

The EU-Japan relations: Selected aspects

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ABSTRACT

Objective: The aim of the paper is to prove that in a world where instability is increasing and security is reduced, the EU and Japan are fulfilling their obligation to bear special responsibility for the implementation of the common western values they represent.

Research Design & Methods: The research method is based on the critical review of literature and the analysis of source materials (the texts of the Agreements and official documents). We run a policy analysis. We examine the law as a tool for policy implementation (New International Legal Process). We draw conclusions based on them.

Findings: The EU-Japan Agreements confirm the community of values on which they are embedded and create conditions for strengthening these values.

Contribution & Value Added: The contribution is here that we show the importance of Agreements between the EU and Japan, which stems from both endogenous factors, resulting from economic and political potentials of the Parties; as well as from the exogenous factors, in the form of external determinants of cooperation, such as recent turbulence in US politics.

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INTRODUCTION

We analyze the relations between the EU and Japan through the prism of the following agreements which were signed: Economic Partnership Agreement (EPA), Strategic Partnership Agreement (SPA) and one that is negotiated: Investment Protection Agreement (IPA). EPA liberalizes trade in goods and services. By setting the legal framework for a strategic partnership, SPA enhances political cooperation between Parties. IPA will regulate standards for investment protection and disputes resolution.

The subject scope of the analysis consists of the content of the EU-Japan Agreements; socio-economic and political potential of the parties; EU's legal powers to negotiate and conclude agreements with Japan, and its competence, whether exclusive or shared, to enter into these Agreements; the importance of Agreements for their parties and for other international actors as well as for regional, trans-regional and global relations.

The aim of the study is to prove that in a world where instability is increasing and security is reduced, the parties are fulfilling their, as real great powers, obligation to bear special responsibility for the implementation of the values represented.

We find out that the Agreements confirm the community of values on which they are embedded and they create conditions for strengthening these values.

THE LITERATURE REVIEW

The Asia-Pacific region is at the forefront of the ranking of regions according to the criterion of conflict potential. This is determined by the co-occurrence of a set of factors, including the number of countries with military nuclear capability and states capable of immediate production of it. In this region there are fallen states, active terrorists, and drugs are produced. The level of danger is enhanced by the fact that North Korea is a contra-system (in relation to a system based on international law). The importance of the region increased after the Cold War, as a consequence of the concentration of nuclear threats in the region, international terrorism, organized crime and significant instability. These threats, in the context of the situation in other regions, determined the American pivot towards Asia. This regional and global policy was named by the Obama administration *pivot to Asia*¹ (Lieberthal, 2011)².

President Trump has rejected this strategy. The change was to include the withdrawal from the transpacific plurilateral agreements in the economic and social sphere, the contestation of cooperation in the sphere of security, undermining the unconditional nature of security guarantees for the countries of the region³. The President raised the obligation to participate in the costs of ensuring security (Baker, 2017).

He also rejected the free trade paradigm. It was initiated by the termination of the Trans-Pacific Partnership (TPP)⁴. The decision raised doubts not only as to economic rationality but also to the way international policy was conducted. Unilaterality and brutality demonstrated disregard for the partners. In this situation the USA's announcement of the willingness to conclude bilateral trade agreements with TPP parties disregarded the assessment of the US's ability to conclude international agreements in the assessment of potential parties.

Trump, confronted with the reality, had to quickly give up the declared strategy. Already in November 2017, in a speech at the APEC summit, Trump presented a vision

¹ This policy was a consequence of the observation made by John Hay, the Secretary of State from 1898 to 1905: "The Mediterranean is the ocean of the past, The Atlantic, the ocean of the present, And the Pacific, the ocean of the future" (Lehmann&Engammare, 2014).

² On the other hand, Kolmaš&Kolmašová (2019, p. 61-79) argue that "*pivot to Asia* never really existed". They even named their paper that way.

³ Directly on the conditionality of the security guarantee see: Sanger&Haberman (2016).

⁴ Plurilateral agreement regulating trade relations, signed on 4.02.2016 between: Australia, Brunei Darussalam, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, USA and Vietnam. Had it been ratified, it would create the most ambitious free trade deal of the postwar era (Fukushima, 2016).

of a “free and open Indo-Pacific” to strengthen the friendship and trade ties between all Indo-Pacific nations, where trade will be based on “fairness and reciprocity” (White House, 2017a).

