

## SIGNIFICANCE OF THE STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN IN INTERNATIONAL ORDER



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### I- INTRODUCTION

Given the Free Trade Agreement (FTA) between the European Union (EU) and South Korea and Japan, Japanese industries with South Korean competitors, particularly want an FTA with the EU. The 20<sup>th</sup> EU-Japan Summit took place in Brussels on 28 May 2011, shortly after the Great East Japan Earthquake on 11 March 2011. The joint press statement from the summit referred to the Year of Solidarity and “Kizuna” (the bonds of friendship) in light of the earthquake and identified the next steps for stronger EU-Japan relations.<sup>1</sup> That statement indicated the leaders’ agreement to begin parallel negotiations for an FTA and a binding agreement, which cover political, global, and multisectoral cooperation.

In the beginning, Japan only wanted an FTA, while the EU requested for a political framework agreement. Parallel negotiations began in April 2013 and both parties signed the Economic Partnership Agreement (EPA)<sup>2</sup> and the Strategic Partnership Agreement (SPA)<sup>3</sup> on 17 July 2018.<sup>4</sup> The EPA entered into force on 1 February 2019. The first year of the EPA’s implementation resulted in an increase in EU exports to Japan by 6.6% compared to the same period a year before wherein Japanese exports to Europe grew by 6.3%.<sup>5</sup> On the other hand,

1 20th EU-Japan Summit Brussels, 28 May 2011 Joint Press Statement, <[https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/122305.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/122305.pdf)>, accessed 24 February 2020.

2 Text of the EPA, see, <[https://www.mofa.go.jp/ecm/ie/page4e\\_000875.html](https://www.mofa.go.jp/ecm/ie/page4e_000875.html)>, accessed 24 February 2020.

3 Text of the SPA, see, <<https://www.mofa.go.jp/files/000381942.pdf>>, accessed 24 February 2020.

4 As a general remark regarding the EPA and the SPA, see, Nakanishi, Yumiko, ‘The Economic Partnership Agreement and the Strategic Partnership Agreement between the European Union and Japan from a Legal Perspective’, Hitotsubashi Journal of Law and Politics, Vol. 47, 2019, 1-15, <<http://hermes-ir.lib.hit-u.ac.jp/rs/bitstream/10086/30076/1/HJlaw0470000010.pdf>>, accessed 24 February 2020.

5 News, 31 January 2020, First year of EU-Japan Economic Partnership Agreement shows growth in EU exports, <<https://trade.ec.europa.eu/doclib/press/index.cfm?id=2107>>, accessed 24 February 2020.

the SPA has not yet entered into force because it not only needs ratification by the EU and Japan, but also by the Member States of the EU. However, majority of the SPA has already been provisionally applied.

This paper focuses on the Japan-EU SPA and seeks to illustrate how the EU’s strategy is embedded in it as well as clarify how it rules the relationship between the EU and Japan.

### II- MEANING OF THE JAPAN-EU SPA

The meaning of the SPA has changed between the past and the present. This means that the existence of a SPA has become increasingly important not only for the EU, but also for Japan because of the changes in international situations. In fact, during Japanese Prime Minister Shinzo Abe’s speech on 27 September 2019 at the Europa Connectivity Forum in Brussels, he said that the EPA and the SPA worked in tandem to propel Japan and the EU into the future. In the USA, Mr. Trump became president and champions the America First policy as well as other protectionist policies.<sup>6</sup> This has consequently affected the world order. In Europe, the UK notified a will of withdrawal from the EU in March 2017 under Article 50 of the Treaty on European Union (TEU) and ultimately left the EU on 31 January 2020. As a result, European citizens have growing mistrust of existing political parties and support the new alternative parties in Germany, France, and Italy. The rule of law is in danger in Poland<sup>7</sup> and the international order, which Western democracies have developed, is currently at risk. Considering such changing situations, the Japan-

6 There is an article to combat together the protectionism of the Trump administration. Article 13 (1) Economic and financial policy stipulates that ‘The Parties shall enhance the exchange of information and experiences with a view to promoting close bilateral and multilateral coordination to support their shared objectives of sustainable and balanced growth, fostering job creation, countering excessive macroeconomic imbalances and combating all forms of protectionism.’ (underlined by author)

7 For example, CJEU *Commission v Poland*, Case C-619/18, ECLI:EU:C:2019:531, <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0619&qid=1582537948294&from=EN>>.

