

Explanatory Memorandum on the Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership

Title: Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership

Command Paper No CP 311

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament as an unnumbered act paper.

2 Subject matter and purpose of the Treaty

2.1 Trade agreements aim to reduce barriers to trade and investment between countries. Barriers can be taxes charged on goods as they cross borders (tariffs), or different rules and regulations that can add to trade costs (non-tariff measures). Barriers make it more difficult and costly to trade or invest overseas. Reducing these barriers can improve the flow of trade between countries and help businesses to access new markets.

2.2 The United Kingdom of Great Britain and Northern Ireland (the “UK”) participates in a number of international agreements as a result of, or relevant to, its prior relationship with the European Union (the “EU”) and which help underpin the UK’s relationships with third countries and international organisations. The Government is seeking, as far as possible, to continue the effect of its current arrangements at the end of the Transition Period provided for in the Withdrawal Agreement between the UK and the EU.

2.3 The UK’s current trading relationship with Japan is governed by the Economic Partnership Agreement between the European Union and Japan (the “EU-Japan Agreement”). The EU-Japan Agreement entered into force in February 2019. The Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership (the “UK-Japan CEPA”) is based from the EU-Japan Agreement and enhances it in areas of mutual interest.

2.4 The UK-Japan CEPA is a comprehensive agreement which establishes an economic association between the UK and Japan. The UK-Japan CEPA covers both trade in goods, including provisions on rules of origin, preferential tariffs and quotas, and trade in services, investment and electronic commerce. It also contains commitments in areas often covered by trade agreements, including intellectual property, notably geographical indications, government procurement, sustainability and the need to tackle climate change . Most of the institutional provisions and bodies provided for in the EU-Japan Agreement are incorporated and retained in the UK-Japan CEPA, although some modifications have been made to the composition and function of these bodies to ensure they operate appropriately in a bilateral context.

2.5 The purpose of the UK-Japan CEPA is to maintain the effects of the EU-Japan Agreement in a bilateral context and to secure enhancements that go beyond the EU-Japan Agreement to provide UK business with additional benefits.

- 2.6 The Parliamentary Report (“the Report”) which accompanies this Explanatory Memorandum gives details of, and explains the reasons for, any significant differences between trade-related provisions in the UK-Japan CEPA and in the EU-Japan Agreement respectively.
- 2.7 The Report first sets out the legal approach used, as well as the general drafting changes which are consistent across all the UK’s continuity trade agreements and which have no significant impact on the effect of the UK’s current trade relationships. The Report focuses on the changes made to the relationship between the UK and Japan as a result of moving from the EU-Japan Agreement to the UK-Japan CEPA. The Impact Assessment that accompanies this Explanatory Memorandum details the UK-Japan CEPA’s impact on the economy of the United Kingdom.

3 Background

- 3.1 Through membership of the EU, the UK participated in around 40 free trade agreements, covering more than 70 countries. Ahead of the end of the Transition Period, the Government aims to put in place the necessary arrangements to ensure there is no disruption to our global trading relationships. Given that Japan has an existing agreement with the EU, the Government has concluded that transitioning, building on and enhancing the EU-Japan Agreement is the best way to ensure continuity of trade.
- 3.2 The UK and Japan have a long-shared history as free trading nations and this deal marks an historic moment that will deepen the partnership between two democratic island nations. A free trade agreement with Japan provides for significant opportunities throughout the economy, from agriculture to digital. Japan is a developed economy with high standards. The UK and Japan are major investors in each other’s economies, in 2018 Japan was the 6th largest investor in the UK, and the UK was the 4th largest investor in Japan in terms of inward investment.¹
- 3.3 The UK Japan CEPA covers a trading relationship worth over £30 billion last year and sets a new gold standard for a deal between two advanced, democratic economies. UK exports to Japan have been growing by an average of 7.6% year-on-year over the previous five years and, with this free trade deal in place, our economic partnership will have even more opportunity. Potential benefits from a deal include better jobs, higher wages, more choice and lower prices for all parts of the UK.
- 3.4 The deal is also an important step towards joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). This will give UK businesses a gateway to the Asia-Pacific region and help to increase the resilience and diversity of our supply chains and reduce tariffs for UK business (95% of goods traded between members are tariff-free).

4 Content

The UK-Japan CEPA builds on the existing EU-Japan Agreement and enhances it in areas such as e-commerce, financial services and intellectual property. The extent to which the Agreement differs is set out in the Parliamentary Report which accompanies this Explanatory Memorandum.

