

**THE EU-JAPAN EPA AND THE QUESTION OF FORMAL
AND INFORMAL TRADE BARRIERS FOR EUROPEAN
BUSINESSES IN JAPAN**

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Abstract. This study focuses on how technical barriers to trade (TBT) are addressed in recent EU-Japan Economic Partnership Agreement (EPA). We analyze the pre- and post-EPA trade policies and the contested issues in Japan from the viewpoint of European businesses. An eclectic theoretical approach is adopted to study the economic, political and social aspects of trade barriers. Whereas *formal* trade barriers, such as tariffs and codified non-tariff barriers are easily discernible, the subtler *informal* trade barriers derive from social norms that guide administrative practices and are hard to measure, and largely neglected in recent research. Based on expert interviews, policy documents, and European business surveys, we observe that the enforcement of EPA in Japan lags behind concerning certain TBTs such as standards, approvals and testing. The findings suggest that informal trade barriers, often linked with investment barriers, have a bearing in the theorization on trade policies and free trade agreements.

Keywords: EU, Japan, EPA, trade barrier, formal, informal, TBT

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1. Introduction

The European Union's (EU) long-standing aim to conclude comprehensive free trade agreements (FTA) with its major trade partners was materialized in an Economic Partnership Agreement (EPA) with Japan in 2019. The EU's broad and deep FTAs strive to liberalize not only tariffs but also other types of trade protection, i.e., non-tariff barriers and regulatory barriers to trade (Sampson and Theuns 2023, Young 2017). While regionalism is hampered in the current geopolitical context characterized by rising scepticism towards globalization (Cuervo-Cazurra et al. 2020), global financial crisis (Evenett 2019) and the covid-19 pandemic crisis (Baldwin and Evenett 2020, Evenett et al. 2022), the EU has continued negotiations for comprehensive FTAs with several trade partners. It has sought FTAs particularly with Asian countries since its Global Europe strategy (e.g. Andreosso-O'Callaghan et al. 2014, Brennan and Murray 2015, Fujita et al. 2011, Kawai and Wignaraja 2011, 2013).

What is noteworthy is that the EU-Japan EPA was relatively rapidly concluded and put into force thus bypassing the earlier concluded EU FTAs with Singapore and Vietnam (DG Trade 2019). The fast pace seems to indicate the importance of the agreement for both the EU and Japan. The EPA is an example of the current trend of countries adhering to faster bilateral trade talks in the context of the slowly advancing multilateral negotiations. While Europe has a long history of engaging in regionalism, Japan has had a notably different path, having been "one of the last hard core multilateralists" (Solís 2010).

The FTAs have been a means to extend the EU's normative power in trade policy preferences (e.g. Alvstam and Lindberg 2019, Poletti and Sicurelli 2018, Sampson and Theuns 2023, Sicurelli 2015, Zurek 2019), such as non-tariff barriers, the primary example being technical barriers to trade (TBT). They include standards, testing and certifications covered by the WTO Agreement on Technical Barriers to Trade from 1994 (Hanson 2010: 40) and the related conformity assessment procedures that are relevant in the case of Japan. The country is known for its difficult regulatory environment for foreign companies, indicating informal trade barriers, not least concerning complex and slow testing and certification procedures faced by exporters. Formal barriers are exposed by Japanese industrial standards that often do not conform to International Organization for Standardization (ISO). Whereas most countries – and also the EU – have some standards that are not based on ISO, European companies claim this to be frequently the case in Japan. This is despite the EU and Japan having a Mutual recognition agreement (MRA) in force since 2002 to accept each other's conformity assessments for specified industrial products (EUR-Lex 2018). As it turns out, informal trade barriers are often related to the (non-)enforcement in the elimination of TBTs. Agricultural and food imports are furthermore subject to sanitary and phytosanitary (SPS) measures (e.g. Beghin and Bureau 2017). The EU's distinctive aim in FTAs with several countries, including Japan, was to tackle technical barriers to trade (e.g. Romanchyshyna 2020).

In this paper, we explore the formal and informal trade barriers in Japan before and after the EU-Japan EPA in order to find out whether the barriers are removed according to the agreement. The research question is: *How were the challenging trade barriers perceived and negotiated by the EU side and enforced in Japan?* In particular, we investigate the technical barriers to trade and the enforcement of the respective commitments of the EPA in Japan based on the reflections from the EU policymakers and business representatives.

We adopt an eclectic theoretical approach, since the research problem at hand contains aspects related to economic, legal, social and political decision-making and practices at several levels. We proceed from contemporary theories of international trade and investment, but believe that theories within the field of international political economy are highly relevant when it comes to understanding and explaining the process of a preferential trade agreement between two or more parties. Moreover, theories from the field of international business, in which the firm-level approach rather than the nation-state or the economic bloc is adopted as the basic analytical level should play a more significant role than is usually the case. Therefore, a broader aim of the paper is also to stimulate the theoretical debate around the explanation of flows of goods in an era of post-GATT/WTO regimes of trade liberalization and increasing concerns about the process of globalization (see e.g. Cuervo-Cazurra et al. 2017, 2020, Evenett et al. 2022, Kobrin 2017, Meyer 2017, Milanovic 2016, Rodrik 2018).

