



HOUSE OF LORDS

Select Committee on the European Union

International Agreements Sub-Committee

Oral evidence: UK-Japan trade negotiations

Wednesday 23 September 2020

3.10 pm

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Members present: Lord Goldsmith (The Chair); Lord Foster of Bath; Lord Gold; Lord Lansley; Lord Morris of Aberavon; Lord Oates; The Earl of Sandwich; Lord Watts.

Evidence Session No. 2

Virtual Proceeding

Questions 17 - 32

Witnesses

[I:](#) Andy Burwell, Director, International Trade, Confederation of British Industry; Nick von Westenholz, Director, EU Exit and International Trade, National Farmers Union; Dr Minako Morita-Jaeger, Fellow, UK Trade Policy Observatory, University of Sussex.

Examination of witnesses

Andy Burwell, Nick von Westenholz and Dr Minako Morita-Jaeger.

Q17 The Chair: Welcome to this afternoon's evidence session as part of the International Agreements Sub-Committee's inquiry into the UK-Japan proposed free trade agreement. I warmly welcome our witnesses this afternoon and thank them very much for their time. I remind everybody that the session will be broadcast and a transcript will be taken, so they will have an opportunity to review it before it is finalised. Members may declare relevant interests shortly at some point during the proceedings. Indeed, I will do that straightaway, as we have a few moments. I declare my interests as a practising lawyer and part of a law firm that engages in international legal work, including with Japan and Japanese companies.

I will ask the first question, members of the Committee will ask questions in turn, and we very much look forward to your answers. But, first, I invite our guest witnesses to introduce themselves briefly.

Andy Burwell: I am the director of international trade at the CBI. My team were heavily involved in advising on the negotiations throughout the process.

Nick von Westenholz: I am the director of EU exit and international trade at the National Farmers' Union.

Dr Minako Morita-Jaeger: I am a fellow at the UK Trade Policy Observatory. I have been working in international policy for about 20 years, in the Government, in the private sector and at the United Nations.

Q18 The Chair: Thank you, particularly for being here; we are very grateful to the UKTPO for its help.

I will direct the first part of the first question to the CBI and the NFU. Give a brief overview, if you very kindly will, of UK-Japan trade in your sector or area.

Andy Burwell: The CBI represents 190,000 businesses across the UK. It is not directly a specific sector, but our members obviously had strong interests throughout. The CBI was involved for over a year in advising the DIT on the negotiations. I give credit to the DIT; it proactively engaged. The Secretary of State, Liz Truss, came to the CBI and spoke to members in November 2019. We then provided evidence in its call for evidence and encouraged members to do so as well. Some 15 business across a variety of sectors provided input.

The CBI was then heavily involved in the architecture for consultation in the ETAG and the STAG, the expert and strategic trade advisory groups. We also followed up across Whitehall and with the Japanese embassy in Tokyo and the Japan Government, and worked closely with the Keidanren, our counterparts in Japan.

The Chair: Mr von Westenholz, you have obviously talked about some of this in the written evidence you have given to us, but it would be good for you to summarise here.

Nick von Westenholz: First of all, it is worth saying that we are very pleased that agreement has been reached between the UK and Japan. It would have been a problem if it had not been reached and we were to leave the current transition arrangements, which would mean leaving the current EU EPA deal with Japan as of 1 January. It is certainly a positive development that the negotiations have reached agreement.

Japan is a largely urbanised country. It obviously has a large population—127 million people—and it relies on food imports for about 60% of its consumption. It is an important potential marketplace. There is not a huge amount of agri-food exports from the UK into Japan at the moment, but there are some important products, particularly alcoholic drinks. We hope that this agreement will stimulate a higher degree of exports from the UK in agri-food into Japan in future.

The Chair: It is your understanding that an agreement has been reached. There was perhaps a little confusion in newspapers over the weekend as to whether there was still something to be resolved, but you understand it has been concluded.

Nick von Westenholz: Yes, as far as we can say. Clearly, as with any trade agreement, there needs to be the legal scrubbing process and final signatures. That has not happened and maybe we cannot count our chickens quite yet, but it seems to me there is a high degree of confidence on both sides that agreement has been reached.

The Chair: That is helpful. What I really wanted to get at was what has been achieved in these negotiations. You said something about it, but you may want to add to it. I now turn to Mr Burwell and Dr Morita-Jaeger.

Dr Minako Morita-Jaeger: Thank you. I will speak from my academic point of view. Since the agreement has not been shared with the public, let me provide my preliminary evaluation. Concluding this agreement is politically significant, especially for the UK; the UK Government press release expressed it as a historic deal. Through the deal the UK can politically demonstrate its capacity to conclude an FTA as an independent trading nation with Japan, which is the world's third largest economy.

However, we have to note that the UK-Japan FTA is based on the EU-Japan EPA. In comparison with the UK Government's press release, I find the Japanese Government press release to be very modest, stressing as it does the importance of continuity of the EU-Japanese EPA for business and the importance of enhancing future UK-Japan relations. The Japanese Government refers to specific areas where the EU-Japan EPA-plus terms have been made and stresses that the Government can maintain the current EU-Japan EPA terms with the UK.

So in comparison with its political significance, its economic impact is minimal since the UK is already a member of the EU-Japan EPA, and its added value seems very slim. Its main achievement for business is continuity of the EU-Japan EPA. At the same time, the reality is that the EU-UK FTA is of incomparable importance for ongoing business activities for both sides.

