

**Department for International Trade Consultation: Trade with Japan
Submission from the Trade Justice Movement
October 2019**

About the Trade Justice Movement

The Trade Justice Movement (TJM) is a UK-wide network of sixty civil society organisations, with millions of individual members, calling for trade rules that work for people and planet. Our members include trade unions, NGOs, consumer groups and faith organisations. Together we are calling for trade justice, where the global system of trade ensures sustainable outcomes for ordinary people and the environment. A list of current members is [available here](#).

TJM has deep concerns about the Government's post-Brexit trade policy. At this critical time, it is essential that we lay down norms for international trade which promote sustainable development and protect the environment. We believe that civil society has a crucial role to play in the development of trade policy, and has too long been left out of the conversation. In this consultation we outline our specific concerns about an FTA with Japan and lay out a framework for what civil society expects in future trade agreements.

Do you consent for the Department for International Trade to gather your personal data and response to this call for input as outlined in the privacy notice?

Yes

Do you consent for your response to this call for input to be used as part of future published government documents relating to future trade agreements with Japan?

Yes

Do you consent for the Department for International Trade, or organisations working on their behalf, to contact you regarding the responses you have given?

Yes

Name: David Lawrence

Email address: david@tjm.org.uk

Please tell us who you are responding as?

(b) Non-governmental organisation - In an official capacity as the representative of a non-governmental organisation / academic institution / other organisation.

Is your organisation aware of the Economic Partnership Agreement that came into force between the EU and Japan in February this year?

Yes

Which of the following trade related areas best describe the areas of the Economic Partnership Agreement that are important to your organisation?

Goods trade; Services trade; Regulation and standards; Cross border investment; Procurement; Intellectual property; Structure of the agreement

Which areas of the Economic Partnership Agreement between the EU and Japan do you think the UK government should consider improving during future trade negotiations with Japan and why?

TJM has concerns about the EU-Japan Economic Partnership Agreement (JEFTA), outlined below:

Public services

JEFTA uses a negative list approach for services. This method limits governments' ability to create, expand, and regulate public services and reverse privatisation of service. A negative list makes it harder for governments to protect and provide public services in line with public policy objectives.¹

Food and environmental standards

JEFTA constrains the ability of the EU and member states to limit Japanese food and feed imports (Article 6.7, especially 6.7.4). Japan is one of the world's largest importers of GM crop imports.² There is no reference to the precautionary principle in the Sanitary and Phytosanitary (SPS) measures or Technical Barriers to Trade (TBT) chapters.

Regulatory cooperation

JEFTA creates ten dialogues (Article 22.3) between regulators of the EU and Japan on policy areas which touch upon national competences: Government Procurement, Agriculture, Food Safety, Services, Investment, E-commerce, among others. There is no guarantee in the text that national parliaments will be involved. It is possible that this cooperation will expand into new policy areas, without the oversight of national legislatures.³

Financial regulation

The financial services chapter of the agreement (Articles 8.58 to 8.67) reduces the instruments available to combat financial speculation and inflation, obstructs banking structure reform and would thus, once implemented, constitute a threat to financial stability and an obstacle to initiatives to stabilise the current financial system.⁴

Digital trade

JEFTA's chapter 8 on trade in services, investment and electronic commerce contains implicit and explicit cross-border data flow commitments (sections C and E respectively) which would constrain the ability of governments to regulate data flows, and may undermine the protection of the fundamental right to the protection of personal data. The complete exclusion of this fundamental right from the agreement is also not ensured. The deal will make it difficult for European regulators and courts to require Japanese banks or car-makers to submit their software and IT equipments for government audits to check conformity with domestic laws on deceptive practices and environmental requirements.⁵

Labour rights

¹ See Trade Justice Movement, '[Trade and Services](#)', accessed October 2019

² Library of Congress (US), '[Restrictions on Genetically Modified Organisms: Japan](#)', accessed October 2019

³ See more on regulatory cooperation here: Trade Justice Movement, '[Dynamic Alignment and Regulatory Cooperation between the UK and the EU after Brexit](#)', September 2019

⁴ See Seattle to Brussels Network, '[European letter on the EU-Japan FTA to members of national parliaments](#)', May 2018

⁵ Ibid.

TJM shares the concerns of the European Trade Unions Congress (ETUC) and Japanese trade union RENGO, who jointly expressed concern that JEFTA does not incorporate effective labour enforcement provisions; namely, Japan has still not ratified two of the fundamental ILO conventions: Convention 105 on Abolition of Forced Labour and Convention 111 on Discrimination (Employment and Occupation).⁶

Is there anything else that you would like to say about the UK's future trade and investment relationship with Japan?

