

# *CHAPTER 2*

# **SERVICES**

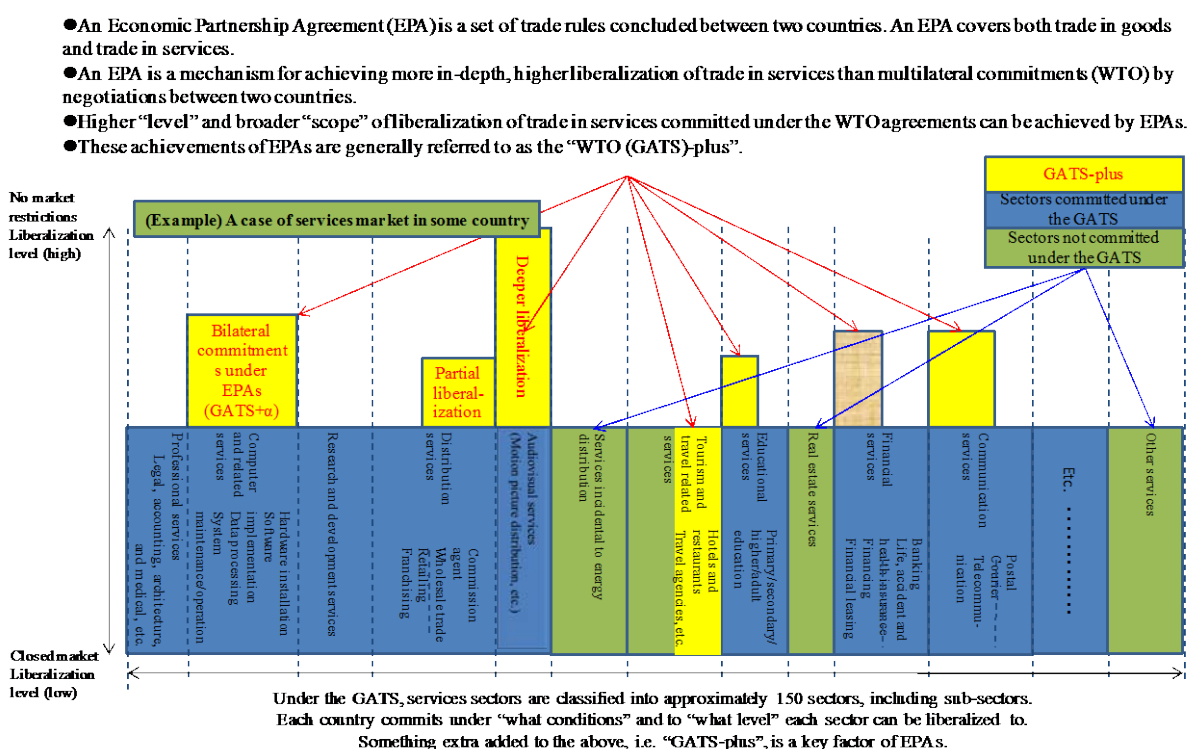
## ***1. BACKGROUND OF THE RULES***

The purpose of the disciplines regarding trade in services under EPAs/FTAs is, as under the General Agreement on Trade in Services (GATS), to enhance trade liberalization by eliminating barriers to trade in services between Parties and increasing the transparency of measures affecting trade in services. Disciplines and specific commitments aim to be GATS plus. Therefore, provisions under EPA/FTA have been gradually developed and advanced, and on some matters, the text of the relevant provisions greatly varies from EPA/FTA to EPA/FTA. This variation reflects certain distinctions between the contracting party countries, such as their policies on liberalization in service areas, history of negotiations regarding the relevant EPA/FTA (*i.e.*, issues with respect to multilateral negotiations or political situations of the negotiating countries).

Unlike trade in goods, where negotiations focus on the maximum tariff rate stated in the relevant schedule of concessions, the liberalization commitment approach, with respect to trade in services in individual sectors, deals with domestic regulations making it difficult to specify the effect of trade restrictions in numerical values. In the service chapter of an EPA/FTA, liberalization commitment approaches are classified into two categories -- the “negative list” and the “positive list”. The “negative list” is an approach of commitment under which the obligation of liberalization such as national treatment and MFN treatment is disciplined as a general obligation; and measures and sectors which are exempted from that obligation are explicitly inscribed in the list of non-conforming measures, and liberalization such as national treatment and MFN treatment is committed for all those which are not included in the list of non-conforming measures. The “positive list” is another approach of commitment under which the subject sectors of liberalization and the conditions and restrictions are specifically and explicitly inscribed in the list regarding national treatment and market access, and no obligations are to be undertaken regarding national treatment and market access with respect to any other sectors which are not inscribed in the positive list. In preparing the lists of the sectors with respect to which commitments are made, the Services Sectoral Classification List (MTN.GNS/W/120; 10 July 1991) used in WTO/GATS should be the basis, but Member countries can also specify the scope of implementing liberalization for sub-sectors and lower levels.

To sum up, the “negative list” is an approach under which Member countries specify the sectors which are exempted from the obligation of liberalization, while the “positive list” is a commitment approach under which Member countries specify the sectors for which liberalization is implemented. The former is considered as a framework which generally contributes to a higher level of liberalization, but of course, the achievement of liberalization all depends on the substance of commitments.

**Figure III-2-1 WTO International Agreement on Trade in Services (GATS) and Economic Partnership Agreements**



## 2. OVERVIEW OF LEGAL DISCIPLINES

The structure of each treaty on trade in services depends on whether it adopts “positive list approach” or “negative list approach”.

### (1) FOUR MODES AND THE RELATIONSHIP BASED ON THESE MODES BETWEEN THE SERVICE CHAPTER, THE CHAPTER ON INVESTMENT, AND THE CHAPTER ON THE MOVEMENT OF NATURAL PERSONS

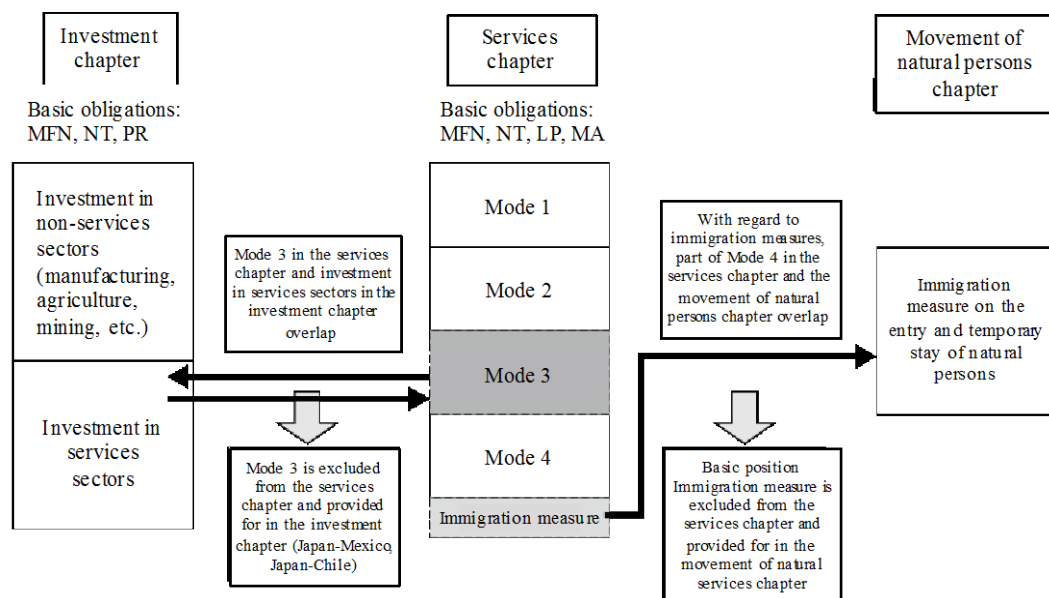
In the GATS, trade in services is classified as four modes of supply: Mode 1: cross-border supply; Mode 2: consumption abroad; Mode 3: commercial presence; and Mode 4: movement of natural persons. Only Mode 3 is dealt with in a different way according to each specific EPA/FTA (see Chapter 12, Part II).