I would like to draw attention to the role of the FTA in enhancing investment. It was completely overlooked during the UK-Japan FTA negotiation. Nothing about the role of investment was mentioned in the UK's strategic approach published by the DIT. Retaining the UK's role as an attractive UK destination must be a highly important issue for its economic prosperity. What kind of investment policy would the UK like to design post Brexit? What are the policy objectives for inward FDI and outward FDI? What is the role of FTAs in achieving those policy objectives? The UK must first establish its investment policy as an independent trading nation as it stands.

The uniqueness of the UK-Japan economic relationship lies in its strong ties to investment. For the UK domestic economy, Japan's presence as a source of investment cannot be ignored. Since the 1980s, Japanese business has been investing in and positioning the UK as its hub for doing business in Europe based on the UK being an EU member state. Currently, there are about 1,000 Japanese companies in the UK, and they have created about 180,000 employees. Japan's investment stock in the UK is the second-largest among non-EU countries after the US, and the sixth largest if we include EU member countries.

What is not well known is the fact that more than half of UK service exports are generated from foreign-owned firms, including Japanese firms. The automotive, chemical and pharmaceutical industries, for example, generated £8.8 billion in service exports. So the role of the foreign company in UK service exports cannot be ignored.

Q19 The Chair: That is really helpful. Thank you very much. We will come back to exactly those points later, and Lord Morris will want to come back to the question of inward investment in a few moments.

You have said—and it is very important that we understand that this is your understanding, based on what the Japanese Government have been saying about this—that the continuity is very important but that, in terms of additional impact over and above the EU-Japan FTA, from which the UK presently benefits, the benefit is minimal. That is what I have understood you to say. Mr von Westenholz, you have already said something, so let me go to Mr Burwell first and then I will come back to you. Mr Burwell, from the CBI, may I please ask your views?

Andy Burwell: Yes, of course. Minako said a lot of what I was going to say. This is a historic deal, politically. It is the first trade deal, albeit a replicated deal, to get over the line with substantial differences since we have left the EU. We are not privy to the text, so I am going on initial impressions, but it feels that continuity has been secured and, importantly, that key UK interests have been negotiated. It has been a tough deal. We know, through talking to the UK and Japanese sides, that the Japanese wanted more; they wanted to negotiate down some of the EU provisions. The UK team did well, particularly given its experience, to hold its ground.

In terms of the difference and the extra £15 billion worth of trade, UK businesses welcome it. Members' input into negotiations, particularly on the digital and tech sides, seems to have been successfully negotiated, and sensible provisions are included. So although it is small in economic terms, it is important that we have the deal.

The Chair: Where do you understand that particular £15 billion benefit to come from?

Andy Burwell: Although I have not seen the full breakdown of the figures, I understand that it is about £3 billion of benefits for UK exports. Financial services probably have a high amount to gain because of the substantial amount of exports from the UK to Japan in that industry, and it is about £12 billion for Japanese companies.

Nick von Westenholz: I agree that the continuity aspect of the deal is the really important aspect. To be honest, I do not think that our expectations were for a great deal more, first, because of the very short timeframe over which the negotiations took place and the need to wrap this up quickly ahead of 1 January next year, and, secondly, because it was clear that the Japanese were reluctant to provide any further liberalisation after a pretty tough EPA negotiation. Certainly, the perception is that they made some fairly significant concessions in that. We are pleased that the UK negotiators, by and large, appear to have secured to a degree in the deal similar terms to the EPA.

To echo what Mr Burwell said, we have not seen the details of this, so we are going on the top-line announcements that the UK Government have given us. There are a number of details that we would like clarity on. I am sure we will come to those in the rest of the session.

The Chair: I imagine we will. Obviously, we have not seen the text either, and we look forward to seeing it when it is available to us.

Dr Minako Morita-Jaeger: I would just like to add one point with regard to the figures provided by the DIT. The UK TPO has not yet examined this in detail, but my evaluation is that this figure is based on the model-calculated gains which the UK-Japan FTA would generate relative to UK-Japan trade relations on WTO terms. So, in a sense, that model is not honest, because it ignores the fact that the UK already enjoys an EU-Japan EPA relationship with Japan. It is still unclear how it came to the value-added segment between the EU-Japan EPA and the UK-Japan FTA. I do not know. I am a bit sceptical about this number.

The Chair: You have indicated that, and thank you for that. That is an important point if that is where the number comes from.

I now turn to Lord Morris, who wants to ask a question about investment, which you mentioned.

Q20 Lord Morris of Aberavon: I want to ask a question on inward investment. In particular, if I heard correctly, Mr Burwell is the director of inward investment for the CBI. Does this agreement improve or diminish

the chances of more Japanese industries investing in the United Kingdom, or is it neutral? My understanding is that, over the years, some Japanese industries were sited in the UK as a foothold into Europe. Our departure, of course, could be crucial as regards those advantages.

Many years ago, I led a delegation from the UK to Japan to meet business leaders, bankers and everyone in order to show what we had to offer: a pliable industrial force willing to accept one union's welcome in particular. You may laugh, but we thought that one of the advantages was the cheapness of golf in the United Kingdom, and I carried with me a list of golf courses and the prices of membership. That seemed to be attractive to some of the executives. I hope it was not a waste of time.

Crucially and specifically, does this agreement improve or worsen the prospects of more Japanese industries coming to the UK, or is it neutral?

The Chair: Who would like to answer that question, leaving aside the golf-club subscription prices perhaps?

Andy Burwell: Perhaps I can start, leaving aside the golf clubs.

I think it improves the prospects of attracting inward investment to the UK. One of the key aspects in the north-east is that we have strong car and rail manufacturing hubs. The reduction in tariffs for parts coming from Japan to the UK will be key to support those manufacturers and those jobs. Fundamentally, just that one tariff shows that it is a promising start and it should attract more investment.

