



House of Commons
International Trade Committee

Digital trade and data

First Report of Session 2021–22

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 23 June 2021*

The International Trade Committee

The International Trade Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for International Trade and its associated public bodies.

Current membership

[Angus Brendan MacNeil MP](#) (*Scottish National Party, Na h-Eileanan an Iar*) (Chair)

[Mark Garnier MP](#) (*Conservative, Wyre Forest*)

[Paul Girvan MP](#) (*DUP, South Antrim*)

[Sir Mark Hendrick MP](#) (*Labour, Preston*)

[Anthony Mangnall MP](#) (*Conservative, Totnes*)

[Mark Menzies MP](#) (*Conservative, Fylde*)

[Taiwo Owatemi MP](#) (*Labour, Coventry North West*)

[Lloyd Russell-Moyle MP](#) (*Labour, Brighton, Kemptown*)

[Martin Vickers MP](#) (*Conservative, Cleethorpes*)

[Mick Whitley MP](#) (*Labour, Birkenhead*)

[Craig Williams MP](#) (*Conservative, Montgomeryshire*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright-parliament/.

Committee reports are published on the Committee's website at www.parliament.uk/tradecom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Jasaron Bajwa (Assistant Clerk), Eligio Cerval-Peña (Clerk), Matthew Chappell (Committee Operations Manager), Professor Tony Heron (POST Parliamentary Academic Fellow), Adam McGee (Media Officer), Saminah Turk (Committee Operations Officer), David Turner (Committee Specialist), Emily Unell (Second Clerk).

Contacts

All correspondence should be addressed to the Clerk of the International Trade Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 8586; the Committee's email address is tradecom@parliament.uk.

You can follow the Committee on Twitter using [@CommonsIntTrade](#)

Contents

Summary	3
1 Introduction	5
What is digital trade?	5
Role of digital trade provisions in free trade agreements	5
Our inquiry	6
2 Government strategy and prominent approaches taken by other states	7
Opportunities of digital trade	7
Barriers to digital trade	8
Government strategy	10
Prominent approaches taken by other states	11
Approach taken in CEPA	12
Proposed accession to CPTPP	13
Calls for a digital trade and data strategy	14
3 Data protection	16
Definition and rationale	16
Data protection provisions	16
Exceptions to the free flow of data	18
Onward data transfers to third countries	19
The UKGDPR and data adequacy	20
Potential threats to data adequacy with the EU	21
4 Source code, consumer protection, and online harms	24
Source code provisions	24
Consumer protection provisions	25
Online harms	26
5 Work at the WTO and G7	28
The G7	28
The WTO	28
Joint Statement Initiative on E-Commerce	29
WTO moratorium on customs duties on electronic transmissions	29

6 Consultation	31
Conclusions and recommendations	33
Formal minutes	36
Witnesses	37
Published written evidence	38
List of Reports from the Committee during the current Parliament	39

Summary

There is no single recognised and accepted definition of digital trade, but it is generally considered to encompass digitally enabled transactions of trade in goods and services. Digital trade requires the movement of data across borders. The Government has, on multiple occasions, emphasised digital trade and data in its FTA negotiations.

This is a pivotal moment for the Government to craft a clear approach to digital trade and data which will guide the development of its independent trade policy. We heard evidence calling for a cross-FTA strategy for digital trade and data in addition to the FTA-specific negotiating objectives which are currently available. The Government should produce and publish a digital trade and data strategy, clarifying the UK's approach to digital trade and positioning it in relation to prominent approaches taken by other states.

Data protection rules and relevant provision in FTAs are complex and open to diverging legal interpretations. We welcome the Government's attempts to address concerns about data protection through its data protection explainers. However, we have heard significant concerns about the data protection provisions and exceptions to the provision committing to the free flow of data in CEPA. We recommend that, as a part of its published impact assessments for future agreed FTAs, the Government includes its assessment of the agreement's impact on the protection of UK citizens' data.

Retaining an adequacy decision from the European Commission is a priority for both businesses and consumers. We welcome the Government's progress in achieving a draft adequacy decision, and its focus on retaining such a decision. The Government should, as a part of its published impact assessments for future agreed FTAs, include an assessment of each agreement's potential impact on maintaining an adequacy decision from the European Commission.

Accession to CPTPP is potentially a good opportunity for the UK in facilitating and encouraging digital trade. However, we heard that joining CPTPP may result in changes to the way data—particularly EU citizens' personal data—is handled in the UK. We recommend that the Government states what changes it anticipates in the management of EU citizens' personal data in the UK as a result of accession to CPTPP and the impact of any changes on UK stakeholders.

Amending the UKGDPR could create a simpler, more effective regulatory regime. We welcome the Government seeking to build on the UKGDPR but call on it to set out how it will depart from the EU's GDPR while maintaining data adequacy and minimising any additional regulatory burden for businesses.

In its published impact assessments for each new FTA, we recommend that the Government includes an assessment of the impact of each agreement on its ability to regulate source code and algorithms at the domestic level.

The inclusion of consumer protection provisions in CEPA is a positive development. We heard calls to use these provisions as a starting point and to build upon them in future FTAs, particularly in relation to the information provided to consumers on e-commerce platforms, and mechanisms for dispute resolution for online transactions. The

Government should clarify how it intends to build upon the provisions in CEPA in future FTAs, and how measures in addition to FTA commitments will be complementary in protecting UK consumers engaging in digital trade.

While a commitment to plurilateralism, particularly at the WTO level, is welcome, it is crucial that the Government also commits to transparency and parliamentary scrutiny in relation to WTO negotiations. We recommend the Government publishes both its objectives for the Joint Statement Initiative and its current proposals to allow for greater transparency and scrutiny.

Consultation was identified as an area for improvement in our report on CEPA. While the Government has engaged in consultation exercises and supported consultations undertaken by Which?, the Government's consultation in this area still requires improvement. We recommend that the Government includes representatives from civil liberties organisations in its ETAG, or otherwise creates a mechanism to consult with them. In addition, we also recommend that the Government consults with stakeholders throughout ongoing negotiations, sharing working texts in confidence where possible and engaging with feedback on those texts.

1 Introduction

What is digital trade?

1. There is no single recognised and accepted definition of digital trade. Dr Emily Jones, Associate Professor at the University of Oxford, told us that it is “helpful for us to think [of digital trade as] the digitally enabled transactions of goods and services.”¹

2. The Government has stated that:

The strongest effort to develop a coherent and comprehensive definition that captures the key features of the different components of cross-border digital trade is found in work led by the OECD, WTO and the IMF.²

3. The Organisation for Economic Co-operation and Development (OECD) states that:

there is a growing consensus that [digital trade] encompasses digitally enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms and governments.³

4. In the World Trade Organization’s (WTO’s) Work Programme on Electronic Commerce, adopted in 1998, electronic commerce is described as: “the production, distribution, marketing, sale or delivery of goods and services by electronic means.”⁴ The International Monetary Fund (IMF) has defined digital trade as “all cross-border transactions that are delivered remotely over ICT networks—i.e. over voice or data networks, including the internet, in an electronically downloadable format.”⁵

5. Hosuk Lee-Makiyama, Director of the European Centre for International Political Economy, captured the challenges of seeking to define and measure digital trade. He told us:

Digital trade defies legal and statistical definitions, as we have heard, and it is very important that we think of it as a general purpose technology. Therefore, trying to define it or trying to measure it can be as meaningful as trying to figure which portion of trade is enabled by electricity or good weather.⁶

Role of digital trade provisions in free trade agreements

6. Rather than removing barriers to digital trade, e-commerce provisions in free trade agreements (FTAs) have been more about locking in existing regulatory practices and preventing future barriers to trade. Hosuk Lee-Makiyama, said:

1 [Q2](#)
 2 Department for International Trade, [Understanding and measuring cross-border digital trade](#), 14 May 2020, p 5
 3 OECD, [Digital Trade: Developing a framework for Analysis](#), 27 July 2017, p 4
 4 World Trade Organization, [Work Programme on Electronic Commerce](#), 30 September 1998
 5 IMF Committee on Balance of Payment Statistics, [Towards a Handbook on Measuring Digital Trade: Status Update](#), October 2018
 6 [Q9](#)

All trade agreements, especially in the area of services and technology analysis, are mostly about collecting commitments in negative terms. That is preventing the contracting parties from undertaking restrictions and prohibitions that might impede negatively on trade. Of course, there is a clear set of exceptions to that.⁷

Our inquiry

7. We focused our scrutiny on the digital trade and data provisions in the UK-Japan Comprehensive Economic Partnership Agreement (CEPA), as well as the Government's negotiating objectives for its ongoing digital trade negotiations. We also considered the role of the Department for Digital, Culture, Media, and Sport (DCMS) in developing the UK's domestic data protection law. Our predecessor Committee held a short inquiry in November 2020 which considered CEPA, including its digital and data provisions.⁸ We launched our inquiry in December 2020. Over the course of three evidence sessions, we heard from 17 witnesses, including academics, business representatives, civil society organisations, the Minister of State for Media and Data, and the Minister of State for Trade Policy. We also received 29 pieces of written evidence. We are grateful to all those who provided oral and written evidence to our inquiry.

8. We acknowledge that the UK's sole management of its trade policy is in its infancy, and that its policy in relation to digital trade and data may still be in development.

