

UK and Japan sign Comprehensive Economic Partnership Agreement

On 23 October 2020 the United Kingdom (**UK**) and Japan signed a [Comprehensive Economic Partnership Agreement](#) (**CEPA**). The CEPA is intended to provide continuity for trade between the UK and Japan (individually a **Party**, together the **Parties**) and enhance the Parties' trading relationship in areas such as e-commerce, intellectual property, financial services, and digital trade. The preamble to the CEPA specifically highlights that in the context of globalisation, digital trade based on the principle of the free flow of data may present new challenges and opportunities.

The European Union's (**EU**) trade agreements, specifically the [EU-Japan Economic Partnership Agreement](#) (**EPA**), will cease to apply to the UK at the end of the transition period on 31 December 2020. This means that, unless a new agreement is in place, trade between the Parties would be conducted on World Trade Organization (**WTO**) terms from 1 January 2021. Consequently, the Parties' goods and services would face high tariffs, regulatory barriers, and market access restrictions. With the conclusion of the CEPA, the Parties aim to ensure that their bilateral trade continues on equivalent, if not, better terms than under the EPA. The CEPA is currently undergoing consideration by the UK Parliament and the Japanese Diet before it can be ratified. The CEPA is expected to enter into force on 1 January 2021, subject to the Parties' exchange of the requisite diplomatic letters.

Below we highlight the most important areas covered by the CEPA, and differing from the EPA. While most provisions in the CEPA replicate the provisions of the EPA, there are important differences in areas such as rules of origin, financial services, and digital and data matters.

1. BACKGROUND AND CONTEXT

The UK will formally re-engage with the world as an independent trading nation on 1 January 2021 after the transition period following its withdrawal from the EU expires. In this context, it has "rolled over" a number of the EU's trade agreements with third countries, thereby replicating the arrangements currently in place between the EU and the respective third country, to provide continuity. As of October 2020, 22 such continuity agreements are in place, 20 of which will enter into effect on 1 January 2021.

Japan did not agree to roll over the EPA. Instead, the UK and Japan agreed to negotiate a new agreement and began talks on 9 June 2020. An agreement in principle was reached on 11 September 2020 and the agreement itself was signed on 23 October 2020. The CEPA is now undergoing the national ratification processes. In Japan, the CEPA must be approved by the Diet, while the UK Government must lay the CEPA before the UK Parliament for 21 sitting days before the it may ratify it. Both sides expect the CEPA to be ready to enter into force on 1 January 2021.

2. TRADE IN GOODS

The CEPA seeks to reduce and/or eliminate tariff and non-tariff barriers to the trade in goods between the two Parties. To this end, the CEPA contains provisions on the (gradual) reduction of tariffs and the elimination of regulatory, technical, and other barriers to trade.

2.1 The reduction and elimination of tariffs

The CEPA will eliminate or reduce customs duties on most originating goods. These are listed in Annex 2-A to the CEPA. The CEPA transitions the tariff preferences in the EPA, meaning the CEPA tariff preferences and reductions are almost identical to those in the EPA. To ensure continuity in the pace of tariff eliminations and to guarantee a seamless transition (as compared with the situation if the EPA had continued to apply to the UK), Annex 2-A has been modified to reflect the later date of entry into force of the EPA. Eventually, duties on 99% of UK tariff lines and 94% of Japan tariff lines will be eliminated.

Tariffs on 21 industrial goods that were eliminated under the [UK Global Tariff](#) have similarly been eliminated in the UK's CEPA schedule. A notable difference between the UK's CEPA schedule and the EU's schedule in the EPA is that duties on two tariff lines covering electrical control units used in cars will be eliminated upon the entry into force of the CEPA, as compared with 2024 in the EPA. Japan's tariff schedule under the CEPA also slightly differs from its schedule under the EPA. According to its CEPA Schedule, Japan will phase out tariffs on nine tariff lines covering specified leathers and hides by 2026, compared to 2028 under the EPA. It will further eliminate tariffs on one ethanol tariff line at entry into force rather than by 2028, as reflected in its schedule under the EPA.

The CEPA includes a provision that if either Party reduces its WTO MFN applied tariffs to rates lower than those specified in Annex 2-A, those lower MFN tariffs will be the applicable customs duty rates to like goods originating in either Party.

