



Department for
International Trade



Department for
Business, Energy
& Industrial Strategy

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To: Lord Goldsmith, Lord Oates, Lord Lansley, Lord Trees, Lord Hain, Lord Foster of Bath, Lord Lilley, Lord Darroch of Kew, Lord Kerr of Kinlochard, Lord Risby, Baroness Liddell of Coatdyke, Baroness Bowles of Berkhamsted, Lord Howell of Guildford, Lord Loomba, Lord Gold, Lord Shipley, Baroness Hooper, Lord Bilimoria, Viscount Trenchard, Baroness Bennett of Manor Castle, Baroness Henig, Baroness Bottomley of Nettlestone, Lord Morris of Aberavon, Lord Liddle, Baroness McIntosh of Pickering, Lord Purvis of Tweed, and Lord Stevenson of Balmacara.

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My Lords,

Thank you for the extensive and compelling debate on the 26 November. As I said on the day, the many thoughtful and measured contributions that we have heard this afternoon have reiterated this House's ability to express its expertise clearly and authoritatively on the most important issues relevant to this agreement.

As I was unable to respond to all those who raised issues during the course of the proceedings, I promised to write and give further detail on a number of topics. In addition, I can assure you all that in due course the Department for International Trade will be writing a full response to the findings of the International Agreements Sub-Committee.

Beginning first with Tariff Rate Quotas (TRQs). There was a request for further comment on the TRQ regime from Lord Goldsmith, on malt in particular and from Lord Loomba on the application of the regime. Total UK agri-food exports to Japan were worth around £402 million in 2019-20¹, of which £271 million was beverages, spirits and vinegar² and £131 million was other agri-food products of which around £1 million was covered by TRQs.

The vast majority of the £131 million of other agri-food exports is not subject to quotas and will be covered by tariff reductions or eliminations including on beef (MFN 38.5% reducing gradually to 9% by 2033), higher value pork (MFN 4.3% reducing gradually to 0% by

¹ According to Japanese Ministry of Finance and customs data covering period from April 2019 to March 2020.

² "Beverages, spirits and vinegar" here refers to products defined under chapter 22 of the Harmonised System.

2027), cheddar cheese (MFN 29.8% reducing gradually to 0% by 2033) and salmon (MFN 3.5% continued reduction to 0% at entry into force).

In 2019-20, the UK utilised only five of the 25 TRQs covered by the EU-Japan agreement. The deal we have negotiated focuses on those quotas with the highest usage and of most value to the UK. These new arrangements cover 99% of the value of UK exports under EU TRQs in 2019-20.

Under CEPA, we will continue to have access to the same preferential tariff rate as in the EU-Japan agreement for 10 priority TRQs. UK exporters will also continue to benefit from access to Japan's duty-free global TRQ for Malt.

Under the UK's arrangement, Japanese importers would initially pay no tariff on imports of covered products. At the end of each financial year, importers would pay the same in quota rate as under the EU scheme (usually 0% tariff) for any TRQ volume not utilised by the EU27.

These arrangements are a bridge to the UK's eventual membership of the Trans-Pacific Partnership (CPTPP). The UK expects there will continue to be enough surplus volume in the EU TRQs until around 2024, by which time we expect to have joined CPTPP. As part of UK-Japan CEPA discussions, Japan has committed (via a Ministerial side letter) to support the UK's quick accession to CPTPP and provide the UK meaningful market access to similar products to those covered by TRQs in the EU-Japan deal.

Japan has further committed (via a Ministerial side letter) to working closely with the UK to ensure the scheme operates effectively and that we have unfettered access to any under-utilised EU quota. Under the UK arrangement Japanese importers of UK products only need to provide two customs documents, rather than the six potentially required by the EU-Japan EPA.

To ensure that the TRQ scheme is understood, additional business guidance in the form of a technical notice has recently been published on gov.uk.

On the particular question around malt, UK exporters will continue to benefit from access to Japan's duty-free global TRQ for Malt. Instead of receiving continued access to a country-specific TRQ for malt, Japan provided a Ministerial side letter guaranteeing that the UK will continue to have access to Japan's duty-free global TRQ. Other countries do not have this additional guarantee. Unlike a country-specific TRQ, this does not require additional documentation providing evidence of originating status and is historically much larger than the TRQ in the EU-Japan EPA. This arrangement from Japan will provide for continuity for UK exports of malt to Japan.

Turning to digital and data, Lord Oates, Lord Bowles and Lord Stevenson all asked questions on the digital and data provisions relating to the CEPA, particularly relating to source code and algorithms.