In the case of EPAs/FTAs in which the GATS style “positive list” approach is adopted, all four modes are covered. However, Mode 3 in the service chapter overlaps with the scope of the chapter on investment as the chapter on investment does not exclude the coverage on investments in service sectors. To avoid any inconsistency inherently arose by such an overlap, the commitment (reservation) in the chapter on investment are made principally the same as the commitment of Mode 3 in the service chapter made in the sectors concerned. Provided that inconsistency is eventually found between the two chapters, there is the provision that the disciplines and commitments in the service chapter should prevail to the extent of such inconsistency.

In the case of the NAFTA-style “negative list” approach, the service chapter covers only the cross-border supply of Modes 1, 2 and 4, while investments in service sectors, i.e., Mode 3, is dealt with in the chapter on investment. In other words, it is the chapter on investment that covers investments in service sectors made by investors of a contracting party’s country in the other contracting party’s country such in forms of subsidiaries and branches.

In addition, regarding Mode 4, immigration measures are dealt with in the chapter on the movement of natural persons, while the treatment after immigration is dealt with in the service chapter. In summary, Mode 4 itself includes the immigration measure but in the case of GATS style EPA/FTA, while keeping it in the scope of the service chapter, the immigration measure is excluded from the Schedule of Commitments (without any commitment); and in the case of NAFTA style EPA/FTA, the immigration measure is not within the scope of the service chapter.

**Figure III-2-2 Relationship between Investment Chapter, Services Chapter, and Movement of Natural Persons Chapter**



## (2) DEFINITION OF SERVICE SUPPLIER OF THE OTHER PARTY AND JURIDICAL PERSON OF THE OTHER PARTY

EPAs/FTAs normally provide for definitions of basic terms in order to clarify the coverage of such basic terms. One such basic term is “service supplier of the party.” They are objects that are given the benefit of EPAs/FTAs. Entities which are eligible to be a service supplier include both natural persons and juridical persons. Under such definitions, such persons are entitled to the benefit of the agreements through, *inter alia*, a liberalization commitment in respect of trade in services. In addition, EPAs/FTAs usually provide for definitions of a “juridical person of the other party”. A “juridical person of the other party” is usually defined as (i) with regard to Mode 1 and Mode 2, a juridical person established within the territory of the other party, and (ii) with regard to Mode 3, a juridical person that is established within the territory of the country and owned or controlled by: (a) a natural person in the other country or (b) another juridical person established within the territory of the other party. Some EPAs/FTAs require as a criterion for such definition engagement by the “juridical person of the other party” in substantial activity in the territory of the other Party, while the others not.

EPAs/FTAs normally define “ownership” and “control” as follows:

A juridical person is deemed to be “owned” by persons if more than fifty percent (50%) of the equity interest in it is owned by such persons. Under GATS, the term “owned” is construed to mean direct ownership. Under the aforesaid definition of a “juridical person of the other party” for Mode 3, such person could mean a juridical person (a “subsidiary”) established within the territory of one contracting party country and directly owned by another juridical person (a “parent company”) established within the territory of the other contracting party country, but would not include a sub-subsidiary (a company

that is indirectly owned by a parent company through subsidiary established within the territory of the other contracting party). In contrast, the chapter on investment in the relevant EPA/FTA normally defines “investment” (which is the subject of protection granted pursuant to that chapter), as an asset of an investor in one contracting party, and such includes any “enterprise” owned, whether directly or indirectly, by such an investor or investors.

Under the chapter on services in the relevant EPA/FTA, a juridical person is “controlled” by persons if such persons have the power to name a majority of its directors or otherwise to legally direct the actions of the juridical person.

### **(3) MOST-FAVOURED-NATION (“MFN”) TREATMENT**

The provision of MFN treatment under GATS requires that among WTO member countries: “each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country” (Article II). According to this provision, a WTO Member country undertakes the obligation of according the same treatment to all other WTO Member countries with regard to the measures which fall under GATS. This means that in addition to national treatment and the treatment pertaining to market access with respect to which a Member country made commitments in the Schedule of Commitments, the same treatment is equally afforded to all WTO Member countries even if no commitment has been made in that country’s Schedule of Commitments. On the other hand, under Article V of GATS, Member countries that enter into an EPA/FTA may not be subject to the MFN obligation under GATS (i.e., there is no obligation to accord such treatment to the WTO Member countries other than contracting party countries to such EPA/FTA). For instance, in the case where under GATS, Member country A has committed to allow foreign capital to make an equity contribution at a rate up to 40% in the retailing service sector, if under the EPA/FTA which country A has concluded with country B (which satisfies the requirement of the said Article V), a commitment has been made to allow a rate up to 50% in the said sector for foreign capital, then there is no obligation to let the WTO Member countries other than country B equally share such committed treatment. Country A allows foreign capital to make an equity contribution at a ratio up to 50% in the retailing service sector only for service suppliers of country B, while the ratio up to 40% remains unchanged for service suppliers of other WTO Member countries.

On the other hand, the MFN treatment provided in EPAs/FTAs requires that a contracting party country should accord to the other contracting party treatment no less favourable than that it accords to like services and service suppliers of any other third country. The MFN treatment pursuant to a principle like this is widely seen in the EPAs/FTAs concluded between developed countries and was provided in agreements like NAFTA and the U.S.A.-Singapore FTA.

Under the EPAs/FTAs, such as the Japan-Viet Nam EPA and the Japan-Switzerland EPA, the MFN treatment is provided with the exception that the preferential treatment provided under the EPAs/FTAs with the third country that satisfies the requirements under Article V of the GATS is not applicable to the other contracting party country to the former EPAs/FTAs. Provisions are included in the Japan-Switzerland EPA that the contracting party country is obliged to consult with the other contracting party country or endeavour to accord to the other contracting party country treatment no less favourable than that provided under other agreements concluded and notified under Article V of the GATS. The Japan-Viet Nam EPA provides an obligation of consultation similar to that of the Japan-Switzerland EPA, but does not provide such obligation to endeavour as is stipulated in the latter EPA.

