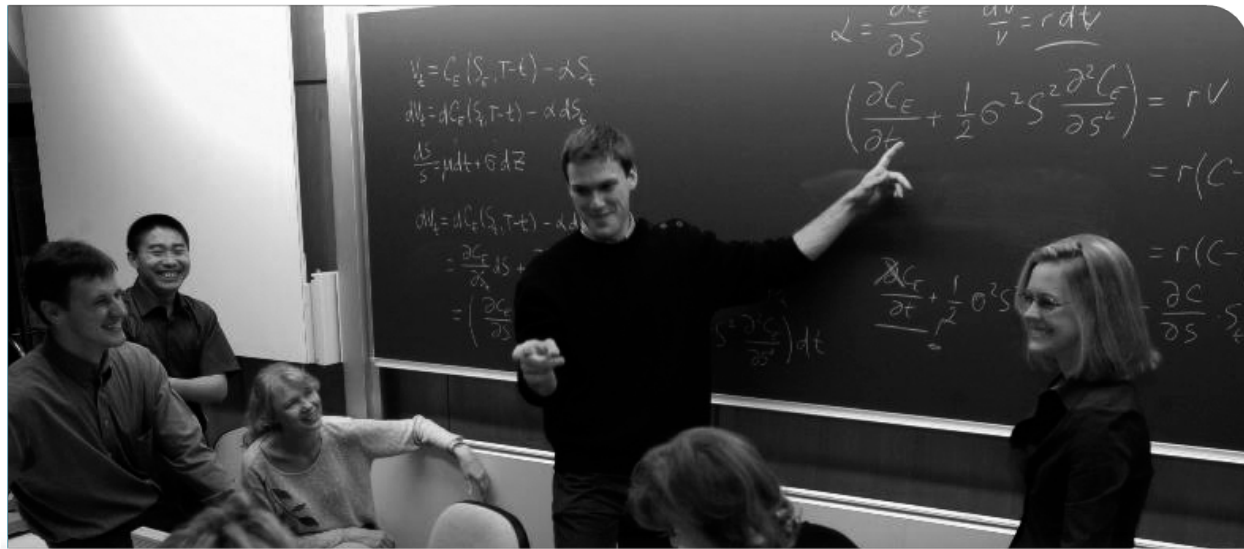




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2 February 2014 – University of Kyoto, Japan

## What Use of Investment Treaties between Developed States: “Japan-Swiss EPA”

**Andreas R. Ziegler**

Professor, Law School, University of Lausanne

Director, LLM Program *International and European Economic and Commercial Law*

Counsel, Blum & Grob, Attorneys-at-law, Zurich

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# Structure

1. Introduction: The EPA
2. Previous Treaties
3. EPA Strategy of Switzerland
4. EPA Rules on Investment
5. Conclusions

# 1 The EPA

- AGREEMENT ON FREE TRADE AND ECONOMIC PARTNERSHIP BETWEEN THE SWISS CONFEDERATION AND JAPAN
- 19 February 2009

## 2 Previous Treaties

### Other Treaties

- Treaty of Friendship and Commerce between Switzerland and Japan – signed on February 6, 1864
- Treaty of Friendship and Commerce between Switzerland and Japan – signed on June 21, 1911
- Double Taxation Agreement of January, signed on 19, 1971 (revised in May, 21, 2010)
- Never specific Bilateral Investment Treaty negotiated !
- OECD Rules apply !

# 3 EPA Strategy of Switzerland

- In addition to the EFTA Convention and the Free Trade Agreement with the European Union (EU) of 1972, Switzerland currently has a network of 28 free trade agreements (FTAs) with 38 partners outside the EU.
- Switzerland normally concludes its FTAs together with its partners Norway, Iceland and Liechtenstein, in the framework of the European Free Trade Association (EFTA).
- Nevertheless, Switzerland has the possibility to enter into FTAs outside the EFTA framework as well, as it has been the case of Japan and China.

# 4 EPA Rules - Chapter 9: Investment

- Article 84 Scope and Coverage
- Article 85 Definitions
- Article 86 General Treatment and Protection
- Article 87 National Treatment
- Article 88 Most-Favoured-Nation Treatment
- Article 89 Transfers
- Article 90 Reservations

- Article 91 Expropriation and Compensation
- Article 92 Treatment in Case of Strife
- Article 93 Subrogation
- Article 94 Settlement of Investment Disputes between an Investor and a Party
- Article 95 General and Security Exceptions
- Article 96 Prohibition of Performance Requirements
- Article 97 Temporary Safeguard Measures



## 4 EPA Rules on Investment

- Article 98 Prudential Measures
- Article 99 Special Formalities
- Article 100 Taxation Measures
- Article 101 Health, Safety and Environmental Measures
- Article 102 Review

# Article 85 Definitions

- (d) “investment activities” means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment, liquidation, sale or other disposition of investment;

# Article 85 Definitions

(g) “investor of a Party” means:

(i) a natural person, who under the law of the Party:

(A) in respect of Japan, is a national of Japan; or

(B) in respect of Switzerland: (aa) is a national of Switzerland; or (bb) has the right of permanent residence; or

...

# Article 87 National Treatment

- Each Party shall accord to investors of the other Party and to their investments, in relation to their investment activities, treatment no less favourable than that it accords, in like situations, to its own investors and to their investments.
- But Article 90: Non-Conforming Measures and Article 102 Review
- No automatic dispute settlement for market access ! (Article 94.4)

# Article 96 Prohibition of Performance Requirements

For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement is hereby incorporated into and made part of this Agreement, mutatis mutandis.

## 5 Conclusions

- Agreement by Switzerland with Korea, Japan (but not Canada)
- High level of liberalization (trade and investment) and protection (investment)
- Symbolic value for multilateral negotiations (WTO, OECD) and regional negotiations
- Will we see many disputes?

# Thank you !

- [andreas.ziegler@unil.ch](mailto:andreas.ziegler@unil.ch)