

Client Alert

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US and Japan Sign Digital Trade Agreement

First announced at the August Group of 7 Summit in Biarritz, France, the US-Japan Digital Trade Agreement (the "Agreement") signed on October 7, 2019 aims to increase bilateral digital trade and sets standards for the two countries' digital trade rules.

Digital trade between the US and Japan currently totals approximately \$40 billion annually. The Agreement makes Japan an even more attractive market for digital businesses by addressing a broader range of issues than the Trans-Pacific Partnership Agreement ("TPP") would have. The Agreement can be seen as equivalent to the US-Mexico-Canada Agreement ("USMCA") signed on November 30, 2018 in terms of its coverage of issues related to promoting digital commerce.

The Agreement was submitted to an extraordinary session of the Japanese Parliament on October 15 and is expected to be ratified in the very near future.

What's covered?

No customs duties on electronic transmissions

The Agreement prohibits both states from imposing customs duties on digital products (such as videos, music, e-books, software, etc.) electronically transmitted between persons or companies in the US and Japan. It also prohibits discriminatory treatment of digital products originating in one country by a person or company in the other country. This prohibition on discriminatory treatment extends to transactions between the countries generally, including taxation measures.

Localization of computing facilities

The US and Japan are prohibited under the Agreement from requiring persons or entities to use or locate computing facilities in their respective territories in order to engage in business in said territories. This also applies to financial suppliers as long as the financial regulatory authorities of the US and Japan have immediate, direct, complete and ongoing access to information processed or stored at computing facilities in both countries. Coupled with the Agreement's prohibition on cross-border transfer restrictions, this provision aims to create a shared US-Japan digital ecosystem.





Source codes and algorithms

Under the TPP — from which the US withdrew in 2017 — signatories would have been prohibited from requiring businesses to disclose software source codes. The Agreement goes further by expanding this protection to algorithms and prevents either government from conditioning the use or distribution of software in its territory on the transfer or provision of access to source codes or algorithms by software owners.

Algorithms are an essential component in the creation of artificial intelligence and other services. The expanded protection the Agreement affords compared to the TPP is therefore a huge benefit for technology companies. Regulatory and judicial authorities can require source code owners to disclose their codes for investigation or enforcement action purposes or other legitimate purposes, but only if appropriate safeguards against unauthorized disclosure are in place.

Other contents

In addition to the above, the Agreement includes measures intended to promote the international distribution of digital products and services. These include a prohibition on cross-border data transfer restrictions and limitation of liability for suppliers and users of interactive computer services (eg, SNS service providers). Also, the Agreement provides basic principles on online consumer protection, personal data protection and cyber security.

Conclusion

Although the Agreement itself does not impose any obligations on companies, its restrictions on government regulation of transactions involving digital products and services are important. The Agreement will make it easier for companies to sell digital content and provide digital services accompanied by data transfers into and from the Japanese market.

Although the Japanese government is aiming to implement the Agreement by January 1, 2020, as of October 2019, substantial discussions regarding legislation or amendments to existing laws and regulations do not appear to have begun. Once underway, the progress of these discussions should be closely monitored.

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