

International Trade Committee

Oral evidence: UK trade negotiations: Agreement with Japan, HC 914

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Members present: Angus Brendan McNeil (Chair); Mark Garnier; Sir Mark Hendrick; Anthony Mangnall; Mark Menzies; Taiwo Owatemi; Lloyd Russell-Moyle; Martin Vickers; Mick Whitley.

Environment, Food and Rural Affairs Committee Chair present: Neil Parish.

Questions 1 - 41

Witnesses

I: Dr Anna Jerzewska, International Trade and Customs Consultant, Trade & Borders; Sam Lowe, Senior Research Fellow, Centre for European Reform; Dr Minako Morita-Jaeger, International Trade Policy Consultant and Fellow, UK Trade Policy Observatory (UKTPO) at the University of Sussex; and Professor Lucia Quaglia, Professor of Political and Social Science, University of Bologna.

II: Mike Hawes, Chief Executive Officer, Society of Motor Manufacturers and Traders (SMMT); Sabina Ciofu, Head of EU and Trade Policy, TechUK; George Riddell, Director of Trade Strategy, Ernst & Young LLP and Professional and Business Services Council (PBSC); and Nick von Westenholz, Director of EU Exit and International Trade, National Farmers' Union (NFU).

Examination of witnesses

Dr Anna Jerzewska, Sam Lowe, Dr Minako Morita-Jaeger and Professor Lucia Quaglia.

Q1 **Chair:** Welcome to today's session where we take evidence on the UK-Japan trade agreement with two panels of experts and knowledgeable people. We have four witnesses in each panel. In the first panel we have Dr Anna Jerzewska, Sam Lowe, Dr Minako Morita-Jaeger and Professor Lucia Quaglia. I will let all four introduce themselves on their own terms—name, rank and serial number—starting with Dr Anna Jerzewska. I hope I have pronounced that correctly.

Dr Jerzewska: Yes, thank you. Good afternoon, Chair; good afternoon, everyone. I am the Director of Trade & Borders consultancy. I advise a range of private and public sector clients including UK Departments, the Scottish Parliament, and British Chambers of Commerce. I am an associate fellow of the UKTPO.

Sam Lowe: I am a senior research fellow at the Centre for European Reform. I was previously a member of the Department for International Trade's Strategic Trade Advisory Group.

Dr Morita-Jaeger: Thank you very much, Mr Chairman. I am a fellow of the UK Trade Policy Observatory and also a trade policy consultant. Prior to the current work, I have been working in international trade policy for Government, the private sector and the United Nations for 15 years.

Professor Quaglia: Good afternoon, everyone. I am a Professor of Political Science at the University of Bologna and I specialise in politics and political economy.

Q2 **Chair:** To open up, I will start with Dr Anna. The Government classify the UK-Japan trade agreement, CEPA, as a new trade agreement rather than a rollover of the EU-Japan agreement. Can you summarise—I will put this question to a number of you—how the two agreements compare with each other?

Dr Jerzewska: Yes, it has been called a new trade agreement. It has been called the first post-Brexit trade agreement. It has actually been called a number of other things. It is the first post-Brexit agreement because we had not really signed anything up to that point in 2020. Most of them have been signed in 2019. It is not a simple rollover. It is a continuity agreement.

There are some changes that I understand that we will discuss today in detail, but the impact of these changes on the economy as a whole and on traders, in my opinion, will be relatively low, from the comments we are hearing from senior Government officials about what this agreement is likely to do and achieve. I think the comments are based on the WTO scenario, which is fair enough. It is good that we have this agreement



because otherwise we would be trading under WTO rules, but it has basically not covered that when these comments are being made.

On it being a new type of deal, a completely bespoke British shaped or UK shaped deal, I think it is still very much an EU deal. It is not a deal that is designed from scratch to support UK trade policy objectives and as such really should not be classified that way, in the way I understand a new, progressive, comprehensive trade deal.

Q3 Chair: One of the difficulties we have had—others can maybe expand on this—is that from the UK Government estimates there has been a 0.07% gain to GDP but, of course, that is only versus the WTO baseline. Do you have any thoughts, Dr Anna, on what this GDP difference is of the CEPA agreement, the UK-Japan agreement, versus the JEEPA agreement, which is the EU-Japan agreement? Is there any distinguishable GDP difference or GDP gain for the UK?

Dr Jerzewska: I don't have that number. I generally feel that while these kind of numbers or estimates are helpful, it is quite difficult to estimate the impact on GDP of an agreement that has not been implemented because there are so many factors at play. I know that Japan accounts for about 2.2% of UK trade, but perhaps someone else might have this number or has done some work on it. I don't have that.

Q4 Chair: Thank you. I will go to Sam Lowe next.

Sam Lowe: I think it is fair to say that this agreement is broadly the same as the EU's agreement with Japan with some tweaks and then some additions, and also some areas where the UK has got slightly less. There are tweaks in areas such as financial services, there are additions in areas such as digital, and when it comes to tariff rate quotas the UK has access to fewer than it would have had in the context of the EU agreement.

On why this is classified as a new agreement, I think we have to take into account the broader context, which is that Japan refused to proceed on the continuity basis. It did not want to roll over an agreement. It pushed to enter into new negotiations and negotiate a new trade agreement. The framing put forward by the Government is not entirely unfair because that is how Japan also approached this. However, when you look at the text itself, it is largely copied and pasted from the EU-Japan agreement, so we should acknowledge that.

On the economic impact, positive or negative, the impact of this agreement is going to be very marginal when compared to the EU agreement. It could be slightly more, it could be slightly less. In broader terms, the reason it is so difficult to put a figure on this is that we also have to take into account that the UK has left the European Union. When you think of the broader economic relationship between the UK and Japan, quite a lot of the investment in the UK was on the basis of it being a member of the European Union. While I think the new provisions on



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digital will facilitate investment into the UK, we also have to take into account that the UK leaving the EU will be a drag on Japanese investment. We could see FDI stocks shifting as of now and we could see a displacement in the future.

Q5 **Chair:** Thank you. Dr Morita-Jaeger, do you have any further thoughts on what you have heard?