The commitment on source code and algorithms expressed in that source code, within CEPA is testament to the UK's drive to provide a model for global standards against forced technology transfer. The commitment prohibits parties from requiring transfer of and access to the source code of software or an algorithm expressed in that source code as a condition of its import, sale, use or distribution. The approach adopted protects the

proprietary information of software and provides confidence to UK firms that they will not be required to transfer trade secrets about their software products or services in order to access or continue accessing the Japanese market. The CEPA provisions make explicit that the protections apply to both traditional and machine learning algorithms, when those algorithms are expressed in code. This addition is for clarification and does not substantively affect the scope of the provision compared to alternatives that do not reference algorithms.

The substantive provision protects coded algorithms from forced technology transfer; however, the exceptions explicitly allow UK regulatory, judicial authorities (as well as conformity assessment bodies) to access coded algorithms for a variety of purposes. This allows legitimate organisations to scrutinise how particular algorithms work in order to assess compliance with law. There are also exceptions covering both the voluntary transfer of source code as well as to enable authorities to scrutinise source code used by, or on behalf of government. These commitments strike the balance between providing the necessary flexibility for the UK to pursue necessary and legitimate domestic public policy objectives whilst also protecting the trade secrets of British companies abroad.

In addition to the above, Lord Goldsmith, Lord Lansley, Lord Foster and Lord Risby also made reference to the free flow of data and data protection.

'Data localisation' refers to measures that require data to be stored and/or processed in a particular country or territory, as a condition of doing business there. Such measures when unjustified are barriers to trade and detrimental to the growth of digital economies.

We want to secure agreements that limit the use of unjustified data localisation measures, which the data localisation article in CEPA accomplishes.

The EU's adequacy assessment will determine whether UK data protection standards are 'essentially equivalent' to the EU's. We see no reason why we should not be awarded adequacy, given we have a data protection framework that is equivalent to the EU's.

The UK's objectives in its FTAs are informed both by universal objectives that promote our identity as a strong supporter of global trade, as well as objectives specific to individual partners that could derive from specific barriers British companies face, or from shared priorities.

The UK is committed to a free, open, and secure internet as the bedrock for a thriving and innovative digital economy and recognises that open access to the internet, or network neutrality, is a pillar of this.

In the UK-Japan agreement, we have secured a commitment to ensuring open internet access as a means of developing an open, secure, and trustworthy online environment that will enable development of innovative technologies and the protection of users of online services.

We have agreed that the UK and Japan should adopt or maintain measures to ensure that individuals and businesses can access and use services and applications of the consumer's choice available on the Internet, subject to reasonable, transparent and non-discriminatory network management. Additionally, the UK and Japan have agreed to

enable access to information on the network management practices of internet access service suppliers.

UK data protection laws are not undermined by CEPA. CEPA commits both parties to maintain national personal data protection regimes; the UK's existing data protection framework, enshrined in the Data Protection Act 2018 and GDPR remains unchanged.

The UK-Japan contains provisions that facilitate the free flow of data by seeking to remove unjustified barriers. It does not change existing measures in relation to onward transfers of personal data. Personal data that is transferred to Japan from the UK cannot be sent to other countries with lower data protection frameworks without appropriate protections being in place.

As with all policy areas, the UK will control our own data protection laws and regulations in line with our interests, after the end of the transition period. We want our data protection law to remain fit for purpose, and to support the future objectives of the UK. The UK will continue to operate a high-quality regime that promotes growth and innovation, and underpins the trustworthy use of data as the UK economy becomes increasingly digitised and data-enabled.

Intellectual Property provisions were also of interest to a number of peers, including Lord Foster, who asked about the strength of provisions, and Baroness Bowles.

The existing EU-Japan EPA agreement is a high standard IP chapter. Both the UK and Japan have well-regarded IP regimes and due to the timing constraints of the negotiation, a key objective for the UK-Japan agreement was to ensure continuity for businesses. That said, the IP chapter agreed between the UK and Japan goes even further in areas of importance to the creative industries.

The UK-Japan agreement secures a commitment to tackle the online infringement of IP rights, ensuring that existing enforcement procedures can allow action against online IP infringement. The agreement encourages Japan to tackle online infringement through voluntary initiatives and impresses the importance of awareness-raising among the public. The CEPA also goes beyond the JEEPA with new commitments to share best practices on the enforcement of IP rights including in respect of websites, and to discuss measures to ensure adequate remuneration for performers and producers of commercial recorded music when it is broadcast or communicated to the public. We also maintained the commitment to the exchange of views and information on issues related to resale rights. We understand that these are areas of significant importance to the UK creative industries.

