

CLIMATE CHANGE AND ENVIRONMENTAL ISSUES IN THE ECONOMIC PARTNERSHIP AGREEMENT AND THE STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN

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Content

- I. Introduction
- II. Climate Change and Environmental Issues in the EPA
- III. Climate Change and Environmental Issues in the SPA
- IV. Analysis
- V. Concluding Remarks and Recent Efforts toward the Paris Agreement in Japan

I. *Introduction*

The European Union and Japan negotiated a free trade agreement (FTA) and in parallel a comprehensive strategic partnership agreement for five years from 2013 to 2018. They signed the Economic Partnership Agreement (EPA)¹ and the Strategic Partnership Agreement (SPA)² on 17 July 2018. The former is a so-called “EU only agreement” which the EU can conclude alone without participation of the EU Member States. Therefore, after the ratification by the EU and Japan, it entered into force on 1 February 2019. On the other hand, the latter is a mixed agreement and needs to be ratified by the EU and all the EU Member States. As a result, its provisional application commenced on that day.

In the beginning Japan wanted to conclude only the EPA because Japanese companies were concerned about adverse effects in the export-manufacturing fields by the conclusion of the FTA between the EU and South Korea. On the other hand, from the outset, the EU requested a binding agreement, covering political, global and other sectoral cooperation in a comprehensive manner.³ Since the enactment of the Treaty of Lisbon in 2009, the EU has had its own values and those values should be applied in EU external action. According to Article 21 Treaty on the European Union (TEU), the EU shall seek to develop relations and build partnerships with third countries that share principles such as democracy, the rule of law, and respect of human rights.⁴

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¹ For text and information about the EPA, see,
https://www.mofa.go.jp/policy/economy/page6e_000013.html (last accessed on 6 December 2019).

² For text and information about the SPA, see,
https://www.mofa.go.jp/erp/ep/page22e_000707.html (last accessed on 6 December 2019).

³ 20th EU-Japan Summit, Brussels, 28 May 2011, Joint Press Statement,
<https://www.mofa.go.jp/region/europe/eu/joint1105.html>.

⁴ Cf. Michael Reiterer, “EU Security Interests in East Asia: Prospects for Comprehensive EU-Japan Cooperation

The EPA comprises 23 Chapters and has about 560 pages. It is a trade agreement, but a comprehensive one. It contains not only chapters on trade in goods and customs matters, but also chapters on intellectual property, sustainable development, regulatory practices and other emerging issues. Therefore, it is a “new generations” agreement. The SPA is comprised of only a preamble and 51 articles. It covers compressive issues including security such as the proliferation of weapons of mass destruction and terrorism, environment and energy, cyberspace and outer space, information society, culture and education. The significance of the SPA is not small.⁵

To date, I have discussed the EPA or/and SPA in several papers.⁶ This paper focuses on environmental issues, in particular climate change. Climate change is one of the most important issues in the EU. The sixth environmental action programme, entitled “Environment 2010”, was adopted on 22 July 2002. It stipulates four priorities: climate change, nature and biodiversity, environment and health, and natural resources and waste. After the Treaty of Lisbon of 2009, Article 191 (1) TFEU was amended. This amendment is the insertion of the phrase “in particular combating climate change”. Climate change is now specified explicitly as an objective of the EU’s environmental policy. In addition, Ursula von der Leyen, who became the president of the European Commission on 1 December 2019, had presented her plan “A Union that strives for more: My agenda for Europe” on 16 July 2019 before the European Parliament.⁷ She proposed a European Green Deal. She also reiterated this point in her speech on the occasion of the UN Climate Change Conference (COP 25)⁸ in Madrid on 2 December 2019. The European Green Deal includes a proposal for the first European Climate Law to enshrine the 2050 climate-neutrality target into law. She stated that they were on track to meet their ambitious Paris Agreement goals and the 2030 target, but they needed to go further and faster if they were truly serious about climate neutrality in 2050. She entrusted Frans Timmermans with the role of Executive Vice-President for the European Green Deal in order to accomplish her plan. The von der Leyen Commission presented a strong determination to deal with climate change. On the other hand, the non-governmental organization, Climate Action Network, gave a “fossil prize” to Japan as well as Australia and Brazil at the venue of COP 25 because the Japanese Minister of Economy, Trade and Industry referred to the continuous use of coal-fired plants. Although there is seemingly an enthusiasm gap between the EU and Japan, it might be interesting to know how climate change is stipulated in the EPA and SPA and how Japan has handled the Paris agreement.

beyond Trade and Economics”, *NFG Policy Paper* No. 6/2015, p.15.

