



Free trade. Sustainable trade.

EU-Japan Trade Negotiations

Executive Summary

Growth driver In the challenging context of constant economic crisis, trade is a driving force to create growth and wealth. **The strengthening of commercial ties between the EU and Japan would augment the bilateral trade volume in goods and services and generate important benefits for the distribution sector.**

Realise the full potential The EU and Japan exchanged goods worth 116 billion euro in 2011. With regard to the huge combined market size the trade volume between these two major global economies remains modest. **More can be done to shape an encouraging business environment open for investments and facilitating mutual imports.**

Barriers Currently, trade impediments in Japan still prevent a higher degree of economic cooperation – **this is particularly true for the retail and wholesale sector:**

- Unfair competition rules
- Strict licensing system and restrictive issuing of permits
- Poor quality standards for food products
- Punitive tariffs and quotas on liquors and leather footwear
- Complex procedures for outlet opening

At the same time, tariffs and regulatory impediments also hamper imports from Japan to the EU.

Objectives With regard to the numerous barriers, the **FTA supports ambitious trade negotiations** which should lead to an agreement removing behind-the-border obstacles and eliminating quotas and tariffs on both sides. Japan should demonstrate good will and stick to its commitment to **dismantle technical and regulatory obstacles to trade already during the negotiation process.** A possible agreement should include a strong implementation chapter and establish mechanisms for regular meetings between administrations and stakeholders.

Review process The **review process**, taking stock after one year of negotiations, is a **meaningful instrument** to ensure progress and to apply the right level of pressure on Japan to eliminate barriers in parallel to the talks. However, the review discussion should be clearly framed and should neither be dictated by prejudice nor short term political considerations. The many trade **obstacles with Japan can only be removed if negotiations are conducted successfully.** In that sense, a premature and hasty suspension of talks would prevent the European distribution sector to increase business with Japan.

FTA Position Paper on EU-JAPAN Trade Negotiations

A) TRADE TALKS – TOWARDS A WIN-WIN SITUATION

The EU and Japan are both experiencing a **persistent economic crisis** with symptoms such as low levels of GDP growth and increasing public debts. The aim of **deepening the economic relationship between the EU and Japan** is therefore of **strategic importance** to give new impetus to the economy and to increase employment.

Today, Japan is the EU's second biggest trading partner in Asia and together, they account for more than one third of the world GDP. The EU ranks third among Japan's trade partners. Exchange in goods was worth 116 billion euro in 2011. Japan is also a major investor in the EU. In 2010, the EU inward Foreign Direct Investment (FDI) stock had reached a value of 129 billion Euros. Yet, with regard to the huge combined market size, the **trade volume between these two major global economies remains modest** – in particular in relation to EU's commerce with the USA, China and Russia.

Concluding a successful FTA with Japan would therefore fuel economic growth. Expected benefits of the FTA include a boost by 0,8% of Europe's GDP, an increase of EU export to Japan by 32,7% and 420 000 additional jobs would be added in the EU, while Japanese exports to the EU would increase by 23,5% (European Commission 2012b).¹

In addition, the conclusion of a **free trade agreement** between the EU and Japan would send a **powerful signal to other WTO members** that the EU and Japan are eager to promote a liberal environment for commerce.

B) TRADE BARRIERS IN JAPAN – DIFFICULT MARKET PENETRATION

Against the background of the current crisis the Japanese government decided to **launch structural reforms** and to open up the domestic market to a certain extent. This aspiration to more trade liberalisation, however, did **not positively affect the business activities of FTA members in this country**.

Japan is still a difficult place to do retail and wholesale business and to export to. The structure of the Japanese economy is to a large extent characterised by conglomerates of companies controlling important market shares and shielding the domestic market from foreign competition. Different studies, for instance from the OECD², indicate that the **Japanese retail and wholesale sector** (worth about 1,250 billion euro) **remains largely closed for foreign companies**.

European distribution companies have to cope with mainly the following obstacles:

- **COMPETITION POLICY:** Many European traders face a competitive disadvantage – or even exclusion – due to a legal framework which is protecting Japanese retail and wholesale companies against foreign enterprises and new market entrants.