Year 2017 closed with a radical turnaround in foreign policy. The National Security Strategy (NSS) presented by the President (White House, 2017b)⁵ identifies new, major threats to US security. The source of them is no longer terrorism⁶ but great power competition with “revisionist powers”, i.e. China and Russia⁷. The response to Chinese hegemony and the aggressive policy of Russia – the authoritarian states that were considered “strategic competitors” – is to be an army whose potential in the region is to be significantly increased. The decision is based on the recognition that the USA has enduring interests and commitments in the Indo-Pacific region⁸, regardless of financial contributions. The NSS positively assessed the balance of 75 years of cooperation with the allies (in the Pacific and European region)⁹. In the NSS, the US also attached great importance to the cooperation of the Indo-Pacific countries in the new formula of the plurilateral institution – cooperation of four: Australia, India, Japan and the USA.

Democratic Asian and Pacific states and the EU want to be co-creators of the new order. Japan advocated the institutionalization of multilateralism (*de facto* plurilateralism). The withdrawal of the US from the TPP has stimulated the activity of participants of cooperation. An alternative form of institutional economic cooperation was created. On 8 March 2018, 11 countries (TPP minus the US) signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)¹⁰. However, it is not that the CPTPP is exactly the same agreement as TPP was supposed to be. The ambition of President Obama was to create a (new) pattern of world trade by means of TPP. The TPP consisted of 30 chapters covering – apart from the liberalization of trade in goods and services – everything from labour standards to intellectual property rights. The CPTPP is narrower (22 TPP provisions were suspended), but the agreement proves the parties’ ability to cooperate (The Economist, 2018). TPP11 also turns out to be attractive to other countries in the region, whose accession will strengthen CPTPP. Intention to join “11” declares Republic of Korea, Bangladesh, Philippines, India, Cambodia, Colombia, Indonesia, Laos, Sri Lanka and Thailand.

⁵ It’s analysis in: Cordesman (2017).

⁶ Weights assigned to threats have been changed: „States are the principal actors on the global stage, but *non-state actors* also threaten the security environment with increasingly sophisticated capabilities. Terrorists, transnational criminal organizations, cyber hackers and other malicious non-state actors have transformed global affairs with increased capabilities of mass disruption” (White House, 2017c).

⁷ „China and Russia are now undermining the international order from within the system by exploiting its benefits while simultaneously undercutting its principles and ‘rules of the road’. (Department of Defense, 2018).

⁸ General Dunderf – the chairman of the Joint Chiefs of Staff stated „If you look at the health of our alliances in the region ... The evidence reflects anything other than a decline in Pacific power. We have enduring interests here, we have enduring commitment and an enduring presence in the Pacific.” (Dunderf, 2018).

⁹ „Mutually beneficial alliances and partnerships are crucial to our strategy, providing a durable, asymmetric strategic advantage that no competitor or rival can match. This approach has served the United States well, in peace and war, for the past 75 years. Our allies and partners came to our aid after the terrorist attacks on 9/11, and have contributed to every major U.S.-led military engagement since. Every day, our allies and partners join us in defending freedom, deterring war, and maintaining the rules which underwrite a free and open international order.” (Department of Defense, 2018).

¹⁰ The pace of ratification is in favour of the presumption that the agreement will enter into force in 2019.

EU economic cooperation in the form of “third wave” RTAs with Republic of Korea¹¹, Japan, Singapore (concluded)¹² and with Australia and New Zealand (in the process of negotiations) is a response to economic challenges related to globalization and the challenges of new economic powers (especially China).

In the sphere of security, an attempt was made to fill – potentially – the vacuum created after the withdrawal of American security guarantees. Withdrawal of the US is to be compensated by cooperation, the beginning of which (since May 2017) has been patrolling the Pacific waters by the US, Japan, France and United Kingdom. In addition, the United Kingdom in the face of Brexit shows interest in cooperating with CPTPP (Gregory, 2018). The reactions of European allies to the Japanese proposal to deepen cooperation by going beyond the sphere of economic relations and the institutionalization of ties in the sphere of security and defence policy are clearly positive.

We believe that trans-regional economic, political and defence cooperation between the EU and the Asian countries of the western hemisphere creates the conditions for stopping destabilization and strengthening security in the regional and global dimension. The EU-Japan Agreements are manifestation of such cooperation.