⁵ Cf. Julie Gilson, “The Strategic Partnership Agreement between the EU and Japan: the pitfalls of path dependency?”, *Journal of European Integration*, 2016, Vol.38, No.7, pp.791-806.

⁶ Yumiko Nakanishi, “Economic Partnership Agreement Between Japan and the European Union and Legal Issues”, *Hitotsubashi Journal of Law and Politics*, Vol.44, 2016, pp.19-30; “Characteristics of EU Free Trade Agreements in a Legal Context: A Japanese Perspective”, *European Yearbook of International Economic Law*, Springer, 2017, pp.457-474; “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, pp.1-15.

⁷ Ursula von der Leyen, “A Union that strives for more: My Agenda for Europe”, https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-http://copjapan.env.go.jp/cop/cop25/en/index.htmlcommission_en.pdf, last accessed on 4 December 2019.

⁸ There is a special site for Japan Pavilion, COP 25 under the Ministry of the Environment, see, <http://copjapan.env.go.jp/cop/cop25/en/index.html> (last accessed on 6 December 2019); The official twitter account of the Ministry of the Environment, MOEJapan Climate Action.

The EPA and the SPA stipulate climate change and environmental issues. However, they are different. Why do the EPA and SPA stipulate them? Is it not enough just for the EPA to stipulate them? I would like to provide some answers to these questions. First, I present how climate change and environmental issues are stipulated in each agreement. Based on this, I then clarify the reasons why these issues are stipulated by both the EPA and SPA.

II. *Climate Change and Environmental Issues in the EPA*

1. Trade and Environment

Although the EPA is an economic agreement, it does contain a chapter on sustainable development. Chapter 16 Trade and Sustainable Development is composed of 19 articles (Article 16.1-16.19). The concept of sustainable development is understood through three components: economic development, social development and environmental protection. The EPA is concluded by the EU only on the side of Europe because the EU has exclusive competence for its all subject matters. The EU does not have exclusive competence in the environmental field. The CJEU held that environmental protection requirements must be integrated in all EU policies including common commercial policy, relying on Article 13 Treaty on Functioning of the EU (TFEU) that regulates the principle of environmental integration.⁹ According to Article 16.1 Context and objectives of the EPA, the EU and Japan recognise “the importance of promoting the development of international trade in a way that contributes to sustainable development” and recognise the contribution of this Agreement to the promotion of sustainable development. Further, according to Article 16.4 (1), the EU and Japan “stress the importance of archiving mutual supportiveness between trade and environment” and “shall exchange views and information on trade-related environmental matters of mutual interest in the meetings of the Committee on Trade and Sustainable Development” that is established under the EPA. Moreover, the EU and Japan recognise the importance of enhancing the contribution of trade and investment to achieve the goal of sustainable development. Both are obligated to “strive to facilitate and promote trade and investment in environmental goods and services” (Article 16.5).

Trade can and should be a means to boost or support the environment, an idea that the EU and Japan share in the EPA.

Furthermore, Article 16.12, entitled “Cooperation”, suggests some possible areas for cooperation: evaluation of the impact between trade and environment, labelling schemes, the promotion of corporate social responsibility, trade-related aspects of multilateral environmental agreements and the promotion of various environmental protection related issues.

2. Right to Regulate

The right to regulate enables countries and the EU to maintain labour and environmental standards.¹⁰ The provision addressing the right to regulate was inserted at the request of NGOs

⁹ Opinion 2/15, opinion of 16 May 2017, ECLI:EU:C:2017:376, paras. 146-147.

¹⁰ Cf. Lorand Bartels, “Human Rights, Labour Standards, and Environmental Standards in CETA”, in Stefan Griller,

and civil society in Europe.¹¹ They were concerned about the deterioration of EU standards. Considering such a request, the EU's FTAs contain the provision regarding the right to regulate. This is covered by Article 16.2 Right to regulate and levels of protection in the EPA. The EU and Japan have the right to determine their sustainable development policies and priorities, and can maintain or improve the protection standards, whereas they cannot encourage trade or investment by relaxing or lowering their level of environmental protection.

