

THE EU–JAPAN PARTNERSHIP

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Bart Gaens
Senior Research Fellow/ The Global Security Programme
Project Director/ CUSPP
The Finnish Institute of International Affairs

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- The EU increasingly aims for Free Trade Agreements (FTA) that are accompanied by a Strategic Partnership, in Asia as well as elsewhere. EU–Japan relations seem closest to resulting in a binding trade-related and political agreement.
- The EU and Japan are global trade powers that focus on soft power; both share the same values, support a comprehensive approach to security, and have a history of ad hoc security cooperation. Both players are also in relative decline, and an FTA would have tremendous significance for both.
- The agreement is said to be close to completion, but numerous obstacles remain, relating to market access, data protection, a human rights clause, an investment court system, and ratification in the EU.
- The political agreement remains primarily of symbolic importance, and sustainable cooperation in security matters is probably a long way off. Nevertheless, in addition to economic benefits, an upgraded EU–Japan partnership through a mega-FTA coupled with a political and strategic partnership agreement would allow both players to take the lead in setting international rules and standards. For the EU, it would also form a vital stepping stone towards deepened engagement in Asia.

Introduction

Asia is at the heart of an ongoing global power transformation. First and foremost, the balance of economic power is gradually shifting to the East. A “rising Asia”, housing some of the world’s largest and fastest growing countries and increasingly marked by rapidly growing economic interdependence and connectivity, is seen as the most dynamic field of the world’s economy today. At the same time, the region is gaining in political and cultural weight. However, as aptly expressed by the term “Asian paradox”, the region is also rife with lingering historical grievances, unresolved territorial disputes, an ongoing arms race, and clear and present security tensions. Asia is also a prime example of a region in which diplomatic friction, political nationalism, and rivalry between states can easily affect trade routes, financial flows and economic cooperation.

Along with the rise of Asia, the European Union’s relative share in the global economy is sharply declining. Between 2004 and 2014 the EU’s share of world GDP dropped from 31.4% to 23.8%,¹ and is set to decline further. As is clear from the European Union’s Global Strategy (EUGS) endorsed in June 2016, Europe realizes it is in its own interests to tap into Asian economies, and it therefore aims to “deepen economic diplomacy” by striving for free trade agreements in the region. At the same time, the EU is well aware that European prosperity and Asian security are interlinked. According to the Global Strategy, the EU aims to “develop a more politically rounded approach to Asia, seeking to make greater practical contributions to Asian security”. This entails a new approach to establishing partnerships in Asia that are buttressed by economic exchange but that also entail a security dimension.

It is the goal of this Briefing Paper to explore this new aspiration on the part of the EU to ink more comprehensive economic and political partnership deals by focusing on the case of the EU–Japan agreement likely to be concluded later this year. The paper first sketches the current state of EU free-trade arrangements in Asia. It then examines

a number of similarities shared by the EU and Japan, which explains why both players refer to each other as “natural partners”. The paper then proceeds by outlining the most significant obstacles impeding the negotiations. The Briefing Paper concludes by looking ahead and assessing the potential for a political and trade-related agreement between the EU and Japan.

Pursuing free trade partnerships, while adding a security dimension

The EU remains first and foremost a trade power in Asia, aiming to secure Free Trade Agreements (FTA, also referred to as Economic Partnership Agreements or EPA). The EU has already concluded FTAs with Singapore (2012) and Vietnam (2015). Negotiations with the Philippines started in 2015, but the country’s deteriorating human rights situation has recently cast a shadow over a future free-trade arrangement. FTA talks with Indonesia, the largest economy of the Association of Southeast Asian Nations (ASEAN) countries, were launched in July 2016. Free-trade talks with Malaysia and Thailand have been put on hold, due to reasons related to the general elections and a military coup respectively, but an Investment Protection Agreement with Myanmar is in the works. Taken together, all bilateral agreements with individual Southeast Asian countries mark important steps towards reviving the plan to create an EU–ASEAN FTA. Talks on this bi-regional trade pact started in 2007 but were discontinued in 2009 due to the involvement of the undemocratic regime in Myanmar and the wide heterogeneity of ASEAN countries.

Creating partnerships relating not only to trade, but also including a political and security-related dimension is part of the EU’s new strategy to broaden its engagement with key Asian countries. Concretely, this is implemented by negotiating a binding political arrangement referred to as a Strategic Partnership Agreement (SPA) (also known as a Framework Agreement, FA) in parallel with a comprehensive FTA. The SPA can be complemented by a security-related Framework Participation Agreement (FPA), which stipulates the strategic partner’s participation in the EU’s Common Security and Defence Policy (CSDP) missions, including crisis management anti-piracy operations.

