



Report of the 15th EU-Japan FTA/EPA negotiating round Brussels, 29 February - 4 March 2016

The 15th round of the EU-Japan FTA/EPA negotiations took place in the week of 29 February in Brussels.

The talks were led on the EU side by Deputy Director General Mauro Petriccione, DG Trade. The Japanese delegation was led for the first time by a new chief negotiator, 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; 14) General, Institutional and Final Provisions and Transparency.

The 16th round of the EU-Japan FTA negotiations is scheduled to take place during the week of 11 April in Tokyo.

You will find below the summary of the subject matters that were discussed during the 15th negotiating round:

1. Trade in Goods

1.1. Market Access

Meetings took place on market access for trade in goods. The EU and Japan discussed how to move to the final phase of negotiations after the first exchange of offers and the recent signature of TPP by Japan. Specific discussions took place on trade in industrial goods, including car parts and electronic products requested by Japan, but also on leather goods, fishery and forestry products and agricultural products including processed agricultural products (food and drinks), without for the moment leading to a breakthrough.

1.2. General rules

On **general rules** for trade in goods progress was made on repaired goods and remanufacturing, as well as on national treatment. A standstill provision and rules for export and import restrictions were discussed but so far not agreed.

1.3. Trade Remedies

Both Parties have discussed Japan's last proposal for disclosure in anti-dumping and another proposal tabled by Japan for the bilateral safeguard clause. The Parties agreed to do some intersessional work in order to close the section on WTO Trade defence instruments rapidly.

2. Non-Tariff Measures and Technical Barriers to Trade

On **Non-Tariff Measures** (NTMs) good progress on general joint assessment work was possible. Next steps involve reflection on what to do with issues not fully solved at the time of the conclusion of the FTA. SPS-related NTM issues will be addressed via a DVC at a later date. On Shochu, positive discussion with Japan took place.

On **the Automotive Annex** both Parties achieved good progress on the issue of treatment of UNECE Regulations and discussed for the first time possible appendices on application of UNECE regulations. Difficulties continue on several issues including coverage, but which are still under further consideration.

On **Technical Barriers to Trade** (TBT) the discussions were constructive throughout. The chapter on marking and labelling was finalised. Regarding transparency, market surveillance and good regulatory practices, tentative solutions were developed and will need to be verified and confirmed in the next round. The more complex issues on international standardisation and conformity assessment were discussed in detail to prepare possible solutions in the future.

3. Rules of Origin

EU and Japan discussed Section A (horizontal rules): definitions (aquaculture) and provisions on absorption, tolerances, sets, unit of qualification and indirect materials.

On Section B (claim, verification and denial of preferential treatment), both sides continued fine-tuning the text. Japan repeated its request to include a possibility to support origin statements by exporters with origin certification issued by designated bodies (Chambers of Commerce). The EU and Japan tentatively explored alternative solutions including a declaration by Japan or an exchange of letters on this issue.

On Product Specific Rules (PSR) for industrial goods, both Parties further exchanged views on textiles (possible timing for exchange of the PSR offers) and for chemicals. Discussions

continued also on tobacco products and Processed Agriculture products (PAPs) and agricultural products beyond HS Chapters 1-24. EU also submitted its definition of sugars for the purposes of the PSR.

4. Customs and Trade Facilitation

The Parties discussed the EU proposals on Definitions, Customs cooperation and Temporary admission. Parties had an exchange of views on the functions of the Specialized Committee on Customs. Parties continued consolidating the text of articles on Customs Procedures and Appeal and Review. A compromise text on the relations with the business community was proposed and the content of the article was provisionally moved to Transparency article. Parties will consider moving the substance of the article on Fees and charges to the Transparency article. Scope and objectives, Advance rulings and Customs valuation were also discussed.

5. Sanitary and Phytosanitary Measures

A constructive discussion took place with the Japanese negotiators on the whole SPS chapter. Convergence has been achieved in many areas.

Efforts still need to be undertaken on the articles dealing with "Definitions", "Procedures for listing of establishments or facilities", "Adaptation to regional conditions", "Sub-committee on SPS measures" before the outcome of the negotiation could be evaluated.

In the plant health area, the Parties agree to deepen the discussions between relevant experts.

6. Services

The negotiation sessions covered the following topics: postal/courier services, mode 4, transport services, cross-border trade in services, financial services and domestic regulation. Telecommunication services and e-commerce will be discussed via videoconference after the round. The round brought mixed outcomes with regard to services: good progress on the text for mode 4, cross-border trade in services, financial services and domestic regulation and little progress on postal/courier services and transport services.

Discussions on postal and courier services mainly focused on the universal service obligation and border procedures (customs clearance and quarantine). Parties agreed to continue the discussions in the intersessional period via videoconference.