As Dr Morita-Jaeger said, the UK has a very strong relationship with Japan on FDI. The Japanese market is the second largest FDI stock in the UK outside Europe. All in all, this is a positive deal and a positive story for our relations with Japan. There are specific provisions that will help attract more.

On the accumulation point, which is important for the EU, from what I understand, the accumulation will remain for this deal, so for manufacturers that utilise complex supply chains across the EU, this deal will honour those provisions.

The Chair: Does that depend at all on what eventual deal is reached between the UK and the EU, or will it stand in any event?

Andy Burwell: Inevitably, it will. Dr Morita-Jaeger will be better framed on that.

On the point about the continuity of the EU-Japan FTA and the provisions in it in that support accumulation, this replicates those.

The Chair: Dr Morita-Jaeger is nodding.

Dr Minako Morita-Jaeger: I would stress that the UK-Japan investment relationship is not purely a bilateral relationship. Mostly, this is a UK-EU-Japan-UK trilateral relationship. The UK-Japan FTA could deal with one segment of this trilateral relationship, but it relies mostly on the EU-UK future trade relationship. That has a great impact on the Japanese

investment. For Japan, the UK is the second largest FDI destination, following the US, but this kind of competitive edge for the UK would be significantly changed in relative terms with the EU, so whether the UK can continue to attract Japanese investment post Brexit must be a crucial issue for the UK economy.

On the rule of origin, as far as I understand it a kind of arrangement is made for the automotive industry and perhaps for other specific industries, but the point is how the UK and the Japanese Governments design the UK-Japan and the EU-Japan FTA to enhance or retain FDI from Japan. One of them may be the comprehensive investment provision chapter, but perhaps this will be addressed in specific questions at a later stage.

The Chair: We will come back to some of that in a moment. The first part of what you said, about the triangular nature of the trade, is something that we have had evidence on already.

Lord Morris of Aberavon: What precisely are the advantages of Japan investing in the UK when we leave Europe?

The Chair: Does the silence speak for itself? I do not know.

Dr Minako Morita-Jaeger: This really depends on the sector. Services and manufacturing companies rely more on the business strategies for each company. Major Japanese investors have a very complicated, well-established regional supply chain in Europe and a global value chain. Those may be the kinds of issues which business will focus on more in UK market itself and which may benefit from an UK-Japan FTA.

Andy Burwell: Let us not pretend that EU market access is the only reason why people invest in the UK. We have a unique time zone, sitting between the US and Asia. We have a strong currency, a strong economy, language, the rule of law. We have strong universities and excellent R&D and innovation. There are so many different factors that come into play when it comes to FDI decisions. It is not purely direct market access to Europe or indeed the provisions of this deal.

Lord Gold: If we manage to enter into an EU-UK trade deal so that it is as easy for Japanese investors to invest into Europe by coming to the UK and investing here, do you think the preference would be to establish in the UK as opposed to in one of the remaining EU countries?

Dr Minako Morita-Jaeger: The significant issue here is that, whatever the UK-EU FTA is, frictionless trade will end, because the UK is outside the EU single market and the customs union, so the current status will be not maintained. That means that Japanese businesses will be forced to remodel their business. In reality, ever since the 2016 referendum they have been exposed to Brexit-related political and institutional uncertainty, and now the Japanese companies are facing no-deal threats again. This uncertainty is the biggest business concern for Japanese investors, so getting rid of this uncertainty is really important.

Q21 Lord Lansley: Can we take the discussion down into one of the specific areas of the agreement as we understand it? When the British Government made the announcement, one of the things they said was that “market access for UK malt exports under an existing quota” would be secured “which is more generous and easier to access than the EU quota”. In this area of tariff-rate quotas, I wondered whether, in the first instance, Mr von Westenholz might be able to help us with unpacking that sentence. How do you understand that this might work?

Nick von Westenholz: You have asked the question that we ourselves have asked the Government. It is not quite clear what that “easier to access” phrase precisely means. It seems to indicate that, when it comes to malt—the EU already has a fairly large tariff-rate quota for malt as part of the EPA—that there is some specific concession to the UK for malt as well. We have asked what precisely that is. I am afraid that we do not have any more details than those you have just alighted on.

There is a bigger question mark around the TRQs and how those will function generally. As I said, there are a number of TRQs in the EPA relating to agri-food products. Our understanding is that the UK has secured an element of those TRQs, which are, of course, EU TRQs, and that the way that the deal will operate is almost to provide the UK with what is left over from those TRQs once the EU has used them up. That might not be an issue in the early years, because generally, in a number of those TRQs, particularly the more significant and generous ones, there is probably a bit of headroom in those already, so there may well be enough room for both the EU and the UK to use up. The concern will be in future years, as exports grow both from the EU and the UK to Japan, that those TRQs will hit their limits, in which case our understanding is that it is the EU exporters that will be given first shout, essentially, on using those TRQs, before the UK.

Added to that, it is not clear how that will be administered. Of course, it might not become clear that a TRQ is being filled until the end of the TRQ year. If that happens, will UK exporters that have exported at the beginning of the year have to pay the tariff and only be able to get rebated later on when it becomes apparent that they could use the TRQ?

There are a number of outstanding issues around the TRQs and how those will operate that we have asked for further clarification on, but the malt TRQ seems to be specific exception. Again, we would like to know how that operates.

Lord Lansley: Those are indeed questions that we will want to pursue. Can I pass this question to Dr Morita-Jaeger, elaborating on it slightly? If we are in a position where, for tariff-rate quotas on agricultural products, what is effectively being provided to us is what is left over from the EU quota unused, in a sense that means we are not getting anything that was not available to us under the EU-Japan EPA. The same tariff-rate quota is available and UK producers and exporters could have used it under the EU arrangement.