Based on the exploration, we argue that despite formal liberalization of cross-border barriers to trade, some informal trade barriers remain. From the viewpoint of European businesses, the EU-Japan EPA still falls short in removing the so-called behind-the-border barriers to trade, especially those related to the enforcement – or the lack of it – of the EPA commitments in Japan. This observation has important implications to theorizing on trade barriers, especially regarding informal barriers that are rooted in social norms and cultural preferences. It is at the same time a tricky issue to distinguish between formal technical barriers to trade that can be identified and legally described in the EPA (in Chapter 7 on Technical Barriers to Trade), and informal barriers to trade that are derived from administrative procedures and practices, consumer preferences and traditional attitudes to foreign companies, goods and services.

The rest of the paper is structured as follows. We first discuss theoretical and methodological aspects on trade barriers, and present the data and methods of the study. Thereafter, we briefly overview the pre-EPA trade and trade policy imbalances between the EU and Japan as well as the policy context of the EPA negotiations. We then present empirical findings on the European policymakers' and businesses' views on EPA and its enforcement in Japan, and their observations on informal trade barriers. We discuss the implications of our findings on the theorization of trade policies, and conclude by summarizing the main results and ideas for further research.

2. Theoretical and methodological aspects on trade barriers

Modern theories of international trade and investment have generally paid more attention to non-tariff barriers in general and technical barriers to trade in particular, given the gradual elimination of formal tariffs in the international trade system (see e.g. Krugman et al. 2018, Oatley 2018). In addition, the close connection between trade in goods and services on the one hand, and the driving forces behind foreign direct investment on the other hand has recently attracted increased interest, not least in order to understand the spatial design of global value chains and the novel forms and patterns of globalization (see e.g. Baldwin 2016, Buckley and Ghauri 2004, UNCTAD 2013, WTO 2011). The global value chains have resulted in a significant growth of trade particularly in East and Southeast Asia as part of the region's history of economic regionalization (Kuroiwa and Kumagai 2011, Kuroiwa and Toh 2008, Teh 2015, WTO 2011). This was enabled by agglomeration, i.e., the development of industrial clusters that had good logistical connections with other industrial clusters in the region (Nishikimi and Kuroiwa 2011: 51). At the same time, the gradual elimination of tariffs both globally and regionally eased the functioning of global value chains.

Theorizing on trade policy revolves around the actors involved and their interests. Literature in international political economy considers the agency of the state and of the broader society, such as economic interest groups in trade policy outcomes, and analyzes what is negotiated, with whom, and why. Traditionally, the focus has been on explaining the forms of trade policy in a world where states protected the interests of domestic industries against foreign industries, i.e., by reciprocal negotiations to reduce tariffs (Young 2016). The contemporary political economy approach to trade policy, adopting a wider lens, acknowledges the multiple agents in formulating trade policy (George Mulgan and Honma 2015). Due to globalization, the value chains in different industries are extended across national borders resulting in a more complex setup for policy. Trade policymaking thus involves a balancing of diverse and partly conflicting interests, and government decision-makers need to respond to sectoral interests but also to advance the broader societal and international interests of the state (*ibid.*). As part of trade policy, countries and regions have different interests in negotiating FTAs and their contents.

Nowadays, there is a need to explain the interests of states to conclude deep FTAs in order to ease global production networks and open behind-the-border barriers for multinational enterprises (Young 2016). Research on trade agreements has discussed, for example, national and intra-regional incoherence in policy-making for FTAs (Chin and Stubbs 2011, Jiang 2010) and domestic stakeholder relations in the negotiation processes (Nelson 2012, Söderberg 2012). National policymaking and stakeholder relations mould the contents of FTAs which, eventually, are a product of the negotiation parties' joint decision and acceptance of the commitments.

2.1. Formal and informal trade barriers

Broadly taken, there are two types of trade barriers, formal and informal that are distinguished by whether they are based on written or unwritten rules, respectively. *Formal* trade barriers can be set at multiple scales – international, bilateral and national – and include tariffs and codified non-tariff barriers such as quotas and TBTs. They are easily discernible and can be removed by free trade agreements or unilaterally at a country level by liberalizing national trade policies (e.g. Krugman et al. 2018). As Cuervo-Cazurra et al. (2017: 155-156) note, formal barriers to trade have been notably reduced by the pro-market reforms to liberalize international trade by removing and reducing tariffs, driven by the interdependence of economies. Similarly, non-tariff barriers (NTB) have been addressed e.g. by the WTO Agreement on TBTs that aims to ensure that technical regulations, standards, and procedures for conformity assessment are non-discriminatory and do not create unnecessary obstacles to trade (GATT/WTO 1994). Standards, on the other hand, are private-sector driven (Hanson 2010: 40) and harmonized by international organizations, such as the ISO, the International Telecommunication Union (ITU) and International Electrotechnical Commission (IEC).

However, the other type of trade barriers, the *informal* barriers may exist at the local level regardless of national or international regulations. According to Saxonhouse and Stern (1989: 294), informal barriers originate from 1) administrative procedures and unpublished government regulations and policies; 2) market structure; and 3) political, social, and cultural institutions. Informal barriers contain all unpublished practices, policies and norms; they may result either from the favouring of domestic interests by the government, or as a ‘byproduct’ of practices that are rooted in domestic institutions (ibid.). The latter is often a consequence of consumers favouring domestic products, or the reserved attitudes towards foreign firms and products. In contrast to tariffs and explicit NTBs, there is no clear-cut way to identify informal trade barriers. They are most often recognized on the basis of ‘complaints by the affected parties’, i.e. firms and governments (Saxonhouse and Stern 1989: 308). Therefore, one way to investigate the currently under-researched informal trade barriers is to survey or interview the relevant government authorities and company representatives.

