

## US and Japan formalize initial Trade Agreements, effective 1 January 2020

---

### EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

---

### Executive summary

The United States (US) President Donald Trump signed a proclamation, on 26 December 2019, implementing two separate trade deals with Japan (collectively, the Agreements).<sup>1</sup> The proclamation came approximately three weeks after Japan's bicameral legislature, the National Diet, approved both Agreements in early December. The US-Japan Trade Agreement (Trade Agreement) will eliminate or reduce duty rates on agricultural and industrial goods and establish preferential quotas for US-specific goods. The US-Japan Digital Trade Agreement (Digital Trade Agreement) is a separate agreement between the two countries that will provide guidelines on priority areas of digital trade. The Agreements went into effect on 1 January 2020 and are expected to be the foundation for further negotiations of a broader free trade agreement between the US and Japan.<sup>2</sup>

### Detailed discussion

President Trump, as part of the Administration's broader Trade Agenda, has long criticized the trade imbalance between the US and Japan, the world's first and third largest economies, respectively. In an effort to reduce the US's \$56.7 billion<sup>3</sup> trade deficit, President Trump and Japanese Prime Minister Shinzo Abe jointly announced their intent to begin negotiations on a US-Japan

trade deal in 2018.<sup>4</sup> These negotiations began in April 2019.<sup>5</sup> As described in EY Global Tax Alert, [USTR grants new exclusions to Lists 1, 2 and 3 for China origin goods; US and Japan reach agreement on the trade in goods and digital trade](#), President Trump and Prime Minister Abe announced the Trade Agreement at the United Nations General Assembly in New York City on 25 September 2019.<sup>6</sup>

Simultaneously, the two world leaders also announced that they had come to terms on the Digital Trade Agreement.

On 7 October 2019, US Trade Representative (USTR) Robert Lighthizer and Japanese Ambassador to the US Shinsuke J. Sugiyama signed the final text of the Agreements, putting both countries on the path towards finalization.<sup>7</sup>

Japan sought ratification by submitting the Agreements to its bicameral legislature, the National Diet. On 19 November 2019, the Diet's lower house, the House of Representatives, voted in favor of both Agreements. On 4 December 2019, the Diet officially approved the Agreements upon passage by the House of Councillors, the Diet's upper house. As Congressional approval was not required in the US, President Trump signed the Agreements into law himself on 26 December 2019. Both agreements went into effect on 1 January 2020.

From a US perspective, the Trade Agreement focuses on enhanced market access for US agriculture products. Prior to the Trade Agreement, \$5.2 billion of the \$14.1 billion of US food and agricultural products imported by Japan were duty-free.<sup>8</sup> The Trade Agreement will reduce or eliminate tariffs on an additional \$7.2 billion worth of US agricultural products.<sup>9</sup> Overall, over 90% of US food and agricultural imports into Japan will either be duty free or receive preferential tariff access. Additionally, US farmers will receive the same preferential treatment as those farmers in member countries to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Application of reduced or eliminated tariff rates for imports into Japan will vary depending on the product's tariff code, as set forth in the Schedule of Japan in Annex I to the Trade Agreement.<sup>10</sup> Products may be subject to tariff reduction, tariff elimination, or staged tariff elimination. Tariff reduction will occur over a number of stages spanning multiple years, covering \$2.9 billion worth of products, such as fresh and frozen beef and pork. Tariff elimination will be effective immediately on \$1.3 billion worth of products, including almonds, cranberries, and broccoli. Staged tariff elimination will also occur over multiple years, spanning \$3 billion of goods such as wine, cheese, frozen poultry, and egg products.

In exchange, the US will eliminate or reduce customs duties on 42 lines and \$40 million of food items, such as persimmons, green tea, and other specific food-related products. Additional products receiving immediate or eventual preferential treatment include certain flower products, bicycle parts, iron and steel articles, industrial machine tools, and various goods included in Chapters 84, 85, and 87 of the Harmonized Tariff Schedule of the US (HTSUS).<sup>11</sup> The elimination and reduction of customs duties will take effect in various stages based on 11 different categories of goods.<sup>12</sup>

Consistent with other bilateral free trade agreements (FTAs), the Annex II to the Trade Agreement contains the rules of origin and origin procedures to determine whether a product qualifies for preferential treatment. For the purposes of the Trade Agreement, a good originates from Japan if it meets one of the following criteria:

- ▶ Wholly obtained or produced entirely in one or both of Japan and/or the US
- ▶ Produced entirely in one or both of Japan and/or the US, exclusively from materials originating in those countries
- ▶ Produced entirely in one or both of Japan and/or the US that uses non-originating materials but satisfies the applicable "tariff shift" requirement<sup>13</sup>

Notably, the deal does not provide any immunity from punitive tariffs on Japanese origin autos under Section 232 actions, nor Japan's desired outcome of removing the Most Favored Nation tariff rate of 2.5% presently assessed on passenger automobiles. However, these topics are expected to be addressed in the next round of comprehensive negotiations taking place early next year.<sup>14</sup>

The Digital Trade Agreement is a separate agreement that establishes rules in the digital space.<sup>15</sup> The substance of the Digital Trade Agreement is effectively the same as the provisions set forth in the United States - Mexico - Canada Agreement (USMCA). Notable provisions include the prohibition of customs duties on electronically-submitted content (e.g., software and music) and the recognition of an electronic signature as a legally appropriate means of authentication. This is important as the World Trade Organization (WTO) Moratorium on electronic transfers is up for renewal at the June 2020 12th Ministerial Conference (see next issue of EY's Tradewatch for related article).