The implication of what the Government are saying, at least in relation to malt exports—we do not know in relation to other specific agricultural products—is that this is more generous and easier to access. I am not quite sure that I can understand why that might be. If it is entirely dependent on the extent to which the European Union in effect allows such quota to be used, even if only by default that it does not use it itself, it does not seem to me that it is inherently either more generous or easier to access. Could you help us with that at all?

Dr Minako Morita-Jaeger: I completely share that sense; I was wondering the same. There are two things I would like to clarify. The first is that, from the outset, the Japanese Government said that they cannot change any agriculture scheme and market access in this negotiation. Why? Because agriculture is politically very sensitive for Japan, as is well known, and if Japan provides better access to the UK than accorded to the EU for agriculture-related products, the UK-Japan FTA itself will not be enacted in the Diet of Japan, the Japanese Parliament. This is a kind of bomb for the Japanese Government. They said from the beginning, “No, we can’t touch anything on this”.

Secondly, there is MFN provision in trading goods. If Japan gives the UK a larger, faster tariff reduction, a higher quota, or any other more favourable treatment, it has to offer the EU the same preferences. This has become a very legal constraint for Japan. Those two issues are clear. So there will be no change. The quota issues are a more cosmetic arrangement within the current regime under the EU-Japan EPA.

Lord Lansley: Dr Morita-Jaeger, on the question of how this is viewed by the EU under its own EPA with Japan, using most favoured nation, have you seen any evidence of the EU saying to Japan, “This is very interesting, but by the terms of our economic partnership agreement, if you have made more generous arrangements with the United Kingdom in some respect, you must offer that to us”? I have seen no evidence of them saying that yet.

Dr Minako Morita-Jaeger: This is another very interesting question. Legally, an MFN clause is everywhere in FTAs; it is all over the world. Implementation is still not clear. This is something we have to investigate.

Lord Lansley: We can investigate that, too.

The Chair: Can I just be clear that your answer to Lord Lansley is that you have seen no evidence of the EU asking to action the MFN clause?

Dr Minako Morita-Jaeger: Do you mean in terms of the EPA with Japan?

The Chair: Whatever deal the UK is getting.

Dr Minako Morita-Jaeger: I have not had the research in this area yet. This is something more for future research. This is a very complicated thing for all the FTAs all around the world.

Q22 Lord Watts: I just want to try to draw out whether the deal that has been done is likely, as trade grows, to be a worse deal than we have at the present time. There seems to be an indication that, as trade grows, our status will actually diminish and that we will have a less favourable trade deal over that period of time. Do our guests believe that the deal is a long-term deal, or might it be a short deal that gets worse over years?

Nick von Westenholz: The continuity bit is important. It is likely to be a similar deal. The position of the Government, as we understand it, was that it has to be, overall, no less liberalising than the Japan-EU EPA. On that basis, it is probably somewhere in that space where it is equal.

The TRQs issue that I spoke about earlier is the one that is concerning. As I said, in the early years that might not be detrimental to UK exporters, which may be able to avail themselves of lower or zero tariffs as much as their EU counterparts can. But as trade might increase, in future years, as I said, we might find ourselves de facto being able to use fewer of those TRQs than we might otherwise have been able to. That is speculation, to some degree, and of course we do not know the details of how TRQs will be administered, which is always important.

Our assumption at the moment is that the concessions in the Japan-EU EPA—where there are tariff reductions over a period of years and TRQs—will more or less be replicated in the UK-Japan EPA, maybe with some differences either way, the malt one being an interesting one where it sounds as though a specific arrangement has been struck on that specific commodity.

Q23 Lord Foster of Bath: It is probably true to say that none of us has actually seen the details of the deal, but we are all somewhat struggling even to understand some of the things the UK Government are saying about the deal, as we heard in the questions from Lord Lansley.

I want to pick up another area where there is some confusion about what the Government are saying in relation to the important area of geographical indicators. We know that the Government said that they have secured new protection for more iconic UK goods, increasing geographical indicators from just seven under the terms of the EU-Japan deal to potentially over 70. They then described some of things that would be covered, such as English sparkling wine, Yorkshire Wensleydale and Welsh lamb.

A number of commentators have suggested that, in fact, what has happened is that Japan is under no obligation to expand its recognition in the future but simply to consider further requests from the UK up to a limit of 70.

I just wonder whether or not you have heard anything about that, what your understanding is, and whether you think the Government might be overselling the deal. Could you add in what importance you think we should be attaching to this area of geographical indicators in the overall deal?

Nick von Westenholz: Technically, your description there is right; only the seven existing GIs have been secured as part of this deal. As we understand it, what has been secured additionally to that is just the right to continue to negotiate for further GIs to be added. The UK Government are saying fairly confidently that there is a positive approach on both sides to add to the list. Take that as you will. The message being given out is that the list will grow, but you are right: there is no cast-iron guarantee that it will grow.

One of the problems has actually just been a technical issue: that the UK Government, during a transition phase, are not able to run the opposition procedure they would normally need to in order to expand the list. Actually, they have been legally unable to expand that list beyond seven, which is why they have had to take this approach. We do not have any guarantee that it will be expanded, but we hope it will be.

Lord Foster of Bath: To confirm, your understanding is that the phrase that the Government have secured “new protection for more iconic goods” is, in fact, incorrect.

Nick von Westenholz: Yes. It does not necessarily reflect that there will be, but maybe it is there because it is reflecting a positive position on both sides that it will be expanded. That is what we have heard.

To the second point, it would be very important to UK farmers for that to be expanded. We sense that market opportunities in Japan in the future years will probably be for that higher-value produce where markets will not be huge but could be valuable in themselves. Those are the sorts of markets where protected names in agriculture are particularly relevant, so it would be important for us that that list could be expanded.