Historically, Japan is an example of a country that for long remained isolated from the general globalization process but opened up during the nineteenth century (Cuervo-Cazurra et al. 2017: 156). The opening was only partial though, and Japan maintained manifold restrictions on foreign direct investment up to the mid-1970s (Saxonhouse and Stern 1989: 301). Even after the formal restrictions were eased, the Japanese economy remained one of the OECD’s least penetrated markets both in terms of exports and foreign direct investment (Kleimann 2015). A country’s openness to trade can be assessed by the extent of non-tariff measures (NTM) that are prevalent both in Japan and its biggest EU export target Germany affecting 76 % and 89 % of their imports, respectively (UNCTAD 2020). As a large economy, Japan also has comparably small exports and imports if counted as a percentage of Gross Domestic Product (GDP), whereas many small open economies have higher shares of foreign trade due to their limited domestic markets (see e.g. OECD 2023).

Trade barriers have been a long-term problem for foreign exporters. Whereas in 1983 Japan's tariffs were the highest among the OECD countries, and those of the United States were the lowest (Harrigan 1993), the overall lowering of tariffs during the subsequent decades along the GATT turned the attention to non-tariff barriers in Japan. In particular, informal trade barriers of the Japanese economy emerged as the subject of complaints among exporters from the United States and also became a hot topic in economic diplomacy between the two countries (Gehrt et al. 2005, Min 1996, Saxonhouse 1993). Agricultural and food exports were among the products that encountered significant informal trade barriers in Japan until very recently (Balassa 1986, Gehrt et al. 2005, Yue et al. 2017).

According to Balassa (1986: 762-763), the informal barriers to imports in Japan took a variety of forms, and included e.g. administrative guidance; customs procedures; standards, testing and certification requirements that discriminated against foreign exporters; and distribution channels. Administrative guidance was exercised on the imports of food products, especially on the imports of cereals and pork that were limited through the government import monopolies. Customs procedures created informal trade barriers because of the significant delays encountered in clearing customs. Also, import license permits were given to Japanese importers rather than foreign exporters who then encountered problems in their production or distribution channels in Japan. Standards, testing and certification requirements were problematic because foreign firms were excluded from the process, but Japanese competitors could participate and were thus able to influence the standards for their benefit (ibid.: 763). There were also changes to standards without sufficient notice to foreign exporters. Japanese standards differed significantly from international ones. As to product testing and certification, imported products could not use the factory-registration and model-approach system which were allowed for the self-certification of Japanese producers (ibid.: 763). These unequal procedures and requirements in standards, testing and certification were perceived as discriminating by foreign exporters.

From a Western point of view, entering the Japanese market is thus a complex process. The problem is not only about trade barriers imposed by the government or the grass-level authorities, but also about the preferences of other host country constituents, such as distributors or consumers who may favour domestic products. In many cases, distribution channels are held by Japanese importers. The channels are characterized as closed and complex with multiple layers of middlemen and thus misunderstood by Western exporters, therefore creating frustration among US policymakers and unnecessary trade disputes with the Japanese government (Min 1996). For example, the attitudes of Japanese distributors towards fruit imports from the US emerged as an informal trade barrier for the US exporters even though Japan was their biggest single export market (Gehrt et al. 2005).

To summarize, the evidence on the possible informal trade barriers was derived from the *complaints* by the affected parties – i.e., policymakers and/or companies encountering those barriers. This was based on their observations on the enforcement of formal trade policies by the host country authorities. Regarding FTAs, the question

is about the enforcement of the commitments in the respective countries after the agreement has been put in force.

Therefore, the real test of the mutual reduction and elimination of technical barriers to trade, as they are phrased in the EU-Japan EPA, will be in its interpretation after formal complaints are expressed by the involved parties at the business level in both the EU and Japan. Since TBTs are subtler and more difficult to measure than formal tariffs, they are more vulnerable to interpretations and post-agreement negotiations. Such interpretations may also vary considerably between different economic sectors based on their relative importance in the total trade in goods and services as well as the importance of the business firms who complain on the interpretation. The borderline between a formal technical barrier and an informal barrier (such as a disproportionately slow administrative procedure) is likewise a complex endeavour to draw. It may turn out that even though a technical barrier is formally abolished, the informal barrier will remain.

2.2. Data and methods of the study

As to the methodology and empirical material of this study, we draw from various sources, including 1) personal interviews of EU and EU member state (MS) trade policy officers and European business representatives in Japan; 2) the European Business Council Report on the Japanese Business Environment (EBC 2020) and the EBC digital white paper (2021), both representing 2,500 European firms in Japan; 3) the Business confidence survey of the Foreign Chambers of Commerce in Japan (FCIJ 2018) representing 137 European firms in Japan; 4) EU documents, WTO trade policy reviews, and the EPA agreement, Chapter 7 on Technical Barriers to Trade (DG Trade 2018a); and 5) international trade statistics.

Altogether 11 personal interviews were conducted with European trade policy officials as well as representatives of Chambers of Commerce and export support organizations in Europe and Japan. The interviews were conducted between 2016–2021 as unique individual meetings either face-to-face on site, or over the phone or Zoom due to the Covid-19 pandemic. The selection criteria for identifying potential respondents was based on their expertise on the studied topic to cover both the policy and business perspectives. Therefore, representatives of the EU External action, EU member state Embassies and Foreign Ministries, and EU member states' Chambers of Commerce in Japan were contacted. Some were approached based on recommendations from other interviewees, thus following a 'snowball' method of identifying respondents. None of the contacted persons declined the interview request. The interviews lasted approximately one hour and were tape-recorded and made notes of. Due to confidentiality, the interviewees are referred to anonymously in the text (e.g. Interview 1) and are listed in the end of the paper (Appendix: Table A1).