Dr Morita-Jaeger: I agree with the points made by Anna and Sam. My simple answer to the question is that the economic value of the agreement on top of continuity seems to be rather limited. On the other hand, I would like to underline some of the developments made in the area of rule-making in CEPA. For UK's future FTA negotiations, Japan would become an important benchmark. That is something I do not want to ignore but let me explain in more detail. It seems that in the economy at least the agreement allows Japan and the UK to achieve continuity, so that is very important given the uncertainty of Covid-19 and the risk of no deal between the UK and the EU on future relations.

Q6 **Chair:** Are you suggesting that when Japan did not want a continuity agreement—a rollover agreement—that is basically exactly what has happened, give or take a tweak or two?

Dr Morita-Jaeger: Yes, but the thing is to what extent they could achieve the ambitions on top of the continuity is very important. In that sense, on seeing the text of the deal I observed that the progress made in UK's trading conditions with Japan, the conditions under the UK-Japan FTA, is limited to some areas of rule making. The first is the market access of UK goods exports, not services exports to Japan, were meaningfully improved under the CEPA. Japan's tariffs on the schedule and the service commitments are almost identical to those in the EU-Japan JEEPA except for some minor details. As for Japanese goods imported to the UK, the UK accommodates a zero reduction in tariffs on some goods but all of these except for two, the UK accommodates zero tariffs on the MFN schedule of the global tariff schedule.

With regard to the entering of the state of natural persons, there are some important developments that I would like to explain in detail later. In spite of these improvements, the commitments are not entirely—*[Inaudible]*— as Japan has already committed. It depends on the UK schedule in the UK-Japan FTA. As for the other chapters, 15 out of 24 chapters included some changes of providence. The degree of changes made differs across chapters. Some are minor changes for administrative purposes and others show more substantive changes. These include e-commerce. That is the highlight of this CEPA, I think, and also the regulatory framework of financial services, intellectual property rights and the rules of origin.

Q7 **Chair:** Thank you. Professor Quaglia, I hope your line is okay now.

Professor Quaglia: Yes. The UK-Japan free trade agreement and the European Union-Japan free trade agreement look quite similar as far as



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financial services are concerned, with three important qualifications. There are relatively modest improvements concerning the provision of new financial services, the use and storage of financial data and regulatory co-operation on financial services. These are the three main differences.

If we look at the effects of the two agreements, there are about 10 articles of financial services in both agreements plus an annexe on regulatory co-operation. The effectual analysis of both documents shows that they are quite similar, almost down to the punctuation marks, the commas and the dots. With the three qualifications that I mentioned earlier on, I would be happy to elaborate on those improvements later on in the discussion.

Q8 Chair: The UK chief negotiator has described this as a gold standard agreement. Do you agree with that? Is it a gold standard agreement or is it just a normal, run of the mill agreement?

Professor Quaglia: As far as financial services are concerned, I am not sure I agree with that. The text looks quite similar to the UK-Japan free trade agreement with the three improvements that I will be happy to discuss later on. I think it is also fair to say that given the tight timetable for the negotiations, perhaps there was not much scope to achieve something more ambitious. Also, if I could add, free trade agreements in general have limited provisions on financial services.

Q9 Mark Menzies: This is to Dr Anna Jerzewska followed by Sam Lowe. The rules of origin provisions in CEPA allow both parties to accumulate EU inputs. It has been suggested that this arrangement might not be in accordance with World Trade Organisation rules. How plausible to you find that argument, Dr Anna?

Dr Jerzewska: Thank you for that question. This is something that has not been confirmed or challenged at the WTO. I have been speaking to a number of WTO lawyers about this, in the context of Brexit as well as before the referendum, so this is something that has been around for a while and a discussion we have been having for a long time.

On the one hand you could say that, yes, it breaches the most favoured nation provision just because it offers preferences to a party that is not a party of the agreement—a third party—and the other party does not get anything in return and does not offer anything in return. You could say that it is extending preferences without any reciprocal provisions from the third party. On the other hand—this is what I think about this provision—it is a way to liberalise the rules of origin. It is a way to extend the provision and that is possibly how this should be viewed.

We don't have an official answer from the WTO so we can only speculate at this point. It has never been used in a way that could merit an official challenge at the WTO. The way the UK is using it or the way the UK is intending to use it after 1 January might bring about such a challenge,



but I still think it is unlikely. It potentially can be viewed in this way, but the focus should be on how it liberalises and extends rules of origin and the provision from that perspective. I think the chances of an actual challenge are small but some may disagree with that.

Q10 Mark Menzies: While you have the floor, I will follow on with another supplementary. Under CEPA, the UK and Japan agree to seek cumulation arrangements with the EU. How likely is the EU to agree to this and what would be the consequences if it didn't?

Dr Jerzewska: I will start with the second part of that question. The consequences would be that all three parties could cumulate with each other to a joint benefit. How likely is it? I think it is extremely unlikely. First, the EU has never shown any kind of preference for these type of provisions. It has used it in its own agreements in the past but very sparingly with only one or two tariff lines in very few selective agreements and in the agreements with developing countries, which are more undependable. It has used it for the auto sector, which has a potential provision. It has just left the doors open for that provision under the agreement with Japan. I would not consider it likely for the EU to extend it across the board to another third country.

I think what is important here is the fact that under what the UK is doing at the moment, with the UK using the extended cumulation with third-party countries like Japan, it is actually the EU that is getting all the benefits. If you allow Japanese manufacturers and British manufacturers to still use EU inputs, that means that EU suppliers still have their clients, so it is still purchased from the EU. In a way, the EU is getting quite a significant benefit here without having to reciprocate. On the whole, yes, it would be better to have a full triangle and everyone involved but I think it is unlikely.

Q11 Mark Menzies: Thanks very much. Sam, what are your thoughts on both those points?

Sam Lowe: On the legality issue, I suppose it is an important question in that extended cumulation underpins the entire UK's approach to continuity agreements. This is not unique to the Japan deal. It exists in Switzerland, in the Ukraine agreement that we have just seen the published text of. It is in Korea on a time-limited basis. It is there for Chile. It is really quite innovative. If we are talking about areas where the UK has used its newfound ability to pursue trade agreements and trade policy to inject a new approach, this is it.