¹ European Commission (2012b) Trade, "Commission proposes to open negotiations for a Free Trade deal with Japan" 18 July 2012, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=823>

² OECD Economic Surveys: Japan 2008. April 2008. pp. 145-148

Competition legislation lacks transparency and enforcement authorities openly discriminate foreign operators.

- **FOOD AND DRINKS:** The Japanese government considers a large number of agricultural import goods as having a harmful effect on the domestic economy. This protectionist attitude translates into a myriad of opaque license regimes, import surcharges and import permits, making it nearly impossible to bring in certain agricultural goods. These restrictions concern, *inter alia*, liquors, dairy (frozen) products, rice and soft drinks. In addition, Japanese food quality legislation is in many cases not harmonised with international standards.
- **CLOTHING AND ACCESSORIES:** It is economically not viable to import leather footwear to Japan due to limited allocation of quotas and high import duties. Japanese authorities strongly restrict the bringing onto the market of perfumes since importers have to apply for licences in a time-consuming and non-transparent procedure with uncertain outcome.
- **OUTLET OPENING:** Before opening a retail store operators have to go through a lengthy and non-transparent permission process which involves authorities at both the national and regional level. Moreover, many towns have set in place restrictive land use plans which make it nearly impossible to obtain the allocation of plots for construction of new retail outlets.

Please see the **ANNEX** (page 5) for more details about legal and procedural obstacles in Japan.

The tariff and non-tariff barriers have a **double negative impact**. Firstly, European traders encounter considerable impediments which prevent them from investing and doing business in Japan. Secondly, these obstacles artificially increase retail and wholesale prices for imported products, to the detriment of Japanese consumers.

C) TRADE BARRIERS IN THE EU – NEED FOR SIMPLER RULES

The European distribution sector does not only face barriers in Japan but also **when importing Japanese products into the Common market**. The EU should pursue the objective of removing these tariff and non-tariff measures:

- **CUSTOMS:** The EU countries do not uniformly apply the common customs laws. No institution or procedure ensures that common rules on classification and customs operations are implemented and administered consistently within the EU. In consequence, when importing the same product from Japan to different EU countries, European companies have to deal with different member states' rules.
- **TARIFFS:** Less customs tariffs are imposed on exports from the EU to Japan (1.7 per cent in average) in comparison to imports from Japan to the EU (3.4 per cent in average). Furthermore, it is reported that 68.7 per cent of European products exported to Japan are duty-free against only 35.9 per cent in the opposite direction.
- **CLASSIFICATION:** European companies importing to the EU from Japan have been exposed to risks with arbitrary and unclear changes in tariff classification.

D) CONCLUSION – SOME RECOMMENDATIONS

A free trade agreement would improve the economic environment for European trading companies in Japan and facilitate mutual exchange of goods. Negotiations for a free trade agreement with Japan should be steered by clear principles and a stringent timeline.

The numerous trade obstacles with Japan can only be removed if negotiations are run and successfully concluded. Therefore, the review process should allow for an honest assessment. In contrast, the EU should not take a one-sided approach and evaluate the bargaining in a captious manner. The break-up of talks would jeopardise all efforts to overcome the existing obstacles and thus prevent the European distribution sector to increase business with Japan.

The FTA calls for ambitious negotiations which should focus on the following results:

- **REGULATION:** The key aim should be to provide business friendly legal frameworks for trade and investment. The wide range of trade-distorting and counterproductive non-tariff barriers – especially on the Japanese side – need to be dismantled.
- **QUOTAS AND LICENSES:** All quotas and trade restrictions should be abolished to enable fair competition. In addition, the Japanese license regime for liquor and fragrances should be liberalised.
- **CUSTOMS DUTIES:** Even though average duties are already at a low level, certain peak rates prevent commercial activities. All industrial and agricultural products should be traded duty-free.
- **SIMPLIFICATION:** The EU and Japan should achieve a high level of compatibility of rules by developing common sets of principles. Regulatory cooperation between administrations should be intensified and produce joint standards and classification rules. On the Japanese side, food hygiene standards should be harmonised with internationally accepted standards.
- **IMPLEMENTATION CHAPTER:** An agreement should include a strong implementation chapter in order to guarantee that all clauses are effectively applied. Regular meetings bringing together authorities and business representatives should enable a continuous dialogue about both the enforcement of provisions and the detecting of weaknesses.
- **WTO:** The EU and Japan should take a clear commitment in favour of successful negotiations at the WTO level. A bilateral agreement should become a driving force of the international aspiration to conclude the Doha Round.

