



**Asia-Pacific  
Economic Cooperation**

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## **Benefits and Issues of the Competition Chapter of EPA - Experience of Japan**

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**公正取引委員会**  
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# Benefits and Issues of the Competition Chapter of EPA - Experience of Japan -

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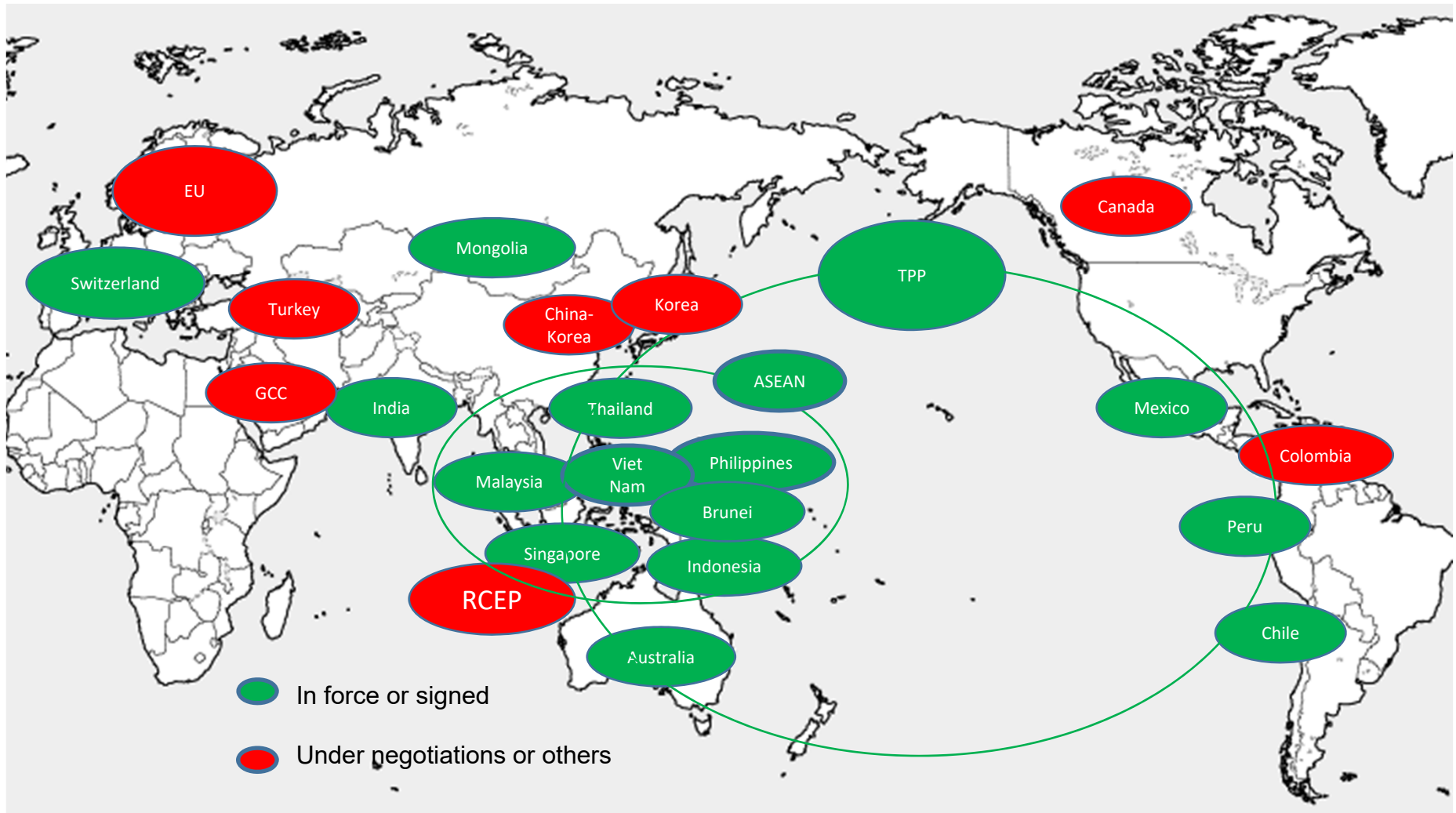
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# 1. Overview

