

UK trade negotiations: Agreement with Japan

Summary

1. Which? welcomes this opportunity to submit evidence on the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership (CEPA) which was signed on 23rd October.
2. Many aspects of this Agreement that impact on consumers are in line with the EU-Japan Economic Partnership Agreement that the UK has been party to – for example, in relation to tariff reductions on consumer goods.
3. There are, however, some key differences that could potentially undermine consumer protection or the UK's ability to regulate to improve consumer protection in the future. One important area where the Agreement differs is in relation to digital trade and specifically, the implications for the protection of people's personal data.
4. The Agreement suggests that a lower level of protection could be accepted than is currently required under the existing General Data Protection Regulations (GDPR) and raises questions over what this will mean in terms of a data adequacy decision with the EU.
5. The Agreement also allows for a review that could potentially see investor-to-state dispute settlement procedures included. The inclusion of such a provision would open the door to an untransparent mechanism that would circumvent the UK's well-established legal processes. This type of dispute settlement procedure could constrain the UK's ability to enforce regulation or to regulate further on issues such as public health, environment, food safety and consumer rights. This is not in consumers' interests and should have no place in the new trade deals that the UK is negotiating.
6. More generally, we support the greater emphasis on consumer protection within the Competition Chapter but think that the UK should have taken the opportunity to go further. A specific Consumer Chapter would reinforce the importance of protecting consumers' interests throughout the Agreement.

Introduction

7. Which? welcomes the opportunity to submit evidence on the implications of the recently agreed Comprehensive Economic Partnership Agreement (CEPA) with Japan. It is important that the trade deals that the UK negotiates deliver clear benefits for consumers and uphold the protections that they expect. Which? has set out four high level tests for a successful trade policy: safety and quality standards must be

maintained and ideally enhanced; people should have greater access to high quality products and services; consumers need to be supported by consumer rights and effective redress and opportunities to lower prices should be taken, subject to the other three tests being met.

8. In August and September, Which? conducted a National Trade Conversation to understand in greater depth what mattered most to people about trade deals when they had a detailed understanding of the issues that could be part of the negotiations. The Conversation took place in Northern England, the East Coast of Scotland, Northern Ireland, South Wales and Southern England. Over five virtual workshops people learned about what we trade, how trade deals are negotiated and what the key issues are for the government's priority trade deals. After much debate and questioning, four issues emerged as the overall priorities for most of the people who took part. These four issues were identified as priorities by the majority of participants across the locations and are a useful basis on which to assess whether the new Agreement with Japan will deliver against people's expectations.
9. The four priorities were:
 1. Maintain health and safety standards for food and products
 2. Maintain data security regulations that protect consumers' digital rights
 3. Protect the environment
 4. Help address regional inequalities by protecting and promoting jobs, skills and industries across the UK

Digital trade and data protection

10. The priority that this Agreement potentially contradicts is maintaining data security regulations that protect consumers' digital rights. The Agreement differs from the EU-Japan EPA in how it deals with data protection – and what this means for the level of protection consumers can expect under the current General Data Protection Regulations (GDPR).
11. Section F of Chapter 8 deals with electronic commerce. This is an important part of the Agreement where the UK has sought to go beyond the EU agreement. Our research shows that people recognise that digital trade will be a key feature of trade negotiations and welcome the UK becoming a leader in this area, as well as the more direct benefits it could bring to them through greater choice and innovation. But they do not expect this to come at the expense of how their data is protected.
12. Article 8.80 covers personal information protection. It encourages mechanisms to promote compatibility and states that this "may include the recognition of regulatory outcomes". The Article also states that each party shall take into account principles and guidelines of international bodies. This is of concern because the principles and guidelines established by international bodies (such as the Organisation for Economic Cooperation and Development (OECD) for example) are weaker than the UK's current GDPR regime. The footnote to this Article is particularly concerning as it states that the enforcement of voluntary undertakings would be acceptable: "*For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy*".