Andy Burwell: I do not have too much to add. The key language is “potentially over 70”. We all know that in bilateral relations and negotiations there are frequently indications of future talks and future direction of travel. This could potentially—using that word again—be one of those, but it is hard to tell without the detail.

In terms of the benefits of GI, it is key to provide the IP protection. That, not just in the agri-sector but in the digi-sector, is something that people have raised as an issue.

Lord Foster of Bath: We will come later to the issue of IP. Dr Morita-Jaeger, do you have anything to add?

Dr Minako Morita-Jaeger: No, I do not have anything to add on GI.

Q24 **The Earl of Sandwich:** I should declare that I am an NFU member in west Dorset complaining about broadband, but I will not bring that up again because you know all about that.

This is a question about CPTPP. As we know, the Government are very enthusiastic about joining CPTPP and this may be a motive for being in the Japan agreement. How do British businesses view this? What

opportunities are there for them if we join, bearing in mind that we have to talk to every individual member to join? Does the CPTPP represent a second chance or a way for the UK to agree more ambitious provisions with Japan in areas where it would have liked to go further? I know that Dr Morita-Jaeger will understand what that means, because she has written very fully on this in her evidence already.

Andy Burwell: Business is generally supportive of the UK joining CPTPP. Geopolitically, the bloc represents a real coming together of countries aligned to the merits of free trade, particularly during a time in which protectionism is on the rise and the case for free trade is increasingly under siege, and the policy practices within CPTPP are seen as some of the most liberal.

Accession to the CPTPP represents 13% of the world's GDP. There is a "Global Britain" angle here; it is a real signal to the UK's intent to build stronger trading relations. From the 11 members, there was £90 billion of trade in 2019, which is more than China and France.

There are issues. Businesses trading in the Asia-Pacific region have not necessarily received the clarification on how joining CPTPP would be more practical and more beneficial than utilising the current ASEAN free trade area, which member companies of CBI are already using to trade within the region tariff-free.

A physical presence is also a key feature of doing business in the region. That is partly due to distance from the UK and partly due to the unique regional dynamics and the requirement for local, contextual understanding to navigate the region. For our members, the vast majority of UK companies with interests in the region are not necessarily just focused on the goods moving in and out of the region but also on issues behind the border. It remains slightly unclear as to how an FTA will directly benefit more than the existing arrangements, but the potential is certainly there. There is also the issue about the alignment with the EU following accession, which will have to be thought through carefully. Dr Morita-Jaeger might want to comment on that.

On your second question about whether it is the second bite of the cherry, the CPTPP, as you will know, has two parts to it. One is the rules. The second is a commitment to have market access negotiations. This Japan deal, much like negotiations with other members, is a key step to the CPTPP, so we can streamline our entrance into the bloc.

Equally, I understand the language, the disciplines and the rules within the Japan deal replicate those with the CPTPP, particularly language directly in some aspects. That also underpins US rules, because that underpins the CPTPP framework.

The Earl of Sandwich: Could we hear from Dr Morita-Jaeger, because I think her emphasis is rather different?

Dr Minako Morita-Jaeger: As you are quite aware, the CPTPP provides very high-quality rules and coverage of rules. Rather than focusing on

market access, I would like to highlight the rule-making function of the CPTPP. For the Japanese Government, the CPTPP is a kind of FTA model. The UK Government see the UK-Japanese deal as a stepping stone towards the CPTPP. The provisions where changes were made under the UK-Japan FTA have to be assessed in comparison with the CPTPP terms.

I would draw your attention to the fact that, generally, EU-Japan EPA values public policy objectives, reflecting the EU's trade agenda, while the CPTPP puts more emphasis on a market-driven economy. The UK has to establish its policy position in this aspect. There is a clear legal conceptual divide between these two agreements. Which way would the UK like to go? Clearly positioning what kind of regulatory regime the UK would like to establish is really important.

- Q25 **The Earl of Sandwich:** This question is probably directed to the NFU. We have had witnesses expressing the wish to see a provision in every FTA that the agreement is consistent with commitments on climate change. Do you see any disadvantages for businesses in including such a clause? How might such a commitment fit in with multilateral partnerships like the CPTPP?

Nick von Westenholz: It is a very complicated question. When it comes to multilateral arrangements, that is a problem, but that reflects the wider problem that with CPTPP, for example, a text already exists. The UK is not negotiating the details of the CPTPP. It will be an individual partner acceding to that on the basis of the already negotiated text. There are problems there.

From the NFU's perspective, the general notion or principle of incorporating climate change commitments into trade agreements, whether bilateral or multilateral, is something we would support. As I am sure you will be aware, we, the NFU, have our own commitment for agriculture in the UK: to try to be net zero by 2040. Not only is that a good thing and the right thing to do, but it would also give UK farmers an advantage and a USP in the food we produce meeting the expectations of the people who want to eat climate-friendly food. It is important both as a principle and commercially for UK farmers.

The Chair: We now move to a different topic.

- Q26 **Lord Gold:** This question is primarily directed to Dr Morita-Jaeger. One area where Japan has wanted to go beyond the EU-Japan agreement is the investment chapter. It wanted a more comprehensive chapter that included investment protection and dispute resolution in the form of investor-state dispute settlement—ISDS—which civil society groups have raised concerns about. The UK Government have not said whether or not they agree with ISDS. It is still with Japan, so we are in the dark. Either way, the CPTPP does include a provision on ISDS. Do you think the UK will have to sign up to ISDS if it wants to go ahead with this? What are the implications for doing so?