A qualitative content analysis was conducted on material from the interviews, business council report, business survey, and policy documents. Descriptive trade statistics were drawn from the data from IMF, JETRO, and trademap.org (ICT, UNCTAD, WTO). Based on these analyses, the study gives an overview of EU-Japan

trade, the negotiations between the two, and the specific barriers that European firms face in the Japanese business environment. Our assumption is that while policies directly affecting cross-border trade are eased, there will be challenges in changing the practices and procedures that affect the regulatory environment in Japan known to be less open to foreign businesses. The paper points at the different spheres of ‘trade policy’, which will potentially help close the gap between the state and business sector realities and highlight the multi-scalar governance of trade.

3. Pre-EPA trade flows, policies and negotiations

An important empirical observation to make when assessing the mutual trade and investment flows between the EU and Japan is that the two parties have drifted away from each other when measured in relative terms. Japan accounted for about 3.5 % of the EU’s extra-regional trade in goods in 2018, whereas it had accounted for 13 % of the EU’s imports in 1993 (see Figure 1). It is specifically the imports to the EU from Japan that have declined in the long term. This means that the traditional large deficit in trade in goods of the EU towards Japan has diminished. The relative decline is also reported in Japanese external trade statistics, even though there has been a recovery during the last years. The main reason for the relative decline in EU-Japan trade is the rise of China as a major exporter and importer and a main trade partner for both the EU and Japan.

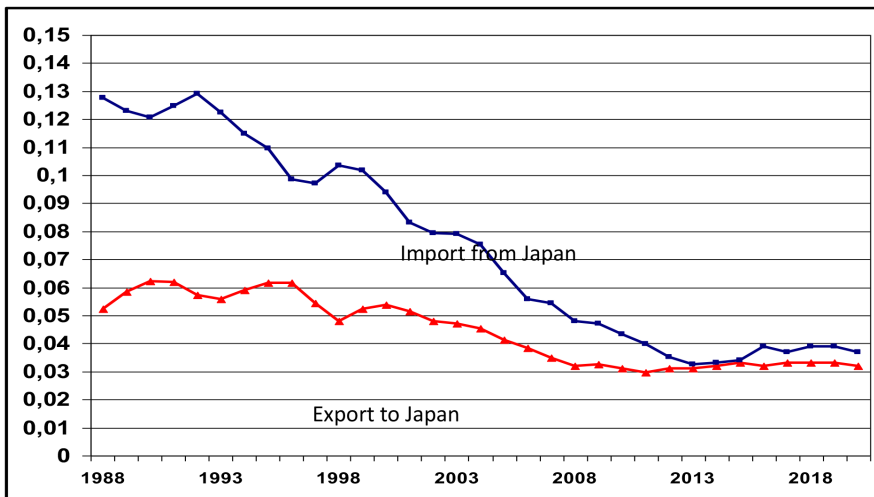


Figure 1. Japan’s share of the EU’s extra-regional imports and exports, 1988–2020.

Sources: IMF Direction of Trade Statistics, JETRO database, ITC/UNCTAD/WTO database at trademap.org. Note: The statistics cover direct trade only. Abbreviations: International Monetary Fund (IMF), Japan External Trade Organization (JETRO), International Trade Centre (ITC), United Nations Conference on Trade and Development (UNCTAD), World Trade Organization (WTO).

The commodity composition in EU-Japan trade in goods is more concentrated to advanced products within the machinery and equipment sector in the flow from Japan to the EU, compared to the opposite direction that is more diverse comprising of basic manufacturing, agricultural and food products. Some of the trade is directly linked to foreign direct investments (FDI), i.e., imports of investment goods or components for production operations. There is furthermore a huge imbalance in the FDI relations, characterized by a large surplus of FDI from Japan to the EU. Even after substantial changes in Japan's FDI framework, the Japanese economy still appears notably more closed for foreign firms compared to the EU. This has led to an unbalanced situation when it comes to the number of foreign firms or the value of FDI from one side to another. This imbalance is obviously a major factor to consider when assessing the informal trade and investment barriers between the two parties.

3.1. Pre-EPA trade barriers

On the surface, external trade protection in Japan and the EU has been more or less at the same level, similar to other highly developed economies. This concerns the easily discernible tariff protection (see Table 1). In 2016, in the middle of the EPA negotiations, the EU's simple average applied MFN tariff level (6.3 %) was slightly higher compared to Japan (6.1 %) affecting the pre-EPA mutual trade. The EU's average tariff for manufactured products was higher (4.3 %), thus affecting the bulk of the bilateral trade. In contrast, Japan's protection for agricultural products was higher (16.3 %) compared to the EU (14.1 %). Tariff levels in both economies were, however, notably higher than in the third highly developed economy, the United States, for both agricultural and manufactured imports. The two other Asian economies, China and South Korea, apply a relatively higher tariff protection throughout the different sectors, in order to allow domestic industries to grow to be competitive in the world market. The weighted average tariff rates for all compared countries were markedly lower than simple averages, indicating generally lower tariff rates for biggest export product categories (Table 1).

