



## Report of the 17<sup>th</sup> EU-Japan FTA/EPA negotiating round

### Brussels, 26-30 September 2016

The **17<sup>th</sup> round of the EU-Japan FTA/EPA negotiations took place in the week of 26 September in Brussels**. Some working groups also had additional meetings in the week before and in the week after the round.

The talks were led on the EU side by Deputy Director General Mauro Petriccione, DG Trade. The Japanese delegation was led Ambassador Koji Haneda.

The negotiations were divided, as during the previous rounds, between the various **Working Groups** which covered the following areas: 1) Trade in goods (including Market Access, General Rules and Trade Remedies); 2) Non-Tariff Measures and Technical Barriers to Trade; 3) Rules of Origin; 4) Customs and Trade Facilitation; 5) Sanitary and Phytosanitary Measures; 6) Trade in Services; 7) Investment; 8) Procurement; 9) Intellectual Property (including Geographical Indications); 10) Competition Policy; 11) Other issues (General and Regulatory Cooperation, Business Environment, Animal Welfare); 12) Trade and Sustainable Development; 13) Dispute Settlement;

You will find below the summary of the subject matters that were discussed during the 17<sup>th</sup> negotiating round:

#### 1. Trade in Goods

##### 1.1. Market Access

On market access, the parties discussed forestry and fisheries products; agricultural and processed agricultural products; industrial products, including car parts and leather products. The parties continued the clarification of their respective priorities and sensitivities.

##### 1.2. General rules

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On rules for trade in goods, the parties cleared up a number of remaining issues, and advanced on the text with a view to conclusion by the end of the year.

### **1.3. Trade Remedies**

During the 17th round, some progress was achieved in the Section of the text concerning "Anti-dumping and countervailing duties". In particular, Japan and the EU came to an agreement concerning the article on "General Provisions". Some progress was achieved in the Section on "transparency and disclosure of essential facts". The two sides decided to exchange texts by email between negotiation sessions, as the remaining issues are rather limited and should be solved soon.

As for the Section of the text concerning "bilateral safeguard measures", the two sides agreed to postpone the discussion on this Section until substantial progress in the negotiation on the "trade in goods" Chapter is achieved. As to the next steps, parties agreed to exchange text proposals by email and to convene a Videoconference when sufficient progress is achieved.

## **2. Non-Tariff Measures and Technical Barriers to Trade**

On the **TBT Chapter**, the Parties continued their intense and constructive work during two full days. This work allowed to make progress on all aspects of the Chapter. Most of the text is now agreed. The TBT Chapter will contain WTO-inspired disciplines on technical regulations, international standards, standards, conformity assessment procedures, marking and labelling. The substantive provisions will be accompanied and supported by disciplines on transparency, market surveillance, joint cooperation. The overall text will also include institutional aspects as well as objectives and clarifications on scope and incorporation of the WTO TBT Agreement. There are a few outstanding provisions that are under scrutiny by the Parties, but otherwise the work on the TBT Chapter can be considered as finished. On **NTM issues** a lot of time in four separate sessions was dedicated to exchanging updates on progress on both the NTM issues presented by the EU and the NTM issues presented by Japan. In a number of areas, further progress is prevented by the lack of applications by either industry or the Parties, which is in turn caused by the fact that the legally required information is not available or properly presented. However, on many other issues progress and goodwill to address remaining issues is visible on both sides. A few specific NTM issues of higher complexity and difficulty were discussed with special attention trying to identify appropriate solutions. SPS-related issues on both sides received particular attention. Special efforts were dedicated to food additives.

Discussions continued on the EU proposal for a car annex. They covered numerous difficult areas, including disciplines on domestic regulations beyond the scope of UNECE Regulations, parallelism between tariff and non-tariff negotiations and also dispute settlement. Most time was dedicated to developing text on disciplines on domestic regulations beyond UNECE Regulations. On a conceptual level, convergence of views was achieved on many aspects. The

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translation of the common views into textual proposals will need to be pursued in follow-up sessions. The provisions relating to implementation will require specific discussions.

