



Japan-US Trade Agreement is a “First-Stage” Deal



Prime Minister Abe and President Trump sign the Japan-US Trade Agreement, September 25, 2019
Source: Cabinet Public Relations Office

While this agreement can be assessed as “a deal where both sides gained benefits,” Japan has already used up the beef and pork card, which means that the “second stage” of the negotiations would likely be more severe.

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The Japan-US trade negotiations that started in April 2019 reached an agreement at the Japan-US summit on September 25 and the Japanese and US governments signed the Japan-US Trade Agreement and the Japan-US Digital Trade Agreement on October 7. Because the agreements needed no approval from the Congress of the United States, they went into force on January 1, 2020, after they were approved at the 200th Extraordinary Session of the Diet underway in Japan. Because no new legislative or budgetary measures were needed for the implementation of the agreements in Japan, there are no related bills.



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The Japan-US Digital Trade Agreement is “TPP-plus”

The reason why the Japan-US Digital Trade Agreement was signed along with the Japan-US Trade Agreement was that digital trade was taken up as a key area “that can produce early achievements,” which was specified in a joint statement made at a Japan-US summit in September 2018 (hereinafter “the 2018 Statement”) with small differences in opinion between the two countries.

The agreement generally followed a chapter on digital trade (Chapter 19) of the United States-Mexico-Canada Agreement (USMCA), signed at the end of November 2018. It also introduced several provisions from a chapter on financial services (Chapter 17) and an annex (12-C) of the USMCA. The USMCA’s chapter on digital trade has additional content based on a chapter on electronic commerce (Chapter 14) of the Trans-Pacific Partnership (TPP). Therefore, Japan and the United States have agreed on some more of the content from the TPP.

The Office of the United States Trade Representative (USTR) released *United States-Japan Trade Agreement (USJTA) Negotiations; Summary of Specific Negotiating Objectives* in December 2018. It says, “specific negotiating objectives” on digital trade were: (1) non-imposition of tariffs on digital products; (2) non-discriminatory treatment of digital products transmitted electronically; (3) the establishment of state-of-the-art commitments that prohibit restrictions on cross-border data transfers and requests for the installation and use of local computing facilities; (4) the introduction of provisions that prevent governments from mandating the disclosure of computer source code or algorithms; and (5) the establishment of rules that limit non-IPR civil liability of online platforms for third-party content. The fifth objective is not stipulated by the TPP, and in the first, algorithms were added to the source code stipulated by the TPP. All of these were stipulated by the USMCA and also included in the Japan-US Digital Trade Agreement.

The agreement, which, along with the USMCA, includes the highest standards for agreements on digital trade, is regarded as a foundation for the efforts to formulate international rules on digital trade, including discussions about rules on electronic commerce within the World Trade Organization (WTO), and Japan-US cooperation in the Osaka Track.

The agreement needed the approval of the Japanese Diet, but not the approval of the US Congress as an administrative agreement.

“Win-win” or unequal?

The Japan-US Trade Agreement is an agreement only for the trade on goods (market access and rules of origin), just as indicated by the name the Japanese government once used for it, the “Japan-United States Trade Agreement on Goods (TAG).” The agreement consists of a total of 11 articles and their respective annexes from Japan and the United States.

Opinion is widely split over the Japan-US Trade Agreement, with some arguing that it is mutually beneficial for both the Japanese and the US, and others arguing that it is a one-sided, unequal treaty that is advantageous only to the United States. If these points are viewed from the standpoint of both governments in the negotiations, I think that the agreement can be said to be a realization of the results both parties respectively hoped for the most.

In the 2018 Statement, Japan clarified its position that, “with regard to agricultural, forestry, and fishery products, outcomes related to market access as reflected in Japan’s previous economic partnership agreements constitute the maximum level.” It is in the TPP and the Japan-EU EPA that Japan has promised the highest level of liberalization to date regarding agricultural, forestry and fishery products. Japan had already agreed on the TPP with the United States and the focus was on whether the United States would demand a higher level of liberalization than in the TPP in negotiations. In the agreement, while Tokyo granted treatment equal to the members of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in regard to the beef and pork that the United States put the utmost importance on, it did no more than commit a level of liberalization equal to the TPP or a lower level of liberalization in regard to its sensitive items, with rice excluded from its commitment.