As to whether it is WTO compliant or not, we just don't know. You can find lawyers who argue either way although the way, at least from my perspective, seems to be with the argument that it is WTO compliant but you can certainly find some US lawyers who think otherwise. But I would also add some political economy context to this, which is that lots of things are potentially WTO incompliant but we only find that out if someone brings a challenge. There is a question of which country would



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challenge this approach by the UK and it is quite difficult to answer that question; maybe the US, maybe China, but it is not an easy question to answer. I would probably lean towards it being compliant, but I can't say that with a high degree of certainty because we don't know yet.

On whether the EU will agree to diagonal cumulation in the context of Japan, we should take into account that the UK has narrowed its ask on diagonal cumulation in the EU negotiations, at least according to leaked texts and also the David Frost letter to the auto industry. Whereas before it was asking for full extended cumulation across all products, it is now specifically focusing on autos and electric vehicles, and on specific share to the country trade partners it is focusing on Japan. I think it is unlikely that the EU will agree to this in the context of the EU-UK negotiations now. However, as Anna referenced, there is a provision in the EU-Japan free trade agreement that states that if the EU and Japan strike a similar deal with the same third country that it should instigate a discussion on cumulation, specifically on autos. It is something that I think could emerge in future but I don't see it being the instant result of the UK-EU negotiations between the EU has been quite hard-lined on this issue.

Q12 Mark Menzies: Sam, just to follow up on the cumulation point, certain provisions on cumulation on CEPA are more liberal than the equivalent provisions in JEEPA, allowing the UK to cumulate inputs from non-EU third countries in respect of confectionery, baked goods, pet foods and some textile products. What do you think are the benefits and risks of those provisions?

Sam Lowe: These are not cumulation provisions. These are just product-specific rules of origin differences between the EU-Japan agreement and the UK-Japan agreement. To give an example, if we do the biscuits, bread, communion wafers type basket, the UK-Japan agreement allows for origin to be conferred simply by a change in tariff heading whereas the EU-Japan agreement requires a change in tariff heading but also that you can't have non-originating dairy, non-originating wheat, barley and rice of over 10% of the value and you can't have non-originating sugar of over 30% of the value. What the UK-Japan provisions allow is for UK producers to source their inputs more widely and still qualify for tariff-free trade under the UK-Japan agreement. I think this should be viewed as somewhat of an improvement in that it makes it easier for UK exporters to potentially qualify for tariff-free trade with Japan.

Q13 Mark Menzies: That is actually quite significant.

Sam Lowe: It is significant for the biscuit exporters, yes. I suppose it should also be taken in the context that the UK has recently, as part of the global tariff, announced that it is going to open a new tariff rate quota for cane sugar with a larger degree. It points towards some sort of strategy in this area.

Q14 Mark Menzies: Before I finish off, Anna, do you want to add anything to that?



Dr Jerzewska: On the product-specific rules of origin and liberalising, yes, definitely liberalisation is a step forward and removing the non-originating thresholds is helpful, makes it simpler and easier. However, with liberalising rules of origin, one thing you should always mention is that the fact that we are liberalising rules of origin doesn't necessarily mean that we will export more. It doesn't necessarily translate into trade. It means that more companies can qualify, but one of the examples of products where the UK has liberalised rules of origin under this agreement versus the EU agreement is pet food. It is the same type of liberalisation that Sam just mentioned but in 2019 we exported the equivalent of US\$15,000 to Japan.

Whether liberalising these rules of origin will mean that we will export more, does it mean that there will be more demand, will we take some of the US's market share or someone else's market share—unless we can be more competitive in some other way, just liberalising the rules of origin does not mean that there will be the exact benefits that we have seen in the press release.

Chair: Thank you very much. Moving on a little—I am just noting time. We are probably over a third of the way through our time, so a note to everybody that interesting as this is, unfortunately that clock keeps ticking. We will go over to Neil Parish, who is joining us as Chair of the EFRA Committee and no doubt Neil will be striking something on agriculture.

Q15 **Neil Parish:** Thank you again for letting me come on to the Trade Committee. To Sam Lowe, first of all, under CEPA UK exporters will have access to 10 of the 25 quotas available under JEEPA, in respect of whatever part of each quota is left unused by EU exporters at the end of each year. How will this system work? Say, for instance, you are exporting soft cheese from the UK and it is getting towards the end of the year, how will you know whether you are going to get access to that lower rate quota or will you pay the extra money on the original tariff? Do you pay the money upfront and get it back? How does it actually work?

Sam Lowe: I am going to give my understanding of this, but I want to caveat by saying the actual text within the agreement is quite difficult to parse and some of what I am saying is based on what I have been told but has not been publicly confirmed yet, so it is open to change. My perception of how this would work is that the Japanese importer, upon indicating it wanted to import under the terms of tariff rate quota, would not be subject to a tariff upfront but at the end of the year, if the quota had been filled, would then need to pay the tariff. There would be lots of other things alongside this. They would probably have to have a bank guarantee backing them.

One area where I will correct you slightly is to make the point that it is not the UK exporter that is necessarily taking on this risk because tariffs are paid by the importer. It is the Japanese importer that is taking on the risk that it might have a tariff that it needs to pay later on. As you



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indicated, there is the risk that a Japanese importer could import from the UK thinking it was importing under the tariff rate quota but then could find that it has a bill later on. But presumably as long as this system has been communicated properly, this is a risk that they would be aware of and could take into account.

Q16 Neil Parish: Would they be able to put that risk back on to the exporter from the UK saying that, “If we don’t get access to that EU quota in retrospect and we have to pay that extra tariff”—can they get the money back from the people who export it from this country?

Sam Lowe: You can write many things into the contracts, so theoretically, yes. If we think about Brexit for a second, just to give an example, as part of the risk management process quite a few importers based in the EU wrote into contracts with suppliers from the UK that if WTO tariffs were applied it would be the UK exporter that ended up having to pay those on behalf or at least the incidence would fall on them. Yes, it is possible that could happen but that is a theoretical problem at the moment.