MATERIAL AND METHODS

The research method is based on the critical review of literature and the analysis of source materials (the texts of the Agreements and official documents). We run a policy analysis. We examine the law as a tool for policy implementation (New International Legal Process). We draw conclusions based on them.

THE SUBJECT MATTER OF THE EU-JAPAN AGREEMENTS

On February 1, 2019 EPA entered into force – the largest free trade zone in the world started operation on that day. Also on that day, as a result of provisional application of SPA, the largest area of free and safe personal data flows was created in the world. The Parties, with the package of newly created agreements, generate a legal framework of “enhanced political and sectoral cooperation and joint actions on issues of common interest, including on regional and global challenges” (European Commission, 2019a).

Both EPA and SPA are an expression of the Parties’ support for the institutionalization of plurilateral cooperation and against international relations in the form of single and one-dimensional transactions and the pursuit of immediate profits. They are also for free and fair trade, and against protectionism; and for the commitment and the will to implement the values and principles¹³ common to societies of both Parties in all spheres – alongside the economy – security, sustainable development, climate protection, consumer protection, labour standards, etc.

The Agreements have created an economic and socio-political framework for new dimension of EU-Japan relations. They have different legal status: – EPA is in force (European

¹¹ See more in: Richey, Han&Kim (2019).

¹² See more in: Hoang&Sicurelli (2017).

¹³ These include democracy, the rule of law, human rights, good governance and market-based economy.

Commission, 2018a); – SPA is provisionally applied and awaits ratification (European Commission, 2018b)¹⁴; – IPA is being negotiated¹⁵. EPA – for the most part – has liberalized trade in goods and services. SPA sets the legal framework for strategic partnership, confirms the community of values and facilitates cooperation against common challenges (Article 1). IPA will regulate legal standards for investment protection and (above all) dispute resolution (probably in a new institutional formula of ISDS).

EPA and IPA are a „new generation” EU agreements, which means that they are comprehensive trade agreements regulating not only trade in goods but also services and providing for not only elimination of customs duties but gradual abolition of all restrictions in international trade within the „Trade for All” Strategy (European Commission, 2016).

The agreement in force, EPA, is a bilateral agreement establishing a free trade area between the EU and Japan¹⁶. It is so far the largest trade agreement concluded by the EU. EPA is one of the three subsets that make up a set of EU trade agreements, which are: – customs unions; – association agreements, stabilization agreements, (deep and comprehensive) free trade agreements, economic partnership agreements; – partnership and cooperation agreements. EPA can be regarded as a representative of the last category.

As the EU has exclusive competence in areas covered by the agreement, therefore it is not subject to ratification by the Member States. It results from the decision to include in the agreement only the domains falling within the exclusive competence of the EU and not to include, *by contrario*, the issues going beyond this scope, consisting of provisions regarding the broadly understood investment issues. The EU, remembering difficulties and controversies accompanying the conclusion and ratification of CETA, decided at all costs to avoid the conclusion of one large mixed agreement with Japan. The Commission, as part of the division of EU treaty relations with Japan into economic and political, has separated economic relations into trade and investment (in fact, the resolution of investment disputes) ones. This procedure has made – as it seems – easier to create regulations, at the same time giving away the threat of a political dispute and difficulties with ratification of the agreement regulating merits of investment matters (*de facto* ISDS matters, creation of the new ISDS mechanism).

The effect of implementation of EPA is the ongoing liberalization of trade in goods and services. EPA will promote trade through the elimination of tariffs and the reduction of non-tariff barriers, including the regulatory cooperation or harmonisation of law between the parties.

The outcome of negotiations is that both parties agreed to provide almost free bilateral access to their markets. Japan will eventually (after 15 years of entry of the Agreement into force) fully liberalise 97% of its tariff lines (86% immediately at the entry into force)

¹⁴ SPA parties assume that the Agreement will come into force in 2019. The schedule does not seem to be threatened. The first Joint Committee under the Japan-EU Strategic Partnership Agreement was held on March 25, 2019 in Tokyo (MOFA, 2019).

¹⁵ The lack of declarations on the state of progress on IPA indicates only that the parties keep it in a tightly closed room, in which, however, a consensus was created. The ratification of SPA and IPA will also require a positive decision from the parliaments of the Member States.

