



Consultation:

A free trade agreement between the United Kingdom and Japan

Which? is the largest consumer organisation in the UK with more than 1.3 million members and supporters. We operate as an independent, apolitical, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

The success of future trade policy will depend on the extent to which it will deliver tangible benefits for consumers, including greater choice and lower prices, within frameworks of regulation, rights and standards that reflect UK consumer expectations and are important for consumer confidence.

Which? has set out four inter-related consumer tests for a future UK trade policy¹. The government needs to ensure that standards are maintained and ideally strengthened, choice of quality products needs to be enhanced, consumer rights must be promoted and opportunities must be taken to lower prices, provided that the other three tests can be met.

This applies to how the UK negotiates a future trade agreement with Japan. The EU-Japan Economic Partnership Agreement (EPA) includes the potential for some consumer benefits that must be retained in line with this approach. This includes tariff reduction on important consumer goods, such as cars and electronic goods, assuming that traders will pass on any benefits to consumers.

It is also important that this is done in a way that respects consumers' desire for the UK to maintain high standards and that any moves towards reaching equivalence, mutual recognition or wider regulatory cooperation do not lead to a lowering of protection. This applies across a wide range of consumer products, where technical and safety standards may differ, as well as to agri-food products and issues such as data protection.

Standards and rights need to be decided by the UK, in line with people's expectations and priorities. People in the UK need to determine the safety and standards regimes that underpin

¹ Which? Consumer Charter for Brexit, March 2018.



the food they eat and products they buy, rather than the UK regime adapting, or becoming a bi-product, of trade negotiations.

Opportunities should be sought to go beyond the existing agreement to enhance mutual consumer rights and reciprocal co-operation between public authorities where consumers currently have weak cross-border protection. A specific consumer chapter, alongside other important chapters on aspects such as workers' rights and sustainable development should be included.

Provisions that relate to consumer benefits and rights (eg. reference to international mobile roaming in the EPA) should be strengthened. This includes agreeing to co-operation on cross-border shopping rights and redress, to early warning systems for food and consumer product safety issues and to better regulation of electronic commerce, including the safety of products sold via online marketplaces.

A future agreement must also have transparency at its heart. This includes how the negotiations are conducted so that there is meaningful stakeholder input, including from consumer and other public interest groups. Any commitments to regulatory co-operation must also be conducted with a high level of transparency. Investor State Dispute Settlement (ISDS) has no place in a future UK-Japan agreement as this would circumvent our well-established legal framework.

Consultation questions

Which of the following trade related areas best describe the areas of the Economic Partnership Agreement that are important to your organisation?

- X Goods trade
- X Services trade
- X Regulation and standards
- Cross border investment
- Small and medium size enterprises (SMEs)
- X Competition law, subsidies, procurement and state-owned enterprises
- X Intellectual property
- X State to state dispute settlement
- X Structure of the agreement.
- X Other: Customs matters
 - Trade remedies
 - Corporate governance
 - Trade and sustainable development
- None

Based on your selection above, which areas of the Economic Partnership Agreement between the EU and Japan are important to your organisation and in what ways are they important?

It is essential that a future UK-Japan trade deal delivers tangible benefits for consumers and ensures consumer confidence. How the trade deal affects people's everyday lives and quality of life will be the true measure of success of government trade policy.

Goods trade, regulation and standards

The EU-Japan EPA commits to mutual reduction of tariffs on some key consumer goods including electronic goods, such as televisions, and cars. If these reductions are passed on to consumers by traders, consumers could see these products become cheaper. It is important to deliver on this in any future agreement – provided that this can be achieved in a way that is consistent with consumers' expectations of standards for consumer goods.

Any harmonisation or moves towards regulatory co-operation should be conducted on the basis that existing UK consumer protections are a floor to be built upon and that standards will not be compromised. This is an important issue for all consumer goods as the approach to standards may differ between the two countries.

Agri-food products are a major part of the agreement. They are also an area that is particularly sensitive for consumers. The majority of consumers (93%) think it is important UK food standards are maintained after Brexit, and nearly three quarters (72%) think food from countries with lower standards should not be available².

Cooperation on agriculture (Chapter 19) includes regulatory co-operation and also co-operation on issues such as production and technology in agriculture in foods. The government must ensure that consumer expectations that high UK food standards will be maintained are respected.

It is important that both parties agree to cooperate with international standards setting bodies. But any future agreement must also acknowledge that international standards can, in some situations, set a lower level of protection than current UK regulation and standards.

The EU-Japan EPA, for example, commits the EU and Japan to full alignment with international standards for product safety and protection of the environment for motor vehicles, but Euro NCAP standards have driven improvements in car safety in the UK that go beyond these UNECE standards. The current UK ban on the use of growth hormones in beef production gives greater protection than the international (Codex) standard. There is also no Codex standard on antimicrobial growth promoters in food production, which are banned in the UK. The strengthening of the British Standards Institution (BSI) standard for refrigeration products in light of concerns about flammability of plastic backed fridges is another recent example of how British standards have necessarily set requirements for a higher level of protection in advance of any agreement on changes to the International Organisation for Standardisation (ISO). A future agreement must ensure that the parties can go beyond international standards.

