

International Trade Committee

Oral evidence: Digital trade and data, HC 1096

Wednesday 10 March 2021

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

Questions 81 - 109

Witnesses

[II](#): Jim Killock, Executive Director, Open Rights Group; Sabina Ciofu, Head of EU and Trade Policy, techUK; and Sue Davies MBE, Head of Consumer Protection and Food Policy, Which?



Examination of Witnesses

Witnesses: Jim Killock, Sabina Ciofu and Sue Davies MBE.

Q81 **Chair:** On panel 2 we have Sabina Ciofu, who is back again. I think we have seen as much of her as we have seen of some of our colleagues; maybe more than Anthony Mangnall, who knows, or Lloyd Russell-Moyle. We also have Sue Davies and Jim Killock. I will let each of you introduce yourself in turn. Give your name, rank and serial number, or whatever else you might want to say by way of introduction.

Sabina Ciofu: Thank you, Chair, and good afternoon everyone. Sabina Ciofu from techUK. We are the trade association for the UK tech sector. We represent about 850 tech companies across the UK, about 90% of which are small and medium-sized enterprises. It is great to be here again.

Sue Davies: Good afternoon. I am Sue Davies and I am head of consumer protection and food policy at Which?, the independent consumer organisation and consumer champion.

Jim Killock: I am the executive director of the Open Rights Group. We work on privacy and free expression in the digital age. We have been going for about 15 years.

Chair: Great. Thank you very much, and thank you, all three, for joining us. To start off this panel, I will go to our colleague Sir Mark Hendrick.

Q82 **Sir Mark Hendrick:** Sabina, how does techUK assess the Government's approach to digital and data provisions in free trade agreements?

Sabina Ciofu: As you have heard from me before, we have been very supportive of the Government's agenda to put digital at the fore of their trade policy, which reflects the way the UK economy is structured and the needs of UK's industry in this space.

We have seen some early and very good signs of a good digital trade policy in both CEPA and the TCA with the European Union, where the UK is slowly crafting its own view of what good digital trade looks like. For instance, in CEPA we have seen quite a few of the CPTPP provisions, as some of the previous speakers have said, but also some provisions from other trade agreements, for instance from the US-Mexico-Canada agreement, something on open government data and access to open government data. I think the UK is navigating all these different good trade provisions around the world and trying to incorporate them into a consistent view of its own.

In the TCA—I am sure you have heard a lot about it—and the agreement with the EU, we have a very good digital trade chapter. It is the first time that the EU has had a digital trade chapter in a trade agreement, so that is definitely a good starting point for further co-operation.



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There are also some exciting negotiations going on right now with Australia and New Zealand, two members of the CPTPP that concluded very advanced digital trade agreements last year. These are digital-only trade agreements with a lot of good commitments and regulatory co-operation, looking at things like digital ID and safe and secure online environments. There are some very good provisions in there and some very good partners to negotiate with when it comes to digital trade.

We are also very excited about the upcoming trade negotiations with Singapore. There is a plan for a digital-only trade agreement with Singapore, which again we think will be at the forefront of what good digital trade looks like right now. That is a very promising negotiation, as well as the review of the agreement with Canada.

We have been very supportive of accession to CPTPP, and the WTO e-commerce negotiation has been running in the background for quite some time now, but hopefully with some progress now that the UK is also a big voice in that. We are definitely supportive of the Government's agenda in this space. We think there is great opportunity to drive a positive agenda in digital trade, and we can't wait to see what is coming down the line this year.

Q83 Sir Mark Hendrick: You certainly seem to have a lot on your plate. Can I take you back to the UK-Japan agreement? Could you summarise the provisions banning unjustified data localisation in the UK-Japan agreement? Does your organisation support these provisions?

Sabina Ciofu: We are very supportive of the ban on data localisation provisions in trade agreements, especially for a sector that operates across borders and across markets, and sometimes globally. It is very important for companies in, for instance, artificial intelligence or financial technology in the UK, especially SMEs, who can access foreign markets without actually having to set up shop there or build local infrastructure. That is very important. For the Japanese market, which is a very big market, we have already seen quite a lot of interest from our members, seeing how they can take advantage of both the ban on data localisation and the open government data provisions that allow companies to access government data and basically trade their algorithms or services to deploy them readily on the Japanese market.

We are definitely very supportive of the ban on data localisation, not only in this agreement but generally in trade agreements and hopefully at WTO level as well.

Q84 Sir Mark Hendrick: Could you summarise the provisions concerning the mandatory disclosure of source code in the UK-Japan agreement? Do these provisions adequately protect businesses' intellectual property rights?

Sabina Ciofu: Indeed they do. This is a provision that appears in a lot of trade agreements around the world. It is mainly done with a view



towards China, which asks for disclosure of source codes and encryption keys for access to its market. The reason why all these trade partners put this language in their own trade agreements is to keep making the point that this is important, that the protection of IP rights is important. Yes, we have seen that language in a number of agreements. We think it is very sensible language and it protects the IP of innovative firms, especially in the tech space and especially as we think down the line of emerging technologies and other such areas.