¹⁶ Initially, the parties differed in terms of the scope and depth of the Agreement: whether it should be an only free trade or economic partnership agreement. It was decided at the EU-Japan Summit in 2010 that work on both agreements will be conducted in parallel. Eventually, the Commission obtained an extension of the negotiating mandate – the original one was limited to the FTA. Acceleration of negotiations and the final decision to conclude EPA took place in response to changes in the international environment.

and 99% of imports, while the EU will liberalise 99% of its tariff lines (96% at the entry into force) and 100% of imports. On the 3% of tariff lines not fully liberalised, Japan has given significant concessions in terms of tariff rate quotas or tariff reductions.

Apart from elimination of tariffs, the non-tariff measures in relation to manufacturing and agricultural goods are reduced or eliminated, and the common rules for determining the origin of goods, technical barriers to trade, sanitary and phytosanitary measures are being introduced.

Particularly important, from the point of view of implementation of EPA, are extensive, detailed dispositions regulating the determination of the rules of origin. Issues relating to this matter – disputes in case of the absence of regulation, may in fact prevent any agreement regulating trade in goods or introduce significant non-tariff restrictions, or be a source of continuing controversy.

EPA parties confirmed both the fact that technical barriers to trade (TBT) in many cases only serve to protect the market and do not serve the declared purposes, and the will to eliminate the existing TBT and not introduce the new ones. The parties also decided to establish institutional and procedural safeguards against breach of agreement in the future (Article 13).

In the case of liberalization in trade in services, the scope of the agreement is very broad. An important element of EPA – from the point of view of public debate – is the way the public services were regulated. During the preparation for the conclusion of CETA and TTIP, the representatives of extreme positions in public opinion stimulated fears of the alleged forced privatization of public services as a result of concluding agreements. Therefore, it is important that EPA includes a negative regulation explicitly stating what the agreement does not require¹⁷.

EPA significantly liberalizes movement of people, which is important from the point of view of the EU. Lifting existing restrictions will allow European entities to operate directly on the Japanese market.

The investment issues have been partially regulated by EPA. However, it does not cover investment protection standards and dispute resolution. They are going to be regulated in IPA, which will regulate the investment issues comprehensively, referring and repeating (partially) the relevant EPA standards and it will comprehensively regulate material, as well as procedural and legal issues in the settlement of investment disputes¹⁸. The separation of investment protection from EPA, in particular the settlement of investment disputes, makes it a non-standard agreement. At the same time, the parties indicated unequivocally that they treat the domain of investment as inseparable from economic relations, as evidenced by its combined treatment with the remaining regulated matters in the Preamble of the Agreement. This proves the tactical nature of the separation of this domain, used for internal use of the EU. However, this *modus operandi* tactic – creation a policy of *fait accompli*, raises doubts as to whether it does not lead to a circumvention of law-democracy.

¹⁷ „On the question of public services, the EU-Japan Free Trade Agreement, like all other EU free trade agreement, maintains the right of Member States’ authorities to keep public services public and it will not require governments to privatize or deregulate any public service at national or local level. Member States’ authorities retain the right to bring in to the public sector any privately provided services. Europeans will continue to decide for themselves how they want, for example, their healthcare, education and water delivered”. (European Commission, 2017, p. 7).

¹⁸ First of all, the most controversial investor-state disputes but also state-state disputes.

Both EPA and IPA are considered to be (mutual, preferential) trade liberalizing agreements, known as Regional Trade Agreements – RTA. They belong to the “third wave” of regionalism. The beginning of the “third wave” is dated to 1995 and is associated with the conclusion of the Uruguay Round and the creation of the WTO. Conclusion of EPA was actually possible due to the Uruguay Round. Nowadays, each WTO member is also a party to a RTA.

EPA confirms the long-term trend according to which subsequent states or (regional) economic integration organizations conclude RTAs recognizing that they can achieve more by creating a special regime by means of bilateral or plurilateral regimes than under the WTO multilateral regime. In addition, EPA, also in the manner typical for RTAs of “third wave”, covers in its scope of regulation some of the subject areas in relation to which it was not possible to reach agreement in negotiations at the WTO forum.