In addition, certain agreements include review provisions aimed at effectively according MFN treatment while not specifically providing for the MFN treatment. Such provisions are peculiar to EPAs/FTAs. That is to say, pursuant to a review provision, if country B newly enters into a B-C

EPA/FTA with country C and if such new B-C EPA/FTA accords a more favourable treatment to country C (which is a third party country from country A's perspective), then the A-B EPA/FTA, which contains a review provision, may obligate the contracting party country B to consider whether it should revise such A-B EPA/FTA in order to accord to country A treatment no less favourable than that provided to country C under the new B-C EPA/FTA. The Japan-Thailand EPA and the India-Singapore FTA are examples of an EPA/FTA providing an MFN provision of this type.

#### **(4) MARKET ACCESS**

As under GATS, EPAs/FTAs provide market access provisions, primarily in order to liberalize restrictive measures imposed on market entries mainly due to economic factors. Following the GATS approach, most such agreements are structured in the positive list format of commitments described above. However, NAFTA, which is a negative list format agreement (which entered into force before GATS), also contains disciplines on “quantitative restrictions” on trade in services. (However, “limitations on the participation of foreign capital”, which is provided in the paragraph 2 (f) of Article XVI of GATS, is excluded because Mode 3 is exclusively covered in the Investment chapter.)

#### **(5) NATIONAL TREATMENT**

As under GATS, national treatment under EPAs/FTAs is a concept whereby the treatment accorded by a contracting party to the services and the service suppliers of the other contracting party country shall be no less favourable than the treatment accorded to its own like services and service suppliers.

Under the positive list approach, the sectors in respect of which national treatment obligations are committed and the conditions and restrictions therefore are inscribed in the “Schedule of Commitments” of the relevant EPA/FTA. On the other hand, under the negative list approach, both the sectors for which national treatment obligations are not committed and the measures which are exempted from such commitments i.e. conditions and restrictions in respect of the remaining sectors are inscribed in the “Schedule of Reservations” of the relevant EPA/FTA. Under either approach, the scope of commitments or reservations, as the case may be, is to be explicitly specified in order to enhance transparency and promote liberalization of trade in services.

#### **(6) ADDITIONAL COMMITMENTS**

As under GATS, commitments which go beyond market access and national treatment obligations may be inscribed in the “Schedule of Commitments” of the relevant EPA/FTA. Some EPAs/FTAs adopting the positive list approach provide examples of additional commitments (such as disciplines promoting competition in the telecommunications sector and additional commitments in respect of domestic regulations in the financial sector) with a view to incorporating the outcome of the GATS negotiation. No example of additional commitments is found in FTAs which adopt the negative list approach.

#### **(7) STANDSTILL OBLIGATION**

Under NAFTA, which adopts the negative list approach, if the contracting party country makes reservations on certain obligations under the agreement (such as with respect to the national treatment obligation, the MFN treatment obligation with regard to existing measures in certain sectors etc.), it owes an obligation to maintain the *status quo* in respect of such reservations as of the entry into force of the agreement (that is, it owes an obligation not to adopt any measure which is more restrictive than existing measures). This is referred to as a “standstill obligation.” A contracting party country may make a reservation not only on existing measures, but also on the relevant service sector, where the country does not owe any such standstill obligation with respect to existing measures, and thus may adopt any

measures and maintain existing measures to an extent specifically reserved the applicability of certain obligations (such as the national treatment obligation) in the sector concerned.

In cases where standstill obligations are provided in an EPA/FTA which adopts the positive list approach (for example, under paragraph 3 of Article 75 of the Japan-Philippines EPA, and with respect to the sectors marked as “SS” (the abbreviation of “short for standstill”) in the Schedule of Commitments attached thereto (such sectors are referred to as the “SS sectors”)), the conditions and restrictions therefore may be inscribed therein only in relation to existing measures which do not conform to either market access obligations or national treatment obligations. Without regard to whether or not the relevant sector is marked “SS”, any commitment inscribed in the Schedule of Commitments for a certain sector is binding. Further, the contracting party countries would be obligated to maintain the status quo of existing measures as of the entry into force of the agreement in connection with the SS sectors. The Japan-Philippines EPA is the first agreement that adopted this approach with respect to services; the Japan-Malaysia, Japan-Indonesia, Japan-Thailand, and Japan-Mongolia EPAs followed it.

## **(8) AUTHORIZATIONS, LICENSES AND QUALIFICATIONS (DOMESTIC REGULATIONS)**

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not create unnecessary barriers to trade in services, most EPAs/FTAs obligate contracting party countries to establish objective and transparent criteria: (i) so as to ensure that any such requirements, procedures and standards are not more burdensome than necessary to ensure the quality of the service, and (ii) so as to ensure that licensing procedures are not in and of themselves a restriction on the supply of the services. In addition, some EPAs/FTAs (for example, the U.S.A.-Singapore FTA, the U.S.A.-Australia FTA, and the India-Singapore FTA) explicitly provide that the parties thereto shall review the relevant disciplines in response to the progress, if any, in working programs concerning qualification requirements and procedures, technical standards and licensing requirements contemplated by paragraph 4 of Article VI of GATS.

## **(9) MUTUAL RECOGNITION**

This provision provides that a contracting party country may recognize the education or experience obtained, requirements met, or licenses or certifications granted by another contracting party country for the purpose of fulfillment, in whole or a part, of its standards or criteria for the authorization, licensing or certifications of service suppliers of another contracting party country. In case of such recognition given by a contracting party country to a third party country, it is clearly provided that such recognition should not fall under the scope of MFN obligation, however, it is also provided that the contracting party country should offer an adequate opportunity to the other contracting party country to demonstrate that the other contracting party should also be treated the same with respect to such recognition. (The same provision is provided for in Article VII of GATS.)

Some agreements go a step further and explicitly provide that the contracting parties negotiate on the framework of mutual recognition by professional associations, and some even require such negotiation to be completed by specific deadlines and/or in respect of certain sectors (see, for example, the India-Singapore FTA).

## **(10) TRANSPARENCY**

As under GATS, in order to ensure transparency, contracting party countries have obligations to (or obligations to make efforts to) promptly publish domestic measures in connection with the disciplines regarding services, establishment of enquiry points, etc. In addition, some agreements effectively provide that a contracting country party may change any existing measure, or introduce any new measure, but only after the expiration of a certain period of time after publishing a draft of such measure,

and that it shall receive comments from the other contracting party country during such period. Some agreements even effectively provide that the parties thereto should adopt such comments to the greatest extent possible.

## **(11) SAFEGUARDS**

While most EPAs/FTAs lack specific provisions on safeguard measures for service sectors (as there has been little progress in respect of negotiation on safeguards contemplated in Article X of GATS), some EPAs/FTAs do contain provisions in this regard. These agreements effectively provide, *inter alia*, that (i) the contracting party countries shall refrain from taking safeguard measures against the other contracting party; (ii) shall not initiate investigations therefore (see, for example, the Australia-Singapore FTA, and the India-Singapore FTA); and/or (iii) the parties thereto shall review the issue of safeguard measures in the context of developments in multilateral negotiations (see, for example, the India-Singapore FTA).