Q17 Neil Parish: The final part of my question to the whole panel is: the UK will lose access to the EU TRQ for malt but the Government say that, “Japan has guaranteed market access for UK malt exports under an existing quota which is more generous and easier to access than the EU quota”. Can you explain exactly how this is going to work?

Sam Lowe: Again, this is my understanding. From having read the letters that were exchanged, we are talking about a Japanese autonomous quota that currently exists and is updated yearly and is open on a non-discriminatory basis to all countries. My understanding, having read those letters, is that Japan has reconfirmed that the autonomous quota that already exists will continue to be open to the UK, so it is not that the UK is going to get preferential access to the quota.

Neil Parish: Thank you, Angus, I will leave it there because time is pressing and you will have your access to the malt market for your whisky, all being well.

Q18 Chair: Much appreciated and whisky, as we know, is a very important product for Scotland. I don’t know how many times we can say that, but anybody who does not appreciate whisky is not living as far as I am concerned.

Moving on to Dr Anna or Sam Lowe—I don’t know whether you do or don’t like whisky—I want to ask about CEPA and JEEPA schedules and the reduction and elimination of tariffs over time. What is the difference between CEPA and JEEPA, the UK-Japan and the EU-Japan agreements, for those schedules and the reduction and elimination of tariffs?

Dr Jerzewska: I will just call it UK and EU agreements, because these acronyms are not particularly helpful.

Chair: You are helping us greatly here. Thank you.



Dr Jerzewska: There are some differences here. I guess the main point is whether these differences are significant or not. We know that about 39% of Japan's tariffs are duty free anyway, 45% will be liberalised under the UK agreement straightaway and then 11 over time. If we compare it to the EU agreement, EU-Japan versus UK-Japan, I am basing this on work done by my colleague at UKTPO, Yohannes Ayele, who has run the numbers. He compared it side by side and came up with quite a comprehensive analysis. In his view, in the UKTPO analysis, on the Japanese tariffs, the tariffs for our exporters or the tariffs that Japanese importers will pay on goods exported from the UK, just to be completely accurate, there are 11 products. There are 10 products on the day of entry and in just under five years in 2025 this becomes 11 products whereby there is a difference in tariffs. The UK has better market access. These 11 products include products such as dried eggs, different types of leather and alcohol over 90%. These are potentially not massive exports and in 2019 there were no exports from the UK to Japan of these 11 products, so there is not a significant change here.

On the other side, the UK's tariffs on imports from Japan, there are 23 tariff lines where this is different and Minako mentioned this in her opening remarks. Basing this also on Yohannes's work, out of these 23 tariffs lines there are only two where it is a significant change, meaning that there is an actual change. All the other ones are meaningless, just because they are reduced to bring this in line with the UK's external tariff, so the UK's global tariff. The two where there is an actual change, first of all, it is a change from 2% to zero, so again not a massive gain for the UK. These products are parts and accessories of recorders and audio equipment.

In terms of schedules and how this looks over time, gradual liberalisation, when we look over the first five to six years, the EU catches up pretty quickly with the UK in the amount of tariff lines at 0%. By 2025, the difference between what the UK offers or the UK has versus what the EU has is 0.01, so again not a significant difference. There are differences in agriculture, so these are the non ad valorem duties, the duties that are price per weight or some other non-percentage tariff duty. This is not a significant difference. Again, in the press release, in the communication that we have seen, it has been compared to the WTO scenario versus what is currently happening.

Q19 **Chair:** Sam Lowe, the difference is small; it is not significant. Nevertheless, you could argue—if you wanted to write a press release—at the very least, or maybe a little more, that there is a difference in the beginning. Would you agree? Where exactly would you put the emphasis on that? Just briefly again, thank you.

Sam Lowe: There are slight differences. I think on the UK side they are largely as Anna said, explained by the global tariff. The applied rate is going to be lower anyway and we had to ensure that that matched up with the schedules. In one of the areas where it does not match the



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global tariff, for electric control units, where the UK has reduced it to zero on day one, it does match up with an autonomous suspension, so the UK is not applying that tariff on day one anyway on a temporary basis. There is not that much liberalisation there.

On the Japan side, in areas where the UK potentially has more than the EU or there have been tariffs or tariffs are going to be phased out more quickly, there are some areas where this is true. For leather products you can see that some tariffs are going to be phased out entirely by 2026 rather than 2028. On the type of products, you have swine leather. You also have ostrich leather, which I found amusing, because I am not sure we export much ostrich leather. That was not something I thought the UK was known for but yes, that tariff will be phased out more quickly than the EU deal.

I know in the parliamentary report the UK also mentions that industrial ethanol will be zero rated on day one. We should take into account that that is because Japan zero rated industrial ethanol anyway since the EU deal came into effect. That is not necessarily a benefit the EU exporters are not having, because they will obviously do that too.

Chair: Thank you very much. We are moving on to Anthony Mangnall, who is a new member of the Committee today and is in at the deep end.

Q20 Anthony Mangnall: Thank you very much, Chair. Perhaps on the ostrich side, we have just been burying our head in the sand about this. Sorry, I could not resist.

Chair: I had thought of it, but I did resist.

Anthony Mangnall: My question is to Dr Morita-Jaeger and Professor Quaglia. How do the provisions of the service chapter in CEPA compare with those in other free trade agreements? Where is the scope for the UK and Japan to be more ambitious in the timeframe available? I will start with Dr Morita, if that is okay.

Dr Morita-Jaeger: Thank you very much for your question. As I said, as far as the market is concerned, it is almost identical. However, there is some progress of the temporary movement of natural persons. But your question about the rule-making part, I would like to say that one thing is the scope of the agreement, so that means normally the EU excludes audio-visual services from its free trade agreement in the WTO to protect European culture and diversity. I expected this time under the CEPA that UK and Japan would agree to include it, but actually not. It is still excluded. The problem is, leading to the future, the consultation and the impossibility of including the audio-visual services in the future. That is one thing I would like to mention. Maybe digital services later. The digital economy, shall I explain later or can I explain now?