1 Eurostat. *The EU in the World*. 2016, p. 79. <http://ec.europa.eu/eurostat/documents/3217494/7589036/KS-EX-16-001-EN-N.pdf/bcacb30c-0be9-4c2e-a06d-4b1daead493e> last accessed 21 Mar 2017

The agreement between the EU and South Korea forms the ideal model of this new type of partnership. As such, it is the first “new generation” FTA. Going beyond the narrow focus on trade in goods and services, it is the most comprehensive and most ambitious of all the EU FTAs, and it is also the first with an Asian country. Since the agreement entered into force in 2011, exports to Korea have increased by over 55%.² An SPA entered into force in 2014 and was followed by the signing of an FPA, which laid down the rules for South Korean participation in terms of financing, personnel, and the transfer of operational control in EU crisis management operations.³ The EU–South Korea FPA involving security cooperation on the ground is a good example of the EU’s ambition to involve third countries in EU-led missions and operations under the CSDP. In practice, security cooperation still remains highly limited, rather ad hoc and below the radar. Nonetheless, it indicates the EU’s aspiration to take on a larger security role in regions such as Asia, also expressed by the Union’s ambition to join the East Asia Summit, an annual forum for regional security dialogue.

The EU and Japan: “Natural partners”?

Taking the EU–South Korea cooperation as a key forerunner, the FTA/SPA that the EU seems closest to completing next is the partnership with Japan. Japan is the EU’s second biggest trade partner in Asia, and its sixth most important global partner. The EU is the 3rd trading partner for Japan, and total trade between the two amounts to approximately 124.5 billion euro.⁴ In March 2017, the European Commission and the Japanese government confirmed their commitment to a swift conclusion of the negotiations that were launched in 2013 and which have undergone 17 rounds of talks. Importantly, in tandem with the FTA, the EU is negotiating a Strategic Partnership Agreement, similar to the

EU–South Korea Framework Agreement (2010) and the EU–Canada Strategic Partnership Agreement (2016). This legally-binding document would cover all relevant areas for cooperation, including regional security, counter-terrorism, disaster mitigation, disarmament and non-proliferation, global commons, and people-to-people exchanges.

On the face of it, Japan is the EU’s natural partner in Asia, as both players share a host of similarities. First, both the EU and Japan are still global trade superpowers. Together, the EU and Japan make up 35.8% of global trade (imports and exports).⁵ Second, both actors are in relative decline and therefore could greatly benefit from joining forces. Whereas the EU faces a range of internal economic, political, and security-related crises, Japan has gone through a lasting period of economic stagnation, referred to as the “lost decades” after the burst of the economic bubble in the early to mid-1990s. China overtook Japan as the world’s second largest economy in 2010. In addition, both players’ relative share in the other’s trade has been declining sharply in recent decades.

Third, both the EU and Japan consider themselves “herbivorous” powers that aim to play a global role first and foremost by focusing on civilian and “soft” power, as opposed to military power. Fourth, and relatedly, both actors refer to each other as global partners sharing the same basic values, including democracy, a market economy, human rights, human dignity, freedom, equality, and the rule of law. Fifth, Japan and the EU are obvious “aid superpowers”. The EU is the world’s largest donor of Official Development Assistance (ODA), taking together the total provided by member states and EU institutions. Japan is the world’s fourth largest donor in gross terms. Furthermore, while Japanese aid can be said to have been traditionally more self-serving when compared to the EU’s approach, at present both actors are displaying convergence with regard to their aid policy. Similar to Japan’s traditional aid philosophy, the EU now increasingly emphasizes the need to shift from aid dependence to self-reliance, as well as strongly supporting private sector involvement in development. Sixth, as a

2 European Commission. *Countries and regions: South Korea*. <http://ec.europa.eu/trade/policy/countries-and-regions/countries/south-korea/> last accessed 21 Mar 2017.

3 Official Journal of the European Union. 5 June 2014, L166/3. [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0605\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0605(01)&from=EN) last accessed 21 Mar 2017.

4 European Commission. *Countries and regions: Japan*. http://trade.ec.europa.eu/doclib/docs/2006/september/trade_doc_113403.pdf last accessed 21 Mar 2017

5 Ministry of Foreign Affairs of Japan. *Japan–EU EPA*. <http://www.mofa.go.jp/files/000013835.pdf> last accessed 21 Mar 2017.

means of contributing to global peace and stability, the EU emphasizes a comprehensive approach to security. Japan emphasizes a similar method, focusing on the concept of “human security”, affirming the rights of individuals and interlinking security and development.⁶

Seventh, and finally, even though the EU–Japan relationship has mainly focused on economy and trade thus far, both parties share a joint experience of security-related cooperation on the ground. In the field of maritime security, both players have a strong interest in keeping the transport lanes safe, as 90% of trade between Europe and East Asia is seaborne and goes through the Indian Ocean. In 2014 the Japanese Maritime Self-Defense Forces (MSDF) cooperated with the European Union Naval Force – Operation Atalanta (EU NAVFOR) in counter-piracy operations in the Gulf of Aden and off the Horn of Africa. In recent years, Japan has also provided financial and technical assistance for EU missions in Niger to contribute to security-related capacity-building, and in Mali, *inter alia* to support a police training school and by improving judicial cooperation. In the past, Japan and the EU have also cooperated in the Western Balkans, Iraq, and Afghanistan.