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EU SPA shows the importance of cooperation in order to maintain peace in the international community, fight against terrorism, maintain the rule of law, and address global challenges such as climate change.

Following the Treaty of Lisbon, which entered into force on 1 December 2009, Article 2 of the TEU explicitly stated that the EU has its own values (e.g. human dignity, freedom, democracy, equality, the rule of law, respect for human rights). Article 21 (1) first subparagraph of the TEU lays down the political principles, which apply to the EU's external action. These are democracy, the rule of law, human rights and fundamental freedoms, human dignity, and others. Article 21 (1) second subparagraph of the TEU stipulates that the EU shall seek to develop relations and build partnerships with third countries, which share the said principles. These principles used to be a conditionality for when the EU supports developing countries and other countries.<sup>8</sup> However, after the Treaty of Lisbon, the EU requested to negotiate and conclude strategic partnership agreements with all countries including developed countries.

The Japan-EU SPA was signed in the form of a mixed agreement, that is to say, an agreement between Japan and the EU and its Member States. Article 37 of the TEU and Article 212 (1) of the Treaty on the Functioning of the EU (TFEU) serve as its legal basis. In particular, Article 37 of the TEU is the legal basis for matters concerning the Common Foreign and Security policy (CFSP) and Article 212 (1) of the TFEU is for economic, financial, and technical cooperation with third countries. As mentioned, the SPA has not yet been implemented, but began to provisionally apply on 1 February 2019. It is composed of a preamble and 51 articles.<sup>9</sup>

8 Nakanishi, Yumiko, 'Political Principles in Article 21 TEU and Constitutionalism', *Hitotsubashi Journal of Law and Politics*, Vol. 42, 2014, 11, 12-13, <<http://hermes-ir.lib.hit-u.ac.jp/rs/bitstream/10086/26442/1/HJlaw0420000110.pdf>>, accessed 24 February 2020.

9 Article 1 (Purpose and general principles), Article 2 (Democracy, the rule of law, human rights and fundamental freedoms), Article 3 (Promotion of peace and security), Article 4 (Crisis management), Article 5 (Weapons of mass destruction), Article 6 (Conventional arms, including small arms and light weapons), Article 7 (Serious crimes of international concern and the International Criminal Court), Article 8 (Counter-terrorism), Article 9 (Chemical, biological, radiological and nuclear risk mitigation), Article 10 (International and regional cooperation and reform of the United Nations), Article 11 (Development policy), Article 12 (Disaster management and humanitarian action), Article 13 (Economic and financial policy), Article 14 (Science, technology and innovation), Article 15 (Transport), Article 16 (Outer space), Article 17 (Industrial cooperation), Article 18 (Customs), Article 19 (Taxation), Article 20 (Tourism), Article 21 (Information society), Article 22 (Consumer policy), Article 23 (Environment), Article 24 (Climate

The terms of the Japan-EU SPA do not make it conducive to conditionality. It states that the EU and Japan must be very strategic partners in order to construct international order together. This can be better understood through the following section of the preamble: 'as like-minded global partners, of their shared responsibility and commitment to setting up a just and stable international order...'

### III- LIKE-MINDED GLOBAL PARTNERS

The EU has maintained and strengthened its international presence, not through military power, but soft power in broadening its own values and norms or standards in the world. The preamble mentions the phrase 'conscious, ... as like-minded global partners, of their shared responsibility and commitment to setting up a just and stable international order...'. Here, the EU explicitly positions Japan 'as like-minded global partners' and vice versa. They agree on being jointly responsible for the construction of a fair and stable international order.