3. Implementation of Multilateral Environmental Agreements

In Article 16.1 (1) several international documents are specified. Among those, the following documents are related to the environment: Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992, Plan of Implementation adopted by the World Summit on Sustainable Development on 4 September 2002, the outcome document of the United Nations Conference on Sustainable Development on 27 July 2012 and the outcome document of the United Nations summit for the adoption of the 2030 Agenda for Sustainable Development on 25 September 2015. The latter is a renowned SDGs (Sustainable Development Goals).¹²

It shows that the EU and Japan share basic international documents for sustainable development including the environment.

Article 16.4 is entitled "Multilateral environmental agreements". Article 16.4 (1) provides that the EU and Japan recognise the importance of multilateral environmental agreements as a means of multilateral environmental governance for the international community to address global or regional environmental challenges. More important is the implementation of those agreements because the implementation of environmental agreements is notoriously difficult. Therefore, the EPA has allowed the EU and Japan to reaffirm their commitment to effectively implement the multilateral environmental agreements (Article 16.4 (2)) in their laws, regulations and practices. In addition, both parties are obliged to exchange information on their respective situations and advancements regarding multilateral environmental agreements as well as the implementation of such agreements (Article 16.4 (3)). Furthermore, Article 16.12 (g) refers to the implementation of CITES on which both parties may cooperate through the exchange of views and information. According to Article 16.11, the EU and Japan "recognise the importance of reviewing, monitoring and assessing, jointly or individually, the impact of the implementation of this agreement on sustainable development". It means that Article 16.4 entitled "Multilateral environmental agreements" is also included as a subject for review.

Walter Obwexer and Erich Vranes (ed.), *Mega-Regional Trade Agreements: CETA, TTIP, and TiSA*, Oxford University Press, 2017, pp.202.

¹¹ Yumiko Nakanishi, "New trade rule-making regarding sustainable development in EU FTAs with Asian countries", Frank Gaenssmantel and Chien-Huei Wu (ed.), *Law and Diplomacy in the Management of EU-Asia Trade and Investment Relations*, Routledge, 2019, pp.229-245.

¹² Keidanren (Japan Business Federation) has promoted the SDGs. Keidanren proposed "Society 5.0 (Super Smart Society)", which is the vision of the next stage in the evolution of human society, following its previous stages as a hunter-gatherer society (Society 1.0), agrarian society (Society 2.0), industrial society (Society 3.0), and information society (Society 4.0). The vision was incorporated in the 5th Science and Technology Basic Plan in Japan. Keidanren launched a site for SDGs in Japanese and English. See, <https://www.keidanrendsgs-world.com/> (last accessed on 6 December 2019).

Although those provisions stipulate neither strict nor concrete obligations for the EU and Japan, they can play the role of a somewhat soft peer pressure. Additionally, Article 16.14 stipulates “contact points”, so that they facilitate communications between the EU and Japan on any matter relating to Chapter 16.

4. Involvement of Civil Society and Dispute Settlement

The EPA stipulates the involvement of civil society. Participatory democracy is reflected in the EPA. Article 16.15 obliges the EU and Japan to convene meetings of domestic advisory groups (DAGs) on economic, social and environmental issues and to consult with DAGs. DAGs should be a balanced representation of independent economic, social and environmental stakeholders. DAGs can meet on their own initiative, express their opinions on the implementation of Chapter 16 independently of the Party and submit those opinions to that Party. Furthermore, according to Article 16.16, the EU and Japan are obliged to convene the Joint Dialogue with civil society organisations including DAGs.

Chapter 16 Trade and Sustainable Development regulates a special dispute settlement mechanism. The EPA confers a general dispute settlement under Chapter 21. The EU and Japan can only use this special dispute settlement mechanism under Articles 16.17 and 16.18 (Article 16.17 (1)). A panel of experts that is convened to examine a conflict matter issues a final report. According to Article 16.18 (6), each Party shall inform the other Party and its own DAGs of any follow-up actions or measures no later than three months after the date of issuance of the final report. The DAGs and the Joint Dialogue may submit their observations in this regard to the Committee on Trade and Sustainable Development that is responsible for the implementation of Chapter 16. Civil society is implicated in the special dispute settlement mechanism under Chapter 16.

