

# Recent Developments in Investment Policy and Practice in Japan

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## Current Status of Japan's IIAs (1)

Traditional BITs				New Generation BITs			
		date of signature	date of effect			date of signature	date of effect
1	Egypt	January 1977	January 1978	12	Korea	March 2002	January 2003
2	Sri Lanka	March 1982	August 1982	13	Vietnam	November 2003	December 2004
3	China	August 1988	May 1989	14	Cambodia	June 2007	July 2008
4	Turkey	February 1992	March 1993	15	Laos	January 2008	August 2008
5	Hong Kong	May 1997	June 1997	16	Uzbekistan	August 2008	September 2009
6	Pakistan	March 1998	May 2002	17	Peru	November 2008	December 2009
7	Bangladesh	November 1998	August 1999	18	PNG	April 2011	
8	Russia	November 1998	May 2000	19	Columbia	September 2011	
9	Mongolia	February 2001	March 2002				
10	Kuwait	March 2012					
11	Iraqi	June 2012					

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## Current Status of Japan's IIAs (2)

Investment Chapters in EPAs				Plural Investment Agreements			
		date of signature	date of effect			date of signature	date of effect
1	Singapore	January 2002	November 2002	1	Energy Chartered Treaty	Jane 1995	October 2002
2	Mexico	September 2004	April 2005	2	China-Japan-Korea	May 2012	
3	Malaysia	December 2005	July 2006				
4	Philippine	September 2006	December 2008				
5	Chile	March 2007	September 2007				
6	Thailand	April 2007	November 2007				
7	Brunei	June 2007	July 2008				
8	Indonesia	August 2007	July 2008				
9	Switzerland	February 2009	September 2009				
10	India	February 2011	August 2011				

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## General Features of Japan's IIAs

- Although Japan has accelerated the negotiations since the policy shifts in 2002, the number of Japan's IIAs is still small.
- Japan's IIAs seek to improve the high-level business environment for overseas Japanese investors.
- Many recent IIAs establish institutional arrangements for the improvement of the business environment.

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## Basic Policy on Comprehensive Economic Partnership(2010)

### **Background**

- Despite a rapid increase of EPA/FTAs, Japan is falling behind.
- It is necessary to deepen economic relationships with Asian and emerging countries, and with Western and Resource-rich countries.
- Among those, the **Asia-Pacific region** is of particular importance for Japan, politically, economically and with respect to security.
- The **Free Trade Area of the Asia-Pacific(FTAA)** is an important means to a seamless business environment.

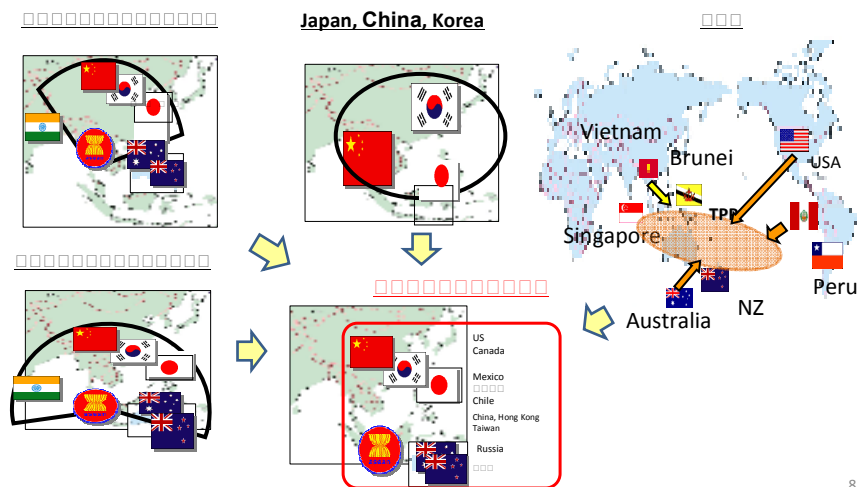
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## Basic Policy on Comprehensive Economic Partnership(2010)

### Concrete Action Plan

- Japan will work towards the realization of bilateral and regional economic partnerships in the Asia-Pacific region such as :
  - Japan-Korea FTA, Japan-China-Korea FTA, East Asian Free Trade Agreement(EAFTA) and Comprehensive Economic Partnership in East Asia (CEPA)**
- Beyond the Asia-Pacific region, Japan will make efforts to arrange for future negotiations with the **EU** and facilitate ongoing negotiations with the **GCC**.