We are very supportive of that provision as well. It is language that we have seen in other trade agreements, and we think it is sensible for protection.

Sir Mark Hendrick: Excellent. Thank you, Sabina.

Q85 **Mick Whitley:** Good afternoon to all our guests. This question is to Jim and Sue. How would you assess the Government's approach to data localisation and mandatory disclosure of source code?

Jim Killock: We are most concerned about the source code provisions, particularly as they apply to algorithms. I characterise this as being very premature. This is a new area, particularly the algorithms part, preventing disclosure of algorithms. It affects a huge array of government policy areas. The potential, therefore, to constrict government policy objectives, is quite severe. To do this without widespread consultation, to do it in the first trade agreement that you have reached, feels a bit risky and it should only have happened after everybody had had time to examine what was going on.

The risk here is that the Government are proceeding without a full view of the consequences of restrictions to accessing algorithms. The Government have, from their own point of view, tried to find exceptions and to build in some safeguards, but there is no guarantee that they have thought of every single circumstance where this will be needed. We know how important algorithmic decisions are to people's lives. We saw over the summer what happened with the exam results and, of course, people at that kind of point need to know how decisions were made. This will be about how they are judged when they get a job and so on. People will be assessed by some machine and will want to know why that decision was made.

At that point, although the Government have reasons within the Japan agreement to say we can get regulators to look at the algorithms and we can get the courts to do that, if that is necessary, it is far harder, when it is private-to-private arrangements to say this person needs this information to be disclosed and there should be a law to make sure that this information is disclosed, or that someone can see certain things out of algorithms. To decide that for effectively all future generations, all future Governments, all future political objectives, without any consultation with Parliament, without any process to gather evidence,



seems to be a derogation of responsibility and is certainly not taking back control.

Sue Davies: We have some similar concerns. We fully support enhancing digital trade and can see that there are real opportunities for consumers in greater choice and access to digital goods and services, but we think a balance needs to be struck where we make sure that we have world-leading consumer protections underpinning it. The Government have had a big agenda around regulating online harms, and Which? found lots of issues where we feel that consumers are not properly protected. The ban on mandatory disclosure of source code and algorithms concerns us because, even though there are some exceptions for regulators, for example, we need to make sure that they are able to properly scrutinise decision-making systems and hold them to account, and make sure that we have control over them so that consumers are not being targeted in inappropriate ways, for instance having unwanted advertising targeted at them.

We think we need to be very careful about this type of ban within trade deals, within the Japan deal but also more generally.

Q86 **Lloyd Russell-Moyle:** This question is mainly for Sue Davies. What is your assessment of the Government's approach to consumer rights? Do you think the approach reflects consumers' priorities within what they would want for digital protection, or has that not been at the forefront of the discussions?

Sue Davies: I think it is quite early days. The Japan deal and the EU deal are the biggest indications of the type of approach that the Government will take. As I just mentioned, we think there are huge opportunities for consumers, but we have to make absolutely sure that, if we are opening up data flows, it is underpinned by effective data protection and wider digital rights.

To understand what people want in digital trade, as well as in trade deals more generally, we carried out a big piece of consumer research at the end of last year. It was called the "national trade conversation" and all parts of the UK—Scotland, Northern Ireland, the north of England, Wales, the south of England—took part. It involved people from all walks of life. We talked about a mix of things that could be on the table as part of trade deals, including digital trade. The research showed that people are excited about the opportunities offered by digital trade—this came out across all the different sessions that we held—and felt that they could benefit from greater choice and access to new types of services and goods, but absolutely thought that the Government needed to uphold the world-leading data protection regime that we have and make sure that they continue to look at how they could regulate online harms.

If you judge where we have got to against that, or what is to come in trade negotiations, we think there are several key issues that the Government should be promoting. The first is being world-leading and



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setting an agenda where, as part of trade deals, we are promoting better cross-border consumer rights. With people shopping online more than ever, as we have seen in the pandemic, and shopping across borders, we need to make sure that there are effective protections in place and effective co-operation between the different competent authorities that are dealing with that. That will enhance consumer trust.

We also need to make sure that we are not restricting the UK's ability to pursue its online harms agenda and regulate in the right way for UK consumers. Related to that is the issue we have just talked about—having access to source code and algorithms when it is appropriate. We think there needs to be a strong net neutrality principle, which the UK has always upheld, within trade deals. More generally, we think there need to be wider consumer benefits being promoted within trade deals, showing tangible benefits for consumers. That includes things like looking at opportunities to enhance cheaper or free roaming, some of the positive things that the Government have already included, such as use of e-signatures, so that signing contracts is a lot easier, and making sure that we do not have customs duties on digital transmissions.

Another key aspect that is absolutely fundamental—and the previous panel focused on it in detail—is upholding the robust data protection regime that we have in the UK. At the moment, it is a slightly mixed picture. The Japan deal includes some provisions around consumer protection but they are still quite vague and not necessarily taking us much further. As I think we will come to later in this session, there is a slightly disturbing shift in the approach that has been taken to data protection. We think that some provisions that have been included risk inhibiting the UK's ability to regulate online harms in the way that we think they need to be regulated.