5. Climate Change

The EPA is the first EUFTA to refer to the Paris Agreement. In the EPA climate change is specified in several articles. Article 16.4 (4) states,

“4. The Parties recognise the importance of achieving the ultimate objective of the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as ‘UNFCCC’), in order to address the urgent threat of climate change, and the role of trade to that end. The Parties reaffirm their commitments to effectively implement the UNFCCC and the Paris Agreement, done at Paris on 12 December 2015 by the Conference of the Parties to the UNFCCC at its 21st session. The Parties shall cooperate to promote the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development. The Parties commit to working together to take actions to address climate change towards achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement” (emphasis by author).

The EU and Japan not only reaffirm their obligation to implement the UNFCCC and the Paris Agreement, but are also obliged to take common measures in order to achieve the objective of the UNFCCC and the Paris Agreement.

Furthermore, according to Article 16.5, entitled “Trade and investment favouring sustainable development”, the EU and Japan are obliged to strive to facilitate trade and

investment in goods and services of particular relevance to climate change mitigation, such as those related to sustainable renewable energy and energy efficient goods and services. While Japan has not yet succeeded in increasing renewable energy, it is good at producing energy efficient goods. In addition, Article 16.12 (h), entitled “Cooperation”, provides that the EU and Japan “cooperate on trade-related aspects of the international climate change regime, including on means to promote low carbon technologies, other climate-friendly technologies and energy efficiency”. Moreover, Article 18.1 under Chapter 18 Good Regulatory Practice and Regulatory Cooperation stipulates “Nothing...shall affect the right of a Party to define or regulate its own levels of protection in pursuit or furtherance of its public policy objectives in areas such as: ... (e) the environment including climate change”.

6. Other Concrete Subjects

Biological diversity (Article 16.6), sustainable management of forests and trade in timber and timber products (Article 16.7), trade and sustainable use of fisheries resources and sustainable aquaculture (Article 16.8) as well as climate change are also stipulated in Chapter 16 of the EPA.

Article 16.6 refers explicitly to two international agreements, the Convention on Biological Diversity and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Article 16.6 (2) stipulates four obligations: first, encouragement of the use of products that were obtained through the sustainable use of natural resources and which contribute to the conservation and sustainable use of biodiversity. Second, implementation of effective measures to combat illegal trade in endangered species of wild fauna and flora as listed in CITES. Third, implementation of the decisions that were adopted under the Convention on Biological Diversity and its protocols and CITES. Fourth, exchange of information and consultation at bilateral and multilateral levels.

Japan has amended several legislations and adopted new legislation in order to fulfil the obligations of CITES. Important amendments are amendment of the Act for Conservation of Endangered Species of Wild Fauna and Flora (Shu no Hozen Ho) in 2013. However, according to NGO Traffic Japan, the implementation of CITES is insufficient. In addition, Japan has been criticised by international NGOs because of whaling. Although whales are subjects of CITES, there is no explicit reference to them in the EPA.

Article 16.7 is associated with the sustainable management of forests and trade in timber and timber products. There is no reference to international agreements. The EU and Japan are obliged to encourage conservation and sustainable management of forests, and trade in timber and timber products, contribute to combating illegal logging and related trade, and to exchange information and share experience at bilateral and multilateral levels.

The EU's Regulation 995/2010 stipulates the obligation of operators who place timber and timber products on the market.¹³ This regulation entered into force on 2 December 2010. In Japan there is the so-called “Clean Wood Act” (Gohobassai Mokuzaito Ryutsu oyobi Riyo Sokushin ni kansuru horitsu) (Act on Promotion of Use and Distribution of Legally-harvested Wood and Wood Products). This legislation was submitted publicly on 20 May 2016 and entered into force on 20 May 2017. According to Article 4 (2) of the “Clean Wood Act”, “the

¹³ OJ of the EU 2010 L295, p.23.

State shall, in order to contribute to promoting the use and distribution of Legally-harvested Wood and Wood Products, collect and provide information on the production and distribution of the Wood and Wood Products in and outside of Japan as well as information on the laws and regulations of Japan and foreign countries concerning the sustainable use of forests, trade and others for ensuring appropriate distribution of the Wood and Wood Products, and take other necessary measures”.