Significant text consolidation took place on mode 4 leaving a reduced number of issues still outstanding. Regarding transport services, the parties discussed various outstanding issues

with regard to air transport services and international maritime transport services and further clarified their respective positions and domestic systems.

During the session dedicated to cross-border trade in services parties discussed *inter alia* the scope of the chapter, the obligations and non-conforming measures. Parties also went through the entire financial services text and could find agreement on several provisions. Finally, in a productive session on domestic regulation the Parties went article-by-article through the entire text, building *inter alia* on the experience gained in the parallel discussions in the negotiations for the Trade in Services Agreement (TiSA).

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

On **investment**, the discussions with the new negotiating team entailed useful clarifications and some progress on a number of issues. We approached positions on market access, MFN and capital movements and we further consolidated the text of the annex on public debt.

During this round the EU has also explained EU's new approach on the right to regulate and made reference to the TTIP and CETA texts. At this stage Japan was not ready to take a formal position and the discussion was of a general nature, focused on explanations from our side.

On **investment dispute resolution**, Japan asked for clarifications on several aspects of the EU proposal for an Investment Court System (ICS) which had been transmitted to Japan beforehand of the 14th round. The discussions touched upon the selection and the qualifications of the tribunal members, rules for the prevention of conflicts of interests, the remuneration of tribunal members, the appeal system, enforcement of decisions, as well as on the provisions on security for costs. Both sides continued consolidating texts relating to the available dispute settlement rules and exchanged views on the relationship between the international investment dispute resolution mechanism and proceedings before domestic courts.

On **corporate governance** some progress was made in further consolidating the text. Japan has agreed to work on a revised version of their text proposal to take into account our suggestions and clarifications.

8. Government Procurement

On **procurement** (overall), the EU and Japan continued their discussions on Government Procurement Agreement (GPA) plus provisions. Both Parties confirmed their provisional agreement on green procurement and further explored possible convergences on domestic challenges. The EU insisted on possible remedies to regulatory barriers in the Japanese procurement markets, notably in order to facilitate the qualification of the EU suppliers under the so called business evaluation or to provide for mutual recognition of testing reports, at

least for sectors already covered by existing bilateral mutual recognition agreements. The EU also stressed again the need to base the handling of public-private partnerships on a common definition.

On market access, the EU and Japan continued to explore how to move negotiations ahead.

On **railway procurement**, the EU and Japan continued to discuss the joint assessment of the "One-year package". As far as the second phase of negotiations is concerned, Japan requested the EU to submit a formal reply to its final package proposal presented during the 14th round of negotiations with the EU emphasizing the need for more balance between the two packages. On regulatory cooperation, Japan confirmed its readiness to include the ongoing review of respective technical requirements and the exploration of possible mutual recognition of testing reports under the FTA umbrella. Both parties finally discussed working arrangements concerning the next railway industrial dialogue.

9. Intellectual Property Rights (including Geographical Indications)

On **Intellectual Property Rights (IPR)**, a constructive round on consolidation of the text but the progress is still slow and will likely continue that way. From the very beginning of negotiations the EU has offered a "limited" approach to the IPR Chapter, addressing only select number of issues of interest to either side. Japan has never seen the value of using such approach and instead proposed a fairly unambitious text bearing a close resemblance to its standard "comprehensive" IPR Chapter in other FTAs. Upon some reflection, the EU decided to agree to the comprehensive text approach and therefore proposed a complete IPR text, covering the same areas as in previous EU FTAs.

On **Geographical Indications (GIs)** both sides continued the discussion on the draft text without any progress on the substance. They also started exchanging views on the progress of the examination of their respective requests in view of the protection via the future agreement of GIs. Japan has notably presented the result of an informal screening of EU GIs against trademarks registered in Japan that could coincide with 12 EU GIs. Japan should complete the examination of EU GIs (for foodstuffs only) by presenting at the next round in April the result of an informal consultation with the view to identify potential conflicts between EU GIs and prior uses and generic terms in the Japanese market. The EU side invited Japan to carry out a similar exercise with respect to EU GIs for alcoholic beverages as soon as possible.

10. Competition

As regards SOEs, the EU and Japan had constructive discussions. Japan made a number of new proposals, mainly in line with the TPP text and bringing the respective positions closer in some areas. More specifically, Japan made a new proposal on the non-discrimination (NT) obligation and the link to the services schedules. Japan also proposed to define a "public service mandate". Open issues that still need more work on both sides concern the definition of SOEs (in particular the notions of "control" and indirect ownership/control), enterprises granted special rights or privileges, the proposed definition of public service mandate, and the new proposal for the NT obligation. Japan also proposed a general turnover threshold as in the TPP. Some other scope related carve outs need further discussion, including the request to carve out sub-central levels of government and existing monopolies, and certain financial services related provisions.