Overall, we think there is an opportunity for the UK to show leadership on this issue, show that it is possible to get the balance right, making the most of digital trade and data flows and bringing greater choice, but also promote a strong consumer protection regime. As part of that, we want a consumer chapter to be included in trade deals in the same way as, for example, SME chapters are included.

Q87 **Lloyd Russell-Moyle:** I agree with you. Hopefully, the Committee will do some more work on consumer chapters, but that is for the future.

In the last panel we heard a bit about a clause that allows businesses to self-regulate on data protection, to create self-regulatory frameworks rather than having statutory regulation frameworks for data protection. Does the trade deal offer hope for consumers who are trying to get redress, when British consumers are trying to understand the myriad different ways their data might be used and held, and to seek redress if the rules are not followed, or is there not much clarity?

Sue Davies: Specifically on data protection, there are some worrying provisions in the Japan deal, not only the reference to voluntary



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undertakings, which, as has already been discussed, could be interpreted to mean that self-regulation could be seen as equivalent to the sort of robust regulatory regime that we have at the moment, but also the reference to international guidelines, which tend to set the minimum standard rather than the gold standard. There are differences between the regimes in Japan and the UK.

We want to make sure that the UK, as it approaches that trade deal but also as it sets a precedent for its approach to other trade deals, is building on the robust data protection regime that we have now. The Government have said they intend to do that, but some of the wording in these trade deals, including in the CPTPP, is concerning. There is a potential risk, if we sign up to them, of the wording undermining the Government's approach and intentions.

Lloyd Russell-Moyle: Jim put it very well, about having those national discussions and not signing it all away.

Q88 **Chair:** Jim and Sabina, what are your views on the regulation of online harms and net neutrality in the UK's free trade agreements?

Jim Killock: We are quite critical of the Government's approach to online harms. We are very concerned that they are trying to place the regulation of free expression with the state regulator. We would never contemplate doing that if we were talking about the newspaper industry, for instance, and yet it seems reasonable to put legal speech into that sort of regime for online harms.

Nevertheless, we do not want this sort of thing in trade agreements, on principle. The problem with trade agreements, as you heard from the last panel, is that they are governed by trade dispute mechanisms and tribunals, which look at the agreement through the prism of trade and therefore look for the least restrictive mechanisms for trade when they are looking at what these agreements say should happen. Placing any kind of free expression, privacy or other fundamental rights objectives into a trade treaty invites a restriction on those fundamental rights to the maximum extent possible to liberate trade; that is to say, the minimum rights for the maximum trade. That is the balance that is likely to be struck through trade courts.

On principle, we think this is a bad idea, particularly putting online harms and liability protections and so on into trade treaties. They just should not be there. As the Open Rights Group, we have to recognise that this is a very contentious area. Whatever the Open Rights Group might want, the key thing is that whatever happens on online harms is governed by courts that we respect and by legislators who are accountable to the public, not trade courts. I think something like online harms being governed through trade laws is deeply inappropriate and should not happen.

Q89 **Chair:** Expand that a little more. How might the Government treat



newspapers differently in this sphere?

Jim Killock: The Government would never impose state regulation on the speech of newspapers. The Government know that the idea of state regulation of the press is a green light to the rest of the world to impose all kinds of censorship and have morality police all over the place. The UK Government do not want to be the Government that does that, yet a state regulator, Ofcom or whatever it decides is the appropriate mechanism, is apparently the right way for online harms. I don't like that idea. The Open Rights Group is very worried about that. It is not a trade issue, and it should not be made into a trade issue. That is the point we agree with, even those people who think Ofcom should be making these decisions.

Q90 **Chair:** Sabina, much the same question: what are your views on the regulation of online harms and net neutrality, and anything you want to pick up from what Jim said?

Sabina Ciofu: First, I briefly want to touch on a point from an earlier question. The language on source code and algorithms does not prevent the modification of that software to comply with our laws and regulations. My reading of that language in a trade agreement is generally through the lens of regulatory autonomy. When it comes to domestic laws and legitimate interest in domestic laws, you are not prevented, as a country, from doing that.

When it comes to net neutrality, I very much agree with what Sue said. It is definitely a cornerstone of the UK approach to regulation. It is very important that that is put into trade agreements. We agree with the language there and are very happy that it is included as a principle.

When it comes to online harms, I will not dig into the whole domestic discussion on it, first of all because I am not an expert on it, but from a trade perspective, the principle of limited liability for online intermediary activities has been a core component of the legal framework that underpins the internet. To a very large extent, it has been fundamental to the growth of the UK's digital economy. We have a diversity of services that are functioning as online intermediaries and that provide easy access to new markets. That liability is limited and conditional. It is not a blanket exemption from the law. For trade-enabling services to function, companies need some level of assurance that they will not be held liable for communications that arise between businesses and consumers using their tools.

The principle in itself is important. How each country looks at regulating, whether or not they call it online harms, or if you look at the EU or the US, everyone seems to be looking at this issue in slightly different ways, but the principle of limited liability should be included in trade agreements. There should also be a commitment for regulators to talk to each other, and for policymakers to talk to each other, as we develop these new laws—especially with our closest trading partners and like-



minded countries—to ensure that we are not building borders over the internet for various reasons. That does not take away the power to regulate online harms in whatever way the Government intend, but the principle is important and I would like to see it included in trade agreements.

