

Japan-EU EPA/FTA Negotiation
Consolidated Text
(Status 30 January 2017)

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

Chapter [XX] Electronic Commerce

[JPN new proposal intersessional November 2016: Article [X01] Objective and General Provisions]

[EU: Objective and Principles]

1. The Parties recognise that electronic commerce contributes to economic growth and increases trade opportunities in many sectors. The Parties also recognise the importance of facilitating the use and development of electronic commerce.
2. The objective of this Chapter is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties.

[JPN: 3. This Chapter shall apply to measures that affect trade by electronic means.

Note: Nothing in this Chapter shall be considered as affecting the views of either Party on whether electronic commerce is categorised as trade in services or trade in goods.]

[JPN: 4. In the event of any inconsistency between this Chapter and Chapter X (Trade in Goods), X (Investment), X (Cross-Border Trade in Services) or X (Intellectual Property Rights), the Chapter other than this Chapter shall prevail to the extent of the inconsistency.]

[EU: 5. Electronic transmissions shall be considered as the provision of services, within the meaning of Chapter III (Cross-border supply of services).]

[JPN: X. The Parties recognise the principle of technological neutrality in electronic commerce.]

[JPN: Article X: General Exceptions]

For the purposes of this Chapter, Article [XX] (Cross border supply of services – General Exceptions) shall apply mutatis mutandis.]

Article [X02] Definitions

For the purposes of this Chapter:

[JPN: (a) “digital data” means computer programmes, text, video, images and sound recordings, or any combinations thereof, that are digitally encoded, electronically transmitted, and produced for commercial sale or distribution, and does not include those that are fixed on a carrier medium;

Note: Nothing in this Chapter shall be considered as affecting the views of either Party on whether trade in digital data through electronic transmission is categorised as trade in services or trade in goods.]

(b) “electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and fulfils the following requirements:

- (i) it is used by a person to confirm that the electronic data to which it relates has been created or signed, in accordance with each Party’s laws and regulations, by that person; and
- (ii) it confirms that information in the electronic data has not been altered.

(c) “electronic authentication” means the process or act of verifying the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication.

Article [X03] Customs Duties

The Parties shall not impose customs duties on electronic transmissions.

[JPN: Article [X04] Non-Discriminatory Treatment of Digital Data]

[JPN: 1. Unless otherwise specified in its Schedules in Annex X (Investment) and X (Cross-Border Trade in Services), no Party shall accord less favourable treatment to digital data created, produced, published, contracted for, commissioned or first made available on commercial terms in the area of the other Party, or to digital data of which the author, performer, producer, developer or owner is a person of the other Party, than it accords to other like digital data.]

[JPN: 2. Paragraph 1 shall not apply to:

- (a) government procurement; and

(b) subsidies provided by a Party or a state enterprise, including grants, government-supported loans, guarantees and insurance.]

[JPN: Article [X05]: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, when this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.]

[JPN: Article [X06]: Prohibition on Locating Computing Facilities Requirement

1. Neither Party may require:

(a) a service supplier of the other Party;

(b) an investor of the other Party; or

(c) an investment in the Party's area of an investor of the other Party, as a condition for conducting its business in the Party's area, to use or locate computing facilities in that area.

2. Notwithstanding paragraph 1, nothing in this Article shall be construed to prevent a Party from adopting or maintaining measures affecting the use or location of computing facilities necessary to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.]

[JPN proposal Intersessional December 2016 for a Drafter's Note on Article [XX] Prohibition on Locating Computing Facilities Requirement and Article [XX] Cross-Border Transfer of Information by Electronic Means: In light of EU's commitment to expedite its relevant internal coordination, the Parties confirm that they have reached common views in terms of

substance on the articles, and aim to finalise mutually agreeable texts of them, consistent with “G7 Principles and Actions on Cyber”, without delay.]

[JPN: Article [X07]: Source Code

1. Neither Party may require the transfer of, or access to, source code of software owned by a person of the other Party, as a condition of the import, distribution, sale or use of such software, or of products containing such software, or of products containing such software, in its Area.

Note: For greater certainty, source code of software referred to in paragraph 1 does not include open source software.

2. For purposes of this Article, paragraph 1 does not apply to measures necessary to achieve legitimate public policy objectives, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.]

Note Intersessional December 2016: EU intends to submit a text proposal as soon as possible.

Article [X09] Domestic Regulation

Each Party shall ensure that all its measures of general application affecting electronic commerce are administered in a reasonable, objective, and impartial manner.

[EU: Article [X]: Principle of no prior authorisation

1. The Parties will endeavour not to impose prior authorization nor any other requirement having equivalent effect on the provision of services by electronic means.

2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of electronic communications and broadcasting services.]

Article [X]: Conclusion of contracts by electronic means

[JPN: Recognising the importance of the principle of technological neutrality in electronic commerce,] Neither Party shall adopt or maintain measures regulating electronic transactions that:

- a) deny the legal effect, validity or enforceability of a contract, solely on the grounds that it is in the form of an electronic communication; or
- b) otherwise create obstacles for the use of electronic contracts, unless such measures are provided for in its laws and regulations.

Article [X] Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its laws and regulations, each Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. Neither Party shall adopt or maintain measures regulating electronic signature and authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or
 - (b) prevent parties to electronic transactions from having the opportunity to establish before judicial or administrative authorities that their electronic transactions comply with any legal requirements with respect to electronic signature and authentication.
3. Notwithstanding paragraph 2, each Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

Article [X] Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures applicable to electronic commerce as well as measures conducive to the development of consumer confidence in electronic commerce.
2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.
3. The Parties recognise the importance of adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

Article [X] Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; and

(b) require the prior consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages.

2. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable recipients to request cessation free of charge and at any moment.

3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

Article [X10] Cooperation on Regulatory Issues of Electronic Commerce

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora to promote the development of electronic commerce.

2. The Parties agree to maintain a dialogue on regulatory issues of electronic commerce with a view to sharing information and experience, as appropriate, including on related laws, regulations and their implementation, and best practices with respect to electronic commerce in relation to, inter alia:

(a) consumer protection,

(b) cyber-security,

(c) combatting unsolicited commercial electronic messages,

(d) the recognition of certificates of electronic signatures issued to the public,

(e) the challenges for small and medium enterprises in the use of electronic commerce,

(f) the facilitation of cross-border certification services,

(g) intellectual property

(h) electronic government.