Article 16.8 specifies fisheries resources and aquaculture. The EU and Japan are obliged to comply with the United Nations Convention on the Law of the Sea, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea, and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea, and additionally to achieve the objectives and principles of the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation. They are also obliged to adopt and implement their respective effective tools for combating illegal, unreported and unregulated fishing. Finally, they shall promote the development of sustainable and responsible aquaculture.

III. *Climate Change and Environmental Issues in the SPA*

Not only the EPA, but also the SPA stipulates climate change and environmental issues. In the EPA there is no independent article on climate change. However, there is a special article on climate change in the SPA, Article 24.

1. Climate Change

In the SPA there are several relevant provisions concerning climate change. According to its preamble, climate change is considered to be one of the major global challenges which the EU and Japan are working closely to address. Article 24 (1) addresses climate change as follows:

“1. The Parties, recognising the need for an urgent, deep and sustained reduction in global emissions of greenhouse gases so as to hold the increase in global average temperature to well below 2° C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5° C above pre-industrial levels, will take the lead in combating climate change and the adverse effects thereof, including through domestic and international actions to reduce anthropogenic greenhouse gas emissions. The Parties shall cooperate, where appropriate, under the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 to achieve the objective of that Convention, in implementing the Paris Agreement, done at Paris on 12 December 2015, and to strengthen the multilateral legal frameworks. They shall also seek to enhance cooperation in other relevant international fora.

2. The Parties shall, with a view to promoting sustainable development, also seek cooperation by enhancing the exchange of information and best practices and, where appropriate, promoting coordination of policies, on issues of mutual interest in the area of climate change, including issues such as: (a) mitigation of climate change through various

measures such as research and development of low-carbon technology, market-based mechanisms and reduction of short-lived climate pollutants; (b) adaptation to the adverse effects of climate change; and (c) assistance to third countries” (emphasis by author).

First, an objective regarding climate change is stipulated concretely in “to hold the increase in global average temperature to well below 2° C above pre-industrial levels”. Second, the EU and Japan show their determination to take the lead in combating climate change. Third, the use of relatively strong words in comparison with other places in the SPA is remarkable. In other places, soft phrases such as “shall enhance cooperation”, or “shall exchange information” are used. Here, the phrase “the parties shall cooperate” is used and in addition concrete objectives are also stipulated to achieve the objective of the UNFCCC and to strengthen the multilateral legal framework. Fourth, the Paris Agreement is referred to explicitly. Fifth, the EU and Japan are obliged to seek enhancement of cooperation in international fora. Sixth, Article 24 (2) also stipulates concretely how to cooperate on issues of mutual interest in the area of climate change.

Furthermore, climate change is related to urban policy. Article 25 Urban Policy refers to climate change in the following manner: “the Parties shall enhance the exchange of experience and good practices in the area of urban policies, in particular to address common challenges in this area, including those arising from demographic dynamics and climate change...” (emphasis by author). Additionally, there are also references to climate change in Article 16 Outer Space, Article 17 Industrial Cooperation and Article 26 Agriculture.

2. Energy

After the Treaty of Lisbon, the EU was conferred with competence in the field of energy in Article 194 TFEU. The EPA does not have any special article for energy. However, the SPA does. Article 26 stipulates the following:

“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 technology”.

The phrase “the Parties shall endeavour to enhance cooperation” indicates a soft obligation. Notably the EU and Japan are obliged to endeavour to enhance cooperation, where appropriate, and close coordination in international organisations and fora.

3. Environmental Issues

Article 23 Environment stipulates:

“1. The Parties shall enhance the exchange of views, information and best practices, on environmental policies and regulations, and enhance cooperation in areas such as:

- (a) Efficient use of resources;
- (b) Biological diversity;
- (c) Sustainable consumption and production;
- (d) Technologies, goods and services that support environmental protection;

- (e) Conservation and sustainable management of forests, including, where appropriate, illegal logging; and
 - (f) Other areas decided under the relevant policy dialogue.
2. The Parties endeavour to enhance cooperation in the framework of relevant international agreements and instruments, as applicable to the Parties, as well as in international fora” (emphasis by author).