¹ This ranking is based on the main FDI release which does not have a detailed list for all countries: [ONS FDI Main Release](#) and JETRO: Japanese External Trade Organization, FDI stock (Based on International Investment Position, net)

Entry into force and termination

- 4.1 The entry into force provisions in the EU-Japan Agreement have been replaced in the UK-Japan CEPA with new provisions to ensure that the UK-Japan CEPA can enter into force immediately after the EU-Japan Agreement ceases to apply to the UK. Entry into force will take place on a date identified in an exchange of diplomatic notes between the Parties, following completion of their domestic legal requirements and procedures.
- 4.2 The UK–Japan CEPA can be terminated by either Party six months after notifying the other in writing, unless the Parties agree otherwise.

Governance and amendments

- 4.3 The UK-Japan CEPA establishes a Joint Committee, comprising representatives of both Parties, which is responsible for supervising its implementation and operation. The UK-Japan CEPA also establishes nine specialised committees, a Joint Committee on Mutual Recognition and four working groups.
- 4.4 The UK-Japan CEPA sets out the procedures by which amendments may be made in Article 24.2. This procedure is substantially the same as it was under the EU-Japan Agreement.
- 4.5 Amendments agreed by the Parties under Article 24.2.1, in the UK, are subject to the Parliamentary scrutiny procedures set out in section 20 of the Constitutional Reform and Governance Act 2010 (CRaG).
- 4.6 Trade agreements require regular review during implementation that can result in amendments to ensure that they continue to operate effectively. To ensure that more technical amendments can be done efficiently it is common to provide for such amendments to be made by decisions of the Joint Committee. This approach is reflected in Article 24.2.3 which enables the Joint Committee to decide to amend the elements of the UK-Japan CEPA listed in Article 24.2.4. Such decisions of the Joint Committee are binding on the Parties and are not, in the UK, subject to the Parliamentary scrutiny procedures in CRaG because acts of the kind specified in section 25(3) and (4) of CRaG are not required.
- 4.7 The Protocol on Mutual Recognition has separate amendment procedures, reflecting its specific functioning. Under Article 14 of the Protocol on Mutual Recognition, it can be amended by agreement between the Parties, and for more minor matters, amendments can be made by an exchange of diplomatic notes.
- 4.8 However, any amendment to the UK-Japan CEPA which would require changes to UK law would, before coming into effect, first require those changes to be implemented domestically. This means that Parliament would have the opportunity to scrutinise, debate, accept and reject such changes to UK law in accordance with normal legislative procedures.

5 Implementation

- 5.1 In general, where implementation of the UK-Japan CEPA is required, the Government will implement pursuant to the European Union (Withdrawal) Act 2018. This Act ensures that existing laws which implement the EU-Japan Agreement continue to have effect, or are incorporated in UK law.

Tariffs

5.2 The Government is working to implement the tariffs in regulations to be made under the Taxation (Cross-border Trade) Act 2018.

Trade Remedies

5.3 Bilateral safeguard investigations will be conducted by the Secretary of State, with support and assistance provided, on request, by the Trade Remedies Authority under clause 6 of the Trade Bill. Pending Royal Assent of the Trade Bill and the commencement of the provisions establishing the Trade Remedies Authority, its functions are being exercised by the Secretary of State. Bilateral safeguard measures will be imposed by repealing or amending statutory instruments made under section 9 of the Taxation (Cross-border Trade) Act 2018 (preferential rates: arrangements with countries or territories outside UK)

5.4 Section 13 of the Taxation (Cross-border Trade) Act 2019 and Schedules 4 and 5 to that Act and statutory instruments made under that section and these schedules provides for the investigation and imposition of global safeguard measures and anti-dumping and countervailing measures.

Procurement

5.5 The UK's current procurement obligations to suppliers from third countries with whom the EU has an agreement are contained in various provisions of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016, as well as the predecessor legislation. Equivalent provisions for Scotland are included in the Public Contracts (Scotland) Regulations 2016, the Utilities (Scotland) Regulations 2016 and the Concession (Scotland) Regulations 2016.

5.6 The UK and Scottish Governments have made statutory instruments under the European Union (Withdrawal) Act 2018 to amend deficiencies in their respective procurement regulations that arise as a result of the UK's withdrawal from the EU ("the EU Exit Regulations"). One effect of the EU Exit Regulations is to keep alive the EU-derived procurement obligations to suppliers from third countries for a period of 18 months. Doing so allows the UK to demonstrate compliance with the transitioned procurement provisions of any free trade agreements, including the UK-Japan CEPA in so far as an agreement replicates the provisions of the underlying EU agreement. As the EU Exit Regulations were made for the context of a "no deal" exit, they are currently under review. In any event, the intention remains that the UK's EU-derived procurement obligations to suppliers from third countries will be preserved for a time-limited period. The UK-Japan CEPA incorporates the provisions of the World Trade Organization Agreement on Government Procurement ("GPA") and the relationship between the two countries under that agreement. The UK's new obligations as an independent member of the GPA are sufficiently similar to the UK's obligations as currently covered under the EU's GPA membership that retaining our obligations under the EU's GPA membership for a limited period via the EU Exit Regulations allows the UK to comply with the obligations that are incorporated from its independent GPA obligations. This is subject to one exception, described further below.