The following section examines three key points in the SPA: (1) Share and promote values and principles, (2) cooperation in international fora, and (3) setting norms and standards.

#### A- SHARE AND PROMOTE VALUES

Article 2 of the TEU lays down the EU's values and Article 21 of the TEU enumerates the EU's principles in its external action. These values and principles are all reflected in the SPA as a characteristic of the EU's political framework agreement. In fact, similar elements can be found in other agreements such as the EU-Korea Framework Agreement and the EU-Canada SPA<sup>10</sup> which were signed after the Treaty of Lisbon. However, the Japan-EU SPA has some features

change), Article 25 (Urban policy), Article 26 (Energy), Article 27 (Agriculture), Article 28 (Fisheries), Article 29 (Maritime affairs), Article 30 (Employment and social affairs), Article 31 (Health), Article 32 (Judicial cooperation), Article 33 (Combating corruption and organised crime), Article 34 (Combating money laundering and financing of terrorism), Article 35 (Combating illicit drugs), Article 36 (Cooperation on cyber issues), Article 37 (Passenger name records), Article 38 (Migration), Article 39 (Personal data protection), Article 40 (Education, youth and sport), Article 41 (Culture), Article 42 (Joint Committee), Article 43 (Dispute settlement), Article 44 (Miscellaneous), Article 45 (Definition of the Parties), Article 46 (Disclosure of information), Article 47 (Entry into force and application pending entry into force), Article 48 (Termination), Article 49 (Future accessions to the Union), Article 50 (Territorial application), and Article 51 (Authentic texts).

10 The SPA text was signed on October 30, 2016. Provisional application of much of the agreement began on April 1, 2017, see, <<https://www.international.gc.ca/europe/assets/pdfs/can-eu-spa-text-eng.pdf>>, accessed 24 February 2020.

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as well.

The Japan-EU SPA preamble states: 'reaffirming their commitment to the common values and principles, in particular democracy, the rule of law, human rights and fundamental freedoms, which constitute the basis for their deep and long-lasting cooperation as strategic partners'. Furthermore, Article 1 (d), entitled 'Purpose and general principles', rules that one of the SPA's purposes is to jointly contribute to the promotion of shared values and principles, in particular democracy, the rule of law, human rights, and fundamental freedoms; and Article 2, entitled 'Democracy, the rule of law, human rights and fundamental freedoms', stipulates the following:

'1. The Parties shall continue to uphold the shared values and principles of democracy, the rule of law, human rights and fundamental freedoms which underpin the domestic and international policies of the Parties. ...

2. The Parties shall promote such shared values and principles in international fora. The Parties shall cooperate and coordinate, where appropriate, in promoting and realising those values and principles, including with or in third countries.' (underlined by author).

Notably, Article 2 of the SPA not only confirms to uphold shared values and principles, but also obliges the EU and Japan to promote shared values and principles in international fora. The EU-Korea Framework Agreement and the EU-Canada SPA do not explicitly require the promotion of shared values and principles in international fora. This difference comes from the acknowledgment that the EU and Japan are not simply equal partners,<sup>11</sup> but like-minded global partners' (「志を同じくする世界的なパートナー」(Japanese); '*partenaires mondiaux animés par*' (French); '*gleichgesinnte globale Partner*' (German)).

Furthermore, another notable aspect is the constant linkage between the EU's FTAs and political framework agreements (e.g. SPAs, Framework Agreements, Partnership and Cooperation Agreements (PCAs), etc.). Then, if values and principles indicated in the latter were violated, the former would be suspended or terminated. In fact, there is an interconnection between the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the SPA. Article 28 (7) of the EU-Canada SPA specifies that the Parties recognise that a particularly serious and substantial violation

of human rights or non-proliferation could serve as grounds for the termination of the CETA. Although the EU-Korea Framework Agreement does not contain such clause for the suspension of the EU-Korea FTA a joint interpretative declaration concerning Article 45 and 46 of the Framework Agreement covers the substantial violation of an essential element of the Framework Agreement (democratic principles, human rights and fundamental freedoms, and the rule of law). In addition, the EU-Korea Framework Agreement is an overarching political cooperation agreement with a legal link to the EU-Korea FTA.<sup>12</sup>

However, there is no linkage between the EPA and the SPA with Japan; and the latter makes no reference to the EPA. As a result, only the SPA (i.e. not the EPA) may be suspended under Article 43 (6) of the SPA.