Q91 Chair: You are quite happy to have Ofcom in this space, as opposed to Jim's view. It is interesting for the Committee to hear different views, but do you think this is a different area from newspapers, for instance? Without putting words into your mouth, would that be because the internet is so immediate and the control of newspapers is different?

Sabina Ciofu: I am not talking about the online harms approach or the discussion internally. I am talking purely about the protection of intermediary liability, as we have seen it in the commerce directive and, basically, in the laws that are the fundament of the internet economy. I am talking purely of the principle. How that is being currently discussed and regulated domestically in a lot of the markets that we are negotiating trade agreements with is a different matter, but that is not affected, in my understanding of how we do these trade agreements. That is not affected. You can still do domestic regulation on online harms in the way you want while committing to protecting intermediary liability as a principle in trade agreements.

That then allows some level of legal certainty for companies operating as intermediaries. A lot of our members, who are small intermediaries, have to navigate multiple different jurisdictions. Having that principle as the basis on which they operate, and having some certainty that they are not going to be held liable for whatever consumers and businesses do on their platforms, is very important for them to be able to operate in foreign markets with some level of certainty.

Q92 Chair: Thank you for that. Jim, I am not trying to stir the pot here. I am genuinely trying to understand, but I am playing a bit of devil's advocate as well. Picking up from what I have just heard, the problem is not that great, really. I want to be as provocative as I can in as few words as possible.

Jim Killock: The question for me is: why do this? The argument has been made that it provides legal certainty. I certainly think that liability protections in the UK context are right, but for us the question is that in principle this is a matter of balancing human rights and deciding what the right way to legislate is. Do you want to be tied up, in a trade agreement, to take particular approaches? I don't think it is right to do that. We would steer clear of things on liability protection and also things on data protection. We would keep data protection out of trade agreements because that is about balancing the privacy rights of citizens with the business interests.

Those things will change over time, and we do not want to have the Government in a situation where lobbyists are saying, "You committed to



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this in this trade agreement. You do not want to be getting into trade disputes. You should not be doing this, that or the other.” Those things, even if they are not about courts and the legal effect of these treaties, are chilling for the policy process. They are weapons for people who are very well paid by very large corporations to help Governments suppress their instincts when it comes to the way they want to regulate and protect their citizens. Our advice would be: as legislators, do not do it.

Q93 Chair: Would citizens and groups not argue back that it would be safer? You will admit that there is a tension here.

Jim Killock: The point we are making here is that data protection needs to be protected and free expression needs to be protected. Do you want to place those protections and governance in trade agreements, where the race is always towards pushing for the maximum trade and the least rights protection, or do you want to make those decisions as legislators? Here you have a great deal of pressure essentially to push your sovereignty out, put those things into trade agreements and be for ever limited in the way that you can legislate and the way that you answer to your citizens for the policies that you put forward.

Sue Davies: Following up on the last point, what concerns us is where provisions that are included in trade deals could inhibit our pursuing our domestic agenda. On the issue of online harms, we were particularly concerned that, in the US negotiating objectives for a UK trade deal, one objective is that legal liability should not be extended for online platforms. As Which?, we know that people are increasingly shopping in online marketplaces. The last time we did a survey was before the pandemic. Then nine in 10 people had bought something from an online marketplace. We keep finding problems with unsafe products, fake reviews and scams. Some marketplaces are better at controlling those things than others, but generally there is a quite weak regulatory regime and we are dealing with a consumer in the UK who is buying from a marketplace that might be based in the US, for example, with sellers based in China.

It is a very complicated picture and an area in which the UK has been reviewing what is the most appropriate type of regulation. We should make sure that we are not limiting our approach by signing up to provisions within trade deals that prevent our regulating domestically. We should instead be looking at whether there is a way that as part of this trade deal we could enhance the way we work together, where we have such a complicated situation with so many jurisdictions.

Q94 Anthony Mangnall: Just to reassure you, if my camera is not on it is only because of a low battery. I am certainly listening in.

Chair: We never doubted you once, but I did note at the beginning that we have seen more of Sabina recently than we have seen of your good self.

Anthony Mangnall: All you need to do is turn up to Westminster and we



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can hang out as much as you would like.

Jim, your organisation has been incredibly outspoken about a lot of the trade deals and the Japan-UK agreement. What do you want to see improved in future trade deals when it comes to digital trade?

Jim Killock: There are lots of things. The best thing to do is keep a lot of it out. Until we know what the safe route is, we should be careful. The absolute minimum, given that the Government are pursuing this, is that the Government create legal certainty that data protection will not be undermined. I noted in techUK's submission that it emphasises the need to keep adequacy with Europe and to make sure that data flows with Europe. We entirely agree with this. What we are less sure about is whether the UK-Japan agreement does not contain risks to those flows and, in particular, to the UK's ability to operate an adequacy system over time, that is to say for us to grant adequacy to third countries in the same way that Europe does.