One of the key characteristics of “third wave” is that RTAs often include bilateral agreements between parties located in different continents. When analyzing EPA and IPA through the prism of entities participating in it, it is simply a classic case of finding partners geographically distant. This is determined by a number of factors, among which it is evident that the stock of partners in the neighbourhood is depleted. An important factor that facilitates the conclusion of RTAs outside the geographical region is the ability to use a model of such agreements which results from a big number of such agreements. RTAs of the “third wave” have *de facto* created a framework agreement only modified to individual needs, which speeds up the conclusion of agreements and reduces costs. RTAs of the “third wave” become a serial product created by parties using the “common platform”, which reduces the costs of creation or use of knowledge.

Another fact proving that EPA and IPA can be regarded as the example of the “third wave” of regionalism is that the parties represent a comparable level of development and economic potential.

One more key feature of “third wave” RTAs is that they cover areas other than only trade in goods. When characterizing EPA through the scope of regulation, it should be noted that it belongs to the PTA (Preferential Trade Agreement) category, classified as WTO+ (after the transitional period customs duties will be eliminated, i.e. the level of cooperation will be increased – in relation to multilateral obligations – under the current WTO mandate) and WTO-X (covering new areas, i.e. going beyond the WTO mandate) (Singh, 2014). EPA provides rules in areas such as sustainable development with an emphasis on environmental protection, corporate social responsibility, labour standards, facilitations for small and medium enterprises, consumer protection as well as regulatory cooperation or harmonisation of law in areas covered by the Agreement.

In spite of the fact that EPA goes beyond the liberalization of trade in goods and services (which is typical for the agreements of “third wave”), it does it unusually, because the broadening of the scope of normative regulation is significantly greater than in the case of comparable agreements. EPA upgrades the typical RTA model – it is the first RTA to form a relationship with the Paris Climate Agreement (PCA), by including obligations of the parties to cooperate – in various forums – in implementation of the PCA. This hard and sharp commitment is important from the perspective of the PCA itself, as it proves that important (and perhaps the main) potential actors of cooperation have decided to sustain and develop it, rejecting the arguments of the opponents and not taking the opportunity

to bury it, which was given by the US decision to withdraw from the PCA. It is also important for other international actors (including states), as it is a signal of the expectations of the superpowers (not just economic ones, which are the EU and Japan).

At the same time, EPA is not a typical RTAs of the “third wave” because it only slightly enlarges and deepens the economic dimension of EU-Japan legal ties. Contrary to other RTAs of this wave, EPA (without the issues regulated by IPA) does not cover the full scope of regulations regarding investments.

The last agreement, provisionally applied SPA, embeds cooperation of parties in the context of the paradigm they represent. A broad catalogue of values and views constituting this paradigm has been articulated in the Preamble. It confirms: “REAFFIRMING their commitment to the common values and principles, in particular, the democracy, human rights and fundamental freedoms”. The statements contained in the Preamble have a clear normative content which determines the binding force of Preamble. The catalogue of challenges indicated in the Preamble is controversial, despite the declaration that it is not exhaustive. “Proliferation of weapons of mass destruction, terrorism, climate change, poverty and infectious diseases, and threats of common interest in the maritime domain, cyberspace and outer space; ... most serious crimes ...” were indicated, while for example aggression and annexation of territories were not¹⁹.

EPA and IPA are also embedded on a foundation of shared values and principles. The Parties strongly emphasize the values that unite them, making at the same time – which is politically interesting – choice of standards that set this system, namely, recalling the values expressed in the United Nations Charter and the Universal Declaration of Human Rights (and not in the human rights pacts). The proof of the community of values of the Parties is also the announcement of cooperation at the UN forum in the creation of new regulations in the field of safety and environmental protection.

There is a two-way action between SPA and the other two agreements, i.e. EPA and IPA. It is a set of all three agreements that will create a strategic partnership between the parties – the community of values. The Parties use the SPA as a tool to complement the policy of the West and maintain its components negated by the United States. What is new – but known from the EPA – is the appreciation of the Universal Declaration of Human Rights at the expense of concealed pacts. Generally, the SPA confirms and deepens the conviction that the separation of EU-Japan relations between EPA, IPA and SPA is only possible and rational from a procedural perspective.

THE CHARACTERISTICS OF THE PARTIES OF THE AGREEMENTS

Both the EU and Japan are developed, industrialised democracies, sharing common values like the rule of law, with strong economic and political links, and closely cooperating with one another in international and multilateral fora such as the UN, the WTO, the G7 and G20 (European Commission, 2018c). Japan is the 3rd richest economy in the world (by GDP) (World Bank, 2019b). Japan and the EU together account for more than a third of the world economy (De Gucht, 2018). Japan is one of the EU’s closest partners and a key ally in the Asia-Pacific region. It is the EU’s 2nd biggest trading partner in Asia after

¹⁹ See more on SPA: Gilson (2016), Berkofsky (2017).

