



House of Commons
International Trade Committee

Digital trade and data: Government Response to the Committee's First Report

Fourth Special Report of Session
2021–22

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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.

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You can follow the Committee on Twitter using [@CommonsIntTrade](https://twitter.com/CommonsIntTrade)

Fourth Special Report

The International Trade Committee published its First Report of Session 2021–22, *Digital trade and data* (HC 123), on 28 June 2021. The Government response was received on 25 October 2021 and is appended below.

Appendix: Government Response

Government strategy and prominent approaches taken by other states

Recommendation 1 - Page 15, Paragraph 43

We recommend that the Government produces and publishes a digital trade & 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.

The Government's response

Following the Committee's recommendation, the Secretary of State for International Trade published her vision for digital trade on 20 September 2021 along with the Department for International Trade's objectives for digital trade in including on trade in data. The vision and objectives are available at: <https://www.gov.uk/government/publications/digital-trade-objectives-and-vision/digital-trade-objectives>. This makes the UK one of the first countries to publish the aims of its digital trade policy in such detail.

The Secretary of State's vision is for the UK to be a global leader in digital trade, with a network of international agreements that drive productivity, jobs, and growth across the UK. The existing and emerging barriers to achieving this vision are considerable. While some countries are more open to digital trade, others are taking a more protectionist and discriminatory approach.

We aim to deliver our vision by addressing key barriers to the UK's five broad goals for digital trade. These goals are to: secure open digital markets; ensure free cross-border data flows that are trusted by individuals, businesses and others; uphold consumer and business safeguards; cut red tape for UK businesses by promoting digital trading systems such as digital customs and electronic documents; and collaborate with international partners to shape rules, norms and standards that reflect our values, and ensure that digital trade is free, fair, and inclusive.

The published digital trade objectives have been shaped for use in bilateral, plurilateral and multilateral negotiations, and are designed to place the UK at the centre of a network

of modern international agreements with countries that share the UK's goals for free and fair trade. In this way, the objectives aim to enhance the UK's status as a global hub for services and digital trade.

A key strategic priority is to expand the UK's digital trade in the Asia Pacific region where technological innovation and the digital economy are growing rapidly. Our goal is to be a country with a broad and integrated presence in the region – committed for the long term, with closer and deeper partnerships, bilaterally and plurilaterally. We are also growing our network of digital trade agreements in other key regions, and are helping to shape the global rules and norms of digital trade in international fora such as the G7 and WTO.

The UK is delivering on our digital trade objectives, most recently in our digital trade agreements in the UK-Japan FTA, the UK-Australia FTA the UK-New Zealand FTA, ongoing negotiations with Singapore, and the UK's discussions to accede to the Comprehensive and Progressive Trans-Pacific Partnership. The objectives for UK FTAs, including our digital trade objectives, and our National Data Strategy, are published on GOV.UK.

Further to the vision and objectives published by the Department for International Trade, the Board of Trade aims to set out a digital trade strategy and recommendations before the end of the year. The strategy will be shared with the Committee on publication.

Data protection

Recommendation 2 - Page 19, Paragraph 53

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.

The Government's response

In our negotiations with trading partners, we seek to include provisions that facilitate free and trusted data flows that underpin the delivery of digital services and data-supported goods trade in sectors such as financial services, agricultural produce, manufactured goods, architecture and engineering.

The flow of data is now essential in the new global economy. The ability to move data across borders is important for economic growth and innovation. For these reasons, an important objective of the UK's approach to trade in data is to secure FTAs that address unjustified obstacles to the free flow of data.

Our trade policy also plays an important role in supporting the protection of personal data. The UK's high standards of personal data protection are set out in the UK's Data Protection Act 2018 and UK GDPR, which includes the protection of personal data when it leaves the UK. This requires use of an accepted transfer mechanism, such as international data transfer agreements, standard contractual clauses between UK firms and their counterparts or a separate agreement that ensures that the personal data protection regime of a partner country meets the standards expected by the UK. Our FTAs build on this by locking in commitments to personal data protection. As we agree new FTAs, the Government will continue to publish materials that aid understanding of what has been agreed and

its implications including, where relevant, on issues related to data protection. Previous examples of this include the digital and data explainer and the data protection explainer, both published to accompany the UK-Japan Comprehensive Economic Partnership Agreement to explain to a wider audience the provisions relating to data and other digital issues. These are available at: <https://www.gov.uk/government/publications/uk-japan-cepa-digital-and-data-explainer>; and <https://www.gov.uk/government/publications/uk-japan-cepa-how-your-data-is-protected>. For future FTAs, the Government will publish a data protection explainer where appropriate.

Recommendations 3 & 4 – Pages 19 & 20, Paragraph 54 & 60

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.