TJM has concerns about future a future UK-Japan trade agreement, outlined below:

1. Parliamentary scrutiny

The current system for ratifying trade agreements gives Parliament very little say. This means that an FTA with Japan would lack scrutiny and democratic accountability.⁷ The government must urgently bring forward primary legislation to ensure that Parliament has a clear role in the development of trade deals. Specifically, Parliament should be given:

- A role in setting the mandate for negotiations and the ability to approve or reject the commencement of trade negotiations.
- Access to key negotiating texts in a timely manner and be able to feed into negotiations, including via full debates in Parliament.
- A new select committee to scrutinise the content of trade agreements and produce recommendations.
- The ability to approve or reject trade deals via a binding vote at the end of the negotiations.
- A formal role in the review of implemented trade deals.

2. Civil society participation

TJM is grateful for the opportunity to respond to this consultation, however there is a lack of clarity on what the mechanisms are for gathering civil society input and how views will be incorporated into future negotiations.

It is essential that civil society remains engaged in all stages of negotiating a UK-Japan FTA. There should be a separate public consultation when the UK has begun negotiations with Japan, including details of the UK's aims for the negotiation so that individuals and civil society organisations can assess specific provisions of the proposed FTA.

With all trade deals, there is a risk that those groups with the most financial interest in a trade deal - such as multinational businesses - have the most influence over negotiating positions. It is important that negotiating positions are in the public interest and have democratic accountability. DIT should build in mechanisms for listening to civil society groups - through online consultations, events in local communities and meetings with representatives of key groups, such as trade unions, NGOs and faith organisations. This will help to ensure that any resulting trade deal is reflective of the concerns and interests of wider society.

3. Comprehensive impact assessments

The government should commission and publish independent impact assessments which critically examine the economic, social and environmental effects of the UK-Japan FTA. These should be

⁶ ETUC, '[ETUC statement on EU Japan FTA](#)', December 2018

⁷ See the Trade Justice Movement (2018), '[Securing democracy in UK trade policy](#)'

designed to accurately inform MPs and the public about the impact of the deal, with particular attention to: environmental and health standards; workers' rights and deregulation; public services and privatisation; the impact on global sustainable development and developing countries; impact on gender, equality and discrimination; and any concerns around rule of law and national sovereignty.

4. Regulatory cooperation and deregulation

The EU-Japan EPA includes provisions for dialogue between both parties' regulators. There is evidence that this kind of 'regulatory cooperation' can put downwards pressure on standards, while also restricting important regulatory decisions to the impact of regulations on trade.⁸

The Government has emphasised that after Brexit, the UK's "regulatory standards will remain as high as the EU's" and that "We will not water down our standards on food safety, animal welfare and environmental protection as part of any future trade deals."⁹ There is clear public support for retaining current standards – IPPR research found 82% of the public are in favour of retaining current regulations, even at the expense of securing a trade agreement with the US.¹⁰ The government must keep to this commitment, and also ensure that the UK's regulatory regime does not recognise lower standards in other countries as 'equivalent' to those in the UK.

5. Food standards and animal welfare

The EU-Japan EPA addresses Sanitary and Phytosanitary (SPS) measures as a key barrier to trade, and DIT's consultation document identifies SPS as an opportunity for reducing barriers to trade. While the government has not announced its negotiating priorities with Japan, and the content of the deal will depend first and foremost on the level of regulatory alignment with the EU, TJM is concerned that post-Brexit trade agreements will lead to the reduction of standards or regulations to allow the importation of more goods.

SPS measures are particularly concerning in relation to food standards and animal welfare. Some Japanese food production practices are banned and heavily criticised in the UK, the most extreme case being the practice of commercial whaling. There are also concerns around animal testing, dolphin hunting and farming.¹¹ Cruelty Free International estimates that Japan ranks second in the world (behind the United States) in the number of animals used in experiments.¹² It is essential that a UK-Japan FTA is not used to undermine the UK's high standards on farming and animal welfare.

6. Investor-State Dispute Settlement

Investor-State Dispute Settlement (ISDS) mechanisms allow private companies to sue governments if they believe that changes to domestic law or policy implementation have negatively impacted on the profitability of their investment.