Table 1. Average tariff rates of Japan and the EU in 2016, compared to China, USA, and South Korea (MFN applied)

	Japan	EU	USA	China	S. Korea
Simple average tariff rate (%)	6.1	6.3	4.8	9.5	14.1
Agriculture (HS 01-24)	16.3	14.1	9.1	14.8	60.0
Non-agriculture (HS 25-97)	3.6	4.3	4.0	8.6	6.6
Weighted average tariff rate (%)	2.5	2.1	1.6	3.5	8.7

Source: WTO (World Trade Organization) trade policy reviews (WTO 2016a, b, c, 2017a, b), World Bank database.

However, tariff protection varied strongly by product category on both sides. Japan's average applied MFN tariff was highest on footwear and headgear (almost 30 %), prepared foods (18 %), and vegetable products (15 %). In contrast, imports to Japan were practically free for machinery, transport equipment, pulp and paper, and precision instruments. (WTO 2017a: 35) On the EU side, import tariffs were highest on certain agricultural products, such as dairy products (36 %), and sugars and confectionery (27 %). In manufactured products, the EU's highest average tariffs were in clothing (12 %), passenger cars (10 %), textiles (7 %) and transport equipment (5 %). (HC 2018: 7, WTO 2017b: 49-50) These had a restrictive impact especially on trade in food and agricultural products. Similarly, the EU's restrictions on car imports had resulted in the Japanese car manufacturers to shift much of their production inside the EU in order to circumvent the high tariff protection.

There were marked differences between Japan and the EU in the types of trade barriers applied. While protection on the EU side mainly took the form of high tariffs on specific product groups, Japan applied a multitude of non-tariff barriers. The so-called behind-the-border trade barriers, i.e. those that are imposed in the regulatory environment, were very high for European companies in Japan (FCIJ 2018). These included TBTs, such as national standards and certifications, restrictions on foreign investment, and regulations that may discriminate against foreign firms. Japan did not accept many internationally harmonized technical requirements or internationally accepted standards (EBC 2015). In 2016, there were over 10,500 Japanese industrial standards, of which only appr. 5,800 had a corresponding international standard (WTO 2017a). The difference from global standards was one of biggest problems for European companies in Japan.

Other main barriers were the Japanese regulatory environment, the protectionist mindset of the authorities, the cumbersome approval processes, quality requirements, and extra testing (FCIJ 2018). Further, there were administrative hindrances. Customs clearance procedures were relatively slow in Japan in global comparison: Japan ranked 49th out of 190 economies compared by the World Bank's Trading Across Borders index in 2017 and 51st in 2018, whereas its main EU trade partners ranked higher – France, the Netherlands and Italy sharing the 1st place, the United Kingdom ranking 28th and Germany 39th in global comparison in 2018 (World Bank 2018, WTO 2017a).

In sum, the characteristics of Japanese business environment, such as a business culture favouring domestic firms and a local consumer base with strong domestic preferences, have created a major trade barrier for foreign exporters. Japan has shielded important manufacturing industries, as well as agriculture and food, from import competition and FDI through complex and often non-transparent regulations. Whereas the challenge in the EU market for foreign businesses is to navigate the 27 distinct business environments, the Japanese market has been claimed to be more closed because of the numerous behind-the-border obstacles.

3.2. Geopolitical context of the EU-Japan EPA negotiations

The launch of the EU-Japan negotiations had its origins in a change of Japan's and the EU's approach to the bilateral relations in 2011. Before that, the relationship had been governed by detailed documents that provided the framework and exact guidelines to the dialogue (Söderberg 2012). After the 2011 EU-Japan summit, a statement was published in which both sides agreed to begin negotiations on two fronts: for an economic partnership agreement, and for a binding agreement on political, global and sectoral cooperation (ibid.: 249). Also instrumental was Japan's new government led by prime minister Abe and the emphasis on FTA talks as part of the 'third arrow' of the so-called Abenomics policy. This was a turnaround in the governance of the bilateral relations, and the actual trade negotiations were opened in a relatively quick pace.

One of the key factors for the rapid action from the Japanese side was that its competitor, South Korea, had reached FTAs with two trade giants, the EU and the United States in 2011 and 2012, respectively (Kleimann 2015). These agreements led to an increase in bilateral trade between Korea and the two major markets, which was observed in Japan with concern about Korea's sudden cost advantage, accompanied by declining export shares of Japanese car manufacturers in the EU and the US. This motivated the Japanese government to open EPA talks with the EU, as well as with the US for the Trans-Pacific Partnership (TPP) negotiations (ibid.: 5). A further push for Japan was the rapid pace at which two other Asian neighbours, Singapore and Vietnam, concluded FTA negotiations with the EU. These FTAs served as models to later negotiations (Alvstam et al. 2017, Cuyvers 2014, Pollet-Fort 2011).

The EU-Japan talks coincided with two notably larger FTA negotiations involving the US and the EU that drew the full attention of global media. The EU and Japan were thus negotiating 'in the shadow' of the TPP comprising of the US and its Asia-Pacific partners, and the Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU that commenced roughly at the same time as the EU-Japan talks in 2013. Interestingly, the EU-Japan talks encountered surprisingly few critics from civil society organizations (Suzuki 2017), as the two simultaneous mega-processes overshadowed the talks between the EU and Japan. This showed in Europe in particular as a 'disproportionate bias' in the public interest as the TTIP was gaining most of the subsequent media attention (Kleimann 2015).