In other areas of interest to the creative industries, on designs we have secured a new provision on multiple design applications, locking in revisions to Japan's design law that are due to come in within the next year. We have updated the total term of protection available for registered designs to 25 years, which also locks in Japan's revision to their law. Additionally, on copyright we have strengthened the UK's and Japan's commitments to promoting best practice by collective management organisations and secured new text that ensures legal protection and remedies against the circumvention of technological protection measures and rights management information.

Baroness Bennett and Lord Trees spoke on the important topic of Animal Welfare. We have locked in the commitments to keep working closely with Japan on animal welfare matters. Nothing in the CEPA prevents the UK from continuing to uphold its' high environmental, food safety and animal welfare standards now that the UK has left the European Union.

Provisions in the UK-Japan CEPA commit both parties to cooperation on matters of animal welfare (Chapter 18), and to the exchange of technical information and best practices for providing safe and high-quality foods for consumers in the UK and Japan (Chapter 19). In addition, DIT is committed to scrutiny of animal welfare standards in FTAs through a range of measures, including where appropriate the assessment of animal welfare impacts.

Additionally, Lord Trees and Baroness Bennett also spoke to the lack of inclusion of Anti-Microbial Resistance in the CEPA. Japan has been consistent in its inability to accept our anti-microbial resistance (AMR) cooperation proposals in the timeframes we have been working to, as this would have introduced extensive new text to the Agreement, rather than building on existing provisions. We will still be working with Japan in international fora in the fight against AMR.

Lord Darroch asked for further clarification on the Northern Ireland Protocol. As Article 1.3 of the Agreement and Article 4 of the Protocol on Ireland/Northern Ireland clearly state, Northern Ireland is included within the territorial scope of UK FTAs.

At the time of negotiations, not all decisions regarding the implementation of the Protocol on Ireland/Northern Ireland had been made. We therefore included this provision, which ensures that the UK-Japan CEPA is legally coherent with the Protocol and the UK's commitments under the Protocol.

UK customs duties, and therefore the tariffs in the UK-Japan CEPA, will apply to goods entering Northern Ireland unless those goods are considered 'at risk' of subsequently moving into the EU.

Given the nature of the approach to tariffs in this agreement, there are very few divergences between UK preferential tariff rates in the UK-Japan CEPA and EU preferential tariff rates in the EU-Japan EPA.

The whole of the UK will benefit from enhanced cooperation with Japan on regulatory standards issues, including through improved engagement on lot codes for wine and spirits, which the UK was able to secure in this agreement. There is nothing in the UK-Japan CEPA which mandates Northern Ireland businesses to operate different regulatory standards.

Lord Liddell and Viscount Trenchard both spoke to the importance of investment and of investment protection.

The EU-Japan EPA does not include provisions on investment protection or investor state dispute settlement and, in line with the continuity approach taken for the majority of investment related provisions, the UK-Japan agreement does not include these provisions either. However, we recognise the importance of provisions relating to investment protection and investor-state dispute settlement in general, and to the importance of the UK-Japan investment relationship and have agreed to continue discussions on these

topics when appropriate. To that end, we have included language in Article 8.5 (3) that provides for future discussions if necessary.

On Subsidies, Lady Henig and Lord Hain both made reference to the offer made to the EU and its relation to those offered to Japan. The UK offer to the EU reflects the arrangements agreed between Canada and the EU. The CEPA includes similar commitments to be transparent about subsidies awarded, to answer queries from the other Party and seek to address any concerns about those subsidies which may affect the other Party. It also prohibits two types of subsidy: unlimited loan guarantees and support for ailing firms without a credible restructuring plan.

The UK-Japan agreement contains subsidy commitments which are appropriate for an FTA, and that reflect the specific context of the Japan negotiation. Both the UK offer to the EU and the provisions in the agreement with Japan build on WTO rules. Both include similar commitments to be transparent about subsidies awarded, to answer queries from the other Party and seek to address any concerns about those subsidies which may affect the other Party.

Negotiations with the EU are ongoing. We are seeking to agree a set of reciprocal provisions which are appropriate to a free trade agreement and to the specific context of the UK's relationship with the EU following the UK's departure from the EU.

Lord Stevenson, Lord Loomba and Lord Goldsmith all referred in their speeches to the matter of cumulation with the EU. In our negotiations with Japan, we have included a provision that seeks to recognise Japanese inputs that are contained in UK goods that are exported to the EU, which is particularly important for the auto sector. While we have included this provision in the CEPA, this arrangement would also need to be agreed between the UK and the EU in order for it to come in to affect.

