INTELLECTUAL PROPERTY RIGHTS

IN A NUTSHELL

The EU-Japan Economic Partnership Agreement (EPA) features some interesting provisions about intellectual property rights (IPR) that are building on the already strong foundation of the TRIPS agreement\(^1\). This short guide explains in brief how you can leverage the EPA to your advantage when interested in approaching the Japanese market.

The main topics related to IPR covered by Chapter 14 of the Agreement are the following:

- General provisions (Articles 14.1 to 14.7)
- Copyright and related rights (Articles 14.8 to 14.17)
- Trademarks (Articles 14.18 to 14.21)
- Geographical indications (Articles 14.22 to 14.30)
- Industrial designs (Article 14.31)
- Unregistered appearance of products (Article 14.32)
- Patents (Articles 14.33 to 14.35)
- Trade secrets and undisclosed test or other data (Articles 14.36 and 14.37)
- New varieties of plants (Article 14.38)
- Unfair competition (Article 14.39)
- Enforcement-General provisions (Articles 14.40 and 14.41)
- Enforcement–civil remedies (Articles 14.42 to 14.49)
- Enforcement of protection against misappropriation of trade secrets (Article 14.50)
- Enforcement–border measures (Article 14.51)
- Cooperation and institutional arrangements (Articles 14.52 to 14.55).

\(^1\) The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is Annex 1C of the Marrakesh Agreement establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994.

For the complete text of the TRIPS Agreement: [https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm](https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm)
Additionally, geographical indications ("GIs") are probably among the most mentioned topics of the EPA receiving quite some attention in the media as one of the major wins for the EU side from the signing of the agreement. According to the EPA, GIs are "indications which identify a good as originating in the territory of a Party, or a region or locality in that Party’s territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin" (Article 14.22.2). The EPA in this regard provides for a full protection of 211 EU-related GIs (foodstuffs [including beers], wines and spirits). The legal provisions offering this kind of protection are following the high standards provided by Article 23 of the TRIPS Agreement. In terms of enforcement, in case of products conflicting with the ones benefitting from a GI protection, Japan shall guarantee also an ex officio administrative enforcement beside the one offered through civil remedies. Additionally, further details on GI application procedures, including relevant templates, can be found on the official website of the Commission. For other details covering the protection of GIs under the EPA, please refer to the relevant factsheet as well.

Most of the provisions contained in Chapter 14 are already implemented by the EU and Japan as both parties are already part to most of the international treaties on IPR, but some minor provisions might necessitate some legislative or regulatory procedures in the future to be implemented.

As far the other major provisions related to IPR under the EPA are concerned, the following table is offering a synopsis of the relevant norms, and their implementation/benefit for EU SMEs.

<table>
<thead>
<tr>
<th>TOPIC</th>
<th>EPA PROVISION</th>
<th>BENEFIT/ CURRENT SITUATION</th>
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<tbody>
<tr>
<td>Trade secrets</td>
<td>General harmonization of trade secret definition</td>
<td>Companies will know that within the two territories the definition of trade secret, and its protection/enforceability shall be basically the same. This kind of standard is already provided for in Japan</td>
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<tr>
<td>Patent extension</td>
<td>Common rules for patent extension (duration, definition, etc.) for pharma &amp; plant protection</td>
<td>In Japan this term is now up to 5 years</td>
</tr>
<tr>
<td>Test data in the pharma and plant protection</td>
<td>Common rules for test data for pharma &amp; plant protection</td>
<td>In Japan this term is 8 years (as a result of pharma-related procedures) and 15 years for agricultural chemical products</td>
</tr>
<tr>
<td>Copyright</td>
<td>Duration of 70 years after author’s death</td>
<td>Already in force in Japan from 30 December 2018 (because of the “Comprehensive and Progressive Agreement for Trans-Pacific Partnership”)</td>
</tr>
<tr>
<td>Trademarks</td>
<td>Specific provisions on trademarks, and product appearance protectable as unregistered design or through unfair competition rules</td>
<td>Same standard of protection already offered by Japanese unfair competition law</td>
</tr>
<tr>
<td>Respect of other international treaties</td>
<td>TRIPS, Berne, etc.</td>
<td>Generally applicable</td>
</tr>
<tr>
<td>Enforcement</td>
<td>Minimum civil enforcement provisions (for damages, etc.)</td>
<td>Almost everything is already provided for in the existing relevant provisions in Japan</td>
</tr>
<tr>
<td>Promotion of IP awareness</td>
<td>Engagement of both parties to promote</td>
<td>Yes, Japan is basically party to all of the major IP-related agreements administered by WIPO.</td>
</tr>
</tbody>
</table>


Additionally, the EU and Japan also agreed (Article 14.53) to have a specialized committee on IPR[^4] which will be responsible for:

- reviewing and monitoring the implementation and operation of the IPR-related provisions
- exchanging information on legislative and policy developments on geographical indications
- discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights.

