods.<sup>3</sup> However, from the period of the 1990s there was an improvement in relations, with an attempt to increase economic dialogue and to create a more definite framework for the relationship.<sup>4</sup>

To illustrate how much the relationship has developed since earlier times, now at present Japan is considered to be one of the European Union's closest partners, being its second largest Asian trading partner, while for Japan the EU is its third biggest partner in trade.<sup>5</sup> The European Union exports to Japan more than 65 billion euros worth of goods per annum, and over 600, 000 jobs are connected to Japan, while Japanese companies have created over 500, 000 jobs in the European Union.<sup>6</sup> As for Japan's export of goods to the European Union, these total to around 70 billion per annum.<sup>7</sup> In recent years there has also been a significant increase in the area of services,

for example, from 2015 to 2017 the European Union exports to Japan increased from 28 billion euros to 34.7 billion euros.<sup>8</sup> With regards to Japan's export of services to the European Union, these increased from 2015 to 2017 from 16 billion to 18.3 billion euros.<sup>9</sup>

Without doubt the greatest and most significant aspect of the EU-Japan relationship is the Economic Partnership Agreement. This has been described as the world's biggest trade deal, covering 635 million people and close to one third of the world's GDP.<sup>10</sup> As to the more immediate background to the signing of the Economic Partnership Agreement, the negotiations for the Agreement officially began on 25 March 2013, and on 6 July 2017 an agreement was reached between the two in principle.<sup>11</sup> Later, on 8 December 2017 negotiations were completed.<sup>12</sup> On 17 July 2018 at the EU-Japan Summit both parties signed the Economic Partnership Agreement<sup>13</sup> and on 12 December 2018 it was approved by the European Union Parliament.<sup>14</sup> In February

<sup>3</sup> Axel Berkofsky: *The EU and Japan: a partnership in the making*, European Policy Centre Issue Paper, February 2007, no. 52, 9, <https://www.files.ethz.ch/isn/30653/EPC%20Issue%20Paper%20No%2052.pdf> (last access 2019.07. 07).

<sup>4</sup> De Prado: *op. cit.*, 436.

<sup>5</sup> European Union External Action: EU-Japan Relations, 1, [https://eeas.europa.eu/sites/eeas/files/eu-japan\\_factsheet\\_april\\_2019\\_6.pdf](https://eeas.europa.eu/sites/eeas/files/eu-japan_factsheet_april_2019_6.pdf) (last access 2019.07.04).

<sup>6</sup> *Ibidem.*

<sup>7</sup> *Ibidem.*

<sup>8</sup> *Ibidem.*

<sup>9</sup> *Ibidem.*

<sup>10</sup> BBC News: *EU-Japan trade: Five things about the world's biggest deal*, 1 February 2019, <https://www.bbc.com/news/business-47086737> (last access: 2019.07.06).

<sup>11</sup> European Commission: Countries and Regions: Japan, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/japan/> (last access 2019.07.06); European Commission: The Economic Impact of the EU-Japan Economic Partnership Agreement (EPA): An analysis prepared by the European Commission's Directorate-General for Trade, June 2018, 7, [http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc\\_157115.pdf](http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157115.pdf) (last access 2019.07.11).

<sup>12</sup> European Commission: Joint State by the President of the European Commission Jean-Claude Juncker and the Prime Minister of Japan Shinzo Abe, Press Release Database, Brussels, 8 December 2017, [http://europa.eu/rapid/press-release\\_STATEMENT-17-5182\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-17-5182_en.htm) (in access 2019.07.06).

<sup>13</sup> European Council/Council of the European Union: EU-Japan summit, Tokyo, 17/07/2018, <https://www.consilium.europa.eu/en/meetings/international-summit/2018/07/17/japan/> (last access 2019.07.11).

<sup>14</sup> European Parliament: European Parliament non-legislative resolution of 12 December 2018 on the draft Council decision on the conclusion of the Agreement between the European Union and Japan for an Economic Partnership,

2019 the Agreement entered into force.<sup>15</sup> The European Union Commission President Jean-Claude Juncker said that “*Almost five centuries after Europeans established the first trade ties with Japan, the entry into force of the EU-Japan Economic Partnership Agreement will bring our trade, political and strategic relationship to a whole new level*”.<sup>16</sup>

It is believed that the Agreement will aid exporters and investors from the European Union in relation to the Japanese market, and also in protecting the values and standards of the EU.<sup>17</sup> Jean-Claude Juncker stated that it is predicted that as a result of the free trade agreement, the level of trade between the European Union and Japan is to increase by 36 billion euros.<sup>18</sup> The deal between the European Union and Japan must also be seen in the broader context of trade liberalization around the world and certain debates with regards to this, with it being said that the Agreement sends a “*powerful*