Anthony Mangnall: Yes.

Dr Morita-Jaeger: As I said, the highlight of this CEPA is e-commerce, so the scope as well. I must say that I like the investment section. The e-



commerce section has showed a lot of progress, then the scope was expanded and the provision definition became more detailed. The major differences between the CEPA and the JEEPA is the new provision for free movement of data and provision of data localisation requirement, the provision of source code, which reflects technology progress and the provision of certification and net neutrality.

The e-commerce section goes beyond the CPTPP e-commerce chapter. I have found some provision in the EU-US-Japan digital trade agreement that provides a similar high standard e-commerce provision in the USMCA incorporated into CEPA, such as the new provision relating to cybersecurity, protection for software algorithms and encryption technology. I observe the e-commerce section in CEPA created a strong foundation for the UK's future negotiation on this digital agreement with its trade partners. That is maybe why it was possible, I observe because the UK national data strategy, which aims to promote innovation flow for information across borders and regulatory co-operation with international partners post-Brexit, allowed such a shift from the EU-style digital trade governance that values more on safeguarding data privacy and security. That was sort of the Asia Pacific-style style digital trade governance, which values more on innovation and the free data flow.

Having said that, I note that UK civil society has a strong concern on free data flow in relation to privacy and personal data protection in international trade agreements. Striking a due balance, striking a good balance between the economic objectives and public policy concern is crucial to developing digital trade rules after the UK leaves the EU.

On tariffs, if you look at the future FT negotiations, I think the UK Government have to listen to non-business stakeholders' concerns for the sake of inclusiveness and explain why the UK becomes ambitious in developing digital trade rules. Without this, I am afraid an anti-movement may grow over time. Those are the two major things that I would like to spotlight.

Q21 Anthony Mangnall: Thank you. Professor Quaglia, can I ask you about business mobility provisions? There does seem to be an improvement on the equivalent provisions under JEEPA. Could you add to how they might benefit the UK and Japanese service suppliers?

Professor Quaglia: I think there are three main improvements between the UK-Japan agreement and the European Union-Japan trade agreement. The first one is about the provision of new financial services, which have been brought in to include all modes of supply, which means the cross-border supply by those establishing the commercial presence in the host country. Also it means the consumption approach is the third mode, and then the fourth one is the travelling of persons with preference to financial services. The European Union-Japan trade agreement only covers the new financial services with reference to one mode of supply, which is the commercial presence in the host country.

The second difference is that the UK-Japan trade agreement does not



include a provision concerning the obligation to store financial data in the host country. It is something that is also in our combination presentation. That would apply in major cost savings, because it means that the UK providers of financial services will not be obliged to set up and maintain financial data storage facilities in Japan and vice versa. That is the avoidance of the duplication of cost.

Then the third difference, which in my opinion is quite a limited one, has to do with regulatory co-operation on financial services. I am not sure whether you would like me to elaborate on this point now or come back to it later on. It would require a couple of minutes of explanation.

Anthony Mangnall: I suspect you might want to come back to it later on when it is addressed in more detail, but that is very helpful. Thank you.

Chair: You are done now, yes. We will go to Mick Whitley, who is standing by. Sam Lowe, were you wanting to come in at this point, just briefly?

Sam Lowe: Yes, just to answer the question on business mobility, because I am not sure it was covered. The UK-Japan agreement has improved some aspects of this. The UK has made clearer commitments on intra-corporate transfers, particularly around provisions related to family members, which I think will be welcome. Japan has made some tweaks as well. I do have one slight question on these, which is that I wonder if they could have been slightly more ambitious, just because when I compare it to the EU-UK draft text that has been put forward by the UK, the UK proposed for intra-corporate transferees provisions of up to five years, whereas the UK-Japan agreement has three years.

Then also in the EU-UK negotiations, the UK has proposed for contractual services suppliers and independent professionals the ability to fill a service contract for 12 months in every 24, whereas the UK-Japan agreement has six months in every 12. This is a very minor difference, but it impacts the flexibility, it impacts the ability of services suppliers to operate and fulfil these contracts. There is an improvement in this agreement, absolutely, but I do think it could have potentially gone further if we look at what was offered in EU-Japan.

The other improvement is now the category of investor is recognised, but another difference is in the EU-UK negotiations the UK proposed recognising the category of short-term business visitor, but has not recognised that category in the UK-Japan. Improvement, yes, but I do think it could have potentially gone further.

Anthony Mangnall: Sorry, if I can just follow up on that, Sam.

Chair: Briefly, if you would, please.

Q22 **Anthony Mangnall:** Do you see that as something that is likely to change and that the lack of opportunity recognised is to be addressed later on?

Sam Lowe: Yes, potentially. I should say that these provisions in trade agreements tend not to create new opportunities for people to move.



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They largely just recognise the existing regimes. If the UK's unilateral regime improves over time, of course that will also apply to Japanese people taking advantage of these opportunities in the UK. My hope would be that this is something the UK looks at over time because mobility of people is something that really matters for the services industry.

Chair: That is one of the things we get told very often by business and is something in the unilateral control of the Home Office. Mick Whitley.

Q23 **Mick Whitley:** Thanks, Chair. This is for Professor Quaglia. How has market access for UK financial service providers in Japan improved under CEPA compared with JEEPA?

Professor Quaglia: Market access has improved, in particular concerning the provision of new financial services, because the UK-Japan free trade agreement has brought in all the four modes of supply of financial services, whereas the European Union-Japan free trade agreement only made reference to one mode of supply, which was commercial presence in the host country. Market access has been brought in in the UK-Japan free trade agreement for financial services.

Q24 **Mick Whitley:** A supplementary, Chair. How do the changes to organisational processes and data use in financial services under CEPA differ from the equivalent provisions under JEEPA and what potential benefits would they offer to UK businesses?

Professor Quaglia: In the UK-Japan trade agreement there is at least general commitment to take authorisation decisions quickly and also to deny authorisation only on a prudential basis, so that is also a new provision that was not included in the European Union-Japan free trade agreement.