## **(12) DENIAL OF BENEFITS**

Denial of benefit provisions under EPAs/FTAs effectively provide that a contracting party country may, under certain conditions, deny the benefits (*i.e.* liberalized market access commitment) provided to service suppliers of the other contracting party country. Many of them have followed the provisions of NAFTA, and deny benefits with respect to services or service suppliers of the other contracting party country where: (i) a juridical person of the other contracting party country is owned or controlled by a third party country which has no diplomatic relations with a contracting party country; (ii) a juridical person owned or controlled by a third party country to which measures such as economic sanctions prohibiting transactions with such juridical person are imposed by a contracting party country; or (iii) a juridical person which is owned or controlled by a juridical person of a third party country and is not engaging in substantial business activities within the territory of the other contracting party country. Regarding (iii), a contracting party country must give prior notification to and consultation with the other contracting party country, but whether or not benefits will actually be denied is left to the discretion of the contracting party country. Such prior notification and negotiations are not mandatory regarding (i) and (ii).

In addition, under GATS a Member country may deny the benefits of GATS to the supply of a service if it establishes that the service is supplied to its territory from or in the territory of a non-member country or that such service is supplied by a vessel registered under the laws of a non-member country in the maritime transport service (Article XXVII).

## **(13) PAYMENTS AND TRANSFERS**

As under GATS, while restrictions on payments and transfers for current transactions relating to trade in services are generally prohibited, restrictions on payments and transfers for the purpose of safeguarding the balance of international payments are conditionally permitted under EPAs/FTAs.

Some EPAs/FTAs limit the coverage of this provision to the sectors committed by the contracting party country in the Schedule of Commitments, as under GATS, while others apply this provision to all sectors as a general obligation.

## **(14) EXCEPTIONS**

Most EPAs/FTAs contain provisions equivalent to those of Articles XIV and XIV***bis*** of GATS, and exempt (as general exceptions) measures to protect public morals, to maintain public order, health and safety, and measures in respect of national security interests.

## **(15) REVIEW OF COMMITMENTS (REVIEW PROVISIONS)**

While GATS provides that Members shall enter into successive rounds of negotiations for progressive liberalization (Article XIX), many EPAs/FTAs provide that reviews of commitments shall be made several years after the entry into force of the agreement for the purpose of further liberalization of trade in services.

EPAs/FTAs include a variety of provisions in this regard. Some agreements follow the GATS model, and advocate efforts toward progressive liberalization (see, for example, the India-Singapore FTA), some do not contain any special provisions in this respect (see, for example, the U.S.A.-Singapore FTA, and the U.S.A.-Australia FTA), some provide for biannual review of the agreement (see, for example, the EFTA-Singapore FTA), etc.

## **3. ECONOMIC ASPECTS AND SIGNIFICANCE**

As discussed in “Part II, Chapter 12, Trade in Services (4) Economic Aspects and Significance,” trade in services by nature may include the movement of production factors as an element, and has a great positive spill-over effect on other industries, as is clear with regard to the financial and telecommunication industries. Thus, although the liberalization of bilateral and regional trade in services has some temporary effect on the employment market for existing service providers (as it does in respect of efforts in multilateral trade), over the long term it will contribute to the enhancement of the competitiveness of relevant service industries as well as to the enhancement of manufacturing efficiency in other service sectors and in manufacturing industries.

## **4. SUMMARY OF JAPAN’S EPAS**

### **(1) MAJOR PROVISIONS**

#### **(a) MFN Treatment**

With respect to EPAs entered into by Japan, the Japan-Mexico EPA, the Japan-Philippines EPA, the Japan-Chile EPA, the Japan-Brunei EPA, the Japan-Peru EPA, the Japan-Australia EPA and the Japan-Mongolia EPA provide that the contracting parties’ countries shall mutually accord to each other general MFN treatment, and shall enumerate in the annex (MFN Schedule of Reservations/Exemptions) as exceptions those sectors in respect of which MFN treatment is not accorded.

The Japan-Singapore EPA and the Japan-Thailand EPA, on the other hand, do not automatically accord to each party MFN treatment. However, under these EPAs, where one contracting country (assume, for example, Singapore) accords preferential treatment to a non-contracting party country (assume, for example, the United States), the other contracting country (for example, Japan) may request the first contracting country to allow such preferential treatment, and the first contracting country must consider whether to so permit.

The Japan-Viet Nam EPA and the Japan-Switzerland EPA provide the principle of MFN treatment with the exception that the preferential treatment provided under the other EPAs/FTAs which either party concludes with a third party country, and which satisfies the requirements of Article V of the GATS, is not applicable to the other party. The Japan-Viet Nam EPA provides an obligation for either party to negotiate with the other party if either party accords more favourable treatment to a third party. Under the Japan-Switzerland EPA, a contracting party country shall endeavour to accord to another contracting party country treatment no less favourable than that provided under other agreements.

Although the Japan-Malaysia EPA and the Japan-Indonesia EPA provide for MFN treatment as a general obligation, Malaysia and Indonesia made reservations with respect to all sectors in the annex,



and made exception of those sectors that would not be accorded MFN treatment (MFN Schedule of Reservations/Exemptions). Malaysia and Indonesia consequently accord MFN treatment only in some sectors (such as rental and leasing services, etc.) as exceptions to the exceptions in the MFN Schedule of Reservations (i.e. “all sectors except”).

### ***(b) Market Access***

Japan’s EPAs with ASEAN countries, including the Japan-Singapore EPA, as well as the Japan-India EPA and the Japan-Mongolia EPA adopt the GATS-type positive list approach, and the market access provisions in these agreements follow those of the GATS model. The Japan-Mexico EPA and the Japan-Chile EPA adopt the NAFTA-type negative list approach and contains no obligatory provisions in respect of market access (NAFTA contains disciplines over quantitative restrictions on trade in services (Article 1207), but does not use the concept of market access in connection with trade in services). The Japan-Switzerland EPA is the first one for Japan to include market access obligations while adopting the negative list approach in an annex to the service chapter. The Japan-Peru EPA and the Japan-Australia EPA also include market access obligations.

### ***(c) National Treatment***

The provisions on national treatment under the Japan’s EPA’s with the Philippines, Mongolia, and Brunei are the same as those of GATS. The Japan-Singapore EPA, the Japan-Malaysia EPA, the Japan-Thailand EPA, the Japan-Indonesia EPA and the Japan-Viet Nam EPA also have provisions regarding national treatment obligations which are modeled on GATS, but provide that the foregoing provisions may not be invoked “under Chapter 21” with respect to any measure that falls within the scope of a tax treaty relating to the avoidance of double taxation. The Japan-Switzerland EPA and the Japan-Australia EPA also include the provisions to that effect. This is based on the premise that dispute resolution regarding measures covered by a bilateral tax treaty shall be conducted pursuant to such tax treaty.