*signal that two of the world’s biggest economies reject protectionism*”.<sup>19</sup> It is believed that the Economic Partnership Agreement increased in its importance as a result of negotiations being suspended between the United States and European Union with regards to the Transatlantic Trade and Investment Partnership (TTIP), and the subsequent placing of tariffs on steel and aluminium products by the US.<sup>20</sup>

It should also be noted that, in addition to the Economic Partnership Agreement, the European Union and Japan signed the Strategic Partnership Agreement.<sup>21</sup> Negotiations towards this end began in 2013, and the signing, as in the case of the Economic Partnership Agreement, took place in Tokyo on 17 July 2018.<sup>22</sup> This is to act as the instrument acting as the basis of the overall bilateral relationship and framework,<sup>23</sup> with a particular emphasis on security.<sup>24</sup> It also affirms the common values that the European Union and Japan share.<sup>25</sup>

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<sup>15</sup> European Union External Action: *op. cit.*, 1.

<sup>16</sup> DW: *EU Parliament approves ‘world’s largest’ free trade deal with Japan*, 12 December 2018, <https://www.dw.com/en/eu-parliament-approves-worlds-largest-free-trade-deal-with-japan/a-46699492> (last access 2019.07.11).

<sup>17</sup> European Commission: Key elements of the EU-Japan Economic Partnership Agreement, 12 December 2018, [http://europa.eu/rapid/press-release\\_MEMO-18-6784\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-6784_en.htm) (last access 2019.07.04).

<sup>18</sup> Kyodo News: *Juncker sees EU-Japan trade expanding by up to \$40 bil. with FTA*, 28 June 2019, <https://english.kyodonews.net/news/2019/06/205f7326edac-juncker-sees-eu-japan-trade-expanding-by-up-to-40-bil-with-fta.html> (last access 2019.07.06).

<sup>19</sup> European Commission: In Focus: EU-Japan Economic Partnership Agreement, <http://ec.europa.eu/trade/policy/in-focus/eu-japan-economic-partnership-agreement/> (last access 2019.07.06).

<sup>20</sup> André Sapir, Sonali Chowdhry and Alessio Terzi: *The EU-Japan Economic Partnership Agreement*, 3 October 2018, Bruegel, <http://bruegel.org/2018/10/the-eu-japan-economic-partnership-agreement/> (Accessed 2019.07.07).

<sup>21</sup> Delegation of the European Union to Japan: EU-Japan Strategic Partnership Agreement (SPA), 1 February 2019, [https://eeas.europa.eu/delegations/japan\\_en/57491/EU-Japan%20Strategic%20Partnership%20Agreement%20\(SPA\)](https://eeas.europa.eu/delegations/japan_en/57491/EU-Japan%20Strategic%20Partnership%20Agreement%20(SPA)) (last access 2019.07.06).

<sup>22</sup> European External Action: EU Japan Strategic Partnership Agreement, 1, [https://eeas.europa.eu/sites/eeas/files/factsheet\\_eu-japan\\_strategic\\_partnership\\_agreement\\_japan.pdf](https://eeas.europa.eu/sites/eeas/files/factsheet_eu-japan_strategic_partnership_agreement_japan.pdf) (last access 2019.07.07).

<sup>23</sup> Delegation of the European Union to Japan: Strategic Partnership Agreement Between the European Union and its Member States, of the one part, and Japan, of the other part, <https://www.mofa.go.jp/files/000381942.pdf> (last access 2019.07.06).

<sup>24</sup> European Union External Action: EU Japan Strategic Partnership Agreement, *op. cit.*, 1.

<sup>25</sup> European Commission: EU-Japan trade agreement on track to enter into force in February 2019, Press Release, 12 December 2018, Brussels, [http://europa.eu/rapid/press-release\\_IP-18-6749\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6749_en.htm) (last access 2019.07.11).

### 3. Specific Provisions of the Economic Partnership Agreement

In terms of the main achievements of the Economic Partnership Agreement, with regards to the European Union, the EPA has removed 99% of tariff lines and 100% in relation to imports, while in Japan's case 97% of tariff lines have been liberalized, while the figure stands at 99% with regards to imports.<sup>26</sup> The Agreement includes such measures as the elimination of duties placed on a large number of cheese types, including Gouda and Cheddar; the ability to bring about a substantial rise in the amount of beef exported to Japan and more opportunities for pork exports; the removal of tariffs on certain industrial products where the European Union is highly competitive; the European Union can now more easily export cars to Japan as the latter is now committed to international car standards; and, which shall be examined here, the opening up of services markets.<sup>27</sup> Additionally, the Agreement allows European Union companies to access the procurement markets of 54 cities of Japan, and also lifts procurement obstacles with regards to railroads,<sup>28</sup> an area in which much interest exists.<sup>29</sup> This will also be surveyed here.