Annex: List of legal and procedural obstacles in Japan

1) Competition policy

Obstacle	Problem description	Impact	Recommendation
Unfair Competition Rules (Anti-Monopoly Law and subsidiary laws)	<ul style="list-style-type: none"> The Anti-Monopoly Law is extremely ambiguous, poorly written and lacks clear rules Legislation is often used in a discriminatory way to the detriment of European companies Japan has a very strict legal framework, unique in the world, to protect small and medium sized companies In a recent statement, overheard in Europe, the new JFTC³ chief announced that upcoming investigations on the abuse of 'superior bargaining position' will be enhanced and it is feared that such enquiries will primarily and discriminatorily be targeted against foreign companies 	<ul style="list-style-type: none"> Diminishing the advantage from economies of scale tend to significantly decrease incentives for European investments in Japan Poorly written competition laws create confusion and legal uncertainty and coerce foreign companies to ask for expensive legal advice (to the benefit of a group of lawyers who are former JFTC officers) Discriminating statements by the JFTC against foreign companies do negatively impact against the spirit of the free and fair trades and lower trusts in Japan as a safe place for business 	<ul style="list-style-type: none"> The legal framework and application should be reformed and streamlined to harmonise the Anti-Monopoly Law with international standards; companies and stakeholders should be consulted during the reform process The manner of enforcement must be made transparent and reasonable; interested parties must be heard sufficiently and involved in the decision-making process Measures and legal guidelines to prevent actual or potential discriminatory enforcements against foreign companies should be established. Discriminating statements by officials must be withdrawn and avoided in the future

2) Food and drinks

Obstacle	Problem description	Impact	Recommendation
Liquor Licensing (Liquor Tax Law)	<ul style="list-style-type: none"> Japan is applying a strict liquor wholesale licensing system Quotas are reallocated only once per year Liquor prices are 	<ul style="list-style-type: none"> Delivery business and internet sales are still limited: At least 0.4 - 1.2 billion ¥ per year of sales⁴ are recognised as lost opportunities from 	<ul style="list-style-type: none"> Liberalisation of the liquor wholesale license regime The issuing of 'Internet Sales Licenses' should be reformed to ensure a clear and flexible application of

³ The Japan Fair Trade Commission (JFTC) is responsible for enforcing the Anti-Monopoly Law and subsidiary laws

⁴ Data provided by FTA members (given that figures are not available from all members, the real economic impact should be even more substantial): 0.4 - 1.2 billion ¥ (Japanese Yen) correspond to 3.3 - 9.8 million € (exchange rate of 21 March 2013)

	<p>controlled by tax authorities (National Tax Agency)</p>	<p>unrealised professional wholesale because of this inflexible liquor legislation</p> <ul style="list-style-type: none"> • The allocation of licences is very time consuming and lacks transparency • Due to external influence and unfair practices European retail and wholesale companies are being disadvantaged 	<p>rules</p> <ul style="list-style-type: none"> • Guarantee fair control and equality of liquor buying price on a legal basis (Japanese Antitrust Law)
<p>Import Surcharges and Import Restrictions</p> <p>(e.g. Provisional Measures Law for Processed Raw Milk Producer Subsidies)</p>	<ul style="list-style-type: none"> • High import surcharges for specific products and import restrictions protecting Japanese domestic industries • For instance: rice imports are limited by quotas 	<ul style="list-style-type: none"> • Heavy burden for wholesalers in their day-to-day procurement operations and cost structures • FTA estimates that surcharges are now causing lost opportunities from unrealised professional wholesale of imported butter of at least 36 tons annually (= 47 million ¥) to the selected prefecture of Kanto Plain alone, and nationwide volume of 108 tons equivalent to 141 million ¥ a year⁵ 	<ul style="list-style-type: none"> • Imports should be liberalised by abolishing applied surcharges and import quotas; relaxed rules would enable consumers to have access to a larger variety of products at affordable prices
<p>Import Permits</p> <p>(Food Hygiene Law)</p>	<ul style="list-style-type: none"> • The Japanese food import permits system is of restrictive and protective nature • Substantial concerns and delays are caused by the quarantine authority's limited resources (e.g. only 2 officers at Tokyo Port) • In addition, it is required to provide detailed scientific analyses and specific formalities 	<ul style="list-style-type: none"> • Approval is extremely time-consuming, difficult, and unpredictable • This forces distribution sector to significantly increase stock keeping units (SKU) of direct imports (= higher costs) • These restrictions cause severe economic damage to wholesalers. Lost opportunities from unrealised sales of imported products (e.g. food, soft drinks, and dairy frozen products) are estimated at 250 million ¥ a year⁶ 	<ul style="list-style-type: none"> • Simplify the import permit regime – approved EU standards in English language as best practice • Decrease turnaround time to less than 2 weeks through simplified and standardised examination process • Involve more appropriate and sufficient staff • Make the quarantine promise the response lead-time

