



The almost free US-Japan Trade Agreement is now in effect

International Trade Alert

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While we all were celebrating the New Year's, January 1, 2020 quietly ushered in a new trade agreement for the United States. The "Trade Agreement between the United States of America and Japan" (US-Japan Trade Agreement) is the newest free trade agreement that benefits US importers and exporters.¹ Signed on October 7, 2019² along with the US-Japan Digital Trade Agreement, the US-Japan Trade Agreement only became effective on New Year's Day after development of the applicable legal procedures. Importantly, it does not cover automobiles and automotive parts, but the two countries have agreed to continue further negotiations with respect to the elimination of customs duties on these types of goods.³

Generally, this US-Japan Trade Agreement reduces or eliminates US customs duties on approximately 241 8-digit subheadings of goods classified under the following Harmonized Tariff Schedule of the United States (HTSUS) chapters:

- vegetable products
- vegetable fats and oils
- sugars and sugar confectionery
- cocoa and cocoa preparations
- miscellaneous edible preparations

- inorganic chemicals, etc.
- organic chemicals
- soap, organic surface-active agents, washing preparations, certain waxes, etc.
- photographic or cinematographic goods
- miscellaneous chemical products
- plastics and articles thereof
- rubber and articles thereof
- ceramic products
- glass and glassware
- articles of iron or steel
- copper and articles thereof
- aluminum and articles thereof
- base metal tools, parts, etc.
- miscellaneous articles of base metal
- nuclear reactors, boilers, machinery, etc.
- electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles
- railway and tramway-related articles
- vehicles other than railway and tramway stock, and parts and accessories thereof
- optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof
- musical instruments, etc.
- toys, games, sports requisites, etc.
- miscellaneous manufactured articles

If an imported article is classified in one of the listed HTSUS subheadings, it then may be eligible for reduced or eliminated tariff savings. However, some subheadings are subject to staging categories that will gradually phase out duties over the next ten years, and products eligible for tariff savings under the US-Japan Trade Agreement are still subject to US Merchandise Processing Fees (MPF).⁴

In addition to identifying the Special Program Indicator "JP" on the customs entry documentation (CBP Form 7501), in order to claim the benefits of the US-Japan Trade Agreement, an importer must indicate a secondary HTSUS subheading (either 9921.01.01 or 9921.02.02, as appropriate) for the claimed product, must export the good from Japan, and will be required to include in its entry documentation a statement that the imported good qualifies as an originating good from Japan. As is the case with most other Free Trade Agreement imports, if Customs & Border Protection (CBP) inquires further, the importer (or Japanese exporter) must provide additional information or documentation necessary to demonstrate that the imported good is originating and qualifies for preferential tariff treatment.

To demonstrate that a good originates under the US-Japan Trade Agreement, an imported good must either (1) be wholly obtained or produced in Japan (or Japan and the United States), (2) be produced entirely in Japan (or in Japan and the US) exclusively from originating materials, or (3) meet the appropriate Product-Specific Rule of Origin. These Product-Specific Rules of Origin generally require non-originating materials to undergo a tariff shift at the 2-, 4- or 6-digit level of its Harmonized System tariff classification number.

In addition to the above duty eliminations and reductions, the Japan-specific tariff-rate quota of Japanese beef has been eliminated, although Kobe and other Japanese beef are still subject to a tariff-rate quota for "other countries" which is limited to approximately 65 million kilograms per year.

CBP reports that its Automated Commercial Environment (ACE) will be capable of handling claims under the US-Japan Trade Agreement beginning on January 14. For goods imported between January 1 and January 13, importers may request retroactive preferential tariff treatment through a Post Summary Correction (PSC), whereby CBP may issue duty refunds if the goods meet the necessary requirements.⁵ Further guidance may be provided when the HTSUS is updated to include General Note 36.

DLA Piper is experienced in customs law and trade agreements. If you have any questions or if you seek further consultation, please do not hesitate to contact us.

¹While this client alert focuses on the agreement from a US import/customs perspective, US exporters will also benefit from lower Japanese duties on items such as food and agricultural products (eg, beef, pork, whey, wheat, oranges, cheeses).

²Proclamation 9974 of December 26, 2019 To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes, 84 Fed. Reg. 72187 (Dec. 30, 2019).

³Trade Agreement between the United States of America and Japan, US-Japan, Oct. 7, 2019, at Annex II, General Note of the U.S. 7.

⁴US Customs & Border Protection, CSMS #41149692, US-Japan Trade Agreement: Information on Claiming Preferential Treatment.

⁵Id.

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