The European Union exports around 28 billion euros worth of services to Japan per annum.<sup>30</sup> The new Economic Partnership Agreement will allow firms from the European Union to provide services to Japan more easily.<sup>31</sup> However, it should be noted that the Agreement does not require that the European Union and Japan privatise and deregulate public service provision.<sup>32</sup> Furthermore, the two entities preserve the right to regulate in this particular area.<sup>33</sup> Several services covered in the EPA shall now be surveyed.

With regards to telecommunication services, the principle of competitive markets and their advantages is recognised, yet at the same time it is acknowledged that regulatory necessities may differ according to the market in question, and thus the parties are given under the Agreement certain flexibility in the implementation of the obligations in this area.<sup>34</sup> The EU and Japan are to ensure that the service suppliers of the other party are provided access to and use of public telecommunications transport networks and services according to the

<sup>26</sup> European Commission: The Economic Impact of the EU-Japan Economic Partnership Agreement (EPA), *op. cit.*, 1.

<sup>27</sup> European Commission: EU-Japan trade agreement on track to enter into force in February 2019, *op. cit.*

<sup>28</sup> *Ibidem.*

<sup>29</sup> Kimura Fukunari: The Significance of the Japan-EU Economic Partnership Agreement, Nippon.com, 17 October 2018, <https://www.nippon.com/en/currents/d00437/the-significance-of-the-japan-eu-economic-partnership-agreement.html> (last access 2019.07.11).

<sup>30</sup> European Commission: Key elements of the EU-Japan Economic Partnership Agreement, *op. cit.*

<sup>31</sup> *Ibidem.*

<sup>32</sup> European Parliament – Directorate-General For External Policies/Policy Department: Study – The EU-Japan Economic Agreement, 18, [http://bruegel.org/wp-content/uploads/2018/10/EXPO\\_STU2018603880\\_EN.pdf](http://bruegel.org/wp-content/uploads/2018/10/EXPO_STU2018603880_EN.pdf) (last access 2019.07.06).

<sup>33</sup> European Commission: Key elements of the EU-Japan Economic Partnership Agreement, *op. cit.*

<sup>34</sup> European Commission: Annex to the Proposal for a Council Decision on the signing, on behalf of the European Union, of the Economic Partnership Agreement between the European Union and Japan for an economic partnership, Article 8.43(1), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0193&from=GA> (last access 2019.07.06).

principle that they are reasonable and are not discriminatory.<sup>35</sup>

In relation to postal and courier services, this is dealt with in Sub-Section 3 of the Agreement. Both the European Union and Japan retain the right to define the concept of universal service<sup>36</sup> obligation in this area, which is not to be considered as an anti-competitive measure, so long as its administration is executed in a “*transparent, non-discriminatory and competitively neutral manner*”, and which is not burdensome beyond necessity with regards to the definition of universal service by the signatory parties.<sup>37</sup> The Agreement further stipulates that the EU and Japan, in relation to any postal and courier services which are subject to any universal service obligation in their own territories, are not to engage in such activities as excluding each others enterprises’ business activities via cross-subsidising, among other measures.<sup>38</sup> Furthermore, it is prohibited under the Agreement to unjustifiably differentiate between customers, including mailers of large volumes or consolidators, where similar conditions exist in relation to charges and provisions with regards to acceptance, delivery, redirection, return and the amount of days that are needed for the delivery for the supplying of a service which is subjected to any universal service obligation.<sup>39</sup>

The issue of international maritime transport services is also addressed in the EPA. It states that each party is to uphold the principle “*of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis*”<sup>40</sup> and that they are to grant to ships flying the flag of the other party or operated by the other party’s service providers treatment which is no less favourable than that accorded to its own ships in relation to such activities as accessing ports, using infrastructure and services of ports, and other related activities.<sup>41</sup> Each party is also to allow each other’s international maritime transport service suppliers to establish and operate enterprises in its territory according to conditions of establishment and operation which are to be no less favourable than those granted to the service suppliers of each respective party.<sup>42</sup> Each party is also to make available to each others respective international maritime transport suppliers, on a basis both reasonable and non-discriminatory, various services at each others ports, including pilotage, towing and tug assistance, anchorage, and berth and berthing services, among others.<sup>43</sup>

The issue of state-owned enterprises is also addressed in the Economic Partnership Agreement.<sup>44</sup> According to the Agreement, it does not prevent either party from

<sup>35</sup> Article 8.44(1). Additionally, according to the same article, both signatory parties must ensure that the terms and conditions are “*no less favourable than those which the supplier of those public telecommunications transport networks and services provides for its own like services under like circumstances*”.