2.2 Tariff rate quotas

Tariff Rate Quotas (**TRQs**) allow imports of a specific quantity of a product at a lower tariff than would normally be available for the product. Once the imports exceed the set quantity, the product can still be imported under the normal (higher) tariff.

Under the CEPA, the UK will benefit from the same preferential TRQs specified in Annex 2-A of the EPA for the ten TRQs¹ for which the UK has identified an interest and for which there is surplus not utilised by the EU. In respect of these ten TRQs, Japan assured the UK in a Ministerial side letter that it would take all reasonable steps to ensure effective operation of the TRQ scheme and maximise the UK's utilisation of any under-utilised EU quotas. These steps include (i) proactively publicising the availability and operation of the scheme, (ii) proactively communicating the availability of UK-Japan Preferential Import Certificates on the government website, (iii) providing a dedicated contact point within the Government of Japan for UK exporters and Japanese importers to respond to queries or requests for information, and (iv) promptly providing any data available on the volume and timing of imports registered under the scheme upon request.² In respect of malt, the UK will continue to have access to Japan's duty free global TRQ instead

¹ These TRQs are listed in Annex 2-A, Part 3 Section B of the CEPA.

² [DIT Report to Parliament](#), Annex A - Exchange of letters p.38, Letter No. 5.

of a country-specific TRQ.³ However, the UK will not have access to another 15 TRQs provided for in the EPA. The UK has stated for 14 of these TRQs that it had no historical utilisation for those TRQs and for one (certain butter products), that it had minimal utilisation.⁴

Japan's Finance Minister further issued a Ministerial side letter assuring the UK of Japan's support in its endeavour to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"). Should the UK initiate the formal accession process, Japan agreed to provide the UK with meaningful market access in respect of tariffs, TRQs, and safeguards in Japan's CPTPP schedule, subject to the UK seeking approval from the other CPTPP members during the accession process.⁵

2.3 Rules of origin

The tariff reductions described in section 2.1 do not, by themselves, guarantee continuity to the current trade flows in the same (or even more preferential) manner as if the UK had remained within the EU. Applicable tariffs on goods will also depend on the classification of goods as originating in the Parties.

Rules of origin determine whether goods originate in one of the Parties and therefore whether the goods can benefit from the preferential tariffs under the CEPA.

Pursuant to Chapter 3 of the CEPA, as under the EPA, goods are treated as originating in one of the Parties if they are (i) wholly obtained or produced in either Party, (ii) produced exclusively from materials originating in either Party, or (iii) produced using non-originating materials⁶ but satisfying the requirements under Annex 3-B. The thresholds for non-originating content permitted in specific products are similar to those under the EPA. For example, Annex 3-B-1 relating to certain vehicles and parts provides that the thresholds will be gradually reduced from between 55% and 60% (EXW) at the time of entry into force of the CEPA to between 45% and 50% (EXW) over the course of the first six years of implementation. In the case of some specific products, the relevant thresholds differ from the EPA. For example, the CEPA will reduce the permitted non-originating content allowed for chassis fitted with engines, for the motor vehicles from 55% to 50% (EXW). The EPA on the other hand, reduces the permitted non-originating content from 55% to 45% (EXW) by 2025.

Throughout the negotiations, cumulation with the EU has been an important issue for both Parties, especially given how interlinked UK supply chains are with the EU. Cumulation is a mechanism which permits that materials originating in a third country or processing carried out in a third country that is not a party to the agreement may nevertheless be considered as originating in one of the Parties or as having been carried out in one of the Parties. If a product qualifies as an originating product pursuant to the cumulation rules, it can also benefit from the preferential tariff rates set down in the CEPA. The CEPA therefore provides that for determining the origin of goods, materials originating in the EU are considered as originating in the Party if they are used in the production of one of the products listed in Annex 3-C (material cumulation).⁷ The CEPA also provides that production carried out in the EU on a non-originating material can be taken into account in determining the origin of a product listed in Annex 3-C (processing

³ DIT Report to Parliament, Annex A - Exchange of letters p.34, Letter No. 1.

⁴ DIT Report to Parliament p. 15.

⁵ DIT Report to Parliament, Annex A - Exchange of letters p.36, Letter No. 3.

⁶ "Non-originating material" means a material which does not qualify as originating in a Party and includes a material whose originating status cannot be determined.