On subsidies, the negotiations continued on the basis of a consolidated text. Japan made new proposals regarding public services, transparency and consultations. The parties made some progress in the definition of subsidy and the consultation provisions. The issues that still need to be discussed are scope related (in particular relating to the sub-central levels of government), services related provisions and dispute settlement.

11. Other

11.1 Business Environment, General and Regulatory Cooperation

In the working group on **Business Environment** Japan came back to the EU proposed wording on cross border transfers of information ("Both parties identify the issue of cross border flows of information as an area of common interest and recognise the importance of further cooperation and dialogue with a view to facilitating cross-border transfers of information, including personal information"). Japan explained that they would like this provision to be made more precise and operational and they therefore proposed to add that "the EU and Japan shall endeavour to solve any related problems through appropriate dialogue and communication between the competent authorities of the Parties aiming for compatibility and interoperability of relevant systems of both sides". The EU expressed its preliminary concerns with this Japanese proposal and recalled that data protection standards or substance could not be negotiated via an FTA. The EU would be very concerned with wording like problems and interoperability. The EU reiterated that while colleagues from DG JUST are open to dialogue, we could not in the FTA go beyond the wording we have previously offered. Japan asked the EU to provide feedback from further internal consultations with MS, which would in turn allow JPN to revert to its constituents.

On **regulatory cooperation**, the EU side informed the Japanese side that the EU is preparing a revised draft and expects to submit it at the next round.

11.2 Animal Welfare

The 15th round gave an opportunity for a wrap up session on **animal welfare** with new lead negotiators on both sides. The issue was not discussed since December 2014 and the session gave a good opportunity to re-establish contacts and to recall respective positions. Animal welfare is a very sensitive issue in Japan, but the EU recalled the content of the scoping paper, which foresees inclusion of the cooperation activities on animal welfare.

12. Trade and Sustainable Development

The 15th round of talks on the Trade and Sustainable Development (TSD) Chapter of the EU-Japan FTA took place in Brussels on 4 March 2016. Discussions proceeded in a constructive atmosphere, leading to further progress: article 1 on context and objectives was closed; all paragraphs of article 3 on labour were closed except the highly sensitive reference to fundamental ILO conventions; some further progress was made on article 4 on multilateral environmental agreements (MEAs); and most of article 14 on domestic advisory groups was agreed. Useful discussions also took place on article 6 on biodiversity, article 7 on timber, article 8 on fisheries, article 12 on cooperation and article 15 on the joint civil society dialogue, which could lay the ground for concrete progress in the next round.

Articles 16 and 17 on TSD-specific dispute settlement mechanisms remained the main difficulty. The Panel of Experts mechanism was again discussed at length. The EU urged Japan to come up with counter-proposals as the only way to more identify and address Japan's concerns. The EU also offered to hold an inter-sessional videoconference with experts to help set things in motion. Japan said it would work on proposals in view the 16th round.

13. General Dispute Settlement

The EU and Japan concluded their negotiations on the Code of Conduct for panellists, after Japan eventually had agreed to the EU's request to apply the Code of Conduct also to candidates who are included in the list of panellists but who are not yet appointed as panellists.

Furthermore, both sides began detailed discussions on the Rules of Procedure for the dispute settlement panel. Substantial progress was made on definitions and on the logistical administration of the panel proceedings. Both sides succeeded to tentatively agree on the level of remuneration for panellists in accordance with WTO standards as well as for panellists' assistants. Following difficult discussions, the terms of reference for the panel were also agreed. Moreover, both sides addressed in detail the transmission of documents from the parties to the panel and vice versa as well as the mode of communication. Several provisions on procedural aspects such as distinction between representatives of a Party and its advisers, division of expenses and commencement of the dispute settlement proceedings need to be further reflected. The negotiations on the Rules of Procedure will continue at the next round.

14. Transparency, General, Institutional and Final Provisions

The Parties advanced further on the consolidation of the **Transparency** text. Only two Articles remain open and the text can be hopefully finalised soon. The discussion focused on how to advance progress on the consolidated text of the article on Administration of Measures of General Application. On the article on enquiries and contact points, Japan insisted on maintaining non-committal language.

The two sides advanced further on the **General, Institutional and Final provisions** text. Good progress was reached on the recitals with all but one agreed. Article on “Objectives” has been finalised. Additionally, the EU’s approach in relation to the definitions was accepted. The Parties continued the discussion on taxation and finalised the article on the Joint Committee. The scope of the General and Security exceptions were discussed. Additionally, a joint session with the competition experts took place during which the article on Persons Exercising Delegated Government Authority and EU questions on the various level of government in Japan were discussed.