

UK trade negotiations: Agreement with Japan Evidence from the Trade Justice Movement International Trade Committee

November 2020

1. The Trade Justice Movement (TJM) is a UK-wide network of sixty civil society organisations calling for trade rules that work for people and planet. Our members include trade unions, NGOs, consumer groups and faith organisations.
2. This document sets out TJM's written evidence to the International Trade Committee's Inquiry on UK trade negotiations: Agreement with Japan. Our response includes answers to selected questions taken from the inquiry's Terms of Reference. While we have not been given a lot of time to review the text of the agreement, and not all the annexes have been published, we were keen to send a response to the committee sooner rather than later.
3. TJM firmly believes that the UK needs a new framework for parliamentary scrutiny of international trade agreements. While this inquiry is welcome, Parliament must be empowered to properly scrutinise new trade deals, with full debates and votes on the government's negotiation objectives, transparency and access to texts during negotiations, and a debate and vote in Parliament after deals are signed. The government should produce an independent impact assessment for each trade deal which looks at social and environmental factors, and includes consultation with civil society organisations. The Trade Bill offers an upcoming opportunity for parliamentarians to push for a reform to these processes.¹

In what ways does CEPA differ from the Japan-EU Economic Partnership Agreement (JEEPA)?

4. Whilst we believe that CEPA does not differ hugely from the Japan-EU Economic Partnership Agreement (JEEPA), there has been insufficient time to make a proper assessment of the likely impact of the differences. There are some differences in tariffs and in digital trade provisions. From a 'trade justice' perspective, one notable difference is the level of civil society dialogue in the deal. In CEPA, civil society dialogue is dependent on Party consent and will only meet every two years instead of every year. Meanwhile, the use of the word "should" to describe civil society dialogue is less binding than the EU's "shall" and means that dialogue is not mandatory.²

¹ See [TJM's most recent Trade Bill briefing here](#).

² CEPA ARTICLE 16.16 Joint Dialogue with civil society: "1. The Parties shall convene, at such times as may be agreed by the Parties, the Joint Dialogue with civil society organisations situated in their territories (hereinafter referred to in this Chapter as "Joint Dialogue"), including members of their domestic advisory groups referred to in Article 16.15, to conduct a dialogue on this Chapter. 2. The Parties should promote in the Joint Dialogue a balanced representation of relevant stakeholders, including independent organisations which are representative of economic, environmental and social interests as well as other relevant organisations as appropriate. 3. The Joint Dialogue shall be convened no later than two years after the date of entry into force of this Agreement. Thereafter, the Joint Dialogue shall be convened regularly, unless the Parties agree otherwise. The Parties shall agree on the operation of the Joint Dialogue before the first meeting of the Joint Dialogue. Participation in the Joint Dialogue may take place by any appropriate means of communication as agreed by the Parties. 4. The Parties will provide the Joint Dialogue with information on the implementation of this Chapter. If the Parties agree, the views and opinions of the Joint Dialogue may be submitted to the Committee and may be made publicly available."

5. Another key difference, albeit not in the deal itself, is the level of scrutiny and democratic oversight each deal will receive. JEEPA passed through the EU's scrutiny processes, which include some votes for MEPs on the trade deal objectives, public consultation on these objectives, the right to regular updates for MEPs and a guaranteed vote on the final deal. The UK, on the other hand, has far less robust scrutiny processes. MPs were not involved with setting the negotiation objectives for CEPA and have not been updated regularly during negotiations, with no access to negotiation texts until after the deal was signed. Even then, MPs have very little opportunity to scrutinise the deal; except for those on the International Trade Committee, MPs only have 21 sitting days to read the text, with no guaranteed vote on the deal under the ratification processes set out in the Constitutional Reform and Governance (2010) Act ("CRAG"). TJM has set out a table which compares scrutiny processes between the UK, US, EU and Japan, see figure 1.

