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Japan-EU Economic Partnership Agreement

Consolidated Text

(Status 5 July 2017)

Text within brackets is subject to further agreement by the Parties.

Title [X] - TRADE IN SERVICES, INVESTMENT AND E-COMMERCE

CHAPTER IV

ENTRY AND TEMPORARY STAY OF NATURAL PERSONS

Article 1

General Provisions and Scope

1. This Chapter reflects the strengthened trade relationship between the Parties as well as the desire of the Parties to facilitate entry and temporary stay of natural persons for business purposes on a reciprocal basis and to ensure transparency of the process.
2. This Chapter shall apply to measures of a Party affecting the entry into the Party by natural persons of the other Party, that are business visitors for establishment purposes, intra-corporate-transferees, investors, contractual services suppliers, independent professionals and short term business visitors, and measures affecting their business activities during their temporary stay in the other party.
3. To the extent that commitments are not undertaken in this Chapter, all other requirements of the Parties' laws and regulations regarding entry and temporary stay shall continue to apply, including regulations concerning period of stay.
4. Notwithstanding the provisions of this Chapter, all requirements of the Parties' laws and regulations regarding work and social security measures shall continue to apply, including regulations concerning minimum wages as well as collective wage agreements.

5. Commitments on entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour/management dispute or negotiation, or the employment of any natural person who is involved in such dispute.

Article 2

General Obligations

1. Each Party shall allow entry and temporary stay to natural persons for business purposes of the other Party in accordance with this Chapter, including the provisions of Annexes [III] and [IV], who comply with the immigration laws and regulations of the Party applicable to entry and temporary stay.

2. Each Party shall apply its measures relating to the provisions of this Chapter consistently with the desire of the Parties set out in paragraph 1 of Article 1, and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article 3

Transparency

1. Each Party shall make publicly available information relating to the entry and temporary stay of the natural persons, referred to in paragraph 2 of article 1.

2. The information referred to in paragraph 1 shall include, where applicable, the following information:

- a) categories of visa, permits or any similar type of authorization regarding entry and temporary stay;
- b) documentation required and conditions to be met;
- c) method of filing an application and options on where to file, such as consular offices or online;
- d) application fees and indicative processing time;
- e) the maximum period of stay under each type of authorization described in subparagraph (a);
- f) conditions for any available extensions or renewal;
- g) rules regarding accompanying dependents;
- h) available review and/or appeal procedures;
- j) relevant laws of general application pertaining to the entry and temporary

stay of natural persons.

3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly inform the other Party of the introduction of any new requirements and procedures, or changes in any requirements and procedures that affect the effective application for the grant of entry into and temporary stay in and, where applicable, permission to work in that Party.

Article 4

Contact Points

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby designate Contact Points.

2. The functions of the Contact Points shall be:

(a) monitoring the implementation of this Chapter;

(b) the exchange of information on measures that affect the entry of nationals under this Chapter;

(c) considering the development of measures to further facilitate the entry of nationals on a reciprocal basis; and

(d) considering recommendations to the Joint Committee.

3. The Contact Points shall exchange information and hold meetings at such times and venues or by means, as agreed by the Parties.

Article 5

Obligations in Other Chapters

1. This Agreement does not impose an obligation on a Party regarding its immigration measures, except as specifically provided in this Chapter and in Chapter [X] [Transparency/ Institutional].

2. Without prejudice to any decision to allow entry to a natural person of the other Party within the terms of this Chapter, including the length of stay permissible pursuant to any such allowance:

(a) the obligations of

a. Article [X] (Investment – National Treatment),

b. Article [X] (Investment – Market Access),

c. Article [X] (Investment – Most-Favoured-Nation Treatment)

- d. Article [X] (Investment – Prohibition of Performance Requirements) and
- e. Article [X] (Investment – Senior Management and Board of Directors),

subject to

- a. Article [X] (Investment – Scope) and
- b. Article [X] (Investment – Non Conforming Measures) [EU: to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,]

are hereby incorporated into and made part of this chapter and apply to the measures affecting treatment of natural persons for business purposes present in the [EU: territory, JP:...] of the other Party under the categories of business visitors for establishment purposes and intra-corporate transferees and Investors, as defined in Article 6 of this Chapter;

(b) the obligations of

- a. Article [X] (Cross-Border Trade in Services – National Treatment) and
- b. Article [X] (Cross-Border Trade in Services – Market Access),

subject to

- a. Article [X, paragraph 2] (Cross-Border Trade in Services – Scope – carve out provision), and
- b. Article [X] (Cross-Border Trade in Services – Non Conforming Measures) [EU: to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,]

are hereby incorporated into and made part of this chapter and apply to the measures affecting treatment of natural persons for business purposes present in the [EU: territory, JP:...] of the other Party under the categories of

- (i) contractual services suppliers and independent professionals, as defined in Article 6 of this Chapter, for all sectors listed in Annex [IV] (reservations on CSS and IP);
- (ii) Short Term Business Visitors, as defined in Article 9 of this Chapter;

(c) the obligations of

Article [X] (Cross-Border Trade in Services – Most-Favoured-Nation Treatment),

subject to

- a. Article [X, paragraph 2] (Cross-Border Trade in Services – Scope – carve out provision) and

b. Article [X] (Cross-Border Trade in Services – Non Conforming Measures) [EU: to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,]

are hereby incorporated into and made part of this chapter and apply to the measures affecting treatment of natural persons for business purposes present in the [EU: territory, JP:...] of the other Party under the categories of

(i) contractual services suppliers and independent professionals, as defined in Article 6 of this Chapter;

(ii) Short Term Business Visitors, as defined in Article 9 of this Chapter;

For greater certainty, these obligations do not apply to measures relating to the granting of entry to natural persons of a Party or of a non-Party.