7 [Q10](#)

8 House of Commons International Trade Committee, Second Report of Session 2019–21, [UK-Japan Comprehensive Economic Partnership Agreement](#), HC 914

2 Government strategy and prominent approaches taken by other states

Opportunities of digital trade

9. Our evidence demonstrates that digital trade and data is the source of a range of opportunities for businesses and consumers. Examining the scale of digital trade across the world, the UN Conference on Trade and Development estimated the value of e-commerce sales to be almost \$26 trillion in 2018, up 8% on the previous year.⁹ The Government has estimated that the digital sector contributed £150.6bn to the UK economy in 2019, employing 4.6% of the national workforce.¹⁰ DIT told us that, in 2019, the UK’s “remotely delivered trade with the world was worth £326 billion, equating to one quarter of total trade.”¹¹ The UK also ranks third in the world, after the US and China, both for the number of tech ‘unicorns’¹²—privately held companies worth more than \$1bn—and for tech investment.¹³

10. DIT has stated that, as a result of the COVID-19 pandemic, “an even greater proportion of trade is now happening online.”¹⁴ Research undertaken by Sage supported this, showing that 73% of UK businesses surveyed had adopted new technology since the start of the pandemic.¹⁵ The pandemic’s stimulation of digital trade was revealed in our evidence: for example, the Information Commissioner’s Office (ICO) said the “Covid-19 pandemic has driven an acceleration in the uptake of digital services that would otherwise have been expected to take years.”¹⁶

11. We also received evidence outlining the role of data and technology in supporting the work of businesses. For example, the Federation of Small Businesses commented on how its members are “harnessing digital technology to reduce costs, grow their business and serve a wider customer base”, highlighting the use of online shops and cloud computing.¹⁷ The Global Data Alliance stated that “sectors from automotive and agriculture to advanced manufacturing and chemical products” were all able to benefit from the use of digital technologies, and techUK noted that 75% of the value created by the internet has been captured by companies in traditional industries.¹⁸ Digital technologies and the movement of data can also enable UK businesses to access services overseas. The Professional and Business Services Council commented on UK businesses’ increasing use of shared services centres—which provide business services such as tax compliance and human capital. It explained that such shared services centres are often located outside of the UK, allowing access to a higher concentration of skilled labour, available at a lower cost.¹⁹

9 United Nations Conference on Trade and Development, *UNCTAD Estimates of Global E-Commerce 2018*, p 1

10 Department for International Trade ([DTD0025](#))

11 Department for International Trade ([DTD0025](#))

12 Tech Nation, *The future UK tech built: Tech Nation Report 2021*, 16 March 2021

13 Tech Nation, *The future UK tech built: Tech Nation Report 2021*, 16 March 2021

14 Department for International Trade ([DTD0025](#))

15 Sage, *Investing for Recovery—Supporting SME Jobs and Growth through Digital Adoption*, 27 October 2020, p 1

16 Information Commissioner’s Office ([DTD0029](#)), IBM Corporation ([DTD0012](#)), The Institute of Export and International Trade ([DTD0017](#))

17 Federation of Small Businesses ([DTD0005](#))

18 Global Data Alliance ([DTD0007](#)), techUK ([DTD0015](#))

19 Professional and Business Services Council ([DTD0013](#))

12. Digital trade and the use of data can deliver consumer benefits, including access to a wider range of goods and services, often delivered more quickly and easily as a result of digital technologies and at potentially lower prices.²⁰ The Advertising Association reported that many digitally-enabled services were free-to-use, with “digital goods and services [having] marginal costs which allows for scalability and rapid innovation”.²¹ We were also told how the facilitation of electronic signatures and paperless trading can be helpful for both consumers and businesses, with the former being able to easily sign binding contracts and the latter being able to benefit from increased efficiency and lower costs when compared to non-digital alternatives.²²

13. Digital trade and digital technologies can also have a role in addressing climate change, for example through the transition from physical products to digital ones. Adobe highlighted that its transition from boxed software to digital software—using the cloud—has reduced its products’ environmental impact by more than 95%.²³ Data itself can be useful in addressing climate change through assisting sustainable farming or facilitating sustainable modes of transport.²⁴ Digital platforms can also be helpful in reducing the need for business travel, therefore reducing emissions produced by vehicles.²⁵

14. However, we heard that the environmental benefits which come from the use of digital technologies also come with an increased demand for energy, particularly in powering data centres.²⁶ The Royal Society told us that around two-thirds of emissions from digital technologies come from the electricity consumption, with the extraction of raw materials, manufacturing, distribution, end-of-use recycling, and disposal of equipment facilitating the use of digital technologies all contributing to carbon emissions.²⁷ On the other hand, the CBI told us that the relationship between the increased use of digital technologies and data centre energy usage is nuanced, with a twelve-fold increase in internet traffic not leading to a corresponding increase in data centre energy usage.²⁸ Emphasising the importance of meeting any increased demand for energy caused by an increase in the use of digital technology with renewable energy, the Royal Society told us that “the uptake of renewable energy has, so far, effectively helped reduce emissions from digital technology use.”²⁹

Barriers to digital trade

15. Witnesses pointed to a range of barriers to digital trade and data flows. The barrier most frequently cited was data localisation. In its simplest form, data localisation involves legislation requiring electronic commerce platforms to register locally or use data centres located within the implementing country’s border.³⁰ Data localisation mechanisms

20 Which? ([DTD0001](#)), Department for International Trade ([DTD0025](#))

21 Advertising Association ([DTD0004](#))

22 Which? ([DTD0001](#)), Adobe ([DTD0003](#)), BSA | The Software Alliance ([DTD0006](#)), IBM Corporation ([DTD0012](#)), techUK ([DTD0015](#)), Office of the City Remembrancer, City of London Corporation ([DTD0026](#))

23 Adobe ([DTD0003](#))

24 IBM Corporation ([DTD0012](#)), The Royal Society ([DTD0014](#))

25 Professional and Business Services Council ([DTD0013](#))

26 Adobe ([DTD0003](#)), Advertising Association ([DTD0004](#))

27 The Royal Society ([DTD0014](#))

28 CBI ([DTD0022](#))

29 The Royal Society ([DTD0014](#))

30 Advertising Association ([DTD0004](#))

can pose significant barriers to digital trade by limiting cross-border data flows.³¹ Emphasising their negative effects, the Federation of Small Businesses described data localisation requirements as constituting a significant cost for small businesses engaged in digital trade.³² techUK criticised governments for adopting such measures, explaining that they fail to keep data secure, and “do not increase commercial privacy or data security.”³³ It also stated that such measures impose significant costs on adopting countries’ economies.³⁴ Similarly, the Office of the City Remembrancer told us that such measures rarely increase data security because businesses are prevented from using centralised data centres which have increased security standards.³⁵

16. Data protection legislation was also described as a potential barrier to digital trade. For example, the Advertising Association described the “unilateral nature” of adequacy decisions under the EU’s GDPR as creating “some legal uncertainty as this can in theory be withdrawn at short notice.”³⁶ These laws can also become a barrier where they are inconsistent between jurisdictions. The Federation of Small Businesses described the collection of data protection regimes around the world as a “complex international patchwork”, with each set of legislation containing differing exemptions.³⁷

17. Stakeholders identified insufficient mechanisms to protect intellectual property (IP) rights as another potential barrier to digital trade. For instance, some regulations, such as those in China, set disclosure of source code as a pre-requisite for market access.³⁸ techUK described such regulations as “worrying”, and the Law Society of Scotland highlighted concerns that UK businesses’ disclosed source code and other “commercially sensitive information” could be shared “to benefit domestic industries” competing with UK businesses.³⁹ The Motion Picture Association described how digital piracy negatively affects distribution channels for digital products, such as films and music.⁴⁰ It also explained that inadequate IP protection could create unfair competition and limit opportunities for legitimate producers and distributors to evolve their products and services.⁴¹

18. Another potential barrier to digital trade is related to infrastructure and connectivity capability, which consists of the quality of infrastructure itself, how accessible that infrastructure is, and how affordable it is.⁴² DIT noted that difficulty in accessing “high-quality infrastructure and connectivity [is] a significant barrier to digitally-enabled services.”⁴³

31 [Q37](#), Adobe ([DTD0003](#)), Advertising Association ([DTD0004](#)), Federation of Small Businesses ([DTD0005](#)), BSA | The Software Alliance ([DTD0006](#)), The Law Society of England and Wales ([DTD0009](#)), Professional and Business Services Council ([DTD0013](#)), techUK ([DTD0015](#)), Law Society of Scotland ([DTD0016](#)), The Institute of Export and International Trade ([DTD0017](#)), Coalition of Services Industries ([DTD0018](#)), TheCityUK ([DTD0020](#)), CBI ([DTD0022](#)), Office of the City Remembrancer, City of London Corporation ([DTD0026](#))

32 Federation of Small Businesses ([DTD0005](#))

33 techUK ([DTD0015](#))

34 techUK ([DTD0015](#))

35 Office of the City Remembrancer, City of London Corporation ([DTD0026](#))

36 Advertising Association ([DTD0004](#))

37 Federation of Small Businesses ([DTD0005](#))

38 The Institute of Export and International Trade ([DTD0017](#))

39 techUK ([DTD0015](#)), Law Society of Scotland ([DTD0016](#))

40 Motion Picture Association (MPA) ([DTD0030](#))

41 Motion Picture Association (MPA) ([DTD0030](#))

42 The Law Society of England and Wales ([DTD0009](#))

43 Department for International Trade ([DTD0025](#))

19. Censorship and other restrictions placed on the internet were also identified as barriers to digital trade. The Advertising Association explained that “online censorship or website blocking can also be a problem, and these[...] can hurt businesses that rely on advertising to sell their goods and services.”⁴⁴ techUK argued that protectionist policies adopted by various countries “will end in a balkanisation of isolated country specific webs”, which “can reduce technology diffusion, affect global value chains and weaken growth.”⁴⁵

20. Barriers which are not necessarily unique to digital trade—for example, “logistical challenges such as pricing, traceability, customs duties, taxes and returns”—were cited as relevant by the Federation of Small Businesses.⁴⁶ Similarly, regulatory differences, paperwork and formalities, and financial licences are also barriers to digital trade.⁴⁷

Government strategy

21. The Government’s “goal is for the United Kingdom to be a global leader in digital trade with a network of international agreements that drive productivity, jobs and growth across the country.” It has outlined a “five pillar” approach to digital trade that:

shape the United Kingdom’s trade negotiations and wider multilateral engagement. These are: open digital markets, digital trade facilitation, data flows, consumer and business safeguards, and global rules and standards.⁴⁸

22. For its ongoing negotiations with Australia, New Zealand and the US, the Government has published identical negotiating objectives for digital trade and data:

- Secure cutting-edge provisions which maximise opportunities for digital trade across all sectors of the economy.
- Include provisions that facilitate the free flow of data, whilst ensuring that the UK’s high standards of personal data protection are maintained and include provisions to prevent unjustified data localisation requirements.
- Promote appropriate protections for consumers online and ensure the Government maintains its ability to protect users from emerging online harms.
- Support the reduction or abolition of business and consumer restrictions relating to access to [the other Party’s] digital market.
- Ensure customs duties are not imposed on electronic transmissions.
- Promote a world-leading eco-system for digital trade that supports businesses of all sizes across the UK.⁴⁹

44 Advertising Association ([DTD0004](#))

45 techUK ([DTD0015](#))

46 Federation of Small Businesses ([DTD0005](#))

47 [Q36](#)

48 Department for International Trade ([DTD0025](#)), [Q116](#)

49 Department for International Trade, [UK-Australia Free Trade Agreement: The UK’s Strategic Approach](#), 17 July 2020; Department for International Trade, [UK-New Zealand Free Trade Agreement: The UK’s Strategic Approach](#), 17 July 2020; Department for International Trade, [UK-US Free Trade Agreement](#), 2 March 2020

23. In addition to its five pillars and six negotiating objectives, the Government has also published a National Data Strategy (NDS) outlining its approach and highlighting four separate pillars and five missions. One of the missions is to champion the international flow of data, which the NDS defines as:

The flow of information across borders fuels global business operations, supply chains and trade, powering growth across the world. It also plays a wider societal role. The transfer of personal data ensures people's salaries are paid, and helps them connect with loved ones from afar. And, as the coronavirus pandemic has demonstrated, sharing health data can aid vital scientific research into diseases while uniting countries in their response to global health emergencies. Having left the European Union, the UK will champion the benefits that data can deliver. We will promote domestic best practice and work with international partners to ensure data is not inappropriately constrained by national borders and fragmented regulatory regimes so that it can be used to its full potential.⁵⁰

The response to the consultation on the NDS is expected shortly.⁵¹

24. The Government has, on multiple occasions, emphasised digital trade and data in its FTA negotiations. We commend the Government's ambition to address the barriers outlined by businesses and we agree that digital trade presents a range of opportunities which the Government should pursue.