6. *Figure 1: Scrutiny comparison table between the UK, US, EU and Japan:*

				
Before negotiations	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MPs have legal right to see objectives <input checked="" type="checkbox"/> MPs votes on general objectives <input checked="" type="checkbox"/> Objectives published for public consultation 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Congress has legal right to see objectives <input checked="" type="checkbox"/> Congress votes on general objectives <input checked="" type="checkbox"/> Objectives published for public consultation 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MEPs have legal right to see objectives <input checked="" type="checkbox"/> (Some) parliamentary votes on objectives <input checked="" type="checkbox"/> Objectives published for public consultation <input checked="" type="checkbox"/> Council votes on objectives 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Diet <input checked="" type="checkbox"/> Diet votes on general objectives <input checked="" type="checkbox"/> Objectives published for public consultation
During negotiations	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MPs have legal right to regular updates <input checked="" type="checkbox"/> Public have access to texts 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Congress has legal right to updates <input checked="" type="checkbox"/> Public have access to texts 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MEPs have legal right to regular updates <input checked="" type="checkbox"/> Public have access to (some) texts 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Diet has legal right to regular updates <input checked="" type="checkbox"/> Public have access to texts
After negotiations	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Parliament <input checked="" type="checkbox"/> Guaranteed vote in Parliament <input checked="" type="checkbox"/> Parliament can reject trade deal outright 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Congress <input checked="" type="checkbox"/> Guaranteed vote in Congress <input checked="" type="checkbox"/> Congress can reject trade deal outright 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Parliament <input checked="" type="checkbox"/> Guaranteed vote in Parliament <input checked="" type="checkbox"/> Parliament can reject trade deal outright 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Diet <input checked="" type="checkbox"/> Guaranteed vote in Diet <input checked="" type="checkbox"/> Diet can reject trade deal outright

7. As has been widely reported, CEPA goes further than JEEPA on digital trade provisions. Digital trade provisions are a new and important part of modern FTAs, and deserve more thorough scrutiny and research, particularly in terms of how digital trade provisions affect individuals' data privacy, health services, the ability of governments to regulate emergent technology and the advantages these provisions might confer on large technology companies. The UK has offered a greater level of liberalisation in terms of data transfer and has waived a requirement for computing facilities to be located within its territory, the implications of both measures need further examination in order to properly understand their impact. TJM has previously published research raising concerns about these potential impacts of digital trade provisions, and the way trade deals can restrict the ability of governments to regulate a powerful and relatively unconstrained sector.

8. A particular concern is that digital trade chapters prevent governments from controlling cross-border data flow, and from forcing technology companies to reveal source-code and algorithms which may have harmful effects - for example, through discrimination or misuse of personal data. Another concern is about data ownership. As technology companies increasingly gather data on all areas of individuals' lives, a key question arises as to who should own that data. Public and individualised health data is typically guarded with maximal privacy through institutions like the NHS, but data collected through health apps and similar health technology is often privately owned by the company. Digital trade rules, if designed poorly, may limit the ability of governments to either access important public health data or introduce data privacy requirements on technology companies.³

Does CEPA represent a good deal for the UK?

9. Ensuring trade continuity between the UK and Japan is important for a number of UK businesses. Japan is one of the largest investors in the UK, and many of its companies have historically used the UK as a base for access to the European market. Japanese investment has allowed traditional UK manufacturing, such as in automobiles, to benefit from new technology and practices, which has created jobs in many parts of the country, particularly outside of London and other large cities. However, it is also worth noting that this trade and investment has mostly taken place without a trade deal between Japan and the UK - the EU-Japan agreement is a recent development.
10. As discussed in answer to the previous question, CEPA largely replicates JEEPA, except in a few areas. TJM has concerns about the level of civil society engagement, public consultation and parliamentary scrutiny in the deal, as well as the environmental and social provisions and the extension of digital trade provisions. These are all discussed in more detail in response to the previous question.
11. TJM welcomes the fact that Investor-State Dispute Settlement (ISDS) has not been included in CEPA. Since the UK and Japan have both signed ISDS agreements with other partners, this was a serious concern during the negotiations. However the text of CEPA leaves open the possibility of a future ISDS agreement.⁴ The UK has also expressed its intention to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which includes an ISDS agreement between its members. We hope that the UK will follow the example of New Zealand, a CPTPP member, which has successfully negotiated exemptions with some countries from the ISDS clauses in CPTPP.
12. **Services:** TJM is concerned about the inclusion of public services in trade deals. The UK lists relatively few exclusions in its new GATS commitments and has traditionally excluded even fewer in EU trade agreements. Annex 1 of the CEPA agreement has at the time of writing not been released and it is therefore not possible to make a full assessment of the extent of liberalisation. However we anticipate that the UK will use the standard GATS exclusion and definition of "services supplied in the exercise of government authority" which most likely does