Dr Minako Morita-Jaeger: Thank you very much for your very interesting question. In the UK-Japan FTA, I understand that this time no comprehensive investment chapter has been added to the agreement.

Let me just give you a basic understanding of the legal landscape of the investment treaties. It is one policy for us to enhance investment relations, and the UK-Japan FTA had to be examined from that perspective. The empirical evidence shows that substantive investment provision in FTAs and bilateral investment treaties positively impacts on trade investment flows. Conventionally, bilateral investment treaties were used as a major policy tool for investment protection. Looking at the global trend, we see that states started to incorporate investment provisions or standalone investment chapters into FTAs from the 1990s.

When it comes to ISDS provision in an FTA, the UK's existing bilateral investment treaties should not be ignored since the CPTPP is not the first time that the UK has used the ISDS mechanism in its legal framework for foreign direct investment. The UK, like other developed countries, has been using bilateral investment treaties for protecting British investment in developing countries since the 1960s. Out of the UK's 89 bilateral investment treaties in force, 87 have ISDS. These bilateral investment treaties were concluded mostly with developing countries, some eastern European countries and with some industrial countries, such as South Korea.

Looking at CPTPP, among the 11 members, the UK has bilateral investment treaties with six countries: Chile, Malaysia, Mexico, Peru, Singapore and Vietnam. All of them include ISDS mechanisms. The UK does not have ISDS in international investment treaties with Australia, Japan, New Zealand and Brunei, most of the developed countries in the CPTPP. As for Canada, the EU-Canada FTA, CETA, includes provision of investment protection and investment court systems. Since FDI became an exclusive EU competence under the Lisbon treaty in 2010, the UK's BITs with Singapore and Vietnam were recently replaced by the EU's investment protection agreement. The bilateral investment treaties with Chile, Malaysia, Mexico and Peru are untouched.

I observe that the UK's current legal framework for foreign direct investment is a sort of patchwork of the conventional investor-friendly BITs that exist with developing countries and the EU's post-Lisbon investment protection agreements that were designed to balance between the rights of a host country and investors.

If the UK accedes to the CPTPP, it would cause a spaghetti bowl situation. First, the UK Government have to clarify their basic approach on ISDS for their future FTA negotiations in relation to their previous bilateral investment treaties.

I can say a bit more about the technical issues in CPTPP, or I can stop here.

The Chair: That is very helpful. If there is something you want to add

that you think would help us on the technical details of CPTPP, another little note on that could be very helpful to the Committee.

Dr Minako Morita-Jaeger: I would be happy to provide written evidence.

The Chair: That is very good of you. Thank you very much indeed.

- Q27 **Lord Gold:** The EU is in favour of establishing a multilateral investment call, currently under discussion under an UNCITRAL working group. It has moved away from including ISDS provisions in its bilateral deals, which is what you were just saying. Some of its trade partners—Canada, Singapore and Vietnam—have signed up to bilateral investment systems, which you mentioned, but others, Japan is one, are less in favour. What approach do you think the UK should be taking in this area? Your answer has already given us the idea that the UK is pretty adaptable.

Dr Minako Morita-Jaeger: Thank you so much for your question. I must say that I am not clear which way the UK should go. It completely depends on the business needs and other stakeholders, including the civil society organisations and consumer societies and organisations. I do not know what option the UK would like to take.

Japan has a very limited number of bilateral investment treaties. Japan does not have a bilateral investment treaty with the UK. Japanese companies are not aggressive in the uptake or use of ISDS. Because of the very uncertain business environment all over the world, they are pushing the Japanese Government to create more BITs in the first place.

As for the UK's options, I will not get too technical, but I understand that some CPTPP members signed letters. New Zealand, for example, signed a letter with Brunei, Malaysia, Peru, Vietnam and Australia to exclude compulsory ISDS. Australia signed letters with Mexico, Vietnam and Peru terminating bilateral investment treaties that include ISDS. Maybe the UK could study other developed countries' practices in the CPTPP.

- Q28 **Lord Watts:** There have been a number of claims about this trade deal but not a lot of detail. The Government have stated that they have negotiated new and more liberal rules of origin. Some things have been quoted about biscuits, coats and some other items. How does the group evaluate the Government's achievements in this area? How does it match up with what your members said they wished or hoped to negotiate?

Nick von Westenholz: This is another area where we would like to understand the detail. As I am sure the Committee is aware, rules of origin are, in themselves, often complicated and technical, so we would need to understand the details.

Our broad concern with rules of origin that are too liberal is that the UK would essentially become a manufacturing hub for bringing in raw materials and selling them overseas under the British brand. That would be a massive problem for domestic producers. There is a real concern that that might be the direction of travel. I am not saying it is, but it

might be the direction of travel at the end of the transition period that we can buy stuff in cheaply from all over the world, badge it up as British and sell it back overseas. Liberal rules of origin would facilitate that. That is our big “watch out” and would concern our members a lot.

Having said that, it is complicated, because there may be an element that, if rules of origin are not liberal enough, that stops trade in particular products entirely. You may have a processed product that contains some British ingredients and some overseas ingredients, and is then exported under a preferential arrangement because it meets the rules of origin. If those rules of origin did not allow that, that would be detrimental to the British element or ingredient of the processed good. That is why we really need to understand the details of this. There is a delicate balance to be struck on how rules of origin are dealt with under either FTAs or broader multilateral agreements.

Lord Morris of Aberavon: On the claims made by the Government, can I include, regarding the new liberal rules of origin, the claim made on 11 September about the new protection for iconic British goods with increased geographical indications? I am interested in Welsh lamb. Is this claim in the press release of 11 September that the number has increased from seven to potentially 70 something that we may look forward to?