First, it is important to understand the tone of the text. The SPA is legally binding. The word “shall” is an obligation. However, the words after “shall” — “enhance the exchange of views, information and best practices” and “enhance cooperation” — are very soft.

Second, cooperation between the EU and Japan at the international level is referred to explicitly. The EU and Japan endeavour to enhance cooperation in international fora. The SPA requests them to be aligned at the international level.

Article 28 Fisheries stipulates:

- “1. The Parties shall promote dialogue and enhance cooperation on fisheries policies in accordance with the precautionary and ecosystem approaches, with a view to promoting long-term conservation, effective management and sustainable use of fishery sources based on the best scientific information available.
- 2. The Parties shall enhance the exchange of views and information and promote international cooperation to prevent, deter and eliminate illegal, unreported and regulated fishing.
- 3...” (emphasis by author).

First, the phrase “the Parties shall promote dialogue and enhance cooperation” is a soft obligation. Second, the Parties shall promote dialogue and enhance cooperation “in accordance with the precautionary and ecosystem approaches”. The phrase “the precautionary approach” is also found in Article 16.9 of the EPA, entitled “Scientific information” that stipulates “when preparing and implementing measures with the aim of protecting the environment..., the Parties shall take account of available scientific and technical information, and where appropriate, ...the precautionary approach”. “The precautionary approach” are softer words than “the precautionary principle”. The latter is one of the environmental principles in the EU (Article 191 (2) TFEU). It is not clear whether the basic Japanese environmental law includes the latter.¹⁴ Third, the EU and Japan are obliged to promote international cooperation.

According to Article 29 Maritime affairs of the SPA, the EU and Japan are obliged to promote dialogue, enhance mutual understanding on maritime affairs and work together to promote: “(b) long-term conservation, sustainable management and better knowledge of ecosystems and non-living resources of the seas and oceans in accordance with applicable international law”. Here again, a soft obligation “shall promote dialogue, enhance mutual understanding” can be found.

¹⁴ Tadashi Otsuka, *Environmental Law* (Japanese), 3 ed., 2010, Yuhikaku, p.55; Otsuka pointed out that it might be possible to interpret that Article 4 of the Japanese basic environmental law, which provides “so that interference with environmental conservation can be anticipatively prevented through enhancing scientific knowledge”, recognises the precautionary principle.

4. Application of Provisions of the SPA

The SPA is not a so-called EU only agreement, but a mixed agreement because the EU does not have exclusive competence for subject matters of the SPA and some competence remains with the Member States. Therefore, the SPA requires ratification not only by the EU, but also by its Member States. The SPA has not been enacted. However, its provisional application has commenced according to Article 47 (2) of the SPA. As a result, Article 24 Climate Change and Other Environment Relevant Provisions began to apply.

IV. Analysis

In the EPA and SPA sustainability and sustainable development are repeated and emphasised. The concept of sustainable development is one of the most important concepts in the EU. The concept is found in the provisions of the TEU and the TFEU. The EU's FTAs contain a chapter on trade and sustainable development.¹⁵ Japanese basic environmental law was put into effect on 13 November 1993. Article 4 of the law stipulates “Environmental conservation shall be promoted so that a society can be formulated where a healthy and productive environment is conserved and sustainable development is ensured by fostering sound economic development with reduced environmental load, through practices on environmental conservation such as reducing as much as possible the environmental load generated by socio-economic and other activities, which are voluntarily and positively pursued by all the people sharing fair burden...” (emphasis by author)¹⁶. Japan and Japanese industry can share the concept of sustainable development.

The EPA and the SPA specify environmental issues including climate change. However, there are some differences.

I start with the EPA.

First, the EPA is a Free Trade Agreement and a so-called “new generation” FTA. Therefore, environmental issues are always related to trade. In fact, environmental issues in the EPA are stipulated in Chapter 16, entitled “Trade and Sustainable Development”. The provisions concerning environmental issues are related to trade (and investment). For example, you can find the phrases “mutual supportiveness between trade and environment”, “trade-related environmental matters”, “contribution of trade and investment to the goal of sustainable development”, “facilitate and promote trade and investment in environmental goods and services” and similar phrases. Concerning climate change, Article 16.4 (4) stipulates “the Parties shall cooperate to promote the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development”, and further, Article 16.5 stipulates “the Parties shall strive to facilitate trade and investment in goods and services of particular relevance to climate change mitigation”.