³ For more information, see this summary on Digital Trade (e-commerce) on [TJM's website](#)

⁴ CEPA ARTICLE 8.5, Review: "If, after the date of entry into force of this Agreement, a Party signs an international agreement with an investment chapter that contains provisions for investment protection or provides for investor-to-state dispute settlement procedures, the other Party, after the date of entry into force of that agreement, may request that the Parties review this Section and Section B. 1 Such a review shall be conducted with a view to the possible inclusion within this Agreement of such provisions that could provide for the improvement of the investment environment. Unless the Parties otherwise agree, any such review shall be commenced within two years from the date of the request and shall be concluded within a reasonable period of time."

not cover the vast majority of UK public services because they are in general either provided 'in competition' with a private provider (any service that is also provided by a private provider) or 'in exchange for a fee' (medicines, dentistry etc.). This sets the UK apart from the EU which uses additional public utilities and services of general interest exclusions.

What is likely to be the impact of the agreement on:

Social, labour, environmental and animal welfare issues?

13. **Trade and sustainable development:** CEPA, like JEEPA, includes a Trade and Sustainable Development (TSD) chapter which includes provisions on protecting the interests of developing countries, as well as human rights and the environment. TJM has long criticised the unenforceability of TSD chapters, which are not subject to dispute settlement. CEPA copies the EU approach, which is limited to cooperation and dialogue-based mechanisms. In practice this means that any TSD issues raised by one party will at best lead to a panel report and further discussions. This limitation means that the commitments of parties to abide by TSD provisions are very weak, and the likelihood of any meaningful consequence from non-compliance is very slim.⁵ It is disappointing to see that the UK has missed an opportunity to go further, for example by considering the greater enforceability of chapters in US trade deals.
14. **Labour rights:** As is common in trade agreements, CEPA includes a mention of cooperation on trade-related aspects of the International Labour Organisation's 'decent work' agenda, and reaffirms ILO standards on workers' rights. However these sections suffer from the same weakness in bindingness and enforceability of the chapters on climate and the environment (see below).
15. **Climate and the environment:** CEPA cites shared commitment to multilateral environmental agreements, including the United Nations Framework Convention on Climate Change and the Paris Agreement; the promotion of low-carbon technologies, conservation and sustainable use of biological diversity including combating illegal trade in endangered species of wild fauna and flora. However, these commitments are not enforceable through the trade agreement.⁶ Furthermore, CEPA has removed requirements for review of these provisions, which would have ensured joint action on climate change keeps track of international developments.
16. TJM has some concerns about Japan's action on climate change. The 'Climate Action Tracker' rates Japan's policies as 'highly insufficient' (on course for up to 4 degrees C of warming) and the UK's as 'insufficient' (on course for up to 3 degrees C of warming).⁷ This assessment is worrying, and as far as we know was not explicitly addressed in trade negotiations, and nor is it meaningfully addressed in the text of the trade deal.

⁵ CEPA ARTICLE 16.7: "Government Consultations 1. In the event of disagreement between the Parties on any matter regarding the interpretation or application of this Chapter, the Parties shall only have recourse to the procedures set out in this Article and Article 16.18. The provisions of this Chapter shall not be subject to dispute settlement under Chapter 22."

⁶ CEPA ARTICLE 16.4 Multilateral environmental agreements: "Nothing in this Agreement prevents a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which it is party, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other Party or a disguised restriction on trade." *The second clause of this statement weakens it significantly, making it very difficult to implement any measure that has a negative impact on trade.*