² Populus, on behalf of Which?, surveyed 2269 UK adults online between the 17th and 18th July 2019. The data were weighted to be demographically representative of the UK population.

Services, regulation and standards

The EU-Japan agreement opens up markets for trade in services and electronic commerce. It affirms the rights of the parties to adopt regulatory measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity. The UK-Japan deal should go further, including in relation to consumer rights.

Telecommunications services are, for example, included, with reference to international mobile roaming. This is an issue of interest to consumers and could be built upon to increase transparency and reduce costs to consumers.

Opening up electronic commerce is also an important aspect of the EPA. The EPA recognises the importance of adopting and maintaining transparent and effective consumer protection measures applicable to electronic commerce as well as measures conducive to the development of consumer confidence in electronic commerce. It also recognises the importance of cooperation between the competent authorities in charge of consumer protection, as well as the importance of adopting or maintaining measures to protect the personal data of electronic commerce users.

As set out in relation to goods, these measures must be built upon. Existing standards and consumer protection, including the General Data Protection Regulations, should not be undermined.

Sanitary and Phytosanitary (SPS) measures

Any future agreement must fully uphold the UK's right to introduce measures to protect human, animal and plant health and apply the precautionary principle. The BSE crisis for example was an important example of where precautionary measures needed to be introduced to protect consumer health.

Any harmonisation must be upwards and enhance consumer protection. The current agreement emphasises the importance of risk assessment, but must also recognise the role of other legitimate factors as part of risk management. Food is an example of a product where standards will often need to be shaped by wider social and cultural considerations, as the horsemeat scare clearly demonstrated.

Provisions around import procedures must not limit the UK's ability to maintain and/ or put in place effective import controls. Great caution is needed around how equivalence is applied and decisions made about whether the other party's measures achieve an appropriate level of protection, as well as how decisions are made about conformity assessment. This must reflect the nature of production methods, as well as the outcome, as these will be important for health and wider consumer protection and determine what is acceptable to consumers. It must also take account of any differences in approach to standards setting and regulations and how compliance is overseen.

Caution is also needed around the extent to which interest groups of the other party are allowed to participate in national standards setting, technical regulation or conformity

assessment consultation processes. It must also be ensured that such consultation processes do not lead to unnecessary delays in implementing consumer protections – and that interest groups in other jurisdictions do not determine the standards that UK consumers rely on.

Technical Barriers to Trade (TBT) issues

In addition to the points highlighted above, it is important that the measures to encourage information exchange and cooperation on market surveillance and enforcement activities, including for dangerous products, are maintained.

This cross-border co-operation is also particularly important with the growth of digital markets, including the large numbers of unsafe products that are sold to consumers via sellers on online marketplaces, potentially circumventing usual customs controls if they are going direct to consumers.

The provisions in the EPA requiring each party to ensure the independence of market surveillance functions to avoid any conflict of interest with conformity assessment functions, as well as with the persons who are subject to control or supervision are also important.

Competition policy

The provisions relating to competition policy commit each party to apply its competition law to all enterprises, private or public, engaged in economic activities, while not preventing them from providing for exemptions from its competition law, provided they are transparent and limited to those necessary for securing the public interest. It is also important that the importance of each party maintaining an independent competition authority and co-operation between competition authorities is included.

Intellectual property

The agreement covers some key issues for intellectual property including recognition and protection of EU geographic indications. They have been given the same level of protection in Japan as in the EU and this must be maintained in a UK deal.

Investor state dispute settlement

Investor State Dispute Settlement was not included within the agreement. This is good news for consumers as such mechanisms would circumvent established UK legal processes and do not have any place in a modern trade agreement that should benefit consumers. However, the deal left open the possibility of a parallel investment deal. No untransparent and unaccountable mechanism which sits outside of the UK's well-developed and functioning legal system should be included.

Other issues:

Customs matters and trade facilitation: Customs matters and trade facilitation are covered in Chapter 4 of the EU-Japan EPA. It is important that a UK-Japan deal has a strong emphasis on effective collaboration to ensure enforcement.



Trade remedies: It is important that a future agreement also recognises the importance of considering the public interest (Article 5.13), which includes the impact on consumers, in relation to trade remedies.

Corporate governance (Chapter 15): Strong provisions on corporate governance should be included within a UK-Japan deal.

Trade and sustainable development (Chapter 16): Trade and sustainable development must also form a strong basis of the future agreement, building on the approach in the EPA. This for example states that the parties recognise the importance of promoting the development of international trade in a way that contributes to sustainable development, for the welfare of present and future generations. It requires each party to strive to ensure that its laws, regulations and related policies provide high levels of environmental and labour protection and to strive to continue to improve those laws and regulations and their underlying levels of protection. It also stresses the importance of multilateral environmental agreements, in particular those to which both parties are party, as a means of multilateral environmental governance for the international community to address global or regional environmental challenges.