### **3. Rules of Origin**

In Section A, parties reached provisional agreement and/or made progress on definitions, including ex-works and fob prices, originating requirements including the concept of territoriality, wholly obtained products, cumulation, de minimis/tolerance. Both sides further discussed the clauses in relation to territories with special treatment. The EU and Japan also made progress on horizontal definitions. Some brackets were removed, subject to further internal consultation, from the provision on wholly obtained products. The provision on bilateral cumulation was also discussed. Regarding Section B (proofs and verification), the provision related to 'origin certification' is still outstanding. Both sides agreed that a legal review of this text is also needed. Regarding the PSR both sides discussed some Chapters. EU provided additional explanation and examples for specific processes applied to chemicals. EU and Japan agree to negotiate on the basis of the build-down method, without prejudice to their initial position on other methods.

### **4. Customs and Trade Facilitation**

The Parties advanced in consolidating views on the scope of the CTF chapter to provide extended trade facilitation on import and export and made progress towards settling the few remaining issues.

### **5. Sanitary and Phytosanitary Measures**

The 17<sup>th</sup> round run with a slow but steady pace and substantial progress could be recorded in most of the articles examined. The articles on definition, audit, emergency measures and equivalence are now fully understood in concept and agreed in wording. Both sides showed to be more committed to find solutions and moved forwards with the remaining topics. It also seems likely that practical solutions could be envisaged for the points where some gap still exists and further discussions are necessary.

### **6. Services**

During the Services negotiations, dedicated sessions were held on mode 4, transport, telecommunication, financial services, cross-border trade in services, domestic regulation and mutual recognition. Overall, parties could make very good progress on the text during this round. Several chapters of the Services text are now close to conclusion.

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Very good progress could be achieved on mode 4. The technical work on the text is now virtually finished. The only outstanding issues concern procedural aspects. Beyond the text, the question of market access also remains open.

During the transport session some smaller provisions on maritime transport could be stabilised but both sides had discussions on the EU's requests regarding feeder services and the movement of empty containers. Some outstanding textual issues on air transport could be solved as well, inter alia building on the progress made in recent TiSA rounds.

There was also a very productive session on telecommunication services. Agreement was reached on the articles on Approaches to Regulation, Resale and the Resolution of telecommunications disputes, leaving the entire text of the chapter now close to stabilisation. The few remaining outstanding issues are mainly horizontal ones that require a decision beyond the services working group or issues for which both parties agreed to await the final outcome of the parallel discussions in TiSA.

In the financial services session, a good discussion took place on regulatory cooperation resulting in further text consolidation. The text of the financial services is almost entirely stabilised except for some articles on insurance services.

The text of the chapters on cross-border trade in services, domestic regulation and mutual recognition were further consolidated leaving only a very limited number of issues open. As last part of this round, a session on postal and courier services will be organised in the second week of October via videoconference.

No major breakthroughs on **e-commerce** could be achieved during this round. Parties could agree on the definition of electronic authentication and (almost) on the definition of electronic signature and the SPAM provision. Further discussions on electronic contracts, domestic regulation, source codes and localisation of computing facilities were as yet inconclusive. Parties agreed to continue the discussions intersessionally.

## **7. Investment (including Investment Dispute Resolution) and corporate governance**

On **investment**, significant progress was made in the areas of investment and corporate governance. The Parties have discussed in detail the issues which remained open on investment liberalization, investment protection, capital movements and payments, safeguard measures and the annex on public debt. The text was further consolidated and possible compromises were found on a number of key issues, which is likely to enable more progress at the technical level.

On **corporate governance** the Parties' position have significantly approached, with only a few remaining issues still requiring further discussion.

On **investment dispute resolution**, the EU and Japan also continued discussing in detail their respective proposals for investment dispute resolution. Topics discussed include the

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methods for appointing tribunal members and questions relating to the review and enforcement of awards. Both sides also worked towards consolidating texts in areas of broader conceptual convergence, such as on preliminary objections, consent, consultations, and the applicable procedural dispute settlement rules. Nevertheless, a substantial convergence of approaches remains to be achieved.