⁷ Article 3.5.2 of the CEPA.

cumulation).⁸ Annex 3-C includes, for example, chemicals, plastics, certain textiles such as carpets and knitted or crocheted fabrics, base metals, machinery, vehicles, aircraft, and certain other manufactured articles. This means that where materials from the EU are used in the production of these goods or processing has been carried out in the EU on non-originating materials used in these goods, the value of these EU materials and processing will be counted as originating value. This will make it easier for such goods to obtain preferential origin and be traded between the Parties on the preferential rules under the CEPA. Unlike the continuity agreement between the UK and the Republic of Korea, cumulation with the EU is not limited in time.⁹

The CEPA further provides that each Party may agree with the EU that products originating in either Party or production carried out in either Party on non-originating materials may be considered as originating in the EU.¹⁰ This would complete full diagonal cumulation between the UK, the EU and Japan and allow current supply and production chains between the Parties and the EU to continue as they do now. The EU, however, has made clear that it is not willing to agree to such wide-ranging cumulation rules in a deal with the UK. It is, therefore, unlikely that the EU will allow the importation of UK-produced goods with parts from Japan to the same extent as while the UK was still part of the EU's single market.

Interestingly the EPA provides the option for the Parties to agree on such diagonal cumulation with *any* third trading partner but only for a very *limited* number of products.¹¹ The CEPA only provides for the Parties to agree on diagonal cumulation with the *EU* but on *virtually all* products.

The CEPA provides some more flexibility for statements of origin, allowing their validity for longer than 12 months in the case of single shipments if the Parties so provide.¹² Meanwhile, under the EPA, the period of validity is fixed at 12 months.

Notably the CEPA contains an enabling clause which allows the Parties to modify the cumulation of origin rules in the CEPA on a technical level after its entry into force e.g. to take account of further cumulation agreed with the EU.¹³ This is a clause the UK has introduced in several of its continuity agreements in order to take account of the complexities and uncertainties in the area, especially given its still uncertain future relationship with the EU.

As under the EPA, a Committee on Rules of Origin and Customs-Related Matters is responsible for the effective implementation and operation of Chapter 3 on the rules of origin.

2.4 Agriculture

Disagreements over market access for agricultural goods had held up negotiations over the summer of 2020. Finally, the Parties agreed to transition Japan's right to adopt safeguard measures with regard to

⁸ Article 3.5.4 of the CEPA.

⁹ Footnote 1 to Article 3 of the Protocol concerning the definition of 'originating products' and methods of administrative cooperation to the [UK-Korea Free Trade Agreement](#) provides that cumulation with the EU will cease to apply three years after the entry into force of the agreement and that the parties must review Article 3 after no more than two years from the entry into force of the UK-Korea Free Trade Agreement.

¹⁰ Article 3.5.10 and 2.5.11 of the CEPA.

¹¹ Diagonal cumulation under the EPA can be agreed with regard to goods classified under HS headings 84.07, 85.44 and 87.08 only.

¹² Article 3.17.4 of the CEPA

¹³ Article 3.5.12 of the CEPA.

imports of beef, pork, processed pork, whey, oranges and racehorses and the UK's utilisation of the EU's leftover agricultural quotas, as outlined in section 2.2 above.

Chapter 19 of the CEPA on cooperation in the field of agriculture, establishes a Working Group on Cooperation in the Field of Agriculture which carries out the functions allocated to the Committee on Cooperation in the Field of Agriculture under the EPA.

As both bodies have similar functions this is unlikely to have any significant impact in practice. Both bodies are vested with the power to ensure the effective implementation and operation of Chapter 19. This entails ensuring and reviewing the implementation and operation of Chapter 19, reporting the activities of the Working Group to the Joint Committee, facilitating cooperation among the private sectors of the Parties that contribute to the objectives herein, and carrying out other functions as may be delegated by the Joint Committee.

3. TRADE IN SERVICES

Most of the EPA's provisions in relation to the trade in services have been replicated in the CEPA. The schedules listing the Parties' reservations in Annexes 8-B-I and 8-B-II of the CEPA have undergone certain technical changes to take account of the UK's withdrawal from the EU by removing references to EU regulations. Japan's schedules have also been updated in line with recent domestic legislation.

3.1 Financial services

The financial services sector is one of the UK's most important export sectors. The CEPA replicates the EPA baseline for financial services but also contains enhanced trade facilitation measures for the sector.