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 Government's response:

The UK is committed to maintaining high standards of protection for personal data, including when it is transferred across borders. Personal data transfers to third countries continue to be governed by the UK's data protection legislation and personal data cannot be transferred to a third country without a legal safeguard in place, such as an international data transfer agreement, standard contractual clauses, or an adequacy decision. Any commitments made in FTAs do not provide a legal basis for the transfer of personal data to third countries and do not alter nor undermine the UK's domestic data protection legislation. The UK's high standards of data protection, rights of individuals over their personal data and legal basis for international data transfers to third countries continue to be governed and contained within the Data Protection Act 2018 and UK GDPR, and not within FTAs. At the conclusion of any new FTA, the Government publishes a broad range of material, including an impact assessment, explanatory memorandum, and explainer documents, to help all interested parties understand the content and impact of our deals.

We have committed to publish impact assessments for new free trade agreements which will cover all relevant impacts of commitments made in the new FTA. In any negotiation, the government considers and assesses the full impact of an agreement, and this is included in the material that the Government publishes at the conclusion of any FTA.

The Government will include implications for data protection in its future Impact Assessments for new FTAs.

Recommendation 5 – Page 23, Paragraph 70

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.

The Government's response

In June 2021, the European Union (EU) formally recognised the UK's high data protection standards as 'adequate' after more than a year of constructive talks. The Government welcomes the EU's adequacy decisions, which allow for the continued free flow of personal data from the EU and EEA to the UK. The UK, which now operates a fully independent data policy, has also legislated to permit the free flow of personal data from the UK to the EU and EEA. We will continue to engage with the EU as appropriate on these issues.

The European Commission reviewed the UK's international data transfers legislation and framework as part of its comprehensive assessment of the UK. They found it to be 'adequate' for the purposes of EU law. The UK will continue to ensure that individuals' data protection rights are protected and upheld when their data is transferred overseas from the UK. We have committed to publish impact assessments for new free trade agreements which will cover all relevant impacts of commitments made in new FTAs. However, as explained in our response to recommendations 3 and 4, the provisions we sign up to in our FTAs do not alter our domestic legislation on personal data protection, nor do they provide a lawful basis for international data transfers.

Recommendation 6 – Page 23, Paragraph 71

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.

The Government's response

The transfer of personal data outside the UK and the processing of personal data in the UK, including the personal data of EU citizens, is and will continue to be regulated by our domestic data protection legislation. Personal data can only be transferred overseas from the UK under adequacy decisions, or alternative transfer mechanisms like standard contractual clauses, except in specified, limited circumstances. Therefore, we do not anticipate changes in the processing of – or level of protection afforded to – EU citizens' personal data as a result of accession to CPTPP.

The UK will maintain a high level of protection for data both in the UK and when being transferred overseas.

Recommendation 7 – Page 23, Paragraph 72

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.

The Government's response

The Government has recently launched a consultation¹ on reforms to create an ambitious, pro-growth and innovation-friendly data protection regime that underpins the trustworthy use of data. Outside of the EU, the UK can reshape its approach to regulation and seize opportunities with its new regulatory freedoms, helping to drive growth, innovation and competition across the country.

As set out in the consultation, the UK was a longstanding proponent of high data protection standards while part of the EU, and it will remain so as an independent nation, leading the way in creating the best possible data protection regime that exists globally. Respect for the existence of multiple different data protection regimes and recognition of the importance of striving towards increased interoperability to support trusted international flows of data are key parts of the UK's approach.

The government believes it is perfectly possible and reasonable to expect the UK to maintain EU adequacy as it begins a dialogue about the future of its data protection regime and moves to implement any reforms in the future. European data adequacy does not mean verbatim equivalence of laws, and a shared commitment to high standards of data protection is more important than a word-for-word replication of EU law. Indeed, other countries, such as Israel, have been granted adequacy decisions by the EU while pursuing independent and varied approaches to data protection, reflecting their unique national circumstances, cultures and heritages.

To further support trusted data flows across the world, alternative transfer mechanisms, such as Standard Contractual Clauses (SCCs), must continue to be readily available, flexible and straightforward to implement. The government will continue to improve the design of alternative data transfer mechanisms, alongside further engagement with international partners to ensure the global regulatory framework enables trusted, free flow of data.

Source code, consumer protection, and online harms

Recommendation 8 – Page 25, Paragraph 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.

The Government's response

In the UK's FTAs, we strongly support provisions that prevent parties requiring access to source code as a condition of its import, sale, or distribution. This is because unjustified requests for businesses to share their source code risk undermining intellectual property rights and business confidence and serve as a barrier to trade. However, source code provisions must not infringe the ability of authorities to ensure compliance with regulations

1 <https://www.gov.uk/government/consultations/data-a-new-direction>

or legislation, and to enforce remedies. For example, a competition authority might require a developer to share elements of its source code with other software developers to produce interoperable programs.

The Government will reference provisions relating to source code and algorithms in its future Impact Assessments for new FTAs. The Government will also provide an explainer where appropriate.

Recommendation 9 – Page 26, Paragraph 81

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.

The Government's response

The Government continues to build upon the provisions in the UK-Japan Comprehensive Economic Partnership Agreement (CEPA) in its FTAs with forward-leaning digital provisions, whilst continuing to protect UK consumers engaging in digital trade. CEPA was the UK's first major trade deal as an independent trading nation and highlights the Government's ambition to secure modern and bespoke digital provisions in our FTAs. This includes a wide range of digital and data provisions that were not in the EU-Japan FTA.