The increased public interest was due to a change in the EU's own institutional structure in the preparation and decision-making on international trade agreements. Before the Lisbon Treaty of 2009, the European Commission alone took care of the Common Commercial Policy and the various bilateral arrangements (Nelson 2012: 339). This resulted in a relatively low degree of transparency, as the Commission wanted to protect the evolving negotiations from lobbyists, stakeholders and the public, in order to retain space for manoeuvre in bargaining with the counterparts (Kleimann 2015: 2). The Lisbon Treaty made the European Parliament central in the EU's trade partnerships which was a notable alteration to the prior structure. The situation changed dramatically and opened up the possibility for public debate, which however materialized only in the geo-strategically important TTIP talks. The

same was true in Japan where the public interest was drawn to the negotiations on the TPP between 12 governments, thus leading to an almost total ignorance of the EU-Japan talks (*ibid.*).

However, the withdrawal of the US from the TPP shook the geopolitical balance in a way that gave a possibility to other FTA negotiations to take a lead. Similarly, the TTIP negotiations between the US and the EU stopped after 15 rounds in 2016 (DG Trade 2018b). The role of China strengthened in promoting its interests in the Belt and Road Initiative (BRI) and the Regional Comprehensive Economic Partnership (RCEP) among 16 regional neighbours, including Japan.¹ It was argued, however, that Japan's economic and political agreements were negotiated and concluded in the shadow of China (see e.g. Berkofsky et al. 2018). This was until the US and Japan launched FTA negotiations in spring 2019 and the FTA came into force in early 2020 after a record fast process (USTR 2020), yet with a relatively limited scope and coverage (Chatzky 2019).

In the bilateral talks, the EU side expected that the FTA will help European companies especially in the food, feed and processed food sectors to access the Japanese market. This was to be achieved by reductions both in tariffs and in the regulatory and non-tariff barriers (EPRS 2016). However, the noted 'asymmetry in the tools of protection', i.e. tariffs vs. non-tariff barriers, created a challenging situation for the FTA negotiations (Kleimann 2015). The two sides had to trade-off especially on the regulatory measures in the Japanese business environment that were prone to be difficult to handle and to enforce.

4. Empirical findings: formal and informal barriers and EU-Japan EPA

The interviews with EU trade policy officials and businesses and the company surveys indicate specific formal and informal trade barriers addressed during the EPA negotiations and after it was put into force, as discussed next.

4.1. EU policymakers' views on EPA

For the EU, opening a dialogue was important in the first place, as the EU's aim was to make Japan 'more informed' with the different issues of the EPA (Interview 1). A major achievement for policymakers was the improved market access. The final EPA goes further and is more detailed regarding market access for European companies, as compared to the EU's earlier FTA with South Korea that had been in force since 2011 and needed revision (Interview 2). The EU-Japan EPA also eased the access of EU firms to Japanese public procurement markets, the issue being one of the most sensitive ones in free trade negotiations among all countries.

The technical barriers to trade were among the most challenging issues in negotiating the EU-Japan EPA, whereas the other 'deep and broad' issue – trade and

¹ The RCEP is a proposed free trade agreement between the ten ASEAN countries and the six countries with which ASEAN has FTAs in force, namely Australia, China, India, Japan, South Korea and New Zealand.

sustainable development – did not raise such concerns perhaps due to its generally novel nature in the Asian context (Interview 3). Yet Japan was a signatory in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that included binding provisions on sustainable development.

As to the contested issue of technical barriers to trade, the harmonization of standards was the hardest to negotiate. However, there were more commitments than expected in the EPA related to international standards, which was seen on the EU side as a positive signal since the issue was somewhat new for Japan. Especially the car industry had a huge interest here, whereas other sectors were not similarly ‘knowledgeable’ (Interview 1).

The interviewees noted that already before the signing of the EPA, new discriminatory standards emerged in Japan. The EU side had anticipated some new technical barriers to appear in the imports of wood, which soon materialized: the new standards allowed only Japanese species of trees in certain industries (Interview 4). Similarly, new restrictions were introduced in imports of food products, such as prohibitions to additives that are used in Europe and thus ban the imports of European food products to Japan. The Japanese industry associations were quick to introduce new standards to protect domestic production from European competition (Interview 4).

Traditionally, the approach to standards has been conservative in Japan. Yet there was an emerging interest in raising the question in Japan and an evolving debate around industrial standards. This represented a ‘new approach’ for Japan to start working with the regulatory standards issue (Interview 1). Particularly the Ministry of Foreign Affairs (MOFA) and the Ministry of Economy, Trade and Industry were seen as competent here, while other ministries still lagged behind in the overall consciousness of the issue. The coordination between MOFA and other ministries was perceived not to function, as other ministries did not recognize that the EPA had brought about a new framework (Interview 1).

4.2. EU businesses’ views on EPA

According to the business confidence survey of the Foreign Chamber of commerce in Japan (FCIJ 2018), the European businesses did not expect a major change in Japanese regulatory barriers after the agreement. Instead, they were somewhat sceptical on the TBT, especially on the standards conformation. Altogether 137 European firms took part in the survey in 2018. The results showed a small expected effect of the EPA among the companies, as almost half of the firms (47%) considered the EPA having ‘no impact at all’, whereas 42% expected ‘some positive effect’, and only 9% considered the EPA to have a ‘strong positive effect’.