## Institutionalizing Economic Cooperation in the Asia-Pacific region



## The Strategy for Rebirth of Japan(2012)

- To actualize the FTAAP, Japan will push ahead with negotiations with South Korea and Australia, and aims to promptly start negotiations on **Japan-China-South Korea**, **ASEAN+3**, and **ASEAN+6** regional economic partnerships.
- Regarding the **TPP**, the government will proceed with consultations with nations interested in participating in the negotiations.
- It will also aim for an early launch of negotiations on **Japan-EU EPA**.

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## Japan's Interests in TPP

- Protection of Intellectual Property Rights at the level of ACTA.
- Liberalization of Investment, especially in ASEAN countries.
- Market access to telecom and financial services, especially in ASEAN countries.
- No lowering of labour and environmental standards.
- Setting up a permanent consultative body to improve the business environment.

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## Trilateral Investment Agreement between China, Japan and Korea

- The first binding legal framework comprising China, Japan and Korea in the field of trade and investment
- Political significance from the perspective of enhancing their relationships.
- Step forward to Trilateral FTA and further economic partnerships.

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## Bilateral IIAs among China, Japan and Korea

- 1988 Japan and China
- 1992 China and ROK (revised in 2007)
- 2002 Japan and ROK

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## Major Achievements in TRIT(1)

- Protection of Intellectual Property rights(Art.9)
- Umbrella clause(Art. 5 (2))
- Prohibition of Performance Requirements(Art. 7)
- Transparency (Art. 10)

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## Article 9 □ Intellectual Property Rights

1. (a) Each Contracting Party shall, in accordance with its laws and regulations, protect intellectual property rights.  
(b) Each Contracting Party shall establish and maintain transparent intellectual property rights regimes, and will, under the existing consultation mechanism on intellectual property, promote cooperation and communications among the Contracting Parties in the intellectual property field.

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## Umbrella clause

### Article 5 General Treatment of Investment

2. Each Contracting Party shall observe any written commitments in the form of an agreement or contract it may have entered into with regard to investments of investors of another Contracting Party.

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## Article 7 Prohibition of Performance Requirements

1. The provisions of the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement are incorporated into and made part of this Agreement, mutatis mutandis and shall apply with respect to all investments under this Agreement.
2. No Contracting Party shall, in its territory, impose unreasonable or discriminatory measures on investment by investors of another Contracting Party concerning performance requirements on export or transfer of technology.

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## Article 10 Transparency

- Prompt publication of its laws, regulations, administrative procedures.
- To provide a reasonable grace period when THE State introduces or changes its law or regulationS , or reasonable opportunity for comments for regulations related to investment before adoption of such regulations
- To respond to specific questions from, and provide information with respect to any actual or proposed measure, which might materially affect the interests of another Contracting Party and its investors.

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## Major Achievements in TRIT (2)

- ISDS (Art. 15)
- Transfers (Art. 13)
- Fair and Equitable (Art. 5)
- National Treatment (Art. 3)

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## Challenges for the future CJK FTA

### Japan and Korea

- Investment Chapter in the CJK FTA should include NT and MFN at the pre- and post-establishment phases, prohibition of PR beyond the TRIMs level, and a negative list approach integrated with the services chapter etc.
- It should cover all industry sectors, including THE services sector, and measures adopted or maintained not only by central governments but also by regional and local governments.

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## Challenges for the future CJK FTA

### China

- The future CJK FTA should provide better protection, greater transparency and any other facilitation and promotion elements.
- Investment liberalization depends much more on the specific needs of individual countries, their state of economic and legal maturity, and their own development strategies.
- The scope and coverage should be consistent with WTO TRIMs.

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## Challenges in implementing Japan's IIA Policy

- Japan aims to improve the business environment for overseas Japanese investors by increasing the number of IIAs and EPAs.
- Response to TPP in Japan shows an increasing tendency of polarization of positive and negative perspectives on further economic integration.
- In order to actualize FTAAP, political leadership is required in diplomatic negotiations as well as domestic reforms

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Thank you for your attention!

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