The CEPA provides additional legal certainty for financial services suppliers operating in or trying to access the other Party's market. Additional safeguards permit the use, storage and processing of financial data on a cross-border basis. Thus, UK providers of financial services will not need to store financial data on servers in Japan and can avoid the associated costs of having to maintain servers in different jurisdictions. The CEPA is thus intended to promote the use of bespoke data storage solutions such as cloud computing services. This is subject to certain requirements that appropriate access remains for the purposes of financial regulation supervision. The scope of provisions supporting new financial services have been broadened to capture all modes of supply. The CEPA also contains stronger and clearer transparency regulations, including on making information on any authorisation requirements publicly available.

An annex on regulatory cooperation in financial services, including insurance, reinsurance and banking services between the UK and Japan will support the development of more consistent regulatory approaches, promote greater deference to each other's frameworks, and better cooperation in international standard setting bodies. The CEPA annex on financial services is more extensive than its equivalent in the EPA. Subject to certain exceptions, suppliers of new services in a Party will enjoy national treatment, i.e. the financial services supplier will be permitted to offer new services in the same manner as the Party would permit its own financial service suppliers in a like situation to supply the new services without adopting or modifying a law.

Finally, the CEPA sets up a Joint United Kingdom-Japan financial regulatory forum, equivalent to the Joint European Union-Japan financial regulatory forum under the EPA.

3.2 Electronic commerce

The Parties concluded more comprehensive provisions on electronic commerce (**e-commerce**) than those included in the EPA. These eliminate customs duties for electronic transactions, and contain provisions on online consumer protection, e-authentication and e-signatures, source code, and mechanisms for future cooperation. The Parties also agreed to certain provisions on access to and use of the internet, and to make available information on network management practices. This is intended to stimulate digital trade, an area important to both Parties' economies.

The CEPA also includes provisions to encourage the interoperability of electronic authentication and signatures, requires more extensive consumer protection rules, more detailed provisions on the protection of personal data specifically in relation to e-commerce, and prohibits restrictions on the cross-border transfer of data for the purposes of carrying out a business activity, including the transfer of personal data, subject to certain public policy exceptions. Meanwhile the EPA merely states that the EU and Japan will reassess within three years from the entry into force of the EPA i.e. 2022, the need for the inclusion of provisions on the free flow of data. The CEPA prohibits each Party from requiring that servers on which data is stored must be on their respective territory. This was especially important for several technology companies operating between the UK and Japan.

The CEPA also provides additional protections for suppliers and manufacturers of commercial ICT products against measures which would require them to transfer or provide access to proprietary information relating to cryptography, force cooperation with a person in the Party, and impose the requirement to use or integrate a particular cryptographic algorithm or cipher, subject to certain law (and in particular competition law) enforcement requirements.

The cooperation provisions with regard to e-commerce are broader than under the EPA. In addition to the functions set down for the Committee on Trade in Services, Investment Liberalisation and Electronic Commerce in the EPA, the equivalent committee set up under the CEPA will also take on the function of discussing matters in relation to trade in audio-visual services.

4. INTELLECTUAL PROPERTY RIGHTS

On Intellectual Property Rights (**IPR**), the CEPA also retains a similar framework to the EPA on copyright, trademarks, geographical indications, designs, patents, regulatory test data exclusivity, new plant varieties, trade secrets, domain names, and enforcement.

Regarding the Parties' obligations in respect of international agreements, however, the CEPA expands on the EPA, adding seven further agreements¹⁴ to the list of international agreements the Parties commit to

¹⁴ The Patent Law Treaty, adopted at Geneva on 1 June 2000; the Trademark Law Treaty, adopted at Geneva on 27 October 1994; the Singapore Treaty on the Law of Trademarks, adopted at Singapore on 27 March 2006; the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999; the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013; the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968; and the Nice Agreement Concerning the International

comply with. The CEPA introduces new provisions, e.g. on technological protection measures to safeguard the rights of authors, performers, or producers of phonograms; the provision of adequate and effective legal remedies against persons involved in violations of the protections for rights management information;¹⁵ maintaining streamlined trademark registration systems which can adapt to technological advances; and providing a system which allows the registration of two or more industrial designs through the filing of one single application.

