

Legal Update

US-Japan Trade Agreements Mark "First Stage" of Tariff Cuts and Commitments on Digital Trade

1. Introduction

On September 25, 2019, President Donald Trump and the Prime Minister of Japan, Shinzo Abe, agreed in principle on a limited bilateral trade deal between their respective countries, which was memorialized by the signing of two separate trade agreements on October 7, 2019, namely the US-Japan Trade Agreement and the US-Japan Digital Trade Agreement.

These trade agreements mark what the White House is calling the "first stage" of the US-Japan agreement on tariff cuts and commitments on digital trade amounting to roughly \$55 billion and are expected to take effect on January 1, 2020, with negotiations on a more comprehensive trade deal to follow thereafter.

2. US-Japan Trade Agreement

The US-Japan Trade Agreement aims to help US farmers restore the Japanese market share they lost to competitors due to the US withdrawal from the Trans-Pacific Partnership (TPP).

As a result, the US-Japan Trade Agreement focuses primarily on agriculture. The agreement will provide the United States with substantial market access,

totaling roughly \$7.2 billion worth of US agricultural exports, through reduced or eliminated tariffs and US-specific quotas. In return, the United States will lower tariffs on a number of Japanese agricultural and industrial exports.

The full tariff schedules of Japan and the United States are enumerated in Annexes I and II to the agreement, respectively. The full text of the US-Japan Trade Agreement is available at <https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-trade-agreement-text>.

(A) US AGRICULTURAL EXPORTS TO JAPAN

The tariff agreement will reduce Japan's tariffs on most agricultural goods imported from the United States to the same level as would have been required under the TPP. The \$7.2 billion tariff elimination or reduction is divided into 40 categories: approximately \$1.3 billion of US exports will receive immediate tariff elimination, about \$3.0 billion will benefit from tariff elimination in stages over as many as 20 years and roughly \$2.9 billion will see staged tariff reduction (but not tariff elimination). Below is a list of major products benefiting from the enhanced market access:

Immediate Tariff Elimination (\$1.3 billion)	Staged Tariff Elimination (\$3.0 billion)	Staged Tariff Reduction (\$2.9 billion)
<ul style="list-style-type: none"> • Almonds • Blueberries • Cranberries • Walnuts • Sweet corn • Lactose • Milk albumin • Grain sorghum • Food supplements • Broccoli • Prunes 	<ul style="list-style-type: none"> • Processed pork • Beef offal • Frozen poultry • Wine • Frozen potatoes • Oranges • Fresh cherries • Cheese and whey • Ethanol • Egg products • Tomato paste 	<ul style="list-style-type: none"> • Fresh beef • Frozen beef • Fresh pork • Frozen pork

Japan will also create US-specific quotas for nine categories of agricultural products, providing access for a specified quantity of US exports at a preferential tariff rate. Importantly, Japan will reduce its 45-percent mark-up on wheat and barley imports, matching the preferential access afforded under TPP countries. Under this agreement, the use of safeguard measures is limited to seven types of agricultural goods (i.e., beef, pork, processed pork, whey protein concentrate, whey powder, fresh oranges and race horses), which will phase out over as many as 20 years.

For a succinct summary of preferential tariff measures on key products, please refer to the fact sheet published by the Office of the United States Trade Representative (USTR) at <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/october/agriculture-related-provisions-of-us-japan-trade-agreement>.

(B) JAPANESE AGRICULTURAL AND INDUSTRIAL EXPORTS TO THE UNITED STATES

The tariff elimination or reduction provided by the United States to Japan is less focused on agriculture. Out of the 11 categories of customs duties, only 42 tariff lines cover agricultural imports, which include cut flowers, persimmons, green tea and soy sauce.

The US tariff cuts will also cover a narrow set of industrial goods, including machine tools, fasteners, steam turbines, bicycles and parts, and musical instruments produced in Japan.

(C) WHAT IS NOT INCLUDED

Notwithstanding its focus on agriculture, the US-Japan Trade Agreement does not reduce tariffs on some of the most important US exports to Japan. For example, the agreement will not affect Japanese tariffs on US butter, skim milk powder, evaporated milk and rice. In addition to these agricultural products, the agreement does not touch Japanese tariffs on large US non-agricultural exports, including aircraft, liquefied propane gas and semiconductor manufacturing equipment.

With respect to Japanese exports to the United States, the agreement will not affect US tariffs on motor vehicle and motor vehicle parts imports produced in Japan. On May 17, 2019, President Trump proclaimed motor vehicle and parts imports, particularly from Japan and the European Union, a threat to US national security, which could possibly lead to US Section 232 tariffs of 25 percent on motor vehicle and parts imports from Japan. However, USTR Robert Lighthizer stated that the Trump administration has no intention of pursuing such import restrictions against Japan "at this point," in light of the new trade agreement¹.

3. US-Japan Digital Trade Agreement

In essence, the US-Japan Digital Trade Agreement is a market-opening agreement on \$40 billion worth of digital trade. This digital agreement calls for both the United States and Japan to reduce barriers to trade on each other's digital media and software. The Digital Trade Agreement substantially mirrors the digital chapters of the TPP and the signed but to-be-ratified United States-Mexico-Canada Agreement.

This agreement includes specific provisions on digital distribution of digital products without customs duties or other protectionist measures. It prohibits imposition of cross-border customs duties to "electronic transmissions," as well as prohibits the United States or Japan from providing less favorable treatments to digital products created in or by a person of the other country than it accords to "other like digital products."

Further, free cross-border data transfers and prohibition against data localization as a condition for conducting business are a significant part of this agreement. It also extends the data localization restrictions to financial institutions and other financial service suppliers so long as the US or Japanese financial regulatory authorities have immediate, direct, complete and ongoing access to the financial data.

In addition, this agreement offers strong protection for digital intellectual property. It prohibits forced disclosure of proprietary computer source code or algorithms of software as a condition for the import, distribution, sale or use of that software in the United States or Japan. With respect to a digital product that uses cryptography, the Digital Trade Agreement prohibits forced partnering or cooperation with local companies as a condition to enter into the market.

The full text of the US-Japan Digital Trade Agreement is available at <https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-digital-trade-agreement-text>.

4. Entry into Force

According to Article 9 of the US-Japan Trade Agreement and Article 22(2) of the US-Japan Digital Trade Agreement, both agreements will be effective 30 days after the United States and Japan notify the completion of their local legal procedures to pass relevant laws or ratify the agreements.

While the agreements will have to be submitted to Japan's legislature, the National Diet of Japan, for ratification, neither agreement requires a vote in the US Congress. Under section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4202), the Trump administration can use its delegated tariff proclamation authorities to enact the tariff changes without congressional approval. Further, the digital trade commitments are likely to take the form of an executive agreement and require no changes to current US law.

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Endnote

¹ Ana Swanson, "Trump Announces a Trade Pact with Japan," *The New York Times*, 2019,

<https://www.nytimes.com/2019/09/25/business/trump-announces-limited-trade-pact-with-japan.html>.

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