¹⁵ Cf. Verena Madner, “A New Generation of Trade Agreements: An Opportunity not to be Missed?”, in Stefan Griller, Walter Obwexer and Erich Vranes, *Mega-Regional Trade Agreements: CETA, TTIP, and TiSA*, Oxford University Press, 2017, p.307, p.312.

¹⁶ The Basic Environmental Law (English translation), see <http://www.env.go.jp/en/laws/policy/basic/index.html>; for the Basic Environmental Law, see https://www.env.go.jp/en/laws/policy/basic_lp.html (last accessed on 6 December 2019).

Second, the text of the EPA is influenced by civil society in the EU. Examples of this are the insertion of the right to regulate in Article 16.2 and the involvement of civil society under Chapter 16 Trade and Sustainable Development.

Third, Chapter 16 stipulates not only obligations regarding environmental issues, but also provides how to implement them. The Committee on Trade and Sustainable Development has been established and is responsible for Chapter 16 in Article 16.13. DAGs that are consulted by governments and submit their views to them are constructed (Article 16.15). The system of the Joint Dialogue with civil society is ensured (Article 16.16). The special dispute settlement for Chapter 16 is stipulated in Articles 16.17 and 16.18, while civil society is involved in it. In addition, Article 16.11, entitled “Review of sustainability impacts”, stipulates that the EU and Japan recognise the importance of reviewing, monitoring and assessing, jointly or individually, the impact of the implementation of the EPA.

For the SPA, several characteristics are recognized.

First, the SPA is legally binding. This is a very important point. The SPA is not just a political declaration. This point had been requested by the EU from the outset. Almost all articles use the word “shall”, which means a legal obligation. It should be pointed out at the same time that phrases after the word “shall” are soft, for example, “seek cooperation”, “enhance cooperation”, “exchange information”, “promote dialogue”, and “enhance mutual understanding”.

Second, the SPA emphasises cooperation between the EU and Japan at the international level. We can often find the phrase “enhance cooperation in international fora”, “close coordination in international organisations and fora” and similar phrases. The EU and Japan share political principles and objectives in Article 21 TEU. The SPA is a strategic partnership agreement based on those principles and objectives. They are obliged to cooperate in international fora in order to tackle global challenges and to work together as setters of joint standards.

Third, there are special articles for climate change and energy. The EPA refers to climate change but does not contain a special chapter on climate change. Additionally, climate change is stipulated only in the trade-related context. The EPA does not provide energy issues at all except for the phrases “climate change mitigation, such as those related to sustainable renewable energy and energy efficient goods and services”, even though the EU has been conferred with competence in the field of energy in Article 194 TFEU. On the other hand, the SPA contains Article 24 Climate Change and Article 26 Energy. Article 24 provides details regarding cooperation between the EU and Japan, as described above.

Fourth, regarding implementation of the SPA, there are several matters to be addressed. A Joint Committee which is made up of representatives of the Parties is established according to Article 42. The Joint Committee is obliged to ensure the proper functioning and the effective implementation of the SPA. The Joint Committee is given an important and decisive role in the dispute settlement mechanism under Article 43 of the SPA, while civil society is not involved in it in any way. It is standard that the EU’s FTAs with third countries and strategic partnership agreements or similar political cooperation agreements have correlation. It means a violation of the SPA will lead to the termination of the FTAs. For example, there is a correlation between the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the SPA between the EU and Canada. Article 28 (7) of the SPA stipulates that the Parties recognise that a particularly serious and substantial violation of human rights or non-proliferation could also

serve as grounds for the termination of the CETA. However, there is no correlation between the SPA and the EPA between the EU and Japan. Only the SPA, not the EPA, might be suspended according to Article 43 (6) SPA.

V. *Concluding Remarks and Recent Efforts toward the Paris Agreement in Japan*

The EPA and the SPA specify environmental issues including climate change. The methods on how to specify them, objectives and context of the relevant provisions differ between the EPA and the SPA. The EPA is a bilateral agreement to boost trade between parties and contribute to sustainable development through trade, while the SPA is also a bilateral agreement and very strategic. It aims to cooperate closely in international fora to solve global problems and to set international standards. Therefore, it is not redundant, but significant that both the EPA and the SPA specify environmental issues.