Prominent approaches taken by other states

25. The UK is developing its strategy for digital trade in the context of differing approaches taken by large economies around the world. Broadly these follow one of three general approaches.

26. The first, typified by the EU, is characterised by the protection of citizens' data as a fundamental right.⁵² Dr Emily Jones, Beatriz Kira, and Danilo B. Garrido Alves described the EU's approach to digital trade in its FTAs:

The EU has not made broad positive commitments that it will permit data to flow across borders out of concern that this would compromise its ability to implement the GDPR. Instead, it has agreed to prohibit the use of specific types of measures (including data localisation) and insisted on an extensive exception for privacy, which completely carves out privacy measures from the scope of the agreement.⁵³

27. The US follows a different approach, which has been described as seeking positive commitments that other governments will allow data flows with the US, and aiming "to impose limits on the measures that governments can use to regulate data flows, including on the grounds of privacy."⁵⁴ While the US's FTAs do allow for exceptions to the free flow of data to protect privacy, a notable difference between its stance and that of the EU

50 Department for Digital, Culture, Media & Sport, [National Data Strategy](#), 9 December 2020

51 [Q142](#)

52 [Q55](#)

53 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

54 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

is that, in the US, data protection is protected as a right at the constitutional level only in relation to action by the state and not by the private sector. In the EU, both state and private breaches can give rise to a rights violation.⁵⁵

28. The third approach—albeit less common than that of the EU and the US—is that taken by China. Outlining the Chinese approach, Professor David Collins, Professional of International Economic law at City, University of London explained that “free flow of data really only began to appear in the last five years or so” in China’s trade agreements covering digital trade.⁵⁶ Domestic data protection laws give Chinese citizens stronger protections against privacy infringements by private actors than those by the state.⁵⁷

29. While these approaches have some fundamental differences, they appear to converge around the adoption of data privacy regulations. For example, California’s Consumer Privacy Act 2018 gives consumers more control over personal data.⁵⁸ Similarly, Professor Elaine Fahey, Jean Monnet Chair of Law and Transatlantic Relations at City, University of London, described how China has “taken the GDPR”, referencing the EU regulation’s influence on China’s prospective Personal Information Protection Law.⁵⁹

Approach taken in CEPA

30. The UK and Japan signed CEPA in October 2020. This was the first new FTA that the UK signed after leaving the EU. At the time we noted that:

The main area in which CEPA differs from JEEPA [the FTA between the EU and Japan] is its provisions relating to digital trade and data. We heard that these provisions are ambitious and compare with provisions put forward in the US’s digital trade agreement with Japan. We also heard that the provisions are significant in terms of precedent-setting for future agreements.⁶⁰

31. Businesses and their representatives told us CEPA was a positive development in the UK’s approach to digital trade. For example, various stakeholders, such as Adobe, described CEPA as indicating a “positive direction of travel”, with the Federation of Small Businesses encouraging the Government to “maintain this approach”.⁶¹ Businesses were particularly welcoming of the provisions banning unjustified data localisation and mandatory disclosure of source code, with the British Software Alliance describing such provisions as “robust and forward-looking”.⁶² However, Nick Ashton-Hart, representing the International Chamber of Commerce UK, described CEPA as “in some ways [...] less ambitious than the UK-EU agreement”.⁶³ In particular, he highlighted the absence of a “provision for computer and related services”, such as Article DIGIT.17 in the UK-EU Trade and Cooperation Agreement (TCA) which defines a range of services as computer and related services for trade and investment purposes.⁶⁴

55 [Q55](#)

56 [Q56](#)

57 [Q56](#)

58 UKTPO - University of Sussex ([DTD0027](#))

59 [Q26](#)

60 House of Commons International Trade Committee, Second Report of Session 2019–21, [UK-Japan Comprehensive Economic Partnership Agreement](#), HC 914, [para 35](#)

61 Adobe ([DTD0003](#)), Federation of Small Businesses ([DTD0005](#))

62 BSA | The Software Alliance ([DTD0006](#))

63 [Q41](#)

64 [Q41](#)

32. CEPA was also seen as marking a shift in the UK's approach, following EU withdrawal. The UK Trade Policy Observatory told us that CEPA “clearly shows the UK's emerging departure from the EU's approach to digital governance.”⁶⁵ CEPA was also described as the “strongest sign that the government's approach is shifting” and “the first time we have seen the UK depart from the EU's approach” in this area.⁶⁶ Disapproving of the UK's perceived change in direction, Which?, the consumer advocacy group, described CEPA as signalling “a concerning shift in the UK's approach to digital trade negotiations.”⁶⁷

33. Some witnesses questioned the wisdom of drawing conclusions on the basis of a single agreement. The Professional and Business Services Council noted that “it is difficult to ascertain a country's ‘approach’ from any single agreement”, but that:

[when] taken in conjunction with the UK-EU TCA, and the published negotiating objective for FTA negotiations with the US, New Zealand and Australia, however, it can be seen that pursuing more advanced digital provisions are definitely a priority for the government.⁶⁸

34. DIT described CEPA as “one of the world's most ambitious FTAs with respect to digital trade and data”, which would “create new opportunities for British tech and digitally-savvy firms to export to Japan, whilst also attracting greater investment into the United Kingdom from Japan's leading digital industry”.⁶⁹

Proposed accession to CPTPP

35. In February 2021, the Government announced its intention to begin formal accession proceedings to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). This is in addition to its ongoing negotiations with Australia and New Zealand—both CPTPP signatories—and its agreement with Japan, another CPTPP signatory. It is also notable that the UK is due to start negotiations with another CPTPP signatory, Singapore, for a Digital Economy Agreement in Spring 2021, which will seek to build upon the existing FTA with the country.⁷⁰

36. As with the feedback received regarding CEPA, businesses and their representatives were overwhelmingly supportive of the Government's intention to accede. For example, the Law Society of England and Wales described potential accession as a “positive development”, while IBM stated that accession would bring “wide-ranging benefits.”⁷¹ The Advertising Association encouraged preserving CPTPP's existing provisions on data localisation and the mandatory disclosure of source code when the UK seeks accession.⁷² Highlighting the strategic benefit of accession, the CBI described CPTPP as including “countries at the forefront of the digital agenda”, noting that New Zealand and Singapore—alongside Chile—have also agreed to the Digital Economy Partnership Agreement (DEPA), a digital-only trade agreement.⁷³

65 UKTPO - University of Sussex ([DTD0027](#))

66 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#)), [Q12](#)

67 Which? ([DTD0001](#))

68 Professional and Business Services Council ([DTD0013](#)), for a similar statement see Law Society of Scotland ([DTD0016](#))

69 Department for International Trade ([DTD0025](#))

70 Department for International Trade, [Joint statement by the UK and Singapore](#), 10 December 2020

71 The Law Society of England and Wales ([DTD0009](#)), IBM Corporation ([DTD0012](#))

72 Advertising Association ([DTD0004](#))

73 CBI ([DTD0022](#))

37. Other stakeholders were more critical of accession to CPTPP. Which? suggested that there could be “detrimental implications” for UK consumers relating to “certain digital trade provisions of CPTPP”, citing the agreement’s implications for data protection (see Chapter 3). Some stakeholders also expressed concerns about the effect of joining CPTPP on data adequacy with the EU, although the Professional and Business Services Council ultimately judged retaining adequacy with the EU as a CPTPP member as “eminently achievable” in the light of Canada, Japan, and New Zealand doing so.⁷⁴ Focusing on IP protection, the Motion Picture Association expressed reservations about accession to CPTPP on the basis that accession “may result in the embrace of IP standards significantly lower than those present in UK law”, citing the current suspension of measures in CPTPP which require signatories to have in place digital security technology to protect IP.⁷⁵

38. It is notable that the UKTPO considered that there may be “no room for the UK to negotiate CPTPP rules including digital and data provisions”, drawing on precedent relating to CPTPP’s existing signatories and comments made by Japan’s trade minister.⁷⁶ Both the Professional and Business Services Council and the Law Society of Scotland also highlighted the potential inability of the Government to reopen CPTPP provisions, with the former stating that there is “likely to be minimal, if any, room for seeking concessions from existing participants on entry.”⁷⁷

Calls for a digital trade and data strategy

39. We heard suggestions that the Government would benefit from adopting a digital trade strategy beyond its FTA-specific negotiating objectives, its “five pillars”, and the National Data Strategy. Nick Ashton-Hart of the ICC UK called for:

a macro-strategy on digital trade, which is granular enough that everyone understands what it is and that is developed in a participatory way, especially regarding non-FTAs in terms of regulatory co-operation and regulatory objectives in order to facilitate interoperability with other regulatory regimes.⁷⁸

40. Drawing comparisons between “larger economies” which have a “clear data strategy”—such as China and the EU—and other economies which instead “operate on a default combination of domestic legislation and obligations undertaken in trade agreements”, Professor David Collins claimed that it was “vital that the UK has a clear data strategy”.⁷⁹ For this strategy, Professor Collins emphasised the importance of considering how UK policies and regulations interact with “the frameworks of trading partners, such as the EU”, as well as “other regional and international norms, notably the Comprehensive Progressive Trans Pacific Partnership (CPTPP).”⁸⁰ In their suggestion that the UK ought to develop a digital trade strategy, Dr Emily Jones, Beatriz Kira, and Danilo B. Garrido Alves described a strategy which would “guide [the UK’s] trade negotiations and wider trade

74 Professional and Business Services Council ([DTD0013](#)), Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#)), Law Society of Scotland ([DTD0016](#))

75 Motion Picture Association (MPA) ([DTD0030](#))

76 UKTPO - University of Sussex ([DTD0027](#))

77 Professional and Business Services Council ([DTD0013](#)), Law Society of Scotland ([DTD0016](#))

78 [Q44](#)