The Chair: We looked at this a bit in relation to earlier questions, but would you like to add at, Mr von Westenholz?

Nick von Westenholz: As I mentioned earlier, we are hoping that Welsh lamb in particular and many other iconic products will be included. At the moment, they are not there. It is clearly the intention of the UK Government to increase that coverage to include things like Welsh lamb.

The Chair: We now move to services.

Q29 **Lord Oates:** Much of the press coverage has focused on trading goods. Dr Morita-Jaeger, could you tell us a little about the service trade provisions in the EU-Japan deal that were most useful to UK businesses and which they wanted to maintain? Could you also tell us about areas where businesses wanted the UK to go beyond the EU deal in trade in services, and your understanding of where they got to on that?

Secondly, you referred in your opening remarks to the gap between the modesty of the Japanese Government press releases and the UK's. The UK Government, as you know, have announced that they have secured improvements that go far beyond the EU-Japan deal, particularly in digital trade, financial services and new protections for the creative industries on IP issues. Could you tell us a little about what you understand of these provisions and which sectors are likely to benefit most from them?

Dr Minako Morita-Jaeger: Mr Andy Burwell might be the right person to answer the first question about the benefit of the EU-Japan EPA from the UK business point of view.

I can answer the second question on evaluating the value added relative to the EU-Japan EPA. It is really odd to see, because the UK Government highlighted the gains from services trade in the DIT's position paper, but the press and media coverage was mostly about the market access in goods. Needless to say, the UK is a services-based economy; 80% of economic output and the workforce is created by service industries.

On the other hand, at the outset I must say that the UK Government cannot expect so much from an FTA services trade liberalisation with non-EU countries. Why? Because, generally speaking, services trade liberalisation commitment in FTAs cannot lead to actual trade liberalisation, which requires changes to existing service trade regimes. This is because normally the Government prefer to retain their policy space. Normally, there is a huge gap between the de facto liberalisation and the commitment in WTO service trade agreements. An FTA can reduce such a policy space but not entirely eliminate it.

When it comes to the UK-Japan relation, in reality the service market in the UK and Japan are open in terms of market access and national treatment. The difference in regulatory regimes matters, because it becomes a de facto barrier to trade and investment activities. This means that regulatory co-operation is a key to facilitating business activities. As you know very well from the EU single market in services, regulatory co-operation is not easy and takes time.

As for the question of how much the UK-Japan FTA could go beyond the EU-Japan EPA, I do not like to categorise into market access and rule-making negotiations. I understand that there is no value added in terms of market access in negotiations this time.

I have to stress, as highlighted by the UK Government and the Japanese Government, the digital economy. Since I do not have the agreement, I can only provide a preliminary comment. I do not think the UK and Japan have created a comprehensive stand-alone chapter like the ones in the CPTPP. I understand that some key provisions such as free flow of data and prohibition of imposing data localisation requirements, which is not subject to prohibition in the EU-Japan EPA, are newly introduced. Also, it seems that the agreement expands the scope of restrictions on requiring source code.

The point I would like to make again is that there is a fundamental legal concept divide between the EU-Japan EPA and the CPTPP in the digital provisions. As I said, EU statutory policy values safeguarding data privacy and security more, whereas the CPTPP approach values market-driven economy and facilitating digital trade. I evaluate that the UK-Japan FTA has taken one step towards CPTPP-type e-commerce rules.

As for the financial services, I cannot comment because I do not have the agreement itself. It is very interesting thing that the Japanese Government simply explained that there is some improvement in rules on financial services so that there is bilateral co-operation among the regulatory authorities.

The Chair: When we get to the end of the session, I will ask you all to help us by telling us which bits of the agreement we should particularly look at when we get to see it. In the meantime, you encouraged Mr Burwell to add to your answer, so I will turn to him.

Andy Burwell: Services are a key part of our economy and really should feature more heavily in FTAs in the future, particularly on regulatory alignment, mutual recognition of qualifications and mobility provisions. The question was specifically about what our members and what British companies asked for in this deal. There was a general feeling that, despite the EU-Japan EPA coming into force, there were persistent issues, particularly with regard to mobility. This is particularly troublesome for digital companies, such as those in fintech, which need to send staff to Japan for longer periods than the three months that was allowed within the EPA.

There are further concerns that align quite nicely with the aspects of the deal that we are aware of, such as skilled permanent resident visas, IP provisions, digital and data provisions, in particular data localisation. Services companies had issues more broadly around that.

The deal that we have and the knowledge of it that has been provided shows that services have been well negotiated. From an economic growth perspective, services will only become more important for our economy. It is certainly a good deal from that perspective.

The Chair: That is good to hear. Lord Foster wanted to ask specifically about IP.

Lord Foster of Bath: I think we have heard assurances that we perhaps have a good deal in that area, so I suggest that we can move on.

The Chair: Lord Gold has a question about legal professionals.

Q30 **Lord Gold:** This question is probably to Dr Morita-Jaeger, who I seem to be picking on this afternoon. Will this trade deal result in any liberalisation of the legal profession, making it easier for British lawyers to practise in Japan? It is a long time since I was in practice, but it was always an issue that it was very hard for English lawyers to do all that they would like to in Japan. It would be nice if that was freed up a little.

Dr Minako Morita-Jaeger: As far as I understand, no progress has been made on professional services. I do not think there is an EU-Japan EPA-plus element regarding professional services.

The Chair: Sorry about that, Lord Gold. Lord Lansley has a question on the very important issue of state aid.

Q31 **Lord Lansley:** The media got very excited about the fact that, in the agreement with Japan, the United Kingdom was signing up to an agreement that included an element of state aid or subsidy control—I think that is the more correct language—measure under the agreement. That was contrasted with the UK's stated position that it was not going to

agree to state aid provisions with the EU but was going to use the WTO subsidy control measures.