Chair: Thank you very much. Mr Whitley, an example of brief and to the point, an example to us all. Thank you very much. Following that example, Mark Hendrick.

Q25 **Sir Mark Hendrick:** Thanks, Chair. Sam, how do the digital trade and data provisions in CEPA compare to those in JEEPA and what benefits might they offer the UK and Japanese businesses?

Sam Lowe: There have certainly been improvements. There is a much stronger commitment to refrain from levying duties on data flows, much stronger commitments to refrain from forcing companies to localise their data in each other's territories and there are commitments around not forcing companies to hand over algorithms and the like. As was mentioned by Minako, this is something that is certainly an improvement over the previous EU agreement and is something that potentially could be described as ground-breaking and that at least match some of the provisions recently put forward by the US in, for example, its agreement with Japan.

The point I would make here though is that there is a need to understand what these mean in practice because what the UK and Japan is committing to here is to not introduce future barriers, because they are



things we do not do. We do not force data localisation in Japan. It is not forcing companies to localise their financial data; that does not happen. What this means in practice is that investors are given greater certainty that these provisions will not be introduced in future. This is important for the investment environment, but it does not necessarily show up in cross-border trade flows because nothing has changed in that perspective.

There is also something important here in setting a precedent and a precedent on the future deals the UK is planning to do and also future deals that Japan is planning to do, so there are some benefits there. I am sure Minako could expand on some of this.

Q26 **Sir Mark Hendrick:** Minako, do you want to expand?

Dr Morita-Jaeger: The implication for business, I think the second section maybe more the UK industry will have a high opinion of this. In practice, I have the same opinion, so that relatively the UK and already Japan are under the EU-Japan framework, then even adding more innovative provisions in business practice, how it will be a benefit to the daily business, I am not sure. Nothing particular to add more than that.

Q27 **Sir Mark Hendrick:** Could perhaps yourself or Sam say a little bit about how CEPA might address the issue of protection of UK consumers' personal information? A great deal of concern about the way in which we get so much spam from sources that is totally unsolicited. Can you perhaps say a little bit about that, Minako and then Sam?

Dr Morita-Jaeger: Yes. As you might be aware, the EU is dependent on the adequacy agreement on data protection of personal information as a side product of the EU-Japan EPA. I certainly understand the Japanese Government had already committed to the adequacy decision. Japan had a supplementary rule to give more protection of personal data from the EU in the EU-Japan adequacy agreement, but whether it applies to the UK's data I am still not sure, but this is something that I want to clarify with the Government.

The second question is relating to article 8.80, chapter 8. This is the provision about the future regulatory co-operation. It is how the UK and Japan are going to develop regulatory co-operation in this area, because this is the clear policy shift from the EU framework to the Asia Pacific, mostly CPTPP, America and Japan kind of digital governance. How the UK would like to develop this in the international trade agreement is still not clear for me.

Q28 **Sir Mark Hendrick:** Sam, do you want to come back on that?

Sam Lowe: Not too much to add. Yes, my understanding is that the UK and Japan have deemed each other adequate for data purposes in the same way that the EU and Japan have done, so that will continue as before.

Q29 **Mark Garnier:** Minako, can I speak to you a little bit about foreign direct investment and investment clauses in this agreement? You are right that



it is notable that investment is a shortfall area in this agreement, but you then go on—and I think it is slightly more interesting—to say, “It is unclear what kind of FDI policy framework the UK would like to design post-Brexit”. Do you want to expand on that?

Dr Morita-Jaeger: Thank you very much for the very interesting question. The thing is the UK-EU-Japan EPA includes all the investment liberalisation and it does not have a comprehensive investment chapter that includes investment protection and a dispute settlement mechanism. The reason is because of uncertainty after Brexit and then also Covid-19, Japan’s investors maybe review the model they established from the 1980s to use in the UK, as you know, and access to the EU market. How to retain the existing investment and how to enforce valid investment relation is the critical issue in this perspective.

The thing is, checking the UK-Japan provisions, nothing happened and then only the one provision about the future, so the review consultation about the possibility of including investment protection and then ISDS in the future. Only one provision was added with regard to investment. This means Japan is eager to include investment protections and then a comprehensive investment chapter, but the UK itself is not ready for that.

Q30 **Mark Garnier:** It is a very interesting point. I will pick you up on a couple of things you said there, which to me are very interesting. The first is I think you suggested that because the UK is coming out of the EU, it makes the UK’s forward policy less predictable than it would otherwise have been had it been in the EU and, therefore, that could have an impact on Japanese enthusiasm to invest in the UK. I think that was the first point, just to make sure I have that right.

The second point was without any clarity of how the UK’s relationship with the EU is going to go forward in the future, because of course we do not have that, that makes the UK economically less of a certain bet than it otherwise was. Do I have that right?

Dr Morita-Jaeger: I completely agree. The thing is the UK-Japan CEPA has completed the basic point at the limit, that they conferred into the valid relation that the heart of the UK-Japan liberalisation is involving the EU. This is just one side of the economic relation between the UK and Japan. In that sense, investment should have been the major strategy of the UK Government for CEPA. The investment chapter is one portion of the strategy and then to just assure, the commitment is showing the commitment to the existing Japanese investment.

But more or less, not only the investment chapter but also the relation with the tariff rate and the rules of origin, all the matters to investment. Also the temporary movement of personnel, as Sam said, is a very critical issue. As I said, while the UK tried to catch up to what Japan committed in the EU-Japan EPA on the movement of natural persons, it is still not yet entirely reciprocal. All of these things in the future FTAs, then not only the outward FTA but inward FTA, how to cope, what is the role of FTAs for the UK, that is something where the UK Government have to



make the position.

- Q31 **Mark Garnier:** That is very helpful. Sam, can I ask you to follow on from that? It is a very interesting point. In the parliamentary report, the Government says CEPA seeks to provide for “continuity in the investment relationship, making it easier for UK firms to invest in Japan” and this is the important point, “and reinforcing the UK’s position as the top destination in Europe for investment, and third in the world”. Following on from Minako’s point, is it not the case that that is quite a heroic claim to make when we do not know whether people investing in the UK are going to get access to the European single market and to the other 27? Is this not crucial in how we can make claims about how successful these trade deals are?

