

5th November 2010

ESF contribution to DG Trade

Public Consultation on the future of EU Japan trade and economic relations



1. Priorities for a forward-looking trade relationship with Japan

1: What should be the objectives and priorities of the future EU- Japan trade and economic relationship? How should the EU pursue these objectives? (optional) (maximum 800 characters)

The EU and Japan are two mature economies and do represent a significant part of the world exporters and importers of goods and services. Their mutual trade and economic relationship have become humdrum, with more and more administrative and regulatory burden that have anchored in the daily life. Should the EU and Japan want to revitalise this relationship and create new business opportunities, the authorities from both parties must make a proper inventory of these impediments and assess how to remove them. The way to pursue these objectives remains to be decided by the parties. Some issues could be solved through regulatory dialogues; other might have to be negotiated through proper trade negotiations. At a time where growth and development is taking place at high speed in emerging countries, which is diverting investment and business out of the EU and Japan, business is foremost interested in quick actions and implementation. If it is to embark into free trade negotiations that would deliver only in three or four years, this is an option that is not very much appealing to business. Similarly, if regulatory dialogues are established but not able to deliver concrete actions, they will not represent any interest to the European services business community. The European Services Forum encourages the European Union to take the opportunity of new leadership in Japan to enter into results-oriented trade relationship with Japan.

2. EU-Japan bilateral economic and regulatory dialogues

The EU-Japan cooperation in the sphere of trade takes place in the framework of an Action Plan (http://ec.europa.eu/external_relations/japan/docs/actionplan2001_en.pdf). This Plan was designed for a ten year period, and will elapse in 2011. The EU and Japan have a range of bilateral dialogues on economic, trade and regulatory issues, for example, the EU-Japan industrial cooperation and industrial policy dialogue, the EU-Japan Regulatory Reform Dialogue, the EU-Japan High Level Trade Dialogue. These dialogues were set up with the aim of strengthening transparency on each side's regulatory policy. In some cases, the dialogues also aim to remove regulatory and non tariff measures with a negative impact on trade and investment.

2: How could the effectiveness of regulatory and trade dialogue/cooperation between EU and Japan be improved? (optional) (maximum 800 characters)

In most of the services sectors, where market access is accredited through regulations, transparency is a must. Lack of transparency should not exist anymore in our two developed and advanced economies. Unfortunately, this is not the case. ESF welcomes the establishment of EU-Japan Regulatory Reform Dialogue, but it is not clear whether this forum is dealing with services sectors.

3: Are there any priority sectors on which regulatory cooperation should focus? (optional)

Yes

If yes, please explain, including specific areas or issues to be addressed. (optional) (maximum 800 characters)

Many services sectors would be interested in regulatory dialogues where the lack of transparency

that might still be implemented by the administrations/regulatory bodies would be explained and remedy; where the various regulatory barriers might be identified, the reasons why they are in place, and the way to remove them, or to make them less burdensome and less trade and/or business restrictive: retail/wholesale; legal services; tax related services; financial services; telecommunication services, etc.

4. Mutual Recognition Agreement

The EU-Japan Mutual Recognition Agreement (MRA) permits acceptance of conformity assessments conducted by either the EU or Japan according to the regulations of the other in four product areas (telecommunications terminal equipment and radio equipment, electrical products, Good Laboratory Practices for chemicals and Good Manufacturing Practices for pharmaceuticals).

8: Should the scope of the agreement be extended to other sectors? (optional)

Yes

If so, to which sectors. (optional) (maximum 800 characters)

The agreement should not be limited to goods products only, but should also look at possibility in negotiating mutual recognition agreements of diplomas and qualifications in professional services where appropriate. Also, an optimal approach to financial services market integration between the EU and Japan should be based on the consistent pursuit of mutual recognition and regulatory convergence in financial services, in particular in asset management and securities. It would lower the transaction costs and raise the volume of securities trading.

7. Trade in services

The EU exports around €20 billion of services to Japan per year and runs a trade surplus of net €6 billion. Nevertheless, the EU's export of services to Japan appears to be below its potential compared to other developed countries. Japan's import penetration is particularly low in business services and communications (telecommunication and post) services as well as in financial services, transport and distribution. Certain sectors such as construction are almost totally closed to foreign companies. Difficulties in securing market access to Japan are holding back significant business opportunities for EU services and manufacturing companies.

12: Are you concerned by barriers to trade in services in your field of activity? (optional)

Yes.