79 Professor David Collins (Professor of International Economic Law at City, University of London) ([DTD0002](#))

80 Professor David Collins (Professor of International Economic Law at City, University of London) ([DTD0002](#))

policy, setting out its policy objectives and how it intends to achieve them.”⁸¹ Professor Collins, and Dr Jones, Beatriz Kira, and Danilo B. Garrido Alves described how such a strategy can increase predictability and ease of compliance for businesses and citizens.⁸² Professor Christopher Kuner, Co-Director of the Brussels Privacy Hub, described the development of an integrated trade and privacy policy as an opportunity for the UK to show leadership, and something that could be “quite innovative” and “quite powerful”.⁸³

41. When asked whether the Government has developed a digital trade strategy, the Minister of State for Trade Policy told us:

I am not aware of a specific strategy document but what we are clear on is what our pillars are, our objectives, and we are also clear on our means. The means are three things: free trade agreements, like the one we did with Japan, digital economy agreements, like the one we are seeking to negotiate with Singapore, and thirdly, through the World Trade Organisation, particularly things like the joint initiative on e-commerce—and fourthly, I should add, through the G7 trade track. Those are our means of how we go forward on making sure that our digital trade policy takes effect as far as we can in all our global doings.⁸⁴

42. The UK has an opportunity to create a clear, innovative position on digital and data governance. We heard evidence calling for a cross-FTA strategy for digital trade and data in addition to the FTA-specific negotiating objectives which are currently available. We note that the Government has “five pillars”, which are best classified as a set of principles, and do not constitute a cross-FTA digital trade strategy.

43. This is a pivotal moment for the Government to craft a clear approach to digital trade and data which will guide the development of its independent trade policy. We recommend that the Government produces and publishes a digital trade and data strategy, clarifying the UK’s approach to digital trade and positioning it in relation to prominent approaches taken by other states. We recommend it detail the Government’s long-term approach and policy objectives in relation to digital trade and data. The strategy should also include how domestic policies will interact with the United Kingdom’s FTA, multilateral, and plurilateral commitments in securing the Government’s long-term economic and non-economic digital trade objectives.

81 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

82 Professor David Collins (Professor of International Economic Law at City, University of London) ([DTD0002](#)), Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

83 [Q80](#)

84 [Q117](#)

3 Data protection

Definition and rationale

44. Data protection or data privacy, (the terminology differs regionally) is comprised of three concepts: individuals having rights in relation to data that can be used to identify them; the existence of a legal framework to regulate data processing; and the existence of remedies for private and public sector breaches of data processing regulations.⁸⁵ Professor Christopher Kuner described the rationale for data protection:

The reason that we provide legal protection for data privacy is that processing of data that identifies you may have serious implications for individuals, for their dignity as a person and it can also lead to all sorts of harms, including misuse of data in ways that violate your expectations, discrimination and even serious human rights violations.⁸⁶

We heard that data protection, in addition to having a role in protecting consumers' dignity, has an important role in facilitating digital trade. techUK described “strong and robust data protection frameworks” as a “crucial prerequisite to ensuring enduring public trust and support in the cross-border flow of data.”⁸⁷ This aligns with the evidence submitted by Which?, that consumers “were widely concerned” about implications that the free flow of data between the UK and other countries may have on consumer data protection rights.⁸⁸ DIT has acknowledged the link between data protection and digital trade, submitting that “the free flow of data needs to go hand in hand with data protection.”⁸⁹

Data protection provisions

45. In CEPA, Article 8.80 outlines the requirement for each party to “adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce” and to “endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.”⁹⁰ A footnote to this provision states:

For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.⁹¹

46. Some stakeholders expressed concerns over this provision. For example, Nick Ashton-Hart, representing the International Chamber of Commerce UK, questioned the strength

85 [Q54](#)

86 [Q54](#)

87 [techUK \(DTD0015\)](#)

88 [Which? \(DTD0001\)](#)

89 [Department for International Trade \(DTD0025\)](#)

90 Foreign, Commonwealth and Development Office, [Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership](#), CP 311, October 2020, p 216

91 Foreign, Commonwealth and Development Office, [Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership](#), CP 311, October 2020, p 216

of this obligation, saying that “endeavouring to adopt is not exactly a hard obligation.”⁹² Beyond this, we heard criticisms of the footnote to the provision, specifically the phrase “the enforcement of voluntary undertakings by enterprises relating to privacy”. Sue Davies MBE of Which? stated that this “could be interpreted to mean that self-regulation [was] equivalent to the sort of robust regulatory regime that we have at the moment”.⁹³ This view was shared by Javier Ruiz Diaz, an independent trade consultant, who described the inclusion of voluntary undertakings as “accepting a lower redemption” and its inclusion amounting to “accepting that there are lower, less intrusive data protection mechanisms that are equally valid for the UK”.⁹⁴ Professor Christopher Kuner said:

I can see two possible ways of interpreting it. One is that it would be sufficient if data protection or data privacy is protected by a self-regulatory regime. This is where I think these concerns come from, and I can understand those concerns, but it seems to me that another possible interpretation might be that the Japanese administrative system relies more than our systems do in the west on co-regulation, such as trust marks and alternative complaint resolution systems. I think this gets down to what is intended here by the parties.⁹⁵

47. In a data protection explainer following the agreement of CEPA, the Government addressed what it called “misinformation in the public domain”.⁹⁶ In response to claims that CEPA will force the UK to accept data protection frameworks which have lower protection standards, the explainer stated:

Nothing in the agreement undermines the UK’s data protection framework. Likewise, the deal does not require either party to accept lower data protection frameworks as equivalent with their own. In fact, the agreement contains a commitment to maintaining comprehensive legal frameworks to protect personal information (Article 8.80.2). The UK does this through our domestic data protection legislation including the Data Protection Act 2018 (DPA).⁹⁷

48. The Minister of State for Trade Policy told us that the inclusion of the footnote:

does not imply that these provisions mean that UK personal data can be transferred to a country that relies on self-regulation as its only means of data protection, which I think is what some commentators have drawn out, or attempted to assert, as a result of that footnote.⁹⁸

He reiterated that the provisions “do not provide the legal basis for the transfer of personal data from the UK”, with those transfers being regulated by the UK’s domestic legislation.⁹⁹ Graham Floater, Director of Trade Policy at DIT, added that the “voluntary undertakings are simply part of a number of different ways in which that country can meet that provision, but it is additional to the protections that already exist for UK citizens.”¹⁰⁰

92 [Q41](#)

93 [Q87](#)

94 [Q14](#)

95 [Q68](#)

96 Department for International Trade, [UK-JP CEPA—a good deal for data protection](#), p2

97 Department for International Trade, [UK-JP CEPA—a good deal for data protection](#), p2

98 [Q124](#)

99 [Q124](#)

100 [Q127](#)

Exceptions to the free flow of data

49. Article 8.84 of CEPA commits parties to “not prohibit or restrict the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.”¹⁰¹ This provision commits to the free flow of data subject to an exception—which is found in other agreements, including CPTPP—allowing for measures required “to achieve a legitimate public policy objective”, such as protecting consumers’ privacy.¹⁰²

50. We heard differing views on whether this exception is broad enough to allow the UK to maintain its current domestic data protection regime, with Dr Emily Jones, Beatriz Kira, and Danilo B. Garrido Alves describing this area as giving rise to “disagreements among experts”.¹⁰³ Professor David Collins described this exception as “incredibly strict”, requiring a measure to be the “only one that could achieve” the relevant policy objective.¹⁰⁴ When asked whether the UKGDPR could be maintained through this exception, Professor Collins suggested that the exception in CEPA “doesn’t look like it would be sufficiently broad to do that”, noting that whether the provision in CEPA is met is judged by a neutral arbitration panel, and that the exception in CEPA “slightly” broader than that contained in CPTPP.¹⁰⁵

51. We also heard evidence supporting the exception being sufficiently broad to maintain the UK’s domestic data protection regime. Hosuk Lee-Makiyama commented that the “UK and EU GDPR is deemed by most mainstream lawyers to pass” the tests contained in the exception, highlighting that CPTPP members such as “Canada, Japan and New Zealand, whose legal systems are more or less conforming with GDPR” have not been actioned on the basis of their domestic data protection regimes being incompatible with their commitment to allowing for the free flow of data.¹⁰⁶ The ICO took the following view on the effect of the provision committing to the free flow of data in CEPA:

We do not [...] know how the provisions in Article 8.84 of the Agreement, covering restrictions on data flows, could theoretically be triggered by Japan, as there is little international precedent.

Having said this, we do not see significant risks for UK data transferred to Japan. Under article 8.84 the UK would clearly have a strong case that UKGDPR would constitute a ‘legitimate public policy objective’ and the protection required for transfers could be a justified restriction.¹⁰⁷

52. The Minister of State for Trade Policy said that it was “strongly” the Government’s “view that the CEPA does not have an impact on our domestic data protection regime.”¹⁰⁸ Graham Floater added that the Government has “discussed this with the ICO” and has “taken legal advice”, which showed “this has no impact on the UK’s Data Protection Act or the way in which that operates.”¹⁰⁹

101 Foreign, Commonwealth and Development Office, [Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership](#), CP 311, October 2020, p 219

102 Foreign, Commonwealth and Development Office, [Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership](#), CP 311, October 2020, p 219

103 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

104 [Q66](#)

105 [Q67](#)

106 [Q18](#)

107 Information Commissioner’s Office ([DTD0029](#))

108 [Q123](#)

109 [Q123](#)

53. **Data protection rules and relevant provision in FTAs are complex and open to diverging legal interpretations. We welcome the Government’s attempts to address concerns about data protection through its data protection explainers. However, we have heard significant concerns about the data protection provisions and exceptions to the provision committing to the free flow of data in CEPA. We recommend that the Government produces an expanded data protection explainer which addresses these concerns in greater detail, drawing upon relevant legal and non-legal precedent.**

54. **We recommend that, as a part of its published impact assessments for future agreed FTAs, the Government includes its assessment of the agreement’s impact on the protection of UK citizens’ data. This assessment should outline the UK’s domestic data protection regime, any relevant commitments made in the new FTA, and any effects that those commitments have on the UK’s ability to maintain its data protection regime.**

Onward data transfers to third countries

55. Some witnesses raised concerns over whether the UK’s commitments in its FTAs could result in UK citizens’ data being transferred to third countries with insufficient data protection safeguards. This manifested itself in two risks: the risk of data being transferred through a legal mechanism, and the risk of data being transferred due to practical difficulties in preventing its transfer.