⁷ [Climate Action Tracker - Japan](#), updated September 2020

17. **Biological diversity:** The section on biological diversity retains the relatively stronger language of the EU deal, when compared to the above on climate agreements. Parties are committed to particular measures, (rather than ‘striving’, ‘encouraging’ or ‘recognising’ as appears in the chapters on climate and the environment more generally) - which constitute unenforceable and vague ambitions. The text cites the 1992 Convention on Biological Diversity, and the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora.
18. **Forestry:** Japan is the largest importer of wood and plywood in the world, the second largest importer of logs and the third largest importer of lumber. Japan has been reluctant to impose mandatory standards for timber imports and has been exposed as a major importer of illegal timber, from at least one EU member state. Japan has pursued a national verification system (the goho-wood system), however participation is purely voluntary for firms and there is no independent monitoring system.⁸ Weak regulation of wood imports may directly encourage environmentally harmful practices in exporting states. Whilst forestry is mentioned in CEPA, the language is non-binding. Provisions in both JEEPA and CEEPA are weaker than those in both CETA and the TPP, where the language is more specific and ambitious.⁹
19. Global Witness has asserted that Japan’s newly introduced law lacks meaningful deterrent and threatens to undermine the regulatory standards adopted by other G7 countries¹⁰, all of which – except Japan – have prohibited imports of illegal timber, and imposed mandatory regulations. A report by the GUE/NGL group of MEPs finds that “The lack of any explicit requirement for a prohibition on imports of illegal timber, mandatory due diligence or the implementation of other specific measures equivalent to efforts underway in the EU or other regions, would appear to be a significant failing. In the context of an agreement with the world’s largest importer of wood and plywood, a country which is demonstrably an importer of

⁸ These issues are all flagged in the EU’s [Sustainability Impact Assessment](#) for its agreement with Japan, 2016

⁹ For comparison, see CETA text on forestry, ARTICLE 24.10 Trade in forest products: “1. The Parties recognise the importance of the conservation and sustainable management of forests for providing environmental functions and economic and social opportunities for present and future generations, and of market access for forest products harvested in accordance with the law of the country of harvest and from sustainably managed forests. 2. To this end, and in a manner consistent with their international obligations, the Parties undertake to: (a) encourage trade in forest products from sustainably managed forests and harvested in accordance with the law of the country of harvest; (b) exchange information, and if appropriate, cooperate on initiatives to promote sustainable forest management, including initiatives designed to combat illegal logging and related trade; (c) promote the effective use of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington on 3 March 1973, with regard to timber species considered at risk; and (d) cooperate, where appropriate, in international fora that deal with the conservation and sustainable management of forests. 3. The Parties shall discuss the subjects referred to in paragraph 2, in the Committee on Trade and Sustainable Development or in the Bilateral Dialogue on Forest Products referred to in Chapter Twenty-Five (Bilateral Dialogues and Cooperation), in accordance with their respective spheres of competence.”

Cf. CEPA on forestry, ARTICLE 16.7 Sustainable management of forests and trade in timber and timber products: “1. The Parties recognise the importance and the role of trade and investment in ensuring the conservation and sustainable management of forests. 2. In that context, the Parties shall: (a) encourage conservation and sustainable management of forests, and trade in timber and timber products harvested in accordance with the laws and regulations of the country of harvest; (b) contribute to combating illegal logging and related trade including, as appropriate, the trade with third countries; and (c) exchange information and share experiences at bilateral and multilateral levels with a view to promoting the conservation and sustainable management of forests and trade in legally harvested timber and timber products, as well as to combating illegal logging.”

¹⁰ Global Witness, [G7 host Japan poised to pass a new law that would undermine the Group’s efforts to combat the global illegal timber trade](#) (press release), April 2016

illegal timber from an EU member state, and which lacks an effective system to regulate imports or monitor compliance, even in public procurement – it is clear that these commitments on timber need to go much further.”¹¹

20. **Animal welfare (whaling):** Significant concerns have been raised in relation to Japan’s track record on whaling. The UK has not used the opportunity of renegotiating aspects of the rollover to improve on the EU deal by inserting specific wording in respect of whaling. While the deal establishes an “Animal Welfare Technical Working Group”, to “exchange information, expertise and experiences in the field of animal welfare and to explore the possibility of promoting further cooperation”,¹² it is not clear exactly what the objectives of this group will be. A group aimed at enhancing standards on animal welfare, for instance, would be very different from a group whose aim is to prevent animal welfare regulations from standing in the way of trade.
21. **Fisheries:** CEPA includes some non-binding references to conservation and sustainable fishing, as well as agreement to comply with the UN Convention on the Law of the Sea, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea and the Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea. The language on illegal, unreported and unregulated (IUU) fishing, however, is weak, with use of phrases like “shall promote”, and shall “adopt and implement”.¹³
22. **Gender rights:** CEPA includes the establishment of a working group on trade and women’s economic empowerment, though there are no enforceable commitments in this area.

UK consumers?