You saw in the previous panel a great deal of debate about where the risk emanates from, and it comes from this idea that restriction should only be that which is necessary. They also discussed how trade dispute mechanisms interpret "necessary" extremely strictly and do the best to limit those kinds of interventions. Given that the UK-Japan agreement says, quite directly, that all kinds of frankly inadequate standards can be used for data transfers and these are all pretty much acceptable and we should just let rip and have all those things, it leaves room for those sorts of instruments to be challenged and for us to be told that we cannot have high standards for data transfers. That would completely undermine our relationship with Europe on data transfers.

Q95 **Anthony Mangnall:** You are talking about not having any risk at all, and that is just not what a trade deal is about. A trade deal, by its very virtue, has elements of risk in it. In one respect, that is the value of doing them. I hear the points that you are making, and of course they are extremely honourable, if I can put it that way, but the point is that the Government seem to have moved already in a direction in which they want to provide more transparency to this Committee and to have more debates in Parliament. You cannot avoid the entire risk that comes with a trade deal. Isn't it better to try to formulate arrangements in collaboration, rather than isolation and staying with the same old familiar territory?

Jim Killock: The question is what risks you want to run, for sure. Our point is that the Government are facing in several directions at once and they must decide whether they want high data standards for protection, as they claim, or are they willing to risk those, as we are saying they do. Do they want transfers with the EU to be easy, or do they want to place risks on that? They are doing these things. They are running risks, which they claim they are not, as well. That is not fair.



The other thing that I think is important for you as a Committee to think about is the sort of analysis that the Government are providing. Usually trade risks are about how much we benefit from this, how much money we make. The assessments that the public were given were all about the trade benefits in money terms. What they did not explore were the legal risks to the frameworks that we have. I think that is a big question.

The other question that I think you want to have in mind is what kind of data economy we want in the end. This will become bigger because the UK is already starting to look at how it can loosen data protection and so on. At the moment we have a legal framework that encourages high standards of data protection, and therefore business models that are protective of people, do not overexploit data and do not cause disadvantage and discrimination towards people. If we loosen these provisions, we encourage business models that are exploitative, do damage to people and discriminate against them. We might get economic growth that way, but we might also get some pretty devastating social consequences. These are choices and there are risks attached to them, for sure. Our point would be that we should try to go for the good things.

Q96 Anthony Mangnall: You have been a very vocal opponent to where the Government have gone on the UK-Japan agreement. What do you see as an acceptable level of risk?

Jim Killock: We cannot be risking the high level of data transfers. If we do that, we endanger our relationship with the European Union on data transfers—and it is a huge volume, as techUK points out in its submission—but it also undermines public trust in the digital sector as a whole. The last thing you want is to have data transfer to the US under very low protections and for that to be abused in that sort of scenario. The things you can do are to try to negotiate clauses that say, “We will run data protection how we like, thanks,” and, “We will do data transfers how we like, thanks.” If CPTPP is still on the table, similarly you need to get provisions and side letters and so on that say, “None of this that we are signing is ever going to be used by anybody to attack our data transfer regime.” There may be some ways that you can lower the risks without jettisoning the sorts of things that Government are doing, but I do not think you can make them entirely absent.

There are a lot of things that we have not been debating so far, even within the digital sections. I know some of my colleagues are concerned about the prohibitions on cryptology, data transparency and so on. They think some of those may turn out to be rather retrograde and quite difficult for certain sorts of regulatory needs. I am also pretty concerned about the right to repair and how that might be affected by what is called “technical protection measures,” which are included. Although I do not know the answer, it is unclear. Technical protection measures are frequently used to prevent the repairability, for instance, of mobile phones and other devices. The Government, today or yesterday, have been saying they are promoting the right to repair. We cannot have trade



laws making it possible for Google, Apple, Sony, Samsung to make devices unrepairable through the use of TPMs.

We need to be really careful about the effect of some of those things. These things are just not on people's radar at the moment, and that is the other thing. You must have a debate.

Q97 Anthony Mangnall: I think this Committee is trying to get to grips with that at quite a high and detailed level. In previous conversations and evidence sessions, we have had almost applause about the fact that the UK standard is incredibly high and is setting the benchmark for how we want to do future trading arrangements and relationships and trade deals. We should be taking that with us into those trade deals. Rather than our necessarily being viewed as trading out and lowering our standards all the time, which seems to be the common accusation against this Government, we could be saying that we are trying to export a high standard across the globe to maintain that.

I am conscious that we may not agree on that point, but we are going into CPTPP or we have signalled our intent to do this. I am conscious of time and want to come on to Sabina and Sue, but give us some top lines. What will your organisation look for when we start doing the formal negotiations in that area beyond what you have already said, if there are any extra points?

Jim Killock: I would just say: high standards for whom and high standards for what? There is a lot of high standards of protection for intellectual property, source code, protections against access to algorithms, protections against privacy going too far. Those are great if you do not like privacy and you do not want transparency for algorithms. Those are great high standards, but from a consumer or citizen perspective those are not necessarily good things.