In summary, most of the provisions included in Chapter 14 have been either already implemented by the parties by the time of entry into force of the EPA or will need to be implemented in the near future by the respective legislative and/or regulatory authorities. In this regard is highly recommended, to be always updated by consulting the official websites from the EU Commission and Japanese Government that are constantly monitoring the implementation of the provisions contained in the EPA (please refer to the “Useful Links” section here below to find the relevant websites), and provide useful information to the stakeholders.

[^4]: As of August 2019, the committee on IPRs had no meeting after the entry into force of the EPA.

**WHAT WILL THE MOST IMPORTANT CHANGE AFTER THE ENTRY INTO FORCE THE EU-JAPAN EPA BE FOR EU SMES?**

The most important change in the EPA from an intellectual property perspective for EU SMEs is definitely related to the provisions on GIs, which will likely open the doors to increased exports of EU-related products thanks to the high standard of protection that will be guaranteed in Japan to the concerned products. As already mentioned, most of the other provisions on IPR, were already in force in both jurisdictions at the time the EPA entered into force.

**CHALLENGES FACED BY EU SMES**

Unlike other topics covered by the EPA in which EU companies will be able to navigate mostly on their own without additional help from external sources, in the case of IPR, it is very unlikely to think that EU companies, especially SMEs, will have the internal resources necessary to individually handle the protection and enforcement of their IPR. Therefore, it is plausible to think that importers from Japan will need to help their partners in the EU to navigate the legal system, and, provide help in being in touch with professionals that could offer legal assistance where needed.
CONCLUSIONS

As far as IPR are concerned (excluding GIs), most of the provisions of the EPA have been basically agreed upon to make the parties converge on some topics, but the starting point was an equally already high standard of protection and enforcement that was based on the participation by the parties to the most important existing international treaties covering IPR. Contrary to most of the other provisions covered by the EPA that are directly applicable to and by EU companies, most of the IPR-related topics, in order to be fully understood and leveraged, require the assistance of a lawyer to be represented in front of the competent authorities or to interpret national or international provisions, therefore, the main challenges probably faced by EU SMEs in this regard might be more related to the possibility of finding local law firms to navigate the relevant legal system. For example, one of the available sources for receiving assistance in terms of IPR-related matters, even by benefitting from a pro bono service (in some cases), is the EU-Japan Technology Transfer Helpdesk,[S], based in Tokyo, which works closely, and on a daily basis with the top IP law firms based in Japan to assist its clients.

[S] The EU-Japan Technology Transfer Helpdesk, based in Tokyo, is one of the services of the EU-Japan Centre for Industrial Cooperation. For more info about the Helpdesk and its services, please consult the relevant links provided in this document.

DISCLAIMER

Please note that this document has been prepared with the sole purpose of simplifying the understanding of some parts of the EU-Japan EPA, and bears no legal standing, for the proper interpretation of Japanese law or applicable provisions in Japan, you have to consult a licensed professional.
USEFUL LINKS

EU-RELATED LINKS

The complete text of the EPA, and Annexes can be found on the following website of the European Commission:

General page on the Agreement including factsheets, statistics, reports:


Factsheet about GIs: https://www.eubusinessinjapan.eu/library/publication/factsheet-epa-geographical-indications

Other sources related to the EPA and IPRs (guidelines, and webinar):
https://www.eubusinessinjapan.eu/issues/economic-partnership-agreement/epa-ipr

Official page of REX (Registered Exporter system):

EU database of geographical indications:

JAPAN-RELATED LINKS


Ministry of Foreign Affairs website (page on SMEs): https://www.mofa.go.jp/ecm/ie/page23e_000546.html


EU-Japan Centre for Industrial Cooperation: https://www.eu-japan.eu

EU-Japan Technology Transfer Helpdesk: http://www.eu-jp-tthelpdesk.eu