56. First, there is a potential issue caused by what Javier Ruiz Diaz referred to as “overlapping regimes of free flows of data” caused by Japan agreeing to the free flow of data in FTAs with both the UK and the US.¹¹⁰ He explained that the US may have a legal claim against Japan for “breaching [the US-Japan FTA] by trying to restrict the data of the people from the UK or from the EU from going there.”¹¹¹ He described the US’s legal claim to require Japan to transfer UK citizens’ data to the US as a “very good case.”¹¹² However, this analysis was disputed by Hosuk Lee-Makiyama, who outlined how onward transfers from the UK’s FTA partners to third countries without sufficient safeguards are “explicitly forbidden” under the UKGDPR.¹¹³

57. The Government has downplayed this risk. In the relevant section of CEPA’s data protection explainer, it said:

transfers of personal data from the UK to Japan will continue to be protected by UK GDPR and the Data Protection Act 2018, under the preserved effect of the EU’s adequacy decision for Japan. This recognises that there are appropriate protections in place when personal data is transferred from Japan to other countries and does not provide for the onward transfer of UK or EU data using APEC CBPR [a data protection system developed and endorsed by the APEC economies].¹¹⁴

58. A second potential risk is that of practical difficulties in preventing onward transfers without sufficient safeguards, even though such transfers are forbidden by the UKGDPR. One practical difficulty may come in the form of improper labelling of UK citizens’

110 [Q14](#)

111 [Q14](#)

112 [Q15](#)

113 [Q18](#)

114 Department for International Trade, [UK-JP CEPA—a good deal for data protection](#), p 2

data in foreign jurisdictions. Dr Kristina Irion, Assistant Professor at the University of Amsterdam, explained that if “UK personal data is not labelled and kept separately from other personal data, it could easily be subject to onward transfer to yet another third country and from there to yet another third country.”¹¹⁵

59. The Minister of State for Media and Data outlined that a UK citizen who feels that their data protection rights have been contravened can pursue a complaint by raising it with the ICO, or with the relevant data protection body in the country where they feel the contravention may have occurred, some of which have a Memorandum of Understanding facilitating cooperation with the ICO.¹¹⁶

60. Digital trade regulations are affected by a mix of domestic law and international commitments. The UK’s current and future FTA partners may have made commitments concerning the free flow of data to third countries. *We recommend that the Government specifically addresses the practical risk of UK citizens’ data being passed onto third countries without sufficient safeguards in its published assessments of the impact on the UK’s data protection regime for future agreed FTAs, considering both legal and non-legal mechanisms to prevent such transfers.*

The UKGDPR and data adequacy

61. The UKGDPR, which alongside the Data Protection Act 2018 regulates the data of UK citizens, came into force on 1 January 2021. The ICO—which is the body in charge of managing the UKGDPR—told us that the UKGDPR is “derived from the EU GDPR” and “seeks to enable data flows via measures to protect personal data when it is transferred to a third country.”¹¹⁷ The legislation allows for third countries’ data protection systems to be granted ‘adequacy regulations’, the UK regime’s equivalent to the EU’s ‘adequacy decisions’, which allow for UK citizens’ data to be transferred to those countries without further safeguards. For transfers to countries without an ‘adequacy regulation’, the UKGDPR allows for transfers under alternative safeguarding measures, such as standard contractual terms.¹¹⁸

62. We received positive evidence concerning the Government’s decision to replicate the EU’s GDPR in the UK’s data protection regime. Which? described the UK’s data protection regime as delivering stringent protections for UK consumers, calling for the protections provided in the regulations to be built upon rather than eroded.¹¹⁹ Diana Avila, of TransferWise, and David Holman, of Armour Communications, both described the GDPR as the “gold standard”, and ultimately expressed support for the regulation despite time taken to initially adapt to the GDPR and a potential increase in costs that comes with following it.¹²⁰

115 [Q73](#)

116 [Letter from the Minister of State for Media and Data to the Chair regarding UK personal data transfers, 5 May 2021](#)

117 Information Commissioner’s Office ([DTD0029](#))

118 Information Commissioner’s Office ([DTD0029](#))

119 Which? ([DTD0001](#))

120 [Q38](#)

63. In March 2021, the Secretary of State for Digital, Culture, Media and Sport, Oliver Dowden, expressed an interest “in reforming our data laws” and “taking a slightly less European approach” to data protection.¹²¹ When asked about plans to modify the UKGDPR, the Minister of State for Media and Data said:

GDPR is certainly not perfect, and in some areas it has proved to be quite burdensome. We are not seeking to dismantle our entire data protection regime but certainly we are interested in making what changes can be achieved that will make it easier for data to be shared, while not diminishing the standards of protection.¹²²

64. In February 2021, the European Commission granted the UK a draft data adequacy decision, which—if formally enacted—would allow EU citizens’ data to pass into the UK without any additional safeguards. Data adequacy from the EU was considered important by a range of stakeholders, including businesses and data privacy organisations. A study by UCL and the New Economics Foundation, found that the UK not receiving an adequacy decision from the EU would cost UK companies between £1bn and £1.6bn, amounting to around £5,000 in legal costs for each small business.¹²³ Business representatives expressed the importance of maintaining adequacy, with the CBI describing adequacy with the EU as a “top priority for business”.¹²⁴

Potential threats to data adequacy with the EU

65. If adopted, the EU’s adequacy decision in relation to the UK will be unilaterally revocable, and in any case will be reviewed within four years. Two potential threats to maintaining an adequacy decision emerged in the evidence we received. These were the possibility of the UKGDPR diverging from the EU’s, and the UK’s FTA commitments resulting in the EU no longer considering the UK’s data protection regime adequate.

66. Dealing first with changes to the UKGDPR, Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves suggested that “departing from the GDPR would place the UK’s adequacy decision [...] at risk.”¹²⁵ Following the Secretary of State for Digital, Culture, Media and Sport’s comment that the UK take a “slightly less European approach” to privacy, the Minister of State for Media and Data told us that, in order to maintain adequacy with the EU, the UK does not need to adopt “every dot and comma of the GDPR regulations”, it only needs to maintain a high standard of data protection.¹²⁶ He told us that the UK has the opportunity to make “some small tweaks” to the UK’s data protection laws, citing the EU GDPR’s impact on small businesses as an area for improvement.¹²⁷

67. Second, witnesses expressed concern about the effects of the UK’s FTA commitments on data adequacy. For example, Which? suggested that the free flow of data provisions in CEPA may put the UK’s adequacy decision at risk. Similarly, the UKTPO highlighted

121 [“Government to reform data protection laws to spur economic growth”, Sky News, 11 March 2021](#)

122 [Q136](#)

123 New Economics Foundation and UCL European Institute, [The Cost of Data Inadequacy: The Economic Impacts of the UK failing to Secure an EU Data Adequacy Decision](#), pp 2, 26

124 Advertising Association ([DTD0004](#)), Federation of Small Businesses ([DTD0005](#)), Professional and Business Services Council ([DTD0013](#)), techUK ([DTD0015](#)), Law Society of Scotland ([DTD0016](#)), The Institute of Export and International Trade ([DTD0017](#)), CBI ([DTD0022](#))

125 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

126 [Q112](#)

127 [Q138](#)

that the EU's GDPR takes rules governing onward transfers of personal data into account for adequacy decisions, with accession to CPTPP meaning that the UK would potentially accept free flows of data with countries which do not have adequacy decisions with the EU.¹²⁸ In its non-binding resolution evaluating the European Commission's approach to UK data adequacy, on 12 May 2021, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs expressed concerns over the risk on onward transfers without sufficient safeguards. Highlighting accession to CPTPP as a particular area of concern, the Committee's resolution states that it:

Takes note that on 1 February 2021, the UK sent a request to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), in particular to 'benefit from modern digital trade rules that allow data to flow freely between members, remove unnecessary barriers for businesses [etc.]; notes with concern that there are 11 members of the CPTPP, eight of which do not have an adequacy decision from the EU; is strongly concerned about potential onward transfers of personal data from EU citizens and residents to these countries if the UK is granted an adequacy decision;

Regrets that the Commission did not assess the impact and potential risks of the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership, which includes provisions on personal data and on the level of data protection;

Is concerned that if the UK includes provisions on data transfers in any future trade agreements, *inter alia* US-UK trade agreements, the level of protection offered by the GDPR would be undermined.¹²⁹

68. Three CPTPP signatories have received data adequacy decisions under the EU's GDPR. The Institute of Export and International Trade described membership of CPTPP and maintaining data adequacy as not a "binary decision".¹³⁰ Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves, and the UKTPO told us that Japan—a CPTPP member with a data adequacy decision from the EU—was required to modify its domestic data protection regime to treat EU data differently from non-EU.¹³¹ Dr Emily Jones, Beatriz Kira, and Danilo B. Garrido Alves called this a "two-tier data protection regime", referring to the differing arrangements for EU data and non-EU data in Japan.¹³²

69. When asked whether the UK may move towards a two-tier data protection regime itself, the Minister of State for Media and Data said the Government does "not intend to diminish [the UK's] standards of data protection in a way that could threaten EU adequacy."¹³³

70. Retaining an adequacy decision from the European Commission is a priority for both businesses and consumers. We welcome the Government's progress in achieving a draft adequacy decision, and its focus on retaining such a decision. We recommend that,

128 UKTPO - University of Sussex ([DTD0027](#))

129 European Parliament resolution on the adequate protection of personal data by the United Kingdom ([2021/2594\(RSP\)](#))

130 The Institute of Export and International Trade ([DTD0017](#))

131 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#)), UKTPO—University of Sussex ([DTD0027](#))

132 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

133 [Q120](#)

as a part of its published impact assessments for future agreed FTAs, the Government includes an assessment of each agreement's potential impact on maintaining an adequacy decision from the European Commission.