13. Article 8.84 includes a general binding commitment not to “prohibit or restrict the cross-border transfer of information by electronic means” with privacy as a legitimate public policy exception. However, the privacy exception allows for challenge.
14. This suggests that the UK is moving away from its commitment to GDPR protections. Inclusion of such provisions is not only concerning for cross-border data flows between the UK and Japan, but could also have implications for how UK consumers’ personal data is then shared with other countries that Japan has agreements with and would appear to put the possibility of an EU adequacy decision at risk.
15. This also appears to contradict the UK’s published strategic approach to a deal with Japan, which stated that the government noted stakeholders’ concerns on the importance of data protection and privacy standards and that the UK would *“seek to facilitate the continued flow of data with the EU and international partners, whilst ensuring the UK’s high standards of personal data protection.”*
16. The Agreement also includes provisions that ban mandatory disclosure of source code, software and algorithms expressed in that software (Article 8.73), although with some exemptions, including for regulatory bodies, judicial authorities or conformity assessment bodies in specific circumstances. Provisions designed to prevent the disclosure of source code and algorithms can pose problems in terms of transparency and accountability of technical systems that are also increasingly being used in many decision-making systems that affect the lives of consumers. It is essential that the Agreement does not inhibit the UK’s ability to ensure appropriate consumer protection from online harms.

Maintain health and safety standards for food and products

17. Which?’s consumer research has consistently shown how important it is that food and wider product standards are upheld. There was concern expressed in the most recent public dialogues that trade deals could lead to the UK accepting imports produced to lower standards – whether in the case of food or consumer products for example. This included safety standards, but also standards that represented wider UK values, such as animal welfare standards in relation to food.
18. The Agreement creates mechanisms for dialogue and cooperation on a range of standards issues, besides the chapters on Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) – for example co-operation in the field of agriculture (Chapter 19). It is essential that these take account of consumer interests as well as those of businesses and do not undermine UK standards.

Protect the environment

19. The importance of ensuring that environmental protection was taken into account as part of UK trade and trade deals was a recurring theme throughout the National Trade Conversation. People were generally conscious of how trade could impact on the UK’s carbon footprint. People saw a real opportunity to promote green trade that would not only benefit the UK, but the whole world.

20. It is therefore positive that the Agreement includes a chapter on Trade and Sustainable Development (Chapter 16) which stresses the importance of multilateral environmental agreements and achieving mutual supportiveness between trade and the environment.

Help address regional inequalities by protecting and promoting jobs, skills and industries across the UK

21. Fairness was an important principle that came through in the National Trade Conversation. The impact of Covid-19 was particularly front of mind, and participants placed a strong emphasis on understanding and supporting all parts of the UK, ensuring that any gains from trade deals were not England or London-centric.
22. This priority relates to wider gains in terms of economic growth and job creation. If looked at specifically in terms of the government's assessment of the impact on consumers, which is focused on tariff liberalisation (depending on the rate of pass through to consumers), there are clear regional differences – reflecting the nature of products that are imported from Japan (recreational goods and cars) and level of household expenditure in the different UK nations.
23. Overall, however, the Agreement will lead to tariff reductions on a wider range of consumer products than were included in the EU-Japan agreement, which should be positive for consumers, assuming that these tariff reductions translate into lower consumer prices and do not have any negative implications for the standards of sensitive products. The impact assessment states that the UK would have 796 types of final consumer products under the current Agreement that are tariff free. With a UK-Japan CEPA this would increase to 1,885 consumer products.

Investor to State Dispute Settlement

24. Article 8.5, Section 3 of the Agreement provides for a review to be conducted with a view to possible inclusion of investment protection or investor-to-state dispute procedures that 'could provide for the improvement of the investment environment'. The inclusion of such a provision would open the door to an untransparent mechanism that would put multi-national business interests above those of consumers and the wider public. It would circumvent the UK's well-established legal processes. This type of dispute settlement procedure could constrain the UK's ability to enforce regulation or to regulate further on issues such as public health, environment, food safety and consumer rights. This is not in consumers' interests and should have no place in the new trade deals that the UK is negotiating.

Consumer interests and a Consumer Chapter

25. More generally, Which? would like to see the government taking a stronger lead on the promotion of consumer rights and protections within trade deals, including reciprocal cooperation between regulators. It is encouraging to see that the UK has negotiated for stronger wording in the Competition Policy chapter (Chapter 11) on consumer protection (Article 11.7). It is unfortunate that it was unable to go further in other areas relating to certain specific consumer rights eg. expanding requirements for

transparency around international mobile roaming charges (Chapter 8, sub-section 4) to work towards free or reduced cost roaming for consumers.

26. We would like to see the UK showing global leadership on consumer protection, building on precedent in other recent trade deals, to include a specific Consumer Chapter. This would reinforce consumer rights and protections throughout the rest of the Agreement.

**Which?
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Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions. We're not influenced by third parties – we never take advertising and we buy all the products that we test.