The main concern of the firms was related to the lack of harmonization of industrial standards. According to respondents, 1) the EU had not sufficiently included non-tariff barriers in the EPA especially with respect to harmonization of industrial standards; 2) there was no detailed information available about the EPA for each industry; 3) the regulatory issues were not sufficiently covered; 4) the harmonization of industrial standards was lacking in the EPA; and 5) there

was a need for government engagement in de-regulation (FCIJ 2018). Many firms (44% of the respondents) considered that there was a need for seminars and training sessions on the EPA (FCIJ 2018). The firms referred to updates on EPA in practice, “to clarify next steps and timeframe” in implementation, and to create working groups in different industries (e.g. food, medical, industrial) in order to “go into details for deep insights”. This was needed although companies have the possibility to participate in the formulation of the agreement texts through industry associations in the different preparation stages of FTAs (Interview 8).

Similar responses were given by two interviewed EU companies in Japan: they did not expect much of a change, information was lacking on the EPA impacts, and they were worried about the TBTs, notably standards. A large telecom firm that had been operating in Japan for decades, expressed not having information about the eventual effects of the EPA on their business, or the industry at large (Interview 5). A high-tech company specialized in industrial measurements did not expect short-term advantages in tariffs, but was aware of the TBTs, including certain technical product specifications that were expected to change. Also, the company anticipated more competition as new players may enter the ‘easier’ Japanese market as a result of the EPA (Interview 6). The interviewees also mentioned other main EPA issues, such as the opening of agricultural and food imports to Japan that will have more impact on trade flows compared to many high-tech industries that they represent. In contrast, the issue of trade and sustainable development was not raised as firms tend to have a ‘cautious approach’ on questions of sustainable development, aside from the business potential induced (Interview 7).

4.3. Post-EPA trade barriers

The enforcement of the EPA issues started after the agreement was put into force in February 2019. The TBTs were expected to remain difficult for European firms even after the implementation. The agreement refers to WTO agreement on TBTs, and states in Chapter 7 on Technical Barriers to Trade that the objective is to facilitate trade by “ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade”. The chapter notes that the parties undertake technical regulations “with a view to increasing their convergence with relevant international standards” and “shall encourage regional or national standardizing bodies to [...] use relevant international standards as a basis for the standards they develop”. These will also be used when developing technical regulations and conformity assessment procedures (DG Trade 2018a).

Data from our interviews and the EBC indicate that European policymakers and businesses are content on tariff reductions, but complain on the non-enforcement of certain TBT issues in Japan (see Table 2). Tariff reductions were implemented swiftly e.g. on food products, metals, chemicals, and footwear. The EBC follows closely the progress in the removal of tariffs on European wines, as well as the protection of geographical indications (GI) on liquor products agreed in EPA. The biggest challenge concerns the non-harmonization of Japanese industrial standards with international standards. According to European firms, Japan is reluctant to accept

the ISO standards in several industries, such as railways, products sold in retail and wholesale trade, wood, and food products. Double testing is still required for food products even if the products are already tested in Europe. The EBC urges the EU and Japan to use EPA to streamline test procedures, and to harmonize testing in Japan according to ISO standards. Also, EU policy officials observe a conduct of practices in TBTs that are against the spirit of the EPA. Problems still remain, and equal treatment is not enforced e.g. in public tenders according to the EPA (Interview 9).

Table 2. European companies' and policymakers' views on the enforcement of EPA commitments in Japan

Trade policy by measure	Product categories affected	Status of enforcement	EBC recommendation
Tariff reductions	Food products, metals, chemicals, footwear	Enforced	–
Tariff reductions	Still wine, sparkling wine	Progressing	Remove all tariffs as agreed in EPA
Protection of geographical indications	139 liquor products	Progressing	Implement as agreed in EPA
Acceptance of ISO standards	Several (railways, retail and wholesale, wood)	Only partially	Accept EN and ISO standards
Testing and approvals	Food products	Double testing not removed	Harmonize testing according to ISO standards
Approval of additives	Food products and wine	Only partially	Approve all additives as agreed in EPA and declared safe by FAO and WHO

Source: Compiled from EBC (2020, 2021) and interviews. Abbreviation: European Business Council in Japan (EBC).

Food and alcohol products are frequently mentioned regarding the enforcement of TBT commitments. In 2021, the EBC reported no progress in the testing and approvals since approval times were not shortened according to EPA, and stated: “While the EBC has seen progress in Japan’s approval of additives, the approval process still remains an obstacle, and an overall lack of transparency. EU and Japan should use the EPA to further strengthen the work in this field. Despite announcements that the EPA would result in faster approval times, this has not been realised” (EBC 2021).

European firms claim that the Japanese market still has high entry barriers that are cultural rather than regulatory, similar to the Korean market (Interview 10). Despite the perceived barriers, the diplomatic relations between the EU and Japan are excellent and have further strengthened in the context of the contemporary geopolitically tense global relations. From the European perspective, the EU-Japan Partnership on Sustainable Connectivity from 2019 is very welcome (Interview 11). After the slowdown caused by the Covid-19 pandemic, the two are taking a systematic approach to implement the connectivity plan (Söderberg 2021).

5. Discussion

Our findings on the EU-Japan EPA have a number of implications to the theorizing on trade barriers. First, the case strengthens the view that trade barriers, including TBTs, are mainly removed through *bilateralism*. Attempts at liberalization are taken through bilateral negotiations because of the very slow and complex multilateral process. The recent changes in international political economy are undermining the previous long process of globalization (cf. Cuervo-Cazurra et al. 2017, Kobrin 2017, Meyer 2017, Milanovic 2016, Rodrik 2018). Whereas multilateral trade talks are more or less at a standstill, bilateral FTAs flourish. In this setting, the EU promotes more comprehensive bilateral FTAs that contain provisions on behind-the-border trade barriers, which, in the EU-Japan negotiations were the most challenging issue.