71. Accession to CPTPP is potentially a good opportunity for the UK in facilitating and encouraging digital trade. However, we heard that joining CPTPP may result in changes to the way data—particularly EU citizens' personal data—is handled in the UK. *We recommend that the Government states what changes it anticipates in the management of EU citizens' personal data in the UK as a result of accession to CPTPP and the impact of any changes on UK stakeholders.*

72. Amending the UKGDPR could create a simpler, more effective regulatory regime. *We welcome the Government seeking to build on the UKGDPR but call on it to set out how it will depart from the EU's GDPR while maintaining data adequacy and minimising any additional regulatory burden for businesses.*

4 Source code, consumer protection, and online harms

Source code provisions

73. CEPA includes a provision banning Parties from requiring the disclosure of source code and algorithms as a prerequisite for market access, subject to exceptions. It is notable that this builds upon the EU-Japan EPA by preventing the mandatory disclosure of algorithms in addition to that of source code.¹³⁴ We heard from Dr Emily Jones that provisions such as this stem from “China’s requirement for companies to disclose their source code and other parts of their intellectual property as a condition for doing business.”¹³⁵ Javier Ruiz Diaz downplayed the importance of these provisions, telling us that he had not seen evidence of mandatory disclosure of source code being a problem beyond specific, limited contexts. He explained that there are:

some comments around Vietnam maybe having requested some things on encryption, but there is very limited evidence that companies around the world are getting their source code or their IP stolen because Governments put any kind of demand on them to disclose their code for accountability purposes.”¹³⁶

74. Businesses were overwhelmingly positive about the inclusion of the ban on the mandatory disclosure of source code provision in CEPA.¹³⁷ The Law Society of England and Wales emphasised how greater protection for businesses’ intellectual property would benefit the Lawtech sector, with CEPA more generally providing “increased opportunity for innovation.”¹³⁸ Companies providing financial services and fintech products and services were also highlighted as standing to benefit from greater source code protections, with IP being important in establishing and maintaining competitive advantage for businesses in the sector.¹³⁹ Sabina Ciofu of techUK described the provision in CEPA as “sensible for protection”, expressing support for the provision.¹⁴⁰

75. However, other stakeholders had concerns about the impact of such provisions on the ability of the UK to regulate the use of source code and algorithms. Which? explained how exceptions to provisions banning the mandatory disclosure of source code “may not be enough to protect consumers in commercial settings”, citing “unfair, deceptive or discriminatory decisions relating to pricing, marketing and a host of other uses of profiling data services” as potential risks in this context.¹⁴¹ Similarly, Jim Killock of the Open Rights Group described there being a risk of “the Government [...] proceeding without a full view of the consequences of restrictions to accessing algorithms.”¹⁴² He told us that, while there are exceptions to allow access to algorithms under CEPA, these may not

134 [Q18](#)

135 [Q17](#)

136 [Q19](#)

137 techUK ([DTD0015](#)), Adobe ([DTD0003](#)), Advertising Association ([DTD0004](#)), CBI ([DTD0022](#))

138 The Law Society of England and Wales ([DTD0009](#))

139 Coalition of Services Industries ([DTD0018](#)), Office of the City Remembrancer, City of London Corporation ([DTD0026](#))

140 [Q84](#)

141 Which? ([DTD0001](#))

142 [Q85](#)

allow protective regulations in “private-to-private arrangements”, such as in the business-to-consumer context.¹⁴³ Hosuk Lee-Makiyama took the view that CEPA’s provision on source code contained exceptions covering “most cases of so-called disclosure that most liberal democracies would deem legitimate”.¹⁴⁴

76. Another concern raised by stakeholders was the impact of banning the mandatory disclosure of source code in the UK’s FTAs on the development of open-sourced software. Evidence submitted by Dr Emily Jones, Beatriz Kira, and Danilo B. Garrido Alves described how prohibiting the disclosure of source code can have implications for competition in the technology sector and the development of open-source software.¹⁴⁵ They also explained how “provisions aimed at maximising the protection of intellectual property could inhibit the use or promotion of free and open-sourced software [...] domestically”, citing concern that “trade agreement provisions could lead to challenging [of] types of public procurement seen as preferring open source.”¹⁴⁶

77. The Government stated that it was “addressing barriers to innovation in areas such as the transfer of source code and cryptographic algorithms.”¹⁴⁷ When asked whether it had assessed its success or progress on regulation of source code and algorithms in its FTAs, the Minister of State for Trade Policy told us:

In terms of the UK-Japan deal, it is a little bit early to tell [...] we do publish a scoping assessment and impact assessment of coming deals, so it would be illogical for us not to look at and review the deals that we have already done. That will be an important part of the work of the Department going forward, but it would be a little bit early to do one on the Japan deal at this stage.¹⁴⁸

78. *We recommend that, in its published impact assessments for each new FTA, the Government includes an assessment of the impact of each agreement on its ability to regulate source code and algorithms at the domestic level. This should explain how source code and algorithms are currently regulated at the domestic level, the relevant source code and algorithm provisions in the relevant agreement, and how, if at all, they affect the Government’s ability to regulate in this area.*

Consumer protection provisions

79. Consumer protection is of particular importance in the context of digital trade because of the prevalence of unique risks to consumers using digital marketplaces. Besides the need to regulate how consumers’ data is collected, stored, and used, consumers should be protected from fraudulent and deceptive practices which can exist on e-commerce platforms.¹⁴⁹ Consumer confidence also has a role in facilitating digital trade and the use of business-to-consumer e-commerce platforms, as emphasised by the Professional and Business Services Council.¹⁵⁰

143 [Q85](#)

144 [Q18](#)

145 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

146 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#))

147 Department for International Trade ([DTD0025](#))

148 [Q118](#)

149 Which? ([DTD0001](#)), Global Data Alliance ([DTD0007](#))

150 Professional and Business Services Council ([DTD0013](#))

80. CEPA contains a consumer protection provision which requires Parties to have consumer protection laws in place at the domestic level to protect against fraudulent and deceptive commercial activities, while recognising the need for cooperation between UK and Japanese authorities. Which? described the provision in CEPA as “a positive first step” in protecting consumers online, calling for future provisions to be “even more ambitious” in future FTAs.¹⁵¹ It cites “promoting better information for consumers” regarding vendors on e-commerce platforms and “[clear] and straightforward pathways to redress and dispute resolution” for e-commerce transactions as areas to improve on the provision in CEPA.¹⁵² When asked to respond to Which?’s assessment of the provisions as a “positive first step”, the Minister of State for Trade Policy told us:

We take consumer protection extremely seriously as a Government overall. That includes in our trade agreements. We are open to having specific consumer protection chapters in trade agreements. I do not agree with Which? on CEPA. There are a lot of good things in their report in terms of things like consumer e-signatures, banning customs duties from digital trade, making sure we can regulate on online harms—all of those aspects of their report I would agree with.¹⁵³

81. The inclusion of consumer protection provisions in CEPA is a positive development. We heard calls to use these provisions as a starting point and to build upon them in future FTAs, particularly in relation to the information provided to consumers on e-commerce platforms, and mechanisms for dispute resolution for online transactions. We recommend the Government clarify how it intends to build upon the provisions in CEPA in future FTAs, and how measures in addition to FTA commitments will be complementary in protecting UK consumers engaging in digital trade.

Online harms

82. Online harms are defined by the Government as “online content or activity that harms individual users, particularly children, or threatens our way of life in the UK, either by undermining national security, or by reducing trust and undermining our shared rights, responsibilities and opportunities to foster integration.” In its Online Harms White Paper, it cites terrorist content and activity, and revenge pornography, amongst many others as examples of online harms.¹⁵⁴ The White Paper sets out a regime of intermediary liability for platforms hosting harmful content online.

83. The US’s objectives for FTA negotiations with the UK include establishing:

rules that limit non-IPR civil liability of online platforms for third-party content, subject to the Parties’ rights to adopt non-discriminatory measures for legitimate public policy objectives or that are necessary to protect public morals.¹⁵⁵

151 Which? ([DTD0001](#))

152 Which? ([DTD0001](#))

153 [Q133](#)

154 Department for Digital, Culture, Media & Sport, [Consultation outcome: Online Harms White Paper](#), 15 December 2020

155 Office of the United States Trade Representative, [United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives](#), February 2019, p 6

The Carnegie UK Trust expressed concerns that the US might “table a new regime [...] along the lines of the United States, Mexico, Canada (USMCA) trade agreement”, fearing this would hand an “advantage to American companies over UK ones and would disadvantage UK citizens and consumers who would be entitled to lesser protection.”¹⁵⁶ Which? described the US’s approach as “in direct conflict with the UK Government’s current trend of stronger digital regulation and oversight when it comes to online harms and platform responsibility.”¹⁵⁷ Sue Davies MBE of Which? called for the Government 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” in its FTAs.¹⁵⁸

84. The Minister of State for Trade Policy told us that:

To the best of my knowledge, the US has not asked for this provision in our free trade agreement negotiation and it is not something that we would agree with. It is there within the US MCA—the US-Mexico-Canada agreement—but it is not something that the United Kingdom would agree to.¹⁵⁹

The Minister of State for Media and Data added that “it is an absolute priority and we would not accept anything that weakens our ability to put in place a very strong protection regime.”¹⁶⁰

85. Regulating online harms is of increasing relevance and importance. We heard concerns over the inclusion of commitments in FTAs which may limit the Government’s ability to regulate online harms at the domestic level, particularly in negotiations with the US. We commend the Government for its approach in refusing to accept constraints on its ability to regulate these harms, and hope that it will maintain this approach throughout negotiations.

156 Carnegie UK Trust ([DTD0010](#))

157 Which? ([DTD0001](#))

158 [Q86](#)

159 [Q135](#)

160 [Q135](#)

5 Work at the WTO and G7

The G7

86. This year, the UK holds the presidency of the G7 group of nations and, in June, held the G7 Summit. The UK's presidency of the G7 is an opportunity for the UK to show global leadership in digital trade.¹⁶¹ The CBI called for the UK to use the presidency to pursue digital and data rules at the WTO, with particular reference to making the WTO moratorium—the practice of WTO members not imposing customs duties on electronic transmissions—permanent.¹⁶² The Minister of State for Trade Policy told us that the Government would be promoting the UK's proposals at the WTO through its G7 trade track, and that promoting digital trade is “one of the main themes” of the UK's presidency of the G7.¹⁶³ In May 2021, G7 Trade Ministers announced their intention to adopt G7 Digital Trade Principles at the Trade Ministers' Meeting in October 2021.¹⁶⁴

The WTO

87. Digital trade is also regulated by commitments made through the WTO, most notably by the General Agreement on Trade in Services (GATS). Professor David Collins stated that the “UK unquestionably needs to pursue digital trade leadership at the World Trade Organization”, with the CBI describing a “narrow window of opportunity to unblock progress in Geneva” created by the new US administration and WTO Director-General.¹⁶⁵

88. We heard differing opinions on whether the rules in GATS remain suitable to govern digital trade. Hosuk Lee-Makiyama explained that, while newer agreements than GATS provide more “specificity” in relation to digital trade, “the general commitments we have undertaken in GATS are still valid” in that they explain and address cross-border data flows without using the terminology of cross-border data flows.¹⁶⁶ However, we also heard criticisms of GATS, with the Professional and Business Services Council referring to it as failing to adequately “cater for more specific issues thrown up by digital trade”, given that thirty years has passed since it was negotiated.¹⁶⁷ The British Software Alliance called for GATS to be updated to include digital provisions, and Professor David Collins suggested that an “Annex on Digital Trade [...] be included as a schedule to GATS.”¹⁶⁸

89. The Minister of State for Trade Policy described the WTO as “not really [having] kept up to date”, noting that “things in the WTO rarely move quickly”.¹⁶⁹ He expressed a strong interest in making sure WTO rules relating to digital trade worked well.