China. However, it is the EU's only 7th most important trading partner worldwide²⁰, while the EU is Japan's 3rd trading partner. So there is an untapped potential in EU-Japan trade relations which was at the core of the decision to launch negotiations for a bilateral trade agreement. EPA, by abolishing tariff and non-tariff barriers to EU's and Japan's markets, opens up new opportunities resulting from expanding markets. The importance of EPA for parties is affected by the share of trade in their GDP. In case of the EU trade accounts for almost 85%, while the world average is 56% (see figure 1). For Japan the corresponding number is much less – 31%²¹.

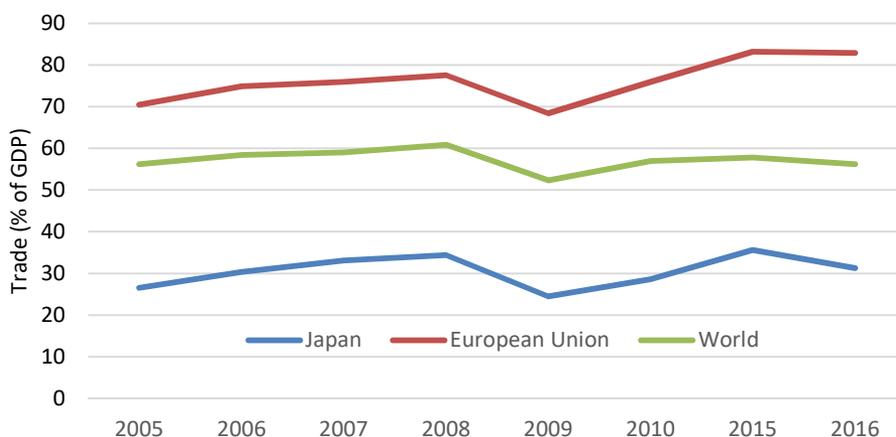


Figure 1. Trade openness of Japan, EU-28 and world, 2005-2016

Source: own elaboration based on: World Bank (2019a).

Fast growth of trade and GDP of both partners can be forecasted as a result of implementing EPA. In 2012, the Commission forecasted that the cumulative economic effect of all (then) negotiated FTAs would exceed 250 billion euro, increasing the EU's GDP by 2% (equivalent to the GDP of Austria or Denmark) (De Gucht, 2018). The simulations made in 2018, based on the actual outcome of EPA negotiations forecast that by 2035 (when EPA is fully implemented) EU's GDP will increase by 34 billion euro more (or extra 0,14%) and Japanese economy will grow by 29 billion euro more (or 0,6%) when compared to the situation with no agreement. This is also accompanied by an increase of EU exports to Japan by about 13 billion euro and of Japanese exports to the EU by about 23 billion euro (European Commission, 2018c).

THE REASONS OF CONCLUDING THE AGREEMENTS

The EU and Japan are continuing the two-way process of creation of a legal framework for mutual relations and implementation of legal and political standards covered by existing

²⁰ Japan is 6th extra-EU export partner, and 7th extra-EU import partner (in 2018) (European Commission, 2019b).

²¹ This low share in case of Japan is due to the collapse of the Japanese exports after 2008. It was a combined effect of the global downturn in 2008 and a natural disaster – earthquakes in the pacific coast of the Tōhoku region (11.03.2011) and the nuclear power plant disaster in Fukushima.

commitments. It is a long-lasting process with variable dynamics. This process encountered many different barriers, among which public opinion pays particular attention to the US-EU-Japan triangle²² of interests and interactions as well as potential economic challenges, not always recognizing the importance of cultural differences in the sphere of functioning of both individuals and society.