5.7 The one area where the UK coverage under the GPA schedules materially differs from its obligations under the EU Schedules relates to updates to the UK's list of entities under Annex 1 of its Schedule. There are instances where bodies are included in the UK's Annex 1 list (Central Government bodies), which did not exist under the EU Schedules, for example because they were created after the EU list was compiled. This includes, for example, the Department for International Trade. The UK Government can use administrative measures to drive compliance with our obligations under the GPA and the

UK-Japan CEPA, pending legislation under clause 1 of the Trade Bill which will put the matter beyond question. Such measures might include Procurement Policy Notices which are already regularly issued by Government to improve practices and procedures in procurement.

5.8 The UK-Japan CEPA also includes some procurement coverage that is not included in the GPA. This, though, is sufficiently similar to the UK's obligations under the existing EU-Japan Agreement, that the amendments made by the EU Exit Regulations will demonstrate compliance with the UK-Japan CEPA until more specific powers become available.

5.9 Clause 2 of the Trade Bill, currently in the House of Lords, provides powers to implement the agreement in full. As set out above, we take the view that the statutory instrument preserving our existing procurement obligations under the EU-Japan Agreement allows us to demonstrate compliance with transitioned provisions of continuity agreements in so far as the UK agreement replicates the provisions of the underlying EU agreement. To the extent that further legislative provision is required in future, clause 2 will be used.

Intellectual Property

5.10 The UK will be implementing all geographical indications (GI) obligations under the European Union (Withdrawal) Act 2018, and regulations made thereunder. This legislation will enable the Government to establish UK GI schemes and will also provide the UK with the power to list Japanese GIs to be protected under the UK-Japan CEPA on the UK register of protected GIs.

5.11 Under the UK-Japan Agreement, the UK has agreed to continue to protect Japan's GIs that were protected under the EU-Japan Agreement, subject to Japan completing their domestic processes to reregister the UK's GIs protected under the EU Japan Agreement in Japan. The UK Government will ensure the statutory instruments raised to make the new UK GI scheme operational provide continued protection for Japan's GIs listed in Annex 14-B, including for the Kumamoto Rush GI.

Mutual Recognition

5.12 The Protocol on Mutual Recognition forms part of the UK-Japan CEPA and will apply from a date agreed between the Parties. It is based on the existing *Agreement on mutual recognition between the European Community and Japan* ("the EU-Japan MRA"). As the UK wishes to ensure continuity of the EU-Japan MRA at the end of the Transition Period, the UK and Japan have signed an Exchange of Letters on mutual recognition of conformity assessment, which will maintain the operational aspects of the EU-Japan MRA until it is superseded by the Protocol on Mutual Recognition. The Government is planning to use the powers in the Trade Bill to make regulations to implement the Protocol on Mutual Recognition.

Technical Barriers to Trade (Shochu)

5.13 There are restrictions on the sizes in which certain alcoholic products can be sold. These provisions are set out in the Weights and Measures (Intoxicating Liquor) Order 1988 as amended by the Weights and Measures (Specified Quantities) (Pre-packed Products) Regulations 2009. The UK-Japan CEPA provides that an additional bottle size will be allowed for single distilled Shochu (Honkaku Shochu). This new bottle size of 900ml corresponds to the traditional 5 go bottle size in which the product is commonly sold. The Government is planning to use the powers in the Trade Bill to make regulations

to implement this commitment. To ensure that appropriate implementation powers are in place, the UK and Japan have agreed in Annex 2-D of the UK-Japan CEPA that this commitment will require the completion of the UK's domestic procedures within 90 days of the entry into force of the UK-Japan CEPA.

6 Territorial Application

6.1 The UK-Japan CEPA will apply to the United Kingdom of Great Britain and Northern Ireland.

6.2 In addition, provisions of the UK-Japan CEPA concerning customs matters, and the Protocol on Mutual Recognition, will apply to the Crown Dependencies (the Bailiwicks of Guernsey and Jersey, and the Isle of Man).

6.3 The UK-Japan CEPA includes a mechanism which will allow for further extension to the Crown Dependencies and Overseas Territories. The Department for International Trade ("DIT") is working with the Crown Dependencies and Overseas Territories, including Gibraltar, to identify when and in which areas such extension will be possible.