We have continued to build on CEPA with further cutting-edge digital provisions in our subsequent FTA negotiations. With EEA/EFTA, our telecommunications services chapter went further than the EU agreement with ambitious provisions on paperless trading, emerging technologies, and on international mobile roaming services – setting a global precedent. With Australia and New Zealand, we have secured cutting-edge provisions on innovation and digital identities which maximise opportunities for digital trade across all sectors of the economy, including provisions that facilitate the free flow of data, whilst ensuring that the UK's high standards of personal data protection are maintained, and provisions to prevent unjustified data localisation requirements. Our cutting-edge Digital Economy Agreement with Singapore will keep us at the forefront of the technological revolution. This agreement aspires to deliver an ambitious model for international digital trade rules and cooperation, building upon our shared agenda in the WTO and our FTA. The UK is also playing a leading role in digital trade negotiations in the WTO Joint Initiative (JI) on E-commerce, and will continue to explore how to push the boundaries in digital trade in future FTAs, including in our negotiations with the United States as well as the UK's accession negotiations for CPTPP.

The UK believes that it is important that effective measures are in place to protect consumer rights when purchasing goods and services online. The UK has one of the world's strongest consumer protection regimes; the system of laws, regulations and institutions established to protect consumers. In general, the UK's consumer protection law applies to both offline and online transactions, with extra requirements for businesses selling goods, service and digital content online. In our Free Trade Agreements, we build on this strong domestic regime by developing high-quality shared rules for online consumer protection and seeking to address unsolicited commercial electronic messaging through both bilateral and multilateral engagement. In our negotiations with trading partners, we strongly

support provisions that require countries to develop or maintain laws or regulations that protect consumers from unfair practices, and promote cross-border cooperation to enhance consumer protection online. At the WTO Joint Initiative on E-commerce, we support provisions on online consumer protection.

As digital trade and technology continues to evolve, we will continue to work closely with industry, civil society and other stakeholders to identify areas where we can continue to drive a digital trade policy fit for the 21st century.

Work at the WTO and G7

Recommendation 10 – Page 29, Paragraph 94

We recommend the Government publishes both its objectives for the Joint Statement Initiative and its current proposals to allow for greater transparency and scrutiny.

The Government's response

The UK's published statement on the WTO Joint Initiative on E-commerce, which outlines the Government's objectives is available at: <https://www.gov.uk/government/speeches/uk-statement-on-the-wto-joint-initiative-on-e-commerce>.

The Department for International Trade has also published the UK's detailed objectives for digital trade in our bilateral, plurilateral and multilateral negotiations. These are available at: <https://www.gov.uk/government/publications/digital-trade-objectives-and-vision/digital-trade-objectives>.

The UK's text proposals for the JI on E-commerce cover: customs duties on electronic transmissions, personal information protection, cross-border transfer of information, location of computing (and financial computing) services, source code, cryptography, open internet access, cybersecurity, electronic contracts, and paperless trading. For greater transparency, we are updating the Trade Advisory Groups on the JI negotiations.

Consultation

Recommendation 11 – Page 32, Paragraph 103

We recommend that the Government includes representatives from civil liberties organisations in its ETAG, or otherwise creates a mechanism to consult with them.

The Government's response

The Government is committed to engaging with a wide array of stakeholders. DIT has set up a range of engagement mechanisms to allow stakeholders – including civil liberties organisations – the opportunity to feed into trade policy, ensuring that the UK position is well informed and reflects the interests of the whole of the UK. These include the Strategic Trade Advisory Group (STAG), sectoral Trade Advisory Groups, the trade union advisory group, civil society roundtables, thematic working groups and the Board of Trade.

In addition, DIT regularly engages with a wide range of stakeholders through DIT's network of International Trade Advisers, as well as civil society organisations and think tanks through roundtables and quarterly stakeholder briefings. We will continue to consult with representatives from civil liberties organisations by these means.

Recommendation 12 – Page 32, Paragraph 104

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.

The Government's response

As part of its preparations for launching FTA negotiations with a country, the Government runs a public consultation to inform its negotiation objectives. An initial scoping assessment of the FTA is published at the same time.

Public consultations provide stakeholders with the opportunity to express their views about UK FTAs, which will help shape Government policy positions and ensure a future trade deal benefits citizens and business in every region of the UK. We ask that all responses are submitted through our online questionnaires.

In addition, DIT has established the Strategic Trade Advisory Group (STAG) to provide a forum for high-level strategic discussions between Government and stakeholders representing a cross section of interests from all parts of the UK on trade policy matters, and specific sectoral Trade Advisory Groups (TAGs).

The Government consults with stakeholders in the TAGs and more widely throughout ongoing negotiations, including open discussions with stakeholders under confidentiality agreements, and engaging with feedback.

The Department regularly engages with a wide range of stakeholders, including civil society organisations, through ministerially-led roundtables and engagements at ministerial and official levels and through statements published on GOV.UK. DIT has also established a number of other fora including: 'town hall' style briefings, roundtables, webinars and group engagements to ensure that stakeholders are able to influence and shape the UK's future trade policy.