Second, the broader *global geopolitical context* of trade negotiations is complex and subject to quick changes and external shocks. Bilateral trade negotiations are deeply affected by the geopolitical framework with sudden twists and turns in the currently tense economic and political relations among major trade powers. The EU-Japan EPA talks were triggered and affected by outside events, such as the changing US trade policy to refrain from TPP as well as the ‘Korea effect’. This conforms to Young’s (2017) notion on the current politics of different FTAs: they are even more interconnected than was previously acknowledged (cf. Poletti and Sicurelli 2018). The shift in the global configuration of trade negotiations gave room for others – such as the EU and Japan – to take a more active role. The EU side used this opportunity to reach out to a more detailed EPA on market access compared to its earlier FTA with Korea.

Third, *formal barriers* to trade, including many TBTs, were markedly lowered by the EPA. The EU negotiators perceived technical barriers as the most challenging issue but in the end, they expressed content with the progress on Japan’s side in addressing the issue and the breadth of inclusion of TBTs in the final EPA. In contrast, European businesses complained about its vagueness on different TBTs and the multitude of standards not being included in the agreement, including non-conformity with ISO standards on certain product categories as well as on testing procedures. It is typical that technical barriers remain out of the scope of FTAs (Sampson and Theuns 2023) and we find that the expectations somewhat differed between EU policymakers and businesses in this respect.

Fourth, *informal barriers* to trade in the Japanese institutional environment are indicated by the imbalances in the EU-Japan bilateral trade and investments and in the complaints by EU businesses (cf. Saxonhouse and Stern 1989) both before and after the EPA. The Japanese economy is relatively open when it comes to formal regulations, yet consumers and firms favour domestic products and business partners, which indicates a closedness of the market for foreign exporters. Informal barriers are also evident in the administrative practices of the authorities in enforcing technical regulations, such as longer than stated procedure times, slow progress in enforcing EPA commitments on the protection of geographical indications, and non-enforcement of EPA commitments in approving additives in food products. Being

vulnerable to different interpretations by the respective parties, informal barriers are dependent on distinct local social norms, codes and cultures. Informal trade barriers have long-standing impacts and need to be conceptualized to account for the current global trade context.

Therefore, there is a need to theoretically better integrate trade barriers and investment (entry) barriers. In distinctive markets such as Japan, informal trade barriers are a significant obstacle to foreign exporters, and should therefore be better understood and conceptualized in theorizing on trade policies. In relation to this, there is a need to identify a common theoretical platform for the comprehensive and more ambitious 'broad and deep' free trade agreements. This would take into account the contemporary reality of globalization including global value chains that induce the bulk of international trade where the interests of the foreign firms and host states may either converge or conflict.

6. Conclusions

We discussed the EU aims and business reactions to the EU-Japan EPA, its challenges and behind-the-border barriers in Japan. The agreement is one of the EU's bilateral comprehensive FTAs that was negotiated in the context of a changing international political economy. Our main interest was in the informal trade barriers related to technical barriers to trade, such as standards and conformity assessment as addressed in Chapter 7 of the EPA. Based on eleven personal interviews with representatives of EU public and private sectors and two business surveys, we find that TBTs were among those that the EU endorsed in its talks with Japan. The negotiations included several challenging issues, not only related to TBT but also to agricultural and food imports, and public procurement.

The European businesses did not expect a major change in the Japanese business environment as a result of the agreement. A main reason for this is the institutional environment in Japan that has the traditionally high entry barriers facing foreign firms. It was accordingly a high priority of the EU in the negotiations to lower this barrier. Although the structural impediments to investment in Japan remain, and while the EU member states are more open to Japanese investment, both parties keep strict codes of conduct in respective corporate sector. Brexit affects the mutual FDI flows between the EU and Japan, since UK was historically the main destination of Japanese FDI in the EU.

Whereas the EU-Japan EPA is broad and deep, an open question remains as to the persisting formal and informal barriers. The extant theories of international trade and investment offer limited insight into how to cope with informal barriers to trade. It is therefore a crucial mission to continue gather empirical evidence on how the EU-Japan EPA is followed up at the business level, and in which respects various barriers remain. However, we can conclude that at the level of an agreement, EPA represents a degree of success in the EU's aims in addressing the behind-the-border barriers.

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Appendix. Table A1. Interviews.
(N.B. EU MS refers to an EU member state.)

Interview #	Interviewee	Organization	Date
Interview 1	Trade policy official	EU Delegation in Tokyo	25.6.2018
Interview 2	Trade policy official	EU MS Ministry for foreign affairs	8.9.2020
Interview 3	Trade policy official	EU MS Ministry for foreign affairs	3.5.2017
Interview 4	Director	EU MS Trade promotion office in Tokyo	25.6.2018
Interview 5	Director	EU MS Chamber of Commerce in Japan	9.10.2018
Interview 6	Deputy director	EU MS Chamber of Commerce in Japan	30.8.2018
Interview 7	Trade policy official	EU MS Ministry for foreign affairs	19.4.2017
Interview 8	Economic counsellor	EU MS Embassy in Seoul	27.6.2016
Interview 9	Market access official	EU MS Ministry for foreign affairs	19.12.2019
Interview 10	Trade policy officer	EU Delegation in Seoul	27.6.2016
Interview 11	Adviser for Economic Affairs	European External Action Service	12.2.2021