Before the Japanese government concludes international agreements, it checks if and how Japan can comply with those agreements. The government submits not only an agreement in question but also relevant domestic legislations for approval to the Diet. The EPA and the SPA refer to the Paris Agreement. Both agreements oblige Japan to act in accordance with the Paris Agreement. Japan enacted a law to promote global warming countermeasures in order to comply with UNFCCC and the Kyoto Protocol in 1998. In 2016 the law was amended to ensure the obligations under the Paris Agreement. Furthermore, an advisory panel that is composed of well-informed independent personalities was established under the Cabinet and issued its final report towards the long-term strategy as a growth strategy for the Paris Agreement on 2 April 2019. Then, the Japanese government made a cabinet decision on 11 June 2019 about Japan's long-term strategy under the Paris Agreement. In this document "hydrogen society" for the future is emphasised. This document, which comprises about 100 pages, is published surprisingly not only in Japanese, but also in English¹⁷. It is also surprising that 800 public comments were gathered from 25 April to 16 May 2019 before the cabinet decision and the Ministry of the Environment responded to them (this document should also be published in English, so that international NGOs can understand the Japanese attitude toward the Paris Agreement more precisely; If they had done so previously, Japan would not have been the recipient of the disgraceful "fossil" prize).¹⁸

Japan's long-term strategy under the Paris Agreement presents measures for emissions reduction in four sectors under its Chapter 2. The four sectors are energy, industry, transport and community and living. For example, in transport, the challenge of "Well-to-Wheel Zero Emission" is indicated. It means that every vehicle produced by Japanese automakers will be electrified by 2050. Japan aims to realise the "Well-to-Wheel Zero Emission" policy in line with global efforts to eliminate emissions, with a focus on energy supply and vehicle

¹⁷ The Government of Japan, June 2019 (Cabinet decision, June 11, 2019), "The Long-term strategy under the Paris Agreement", <https://unfccc.int/sites/default/files/resource/The%20Long-term%20Strategy%20under%20the%20Paris%20Agreement.pdf> (last accessed on 6 December 2019).

¹⁸ For public comments and response to these, see <https://www.env.go.jp/press/111783.pdf> (Japanese) (last accessed on 6 December 2019).

innovation.¹⁹ It is said that replacing all vehicles with electrified vehicles (xEVs) can reduce gas emissions by around 80% per vehicle, including around 90% reductions per passenger vehicle.

Currently, Japan is being criticised because of its attitude toward climate change. After the Fukushima accident on 11 March 2011, the use of nuclear power stations is no longer an option for Japan to reduce CO₂. However, Japan has been exceptional at developing technology for energy efficiency. Therefore, the Japanese government, in cooperation with the Environment Ministry, the Ministry of Land, Infrastructure, Transport and Tourism and the Ministry of International Trade and Industry, is driving forward ZEH (Net Zero Energy House) and ZEB (Net Zero Energy Building) in the context of energy efficiency and energy-related technology. According to the fifth Strategic Energy Plan²⁰, which was decided by the Cabinet in July 2018, the Japanese Government aims to achieve ZEB on average with regard to newly constructed buildings by 2020 for non-residential buildings and by 2030 for newly constructed public buildings nationwide. With regard to houses, the Japanese Government aims to achieve ZEH for more than half of the ordered stand-alone houses newly constructed by home-makers, etc by 2020 and for standard newly constructed houses by 2020 and for all newly constructed houses on average by 2030. The government wants to support this project financially.

The EPA has been entered into force and the relevant provisions regarding climate change and environmental issues have begun to apply provisionally. The implementation of those agreements is important. I shall continue to observe how those agreements between Japan and the EU will contribute to the resolving of climate change and environmental issues.

¹⁹ Ministry of Economy, Trade and Industry, “Japan Promotes Electrified Vehicle (xEV) Strategy ahead of 2050”, <https://www.meti.go.jp/english/mobile/2018/20180911001en.html> (last accessed on 6 December 2019).

²⁰ The fifth Strategic Energy Plan of Japan, https://www.enecho.meti.go.jp/en/category/others/basic_plan/5th/pdf/strategic_energy_plan.pdf (last accessed on 6 December 2019).