

## Japan and UK sign Comprehensive Economic Partnership Agreement

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### Executive summary

On 23 October 2020, Japan and the United Kingdom (UK) signed the Comprehensive Economic Partnership Agreement (CEPA) after having concluded negotiations on 11 September 2020. In her remarks following the signing of the CEPA, the UK Secretary of State for International Trade, Liz Truss MP, specifically commented on the historic nature of the CEPA as one of the first free trade agreements that the UK has signed that goes beyond the European Union (EU) agreement that it replaces.

Prior to leaving the EU's Single Market and Customs Union, the UK has benefitted from the EU's extensive network of existing trading arrangements with third countries. In many cases, the UK sought to simply "roll over" third country deals. However, and despite the EU-Japan Economic Partnership Agreement (EPA) being one of the most recent (and most comprehensive) agreements the EU has signed to date, both the UK and Japan agreed that there were areas where both could go further to reflect the bilateral trading relationship between the two nations.

The Japan-UK CEPA is also considered to be an important stepping-stone to the UK's stated aim of joining the Comprehensive and Progressive Trans-Pacific Partnership, of which Japan is a member alongside 10 other Pacific-rim nations.

## Detailed discussion

### General overview

Many of the changes in the Japan-UK CEPA reflect the UK's changed circumstances, so they are technical in nature rather than substantive. These include the removal and replacement of references to the EU and amendments to the territorial application of the agreement. However, there are a number of significant changes when comparing the two agreements spanning trade in goods, services (including financial services), intellectual property and digital trade. These improvements are summarized below.

### Trade in goods, customs and rules of origin

#### Tariffs

Under the new agreement, the time taken for the tariff reductions to enter into force will keep in lockstep with the EU-Japan EPA. For qualifying goods exported from Japan to the UK, certain additional tariffs have been eliminated in line with the UK's Global Tariff regime.

Two UK tariff lines covering electrical control units used in cars have been eliminated early, on entry into force (instead of 2024). On the Japanese side, nine tariff lines covering leathers and hides will become duty-free two years earlier in 2026 (rather than 2028) as well as one tariff line covering industrial ethanol which is eliminated on entry into force (instead of 2028).

#### Tariff-rate quotas

The EU-Japan EPA contains 25 Japanese agri-food tariff-rate quotas (TRQs). The Japan-UK CEPA contains 10, in which Japanese importers can retrospectively claim tariff relief for food importers from the UK, so long as EU imports have not maxed out their respective quotas.

TRQs include:

- ▶ Wheat products
- ▶ Doughs and cake mixes
- ▶ Food preparations (including those containing wheat, barley, cocoa, tea and coffee)
- ▶ Milk powder
- ▶ Certain cheeses

### Rules of origin

The rules of origin chapter allows EU inputs to UK and Japanese goods to count as "local" to either UK or Japan for the purpose of qualifying for tariff-free trade. This is a significant outcome for businesses whose supply chains cross the EU, Japan and the UK. Japan has also offered to lower the paperwork requirements for accessing preferential rates in comparison with the EU-Japan agreement. Under the CEPA, the importing party will be allowed to set the validity of the statement of origin for longer than the 12 months set out in the EU-Japan agreement. The new measures will see that a request for information when conducting a verification may be made either by the end of two years after importation or by the end of 38 months after the statement of origin is made out, whichever is earlier.

Under product-specific rules, UK bread and biscuits (as well as certain textiles) will also find it easier to qualify for tariff-free trade as the Japan-UK provisions mean fewer restrictions on where they can source biscuit ingredients from, compared to the EU-Japan agreement.

### Agricultural safeguards

Japan operates a system of agricultural safeguards that are designed to guard against volatility in certain agricultural sectors in order to protect its domestic market. When applying agricultural safeguard measures, the CEPA agrees that Japan may aggregate imports of relevant products (beef, pork, processed pork, whey and oranges) from the UK together with imports from the EU for purposes of the triggering and application of safeguard measures. This will allow for greater certainty rather than new regime and levels for UK-only agrifood products.

### Conformity assessments

Japan and the UK have replicated the EU-Japan Agreement on Mutual Recognition and incorporated it as a Protocol to the Japan-UK CEPA. The Protocol on Mutual Recognition covers electrical products, good laboratory practices for chemicals, good manufacturing practices for medicinal products (human), telecommunications and radio equipment.

### Trade remedies

With regards to trade remedies, the Japan-UK CEPA has taken primarily a continuity approach except for the inclusion of a discretionary "lesser duty rule" to reflect new UK trade remedies legislation.

## Services, investment and digital trade

### Business mobility

The agreement "secures more flexibility" for Japanese and British companies to move talent into each country, covering a range of UK-skilled workers to enter Japan, from computer services to construction. This includes commitments that requirements for visas will be "clear, transparent, and with an aim that they be processed in 90 days." Japan has expanded the scope of the ICT category and the investor definitions have been amended to focus on investment as an activity rather than the amount of capital invested. Intra-company transferee rules are already in place for transfers into the UK from Japan, and these will be enhanced in January as part of the UK's 2021 immigration system delivery. The UK's Youth Mobility Scheme also already extends to Japan.