If yes, which ones? Please clarify whether: a) They affect your ability to establish physical outlets in the country and supply services through these outlets b) They discriminate in favour of domestic service suppliers c) They affect the price of the services you provide d) They have other restrictive impacts (please specify) (optional) (maximum 800 characters)

The European Services Forum represents all the services sectors, and therefore all the barriers listed here above are in place in one or more services sectors. Restrictions to establish a commercial presence (or chose the legal form of the presence) (a) are in place in legal services and other professional services, in construction services, in banking services, in telecommunication services. To be able to export services to Japan requires the possibility to provide services across the border without having a physical presence in the country (so-called GATS mode 1), but this is not possible in many services sectors in Japan (most of the professional services where residency requirements are in place, like in many other services sectors; subsidiaries are compulsory to provide insurance and insurance related services). All these obligations to foreign services providers have an impact, since some small European providers will consider too expensive and too complicated to establish a presence in Japan. For those which would do so, these obligations have an obvious impact on the price of the service delivered. As regards the mobility of services providers to Japan on a temporary basis (GATS mode 4), there are still a lot of difficulties and long delays in obtaining work permits. These administrative burdens considerably slow down the possibility for our firms to deliver in time the right services by the right expert and sometimes lead to the loss of the market. Many other concrete barriers are identified by the representative of

European companies in Japan, the European Business Council (EBC), which produce an annual report listing the difficulties encountered by our companies on site (for those who have the market open!). The European Services Forum supports the action done by EBC and encourages the European Commission to take into consideration the services related aspects in the EBC reports when assessing the EU-Japan trade economic relations.

13: How should the EU address these restrictions to trade in services with Japan? (optional)
(maximum 800 characters)

Japan has made a reasonably good revised offer in the WTO DDA GATS negotiations (see attached ESF preliminary assessment of Japan Revised Offer). Japan seems to be willing to deliver ambitious commitments in this framework, and this is welcome, although much remains to be done. In this offer, Japan is willing to bound most of the autonomous reforms that it has undertaken since the conclusion of the Uruguay Round, including the GATS telecommunication and financial services in 1997. Given that the DDA is stalled and there are no serious indication that it will resume any soon, given that Japan has not signed any significant FTA in which commitments in services sectors have been taken, despite the large number of FTA signed by Japan since 15 years, the EU should properly assess what would be the added value for the European services sectors of services and investment negotiations through a bilateral free trade agreement with Japan.

It is clear that many existing obstacles are not pure market access problems and therefore one can question the need to launch the heavy and lengthy process of an FTA, but given the lack of appropriate responses by the Japanese legislators, regulatory authorities and administrations to the numerous requests of improvement in many sectors, one must however envisage the necessity of entering in trade negotiations, as a mean to pressure the local regulators from the outside.

8. Investment

Over the past few years, the EU has become a major investor in Japan in flagship FDI projects. However, foreign investment in Japan remains the lowest among OECD members. In terms of actual value of EU investment, figures are equally striking: EU's FDI stock in Japan is around €75 billion out of the EU's total FDI stock of almost €3 trillion: a mere 2.8% of all outward EU FDI. One important explanation for the low level of FDI is the low number of mergers and acquisitions transactions in Japan. The Japanese government has recognised this problem and proposed a programme for the acceleration of foreign direct investment in Japan which has shown mixed results so far. Further, the rights of minority shareholders are very limited and a hostile takeover is almost impossible.

14a: Are you concerned by barriers to trade in services investment in your field of activity? (optional)

Yes.

If yes, what are the barriers to investment? (optional) (maximum 800 characters)

The barriers to investment in Japan are notably the difficulties to properly assess potential local partners, which has lead a low number of mergers and acquisitions, and even some disinvestments (i.e. selling off activities by European companies to Japanese companies, and therefore leaving out the country). Given the difficulties in term of business culture/inside enterprise behaviour that are fundamentally different in Japan and the lack of any efforts to encourage foreign companies to come in, many investors prefer to turn to more promising emerging countries. The facilitation of hostile takeovers might be an improvement, but will not diminish the culture gap. Foreign direct investment in Japan is much lower than it is in Europe, and there appear to be structural barriers related to company law and merger and acquisition rules. These clearly discourage potential investors due to the cost and complexity of completing transactions. Japanese competition rules play a crucial role in reinforcing the market dominance of incumbents, again working against European investors. Public markets in Japan also appear to be relatively closed to external competitors, particularly in areas like transport. These policy barriers will be harder to tackle, but they must be on the table if the full benefits are to be achieved.

14b: Do you consider that there is a need for the EU to contribute to facilitating EU direct investment in Japan? (optional)

Further analysis should be done to clearly identify why EU investors are not attracted by Japan (at a time where Japan is a strong investor in the EU (n° 3 with € 100 Bio in 2006 – 4,8% of total), which is welcomed). According to Eurostat¹, The EU invested € 11.9 Bio in 2005 (5% of EU outward FDI), of which 81% of those investment went to services sectors, but these investment fell down to € 0.5 Bio in 2006 (0% of EU outward). There is a clear discrepancy between inward and outward FDI from and to Japan, which means that there is indeed a need for the EU to initiate some action to facilitate EU Direct Investment in Japan. Putting into place an EU-Japan Investment Forum might be an idea; but the lack of concrete result in previous dialogues in other issues is not encouraging to take that road, although it might be a venue to identify the real reasons for the discrepancy describe here above. Negotiating removal of commercial presence barriers in services sectors though an FTA might be also an option to explore (see above, response to Question 13). We do not believe that the absence of protection of the investments post establishment would be a reason by investors. However, it is astonishing to note that Japan has not signed any Bilateral Investment Treaty (BIT) with any European Union country. Japan has concluded only 16 BITs, including one with Turkey and Russia as only European countries. In the framework of the new EU investment policy, the European Commission should therefore explore whether there might be any appetite by European business for a European bilateral investment treaty with Japan, included or not within a possible FTA.