Which of the following trade related areas best describe the areas of the Economic Partnership Agreement that the UK government should consider changing during future negotiations?

- X Goods trade
- X Services trade
- X Regulation and standards
- Cross border investment
- Small and medium size enterprises (SMEs)
- Competition law, subsidies, procurement and state-owned enterprises
- Intellectual property
- State to state dispute settlement
- X Structure of the agreement.
- X Other – General provisions
- None

Based on your selection above, which areas of the Economic Partnership Agreement between the EU and Japan do you think the UK government should consider improving during future trade negotiations with Japan and why?

Apart from lowering the prices of some goods for consumers, the EU-Japan deal does not have any other obvious, tangible consumer benefits. Future negotiations should therefore be used to address this and demonstrate that the agreement will be able to have a positive impact on people's lives. This includes enhancing consumers rights as well as ensuring people can have confidence in the standards that underpin trade in both goods and services.

Structure of the agreement

Any future agreement must also cement existing levels of rights and protection and contain commitments to advance and enhance those consumer protection and rights. This should be set out as an over-arching objective of the future trading relationship.

Consumer Chapter

There should be a specific Consumer Chapter which more explicitly highlights the importance of consumer rights and protection as part of trade. Recent trade deals established through the UK's membership of the EU have included specific chapters on labour, environmental and competition policy. The UK should now go further and also address consumer protection.

The Chapter should recognise the rights of each country to maintain existing levels of consumer protection, as well as emphasising the role of the deal in furthering it. The inclusion of a Consumer Chapter should complement and enhance more specific reference to relevant consumer rights and protections within individual chapters (for example on Sanitary and Phytosanitary (SPS), and Technical Barriers to Trade (TBT) measures, financial services, trade remedies, data protection – depending on the scope) and embed consumer rights across the whole agreement.

Overarching objectives

The importance of maintaining consumer protections, including for health protection, should be an explicit objective of the agreement (with the General Provisions) and also emphasised as part of key chapters. The TBT Chapter in the current Chapter, for example, emphasises the objectives of ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade. A UK-Japan agreement should also recognise the importance of the parties' ability to maintain legitimate consumer protections to meet their consumers' expectations, while still minimising any unnecessary barriers to trade.

Standstill provision

A standstill provision should be included so that there is a 'floor' on consumer rights and protection that the UK, and partners, will not fall below. Provisions should be included to require enhancement of those established rights and protections.

Enhancing consumer rights

Trade deals should be used to demonstrate that the government is advancing consumer interests by promoting cross-border consumer rights.

Consumers will increasingly be buying online and buying products that originate from other countries. When travelling in the EU people currently have a range of rights and protections that have been agreed to protect them when things go wrong with their plans and to give

them better and cheaper access to certain services. 91% of people think it is important that the government includes consumer rights as part of trade deals³.

Consumers should be able to have confidence that the rights and standards they expect to be in place can be implemented and enforced across borders. Transparent reciprocal market surveillance and enforcement co-operation should be more explicitly mentioned. Issues that should be addressed include:

- Cross-border consumer enforcement co-operation between enforcement and public protection bodies – from sharing of information to the potential for joint actions
- Early warning, intelligence-sharing and alert systems between public authorities, customs and competition authorities.
- Co-operation through alternative dispute resolution (ADR) platforms that enable private enforcement of consumers' rights
- Judicial cooperation that will enable consumers to enforce their rights and pursue private legal action when necessary.

Digital services and online marketplaces

The Agreement should also be used to enhance consumer protection and reciprocal enforcement co-operation on cross-border issues that cannot be dealt with through national jurisdictions alone. This includes for example, ensuring the compliance of products sold through online marketplaces with product safety requirements.

Which? and its sister international organisations are repeatedly finding unsafe, non-compliant products for sale on these marketplaces. These products range from toxic toys through to faulty carbon monoxide detectors and USB chargers that are a fire risk. The marketplaces can be based outside of national jurisdictions and so can their sellers. Opportunities to co-operate and enhance consumer protection in this rapidly evolving market should be taken. Nine in 10 people in the UK have bought a consumer good from an online marketplace and most people are unaware of the limited legal responsibilities of the marketplaces themselves.

Is there anything else that you would like to say about the UK's future trade and investment relationship with Japan?

Transparency

It is essential that consumers are involved throughout the development of trade policy and the government's approach to trade negotiations. Which?'s research has found that only a fifth (20%) of respondents thought that the UK government would be open and transparent about how trade deals would affect consumers.

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Any commitments to regulatory co-operation must also be conducted with a high level of transparency. Investor State Dispute Settlement (ISDS) has no place in a future UK-Japan agreement as this would circumvent our well-established legal framework.

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