Starting with Mr Burwell, what do you understand to be the significance or otherwise of the measures agreed with Japan? Is there anything in particular that British businesses are looking for in terms of state aid regimes?

Andy Burwell: Again, we are not privy to the text, so it is hard to provide extra detail to what is in the public domain. From what we understand, it is not substantially different to the EU-Japan EPA. It is a standard chapter in free trade agreements these days, for instance with things like transparency.

On the areas that the EU-Japan deal outlaws, there are things like "guaranteeing debts or liability as an enterprise, without any limitation as to the amount and duration of such guarantee", which the UK would not do anyway. It is not an issue.

As we know, state aid is a complicated area. When rules are agreed, they need to be applied evenly. Relating to the EU but more broadly about business wants, the CMA and the EU will need to work closely together on this, particularly with cross-border multinationals in mind. State aid is an important tool. Indirect support for state aid, such as the British Business Bank's patient capital fund, has proven to be an important instrument. During Covid, we have obviously seen the need to support jobs and economic growth. Just this morning, in fact, Vestager was discussing climate change and the possible use of state aid in meeting climate agreements. State aid is certainly a key aspect of economic policy, and businesses really just need it applied consistently and evenly.

Lord Lansley: If the provision with Japan that we enter into directly mirrors the EU-Japan EPA, if I remember correctly the subsidy control chapter in the EU-Japan EPA is as Mr Burwell just described it. In addition, the dispute resolution mechanism in the EPA is disapplied to subsidy control, so the enforcement mechanisms do not really exist. There is a text that basically says that people approach this in good faith and notification has to happen, but if somebody then complains, somebody has to take account of their complaint; they cannot go to the arbitration court or anything of that kind.

Although we may have entered into an agreement paralleling the EU-Japan agreement, the state aid regime in this may have been entered into by the UK Government on the basis that it does not really commit them to anything much. Dr Morita-Jaeger, what do you think on that?

Dr Minako Morita-Jaeger: I do not know how much time we have. State aid is a very hot topic and very complicated, so maybe I will not answer directly that very complicated issue.

My general understanding has mostly been covered by the CBI, but I will add two points. The first is that the EU's approach to subsidies in FTAs is more about building a mechanism for information exchange. It is nothing

more than that. It is an ex-post information exchange with Japan. Secondly, the definition of subsidies in the EU-Japan EPA is narrower than the EU's definition of its regime on state aid. Those are the two points I would like to underline.

Lord Lansley: Can we just go back to Mr Burwell on the point about enforcement? In the context of what you were saying, it seems to me that whether something is enforceable is rather important. If it is not enforceable, in effect the British Government have not signed up to anything very different from what they are talking about with the EU. The British Government are not saying they will not notify the EU of possible state aids; it is just that the regime that is applied to it will be more of the character of a WTO regime rather than an EU state-aid regime.

Andy Burwell: Indeed. I do not have the detail of the deal, so it is hard for me to comment. Notification should be in there, but it is hard for me to comment on the degree to which there are agreements on dispute resolution or further.

The Chair: We are coming towards the end of our session. I have already indicated that I would very much like to know from our experts, perhaps after the session has ended, which bits we should particularly look at when we get to see the text. A number of times it has been said, "Of course, we don't know until we have seen the text". If you could direct our attention, that would be very helpful.

In the meantime, Lord Sandwich has an important question about SMEs.

Q32 **The Earl of Sandwich:** My question is a very easy one. Everyone loves SMEs, the Government want an SME chapter, it is in the agreement and everybody talks about it, but when it comes down to it, does having dedicated SME chapter really help them? What opportunities or benefits do they stand to gain through the provisions in this particular agreement?

Dr Minako Morita-Jaeger: I do not have the agreement before me, but as far as I understand there would be no progress compared with the EU-Japan EPA.

I would like to draw your attention to the report published by the UK TPO and the Federation of Small Businesses on SMEs and FTAs earlier this year.¹ We examined the best practices in existing FTAs, particularly the EU-Japan EPA and the CPTPP. Let me just say that these FTAs can be used as best practice. The UK is a part of the EU-Japan EPA, so it already has high-quality best-practice provisions inside the EU-Japan EPA.

The point is that the UK has been a signatory of the EU-Japan EPA. I do not think that the UK Government were actively engaged in helping SMEs to use the FTAs. So the UK Government's future task is to implement the

¹ Note by the witness: 'Borchert, I. and Morita-Jaeger, M. (2020). The representation of SME interests in Free Trade Agreements: Recommendation for best practice, Published by UKTPO and FSB. <https://blogs.sussex.ac.uk/uktpo/files/2020/01/FSB-Trade-TPO-Report.pdf>'

SME provision in the UK-Japan FTA that was copied from the EU-Japan EPA. The UK Government should establish a SME support scheme within the UK in co-operation with Japan, including a scheme to disseminate information and provide practical support for SMEs in order to reduce constraints such as a lack of knowledge in human resources and access to information. SMEs have those particular problems. For example, they could have an online information services helpdesk and seminars or webinars for SMEs across the UK to improve understanding of the UK-Japan FTA and utilise it for daily business. Implementation is key.

The Chair: I want to thank all of you very much indeed for your very helpful evidence. We have run over a bit, although we did lose a little bit of time at the beginning. The Committee has other important business to transact, so although there are other questions that we would like to ask you, I will draw this to a conclusion at this stage, with very warm thanks. Of course, we would be delighted to receive any further comments you would like to make in writing. Everything that you have said today will help us in our task, and I am sure any further information you have provided would do exactly the same. Thank you very much indeed.