## **8. Government Procurement**

On procurement (overall), considerable progress was achieved in the drafting of the chapter, where text was agreed notably regarding remedies in the Government Procurement system.

On market access, a discussion took place to help each side better understand the scope of the respective other side's offer and request. In the railways sector, in particular, the question of the application or not of the Operational Safety Clause (OSC) to EU bidders and that of the possible withdrawal of the EU's GPA market access reservations vis-à-vis Japan was discussed, but without as yet finding a sufficient convergence of views.

## **9. Intellectual Property Rights (including Geographical Indications)**

On **Intellectual Property Rights (IPR)**, there has been a lot of progress towards reaching an agreement on the non-contentious provisions of the Chapter. The parties advanced in the consolidation of the text concerning general provisions and civil enforcement. A detailed technical discussion took place regarding design provisions. It focused on the possible ways to accommodate differences between the respective systems of the parties including on design protection for spare parts. The wording is almost stable regarding patent term extension (supplementary protection certificates) and regulatory data protection for pharmaceuticals and plant protection products. The parties also identified further common textual elements regarding IPR border measures.

Discussion remains difficult on patent and copyright provisions, where there are differences between the respective positions of the parties. Regarding some possible unfair competition provisions, the parties are exploring ways to address some of those aspects under design and trademark clauses. As one of the next steps, the EU is preparing a text proposal on undisclosed information - based on the recent EU directive on Trade secrets.

On **Geographical Indications (GIs)** during the 17th EU-Japan FTA negotiations Round, both sides extensively review the draft text regarding provisions applying to geographical indications, including its annexes. They also exchanged views on the work ahead to ensure a rapid conclusion of the Chapter, in particular in view to prepare for the publication of EU GIs in Japan.

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## **10. Competition**

As regards SOEs, the discussions continued in a constructive spirit and some progress was made during this round. Although the Parties succeeded in consolidating the text further, some differences of view still remain. These relate to some of the definitions of the covered entities and the scope of the rules.

For subsidies, the Parties consolidated the draft text further, and significant progress was made on several technical issues. Moreover, the two sides exchanged views on how subsidies transparency could be improved, but these discussions have yet to be concluded.

## **11. "Others"**

### **11.1 Business Environment, Regulatory Cooperation**

Japan and the EU side had a first detailed discussion on the entire text of the EU SME chapter proposal. A positive and constructive exchange took place between the parties as regards the possibility of including a SME chapter in the FTA. The parties shared their views on the objectives and commitments of information sharing and the tasks of the institutional set-up, which should ensure that SMEs will fully benefit from the agreement. Both sides will provide further clarifications on specific issues in a follow-up meeting.

### **11.2 Animal Welfare**

The Parties continued discussing on a possible compromise text on "Cooperation on animal welfare". The EU presented a compromise text which now needs to be reverted by Japan.

## **12. Trade and Sustainable Development**

On Trade and Sustainable Development (TSD), negotiations took place in a constructive mood. The Parties engaged in in-depth discussions on all the chapter's open issues, working on the basis of the draft joint text and of revised proposals tabled ahead of the round.

This allowed to make progress towards the finalisation of the chapter, notably with regard to the articles on the sustainable use of fisheries resources and sustainable aquaculture and on interaction with domestic civil society through Domestic Advisory Groups. The Parties also reached a common understanding on how to address provisions related to, respectively, transparency of domestic TSD measures and the functioning of the government-to-government body tasked with overseeing the implementation of the TSD chapter.

Concerning the other areas under discussion, the EU recalled the importance of provisions on ILO instruments, the establishment of a platform for joint civil society dialogue, and an

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effective dispute settlement mechanism. Open exchanges during the round allowed to better understand each other's priorities in these areas and to explore ways to address them. To build on these discussions, the Parties agreed to continue technical work on these issues intersessionally.

### **13. Dispute Settlement**

Both sides held constructive discussions on the remaining issues under the state-to-state dispute settlement chapter. They found a large agreement on the panel composition and the qualification of arbitrators while the modalities if the list of roster has not been established or is insufficient still require further discussions. Both sides further tentatively agreed on cross-retaliation rules.

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