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Japan-EU Economic Partnership Agreement

Consolidated Text

(Status 5 July 2017)

Text within brackets is subject to further agreement by the Parties.

Title [X] - TRADE IN SERVICES, INVESTMENT AND E-COMMERCE

CHAPTER I

GENERAL PROVISIONS

Article 1

Objectives, coverage and definitions

1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive and reciprocal liberalisation of trade in services and investment and for cooperation on e-commerce.
2. For the purpose of this Title, the Parties reaffirm their right to adopt within their territories regulatory measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.
3. This [Title] shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.

4. This [Title] shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this [Title]. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under the terms of this [Title].

5. For the purpose of this [Title]:

(a) “aircraft repair and maintenance services during which an aircraft is withdrawn from service” mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from services and does not include so-called line maintenance;

(b) “airport operation services” means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

(c) “computer reservation system (CRS) services” mean services provided by computerized systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued

(d) “Covered investment” means an investment in the [EU: territory, JP:...] of a Party owned or controlled, directly or indirectly, by an investor of the other Party, made before or after the date of entry into force of this agreement in accordance with the applicable law .

(e) “cross-border trade in services” means the supply of a service:

(i) from the [EU: territory, JP:...] of a Party into the [EU: territory, JP:...] of the other Party;

(ii) in the [EU: territory, JP:...] of a Party to the service consumer of the other Party;

(f) “direct taxes” comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(g) "economic activity" means any service or activity of an industrial, commercial or professional character or activities of craftsmen, except for services or activities performed in the exercise of

governmental authority;

- (h) an "enterprise" means a juridical person or branch or representative office;
- (i) "establishment" means the setting up or the acquisition¹ of a juridical person or the creation of a branch or representative office in Japan or in the EU respectively².
- (j) "existing" means in effect on the date of entry into force of this Agreement;
- (k) "freely convertible currency" means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions³
- (l) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;
- (m) "investment" means every kind of asset that has the characteristics of an investment, including such characteristics as a certain duration, the commitment of capital or other resources, the assumption of risk, or the expectation of gain or profit. Forms that an investment may take include:

- (i) an enterprise;

¹ The term "acquisition" shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

² Expansion is understood by the Parties as being covered through the definition of establishment in the form of establishment by an enterprise that is a covered investment.

³ Currencies that are widely traded in international foreign exchange markets and widely used in international transactions include freely usable currencies as designated by the International Monetary Fund in accordance with the Articles of Agreement of the International Monetary Fund.

- (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
- (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
- (iv) futures, options and other derivatives;
- (v) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (vi) claims to money and to any performance under contract having a financial value;
- (vii) intellectual property and goodwill;
- (viii) licenses, authorisations, permits, concessions and similar rights conferred pursuant to applicable domestic law; and
- (ix) any other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges as well as returns⁴ that are invested;

For greater certainty, an order or judgement entered in a judicial or administrative action does not constitute an investment.

(n) "investor of a Party" means:

- (i) a natural person of a Party; or
- (ii) a juridical person of a Party

that seeks to make, is making or has made an investment in the [EU: territory, JP:...] of the other Party;

(o) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(o1) a juridical person is:

- (i) "owned" by natural or juridical persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by natural or juridical persons of that Party;

⁴ Such returns may include any amounts yielded by or derived from an investment or reinvestment, in particular, profits, interest, capital gains, dividends, royalties or fees, and payments in kind. A change in the form in which assets are invested or reinvested does not in itself affect their character as investment.

- (ii) "controlled" by natural or juridical persons of a Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (p) a "juridical person of the EU" or a "juridical person of Japan" means a juridical person constituted or organised under the laws of a Member State of the EU or of Japan and engaged in substantive business operations⁵ in the [EU: territory, JP:...] of the EU or of Japan, respectively;
- (p1) Notwithstanding the preceding paragraph, shipping companies established outside the EU or Japan and controlled by nationals of a Member State of the EU or of Japan, respectively, shall also be beneficiaries of the provisions of this Title, with the exception of [Section X] [Investment Protection] and of [Section X] [investor-to-state dispute settlement], if their vessels are registered in accordance with their respective legislation, in that Member State or in Japan and fly the flag of a Member State or of Japan;
- (q) a "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form⁶;
- (r) "measures adopted or maintained by a Party" means measures taken by:
- (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (s) a "natural person of the EU" means a national of one of the Member States of the EU in accordance with its applicable laws and regulations and a "natural person of Japan" means a national of Japan in accordance with its applicable laws and regulations⁷;
- (t) "operation" means conduct, management, maintenance, use, enjoyment and sale or other form of disposal of the investment.

⁵ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

⁶ For greater certainty, the term "measure" includes failure to act.

⁷ The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen passport.

(u) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

(v) "services" means any service in any sector except services supplied in the exercise of governmental authority;

(w) "services supplied or activities performed in the exercise of governmental authority" means services or activities which are supplied or performed neither on a commercial basis nor in competition with one or more economic operators;

(x) a "service supplier" of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service;

Article 2

Specialized Committee on Trade in Services, Investment and E-commerce

1. For the purposes of the effective implementation and operation of this [Title], the Parties hereby establish a Specialized Committee on Trade in Services, Investment and E-commerce (hereinafter referred to in this Article as "the Specialized-Committee").

2. The functions of the Specialized Committee shall be:

(a) reviewing and monitoring the implementation and operation of this [Title] and the non-conforming measures set out in each Party's Schedules in Annexes [X] (Existing Measures) and [Y] (Future Measures);

(b) exchanging information on any matters related to this [Title];

(c) examining possible improvements of this [Title];

(d) discussing any issue related to this [Title] as may be agreed upon;

(e) reporting the findings of the Specialized Committee to the Joint Committee; and

(f) carrying out other functions as may be delegated by the Joint Committee.

[JP: (g)...]

[JP: 3. ...]

4. The Specialized Committee shall be composed of representatives of the Parties including officials of relevant Ministries or Agencies in charge of the issues to be addressed. The Specialized Committee may invite representatives of relevant entities other than [the Governments of the Parties] with the necessary expertise relevant to the issues to be addressed.

Article 3

Review

1. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures set out in its Schedules in Annexes [X] and [Y] respectively.

2. With a view to introducing possible improvements to the provisions of this [Title], and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services, investment and e-commerce, and the investment environment, including the present Agreement, in accordance with the procedure set out in Article 2 (Specialized Committee on Trade in Services, Investment and E-commerce).
