

Disclaimer: the negotiations between EU and Japan on Economic Partnership Agreement are not concluded yet, therefore the published texts should be considered provisional and not final. In particular, the provisions which appear in brackets are still under negotiations. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations. The texts are published for information purposes only and are without prejudice to the final outcome of the agreement between the EU and Japan. Any such texts become binding upon the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement, and after the final texts are submitted and approved by the legislators.

CHAPTER [X]

INVESTMENT

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

SECTION X

SCOPE

Article [X1]

Scope

1. This Chapter shall apply to measures adopted or maintained by a Party with regard to the establishment or operation of economic activities by:

(a) investors of the other Party; and

(b) covered investments; and

(c) for the purposes of Article [x6] (Prohibition of performance requirements), any investment in the [EU: territory, JP:...] of the Party adopting or maintaining the measure.

2. The Section [X] (Liberalization of Investments) does not apply to measures relating to:

(a) cabotage in maritime transport services¹

(b) air services or related services in support of air services² other than the following:

(i) Aircraft repair and maintenance services during which an aircraft is withdrawn from service;

¹ For the EU, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national cabotage in maritime transport services under this chapter covers transportation of passengers or goods between a port or point located in a Member State of the EU and another port or point located in that same Member State of the EU, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in a Member State of the EU.

² For greater certainty, this Chapter shall not apply to any service using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

(ii) The selling and marketing of air transport services;

(iii) Computer reservation system (CRS) services;

(iv) Ground handling services;

(v) Airport operation services.

2. The section on Liberalisation of Investments shall not apply to audio-visual services.

[3. JP....]

**SECTION X
LIBERALISATION OF INVESTMENTS**

**Article [X2]
Market Access**

1. Neither party shall maintain or adopt with regard to market access through establishment or operation by an investor of a Party or by an enterprise constituting a covered investment, either on the basis of its entire [EU: territory, JP:...] or on the basis of a territorial subdivision, measures that:

a) impose limitations on:

i) the number of enterprises, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;¹

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;²

(iii) the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;³

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;

(v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.

b) restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity.

^{1, 2, 3} [Footnotes to paragraphs 1 (a) (i), (ii), (iii): Subparagraphs 1 a (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural good.]

**Article [x3]
National Treatment**

1. Each Party shall accord to investors of the other [Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to its own investors and their investments with respect to establishment in its [EU: territory, JP:...].

2. Each Party shall accord to investors of the other [Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to its own investors and their investments with respect to operation in its [EU: territory, JP:...].

3. For greater certainty, the provisions of paragraphs 1 and 2 shall not be construed as to prevent a Party from prescribing statistical formalities or information requirements, in connection with the covered investments in its [EU: territory, JP:...], provided that those formalities or requirements do not constitute a means to circumvent the obligations of that Party pursuant to this Article.

Article [x4]

Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of [the other Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to investors of a non-Party and to their investments with respect to establishment in its [EU: territory, JP:...].

2. Each Party shall accord to investors of [the other Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to investors of a non-Party and to their investments with respect to operation, in its [EU: territory, JP:...].

3. The provisions of paragraph 1 and 2 shall not be construed to oblige a Party to extend to investors and investments of the other Party the benefit of any treatment resulting from:

(a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation.

(b) existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of the General Agreement on Trade in Services or its Annex on Financial Services.

4. For greater certainty, the “treatment” referred to in Paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international agreements.

5. Substantive provisions in other international agreements concluded by a Party with a non-Party³ do not in themselves constitute “treatment” under this Article. For greater certainty, actions or inactions of a Party in relation to such provisions can constitute treatment⁴ and thus give rise to establishing a breach of this Article, only if the breach:

(i) is established based on this Article and not based on the said provisions, and

(ii) in the case of a covered investment, causes loss or damage to it, which is not established based on differences in the amount of compensation that could be obtained by using the said provisions in a dispute settlement case.

Article [x5]

³ For greater certainty, the mere transposition of such provisions into domestic legislation does not change their qualification as international law provisions and consequently their coverage under this paragraph.

⁴ For greater certainty, the investors of the other Party or their covered investments would be entitled to receive such treatment even in the absence of an investment by an investor of the non-Party at the time when the comparison is made.