### B- COOPERATION IN INTERNATIONAL FORA

The Japan-EU SPA urges cooperation in international organisations or fora. The preamble indicates that the Parties have determined to 'enhance their cooperation and to maintain the overall coherence of the cooperation, including by strengthening consultations at all levels and by taking joint actions on all issues of common interest' (underlined by author). Moreover, Article 1 states that the purpose of the SPA is '(a) to strengthen the overall partnership between the Parties by furthering political and sectoral cooperation and joint actions on issues of common interest, including regional and global challenges' and '(b) provide a long-lasting legal foundation for enhancing bilateral cooperation as well as cooperation in international and regional organisations and fora' (underlined by author).

Some concrete examples are as follows:

First, is the coordination of their positions. For example, Article 10 states that 'the Parties shall endeavour, in support of their commitment to effective multilateralism, to exchange views and enhance cooperation and, where appropriate, to coordinate their positions in the frameworks of the United Nations and of other international and regional organisations and fora.' The EU and its Member States are therefore required to cooperate in upholding the former's position on international organisations and fora. It is essential for them to speak as one in order to strengthen the EU's voice. The coordination of the

<sup>11</sup> Article 1 (7) of the EU-Korea Framework Agreement; Article 1 (3) of the EU-Canada SPA.

<sup>12</sup> Article 15.14 (1) of the EU-Korea FTA rules, 'The present Agreement shall be an integral part of the overall bilateral relations as governed by the Framework Agreement. It constitutes a specific Agreement giving effect to the trade provisions within the meaning of the Framework Agreement.'

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positions of the EU and Japan on international fora has this effect. Similar phrases can be found in following articles: Article 11 (2): Development policy ('The Parties shall, where appropriate, coordinate their positions on development issues in international and regional fora.');

Article 12 (1): Disaster management and humanitarian action ('The Parties shall enhance cooperation and, where appropriate, promote coordination at the bilateral, regional and international levels...');

Article 26: Energy ('The Parties shall endeavour to enhance cooperation and, where appropriate, close coordination in international organisations and fora...');

Article 36 (1): Cooperation on cyber issues ('The Parties shall enhance the exchange of views and information on their respective policies and activities on cyber issues, and shall encourage such exchange of views and information in international and regional fora.').

### C- SETTING NORMS AND STANDARDS

The EU has been committed to set up international norms and standards that are based on its own and it agreed with Japan to cooperate in this field. Several articles advocate this objective: Article 17 (1): Industrial cooperation ('The Parties shall promote industrial cooperation to improve the competitiveness of their enterprises. To this end, they shall enhance the exchange of views and best practices on their respective industrial policies in areas such as innovation, climate change, energy efficiency, standardisation, ...' (underlined by author)); Article 21 (d): Information society ('standardisation and dissemination of new technologies' (underlined by author)); Article 36 (2): Cooperation on cyber issues ('...based on the understanding that international law applies in cyberspace, they shall cooperate, where appropriate, in establishing and developing international norms and promoting confidence building in cyberspace' (underlined by author)).

### IV- PRIORITY AREAS

The Japan-EU SPA is a comprehensive political framework agreement with three priority areas: (1) peace and security, including crime and terrorism; (2) environment and energy; and (3) new technologies.

#### A- PEACE AND SECURITY

The preamble mentions: 'conscious...as like-minded global partners, of their shared responsibility and commitment...to achieve peace, stability and prosperity of the world as well as human security'; 'resolved...to work closely to address major global challenges that the international community has to face, such

as proliferation of weapons of mass destruction, terrorism...'; and 'resolved...that the most serious crimes of concern to the international community as a whole must not go unpunished' (underlined by author).