## FTA/EPAs between Japan and Other Economies and Regions



(as of March 2017)

## 1. Overview

### EPAs containing competition-related provisions

	Economies and Regions	Signature Date	Effective Date
1	Singapore	2002.1	2002.11
2	Mexico	2004.9	2005.4
3	Malaysia	2005.12	2006.7
4	Philippine	2006.9	2008.12
5	Chile	2007.3	2007.9
6	Thailand	2007.4	2007.11
7	Indonesia	2007.8	2008.7
8	ASEAN	2008.4	Partly effective
9	Vietnam	2008.12	2009.10
10	Switzerland	2009.2	2009.9
11	India	2011.2	2011.8
12	Peru	2011.5	2012.3
13	Australia	2014.7	2015.1
14	Mongolia	2015.2	2016.6
15	TPP	2016.2	Not yet effective

## 1. Overview

# EPAs and other International Agreements

<b>1</b>	<b>EPA *</b> <b>(Basic Agreements)</b> <i>: Economy to Economy (or Region)</i>	✓	✓	✓	✓			
<b>1'</b>	<b>EPA *</b> <b>(Implementing Agreements)</b> <i>: Government to Government</i>		✓	✓				
<b>2</b>	<b>Anti-monopoly Cooperation Agreements</b> <i>: Government to Government</i>					✓	✓	
<b>3</b>	<b>MOU</b> <b>(Memorandum of Understanding)</b> <i>: Agency to Agency</i>			✓	✓		✓	✓
<b>Economies and Regions</b>		Chili, ASEAN, India	Mexico, Malaysia, Thailand, Indonesia, Switzerland, Peru	Singapore, Philippines, Mongolia	Australia, Vietnam	US, EC	Canada	Brazil, Korea, China**, China***, Kenya

\* competition-related provisions only

\*\* MOFCOM

\*\*\* NDRC

## 1. Overview

# Basic Elements of EPA

A competition chapter of EPA covers basic elements as follows:

- a. Appropriate measures against anticompetitive practices
- b. Non-Discrimination
- c. Procedural Fairness
- d. Cooperation on issues relating to competition law enforcement
- e. Transparency
- f. Technical Cooperation
- g. Consultation
- h. Non-Application of Dispute Settlement

## 2. Benefits

### Benefits of the Competition Chapter

- Cooperation articles in EPA make enforcement cooperation between competition authorities easier.
  - Enforcement cooperation includes:
    - a. Coordination of timing of Dawn Raid
    - b. Information Exchange on Progress of Investigation
    - c. Provide information on Legal Measure etc.



## 2. Benefits

- Through the dialogue in the negotiation for the competition chapter, each agency builds mutual understanding and trust, which leads to a shared awareness of sound enforcement activities.
- EPA contributes to improve the predictability for enterprises engaging in cross-border business and makes the market more attractive for them.

### 3. Issues (1)

## Issues on the competition chapter (1)

How are the elements of “Cooperation” contained in the EPA’s chapter?

- Elements of cooperation include:
  - i. Notification;
  - ii. Cooperation in enforcement activities (such as exchange of information etc.);
  - iii. Coordination of enforcement activities;
  - iv. Request for enforcement activities (positive comity);
  - v. Consideration of important interests of the other party (negative comity)
  
- Need to consider the existence of comprehensive competition law and levels of competition policy experience of the counterparty

### 3. Issues (1)

# Matrix of the Contents of Cooperation

(contained in the competition chapter of EPA)

Economies	Notification	Enforcement Cooperation (Exchange of information)	Coordination of Enforcement	Positive Comity	Negative Comity	Technical Cooperation
US (*Anti-monopoly Cooperation Agreements)	✓	✓	✓	✓	✓	
<u>Economy Type1</u>	✓	✓	✓	✓	✓	
<u>Economy Type2</u>	✓*	✓*	✓*			✓
<u>Economy Type3</u>						✓