In addition, Japan regarded the obtainment of a commitment by the United States not to impose restrictions on imports of automobiles and auto parts from Japan as one of the most important issues of the negotiation. Needless to say, the automobile industry is a key Japanese industry. Automobiles and their parts are Japan’s largest export to the United States, accounting for a little more than one-third of the total amount of exports to the United States (about 5.5 trillion yen in 2018). Japan needed to do all it could to prevent the United States from imposing additional tariffs and quantitative restrictions on Japanese automobiles and their parts due to potential national security threats based on Section 232 of the Trade Expansion Act of 1962. According to an estimate by the Japanese government, if the United States imposes 25% additional tariffs on automobiles and their parts, Japan’s tariff payment will increase by about 1.9 trillion yen (based on 2018 records of exports to the United States). The joint statement made at the Japan-US summit in September 2019 (hereinafter “the 2019 Statement”) included very similar wording to the 2018 Statement, that both Japan and the United States must refrain from taking measures against the spirit of the Japan-US Trade Agreement, the Japan-US Digital Trade Agreement and the 2019 Statement while the agreements are being implemented in good faith. This means that the enforcement of US restrictions on the import of automobiles and their parts from Japan will be avoided for the time being.

Regarding the conclusion of a free trade agreement (FTA) between Japan and the United States, although Japan had clarified its basic position that the US coming back to the TPP is the best option, it shifted its policy and agreed on starting negotiations on a bilateral trade agreement with the United States as the second best option. The conceivable reason for this is that Japan could expect that two issues causing a lot of concern domestically—a greater liberalization of agricultural, forestry and fishery products than the TPP and the enforcement of US restrictions on the import of automobiles and their parts from Japan—could be avoided through negotiations. The agreements can be said to be a realization of these efforts.

Meanwhile, the United States regarded the obtainment of the same level of liberalization as the TPP from Japan regarding agricultural products, especially beef and pork, as the most important purpose of its negotiations. Japan putting the CPTPP into effect at the end of 2018 and the Japan-EU EPA into effect on February 1, 2019, put US exporters at a competitive disadvantage in the

Japanese market. The United States was virtually the only exporter to which the EPA preferential tariff rates regarding beef and pork in particular were inapplicable. For example, while the tariff rate on beef stood at 38.5% for products from the United States, the rate was 26.6% for products from the CPTPP members, such as Australia and Canada. The United States emphasized resolving this disadvantageous situation as soon as possible. In addition, with the prolonged US-China trade friction, Congressional approval of the USMCA was not proceeding as expected and there was no progress in trade negotiations with the European Union (EU). I speculate that getting specific results in negotiations with Japan was a priority issue for the Trump administration. In the agreement, Japan granted the United States the same treatment as the CPTPP members regarding beef and pork tariffs.

Regarding the automobile industry that is important to the United States, in the 2018 Statement, the country clarified its position that “market access outcomes in the motor vehicle sector will be designed to increase production and jobs in the United States in the motor vehicle industries.” Because Japanese tariffs on automobiles and their parts are already zero, the United States cannot agree in negotiations on reductions or the removal of tariffs on related items that would lead to an increase in imports from Japan to realize the goal of increasing the US automobile industry’s production and employment. In the agreements, Washington did no more than insert one sentence into its annex, “Customs duties on automobile and auto parts will be subject to further negotiations with respect to the elimination of customs duties.”

This point of view shows that both Japan and the United States can be said to have realized their initial goals for the negotiations through the agreements. The view that the Japan-US Trade Agreement resulted in a mutually beneficial agreement is based on an evaluation of this point. But while Tokyo liberalized some sensitive items, including beef and pork, to the level of the TPP, Washington just promised to shelve the “threat” of enforcing restrictions on the import of automobiles and their parts from Japan and did not agree on removing tariffs on automobiles and their parts, which it had promised in the TPP. If you focus on this point, the Japan-US Trade Agreement can be said to be unequal. Considering that Japan negotiated with a Trump administration that wields unilateral measures and is oriented on negotiating through “power,” not rules, the author evaluates the agreements as the Japanese government’s realistic handling of the situation. But this evaluation is premised on the agreements not being final, but being the “first-stage” deal.