Awareness of the difficulties associated with cultural differences, however, was not perceived by the EU and Japan as an insurmountable obstacle but as a challenge that can be faced together. This has been demonstrated by the proposals of deregulation²³ of the Japanese economy presented by the Commission, as a way to refloat the economy suffering from the Asian financial crisis. The European response to the Japan's economic problem was not *schadenfreude* when the economic rival suffered the troubles (in politics Japan was – informally – a strategic ally of the EU as part of the western hemisphere). We consider these particular European proposals as the starting point in the calendar of works on the subject matter of the Agreements researched in this paper. The essence of the proposal was the willingness to help Japan in carrying out the institutional transformation, which was to lead to get out of the crisis and to initiate the economic growth thanks to – among others – restoring confidence in the economy. Apart from the content of the proposal, it was important that the parties have mutual confidence in each other and are capable of dialogue in matters falling within the internal sphere of the state (demonstrated by the proposal and positive reaction to it). In bilateral contacts, the parties searched for what is common or for brings them closer to each other, not what differentiates them. This way – with the use of official, semi-official and unofficial contacts – the EU and Japan led to the entry into force (January 1, 2002) of the Mutual Recognition Agreement (MOFA, 2001). The agreement, by limiting non-tariff barriers, facilitated trade in goods.

The political impulse for the EPA negotiations were the arrangements made during the 20th EU-Japan Meeting (May 2011). It took a year to agree on the agenda (until May 2012), and the subsequent months passed on the EU internal procedures. The official start of negotiations was on 25.03.2013, and the first round of negotiations took place in Brussels on 15-19.04.2013. Although the parties declared “toughness” in the negotiations, and even readiness to withdraw from them, the talks were conducted quickly and the will to reach the agreement was evident. Works on the agreement were carried out in the “4 steps” formula: preparing, negotiating, finalising, signing (European Commission, 2012), i.e.: 1) the Commission submitted to the Council an application for the negotiating directives; 2) the Council adopted negotiating directives and indicated the Commissions to conduct negotiations; 3) the Commission negotiated on behalf of the 28 Member States; 4) after obtaining the authorization from the Parties, the agreement was initially signed in the procedure of a co-decision of the Council and Parliament (European Commission, 2018d).

²² The tops of this triangle are strategic allies, being at the same time extremely different. The US is (still) the only hyperpower in the strategic dimension (perhaps China will achieve this rank), remaining a national state (see more: Khanna (2013), Dasgupta (2018)). The EU and Japan are – at best – the superpowers, and the beneficiaries of American security guarantees. At the same time, when the world returns to the Hobbesian culture of rivalry, the USA, using the instruments of unilateralism, confronts itself with more and more new players of the “axis of evil”, while the EU and Japan, adhering to Wilsonian values and methods, follow the path of multilateralism (see also: Kagan (2003, 2004, p. 65-87).

²³ The deregulation dialogue between the EU and Japan has developed since its official establishment in 1994 and is continued.

Already after the negotiations were started, it was decided to exclude from the agreement the domain of investment protection and negotiate it separately; it was negotiated by another team led by M. Martin-Prat. This separation creates a new model for the conclusion of EU trade agreements (“free trade agreements architecture”), under which, according to the ECJ ruling of 16.05.2017, the issues falling within the exclusive competence of the EU were separated from the shared competences, where the concluded agreement is a mixed agreement.

THE IMPORTANCE OF THE AGREEMENTS FOR THE CONTRACTING PARTIES

In the western hemisphere and consequently in the world, the paradigm of international relations stating that the necessary condition for achieving peace and justice – the values declared by the societies and countries of the western hemisphere as desirable in international relations – is “free and fair trade” is being questioned. The author of this paradigm was the USA, and this country, as part of its policy of leadership, worked to implement it.

A multi-element (because it encompasses principles that shape the political- and socio-economic system) regime of western values influenced both internal and external relations. Relations between countries belonging to the “west” can be treated as evidence of a positive verification of The Dell Theory of Conflict Prevention²⁴. At the same time, the United States’ potential has grown throughout this period, and the country has eventually become an essential hyperpower. The American leadership also included the role of an intermediary in the transcontinental relations of the allies. Transcontinental political and socio-economic relations of European, Asian and (both) Americas’ countries belonging to the “west” were maintained (predominantly) *via* the USA.

All this structure – including values, norms, institutions and practices – is consistently demolished by President Trump. Under these conditions, a transpacific bridge connecting the EU with Asia is being built. This bridge – potentially, after the end of turbulence in US policy – will allow to create a stable triangle of the states of two oceans (Atlantic and Pacific). The strategic triangle is a desirable response to threats to stability and security in the world. The states of this space can institutionalize the security community, ensuring their nations the sustainable development and protecting the remaining ones from the effects of the safety vacuum.