7 Financial implications

7.1 None

8 Impact Assessment

8.1 A full Impact Assessment will be published when the agreement is laid before parliament.

9 Human Rights

9.1 The Preamble to the UK-Japan CEPA reaffirms the commitment of the UK and Japan to the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948.

10 Reservations and Declarations

10.1 No reservations or declarations have been made in relation to the UK-Japan Agreement.

11 Consultation

11.1 Between 20 September and 4 December 2019, DIT ran a Call for Input that gave businesses, interest groups and members of the public the opportunity to highlight their priorities for a potential future agreement with Japan. Our Response to the Call for Input was published alongside our negotiating objectives on 13 May, and is available at [GOV.UK](https://www.gov.uk/government/consultations/uk-japan-cepa-consultation-response)

11.2 DIT engages extensively with a wide variety of stakeholders including businesses, civil society, academics and consumer groups through the Strategic Advisory Group and Expert Trade Advisory Groups. We have also run a series of outreach events and have regular conversations with businesses and other stakeholders on a range of issues. This programme of engagement has included regular progress updates on transitioning existing EU free trade agreements. As part of the Government's commitment to a transparent and inclusive trade policy, DIT holds Quarterly Stakeholder Briefings in order

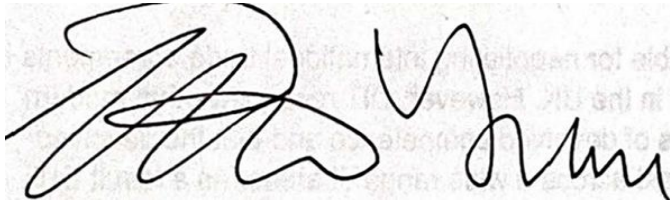
to engage with businesses across the UK as well as engaging with key stakeholders in Trade Advisory Groups. DIT has issued advice to business to help them prepare whether the UK secures a trade agreement with the EU at the end of the Transition Period or not, including publishing the status of agreements on the GOV.UK website.

- 11.3 The UK Government is responsible for negotiating international trade agreements on behalf of all the nations and regions in the UK. However, DIT recognises that modern trade agreements interact with areas of devolved competence and that the devolved administrations (DAs) have an interest across a wide range of areas. As a result DIT works closely with the DAs to help inform and develop policy that best reflects this. DIT shares Parliamentary Reports, Explanatory Memoranda and text in full once it is stable on individual agreements with the DAs. DIT also welcomes their views as progress is made, in particular for areas covering devolved competence such as sanitary phytosanitary standards, regulatory practice and procurement. DIT will continue to work with DAs to ensure effective implementation.
- 11.4 DIT Ministers have held regular discussions with their DA counterparts to keep them informed of developments to the UK-Japan CEPA. Ministerial engagement is primarily conducted through regular calls, exchanges of correspondence and a quarterly Ministerial Forum for Trade. A close working relationship also enables information sharing between officials, for example through a Senior Officials Group that meets once every six weeks and regular calls between senior officials in the DAs and the UK's Chief Negotiator.
- 11.5 DIT has shared text with Crown Dependencies (CDs), held policy specific discussions and provided updates through a fortnightly contact group established to support engagement on all Rest of the World free trade agreements.
- 11.6 DIT continues to work with CDs to ensure they can implement provisions which are to apply to them. DIT has shared stable text to enable CDs to take any steps required for their domestic implementation ahead of entry into force. DIT will continue to work with CDs to assure compliance with relevant articles in the agreement.
- 11.7 DIT has agreed a mechanism to extend further coverage to CDs at, or after, ratification for provisions beyond customs matters and the Protocol on Mutual Recognition. DIT will now begin a programme of engagement to understand specific interest for further coverage and undertake necessary compliance work ahead of possible extension.
- 11.8 Overseas Territories (OTs) will not be within scope of the agreement at ratification. DIT has committed to using the extension mechanism (11.7) to seek OT coverage in chapters of interest. DIT shared draft text and discussed this approach to inclusion with OTs during negotiations. DIT will now begin engagement with OTs to understand specific interests and begin necessary compliance work ahead of possible inclusion.

12 Ministerial Responsibility

- 12.1 The Secretary of State for International Trade has overall responsibility for the economic and trading relationship with Japan and for this Treaty.
- 12.2 The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for UK policy relating to the UK's relations with Japan.

12.3 The Minister for the Cabinet Office is responsible for the implementation of international procurement obligations.

A handwritten signature in black ink, appearing to be 'Elizabeth Truss', written over a faint, repeating watermark of the text 'The Rt Hon Elizabeth Truss MP'.

The Rt Hon Elizabeth Truss MP
Secretary of State for International Trade