<sup>36</sup> According to Article 8.36(2)(b), universal service is defined as the “*the permanent supply of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users*”.

<sup>37</sup> Article 8.37(1).

<sup>38</sup> Article 8.37(3)(a).

<sup>39</sup> Article 8.37(3)(b).

<sup>40</sup> Article 8.69(a).

<sup>41</sup> Article 8.69(b).

<sup>42</sup> Article 8.69(c).

<sup>43</sup> Article 8.69(d).

<sup>44</sup> According to Article 13.1(h), this is defined in the Agreement as an enterprise which is engaged in commercial activities where either the EU or Japan “*directly owns over 50 per cent of the share capital; controls, directly or indirectly through ownership interests, the exercise of more than 50 per cent of the voting rights; holds the power to appoint a majority of members of the board of directors or any other equivalent management body; or has the*

establishing or maintaining state-owned enterprises, or granting special rights or privileges to enterprises or designating monopolies.<sup>45</sup> Furthermore, the parties are not to either require or encourage such enterprises to act in a way which is inconsistent with the Agreement.<sup>46</sup> Additionally, the Agreement stipulates that neither party shall treat each others enterprises in a discriminatory manner with regards to the purchase of goods and services.<sup>47</sup>

As to the issue of public procurement, according to Article 10.1 of the EPA the WTO Agreement on Public Procurement is made part of the Agreement. According to the Agreement neither the European Union nor Japan is allowed to exclude a supplier established in the other party from being a participant in any procedure for tenders on the basis that there is a legal requirement that a supplier has to be either a natural person or legal person.<sup>48</sup> Furthermore, the procuring entity is not allowed to impose on the relevant party the condition that they have relevant prior experience acquired on the territory of that particular party.<sup>49</sup>

As already stated above, the Economic Partnership Agreement lists 54 Japanese cities, the procurement markets of which shall now open up to the European Union. To be more specific, these are Japan's "core cities" (known as Chūkakushi in Japanese) which have populations of around between

300,000 and 500,000 people.<sup>50</sup> This is a significant enlargement of Japan's public procurement market to the European Union.<sup>51</sup> Additionally, as has also already been stated, Japan's railway sector will also become more accessible to the EU. It is worth noting in relation to this topic that in the past European suppliers were essentially blocked from access to this particular market as a result of the WTO GPA's Operational Safety Clause (a previously contentious and problematic matter between the parties) application by Japan.<sup>52</sup> This clause is no longer applicable in the area of goods and services procurement for contracts over the amount of approximately 480,000 euros.<sup>53</sup>

#### 4. Conclusion

With the signing of the Economic Partnership Agreement between the European Union and Japan, the relationship between these two entities has been further strengthened and solidified. The relationship has moved significantly from the Cold War era, to the point where the two have now signed the world's largest trade agreement with each other. By analysing certain provisions of the Economic Partnership Agreement in this study we see the significant developments and changes that the Agreement brings to the EU-Japan relationship, and the specific opportunities that it affords to the signatory parties. The

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*power to legally direct the actions of the enterprise or otherwise exercises an equivalent degree of control in accordance with its laws and regulations."*

<sup>45</sup> Article 13.4(1).

<sup>46</sup> Article 13.4(2).

<sup>47</sup> Article 13.5(1).

<sup>48</sup> Article 10.5(1). However, according to the same article there is an exception to this, which is that this does not apply with regards to procurement when it is within the scope of the Act on Promotion of Private Finance Initiative of Japan (Law no. 117 of 1999).

<sup>49</sup> Article 10.5(2).

<sup>50</sup> EU-Japan Centre for Industrial Cooperation: Government Procurement and the EU-Japan EPA, <https://www.eu-japan.eu/government-procurement-and-eu-japan-epa> (last access 2019.07.11).

<sup>51</sup> *Ibidem*.

<sup>52</sup> *Ibidem*.

<sup>53</sup> *Ibidem*.

Agreement strongly signifies the European Union and Japan's commitment to free trade and liberalization at a time where such arrangements have been questioned within certain sections of the international

community, and thus, in a sense, the EPA also acts a significant statement as to the principles that both the European Union and Japan wish to uphold in the international arena.

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