Sam Lowe: The final bit of your question is difficult because it depends if we are approaching this trade agreement in isolation or as part of a much broader package, but I agree with what has been said. The main component of the Japanese economic relationship with the UK so far has been one of investment and it has been about investing in the UK so as to allow Japanese companies to access the rest of Europe as well as the UK market.

The fact that we are going to make accessing the rest of the EU market inevitably more difficult at the end of the year to varying degrees, depending on what that relationship is, will obviously have an impact. We have seen Japanese investment banks having to open up subsidiaries in Frankfurt in order to manage this. We are going to see some of the FDI that would otherwise have come to the UK shifting to Europe. There is then a question in the context of this free trade agreement: what do these provisions do in terms ensuring future FDI comes to the UK, maybe in other areas that it did not before? You are thinking about digital. I would argue that digital provisions are part of that discussion in that they provide some certainty around the direction of travel in the UK as to its rules on data localisation, cross-border flows of data and the like.

Yes, I would agree that the investment chapter is interesting in that it did not include investor state dispute settlement, which is something the Japanese would have liked to have included in there. It is something that the EU had to carve out of its trade agreement with Japan as well. The reason for this is it is controversial. My answer as to why the UK did not necessarily go along with this ask is the time constraint. If this agreement included investor state dispute settlement, this discussion we are having now would be much different because the public backlash in the UK to this rollover or new agreement—however you want to frame it—would be quite large because lots of people have very strong opinions about it and what benefits it confers on foreign investors. It is something that scuppered the TTIP negotiations.

In my view, it seems that the UK has decided to kick the can on that slightly. It has included provisions saying, “We will return to this issue later and address it then,” but in my view, in order to get it through quickly—which is what they needed to do, and I would agree with that—



by the end of the year, they have decided not to look at that just yet.

Q32 **Mark Garnier:** Is that a glaring omission from the deal? Should we have had it?

Sam Lowe: I do not think it is necessary between the UK and Japan in that we both have quite fully functioning legal systems. There is an argument to be made that because the Japanese investors value it that its inclusion could have given them more certainty when it came to investments into the UK, but I think the Government have made the right decision here. I think the main priority was getting the bulk of this agreement done by the end of the year and having this domestic fight now could have jeopardised that, so kicking the can was the right option. We can argue about this later.

Q33 **Martin Vickers:** In respect of support for SMEs, could the witnesses outline what specific benefits they see for SMEs entering into trading relationships with Japan? Yes, Dr Minako.

Dr Morita-Jaeger: Thank you very much. The UK FSB published the report on the SMEs and the FTAs and the better practice early this year. After this, I would like to explain the key issues. The UK-Japan CEPA introduced eight new provisions promoting bilateral co-operation activities to assist SMEs in participating in the global market, so that is article 25. It stipulates areas of co-operation, including organising seminars, workshops, information sharing and best practices. The EU-Japan JEEPA can be considered as one of the best practices with regard to SME provisions in a situation that supports implementation of those provisions. Since the UK Government were completely depending on the European Commission to implement the SME provision under the EU-Japan EPA framework, the UK Government have to take an active role to support the British SMEs, utilising the UK-Japan CEPA.

The activities may include in practice establishing a scheme to disseminate information and providing practical support for SMEs in order to reduce constraints, such as a lack of financial human resources and access to information, for example, online information services and a helpdesk and seminars with SMEs across the UK to understand the UK-Japan CEPA and agreement. In that sense, rules of origin is a very complicated area, the SMEs always have difficulties in understanding and using it, so this is an area the UK Government have to tackle in supporting SMEs.

Q34 **Martin Vickers:** That is helpful, thank you. Do either of the other two witnesses want to come in on that?

Sam Lowe: The SME chapter is copied from the EU's SME chapter. I think it is probably good. I am slightly sceptical about SME chapters in general because they tend to just say, "We will make a website and we will keep it up to date", which is good. I just assume we should be doing those sorts of things anyway. It does not need to be written into a trade agreement in text, but if that trade agreement does push Government into doing that the providing this information readily to small and



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medium-sized enterprises then, yes, of course that will be of benefit to them.

Martin Vickers: Taiwo, did you want to come in now?

Chair: Taiwo, is there anything you want to add or ask there?

Taiwo Owatemi: No. I am happy to move on.

Q35 **Chair:** Thanks very much, Taiwo. I hope all the technical stuff is sorted out now. I have a feeling it is a day for technical stuff. Let's hope that we do not tempt the gods any further.

Sam Lowe, can I ask you about article 1.9.5, which provides where there is an inconsistency between CEPA and the Northern Ireland Protocol, a party is not prevented from taking steps in relation to the inconsistency? How do you think this agreement would be inconsistent with the Northern Ireland Protocol and what types of remedy actions could be taken?

Sam Lowe: This is slightly hypothetical, in that this provision just holds that the Northern Ireland Protocol take precedence over what is in the UK-Japan agreement. On what the additional provisions accorded by the Northern Ireland Protocol could be, it is possible that the Joint Committee could introduce provisions that meant that if you were importing into Northern Ireland under the provisions of a UK free trade agreement, you not only had to demonstrate the rules of origin, but you also had to demonstrate that that product was going to remain in Northern Ireland so that there is no further risk of onward transport.

This would be an additional burden on the importer that potentially could be non-compliant with the UK-Japan provisions on TBT, but this article allows for that to happen. It says that the Northern Ireland Protocol takes precedence. At the moment we are left coming up with hypothetical examples because we do not know where it would clash. It just means that if it does, the Northern Ireland Protocol comes first.

Q36 **Chair:** There will be no danger of breaking international law in any specific or limited way—to choose a random couple of words—as regards this agreement then?

Sam Lowe: I am not going to comment on that.

Chair: Okay, fair enough..

