Legislation to amend Japan’s excise taxes on tobacco products would constitute a regulatory measure subject to the obligations in Chapter 18 (Good Regulatory Practices and Regulatory Cooperation) of the European Union-Japan Economic Partnership Agreement ("EPA"). Chapter 18 prohibits Japan from using excise taxes as a disguised restriction on international trade. In addition, Chapter 18 requires that, before passing any legislation, Japan include the legislation in its list of planned regulatory activity published at least once a year, conduct an impact assessment, publish a draft of the legislation, request public comments, address any comments that it receives during the public consultations, and consider alternative measures.

Chapter 18 also provides a mechanism through which the European Union can request information and clarification from Japan about the planned legislation, and through which the European Union may raise any concerns it may have about the planned legislation. Japan would be compelled to respond to those concerns within 60 days.

Legislation amending Japan’s excise taxes on tobacco products would fall within the scope of Section A of Chapter 18 of the EPA.

- Section A of Chapter 18 “applies to regulatory measures issued by the regulatory authority of a Party in respect of any matter covered by this Agreement”.

- In the case of Japan:
  - “regulatory measures” include all laws, Cabinet Orders, and Ministerial ordinances;1 and
  - “regulatory authority” means “the Government of Japan”.

- Japanese excise taxes on tobacco products (the National Tobacco Excise Tax, National Tobacco Special Excise Tax and Local Tobacco Excise Tax) are imposed pursuant to the Tobacco Tax Act (Act No. 72 of 1984, as amended), the Act on Special Measures for Securing Necessary Financial Resources Incidental to Transfer of Debts to General Account (Act No. 137 of 1998), and the Local Tax Act (Act No. 226 of 1950, as amended), each of which is a “law”. Amendments to the excise tax would also have to take the form of a “law”.

- Since any amendment to the excise tax legislation would take the form of a “law” issued by the Government of Japan, such amending legislation would constitute "regulatory measures issued by the regulatory authority of a Party" for purposes of Section A of Chapter 18 of the EPA.

- Article 2.7 of the EPA imposes obligations on the imposition of internal taxes on imported products, including excise taxes. Consequently, any Japanese legislation amending the excise taxes on imported tobacco products would be “a matter covered by this Agreement” for purposes of Section A of Chapter 18 of the EPA.

1 EPA, Article 18.2(b)(ii).
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➢ In sum, Japanese legislation amending the current excise taxes on tobacco products would fall within the scope of Section A of Chapter 18 of the EPA and would be subject to its obligations.

The approval process for legislation amending Japan's excise taxes on tobacco products would have to comply with all of the obligations on good regulatory practices set out in Section A of Chapter 18 of the EPA.

➢ Section A of Chapter 18 of the EPA sets out a wide range of obligations on good regulatory practices with which the Government of Japan would have to comply if it decides to pursue amendments to the current excises taxes on tobacco products.

➢ The obligations include the prohibition in Article 18.1.4 against regulatory measures constituting a disguised barrier to trade. Thus, insofar as any changes to the excise taxes adversely impact imported tobacco products, they could violate Article 18.1.4.

➢ In addition, Section A of Chapter 18 requires the Government of Japan to:

- include the draft legislation in the list of planned major regulatory measures that it is required to make publicly available once a year.\(^2\) As part of this obligation, the Government of Japan must provide a brief description of the planned legislation's scope and objectives. This list should be made available sufficiently in advance of any legislative action so as to give the European Union and other stakeholders "early information" on the planned regulatory measure;

- publish the draft legislation or consultation documents providing sufficient details about the legislation under preparation to allow any person to assess whether and how the person's interests might be significantly affected;\(^3\)

- offer, on a non-discriminatory basis, reasonable opportunities for any person to provide comments;\(^4\)

- consider the comments received;\(^5\)

- make publicly available any comment received or a summary of the results of the consultations;\(^6\)

- carry out an impact assessment of the draft legislation. This regulatory impact assessment must consider (i) the need for the legislation; (ii) any feasible and appropriate regulatory or non-regulatory alternatives, including the option of not taking the legislative action; (iii) the potential social, economic, and environmental impact of those alternatives, including on trade and on small and medium-sized enterprises; and (iv) how the options under consideration relate to relevant international standards, including the reason for any divergence; and

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\(^2\) EPA, Article 18.6.
\(^3\) EPA, Article 18.7 (a).
\(^4\) EPA, Article 18.7 (b).
\(^5\) EPA, Article 18.7 (c).
\(^6\) EPA, Article 18.7.3.
Chapter 18 establishes a mechanism that would allow the European Union to seek information and clarification from Japan and to raise concerns about the planned legislation.

- Article 18.16 of the EPA establishes a procedure through which the European Union may request information and clarifications from Japan regarding the planned legislation amending the excise tax regime on tobacco products.

- Pursuant to Article 18.16, the European Union could also raise any concerns it may have about the planned legislation. Japan would be required to respond to those concerns within 60 days. In its response, Japan would have to include the policy objective and rationale of the regulatory measure and an explanation as to the absence of a less trade or investment restrictive measure which could achieve the same policy objective with the same efficiency.

- If the European Union is not satisfied with Japan’s response, it could request consultations with Japan under Article 18.6.4 to explore a satisfactory solution, including adjustment to the amending legislation.

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