23. **Regulatory cooperation:** CEPA has the potential to lead to a reduction in consumer standards, including food standards, through regulatory cooperation. The deal includes a chapter on regulatory cooperation which contains general commitments on regulatory cooperation but also specifies cooperation in the field of agriculture. The text says: “The scope of cooperation... shall cover: (a) the promotion of trade in agricultural products and foods, including a dialogue on the relevant laws and regulations; (b) cooperation with a view to improving farm management, productivity and competitiveness, including the exchange of best practices regarding sustainable agriculture, as well as the use of technology and innovation; (c) cooperation on production and technology in agriculture and foods.”¹⁴
24. A key concern is that regulatory cooperation puts downwards pressure on standards, which ultimately disadvantages consumers. Regulatory cooperation provisions aim to facilitate the alignment of regulations between trade partners through the establishment of councils of trade experts who have the power to scrutinise proposed regulation and suggest amendments. Such councils were proposed in the Transatlantic Trade and Investment Partnership (TTIP) and are present in the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada.

¹¹ GUE/NGL, S2B Network, [Making Sense of JEFTA](#), November 2017

¹² CEPA ARTICLE 18.17 - Animal Welfare

¹³ CEPA ARTICLE 16.8 - Trade and sustainable use of fisheries resources and sustainable aquaculture

¹⁴ CEPA ARTICLE 19.1 - Cooperation in the Field of Agriculture

25. Regulatory cooperation councils are problematic for a number of reasons; (1) they are an undemocratic way of making regulations, since they empower unelected bureaucrats rather than MPs to influence regulations; (2) there is evidence that business groups have a particularly high level of influence over the functioning of these councils, while trade unions, environmental groups and civil society are excluded; and (3) most importantly, alignment of regulations between parties can lead to a mutual diminishing of standards to the lowest common denominator, and present a barrier to the introduction of new regulations. Good regulation is essential for tackling the climate crisis, as well as upholding labour rights, social rights and animal welfare.
26. **Standards:** Recent polling shows that a vast majority of consumers would not accept lower standards in exchange for new trade deals. The results show that 79% would not accept vegetables grown using pesticides banned in the EU, 75% would not accept dairy products treated with antibiotics, and 80% would not accept chlorine-washed chicken or hormone-fed chicken.¹⁵ Similarly, research from Ipsos MORI shows that a majority of voters in areas which supported leaving the EU in the 2016 referendum - including those on lower incomes - support regulation on businesses to maintain high standards.¹⁶ Whilst Japan is currently not a significant exporter of food products (even soy sauce) it has an ambition to significantly increase its trade in this area, the trade deal as currently worded could therefore store up problems for the future.
27. Further polling shows that consumers do not want animal welfare standards lowered and this is consistent across regions, age and socio-demographic groups. A recent Savanta ComRes poll showed that both 76% of C2DEs and 74% of ABC1s did not want animal welfare standards lowered, showing that even consumers with relatively lower incomes still value high standards.¹⁷ A recent study for the Food Standards Agency showed that consumers have very negative values for three animal practices: hormone treated beef, ractopamine fed pigs, and chlorine washed chicken. The results revealed that, on average, the public highly value food products that observe present UK food safety standards and had negative Willingness to Pay scores of up to -50% for beef with hormones and -70% for ractopamine fed pigs.¹⁸
28. **Precautionary principle:** in CEPA the EU's precautionary principle is retained, however unlike in JEEPA, "available scientific and technical information" is not qualified by terms such as 'peer-reviewed, robust, high quality', but instead qualified by "where appropriate", which at the very least suggests that the precautionary principle is given a lesser status than the 'science-based' approach.¹⁹

¹⁵ YouGov polling, [US Trade Deal](#), June 2020

¹⁶ Unchecked, [NEW POLL: Attitudes of Younger Leave Voters to Regulation and Deregulation](#), May 2020

¹⁷ Agriland, [RSPCA poll reveals 75% want ban on lower welfare standard imports](#), August 2020

¹⁸ Balcombe, Bradley and Frasert, University of Kent, [The Economic Analysis of Consumer Attitudes Towards Food Produced Using Prohibited Production Methods: Do Consumers Really Care?](#), October 2020

¹⁹ CEPA ARTICLE 16.9 Scientific information: "When preparing and implementing measures with the aim of protecting the environment or labour conditions that may affect trade or investment, the Parties shall take account of available scientific and technical information, and where appropriate, relevant international standards, guidelines or recommendations, and the precautionary approach."