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To the
Members of the
European Parliament

Vienna, 3 December 2018

Trade agreement between the EU and Japan

BAK Transparency Register Registration number: 23869471911-54

ÖGB Transparency Register Registration number: 43246044354-41

Dear Member of the European Parliament,

In the coming days you will vote whether to accept the EU-Japan Free Trade Agreement (JEFTA). The Austrian Trade Union Federation (ÖGB) and the Federal Chamber of Labour (BAK) support trade relations in principle, as long as they are conducted under fair conditions and hence are demonstrably beneficial to workers and the environment. However, such conditions are not guaranteed by JEFTA, as was the case with CETA.

The scope of application of JEFTA extends far beyond traditional trade agreements, the aim of which is to lower customs duties and quotas. The average rate of import duty is already very low without JEFTA at 5.2% (EU) or 4% (Japan)¹, which is why the new-generation agreements are targeting deregulation of so-called barriers to trade. Analyses by the Commission of the outcome of JEFTA negotiations reveal a negligible boost to growth (+0.14% singular accumulated effect over 17 years till 2035 for all EU Member States together; there is no data reported on an increase in employment²).

¹ European Commission's Directorate-General for Trade. (June 2018). The Economic Impact of the EU – Japan Economic Partnership Agreement (EPA). Page 8. http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157116.pdf (accessed on 20.11.2018)

² European Commission's Directorate-General for Trade. (June 2018). The Economic Impact of the EU – Japan Economic Partnership Agreement (EPA). Page 49. http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157116.pdf (accessed on 20.11.2018)

Furthermore, the negotiations are problematic from the point of view of democracy due to their construction as a “living agreement”.

This can be summarised in the following points:

In the view of BAK and ÖGB, the fact that the mutual recognition or harmonisation of standards will be possible within the scope of **regulatory cooperation** without a corresponding public discussion is of the utmost concern. Instead of concluding in the European Parliament and the parliaments of the individual Member States, these “adjustments” will be decided in transnational committees and hence will be removed from **parliamentary control**. This is of concern in view of the fact that unspecified actors will be included in the preliminary stages and it has been proved that industrial lobbies are significantly more dominant than civil society interest groups. This will increase the pressure to deregulate and hence will make it more difficult to protect the public interest. Members of the European Parliament are to be informed of deregulation plans but will have only one opportunity to agree or reject the agreement and that is now, before JEFTA comes into force. The possible amendment or recognition of differing regulations, in particular regarding **personal data protection**, or the authorisation and labelling regulations for foods that are **genetically modified** or **treated with ionising radiation**, are specific examples for this.

Furthermore, the **precautionary principle according to EU legislation** is not safeguarded. JEFTA means that preventive measures to protect the environment and health can only be decided when full scientific proof of any harmful effects is provided. How contradictory, protracted or even incalculable the provision of proof can be is demonstrated, for example, by the use of glyphosate and its effects on man and the environment, the impact of neonicotinoids on bees or smoking as a cause of cancer, accepted only after decades.

Furthermore, the International and European Trade Union Confederations criticise that Japan has only ratified six of the overall eight ILO minimum standards (Conventions No. 105 Abolition of Forced Labour and No. 111 Discrimination [Employment and Occupation] are still outstanding). These internationally recognised standards provide an essential minimum protection against the dismantling of social and labour standards resulting from competition (race to the bottom).

BAK and ÖGB further object to the fact that the chapters on sustainable development in all trade agreements with regard to the ratification, implementation and effective compliance with labour and environmental standards are completely toothless. The chapter on sustainability is not subject to the general dispute settlement mechanism and there is no protection offered through sanctions. This means that non-compliance with these international standards is without effective remedy.

Also missing is a “gold standard” clause to fully exclude services of public interest from the scope of application of JEFTA. Instead of guaranteeing reliable protection from aggressive business interests, the scope of action for public authorities to organise and provide services of public interest is being jeopardised unnecessarily. This risk is also present in relation to market access or procurement as well as in relation to economic needs test or proportionality tests of domestic regulations. Furthermore, the controversial “negative list approach” is being applied (without specific exceptions the

obligation to liberalise will take effect). This also will increase legal uncertainty and the risk of liberalisation through the back door.

We have repeatedly expressed our criticism of investment protection agreements in position papers and fortunately this criticism has been taken into account, most recently by the European Court of Justice in the case C-284/16, Achmea, with regard to intra-EU BITs. In the opinion of ÖGB and BAK, neither the reform effects kick-started by CETA nor the transfer of investment protection to a separate bilateral investment agreement with Japan will change the basic issues with investment tribunals: corporations will still be able to bring a direct action for compensation against contracting states on the basis of extremely vague legal foundations. The theoretical potential threat alone will mean that countries will, in case of doubt, abandon legitimate regulatory projects in order to avoid liability risks.

For these reasons BAK and ÖGB request that you reject the agreement with Japan as long as these problematic contents remain unchanged.

Yours sincerely,

Wolfgang Katzian
President

Renate Anderl
President