### Domestic regulation

A Domestic Regulation chapter in the trade agreement sets out principles and disciplines that both Parties agree to abide by in order to ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not constitute unnecessary barriers to trade in services. Japan and the UK have sought to incorporate cutting-edge provisions from the ongoing World Trade Organization negotiations into the Japan-UK agreement. The additional commitments by Japan and the UK should seek to provide more transparency and certainty when looking to undertake the necessary regulatory procedures in order to access either the Japanese or UK market.

### Financial services

The principle difference between the EU-Japan EPA and the Japan-UK CEPA for financial services is that it makes the process of applying for a license to operate more transparent to ensure they are processed in a "reasonable period of time" and so that the applicant for authorization may provide additional information to complete an ongoing application. The provisions on supporting the supply of new financial services were also broadened to capture all modes of supply.

Additional safeguards were also agreed on the ability to use, store and process financial data on a cross-border basis. Any requirement on data localization is expressly prohibited.

The Japan-UK agreement has also looked to strengthen the annex on regulatory cooperation, including creating a forum for ongoing regulatory cooperation between HM Treasury, the Bank of England, the Financial Conduct Authority and the Financial Services Agency of Japan.

### Digital trade

The Japan-UK CEPA goes considerably further than the EU-Japan agreement in the area of Digital Trade. Many of the provisions in the CEPA are linked to those in the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) of which Japan is a signatory and the UK is seeking accession. The areas of additional commitments include:

- ▶ Binding provisions on ensuring cross-border data flows
- ▶ A prohibition on data localization
- ▶ Commitment to adopt and maintain a legal framework that provides for the protection of personal information. This also includes the transition of the adequacy decisions the European Commission had granted to Japan and vice versa
- ▶ New commitments forbidding the forced transfer of proprietary information on "Information and Communication Technology Products that Use Cryptography"
- ▶ Incorporation of enhanced provisions relating to the e-commerce customs duty moratorium, online consumer protection, e-signatures, source code as well as establishing mechanisms for future cooperation

### Audio-visual services

Unlike the EU which has historically refused to include discussions on audio-visual services on cultural grounds, Japan and the UK have agreed to initiate cooperation on audio-visual services under the agreement. This will mark a shift for the UK's creative sector which has typically had less of a stake in trade policy discussions.

### Investment

Like its predecessor, the Japan-UK CEPA does not contain any investor-state dispute settlement provisions. However, both Parties have inserted a review clause regarding the Multilateral Investment Court which would trigger a review process under the Japan-UK agreement to gauge the impact on the provisions of the agreement.

## Intellectual property

With regards to the Japan-UK CEPA, a number of new provisions with regards to intellectual property (IP) rights have been agreed including on the topics of:

- ▶ On industrial designs, the Japan-UK CEPA provides an uplift in the guaranteed term of protection from 20 to 25 years.
- ▶ Technological protection measures. This is aimed at providing a legal remedy against the circumvention of technological measures.
- ▶ Rights management information which requires both Parties to provide adequate and effective legal remedies against any person knowingly performing certain acts that will induce, enable, facilitate or conceal an infringement of copyrights and related rights.
- ▶ Registration and renewal processes for trademarks, encouraging both Parties to maintain a streamlined trademark registration system.
- ▶ The use of “Well-known trademarks” which reflects UK legislation and practice.
- ▶ Bad faith trademarks. The Japan-UK CEPA commits both Parties and their competent authorities to refuse an application or cancel a registration where the application to register the trademark was made in bad faith.
- ▶ Multiple design applications, requiring a system in each Party whereby multiple designs can be registered through the filing of one application for the registration of industrial designs.
- ▶ Access to justice.
- ▶ Enforcement in the digital environment and public awareness.
- ▶ Criminal remedies for certain IP rights infringement.

## Geographical indications (GIs)

The relevant protected names recognized under the Japan-UK CEPA and the EU-Japan EPA are identical, except for the inclusion of Irish Cream and Irish Whisky which are joint Northern Ireland/Irish geographical indications. The GI chapter in the CEPA also includes an enhanced review mechanism to add new GIs in the future.

## Sustainability, SMEs and gender empowerment

### Sustainable Development

Both Japan and the UK under the new agreement have committed to enhancing the use of Sustainability Impact Assessments. However, certain changes have not been welcomed by civil society organizations including the removal of the Sustainable Development chapter from the scope of the dispute provisions of the CEPA as well as changing the meeting of the Joint Dialogue with Civil Society to every two years instead of the one year provided under the EU-Japan EPA.

### Gender empowerment

The Japan-UK CEPA includes a new chapter on Women and Gender Empowerment. The aim of these provisions is to enhance cooperation and cooperation activities in this area. A new working group on Trade and Women's Economic Empowerment is to be established to oversee the new chapter.

### Small- and Medium-sized Enterprises (SMEs)

Japan and the UK have agreed additional provisions to undertake and strengthen cooperation to support SME trade and investment between Japan and the UK. The role of the private sector has been highlighted as important in this regard. It includes a number of examples of cooperation activities that may take place, such as developing and promoting seminars for SMEs or exchanging best practices in supporting exporting SMEs.

## Implications for business

Businesses will need to be aware of any substantive changes to the Japan-UK CEPA, as compared with the EU-Japan EPA, if they wish to continue to employ the preferential trading terms granted under the new agreement. Businesses should also be aware where additional market access has been granted under the CEPA compared to the EU-Japan EPA to maximize their utilization of the CEPA going forward.

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