The above-mentioned goals are concretely manifested in following articles: Article 3 (Promotion of peace and security); Article 4 (Crisis management); Article 5 (Weapons of mass destruction); Article 6 (Conventional arms, including small arms and light weapons); Article 7 (Serious crimes of international concern and the International Criminal Court); Article 8 (Counter-terrorism); Article 9 (Chemical, biological, radiological and nuclear risk mitigation); Article 33 (Combating corruption and organised crime); Article 34 (Combating money laundering and financing of terrorism); Article 35 (Combating illicit drugs); and Article 36 (Cooperation on cyber issues). All these articles except Articles 3, 4, and paragraph 1 of Article 5 do not apply yet because most of them are related to the Common Foreign and Security Policy (CFSP) and belong to the competence of the EU Member States and therefore require their ratification.

The rule of law is of the EU's own values and the Japan-EU SPA refers the rule of law in the preamble, Article 1 (1) and Article 2. It is important to note that Article 29, entitled 'Maritime affairs', states 'the Parties shall promote dialogue, enhance mutual understanding on maritime affairs and work together promote: (a) the rule of law in this area, including freedoms of navigation and overflight and the other freedoms of the high seas as reflected in Article of UNCLOS...' (underlined by author). Political issues regarding the rule of law in the South China Sea are aware.

#### B- ENVIRONMENT AND ENERGY

The EU has been in the forefront of environmental protection, which includes climate change, since the effectuation of the Single European Act of 1987. The EPA explicitly references the Paris Agreement concerning climate change. Although it is technically a free trade agreement, it contains a special chapter on environmental protection. The SPA also contains several provisions that are oriented towards the environment as environmental protection and energy are among its priorities. In particular, Chapter 16 (trade and sustainable development) of the EPA covers pertinent environmental issues.<sup>13</sup> Environmental protection under

<sup>13</sup> Nakanishi, Yumiko, 'Climate Change and Environmental Issues in the Economic Partnership Agreement and the Strategic Partnership Agreement Between the European Union and Japan', *Hitotsubashi Journal of Law and Politics*, Vol. 48, 2020, 9, 11-15, <<https://hermes-ir.lib.hit-u.ac.jp/rs/bitstream/10086/30992/1/HJlaw0480000090>>.



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the EPA is taken in the context of trade and investment. On the other hand, the SPA emphasises cooperation between the EU and Japan at an international level. For example, Article 23 (2) of the SPA (Environment) states, 'The Parties shall endeavour to enhance cooperation in the frameworks of relevant international agreements and instruments, as applicable to the Parties, as well as international fora.' (underlined by author) Although both the EPA and the SPA consider environmental protection, they tackle with it in different ways.<sup>14</sup>

Climate change is regarded as a major global challenge faced by the international community. Although the EPA also considers climate change, it does not contain a special article for it. On the contrary, the SPA does have a special article for climate change (i.e. Article 24). According to the article, the EU and Japan must take the lead in combating climate change and its adverse effects and they are obliged to work towards enhancing cooperation in international fora. Climate change is not only covered in Article 24, but also in Article 16 (Outer space), Article 17 (Industrial cooperation), Article 25 (Urban policy), Article 27 (Agriculture), Article 28 (Fisheries), and Article 29 (Maritime affairs).

While the EPA does not particularly consider issues concerning energy, the SPA does have a special article for it. Article 26 of the SPA stipulates, 'The Parties shall endeavour to enhance cooperation and, where appropriate, close coordination in international organisations and fora, in the area of energy, including energy security, global energy trade and investment, the functioning of global energy markets, energy efficiency and energy-related technologies.'

The new European Commission under the President Ursula von der Leyen advocates the European Green Deal. The SPA provisions that are related to the environment are already being provisionally applied. It requires the EU and Japan to strive to improve cooperation in the frameworks of relevant international agreements and instruments, when applicable to the Parties as well as international fora.