From the perspective of these threats, it is particularly important to uphold the rules of “free and fair” trade and to institutionalize the community of values between the EU and Asian countries implemented in the form of EU-Japan agreements. We perceive the three agreements as a tool for defending international order against actions or persons threatening it. The agreements not only refer to values, but – potentially – they also strengthen and institutionalize these values.

The EU and Japan have recognized that the cooperation is a source of benefits. Implementation of the Agreements will bring the spill-over effect. The Parties are convinced of the possibility – limited in time – of substituting the role of the US in maintaining the “west” by creating by-passes connecting the allies from the regions of Europe, America (Canada and the countries at the south of Rio Grande del Norte), Asia and the Pacific, maintaining order,

²⁴ According to it: „No two countries that are both part of a major global supply chain, like Dell’s, will ever fight a war against each other as long as they are both part of the same global supply chain” (Friedman, 2005, p. 421).

value and paradigm. They see the possibility to meet the challenges of both strategic rivals (China, Russia) and the strategic partner (USA). The EU (and its Member States) and Japan co-create a functional (i.e. without institutions) security community²⁵.

In the past the political relations between Europe and Japan, from the perspective of Europe, were directly related to US-Japan relations. Despite the community of values, principles and interests, these relations were always *de facto* maintained by and with the participation of a third party – the USA. For decades, Japan has been a “big mute” in world politics – at the same time being a great payer, a state that stands out in a humanitarian and development assistance. However, both Japanese silence and Japanese action were not perceived by public opinion to an extent proportional to the scale of phenomena. What the public perceived in Europe with regard to Japan was its economic activity. Relatively rapid evolution of the Japanese economy from an imitator to an innovator, from a producer and seller of low-quality cheap products to a competitor in the rivalry for market dominance was arousing – effectively fomented and strengthened by European economic entities – fears of failure in competition with Japan. As a result, Europe erected an economic wall that was supposed to separate (protect) it from Japan²⁶, while in the political and security sphere it did not build bridges connecting it with Japan. The economic policy of Japan was a mirror image of this. Contrary to so many and so important factors connecting the EU and Japan, these actors remained for decades at a distance, which was only partly due to the geographical distance.

CONCLUSIONS

The three Agreements making closer political and economic ties between the UE and Japan open the way to creation of the EU’s security community with “democratic diamonds” in the Asia-Pacific region. The importance of the Agreements is co-decided by:

- endogenous factors, resulting from economic and political potentials of the parties;
- exogenous factors, in the form of external determinants of cooperation. These factors include turbulence in US politics.

We find that the Agreements are a tool for the defence of international order against threats. The political context of the agreements is determined by US policy in relation to regions and problems, which is in contradiction with long-term strategy of the US. This is a source of instability, particularly dangerous for the strategic actions of the rivals of the “west”, challenging the international order. US, rejecting the paradigm of “free and fair trade” and collective self-defence of the free world, put the allies in a safety vacuum and made them unable to face threats. In addition, it happened under Trump’s neo-isolationism policy and under the conditions of undermining US obligations. The Agreements are a tool of protection against the emergence of a safety vacuum. The Agreements additionally activate Japan, which ceases to be a „big mute” in world politics.

Cooperation between Parties proves the spill-over effects. The EPA is especially source of economic and social benefits, but it also creates the unprecedented ties in EU-Asia relations which are comparable with EU-US relations. Entry into force of the EPA is beneficial

²⁵ As the Euro-Asian institutional security community was not built.

²⁶ Analogous to that erected by Japan.

for all parties from the point of view of: direct impact on the economy (bilateral relations); indirect impact, as it strengthens the position of the Parties in cooperation with strategic partners and in global competition; the influence on the power of the Parties.

The Agreements do not create a rigid legal framework for cooperation. It may be subject to both deepening and broadening. We claim that Japan and other countries of the region as well as the EU, when confronted with the threat (above all - the American neo-isolationism), show the ability to independently take up the challenge. This cooperation, leading to the construction of a transpacific bridge, may become – after the return of the US to traditional policy – a pillar of the cooperation of the states of the Two (Atlantic and Pacific) Oceans.

The entry into force of the agreements requires monitoring of their implementation through the prism of their impact on bilateral, regional and global relations. The choice of "unilateralism" by the EU and Japan on the one hand and "multilateralism" by the US on the other creates a unique research opportunity to assess the cost-benefit of both forms.

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