### ***(d) Standstill Obligations***

The Japan-Mexico EPA, the Japan-Chile EPA, the Japan-Switzerland EPA, the Japan-Peru EPA, and the Japan-Australia EPA, which adopt the NAFTA-type negative list approach, provide that the following measures are to be covered by standstill obligations:

- (i) Existing measures not conforming to certain obligations (for example, national treatment) maintained by the federal or central government and inscribed in the Schedule of Reservations (a list of sectors reserved under the existing measures).
- (ii) Existing measures not conforming to obligations (for example, national treatment) maintained by the regional government at the prefectural level as measures of the local government and inscribed in the Schedule of Reservations (a list of measures reserved under the existing measures), and existing measures not conforming to obligations (for example, national treatment) maintained by the local government other than at the prefectural level (municipalities such as cities and villages).
- (iii) Existing measures not conforming to obligations (for example, national treatment) maintained by the state government as measures of the local government and inscribed in the Schedule of Reservations (a list of sectors reserved under the existing measures), and all existing measures not conforming to obligations (for example, national treatment) maintained by the local government (municipalities such as cities and districts). Regarding the Japan-Switzerland EPA, existing measures, for which the Swiss government does not specifically reserve to adopt new measures, among those measures not conforming to obligations (for example, national

treatment) maintained by the state and local government and inscribed in the Schedule of Reservations. With regard to the Japan-Peru EPA and the Japan-Australia EPA, existing measures not conforming to obligations (for example, national treatment) maintained by the central government or local government and inscribed in the Schedule of Reservations (a list of sectors reserved under the existing measures) and existing measures not conforming to obligations (for example, national treatment) maintained by the local government.

In the case of the positive list approach, sectors subject to standstill obligations are those marked SS in the Schedule of Commitments. Although the terms of such standstill obligations are provided in the Japan-Philippines EPA, the Japan-Malaysia EPA, the Japan-Thailand EPA, the Japan-Indonesia EPA, and the Japan-Mongolia EPA, such terms limit those specific commitments of sectors marked SS to conditions and restrictions under the existing measures not conforming to national treatment, etc. (as stated in Paragraph (2) 7) herein).

**(e) Transparency**

All EPAs that have been concluded by Japan so far provide in the chapter therein on general provisions (except the Japan-Mexico EPA, in which the relevant provisions are provided in the chapter on implementation and operation of the agreement) that those measures which pertain to or affect the operation of the agreement be published, at least within the country, and that each contracting party country is obligated to respond to questions posited by the other country with respect to such measures. This also extends to the provisions of the chapter on services. However, the following items are mentioned in the chapter as agreements provided for ensuring transparency. In addition, the chapter on trade in services in the Japan-Malaysia EPA requires that information regarding restrictive measures affecting, *inter alia*, market access, national treatment obligations and provision on white papers, in respect of trade in services be provided.

The Japan-Philippines EPA, the Japan-Brunei EPA, the Japan-Thailand EPA, and the Japan-Mongolia EPA provide for the preparation, delivery to the counterparty country and publication of a list of existing measures not conforming to the market access and national treatment obligations (“transparency list”) and the Japan-India EPA provides an obligation for the preparation and publication of a similar list, regardless of whether a specific commitment covers the relevant sector. Simply put, a transparency list is prepared solely for the purpose of increasing the transparency of restrictions, and does not affect the rights and duties of the contracting party countries. Measures to be covered by a transparency list include, in addition to measures included at the national level, measures of regional governments (at the prefectural level in Japan) and of municipal governments (at the level of cities, towns, and villages in Japan), except for the Japan-Philippines EPA, which does not include measures at the municipal level in the transparency list. Moreover, in addition to the aforementioned provisions in the chapters on general provisions and so forth, the Japan-Philippines EPA, the Japan-Indonesia EPA, the Japan-Brunei EPA, and the Japan-Viet Nam EPA effectively provide that a contracting party country must respond to and provide information in response to questions by a service supplier of the counterparty country through its contact point. This is significant because, unlike with respect to what information is to be provided under general provisions, such information is to be provided to the service supplier and not the government of the contracting country.

As commitments under the Japan-Mexico EPA, the Japan-Chile EPA, the Japan-Switzerland EPA, the Japan-Peru EPA, and the Japan-Australia EPA are determined using the negative list approach, it is clearly understandable from the structure of the agreement which sectors contain a measure not conforming to certain obligations (for example, the national treatment obligation), and, if any measures not conforming to such obligations exist, the nature of such measure or measures, as the case may be. This ensures a high level of transparency. In addition, it effectively provides that if a new measure which affects the implementation or the operation of the agreement is to be introduced to a sector on the

transparency list, notification shall be made to the counterparty country, to the greatest extent possible, thereby contributing to the enhancement of transparency of regulatory measures.

***(f) Denial of Benefits***

Under the Japan-Singapore EPA, in addition to those services in respect of which benefit is denied under GATS (i.e. services from non-member countries, maritime transport services by vessels of a non-member nationality, etc., as described above), benefit under the EPA is denied to (i) a juridical person which is controlled or owned by a party of a third party country, established in the territory of the other contracting party country and not engaged in a substantial activity in the territory of either contracting party country, and (ii) a juridical person established in the territory of one of contracting party countries by a service supplier of a third party country and which does not engage in a substantial activity in such contracting party countries.

The Japan-Mexico EPA, the Japan-Philippines EPA, the Japan-Chile EPA, the Japan-Brunei EPA, the Japan-Indonesia EPA, the Japan-Viet Nam EPA, the Japan-Peru EPA, the Japan-Australia EPA and the Japan-Mongolia EPA, for the most part, adopt the text of the provisions of NAFTA. They provide that a service supplier of the other contracting party country will be denied benefits if it is a (i) juridical person that is owned or controlled by persons of a third party country with which Japan does not maintain diplomatic relations, or by persons of a third party country upon whom Japan is imposing economic sanctions, and (ii) juridical person that is owned or controlled by persons of a third party country and that has no substantial activities in the territory of that other contracting party country.

The Japan-Malaysia EPA effectively provides that only with respect to clause (i) discussed in the foregoing paragraph addressing the Japan-Mexico EPA and the Japan-Philippines EPA will benefits be denied. It does not provide the same in respect of clause (ii) of the foregoing paragraph because, in its definition of a “juridical person of the other Party,” the Japan-Malaysia EPA exempts from application of the agreement a juridical person which does not engage in substantive activity in the territory of the other contracting party country.

The Japan-Thailand EPA provides that clause (ii), which does not engage in substantive activity in the territory of the other contracting party, will benefits be denied in addition to the juridical person defined in clause (i).

The Japan-Switzerland EPA does not provide any provisions of denial of benefits.