Most crucial to the partnership is the arrangement to conclude an FTA. The EU–Japan agreement would comprise over one-third of the world’s GDP. According to a European Commission Impact Assessment Report published in 2012, the EU’s GDP would increase by between 0.34% and 1.9% (representing an additional GDP of a minimum of 42 billion euro and a maximum of 320 billion euro). Exports to Japan would increase by between 22.6% and 32.7%, depending on the FTA’s level of ambition. The effect of the FTA on European employment would vary. While there would be a substantial increase in jobs in the electrical machinery sector, other sectors would be only marginally affected in a positive or negative way. An FTA could potentially have a negative effect on EU employment in the automobile sector, but this adverse effect could be mitigated by

higher Japanese Foreign Direct Investments (FDI) in the EU, resulting in job creation.⁷

Obstacles and limitations

The EU–Japan partnership thus harbours great potential, and can also be seen as a logical extension of the EU’s new strategy to combine economic diplomacy with a more comprehensive approach, including a stronger political and security-related dimension. Negotiations are quite advanced at present, and have been “close to a conclusion” for some time. An agreement is likely to be reached later this year. Nevertheless, some obstacles and caveats remain.

Market access and data protection

First, in the FTA negotiations, market access poses the greatest hurdle. The EU seeks to open up Japan’s market for exports of its dairy products, beef, pork, and wine, and is calling on Japan, which aims to protect its farming sector, to reduce tariffs on agricultural products. Japan is seeking to obtain easier access to the EU’s automobile sector. At the same time, the negotiations are partly asymmetrical as the EU is seeking a reduction in non-tariff barriers that protect the Japanese market, while Japan wants the EU to lower its tariffs, especially in the light of Japan’s competition with South Korea (with whom the EU has an FTA). Data protection is also a thorny issue. Both partners would need to find a compromise that guarantees that Japan’s data protection rules are on a par with the EU’s strict privacy laws.

Essential elements clause

The EU is seen by Japan as a strategic partner with a shared value system and global ambitions. Both the EU and Japan employ a diplomacy based on universal values and appeal to defend human rights. Hence, the inclusion of a human rights clause in the SPA does not seem to be a major issue. Nevertheless, both partners have different views in more than one field relating to values and norms. The most

6 Fukushima, Akiko. “Japan–Europe cooperation for peace and stability: Pursuing synergies on a comprehensive approach”. *Policy Brief*. German Marshall Fund of the United States, Asia Program, April 2015.

7 European Commission. “Impact Assessment Report on EU–Japan Trade Relations.” *Commission Staff Working Document*. Brussels, 18.7.2012. http://trade.ec.europa.eu/doclib/docs/2012/july/tradoc_149809.pdf last accessed 21 Mar 2017.

symbolically strong in terms of differing values is the discrepancy in their views on capital punishment. Japan is one of three developed countries, together with the US and Singapore, that implements the death penalty. Fifty-four executions took place between 2007 and 2015.⁸ The EU has long been calling on Japan to place a moratorium on capital punishment. Yet differences of opinion also abound in the field of administration of justice, including on the duration of an interrogation or the length of preliminary confinement, for example. Japan has voiced opposition to the EU's principled inclusion of a human rights clause in the SPA, arguing that the clause might exert tacit pressure on Japan and that a political agreement constraining the EPA poses legal questions.⁹

In theory, such “essential elements” clauses allow a suspension of obligations stipulated in the agreement in case either partner violates human rights. However, this is likely to be a relatively minor issue. The Comprehensive Economic and Trade Agreement (CETA) with Canada, ratified by the EU in February 2017, sets an important precedent for a merely symbolic and watered-down version of the essential elements clause included in the SPA that only refers to a “particularly serious and substantial violation” such as a *coup d'état*, ultimately making its inclusion “of an entirely political value”.¹⁰ It can also be seen as an example of the EU's “principled pragmatism”, as extolled in its Global Strategy. Yet its inclusion is important in the light of potential future agreements with other countries, including China.