The EU also took the lead in dealing with marine plastic waste management. It adopted a directive on 5 June 2019, which is geared towards the reduction of the impact of certain plastic products on the environment through regulating single-use plastic products. The directive entered into force on 2 July 2019.<sup>15</sup> Initially,

Japan passively dealt with the marine plastic waste; however, this later changed upon the implementation of the strategy towards resource circulation of plastics in on 31 May 2019. The Osaka G20 Summit took place on 28-29 June 2019. The leaders' declaration includes the statement, '... we share ... as a common global vision, the "Osaka Blue Ocean Vision" that we aim to reduce additional pollution by marine plastic litter to zero by 2050 through a comprehensive life-cycle approach that includes reducing the discharge of mismanaged plastic litter by improved waste management and innovative solutions while recognizing the important role of plastic society...' Further cooperation in international fora by the EU and Japan is also expected.

### C- NEW TECHNOLOGIES

The third priority area is new technologies. Digital Single Market or the shaping of Europe's digital future is one of the most important issues in the EU and the SPA consequently contains a number of relevant articles. First, Article 14 (Science, technology and innovation) states that based on the 2009 Agreement between the European Community and the Government of Japan on Cooperation in Science and Technology, the EU and Japan are 'obliged to enhance cooperation in the area of science, technology and innovation...' Article 16 (Outer space) also refers to space science and technologies, but the more relevant article would be Article 21 (Information society). According to the latter, 'The Parties shall exchange views on their respective policies and regulations in the area of information and communications technologies to enhance cooperation on key issues, including: (a) electronic communications, including internet governance and online safety and security.' (underlined by author) Despite Artificial Intelligence (AI) becoming increasingly important nowadays, it is not bound by fixed rules, but mere ethical guidelines.<sup>16</sup> The need for the legislation of hard laws and the specific laws that have to be implemented must be discussed in the future. On the other hand, international ethical guidelines or soft legislations will definitely be necessary. Therefore, cooperation between the EU and Japan in this area is vital. Given this, the protection of personal data is also of crucial importance and this has prompted the EU to adopt the General Data Protection Regulation (GDPR).<sup>17</sup> On a

accessed 24 February 2019.

16 European Commission, COM (2018) 237, Artificial Intelligence for Europe, <<https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-237-F1-EN-MAIN-PART-1.PDF>>, accessed 24 February 2020; Japanese Cabinet Office (Naikaku-fu), Social Principles of Human Centric AI, see, <<https://www8.cao.go.jp/cstp/english/humancentricai.pdf>>, accessed 24 February 2020.

17 Official Journal of the EU 2016 L 119/1, Regulation 2016/678, see, <<https://eur-lex.europa.eu/legal-content/EN/TXT/>

pdf>, accessed 1 March 2020.

14 See, Nakanishi, *ibid.*, 18-20.

15 Official Journal of the EU 2019 L 155/1, Directive 2019/904, <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0904&qid=1582562356236&from=EN>>.

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similar note, Japan's Act on the Protection of Personal Information has also been amended. The European Commission considered Japan as third country which ensures an equivalent guarantee, meaning that data transfer from the EU to Japan is possible. Moreover, Article 39 (Personal data protection) of the SPA is also relevant.

These SPA provisions have all been provisionally applied.

### V- CONCLUDING REMARKS

The phrases, 'the Parties shall enhance', 'the Parties shall endeavour to cooperate', and 'the Parties shall promote dialogue', may make the SPA seem to not have teeth. However, it is important to note that it is a legal binding document that requires the EU and Japan to cooperate with each other. Further, it is also remarkable that the SPA aims to provide a 'long-lasting legal foundation' for enhancing bilateral cooperation as well as cooperation in international and regional organisations and fora' (underlined by author) (Article 1 (1) (b) SPA). Furthermore, it is notable that the Joint Committee was established under Article 42 and this gives the SPA an institutionalised character.

The current world situation particularly necessitates cooperation between the EU and Japan in international organisations and fora. The SPA can be a meaningful tool for these two countries in addressing global challenges.

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