161 CBI ([DTD0022](#)), TheCityUK ([DTD0020](#))

162 CBI ([DTD0022](#))

163 [Qq114](#), [139](#)

164 G7 Trade Ministers, *G7 Trade Ministers' Communiqué*, 28 May 2021

165 Professor David Collins (Professor of International Economic Law at City, University of London) ([DTD0002](#)), CBI ([DTD0022](#))

166 [Q10](#)

167 Professional and Business Services Council ([DTD0013](#))

168 BSA | The Software Alliance ([DTD0006](#)), Professor David Collins (Professor of International Economic Law at City, University of London) ([DTD0002](#))

169 [Q139](#)

90. **The UK has an important opportunity to show leadership in multilateral negotiations at the WTO, complemented by its presidency of the G7 this year. We encourage the Government to continue to take the lead in negotiations at the WTO, and to consider opportunities to reform and update GATS.**

Joint Statement Initiative on E-Commerce

91. A group of 86 countries, including the UK, is currently negotiating rules to regulate digital trade at the plurilateral level through the Joint Statement Initiative (JSI) on e-commerce. The British Software Alliance highlighted it as an opportunity for the countries to “negotiate a new rulebook for e-commerce”, with the Global Data Alliance describing the negotiations as holding “promise of common and forward-looking data transfers rules.”¹⁷⁰

92. Which? stated that the “stakes [for the negotiations] are high for participating countries to design rules that put consumer concerns centrally and protect their rights in addition to ensuring that the digital economy thrives.”¹⁷¹ UNISON, noting that the UK’s WTO text is not public, described the Government’s approach as a “rush to agree a new WTO digital trade agreement without UK domestic consultation”.¹⁷² Ultimately, they called for “the government [to] make a public commitment that it will be supporting the underpinning of digital privacy protections as fundamental and human rights like the EU in the e-commerce negotiations.”¹⁷³

93. The Minister of State for Trade Policy said that we “can see the proposals that [the Government] submitted” for the JSI negotiations. He told us that the proposals cover a range of areas, including opposing customs duties on e-transactions, personal information protection, cross-border data transfers, and source code amongst other things.¹⁷⁴

94. **While a commitment to plurilateralism, particularly at the WTO level, is welcome, it is crucial that the Government also commits to transparency and parliamentary scrutiny in relation to WTO negotiations. We recognise that there is a tension between maintaining negotiating strategies and making information on proposals public, but urge greater transparency in this area. We note that the EU has published some of its proposals for the Joint Statement Initiative. We recommend the Government publishes both its objectives for the Joint Statement Initiative and its current proposals to allow for greater transparency and scrutiny.**

WTO moratorium on customs duties on electronic transmissions

95. In addition to GATS, the WTO moratorium on customs duties on electronic transmissions is a key agreement at the WTO level which regulates digital trade. It is currently being considered for renewal by the WTO. We heard a considerable amount of support for its renewal.¹⁷⁵ The UKTPO outlined some of the criticisms made against

170 BSA | The Software Alliance ([DTD0006](#)), Global Data Alliance ([DTD0007](#))

171 Which? ([DTD0001](#))

172 UNISON ([DTD0023](#))

173 UNISON ([DTD0023](#))

174 [Q139](#)

175 Which? ([DTD0001](#)), Professor David Collins (Professor of International Economic Law at City, University of London) ([DTD0002](#)), Advertising Association ([DTD0004](#)), Federation of Small Businesses ([DTD0005](#)), techUK ([DTD0015](#)), The Institute of Export and International Trade ([DTD0017](#)), Data & Marketing Association UK (DMA), Federation of European Data & Marketing Associations (FEDMA), Global Data & Marketing Alliance (GDMA) ([DTD0028](#)), Motion Picture Association (MPA) ([DTD0030](#))

the moratorium—that it results in a loss of tariff revenue and has adverse impacts on industrialisation—but ultimately dismissed them, describing the concerns as “largely unfounded”, “potentially exaggerated” or not being addressed by an end to the moratorium.¹⁷⁶ Some business representatives also called for the moratorium to be made permanent rather than being subject to renewal.¹⁷⁷ We also heard that the definition of the term “electronic transmissions” for the purposes of the moratorium are is currently unclear, with techUK calling for the term to be given a broad definition to include the content of transmissions in addition to the transmissions themselves.¹⁷⁸

96. DIT told us that it is a “strong advocate for the WTO moratorium on customs duties on electronic transmissions” and opposes the imposition of customs duties on electronic transactions. It also highlighted that it had included prohibiting customs duties on customs duties in its negotiating objectives in addition to its work at the WTO.¹⁷⁹

97. We heard support for making the WTO’s moratorium on customs duties on electronic transmissions permanent. We commend the Government for its incorporation of this objective in its FTA negotiations, but emphasise the importance of continuing efforts to make the moratorium permanent at the WTO.

176 UKTPO - University of Sussex ([DTD0027](#))

177 BSA | The Software Alliance ([DTD0006](#)), Professional and Business Services Council ([DTD0013](#)), Law Society of Scotland ([DTD0016](#)), CBI ([DTD0022](#)), Office of the City Remembrancer, City of London Corporation ([DTD0026](#)), UKTPO - University of Sussex ([DTD0027](#))

178 Dr Emily Jones, Beatriz Kira and Danilo B. Garrido Alves ([DTD0021](#)), techUK ([DTD0015](#))

179 Department for International Trade ([DTD0025](#))

6 Consultation

98. On Government consultation related to digital trade, the Committee’s report on CEPA states:

It has been pointed out to us in evidence that consultation by the Government on its digital trade policy has been limited. Only business interests are represented on DIT’s Telecoms and technology Trade Advisory Group, and other stakeholders, such as consumer groups, trade unions and policy experts, have had limited opportunities to put their views forward.¹⁸⁰

99. We heard a range of views from stakeholders concerning the Government’s consultation mechanisms in this area. In oral evidence, Diana Avila of TransferWise stated “[we] feel overall that the Government are eager to hear our needs, but at the moment we are not part of any of” DIT’s Trade Advisory Groups (TAGs).¹⁸¹ Sue Davies MBE of Which? stated that it was “pleased the Government have stepped up some of the ways they are engaging with civil society”, citing the establishment of the Strategic Trade Advisory Group (STAG).¹⁸² Ms Davies also praised DIT for assisting in Which?’s national trade conversation, a consultation event.¹⁸³

100. Other stakeholders were less positive, with criticisms of both the breadth and depth of stakeholder consultation. Dr Emily Jones, Beatriz Kira, and Danilo B. Garrido Alves described “detailed, in-depth consultation” in this area as “limited”, noting that DIT’s telecoms and technology TAG is comprised exclusively of business representatives.¹⁸⁴ Jim Killock, representing the Open Rights Group—a rights advocacy organisation—described its experience as follows:

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.¹⁸⁵

UNISON expressed concern over a lack of consultation in relation to negotiations undertaken through the WTO, stating that insufficient consultation limits the UK’s ability to adopt a “future proofed and sustainable” digital trade strategy which will serve the public’s best interest.¹⁸⁶

101. We also heard that the extent of consultations could be improved from stakeholders who have a place on the TAG or STAG. Sue Davies MBE, a member of the STAG, stated that “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.” She called for a better mechanism to try to discuss

180 House of Commons International Trade Committee, Second Report of Session 2019–21, [UK-Japan Comprehensive Economic Partnership Agreement](#), HC 914, para 39

181 [Q50](#)

182 [Q103](#)

183 [Q103](#)

184 Dr. Emily Jones, Beatriz Kira, Danilo B. Garrido Alves ([DTD0021](#))

185 [Q102](#)

186 UNISON ([DTD0023](#))

what is happening within the digital trade chapter, or other chapters, on a confidential basis during the negotiations.”¹⁸⁷ techUK has representatives on both the STAG and TAG. Sabina Ciofu, who gave oral evidence on behalf of techUK, described the consultations as “unidirectional”, comprising of “more an update after negotiating rounds of what has been happening”. Ms Ciofu suggested that a range of stakeholders—including consumers, civil society groups, and industry—ought to be included in consultations to prevent negotiation outcomes from being “complete surprise to any stakeholder in society.”¹⁸⁸

102. The Minister of State for Trade Policy told us that DIT has its Strategy Trade Advisory Group and a relevant Trade Advisory Group which, in addition to the Department’s Trade Union Advisory Group, have “worked very well so far.”¹⁸⁹ The Minister of State for Media and Data highlighted the series of roundtables and one-to-one consultations with stakeholders including technology companies and privacy campaign groups undertaken when DCMS was producing its National Data Strategy. He emphasised the importance of continuing to “maintain a dialogue” with stakeholders”.¹⁹⁰

103. Consultation was identified as an area for improvement in our report on CEPA. While the Government has engaged in consultation exercises and supported consultations undertaken by Which?, the Government’s consultation in this area still requires improvement. We heard evidence suggesting that consultation with civil society organisations, such as civil liberties organisations, could be improved, though we note that the Government has consulted civil liberties organisations as a part of its National Data Strategy. We recommend that the Government includes representatives from civil liberties organisations in its ETAG, or otherwise creates a mechanism to consult with them.

104. While other stakeholders were largely positive about the Government’s consultation mechanisms, they stressed the importance of consultation to be a dialogue rather than one-sided. As such, we recommend that the Government consults with stakeholders throughout ongoing negotiations, sharing working texts in confidence where possible and engaging with feedback on those texts.