***(g) Payments and Transfers***

The Japan-Singapore EPA, the Japan-Thailand EPA, the Japan-Brunei EPA, the Japan-Viet Nam EPA, and the Japan-India EPA extend GATS disciplines only to committed sectors. The Japan-Philippines EPA, the Japan-Malaysia EPA, the Japan-Indonesia EPA, the Japan-Switzerland EPA, the Japan-Peru EPA, the Japan-Australia EPA and the Japan-Mongolia EPA, however, extend GATS disciplines to all sectors pertaining to trade in services as general obligations and do not limit such disciplines to committed sectors. The Japan-Mexico EPA effectively provides that no restrictive measures on payments and transfers shall be applied to cross-border trade in services in the chapter therein on exceptions (which enumerates those that are beyond the scope of the entire agreement). This is not provided in the Japan-Chile EPA.

Note: The provisions on the scope of trade in services, modes and obligations (*i.e.*, national treatment, markets access) contain many parts which overlap with provisions under GATS. Therefore, descriptions on these are not dealt with in detail here in this chapter, as “Part II Chapter 12 Trade in Services” already gave an account thereof.

## **(2) SALIENT FEATURES OF LIBERALIZATION COMMITMENTS OF THE COUNTERPARTY COUNTRY**

Commitments were made using the “positive list” in EPAs with ASEAN countries. The counterpart countries made commitments with a higher level than under GATS regarding manufacturing industry-related repair and maintenance services, wholesale distribution services, computer and related services and also in sectors such as finance, communications, construction and transport. These commitments also include a standstill obligation; they do not deviate from the current laws and regulations, a phenomenon which is frequently seen in the commitments made by developing countries under GATS, and the inconsistency between the EPA as an international commitment with Japan and the regulations based on the counterpart country’s current domestic laws and regulations have been eliminated.

In the EPAs with Mexico, Chile, Switzerland, Peru, and Australia, commitments were made using the “negative list.” In principle, national treatment and MFN treatment obligations were made horizontally on all service sectors. In the EPA with Switzerland, Peru, and Australia, market access obligations were also provided. Reservations were made for the sectors where commitments basically were secured through a standstill obligation while leaving certain sectors (key service sectors such as communication services, sectors relating to social policy) without a standstill obligation.

*(a) Japan-Singapore EPA (entered into force in November 2002)*

*(b) Japan-Mexico EPA (entered into force in April 2005)*

*(c) Japan-Malaysia EPA (entered into force in July 2006)*

*(d) Japan-Chile EPA (entered into force in September 2007)*

*(e) Japan –Thailand EPA (entered into force in November 2007)*

*(f) Japan-Indonesia EPA (entered into force in July 2008)*

*(g) Japan-Brunei EPA (entered into force in July 2008)*

*(h) Japan-Philippines EPA (entered into force in December 2008)*

*(i) Japan-Switzerland EPA (entered into force in September 2009)*

*(j) Japan-Viet Nam EPA (entered into force in October 2009)*

*(k) Japan-India EPA (entered into force in August 2011)*

*(l) Japan-Peru EPA (entered into force in March 2012)*

*(m) Japan-Australia EPA (entered into force in January 2015)*

*(n) Japan-Mongolia EPA (entered into force in June 2016)*

For the features of liberalization commitments of the counterpart country of each EPA above, see pages 613-623 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

***(o) TRANS-PACIFIC PARTNERSHIP (TPP) (SIGNED IN FEBRUARY 2016)***

The TPP provides for national treatment, MFN treatment, market access (such as a ban on quantitative restrictions) and other obligations. As with the NAFTA, the negative list approach was adopted. Among existing EPAs that have been signed by Japan with countries participating in the TPP, only EPAs with Mexico, Chile, Peru and Australia adopt the negative list approach. Therefore, a shift from the positive list to the negative list (which generally allows more liberalization) with regard to Brunei, Malaysia, Singapore, and Viet Nam represents a step forward to promote liberalization and improve transparency. Moreover, the TPP was great progress in terms of Japan's relationship with Canada, New Zealand, and the United States as there had been no EPA/FTA with these countries.

***(p) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (entered into force in December 2018)***

The service-related provisions under the TPP are applied, with some provisions "suspended," including provisions concerning express delivery services stipulated in the annex (Annex 10-B, 5 and 6) and resolution of telecommunications disputes (Article 13.21 1(d)).

***(q) Japan EU EPA (entered into force in February 2019)***

The Japan-EU EPA stipulates obligations such as national treatment, most-favoured-nation treatment, market access (prohibition of volume restrictions, etc.). In addition, as with the TPP Agreement, etc., in principle, all fields are liberalized and a negative list format is used to list the measures/fields to be reserved. Regarding the measures that have approved for not applying the rule related to the liberalization of national treatment, etc., with a ratchet clause that promises not to exacerbate the degree of liberalization, it is possible to prevent damages due to unforeseen stricter regulations. Hence, the business predictability is ensured, (however, ratchet clauses do not apply to areas with comprehensive reservations (so-called "Future Reservations")).

In addition, there are separate rules for financial services (including financial regulatory cooperation) and telecommunications services.

In individual fields, the fields on which the EU promised liberalization are expanding as compared to GATS.

**Figure III-2-3 Effective/Signed EPAs between Japan and other Countries\*: Overview of the Provisions in the Chapter on Services**

Name	Japan-Singapore EPA	Japan-Mexico EPA	Japan-Malaysia EPA	Japan-Chile EPA	Japan-Thailand EPA	Japan-Indonesia EPA	Japan-Brunei EPA
Effective/Signed as of	Effective on 2002.11.30	Effective on 2005.4.1	Effective on 2006.7.13	Effective on 2007.9.3	Effective on 2007.11.1	Effective on 2008.7.1	Effective on 2008.7.31
Approach on Liberalization Commitments	Positive list approach	Negative list approach	Positive list approach	Negative list approach	Positive list approach	Positive list approach	Positive list approach
MFN Treatment	Δ No MFN provision in the agreement. However, regarding the preferential treatment accorded to a third party country by a contracting party country, it is provided that upon request from the other contracting party country it should consider whether to accord the equal treatment to the other contracting party country.	○ In principle unconditional MFN treatment is provided, with exceptions inscribed in the annex (MFN Schedule of Reservations).	Δ In principle, unconditional MFN treatment is provided. However, in the annex (MFN List of Exemptions) which provides exceptions, reservations on according the MFN treatment are made with respect to all sectors except a few, in which the MFN treatment is accorded as an exception to the exceptions.	○ In principle unconditional MFN is provided, with exceptions inscribed in the annex (Schedule of Reservations).	Δ When a contracting party country has accorded better treatment to a third party country, if requested by the other contracting party country, it should consider according no less favourable treatment to the other contracting party country than to a third party country.	Δ In principle, unconditional MFN treatment is provided. However, in the annex (MFN List of Exemptions) which provides exceptions, reservations on according the MFN treatment are made with respect to all sectors except a few in which the MFN treatment is accorded as an exception to the exceptions.	○ In principle unconditional MFN is provided, with exceptions inscribed in the annex (MFN List of Exemptions).
National Treatment (NT)	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	○ In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	○ In principle NT shall be accorded in all service sectors except the ones inscribed in the annex (Schedule of Reservations)	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.	○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.
Market Access Commitments	○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.	Market access is not provided for. Instead there is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations).	○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.	Market access is not provided for. Instead there is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations).	○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.	○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.	○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.
Transparency Requirements	Δ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.	○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures. As commitments are made in the form of the negative list approach, regarding the sectors reserved through the standstill obligation based on the existing measures, the descriptions on those measures are explicitly provided in the Schedule of Reservations.	Δ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures. There are provisions in the service chapter obliging each contracting party country to provide the other contracting party country with (i) information on the measures affecting its commitments related to market access and national treatment; and (ii) copies of annual reports or any other publication generally available to the public.	○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures. As commitments are made in the form of the negative list approach, regarding the sectors reserved through the standstill obligation based on the existing measures, the descriptions on those measures are explicitly provided in the Schedule of Reservations.	Δ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures. Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to the commitments of market access and national treatment accorded under the agreement (transparency list). Said list shall be exchanged with other party.	Δ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures. It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.	○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures. Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to the commitments of market access and national treatment accorded under the agreement (transparency list). Said list shall be exchanged with other party. It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.
Standstill Obligation	No provision in the agreement.	○ This obligation is provided regarding any existing	○ This obligation is provided only for sectors or sub-sectors	○ This obligation is provided regarding any existing	○ This obligation is provided only for sectors or sub-sectors	○ This obligation is provided only for sectors or sub-sectors	No provision in the agreement.