The CEPA expands on the enforcement provisions set down in the EPA. A general clause requires the Parties to have an effective judicial system and alternative dispute resolution mechanism in place to allow right holders to enforce their rights without unwarranted delay or unreasonable cost. Further, criminal procedures and penalties should be in place for wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. The CEPA also contains additional provisions on enforcement in the digital environment to permit effective action against any act of infringement of IPRs taking place in the digital environment. Meanwhile, the CEPA Parties commit to take appropriate measures to limit the liability of, and remedies against online service providers for IPRs infringements committed by their users, where the service providers take relevant action to prevent access to the IPRs infringing materials in accordance with the laws of the Party.

The CEPA also increases the total term of protection available for industrial designs by five years, from 20 years from the date on which the application was made or treated under the EPA, to 25 years.

On public health, the CEPA requires the Parties to respect Article 31 *bis* of the WTO TRIPS Agreement which has been applicable since 2017. The provision allows World Trade Organization Members to grant special compulsory licences exclusively for the production and export of affordable generic medicines to other members which cannot produce them domestically in sufficient quantities to provide for their patients.

The assurances already made in the EPA on geographical indications (**GIs**) are transitioned to the CEPA, and thus the list of GIs in Annex 14-B remains unchanged. However, GIs listed in Annex 14-B as of the entry into force of the CEPA can only be protected after undergoing national procedures and being notified to the other Party.

The Parties continue to recognise the importance of cooperation, but also agreed to further cooperation in respect of projects and programmes related to the fight against infringements of IPR, including websites registered outside the territories of the Parties. The latter is a new addition to the CEPA, highlighting the agreement's recognition of digital technology and its impact on IPR.

5. INVESTMENT

The CEPA provisions on investment are based on the comprehensive and ambitious EPA investment chapter. This transitioning of the existing rules into the CEPA creates legal certainty for the Parties' investors. The investment provisions grant UK and Japanese investors market access without limitations

Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957. The Parties also agreed to make all reasonable efforts to ratify or accede to the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012.

¹⁵ This is data which identifies a work, performance or phonogram, the author of the work, the owner of the work, or information about the terms and conditions of the use of the work, performance, or phonogram.

on the number of enterprises, value of transactions or assets, and foreign capital participation. Further, the Parties may not restrict or require specific types of legal entities or joint ventures as investment vehicles.

Akin to the EPA, the CEPA investment chapter does not contain provisions on investment protection and investor-state dispute settlement (**ISDS**). However, if either Party concludes an agreement containing such provisions with a third party, the CEPA permits the other Party to request a review of the investment provisions in the CEPA within two years of the entry into force of that agreement with a view to the possible inclusion of such provisions in the CEPA.

The key distinction between the CEPA and the EPA is a technical clarification by the UK relating to the prohibitions in investment performance requirements. This clarification relates to the operation of the UK's legal framework for competition, mergers, and takeovers. In this respect, the UK clarifies that prohibitions on the requirements (i) to transfer technology, a production process or other proprietary knowledge to persons in the Party's territory and (ii) to adopt certain license term durations or royalty rates/amounts below a certain level, do not apply to measures adopted by its competition authority according to merger control or market investigation laws to remedy situations having an adverse effect on competition.

6. SMALL AND MEDIUM-SIZED ENTERPRISES

The small and medium-sized enterprises (**SME**) Chapter replicates the EPA provisions on information sharing, SME contact points, and the exclusion from dispute settlement. These provisions require each Party to maintain websites containing a summary of the agreement, searchable customs tariffs and rules of origin including information on duty drawbacks, deferrals or other types of duty relief and links to relevant government authorities. These websites should be accessible by SMEs free of charge.

Unlike the EPA, the CEPA includes an additional provision on cooperation between the Parties. Pursuant to this provision, the Parties have agreed to strengthen cooperation to identify ways to assist SMEs to take advantage of the commercial opportunities as well as to promote and facilitate trade and investment opportunities under the CEPA. The cooperation activities include developing and promoting seminars for SMEs and exchanging best practices.

7. CONCLUSION

The CEPA, although heavily based on the provisions of the EPA, contains some additional provisions which will benefit businesses and consumers both in Japan and in the UK. Crucially, however, it ensures that Japan and the UK have concluded an agreement which provides continuity to the extent the two Parties could do so. Any business with integrated supply chains linked to the EU and hoping to continue exporting to the EU will, however, remain dependent on an agreement between the EU and the UK. Once the CEPA has passed the national ratification processes, it is expected to enter into force seamlessly following the end of the transition period and take effect as of 1 January 2021.