187 [Q103](#)

188 [Q106](#)

189 [Q143](#)

190 [Q142](#)

Conclusions and recommendations

Government strategy and prominent approaches taken by other states

1. The Government has, on multiple occasions, emphasised digital trade and data in its FTA negotiations. We commend the Government's ambition to address the barriers outlined by businesses and we agree that digital trade presents a range of opportunities which the Government should pursue. (Paragraph 24)
2. The UK has an opportunity to create a clear, innovative position on digital and data governance. We heard evidence calling for a cross-FTA strategy for digital trade and data in addition to the FTA-specific negotiating objectives which are currently available. We note that the Government has "five pillars", which are best classified as a set of principles, and do not constitute a cross-FTA digital trade strategy. (Paragraph 42)
3. This is a pivotal moment for the Government to craft a clear approach to digital trade and data which will guide the development of its independent trade policy. *We recommend that the Government produces and publishes a digital trade and data strategy, clarifying the UK's approach to digital trade and positioning it in relation to prominent approaches taken by other states. We recommend it detail the Government's long-term approach and policy objectives in relation to digital trade and data. The strategy should also include how domestic policies will interact with the United Kingdom's FTA, multilateral, and plurilateral commitments in securing the Government's long-term economic and non-economic digital trade objectives.* (Paragraph 43)

Data protection

4. Data protection rules and relevant provision in FTAs are complex and open to diverging legal interpretations. We welcome the Government's attempts to address concerns about data protection through its data protection explainers. However, we have heard significant concerns about the data protection provisions and exceptions to the provision committing to the free flow of data in CEPA. *We recommend that the Government produces an expanded data protection explainer which addresses these concerns in greater detail, drawing upon relevant legal and non-legal precedent.* (Paragraph 53)
5. *We recommend that, as a part of its published impact assessments for future agreed FTAs, the Government includes its assessment of the agreement's impact on the protection of UK citizens' data. This assessment should outline the UK's domestic data protection regime, any relevant commitments made in the new FTA, and any effects that those commitments have on the UK's ability to maintain its data protection regime.* (Paragraph 54)
6. Digital trade regulations are affected by a mix of domestic law and international commitments. The UK's current and future FTA partners may have made commitments concerning the free flow of data to third countries. *We recommend that the Government specifically addresses the practical risk of UK citizens' data being*

passed onto third countries without sufficient safeguards in its published assessments of the impact on the UK's data protection regime for future agreed FTAs, considering both legal and non-legal mechanisms to prevent such transfers. (Paragraph 60)

7. Retaining an adequacy decision from the European Commission is a priority for both businesses and consumers. We welcome the Government's progress in achieving a draft adequacy decision, and its focus on retaining such a decision. *We recommend that, as a part of its published impact assessments for future agreed FTAs, the Government includes an assessment of each agreement's potential impact on maintaining an adequacy decision from the European Commission. (Paragraph 70)*
8. Accession to CPTPP is potentially a good opportunity for the UK in facilitating and encouraging digital trade. However, we heard that joining CPTPP may result in changes to the way data—particularly EU citizens' personal data—is handled in the UK. *We recommend that the Government states what changes it anticipates in the management of EU citizens' personal data in the UK as a result of accession to CPTPP and the impact of any changes on UK stakeholders. (Paragraph 71)*
9. Amending the UKGDPR could create a simpler, more effective regulatory regime. *We welcome the Government seeking to build on the UKGDPR but call on it to set out how it will depart from the EU's GDPR while maintaining data adequacy and minimising any additional regulatory burden for businesses. (Paragraph 72)*

Source code, consumer protection, and online harms

10. *We recommend that, in its published impact assessments for each new FTA, the Government includes an assessment of the impact of each agreement on its ability to regulate source code and algorithms at the domestic level. This should explain how source code and algorithms are currently regulated at the domestic level, the relevant source code and algorithm provisions in the relevant agreement, and how, if at all, they affect the Government's ability to regulate in this area. (Paragraph 78)*
11. The inclusion of consumer protection provisions in CEPA is a positive development. We heard calls to use these provisions as a starting point and to build upon them in future FTAs, particularly in relation to the information provided to consumers on e-commerce platforms, and mechanisms for dispute resolution for online transactions. *We recommend the Government clarify how it intends to build upon the provisions in CEPA in future FTAs, and how measures in addition to FTA commitments will be complementary in protecting UK consumers engaging in digital trade. (Paragraph 81)*
12. Regulating online harms is of increasing relevance and importance. We heard concerns over the inclusion of commitments in FTAs which may limit the Government's ability to regulate online harms at the domestic level, particularly in negotiations with the US. We commend the Government for its approach in refusing to accept constraints on its ability to regulate these harms, and hope that it will maintain this approach throughout negotiations. (Paragraph 85)

Work at the WTO and G7

13. The UK has an important opportunity to show leadership in multilateral negotiations at the WTO, complemented by its presidency of the G7 this year. We encourage the Government to continue to take the lead in negotiations at the WTO, and to consider opportunities to reform and update GATS. (Paragraph 90)
14. While a commitment to plurilateralism, particularly at the WTO level, is welcome, it is crucial that the Government also commits to transparency and parliamentary scrutiny in relation to WTO negotiations. We recognise that there is a tension between maintaining negotiating strategies and making information on proposals public, but urge greater transparency in this area. We note that the EU has published some of its proposals for the Joint Statement Initiative. *We recommend the Government publishes both its objectives for the Joint Statement Initiative and its current proposals to allow for greater transparency and scrutiny.* (Paragraph 94)
15. We heard support for making the WTO's moratorium on customs duties on electronic transmissions permanent. We commend the Government for its incorporation of this objective in its FTA negotiations, but emphasise the importance of continuing efforts to make the moratorium permanent at the WTO. (Paragraph 97)

Consultation

16. Consultation was identified as an area for improvement in our report on CEPA. While the Government has engaged in consultation exercises and supported consultations undertaken by Which?, the Government's consultation in this area still requires improvement. We heard evidence suggesting that consultation with civil society organisations, such as civil liberties organisations, could be improved, though we note that the Government has consulted civil liberties organisations as a part of its National Data Strategy. *We recommend that the Government includes representatives from civil liberties organisations in its ETAG, or otherwise creates a mechanism to consult with them.* (Paragraph 103)
17. While other stakeholders were largely positive about the Government's consultation mechanisms, they stressed the importance of consultation to be a dialogue rather than one-sided. *As such, we recommend that the Government consults with stakeholders throughout ongoing negotiations, sharing working texts in confidence where possible and engaging with feedback on those texts.* (Paragraph 104)

Formal minutes

Wednesday 23 June 2021

Members present

Angus Brendan MacNeil, in the Chair

Mark Garnier	Anthony Mangnall
Paul Girvan	Craig Williams
Sir Mark Hendrick	Martin Vickers

Draft Report (*Digital trade and data*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 104 read and agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Thursday 24 June at 9.30 a.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 27 January 2021

Hosuk Lee-Makiyama, Director, European Centre for International Political Economy (ECIPE); **Professor Elaine Fahey**, Jean Monnet Chair in Law & Transatlantic Relations, City Law School, City, University of London; **Javier Ruiz Diaz**, Policy Consultant; **Dr Emily Jones**, Associate Professor in Public Policy, Blavatnik School of Government, University of Oxford

[Q1–32](#)

Diana Avila, Global Head of Banking and Expansion, TransferWise; **David Holman**, Director, Armour Communications; **Nick Ashton-Hart**, Special Adviser, International Internet Policy, ICC United Kingdom

[Q33–52](#)

Wednesday 10 March 2021

Professor David Collins, Professor of International Economic Law at City, University of London; **Professor Christopher Kuner**, Professor of Law, Vrije Universiteit Brussel (VUB), Co-Director, Brussels Privacy Hub; **Dr Kristina Irion**, Assistant Professor, Institute for Information Law (IViR), University of Amsterdam

[Q53–80](#)

Sue Davies MBE, Head of Consumer Protection and Food Policy, Which?; **Sabina Ciofu**, Head of EU and Trade Policy, techUK; **Jim Killock**, Executive Director, Open Rights Group

[Q81–109](#)

Wednesday 21 April 2021

Rt Hon John Whittingdale OBE MP, Minister of State for Media and Data, Department for Digital, Culture, Media and Sport; **Rt Hon Greg Hands MP**, Minister of State for Trade Policy, Department for International Trade; **Graham Floater**, Director of Trade Policy, Department for International Trade; **Nick Russell**, Deputy Director of the Digital Trade Team, Department for Digital, Culture, Media and Sport

[Q110–143](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DTD numbers are generated by the evidence processing system and so may not be complete.

- 1 Adobe ([DTD0003](#))
- 2 Advertising Association ([DTD0004](#))
- 3 BSA | The Software Alliance ([DTD0006](#))
- 4 CBI ([DTD0022](#))
- 5 Carnegie UK Trust ([DTD0010](#))
- 6 Coalition of Services Industries ([DTD0018](#))
- 7 Collins, Professor David (Professor of International Economic Law, City, University of London) ([DTD0002](#))
- 8 Data & Marketing Association UK (DMA); Federation of European Data & Marketing Associations (FEDMA); and Global Data & Marketing Alliance (GDMA) ([DTD0028](#))
- 9 Department for International Trade ([DTD0025](#))
- 10 Federation of Small Businesses ([DTD0005](#))
- 11 Global Data Alliance ([DTD0007](#))
- 12 IBM Corporation ([DTD0012](#))
- 13 Information Commissioner's Office ([DTD0029](#))
- 14 Jones, Dr Emily (Associate Professor, Blavatnik School of Government, University of Oxford); Beatriz Kira (Senior Research and Policy Officer, Blavatnik School of Government, University of Oxford); and Danilo B. Garrido Alves (Research Officer, Blavatnik School of Government, University of Oxford) ([DTD0021](#))
- 15 Law Society of Scotland ([DTD0016](#))
- 16 Motion Picture Association (MPA) ([DTD0030](#))
- 17 Office of the City Remembrancer, City of London Corporation ([DTD0026](#))
- 18 Professional and Business Services Council ([DTD0013](#))
- 19 techUK ([DTD0015](#))
- 20 The Institute of Export and International Trade ([DTD0017](#))
- 21 The Law Society of England and Wales ([DTD0009](#))
- 22 The Royal Society ([DTD0014](#))
- 23 TheCityUK ([DTD0020](#))
- 24 UKTPO—University of Sussex ([DTD0027](#))
- 25 UNISON ([DTD0023](#))
- 26 Which? ([DTD0001](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2019–21

Number	Title	Reference
1st Report	The COVID-19 pandemic and international trade	HC 286
2nd Report	UK-Japan Comprehensive Economic Partnership Agreement	HC 914
3rd Report	UK trade remedies policy	HC 701
4th Report	UK freeports	HC 258
1st Special Report	The COVID-19 pandemic and international trade: Government Response to the Committee's First Report of Session 2019–21	HC 815
2nd Special Report	UK-Japan Comprehensive Economic Partnership Agreement: Government Response to the Committee's Second Report of Session 2019–21	HC 1163

Session 2021–22

Number	Title	Reference
1st Report	Digital trade and data	HC 123
1st Special Report	UK trade remedies policy: Government Response to the Committee's Third Report of Session 2019–21	HC 269
2nd Special Report	UK Freeports: Government Response to the Committee's Fourth Report of Session 2019–21	HC 453