Name	Japan-Singapore EPA	Japan-Mexico EPA	Japan-Malaysia EPA	Japan-Chile EPA	Japan-Thailand EPA	Japan-Indonesia EPA	Japan-Brunei EPA
		measures which are non-conforming to NT, MFN, or market access obligation, and which are maintained by a contracting party country at the central or local government level. These measures are set out in the annex (Schedule of Reservations).	indicated by the "SS" mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those based on relevant existing measures which are non-conforming to NT or market access obligation.	measures which are non-conforming to NT, MFN, or market access obligation and which are maintained by a contracting party country at the central or local government level. These measures are set out in the annex (Schedule of Reservations).	indicated by the "SS" mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those based on relevant existing measures which are non-conforming to NT or market access obligation.	indicated by the "SS" mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those based on relevant existing measures which are non-conforming to NT or market access obligation.	
Prohibition of Restrictions on Payments and Transfers	Δ Same provision as GATS, where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.	○ In the separate Chapter of Exceptions (which identifies exceptions excluded from the entire agreement), there is a provision prohibiting restrictions of international transfers and payments for current transactions relating to cross-border trade in services of all sectors and sub-sectors.	○ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors; not limited to just those sectors and sub-sectors inscribed in the Schedule of Specific Commitments.	No provision in the agreement.	Δ Same provision as GATS where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.	○ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors; not limited to just those sectors and sub-sectors inscribed in the Schedule of Specific Commitments.	Δ Same provision as GATS where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.

# Part III: EPA/FTA and IIA

Name	Japan-Philippine EPA	Japan-Switzerland EPA	Japan-Viet Nam EPA	Japan-India EPA	Japan-Peru EPA	Japan-Australia EPA	Japan-Mongolia EPA
Effective/Signed as of	Effective on 2008.12.11	Effective on 2009.9.1	Effective on 2009.10.1	Effective on 2011.8.1	Effective on 2012.3.1	Effective on 2015.1.15	Signed on 2015.2.10
Approach on Liberalization Commitments	Positive list approach	Negative list approach	Positive list approach	Positive list approach	Negative list approach	Negative list approach	Positive list approach
MFN Treatment	<p>○ In principle, unconditional MFN is provided, with exceptions inscribed in the annex (MFN List of Exemptions).</p>	<p>△ In principle, unconditional MFN treatment is provided. Exceptions are subject to measures inscribed in the annex (Schedule of Reservations) and the treatment accorded under other EPAs/FTAs that satisfy the requirements under Article V of GATS. The contracting party country is obliged to endeavour to accord to the other contracting party country treatment no less favourable than that provided under the EPAs/FTAs concluded with the third country.</p>	<p>△ In principle unconditional MFN treatment is provided. Exceptions are subject to measures inscribed in the annex (MFN List of Exemptions) and the treatment accorded under other EPAs/FTAs that satisfy the requirements under Article V of GATS. The contracting party country is obliged to give the other the contracting party country an opportunity to consult on whether the more favourable treatment accorded to the third country under the other EPAs/FTAs may be accorded to the other contracting party country.</p>	<p>△ If a contracting party country accords better treatment to a third party country, then at the request of the other contracting party country, according better treatment will be considered.</p>	<p>○ In principle, unconditional MFN treatment is provided, with exceptions inscribed in the annex (MFN List of Exemptions).</p>	<p>○ In principle, unconditional MFN treatment is provided, with exceptions inscribed in the annex (MFN List of Exemptions).</p>	<p>○ In principle, unconditional MFN treatment is provided, with exceptions inscribed in the annex (MFN List of Exemptions).</p>
National Treatment (NT)	<p>○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.</p>	<p>○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).</p>	<p>○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.</p>	<p>○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.</p>	<p>○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).</p>	<p>○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).</p>	<p>○ National Treatment shall be accorded in the sectors inscribed in the Schedule of Specific Commitments.</p>
Market Access Commitments	<p>○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.</p>	<p>○ In principle, the same provision as Article XVI of GATS on market access is provided. Exceptions are inscribed in the annex (Schedule of Reservations).</p>	<p>○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.</p>	<p>○ Same provision as Article XVI of GATS on market access, which obliges each contracting party country to accord no less favourable treatment than that undertaken and specified in the Schedule of Specific Commitments.</p>	<p>○ In principle, the same provision as Article XVI of GATS on market access (except limitations on the participation of foreign capital) is provided. There is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations)</p>	<p>○ In principle, the same provision as Article XVI of GATS on market access is provided. There is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations)</p>	<p>○ Same provision as Article XVI of GATS on market access shall be accorded within a range specified in the Schedule of Specific Commitments).</p>
Transparency Requirements	<p>○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to commitments of market access and national treatment accorded under the agreement (transparency list). Said list shall be exchanged with other party. It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty</p>	<p>○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>As the agreement adopts the negative list approach, details of existing laws and regulations which are reserved under the standstill obligations are specified in the annex (List of Reservations).</p>	<p>△ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>It is also provided that a contracting party country must respond to and provide information in response to questions from a service supplier of the counterparty country through its contact point.</p>	<p>○ Each contracting party country is obliged to promptly make public (or otherwise make publicly available) its measures pertaining to or affecting the operation of the agreement, at least within the country, and to respond to the other contracting party country's inquiries about these measures.</p> <p>Each party shall prepare a non-legally binding list providing all relevant laws and regulations which are not conforming to commitments of market access and national treatment accorded under the agreement (transparency list) (duty to endeavour provisions). Said list shall be exchanged with other party. It is also provided that a contracting party country must respond to and provide information in response to questions from a service</p>	<p>○ Each contracting country is obliged to make efforts to respond to questions on the relevant laws and regulations from interested parties as much as possible, and to promptly make public (or otherwise make publicly available) the opinions and examination results of public comments on the adoption of final laws and regulations.</p>	<p>○ When a party maintains measures related to licensing requirements and procedures, qualification requirements and procedures, and technical standards, the party shall make publicly available the information on the requirements and procedures to obtain, renew, or retain any licenses or professional qualifications and the information on technical standards, where available. Where any form of authorization is required for the supply of a service, the party shall ensure that it will where practicable, in the case of an incomplete application, on request of an applicant, identify all the additional information that is required to complete the application;</p>	<p>○ Each party shall prepare a non-legally binding list providing all relevant measures affecting the obligations of market access, national treatment, and Most-Favoured-Nation Treatment in all sector (transparency list) (obligatory provisions). This list shall be exchanged with the other party within five years from the date of entry into force of this agreement. Where necessary or as agreed between the parties, the list shall be subject to future review and revision.</p>