9. Public procurement

The public procurement market in Japan is an area where European firms report difficulties. These difficulties can be split into four categories: a) limited coverage under the WTO Government Procurement Agreement, leading to restricted access to some strategic areas like construction services or local procurement (the threshold for construction services is set at 15.000.000 Special Drawing Rights (SDR) versus 5.000.000 SDR in the EU and most other GPA parties b) obstacles due to a distortive interpretation of Japan commitments under the Agreement on Government Procurement (GPA) or to regulatory or administrative burdens (extensive interpretation of the operational safety clause to block the access to the railways procurement market or heavy registration procedures for candidates) c) difficult access to notices on call for tenders due to a lack of a single point of access and the scarcity of information in languages other than Japanese d) procurement practices implying advantages for domestic suppliers (award of contracts on the basis of the lowest price or unlimited liability in the procurement for public works).

15: Are you concerned by restrictions in public procurement in your field of activity? (optional)

Yes, many services sectors are concerned by restrictions in public procurement in Japan: construction services and related services (architects, engineering, designing, urban planning, etc.); information and communication technologies (ICT) for computer related services, management services, etc.; environmental services (water and waste management, etc.), etc.

If yes, what strategy should the EU develop to open up Japan's public procurement market? (optional) (maximum 1200 characters)

Given the lengthy process for the adoption and implementation of the revised GPA text, and given that Japan continues to have a restrictive approach towards the interpretation of the agreement and has very limited commitments under the GPA, it seems that the only way to make significant progress that would allow further opening up of the Japanese's public procurement market would be through a comprehensive and full-fledge Free Trade Agreement, where the chapter on public procurement and the related concrete commitments at national and local levels would be crucial for any conclusion on such an agreement. The example of the negotiations between the EU and Canada should set up a benchmark, in terms of coverage (all public entities that need to require public tender for their functioning, including at local level, the municipalities and other administrative bodies, but also the education institutions and medical institutions, and all sectors that use tax-payer money).

¹ Source: Eurostat EU FDI Yearbook 2008 – Data 2001-2006

10. Competition issues

The European Union and Japan signed an Agreement concerning cooperation on anti-competitive activities on 10 July 2003. The Agreement provides a legal framework for cooperation and coordination between the competition authorities of the European Commission and Japan (Fair Trade Commission). Under the Agreement, the competition authorities of each side are under an obligation to notify the other side of any competition enforcement activities that may affect important interests of the other side. The Agreement provides arrangements (such as regular meetings) to improve mutual understanding of each other's policy and to facilitate cooperation on individual investigations.

“16a: Are there fields (anti-trust/mergers/liberalisation/state aid) where the EU should seek to increase cooperation with Japan with a view to pushing for the removal of non-tariff barriers in Japan?”

⇒ ESF Secretariat is not in position to reply to this question, but encourage companies that might be interested to do so.

11. Multilateral cooperation

The 2001 Action Plan foresaw a reinforcement of the cooperation between the EU and Japan on multilateral trade and economic issues, standards, the trade financial system and, development Key to achieving these objectives is close cooperation to strengthen the multilateral trading system through successful completion of the Doha Development Agenda (DDA) and to facilitate the accession and integration of emerging and developing countries into the WTO. In addition, the EU and Japan have been cooperating on regulatory and economic and financial issues in other multilateral fora such as the UN, G-8, G-20 and the OECD.

17: Do you find the results of the EU-Japan multilateral cooperation in these policy areas to be: (optional)

Very good

Satisfactory

Insufficient

If insufficient, please indicate why (optional) (maximum 800 characters)

EU and Japan are not in position to remain significant actors in the DDA talks, notably due to their mutual defensive positions in agriculture related issues. Highly indebted countries like EU Member States and Japan have much less margin of manoeuvre in for a like G20, where emerging countries with strong economic growth will continue to have growing influence.

18: In which ways could EU-Japan multilateral cooperation be enhanced in the coming years? (optional) (maximum 800 characters)

The EU and Japan should drastically reform their agriculture system, so as to remove this impediment to conclude the WTO talks. Our economies are the one that are the most interested in keeping a strong multilateral rule based system. A joint initiative from EU and Japan on the agriculture chapter of the DDA might be a way to enhance the EU-Japan multilateral cooperation and bring back the influence of the two parties in international fora.

Joint positions on climate change and innovation technologies in multilateral gathering should also be explored.