\* general and brief prescription

### 3. Issues (1)

- Economy Type 1 has comprehensive competition law and enough experience of competition policy
  - Full-fledged elements of cooperation (as in Anti-monopoly Cooperation Agreements with US, EC and Canada) are contained.
- Economy Type 2 has comprehensive competition law but less experience of competition policy
  - Elements on Notification, exchange of information and coordination of Enforcement are contained in general and brief description.
  - Positive/negative comity are not contained.
  - Cooperation will be reviewed and enhanced as appropriate.

### 3. Issues (1)

- Economy Type 3 doesn't have comprehensive competition law
  - No detailed elements of cooperation is contained.
  - The cooperation will be reviewed and enhanced when comprehensive competition law is adopted.
  - Technical cooperation is contained and JFTC will contribute to building capacity.
- We are considering an approach tailor-made for the counterparty regarding the elements of cooperation.

### 3. Issues (2)

## Issues on the competition chapter (2)

### Challenges in relation to “Exchange of Information”

- Exchange of information is a key activity when cooperating between competition agencies.
- Article 43-2 of Japanese Antimonopoly Act (AMA) offers Fair Trade commission the legal basis for providing foreign competition authorities with information.
- In addition, Article 43-2 of Japanese AMA makes some conditions for providing information; reciprocity, confidentiality, prohibition of utilization for unintended purposes, non-use for criminal proceedings.

### 3. Issues (2)

## Legal Frameworks in the Japanese AMA for “Exchange of Information” (1)

### Article 43-2

(1) The Fair Trade Commission may provide ...Foreign Competition Authority...with information that is deemed helpful and necessary for the execution performance of the Foreign Competition Authority's duties (limited to duties equivalent to those of the Fair Trade Commission as provided in this Act...); provided, however, that this does not apply if the provision of relevant information is found likely to interfere with the proper execution of this Act or to infringe on the interests of Japan in any other way.

### 3. Issues (2)

## Legal Frameworks in the Japanese AMA for “Exchange of Information” (2)

### Article 43-2

(2) Whenever the Fair Trade Commission provides information to a Foreign Competition Authority pursuant to the provisions of the preceding paragraph, the Fair Trade Commission must confirm the matters listed in the following items:

(i) that the relevant Foreign Competition Authority is capable of providing information equivalent to the information provided pursuant to the provisions of the preceding paragraph



### 3. Issues (2)

## Legal Frameworks in the Japanese AMA for “Exchange of Information” (3)

(ii) that the secrecy of information provided as secret pursuant to the provisions of the preceding paragraph will be protected under the laws and regulations of the relevant foreign country to a degree that is equivalent to the degree to which the secrecy of such information is protected in Japan

(iii) that the information provided pursuant to the provisions of the preceding paragraph will not be used by the relevant Foreign Competition Authority for purposes other than those contributing to the performance of its duties

### 3. Issues (2)

## Legal Frameworks in the Japanese AMA for “Exchange of Information” (4)

### Article 43-2

(3) Appropriate measures must be taken so that the information provided pursuant to the provisions of paragraph (1) is not used for criminal proceedings undertaken by a court or a judge in a foreign country.

## TPP and “Commitment Procedure”

- TPP puts emphasis on procedural fairness.
- TPP includes an article which prescribes that "Each Party shall authorise its national competition authorities to resolve alleged violations voluntarily by consent of the authority and the person subject to the enforcement action".
- A bill for relevant law amendments associated with the conclusion of the TPP has been passed by the National Diet. (\*to be put into effect concurrently with TPP)
  - The bill includes an amendment of the AMA to introduce a commitment procedure.

# Thank you.

The views expressed in this presentation are solely those of the speaker and do not necessarily reflect those of the agency that the speaker belongs to.

All errors in this presentation are mine.