From an operational perspective, US Customs and Border Protection's Automated Commercial Environment (ACE) will be capable of handling claims under the new US-Japan

Trade Agreement starting 14 January 2020 with the new special program indicator "JP" as a prefix to the eligible tariff number.<sup>15</sup> Notably, claims under the Agreement are not exempt from the Merchandise Processing Fee (MPF). Lastly, General Note 36 will be added to the HTSUS and will provide further guidance.

Within four months of implementation, President Trump and Prime Minister Abe will shift their efforts towards securing a more comprehensive trade deal. This broader agreement is expected to cover both tariff and non-tariff barriers to trade, including customs duties and restrictions on the trade of services and investment.

## Actions for businesses

Companies with Japan and US trade are encouraged to review the text of the Agreements and understand potential benefits. To this end, immediate actions companies can consider are:

- ▶ Review the list of the products that are covered by the agreement and their corresponding duty rates for qualifying imports.
- ▶ Review the origin requirements against the current supply chain to understand if there are opportunities to claim preferential treatment under the FTA as a US or Japan-origin product.
- ▶ Consider supply chain or sourcing changes that may allow products to benefit from the agreement.

---

## Endnotes

1. Proclamation 9974 of December 26, 2019 To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes, 84 Fed. Reg. 72187 (Dec. 30, 2019).
2. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/december/ambassador-lighthizer-lauds-japan#>.
3. Currency references in this Alert are to the US\$.
4. <https://www.whitehouse.gov/briefings-statements/joint-statement-united-states-japan/>.
5. <https://ustr.gov/countries-regions/japan-korea-apec/japan>.
6. EY Global Tax Alert, *USTR grants new exclusions to Lists 1, 2 and 3 for China origin goods; US and Japan reach agreement on the trade in goods and digital trade*, dated 27 September 2019.
7. <https://www.whitehouse.gov/briefings-statements/joint-statement-united-states-japan-2/>.
8. <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-agriculture%E2%80%90related#>.
9. <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-secured-tremendous-victory-american-farmers-businesses-new-japan-trade-agreements/>.
10. U.S.-Japan Trade Agreement, Annex I: Tariffs and Tariff-Related Provisions of Japan, I-B-5-1; [https://ustr.gov/sites/default/files/files/agreements/japan/Annex\\_I\\_Tariffs\\_and\\_Tariff-Related\\_Provisions\\_of\\_Japan.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Annex_I_Tariffs_and_Tariff-Related_Provisions_of_Japan.pdf).
11. <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-us-japan-trade-agreement#>.
12. General Note 4 (a) (k) in Annex II of the Trade Agreement. [https://ustr.gov/sites/default/files/files/agreements/japan/Annex\\_II\\_Tariffs\\_and\\_Tariff-Related\\_Provisions\\_of\\_the\\_United\\_States.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Annex_II_Tariffs_and_Tariff-Related_Provisions_of_the_United_States.pdf).
13. See endnote 12.
14. See endnote 7.
15. US Customs and Border Protection, CSMS #41149692, US-Japan Trade Agreement: Information on Claiming Preferential Treatment. <https://www.cbp.gov/trade/free-trade-agreements/japan>.

For additional information with respect to this Alert, please contact the following:

**Ernst & Young LLP (United States), Global Trade**

- ▶ Robert Smith, *Irvine*                      robert.smith5@ey.com
- ▶ Michael Leightman, *Houston*              michael.leightman@ey.com
- ▶ Lynlee Brown, *San Diego*                  lynlee.brown@ey.com
- ▶ Michael Heldebrand, *San Jose*              michael.heldebrand@ey.com
- ▶ Nathan Gollaher, *Chicago*                  nathan.gollaher@ey.com
- ▶ Todd Smith, *Irvine*                          todd.r.smith@ey.com
- ▶ Bill Methenitis, *Dallas*                      william.methenitis@ey.com
- ▶ Armando Beteta, *Dallas*                      armando.beteta@ey.com
- ▶ Bryan Schillinger, *Houston*                  bryan.schillinger@ey.com
- ▶ Michelle F. Forte, *New York*                  michelle.forte@ey.com
- ▶ Dennis Forhart, *Seattle*                      dennis.forhart@ey.com
- ▶ Douglas M. Bell, *Washington, DC*              douglas.m.bell@ey.com
- ▶ Nesia Warner, *Austin*                          nesia.warner@ey.com
- ▶ Jay Bezek, *Charlotte*                          jay.bezek@ey.com
- ▶ Helen Xiao, *Chicago*                          helen.xiao@ey.com
- ▶ Sharon Martin, *Chicago*                      sharon.martin1@ey.com
- ▶ Scott Fife, *Chicago*                          scott.fife@ey.com
- ▶ Javier Quijano, *Detroit*                      javier.quijano@ey.com
- ▶ James Grogan, *Houston*                      james.grogan@ey.com
- ▶ Nicholas Baker, *Houston*                      nicholas.baker@ey.com
- ▶ Oleksii Manuilov, *New York*                  oleksii.manuilov@ey.com
- ▶ Parag Agarwal, *New York*                      parag.agarwal@ey.com
- ▶ James Lessard-Templin, *Portland*              james.lessardtemplin@ey.com
- ▶ Amy Papendorf, *San Francisco*                  amy.papendorf@ey.com
- ▶ Robert Schadt, *Washington, DC*                  robert.schadt@ey.com
- ▶ Celine Petersen, *Chicago*                      celine.petersen@ey.com
- ▶ Sara Schoenfeld, *New York*                  sara.schoenfeld@ey.com
- ▶ Alexa Reed, *Detroit*                          alexa.reed@ey.com
- ▶ Evan Bloom, *New York*                          evan.bloom@ey.com

**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](http://ey.com).

Indirect Tax

© 2020 EYGM Limited.  
All Rights Reserved.

EYG no. 000193-20GbI

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](http://ey.com)**