Investor protection

Japan and the EU also appear to be at odds over the Investment Court System (ICS), included in the EU-Vietnam FTA as well as in the CETA, which is a mechanism for resolving disputes between investing companies and the host government. The system replaces the former ad hoc system of Investor State Dispute Settlement (ISDS). The ICS's aim is to make the investment protection system more transparent, and to ensure that the investor's rights do not

impinge on public policy-making, including environmental, health and consumer protection. But the new system remains controversial because it is separate from domestic law and still allows private corporations to sue states for practices that harm their business. The CETA, for example, was only signed after the final text enshrined government rights to regulation in terms of public policy and health protection, for example. The proposed text for the EU-Japan deal envisages that the ICS can be replaced in the future by a multilateral investment court. Japan, however, has expressed reservations towards the need for the new courts to replace the current arbitration procedures in disputes.¹¹

Security cooperation

The EU's new “politically rounded” approach aims to enhance cooperation in non-traditional security with third countries such as Japan, in areas as diverse as maritime security and anti-piracy operations, counter-terrorism, peace-building or the fight against cybercrime, without encroaching on the military and hard security role of the US in the Asia-Pacific. Importantly, Japan has implemented new security legislation under the banner of a “pro-active contribution to peace”, including allowing itself the right to collective self-defence. This gives Japan's military forces more leeway when participating in international peacekeeping missions. Nevertheless, Japan's engagement in military operations will remain highly restricted and legally confined. Furthermore, as noted above, the EU's role as a security actor in Asia remains highly confined and primarily ad hoc. Unlike the EU-South Korea agreement, no Framework Participation Agreement is currently being negotiated with Japan, which underscores the primarily political significance of the Strategic Partnership Agreement.

Ratification in the EU

The biggest stumbling block, however, relates to the member-state level in the EU, including the outcome of the forthcoming elections in France in particular. The ratification of an eventual agreement may also become precarious. Just like the CETA, most likely the EU-Japan EPA/SPA will be considered a “mixed

8 *The Economist*, 6 April 2016.

9 *Japan Times*, 6 May 2014.

10 Bartels, Lorand. “Human rights, labour standards and environmental standards in CETA”. *Legal Studies Research Paper Series*, University of Cambridge, February 2017, p. 11.

11 *Financial Times*. “Brussels ‘close’ to free-trade deal with Japan”. 5 December 2016.

agreement”, which means that some areas will fall under exclusive EU competence, whereas others will be under the competence of the Member States. In general, trade in goods and services and foreign direct investment are matters under exclusive EU competence, whereas trade in transport services, as well as fundamental labour and environmental standards are competences shared with the Member States. In December 2016, the European Court of Justice ruled that the EU did not have exclusive competence to sign and conclude the EU–Singapore FTA, and the agreement would therefore necessitate the participation of the Member States acting jointly. This means the agreement can be applied provisionally, but that in order to enter into force completely, it would need the approval of all 38 national and regional parliaments. This is the case with the CETA and will most likely be the case with the EU–Japan agreement.

Prospects

In spite of these obstacles, an upgraded EU–Japan partnership through a mega-FTA coupled with a political and strategic partnership agreement would mark a vital stepping stone towards increased EU engagement in Asia. For the EU as a primarily economic power, the significance of a trade agreement that could potentially boost growth more than the Transatlantic Trade and Investment Partnership (TTIP) could have done, is clear. The EU–Japan negotiations have certainly been revitalized since both the TTIP and the Transpacific Partnership (TPP) were put on ice following the start of the Trump presidency in the US. A changing US stance towards Asia gives Europe an opportunity to carve out a role for itself in the region, as a key partner in trade and investment. An enhanced role in Asian security may seem largely rhetorical for the time being, but the agreement with Japan can at least lay the groundwork for closer cooperation in non-traditional security.

From the perspective of Japan, Brexit has prompted Tokyo to recalibrate its relations with key European markets, and spurred on negotiations with the EU. Furthermore, after the US withdrawal from the TPP, an agreement with the EU could be part of a “Plan B”, or even be a way to put pressure on the US for a possible bilateral trade agreement. As for the SPA, Japan does not have much to lose, as the agreement

mainly sets up the general political framework and confirms the shared values and principles.

In addition to the economic benefits, inking an EU–Japan agreement would mean that both players can take the lead in setting international rules and standards with regard to transparency, safety, services, trade, labour rights, and sustainable development. Most importantly, at a time when there is a lot of popular resistance against free trade, there is a need to carefully explain to the general public the benefits of a possible EPA/SPA in terms of its economic, social and environmental impact, and in the light of issues such as GDP growth, jobs, food safety, and consumer protection.

After the ground-breaking EU–South Korea agreement, the EU–Japan partnership is the next logical step towards an enhanced presence for the EU in Asia. It would allow the EU to show its continued dedication to openness as a trade power. It will also provide the EU with an opportunity to prove that rumours of its demise have been greatly exaggerated.

The Finnish Institute of International Affairs
tel. +358 9 432 7000
fax. +358 9 432 7799
www.fiiia.fi

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