The issue of Sustainability was raised by Lord Oates and Baroness Bennett about provisions that tackle that across the CEPA.

This chapter underlines the UK and Japan's commitments to trade and sustainable development, highlighting their recognition of the linked nature of economic, social and environmental development. The UK and Japan will work to ensure that their laws and regulations maintain and improve on their high level of protections based on international standards, whilst recognising their right to regulate for themselves in this area.

Throughout negotiations, our objective has been to agree on an ambitious and comprehensive FTA with Japan that builds on the EU-Japan agreement. The vast majority of the institutional provisions have been retained in the UK-Japan CEPA.

Minor amendments have been made to the articles on Joint Dialogue with Civil Society and the Panel of Experts to ensure they operate appropriately and more flexibly in the bilateral context. These changes though will not affect our ability to provide adequate monitoring and implementation of the chapter.

The Noble Lords Lord Purvis and Lord Oates raised queries relating to the comparability of the 2018 Impact Assessment for the EU-Japan EPA and the 2020 Impact Assessment for the UK-Japan CEPA.

The Impact Assessment on the EU-Japan agreement published in 2018 is out-of-date and major methodological differences in approach mean that it is not comparable with the recently published 2020 UK-Japan Impact Assessment.

The 2018 Impact Assessment received a Green Rating from the Regulatory Policy Committee and was deemed fit for purpose at the time of seeking Parliaments approval of the EU-Japan EPA. The UK is assumed to be part of the EU in the baseline for this previous Impact Assessment.

The analysis presented in the 2020 Impact Assessment is different from the 2018 impact assessment, including in the following significant ways:

- The model structure used in the 2018 analysis is based on the world economy in 2007 (GTAP version 8), whereas the 2020 Impact Assessment is based on the world economy in 2014 (GTAP version 10). In addition the later modelling exercise uses projections of the world economy to 2035.
- The 2018 Impact Assessment is based on modelling where the UK is an EU member state, whereas the 2020 Impact Assessment assumes the UK-EU future trading relationship is based on an FTA relationship.
- The methodology used in the 2018 Impact Assessment is based on apportioning an external estimate of the overall impact of the EPA (to the EU as a whole) to the UK. In contrast the estimated impacts in the 2020 Impact Assessment are based on more recent CGE modelling of the impact of the agreement on the UK itself, better reflecting the structure of the UK economy.

Due to the different methods employed, a comparison of the estimates does not give the difference in impacts between the EPA and CEPA.

Lord Purvis also asked for further clarity surrounding the difference between the 2020 Scoping Assessment and the 2020 Impact Assessment.

The Scoping Assessment, published in May, was undertaken prior to the launch of negotiations (during the 'scoping phase'). The Impact Assessment was published at the end of negotiations as the detailed provisions have become known. The estimates in both the Scoping Assessment and Impact Assessment predict that the UK-Japan agreement could increase UK GDP by 0.07% in the long-run.

The modelling exercise in the Impact Assessment updated the analysis in the Scoping Assessment by:

- Updating the UK's tariff schedule included in the baseline to the reflect the UK's Global Tariff (UKGT) schedule rather than the EU Common External Tariff included in the Scoping Assessment. This was updated to better reflect the expected tariff schedule which would apply in the UK in the absence of an agreement with Japan.
- Updating the inputs to the modelling exercise (specifically, the assumed trade barrier reductions resulting from the agreement) to reflect more accurately the final negotiated agreement.

These changes to the modelling exercise resulted in changes to the estimated impacts on trade flows.

Baroness Liddell commented on the need to achieve a better balance between the relative gains for UK and Japanese exporters. Bilateral trade balances are not included in our negotiation objectives. The estimates in the impact assessment show that the agreement is expected to result in higher output, higher wages, and lower prices for UK consumers and businesses.

The estimates of the impact on overall imports and exports to and from the UK with the world, show that the UK's overall trade balance could improve as a result of the agreement.

The modelling suggests that UK importers could switch import sources as a result of the agreement with Japan. The larger part of the expected increase in our imports from Japan reflects importers switching their source of supply from other countries to better value products from Japan. This is a result of the agreement's making it easier and less costly for UK businesses to do business with Japan, compared to other countries.

Lower price imports benefit businesses making use of the inputs in their production, as well as final consumers. According to UN Comtrade data, 59% of all Japanese goods imported into the UK were in intermediary goods.³

The growth in both countries' imports from the world is expected to be broadly similar whilst the growth in the UK exports to the world is slightly larger than the growth in Japan's exports to the world.