A limited agreement worth about 7.2 billion dollars

The Japan-US Trade Agreement was reached just half a year after the start of negotiations. This speedy conclusion was exceptional, although it was based on the foundation of the TPP negotiations. The largest factor that led to this result was probably that the United States prioritized an early agreement over everything else in its efforts to resolve the disadvantageous situation in the Japanese beef and pork markets as soon as possible. In addition, the Trump administration made use of the provisions in section 103 (a) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 to put the agreement into effect as quickly as possible and took the

exceptional action of making Congressional approval, which would take a lot of time, unnecessary. Following the provisions, in the agreements, the United States promised to remove tariffs only on items whose current tariff rates are 5% or lower and only promised to halve tariffs on items whose current tariff rates are over 5%.

Because of this emphasis on the speed of negotiations and at the request of US domestic laws, the agreements are partial agreements whose target items are limited. Japan promised to reduce and remove tariffs on 595 agricultural products, which total about 7.2 billion dollars and the United States promised to reduce and remove tariffs on 42 agricultural products (about 43 million dollars) and 199 industrial products (about 7.17 billion dollars), which total about 7.2 billion dollars. In this sense, as the Japanese Foreign Minister Motegi Toshimitsu said, the agreements are “well balanced regarding agricultural and industrial products” and are also consistent with “reciprocity”, which President Trump likes. But 7.2 billion dollars make up just 5% of Japan’s total exports to the United States of 140 billion dollars (2018).

Since it is a limited agreement, the Japan-US Trade Agreement is doubtful in terms of the WTO agreements. According to the Japanese government, the tariff removal rate of the agreement is about 84% for Japan and about 92% for the United States (on a trade value basis). But the US figure includes the amounts of automobiles and their parts whose tariffs Tokyo anticipates that Washington will agree on removing in the future. Excluding these, the US tariff removal rate will fall short of 60%. The WTO agreements (Article 24 of the General Agreement on Tariffs and Trade [GATT]) require trade agreements among advanced nations to remove tariffs on “substantially all trade” and a tariff removal rate of 90% is regarded as the measure of this. It is hard to say that the agreement meets this requirement.

The US Schedule of Concessions (Annex 2) just says that, “Customs duties on automobile and auto parts will be subject to further negotiations with respect to the elimination of customs duties.” By only this wording, it is difficult to consider that the United States has promised to remove tariffs on automobiles and their parts in the near future. At the moment, I cannot help but question the inclusion of automobiles and their parts in the US tariff removal rates.

Tough negotiations are expected in the “second stage”

The USTR calls the Japan-US trade agreement a “first-stage initial tariff agreement.” Japan did not make any concessions regarding taxable industrial products and the agreement is premised on the conclusion of a second-stage negotiation. It is necessary to develop the Japan-US Trade Agreement into an agreement free from doubt in terms of the WTO agreements through future negotiations.

The 2019 Statement says that the two parties will finish consultations within four months of the Japan-US Trade Agreement going into effect and, “enter into negotiations thereafter in the areas of customs duties and other restrictions on trade, barriers to trade in services and investment, and other issues in order to promote mutually beneficial, fair, and reciprocal trade.” Second-stage negotiations will start as early as this spring.

Given the US-China and US-European Union trade friction, and the schedule of the US presidential election, there are slim chances that the negotiations will progress quickly. But if the negotiations proceed in earnest, the United States, aiming for a comprehensive trade agreement, will make many unreasonable demands, such as further opening of the agricultural products market and the introduction of currency provisions, on the basis of its 22-item “Specific Negotiating Objectives” with Japan. Regarding agricultural products, the Japanese Schedule of Concessions (Annex 1) says, “In future negotiations, the United States will be seeking preferential treatment with respect to agricultural goods.”

While dealing with these US demands in future negotiations, Japan must win the removal of tariffs on automobiles and their parts from the United States. Japan has already accepted in the first stage the liberalization of beef and pork, which was its most significant bargaining chip. However, you cannot rule out the possibility that the United States will dredge up the enforcement of restrictions on the import of automobiles and their parts from Japan if the negotiations do not go smoothly. It is worrying that United States Trade Representative Robert Lighthizer stated that the United States would not take such restrictive measures against Japan “at the moment” after the Japan-US summit. Second-stage negotiations are expected to be tough for Japan.

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