⁵ 141 million ¥ correspond to 1.2 million € (exchange rate of 21 March 2013)

⁶ 250 million ¥ correspond to 2 million € (exchange rate of 21 March 2013)

Food Quality Standardisation (Food Hygiene Law)	<ul style="list-style-type: none"> Japanese food hygiene standards are not systematically harmonised with international standards (e.g. Codex Alimentarius) Specific certification of samples in accredited laboratories is required 	<ul style="list-style-type: none"> Lack of enforcement of national and international food hygiene standards This hampers efforts by trading companies to set up efficient food supply chains Costly and time consuming testing, specifically for the Japanese market Provisions of the Food Hygiene Law also affect food contact products (e.g. glassware, cutlery tableware and toys) 	<ul style="list-style-type: none"> Establish national food hygiene standards based upon and harmonised with international standards Adoption of 'Hazard analysis and critical control points' (HACCP) Creation of an accredited food safety standard (e.g. Global Food Safety Initiative; GFSI)
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3) Clothing and accessories

Obstacle	Problem description	Impact	Recommendation
Footwear import quotas	<ul style="list-style-type: none"> Japan still imposes a restrictive and non-transparent quota system on leather footwear Products imported within the quota are on top subject to a 24 per cent customs duty Leather footwear imported outside of the quota is heavily taxed (up to 200% of the value) 	<ul style="list-style-type: none"> Import of leather footwear to Japan is almost impossible and is not economically viable 	<ul style="list-style-type: none"> The quota and duties should be abolished to enable fair competition
Perfume licensing (Pharmaceutical Affairs Law)	<ul style="list-style-type: none"> Importers have to apply for 'import licenses' and 'import sales licenses' for fragrances 	<ul style="list-style-type: none"> The process of obtaining these licenses is cumbersome (up to two years!) and uncertain If refused then the item cannot be imported 	<ul style="list-style-type: none"> The license regime for fragrances should be liberalised

4) Outlet opening

Obstacle	Problem description	Impact	Recommendation
Open large stores (Large Stores Law)	<ul style="list-style-type: none"> The authorisation to open retail outlets of more than 500m² is a complex procedure involving authorities at the regional 	<ul style="list-style-type: none"> Operators have to go through a lengthy and non-transparent permission process which is often to the detriment 	<ul style="list-style-type: none"> Simplify procedures and reduce the amount of paperwork Fair treatment of foreign retailers and wholesalers

	<p>and national level</p> <ul style="list-style-type: none"> • Authorities are entitled to refuse permission if nearby small and medium retailers could be negatively affected 	<p>of foreign operators</p> <ul style="list-style-type: none"> • A myriad of different laws and separate license procedures are in force discouraging investments in Japan 	
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About the FTA

FTA's mission is to promote the values of free and sustainable trade for its members within Europe and worldwide. The FTA strives for a liberal international framework for trade and is dedicated to improving the international supply chain in terms of corporate responsibility.

As a large association of more than 1,100 European and international retailers, importers, brand companies and national associations, with a total turnover of more than 600 billion euro, the FTA represents companies of all types and all sizes from more than 22 countries, including chains of supermarket, fashion brands, departments stores, discounters and online sellers.

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