



## AGREEMENT IN PRINCIPLE FOR THE JAPAN-UK TRADE DEAL: A FOCUS ON TECH AND THE DIGITAL ECONOMY

**The UK and Japan have reached agreement in principle on the UK-Japan Comprehensive Economic Partnership Agreement (UKJCEPA). The UKJCEPA is expected to be largely based on the existing Japan-EU EPA (JEEPA) but there will be some notable differences.**

The agreement (reached on 11 September 2020) has been hailed as "historic" by the UK government and represents the UK's first major post-Brexit trade deal. In Japan, the UKJCEPA has been welcomed as ensuring post-Brexit trade continuity with the UK. Japan and the UK have each enjoyed improved access to each other's markets since the JEEPA came into force in February 2019, but once the Brexit transition period ends on 31 December 2020 so too do the benefits enjoyed by both parties under the JEEPA.

While we must wait for the full text of the UKJCEPA (expected in October) to understand exactly what has been agreed, announcements by both governments offer some strong indications on what to expect.

### THE POLITICAL AND DIPLOMATIC SIGNIFICANCE

The symbolic importance of the agreement has been emphasised by both nations.

The UK government stated that both parties have a "*long-shared history as free trading nations and this deal marks an historic moment that will deepen the partnership between two democratic island nations*". The Japanese government also appreciates the importance of the UKJCEPA in improving ties between London and Tokyo, claiming that the deal "*will form an important foundation for the strengthening and deepening of amicable relations between the two countries*" and that the deal agreed in the wake of the coronavirus pandemic "*sends a strong message to the international community*".

### RETENTION OF JEEPA BENEFITS

Japanese government press releases have emphasised the importance of retention of JEEPA benefits to Japanese businesses. Indeed, both UK and Japanese businesses are expected to benefit from largely the same tariff elimination regime as under JEEPA for industrial goods. Importantly, however, tariffs for Japanese railway and autocar parts exports into the UK—significant export items for the Japanese economy—will be scrapped.

For agricultural and marine produce too, mutual market access has been maintained largely on the terms of the JEEPA. That said, both parties have highlighted the expansion

#### Key issues

- UKJCEPA is the UK's first major post-Brexit trade deal
- Provided that UKJCEPA is ratified before the end of 2020, disruption to UK and Japanese businesses operating in each other's markets should be minimised even once the Brexit transition period ends
- There are many similarities between UKJCEPA and JEEPA but both the UK and Japan have also highlighted the differences, such as provisions around e-commerce and technology
- The UKJCEPA has symbolic importance, particularly to the UK, but the substantive protections and benefits cannot be fully understood until release of the full text

of geographical indications, or "GI"s, from seven under JEEPA to potentially over 70 under the UKJCEPA. GIs are marks on products which verify their provenance, a particularly important marketing tool for goods whose geographical origin is an important selling point.

## BEYOND JEEPA INTO THE DIGITAL ECONOMY

Both sides have tried to draw attention to the tech aspects of the UKJCEPA. According to the UK government, the UKJCEPA includes "*cutting-edge digital & data provisions that go far beyond the EU-Japan deal*". In particular, provisions on efficient data transfer and protection, net neutrality and a ban on data localisation have been lauded by the UK.

**Data Transfer and Protection:** This was one of the UK's [stated negotiation objectives](#) in advance of the negotiations. While it remains to be seen exactly what has been agreed, commentary from the UK Government suggests that commitments on digital and data flows "*go far beyond*" those in the JEEPA, in which the EU and Japan commit to a soft obligation to reassess, within three years of ratification, "*the need for inclusion of provisions on the free flow of data*".

**Net neutrality:** The UK has stated that the UKJCEPA includes commitments to "*uphold the principles of net neutrality*." This is the principle that internet access may not be offered to end users in a discriminatory way, for example by offering different access speeds to different users. The JEEPA does not contain substantive provisions on net neutrality beyond stating that the parties recognise the "*importance of the principle of technological neutrality in electronic commerce*".

**Prohibition on data localisation requirements:** Data localisation requirements can mandate that data relating to users or subject matter within a given jurisdiction be stored in that jurisdiction. A prohibition on these requirements (which may be subject to certain exceptions in the text of the agreement) potentially saves businesses located in Japan or the UK from having to own, or outsource to, server racks in other countries. Japan has signed up to commitments limiting the imposition of data localisation requirements in other FTAs including the Comprehensive Agreement for Trans-Pacific Partnership ("CPTPP") and the Japan-Mongolia Free Trade Agreement.

## FULL TEXT EXPECTED IN OCTOBER

The full extent of the protections and benefits offered to Japanese and UK businesses and investors will not be apparent until the full text of the UKJCEPA is released. Other questions too remain to be answered, one of the most important of which is whether the investment provisions in the UKJCEPA will be enforceable through international arbitration under investor state dispute settlement (ISDS) provisions. ISDS provisions offer a critical route of recourse to investors who consider a state has breached its international investment law obligations. Almost all of Japan's investment treaties contain ISDS provisions—with the JEEPA being a notable exception—so it remains to be seen whether the UKJCEPA will contain ISDS provisions.

## FURTHER INFORMATION

Clifford Chance's international trade and investment arbitration experts assist governments and corporate clients to navigate the complexities of international trade and investment agreements and can provide guidance on investment treaty structuring. This note is an overview only and is not legal advice. For further information on the UKJCEPA, or if you would like to know more about the implications of free trade agreements and how to utilise investment treaties to protect your international investments more generally, please contact one of the individuals listed below.

Please also see our previous [briefing](#) on this treaty.

### Next Steps

- The full text of the UKJCEPA has yet to be released
- Both Japan and the UK must ratify the agreement: in Japan, the Diet must vote to approve the agreement in its autumn session in order that it can take effect from January 2021
- In the UK, whilst Parliament may object to ratification and stop the implementation of changes to UK tariffs, significant resistance is not expected, and ratification can be completed unilaterally by ministers in any event

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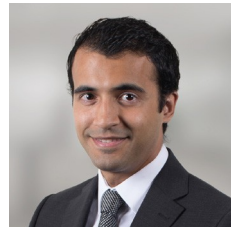
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