	country through its contact point.			supplier of the counterparty country through its contact point.			
Standstill Obligation	<ul style="list-style-type: none"> <li>◦ This obligation is provided only for sectors or sub-sectors indicated by the “SS” mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those based on relevant existing measures which are non-conforming to NT or market access obligation.</li> </ul>	<ul style="list-style-type: none"> <li>◦ This obligation is provided for any existing measures which are non-conforming to NT, MFN, or market access obligation, and which are maintained by a contracting party country at all levels of the government (at central, regional, or municipal level). These measures are set out in the annex (Schedule of Reservations).</li> </ul>	No provision in the agreement.	No provision in the agreement. (However, there is a standstill obligation regarding application of FDI policy)	<ul style="list-style-type: none"> <li>◦ This obligation is provided for any existing measures which are non-conforming to NT obligation, etc., and which are maintained by the central or local government. These measures are set out in the annex (Schedule of Reservations).</li> </ul>	<ul style="list-style-type: none"> <li>◦ This obligation is provided for any existing measures which are non-conforming to NT obligation, etc., and which are maintained by the central or local government. These measures are set out in the annex (Schedule of Reservations).</li> </ul>	<ul style="list-style-type: none"> <li>◦ This obligation is provided only for sectors or sub-sectors indicated by the “SS” mark in the Schedule of Specific Commitments. This mark means specific commitments made in such sectors or sub-sectors are limited to those based on relevant existing measures which are non-conforming to NT or market access obligation.</li> </ul>
Prohibition on Restrictions on Payments and Transfers	<ul style="list-style-type: none"> <li>◦ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors; not limited to just those inscribed in the Schedule of Specific Commitments.</li> </ul>	<ul style="list-style-type: none"> <li>◦ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors.</li> </ul>	Δ Same provision as GATS, where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.	Δ Same provision as GATS, where such prohibition is only applied to restrictions of international transfers and payments for current transactions relating to specific commitments.	<ul style="list-style-type: none"> <li>◦ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors.</li> </ul>	<ul style="list-style-type: none"> <li>◦ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors.</li> </ul>	<ul style="list-style-type: none"> <li>◦ There is a provision prohibiting restrictions of international transfers and payments for current transactions relating to trade in services of all sectors and sub-sectors.</li> </ul>

## Part III: EPA/FTA and IIA

Name	TPP agreement	CPTPP agreement	Japan-EU Economic Partnership Agreement
	Signed on 2016.2.4	Effective on 2018.12.30	Effective on 2019.2.1
Format of annex (reservation schedule)	Negative list approach	Negative list approach	Negative list approach
MFN Treatment	○ In principle unconditional MFN is provided, with exceptions inscribed in the annex (MFN List of Exemptions).	○ In principle unconditional MFN is provided, with exceptions inscribed in the annex (MFN List of Exemptions).	○ In principle unconditional MFN is provided, with exceptions inscribed in the annex (MFN List of Exemptions).
National Treatment (NT)	○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).	○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).	○ In principle, NT shall be accorded in all service sectors except for the ones inscribed in the annex (Schedule of Reservations).
Market Access Commitments	○ In principle, the same provision as Article XVI of GATS on market access (except limitations on the participation of foreign capital) is provided. There is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations)	○ In principle, the same provision as Article XVI of GATS on market access (except limitations on the participation of foreign capital) is provided. There is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations)	○ In principle, the same provision as Article XVI of GATS on market access (except employment restrictions and limitations on the participation of foreign capital) is provided. There is a provision prohibiting the requirement of establishing a local representative office or any form of enterprise; exceptions are inscribed in the annex (Schedule of Reservations)
Transparency Requirements	○ With regard to regulations on matters subject to the provisions of this chapter, obligations are provided, such as adoption or maintenance of an appropriate mechanism for responding to inquiries from stakeholders.	○ With regard to regulations on matters subject to the provisions of this chapter, obligations are provided, such as adoption or maintenance of an appropriate mechanism for responding to inquiries from stakeholders.	○ With regard to regulations on matters subject to of this chapter, should be disclosed promptly, and that there should be a reasonable opportunity to submit opinions on the proposed laws and regulations.
Standstill Obligation	○ This obligation is provided for any existing measures which are non-conforming to NT obligation, etc., and which are maintained by the central or local government. These measures are set out in the annex (Schedule of Reservations).	○ This obligation is provided for any existing measures which are non-conforming to NT obligation, etc., and which are maintained by the central or local government. These measures are set out in the annex (Schedule of Reservations).	○ This obligation is provided for any existing measures which are non-conforming to NT obligation, etc., and which are maintained by the central or local government. These measures are set out in the annex (Schedule of Reservations).
Prohibition of Restrictions on Payments and Transfers	○ This obligation is provided so that all funds related to cross-border provision of services can be transferred or paid freely and without delay to and from the area of that country.	○ This obligation is provided so that all funds related to cross-border provision of services can be transferred or paid freely and without delay to and from the area of that country.	○ Regarding the transactions related to the capital account and net interest expense of balance of international payments, provided to allow the free movement of capital for the purpose of liberalizing investments and other transactions.

\* The EPAs referred to in this table are limited to those signed and approved by the Diet.

## ***5. SUBSTANCE OF AGREEMENTS ON SERVICES IN OTHER COUNTRIES***

If a member of the WTO enters into an FTA regarding trade in services, it must notify the WTO under Article V of GATS.

Prior to 1993, there were only two regional economic integrations that included integration in the services sector. They were the European Economic Community, which entered into force in 1958, and the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), which entered into force in 1989. In addition, from 1994 (after the conclusion of NAFTA) to 2000, there were only 10 regional economic integration agreements which included integration in the services sectors that entered into force. There were seven such cases in 2001, four in 2002; thereafter, EPAs/FTAs regarding trade in services have entered into force at a rate of three to seven per year. Most economic integrations include trade in services. For analysis of nine characteristic FTAs (NAFTA, Australia-Singapore FTA, US-Singapore FTA, US-Australia FTA, US-ROK FTA, EFTA-Singapore FTA, Australia-Thailand FTA, India-Singapore FTA, and ESTA-ROK FTA), see page 628 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.