The question is to have a debate about why we are setting these standards where we are setting them. Whether they are high or not is not the point. The point is who benefits from them. We have talked about the main provisions we are concerned about. I have mentioned TPMs as an extra one that I think is low on people's radar. I want to make sure that in whatever you negotiate it is very clear that particularly privacy provisions and free expression are not adversely affected and there are ways to make our own laws in the way we want in those areas.

Q98 Anthony Mangnall: Thank you very much. I really appreciate that. Can I quickly bring in Sabina and Sue to hear your thoughts on this? I do not think it is that disagreeable to have a debate on standards. In fact, if anything, I think it is a benefit and one that should be had.

Sabina Ciofu: We have quite a few points to add to this conversation. First, there is not any danger when it comes to Japan particularly with privacy. Japan is deemed adequate by the European Union. We have a rollover adequacy arrangement as well. Japan has very high standards of data protection. It is one of the countries that, at the G20, has been



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pushing for this concept of data flows with trust. It is a big ally at the WTO negotiations on data flows as well as data privacy. I think we are picking the wrong enemy here when we are criticising an agreement with Japan. Even the EU, with the gold standard, as it has been portrayed, has deemed Japan adequate. I think that is important to note. There will be critical points along the line and there will be countries that don't, and there will be countries that have lower standards of data protection that we should be looking at and considering, but Japan is probably not one of them.

The second point is that high levels of data protection is a very important element for the industry. If we are ever to have trade trust in technology, and especially with all the technologies coming down the line or the emerging technologies, we need to maintain these high levels of data protection and security and standards that the UK has. I agree that trade agreements offer an opportunity to have conversations on those high standards. We have been very supportive of having this high level of standards in the UK, mainly because if you start a company in the UK it can operate anywhere in the world because you are operating under the high standards. It is important for trust in technology and for trust in trade agreements that we maintain these standards.

One of the key points in a digital trade chapter is cross-border data flow. One of the key commitments of a good digital trade chapter is around cross-border data flow, which is key and we have heard that a lot. I am sure you have heard that a lot. It is key to trade, and especially to trade for an economy like the UK, which is very much services-based. It is very important that we have commitments around that.

Having commitments around that without tackling privacy in any way is probably not the way to go, so commitments to privacy definitely should be part of digital trade agreements and digital trade chapters in trade agreements. The language used in the Japan agreement is not new. It is language we have seen in other trade agreements, and the system for managing personal data transfers will be regulated separately. That will be part of the new UK data strategy. That will be part of the new UK international data transfers regime, so it will very much depend on how the UK decides to do this international data transfers regime. That will be the basis for personal data transfers, not trade agreements. I wanted to clarify those two points on privacy specifically.

Sue Davies: Consumers need reassurance that, as the Government approach these trade deals, they will stand up and maintain the really high data protection we have in the UK. We tried to have a debate about this, as I mentioned, with our national trade conversation. It was interesting that, when all the different issues were presented to people about what could be on the table in trade deals, data protection was one of the top priorities, along with food standards. It is something that people think is really important, so we would like to see the Government approach the negotiations by pushing for strong provisions that make



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sure we still have the flexibility to regulate in a way that is appropriate for UK consumers and makes sure we have the protections we need.

We are worried about some of the references in the Japan deal that suggest we are shifting away from the current approach, and it is important as we look at CPTPP, for example, which has similar provisions, that we are not slowly starting to dilute the important protections we have. As the other panel focused on quite a bit, it is about where the data goes when the country we are reaching a trade deal with has trade deals with lots of other countries as well.

Q99 Anthony Mangnall: Can you give any examples of where we have diluted our data protections through a trade deal, or where a country we have entered into a trade agreement with has then traded our data on to a third country? Are there any examples of that happening?

Sue Davies: I think it is all early days. We are developing our trade policy. We have huge opportunities to get everything lined up, so we are taking advantage of digital trade but also making sure we have proper protections. The Japan deal was the first deal that gave an indication of how the UK might be approaching digital chapters with this new flexibility. It is unclear exactly what the full consequences of that will be, but we want to make sure, if it is a precedent for other trade deals, that we will not start diluting it. There is no evidence yet, but it is about prevention and making sure we are getting the benefits from digital trade and freeing up data flows while not losing consumers' confidence because they suddenly feel worried about what is happening to their data.

Jim Killock: It is all about legal risk. The question is not that you sign a trade deal and you instantly get all the data flowing and changes to the legal regime. What happens in one, two or five years, particularly with CPTPP where there are multiple partners, many of whom might have an interest in challenging the UK's data protection framework? It is also possible that the US might join that agreement and have an even stronger interest in bringing down aspects of the UK's data flow arrangements through adequacy systems. The question is: do you want to cut off that risk or do you want to run that risk? If you are going to run that risk, why are you doing it?

Q100 Anthony Mangnall: I can see Sabina wants to come in on this, and I want to hear from her, but is there not also the point that if America really wants to join CPTPP it has to raise and meet our standards?