Senior management and board of directors

Neither Party shall require an enterprise of a Party that is a covered investment to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality.

Article [x6]

Prohibition of Performance Requirements

1. Neither Party shall impose or enforce any of the following requirements or enforce any commitment or undertaking in connection with the establishment or operation of any investments in its [EU: territory, JP:...]⁵:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services supplied in its [EU: territory, JP:...], or to purchase goods or services from natural or juridical persons or any other entity in its [EU: territory, JP:...];
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its [EU: territory, JP:...] that such investments produce or supply by relating such sales in any way to the volume or value of its exports or foreign exchange inflows;
- (f) to restrict the exportation or sale for export;
- (h) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its [EU: territory, JP:...];
- (i) to locate the headquarters of that investor for a specific region or the world market in its Area;
- (j) to hire a given number or percentage of its nationals;
- (k) to achieve a given level or value of research and development in its Area; or
- (l) to supply one or more of the goods produced or services provided by the investment to a specific region or to the world market, exclusively from its own [EU: territory, JP:...].
- (m) to adopt

⁵ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “requirement” or a “commitment or undertaking” for the purpose of paragraph 1.

- (i) a rate or amount of royalty below a certain level ; or
- (ii) a given duration of the term of a license contract⁶,

with regard to any license contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future license contract freely entered into between the investor and a natural or juridical person or any other entity in its Area, provided that the requirement is imposed or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph (m) does not apply when the license contract is concluded between the investor and a Party;

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of any investments in its [EU: territory, JP:...], on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its [EU: territory, JP:...], or to purchase goods from natural or juridical persons or any other entity in its [EU: territory, JP:...];
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (d) to restrict sales of goods or services in its [EU: territory, JP:...] that such investments produce or supply by relating such sales in any way to the volume or value of its exports or foreign exchange inflows;
- (e) to restrict the exportation or sale for export;

3.(a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any investment in its [EU: territory, JP:...], on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its [EU: territory, JP:...].

(b) Subparagraphs 1(a), 1(b), 1(c) , 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

(c) Subparagraph 1(h) and (m) shall not apply when:

- (i) the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority in order to remedy a violation of competition laws and regulations; or

⁶ A "license contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

(ii) a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or measures requiring the disclosure of data/proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.

(d) Paragraph (m) shall not apply if the requirement is imposed or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright laws.

(e) Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. This article is without prejudice to the obligations of a Party under the WTO Agreement.

Article [x7]

Non-Conforming Measures and Exceptions

1. Articles [x2](MA), [x3](NT), [x4](MFN), [x5](SMBD) and [x6](PPR) do not apply to:

(a) any existing non-conforming measure that is maintained by [a Party] at a level of;

(i) with respect to the European Union [or an EU Member State]:

(A) the European Union, as set out in its Schedule in Annex [XI];

(B) the national government of an EU Member State, as set out in its Schedule in Annex [XI];

(C) a provincial, territorial or regional government of an EU Member State, as set out in its Schedule in Annex [XI]; or

(D) a local government, other than government referred to in (i)(C); and

(ii) with respect to Japan:

(A) the central government, as set out in its Schedule in Annex [XI];

(B) a prefecture, as set out in its Schedule in Annex [XI];

(C) a local government other than a prefecture;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification, with Articles [x2](MA), [x3](NT), [x4](MFN), [x5](SMBD) and [x6](PPR).

2. Articles [x2](MA), [x3](NT), [x4](MFN), [x5](SMBD) and [x6](PPR) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex [XII].

3. Neither Party shall, under any measure adopted after the date of entry into force of this

Agreement and covered by its Schedule in Annex [XII], require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

4. Articles [x3](NT), [x4](MFN) shall not apply to any measure that constitutes an exception to, or a derogation from, Articles 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.
5. Articles [x2](MA), [x3](NT), [x4](MFN), [x5](SMBD) and [x6](PPR) shall not apply to any measure that a Party adopts or maintains with respect to government procurement.
6. Articles [x2](MA), [x3](NT), [x4](MFN) and [x5](SMBD) do not apply to subsidies granted by the Parties.