Baroness Liddell also expressed concerns around the arrangements for SMEs and requested information on the extent to which the scoping exercise showed the difficulties that SMEs might encounter in doing business with Japan.

The CEPA will support SMEs through a dedicated SME chapter that ensures that UK SMEs are provided with the tools and resources necessary to seize the opportunities of exporting to Japan, creating new opportunities for the UK's 6.0 million small and medium-sized businesses to trade with Japan.

The CEPA could deliver huge gains, both for the 8,300 UK Small and Medium-Sized (SMEs) across the UK already exporting goods with Japan as well as those making plans to enter the Japanese market.

The CEPA sets out how the UK and Japan will exchange information on vital rules and regulations, including through the use of an SME website and a searchable database. This commitment also includes making information on doing business in Japan available to UK SMEs in English.

³ United Nations, Classification by Broad Economic Categories (BEC) Rev.5, 2018 (passenger motor vehicles have been included within the consumer goods category). BEC has limitations as a source for identifying goods for intermediate use.

The UK and Japan have agreed to undertake and strengthen cooperation to support SME trade and investment between the UK and Japan, and that it is important to involve the private sector in this cooperation.

On 30 November, we published information on Gov.uk to support businesses prepare for new trading arrangements with Japan under the CEPA, including a page on SMEs as well as information on tariff rates and rules of origin. This information includes free-to-use online tools so that businesses can check product-specific and country-specific information on tariffs, rules and regulations that currently apply to UK trade in goods.

According to our published Impact Assessment, SMEs generally operate at a small scale and therefore tend to face higher trading costs relative to output. This means that they tend to be disproportionately affected by trade barriers. This would help explain why SMEs tend to display a lower propensity to export relative to larger firms.⁴

In general SMEs have reported issues relating to limited information about how foreign markets work, difficulties in accessing export-distribution channels and in contacting overseas customers. In addition, SMEs have reported costly product standards and certification procedures, and a lack of information about requirements in the foreign country as barriers to trade.

In the public call for input on trade negotiations with Japan, the main views and recommendations of stakeholders relating to UK SMEs included:

- Measures that sought to help SMEs outlined in the EU-Japan EPA be preserved, including the free online information that explains parts of the agreement relevant to SMEs and enables easier access to procurement contracts
- Non-tariff barriers, such as customs procedures, be further reduced
- And, improvements be considered in the areas of e-commerce, intellectual property, trade facilitation and the use of obligatory language.

To address the issues summarised above, the SME chapter (Chapter 20) of the UK-Japan CEPA commits the UK and Japan to transparency on market access through the sharing of user-friendly information suitable for SMEs. In addition, the agreement states that a central point of contact will be established to facilitate cooperation with Japan on issues specifically relating to SME trade. The objective of the chapter is to reduce trade barriers and information gaps which can be particular obstacles to trade for SMEs.

Other commitments across the agreement which are likely to particularly benefit SMEs are:

⁴ WTO (2016), 'World Trade Report 2016, Levelling the trading field for SMEs' https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf

OECD (2019), 'Helping SMEs internationalise through trade facilitation' [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP\(2018\)24/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP(2018)24/FINAL&docLanguage=En)

WTO (2016), 'World Trade Report 2016, Levelling the trading field for SMEs' https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf

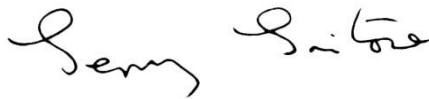
- Under the Customs and trade facilitation chapter (Chapter 4), the agreement includes a commitment to simplify customs procedures in order to reduce the time and cost for traders (Article 4.6).
- The UK and Japan have agreed to maintain cooperation on challenges for SMEs in the use of e-commerce (Article 8.83) and intellectual property issues (Article 14.60).

The agreement includes provisions to further encourage a transparent regulatory environment to give greater certainty to businesses, especially SMEs (Article 17.2).

I firmly believe that the UK-Japan comprehensive economic partnership is a very important agreement, not least because it is the first in nearly 50 years that the United Kingdom has struck on its own account with another major economy. It strengthens Britain's relationship with the third-largest economy in the world. It not only secures the benefits of the existing EU agreement, but it goes further in a number of key areas, such as digital and data, the protection of geographical indications, financial services and rules of origin.

I will be placing a copy of this letter in the House Libraries. I hope that this will satisfy the concerns Noble Lords have.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Grimstone', written in a cursive style.

Lord Grimstone of Boscobel, Kt
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