Sabina Ciofu: I want to add a point when it comes to data travelling around the world and reaching third countries after our trading partners. In all this data transfers regime, especially under GDPR and the UK-EU framework, there is an onward transfer mechanism included in this adequacy decision. That means Japan, which has an adequacy decision, has to take care that European citizens' data does not reach third countries that are not deemed adequate by the EU. If it does not do that, the EU can withdraw that adequacy decision.



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At the moment the UK has the same system, so it is just not going to happen that you transfer data to Japan and from there it goes all over the world without any consideration for the adequacy decision, as it would mean that Japan loses the adequacy decision. A lot of the countries that have an adequacy decision now have to balance this out. When they consider new trade agreements and new arrangements, they are balancing what they can do under the new adequacy system.

There is an onward transfer mechanism. There will probably always be, even when the UK decides its own international transfers regime, because you need to be able to control where that data goes further than the country you have a trade agreement with. There is a legal mechanism to control that. The idea that data can travel freely after it reaches one of the trading partners is not entirely correct, according to the laws we have now.

Anthony Mangnall: I think there is a bigger debate to be had here. I hope we might be able to cover this topic again in the future, and also on the Floor of the House of Commons. I will hand back to the Chair and apologise for taking up so much time, but I know you wanted to see more of me, Chair.

Chair: Absolutely. The hospitality was on you, Mr Mangnall, which as a Scotsman always sounds very good.

Q101 **Martin Vickers:** I turn to the WTO moratorium on customs duties on electronic transactions. What approach do you think the Government should take to renewing the WTO moratorium?

Sabina Ciofu: The moratorium on customs duty is one of the big success stories of the WTO, and it does not have that many, especially when it comes to digital trade. We are very supportive of making it permanent. A number of countries in the WTO would also like to see that happen. In the meantime, we can include it in our trade agreements to keep making the point until we can reach agreement at WTO level. It will likely still be a matter of renewing it a few more times before it becomes permanent, but that is definitely what we think should happen because it has been a real success story when it comes to the international economy and companies being able to trade online.

We are supportive of a broad definition of electronic transmission to include the content of those transmissions—e-books, video software—so not just the means but also the content in this moratorium. We are supportive of making it permanent.

Sue Davies: I completely agree. We think it is really important that the moratorium is retained and that we do not have customs duties imposed on electronic transmissions, because they would ultimately feed through to consumers. Within free trade agreements, the Government, as they have been doing, should make sure there are provisions so that they are not included, and we think the moratorium needs to continue.



Martin Vickers: Jim, are you going to make it unanimous?

Jim Killock: I have nothing to add here.

Q102 **Mark Garnier:** I have a final question to all of you, but can we start with Jim? How much engagement are you getting with the Government, so DIT and/or DCMS? Are they reaching out to you, or do you feel you are getting enough opportunity to feed into the process of policy-making?

Jim Killock: I think civil society has noticed a shift. We were at very high-level meetings about a year or a year and a half ago. That stopped once trade agreements started to get into an active phase and, from what we can see, the inside game around trade agreements is very much limited to industry partners for the most part. We are getting some updates and there is a general level of engagement.

With CPTPP there is some advantage to the way we can advance things with Government, because the trade agreement already exists. It is public, and it is therefore possible to start making points and having reasonable discussions about some of those things, but that does not apply to the other agreements that have been negotiated because those have been done effectively in private or in secret.

I think the challenge here is how you have a democratic mechanism and a democratic system that allows everybody to participate in the system of negotiating trade agreements. The kind of model that needs to be developed is the Nordic model, the Swedish model, where parliamentarians set negotiating mandates so that everybody understands what is being negotiated before it gets negotiated, where parliamentarians have access to the text of these things as they are negotiated, where select partners such as Which? and others might be allowed access to negotiating texts to feed advice into parliamentarians and others.

It is not about having a Zoom meeting with 200 attendees where maybe I get to ask a question or maybe somebody else does, and maybe we get an off-pat answer and maybe we do not. The question is: are people able to engage with the substance of these agreements as they are negotiated? At the moment, you have to say neither parliamentarians nor civil society are able to do that. I suspect a fair bit of industry is able to input in a way, and that tells you a lot about what the content of these agreements is likely to be and who they are likely to favour. I think we have to get a bit wise to this, look at the sort of model that the European Parliament has, for instance, for access and the model the Scandinavian countries have had.

Q103 **Mark Garnier:** That is really helpful. Which? is part of the Strategic Trade Advisory Group, so you have an ability to feed in. Is that right?

Sue Davies: Yes, that is right. I sit on the STAG, as it called, and we are pleased the Government have stepped up some of the ways they are engaging with civil society. There is now a civil society roundtable. I



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mentioned our national trade conversation, and the Department for International Trade helped us with that, fed in and was interested in the findings.

I agree with Jim that the gap is what is happening as negotiations are progressing. The Government have trade advisory groups, but it is just business interest groups that sit on those, so it is very difficult to know what is happening during the process of negotiations other than very high-level discussions at certain periods of time and then seeing the result at the end and scrutinising at that stage. We think there should be a better mechanism to try to discuss what is happening within the digital trade chapter, or other chapters, on a confidential basis during the negotiations.