[3. Where a Party has set out a measure in the Schedule in Annex I or II, the obligations contained in paragraph 2 shall not apply to that measure, to the extent that the measure affects the treatment of natural persons for business purposes present in the [EU: territory, JP:...] of the other Party.]

Article 6

Definitions

For the purpose of this Chapter:

(a) the term “Business visitors for establishment purposes” means natural persons working in a senior position who are responsible for setting up an enterprise and do not offer or provide services or engage in any other economic activity than required for establishment purposes nor do not receive remuneration within the host Party.

(b) the term “Intra-corporate transferees” means natural persons who have been employed by a juridical person in a Party or have been partners in it for a period not less than one year immediately preceding the date of their application for the entry and temporary stay in the other Party, and who are temporarily transferred to an enterprise in the [EU: territory, JP:...] of the other Party that may be a representative office, a subsidiary, branch or head company of the former juridical person.

The natural person concerned must belong to one of the following categories:

(1) Managers: Persons working in a senior position, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:

(i) directing the enterprise or a department thereof; and

(ii) supervising and controlling the work of other supervisory, professional or

managerial employees; and

(iii) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions.

(2) Specialists: Persons who possess specialised knowledge essential to the enterprise's production, research equipment, techniques, processes, procedures or management.

For the EU, in assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

(c) The term "Investors" means natural persons who establish an enterprise, and develop or administer the operation of such enterprise in the other Party in a capacity that is supervisory or executive, and to which that person or the juridical person employing that person has committed, or is in the process of committing, a substantial amount of capital.

(d) The term "Contractual service suppliers" means

(i) in respect of entry and temporary stay in the EU, natural persons employed by a juridical person of a Party which itself is not an agency for placement and supply services of personnel nor acting through such an agency, has not established in the [EU: territory, JP:...] of the other Party and has concluded a bona fide contract to supply services with a final consumer in the latter Party, requiring the presence on a temporary basis of its employees in that Party, in order to fulfil the contract to provide services¹⁴.

(ii) in respect of entry and temporary stay in Japan, a natural person of the European Union who is an employee of a public or private organisation in EU having no commercial presence in Japan (hereinafter referred to in this Section as "the EU organisation") provided that the following requirements are satisfied:

(a) a service contract between a public or private organisation in Japan (hereinafter referred to in this Section as "the Japanese organisation") and the EU organisation has been concluded;

(b) a competent immigration authority of Japan determines, in the context of the service contract referred to in subparagraph (a), that a labour contract between the natural person and the Japanese organisation has been concluded;

(c) the service contract referred to in subparagraph (a) does not fall under the scope of service contract for the placement and supply services of personnel (CPC872), and the labour contract as referred to in subparagraph (b) complies with the relevant laws and regulations of Japan; and

(e) The term "Independent professionals" means

(i) in respect of entry and temporary stay in the EU, natural persons engaged in the supply of a service and established as self-employed in the [EU: territory, JP:...] a Party who have not established in the [EU: territory, JP:...] of the other Party and who have concluded a bona fide contract (other than through an agency for

placement and supply services of personnel) to supply services with a final consumer in the latter Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services¹.

(ii) in respect of entry and temporary stay in Japan, a natural person of the EU who will engage in business activities of supplying services, during his or her temporary stay in Japan on the basis of a personal contract with a public or private organisation in Japan.

Article 7

Business Visitors for Establishment Purposes, Intra-Corporate Transferees and Investors

1. Each Party shall allow the entry and temporary stay in [EU: territory, JP:...] of business visitors for establishment purposes, intra-corporate transferees and investors of the other Party in accordance with Annex [III] (Annex on business visitors for establishment purposes, intra-corporate transferees, investors and short-term business visitors).

2. Neither Party shall adopt or maintain limitations on the total number of natural persons that are allowed entry in accordance with paragraph 1 of this Article, in a specific sector or sub-sector, in the form of numerical quotas or the requirement of an economic needs test either on the basis of a regional subdivision or on the basis of its entire territory.

Note: The length of stay for business visitors for establishment purposes is without prejudice to the rights granted by one of the Parties to nationals or citizens of the other Party under bilateral visa waivers.

Article 8

Contractual Service Suppliers and Independent Professionals

1. Each Party shall allow the entry and temporary stay in [EU: territory, JP:...] of contractual service suppliers and independent professionals of the other Party in accordance with Annex [IV](Annex for CSS and IP).

2. Unless otherwise specified in Annex[IV](Annex for CSS and IP), a Party may not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party allowed entry, in the form of numerical quotas or the requirement of an economic needs test.

¹ The service contract referred to under (d) and (e) shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

Article 9

Short-Term Business Visitors

1. Each Party shall allow entry and temporary stay of short-term business visitors of the other Party in accordance with Annex [III] (Annex on business visitors for establishment purposes, intra-corporate transferees, investors and short-term business visitors), subject to the following conditions:
 - (a) the short-term business visitors are not engaged in selling their goods or services to the general public;
 - (b) the short-term business visitors do not on their own behalf receive remuneration from within the Party where they are staying temporarily; and
 - (c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has no commercial presence in the [EU: territory, JP:...] of the Party where they are staying temporarily, and a consumer there, except as provided in Annex [III].
2. Unless otherwise set out in Annex [III] (Annex on business visitors for establishment purposes, intra-corporate transferees, investors and short-term business visitors), each Party shall allow entry of short-term business visitors without the requirement of a work permit, economic needs test, or other prior approval procedures of similar intent.
3. The maximum length of stay of short term business visitors shall be 90 days in any six-month period.

Note: The length of stay for short-term business visitors is without prejudice to the rights granted by one of the Parties to nationals or citizens of the other Party under bilateral visa waivers.