Q37 **Lloyd Russell-Moyle:** The Secretary of State told us last week that the UK expects to cede to CPTPP by 2024. To some extent, many of the provisions in this are expected to live as long as that but not necessarily longer. How realistic is that timeframe and what are the implications for UK trade with Japan under CEPA, particularly in respect to the TRQs that the Secretary of State indicated would be replaced with a CPTPP-style arrangement?

Sam Lowe: I am happy to answer this, but also aware I have spoken quite a lot.

Chair: Give it a go at the moment.



Sam Lowe: Okay. 2024, it is ambitious but it is not impossible. I think when you consider that with the Japan agreement concluded and my assumption that we are going to have a rollover with Canada as well and with the New Zealand and Australia negotiations—at least to my mind—possibly concluding next year, we are going to be at a point by 2024 where we have a trade agreement in place with most of the CPTPP members. There are still questions about the Mexico rollover and we probably will not have Malaysia and Brunei by then, but we could have everyone else, so I think CPTPP accession is possible.

In practice it could mean that the UK could, as part of that, negotiate access to more TRQs, so it could expand the range of TRQs open to the UK. On the broader benefits of CPTPP membership over just having bilateral relationships with each of the parties, which is what we are on course to have, it would allow for diagonal accumulation to come into effect between all of the CPTPP members, which would potentially help when it comes to supply chain management and increasing the possibility of exporters qualifying for the tariff-free trade.

Yes, I think it is possible. It could open new benefits. It will not necessarily be easy. Quite a few of the CPTPP members have made a commitment to remove all tariffs as part of their commitments there. Japan is not one of them, but Australia and New Zealand have and they will presumably ask the same of the UK, so the UK will have to navigate that if it is not something it wants to do. To my mind, it is more probable at this point in time than a trade agreement with the US.

Dr Morita-Jaeger: Nothing to add about the TRQ, but I would like to say in general whether the timeframe of 2024 is realistic or not, but in substance, yes, the UK-Japan CEPA can be considered a stepping stone towards the CPTPP. But I would like to draw attention to the rapidly changing political landscape surrounding the CPTPP. A big game-changer will be the new incoming US presidency of Joe Biden and the implication of his trade policy. Trade policy does not seem to be the new President's top priority, but the US might revisit the CPTPP and renegotiate it, using as a counterbalance China's geopolitical presence in the Asia Pacific region. Also the CPTPP members would strongly expect the US to rejoin the group at the first place, so what this means for the UK is something to reflect.

Q38 **Lloyd Russell-Moyle:** Would it be likely that America would jump us in the queue in those kind of negotiations and mean that we were having to negotiate an agreement with the US as a full member or would the expectation be that we would get there first and then America is having to negotiate with us as a member, or are we talking about a track that we both end up negotiating at the same time and join at the same time? What is the kind of anticipated timescale if that is the scenario?

Dr Morita-Jaeger: Sorry, it is very difficult to predict those other options when the new President has not started his Administration, so I cannot say that. My point is the decision of the CPTPP members is that all these CPTPP members will now just look at the US from next year. That is my



point.

Lloyd Russell-Moyle: They might get distracted, yes.

Chair: Lloyd, somehow we lost Dr Anna for a while there. You might want to address your question to her as well, the CPTPP one, since she has returned.

Q39 **Lloyd Russell-Moyle:** I can see you are back, Anna. The question is the Secretary of State of course has said that we should cede into the CPTPP by 2024. My question more generally is how realistic is that? What are the implications of trade with Japan under this, particularly maybe related to TRQs? The Government have indicated they only expect the headroom until 2024, because then they hope the CPTPP will kick in and they would not need the headroom beyond that of the EU leftover part of the TRQs. Is 2024 realistic and what are the political consequences if that is delayed?

Dr Jerzewska: Yes, thank you for that question and thank you for repeating the question for my benefit. Apologies for dropping off, I lost internet connection and I am doing this now from my mobile, as you can probably see, but these are the joys of the second lockdown.

I would agree with the answers I have heard from the other panellists. It is always incredibly difficult to predict things like that and to give an answer and an estimate because again, the same as with estimates for the impact on the GDP, there are so many factors in play, so many things that can happen and go wrong or go right. 2024 is definitely much more realistic. It is definitely realistic when you compare it to 2021, but there is still quite a lot to do in sequencing. I am personally not entirely sure whether the UK will want to rejoin CPTPP, but I guess we will see.

In a way, sequencing would be two different processes and they do not necessarily have to be tied together. You could say the US is a founding member, if not of the P4, the initial version of the TPP, the previous version of this agreement. On the importance for the current members, the US joining this agreement versus the UK joining this agreement, it has a slightly different weight attached to it.

Q40 **Lloyd Russell-Moyle:** Are there any risks for CEPA, particularly in the TRQs, but other areas if that date was pushed back later or is CEPA good enough to go on and on and on without the time pressure of joining CPTPP?

Dr Jerzewska: Again, it is an incredibly difficult question. There is quite a lot that can change in between now and then. Again, I cannot provide the answer for that, but the question would be what would happen if the UK was not be able to join the CPTPP by 2024 with TRQs and what would be done in the meantime. Again, it is purely speculative at this point and it is very difficult for me to give a precise answer.

Professor Quaglia: Perhaps I would add with reference to financial services, the CPTPP has very limited provisions. Although it would also mean that it is an additional market of 11 other countries, many free



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trade agreement provisions on financial services are very “thin”.

Q41 **Lloyd Russell-Moyle:** In some respects it could not replace this agreement because this agreement goes further on financial services and some of the other areas, so it would help complement in some areas, but not others?

Professor Quaglia: That is correct, yes.

Lloyd Russell-Moyle: That is useful. Thank you very much.

Chair: Great, thank you. I think on the CPTPP, the Americans were expected to join and certainly the American Chamber of Commerce expected them to join, so I think the pressure in the States will be, with the change of regime, to get on and get it done.

Anyway, getting on and getting it done is what we have done with the first panel. Can I thank you all? Great to have you all, as ever, and some witnesses that we have seen in the past of course as well. I hope it will not be too long before we see you again. We will move on to the second panel, but I thank Dr Anna Jerzewska, Sam Lowe, Minako Morita-Jaeger and Professor Lucia for being with us this afternoon.