Q104 **Mark Garnier:** Is it one way? Do they say, "What do you think?" or do they say, "We think this. What is your opinion of our thoughts, and what should we get better?" How does this work in a practical sense?

Sue Davies: We are asked our views, but it is very difficult to know what is on the table during the negotiations.

Q105 **Mark Garnier:** You are not given any clue as to what the Government are thinking. It is just, "Here is an open opportunity for you to say what you think," and they just listen and that is it?

Sue Davies: There might be indications of general direction of travel, but some of the issues we have been talking about today show how the real, specific wording within texts, including footnotes that are added, can be quite crucial to the implications. I suppose it is getting a balance. Obviously we are not Government. We will not be seeing absolutely everything, but it is having more of an opportunity to feed in at the right point before everything is set in stone and is firmed up. At the moment, as we saw with the Japan deal, it is a case of scrutinising it once everything has been signed.

Q106 **Mark Garnier:** Even then, it is quite complicated because it is 65 chapters or whatever it is.

Sabina, does TechUK get to sit on the trade advisory groups, the slightly more inner ones? Do you have a happier story to tell, or is it much the same thing: you can put in your opinion but you do not get to hear much of what is going on?

Sabina Ciofu: Our CEO sits on the Strategic Trade Advisory Group, and our deputy CEO sits on the tech and telecoms trade advisory group, so we are involved in all the formal ways we can be. However, I tend to agree with what Sue and Jim said. Even for these groups, there has not been a lot of information coming out on what is being negotiated. It is more unidirectional, if I can say that. It is more an update after negotiating rounds of what has been happening.



There are formal ways to input in consultations and all that, but not, as Jim was alluding to, how other countries and other trade negotiators have designed their systems in a way to be transparent and co-operative. I think this is really important. Even if, as an industry body, we are sitting at a table, it is important that everyone is brought around that table because ultimately you need to build trust in the trade negotiation process, especially in this new beginning of trade negotiations. Having everyone around the table and bringing consumers and civil society, industry, all the stakeholders in the debate on board as we go along with these negotiations is really important so that, when the outcome comes out, it is not a complete surprise to any stakeholder in society. I tend to agree with what the other speakers have said.

Q107 Mark Garnier: Any of you can jump in on this. Do you think it is because the Government are just new to this? It is the first time the Government have been able to do these trade negotiations in four decades. Do you think it is just teething problems, or do you think the Government fundamentally have their own views and those are right? Therefore, if you collectively have views on this, you are very welcome to make them plain but it does not necessarily mean they will be taken heed of. Teething problems or strategic, structural problems?

Jim Killock: I think Governments tend to prefer secrecy and doing it themselves. If you look at trade negotiations down the years, part of the deal has been: what can we get away with in trade agreements? What can we get away with in trade agreements that we would not be able to get past Parliament or persuade our citizens is a good idea?

Q108 Mark Garnier: Is that a general point or just the British Government?

Jim Killock: No, it is many Governments. Policy laundering is a fact of life. We saw it through the European Union previously. You see policies that are deeply unpopular being pushed into the European Commission at times, so domestic Governments could blame the European Union for them. We have seen the same at the WTO. In fact, one of the criticisms of the WTO process is that it has become too transparent, which has clogged it up. No longer can the wool be pulled over people's eyes.

The advantage of secrecy is that you can get away with more. But, of course, that undermines all the trust issues. I think many of the issues with the WTO are also about scale, and the need for secrecy is probably far less. It is also probably more important because bilaterals can both achieve more and risk more and, therefore, have more consequences and be more problematic. Because trade agreements are more focused, it is more important to apply that scrutiny because of the inherent dangers.

Mark Garnier: Thank you very much. I was conscious, when you mentioned pulling the wool over people's eyes, that the Chair has a flock of sheep to get in before it gets dark.

Q109 Chair: I am very aware of wool at the moment. Are we done now? Is there anything brief we need to finish with?



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Sabina Ciofu: To jump in here very quickly, I do not think it is ill will. The stakeholder engagement of this Government has developed constantly throughout the last three years. I think it is a novelty, and it is a whole process that we are all learning from. The stakeholder engagement is developing. It is just that nobody has reached that level of transparency and engagement in a few years, so it will take some time to get there, but there is no ingrained ill will to not engage.

Sue Davies: How we improve the stakeholder engagement but also the public engagement is really crucial, and that has not been done enough to date. There is a real opportunity, because our research has shown that once you talk to people they really get into trade policy and are interested in all these issues.

Mark Garnier: That is really interesting. Thank you all very much indeed. Angus, back to the crofter's rights.

Chair: Thank you. They are very important rights, too. I am glad to hear it is not just the Committee that is dealing with this unidirectional stuff from the Government, as Sabina and Sue said how important it is to find out what is going on as the negotiations are ongoing. Believe us, we know the great proof of that. I am very interested in what Jim said about policy laundering. That is an interesting concept, and maybe it has gone with Brexit.

Thank you all very much for coming along this afternoon. It was fascinating. I am sorry that time is pressing and there are things on. Thank you all. I have a feeling that, for some reason, it will not be too long until we see some of you yet again. It is always a pleasure. Thank you very much.