The original stated aim of ISDS was to increase investment in countries where the legal infrastructure was considered to be weak, however the evidence suggests that such provisions have done little to help attract investment to these countries. ISDS effectively provides international investors with a form of political risk insurance, the costs of which are shouldered by taxpayers: the average costs of

⁸ Trade Justice Movement, '[Dynamic Alignment and Regulatory Cooperation between the UK and the EU after Brexit](#)', September 2019

⁹ Government Response to Environment, Food and Rural Affairs Committee Sixth Report of Session 2017–19, 'The future for food, farming and the environment' (HC 870), October 2018.

¹⁰ The Independent, '[Ditch trade deal with Trump rather than accept chlorinated chicken, Britons say](#)', 7 April 2018

¹¹ Honji, M, '[Can Farm Animal be an object of legal protection in Japan?](#)', 2014

¹² Cruelty Free International, '[Facts and figures on animal testing](#)', accessed October 2019

defending a case is US\$8 million and the average award is US\$504 million.¹³ ¹⁴ Over 95% of all compensation awarded in ISDS cases has gone to companies with over US\$1 billion in annual revenues and super-rich individuals with over US\$100 million in wealth.¹⁵ The mechanism offers sweeping rights to investors with no equivalent for domestic companies or communities facing adverse effects of business malpractice. It offers a degree of enforceability that is unparalleled elsewhere in international law.

Arbitration tribunals do not meet recognised standards for rule of law: they lack an appeals system, judges do not have the same level of training, trials are not always transparent and there are very high costs to bring a case. ISDS also has worrying implications for public policy; governments risk significant legal costs for defending a case and compensation in the millions, sometimes billions, of dollars if they lose. This has led to 'regulatory chill', whereby states are reluctant to introduce legislation which might harm the profits of these investors – even if the legislation is in the interests of the environment, social welfare, or is democratically supported by the electorate.¹⁶

Companies have challenged a range of government policies, from environmental policy to minimum wage legislation. For example, in *Vattenfall vs. Germany (2009)*, Swedish energy firm Vattenfall launched an investor-state claim against Germany because it had tightened legislation on water quality which affected Vattenfall's plans to build a coal-fired power plant. Vattenfall argued that this amounted to an expropriation and a violation of Germany's obligation to afford foreign investors "fair and equitable treatment." To avoid the case being taken to an international tribunal, the German government agreed a settlement, including the weakening of the environmental standards required to obtain a permit for the plant.¹⁷ Other cases include *Lone Pine vs. Canada (2013)*,¹⁸ where the company is challenging a ban on fracking under the St. Lawrence river and *Anglian Water Group vs. Argentina (2010)* where investors successfully sued Argentina for measures taken during its currency crisis.¹⁹

For these reasons, TJM believes that ISDS (or the CETA alternative, ICS) should not be included in any future FTA between the UK and Japan. Its inclusion would undermine key shared values including democracy, transparency and rule of law; there is also significant public opposition to its inclusion in such a deal. In a [separate briefing](#), Trade Justice Movement has outlined possible alternatives to ISDS, some of which are preferable, but many suffer from the same problems. Ultimately it is difficult to see how a system where the public insure private investor risk can avoid the problems of regulatory chill and democratic oversight. Increasingly, this dissatisfaction with ISDS means that it is being left out of FTAs. In October 2018, the US and Canada decided to drop ISDS altogether from the US-Mexico-Canada Agreement (USMCA), the replacement to the North American Free Trade Agreement (NAFTA).

Although the EU-Japan EPA does not cover investment, Japan is a member of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which does contain ISDS provisions; and unlike New Zealand, has not negotiated any bilateral exemptions from these provisions.²⁰ This implies that

¹³ Gaukrodger, D. and K. Gordon, '[Investor-state dispute settlement: a scoping paper for the investment policy community](#)', OECD Working Papers on International Investment, 2012/03, OECD, 2012, p19

¹⁴ UNCTAD, '[Investor-state dispute settlement: review of developments in 2017](#)', June 2018

¹⁵ Gus Van Harten & Pavel Malysheuski, '[Who has benefited financially from investment treaty arbitration? an evaluation of the size and wealth of claimants](#)', Osgoode Legal Studies Research Paper No. 14/2016

¹⁶ For more on issues related to ISDS, see: Trade Justice Movement, '[ISDS - Briefing for Parliamentarians](#)', March 2019

¹⁷ See report from the International Institute for Sustainable Development, '[The State of Play in Vattenfall v. Germany II](#)' (2014)

¹⁸ See case details at Global Affairs Canada, '[NAFTA - Chapter 11 - Investment](#)' (accessed October 2018)

¹⁹ See Investment Treaty News, '[Awards and Decisions](#)', 23 September 2010

²⁰ Library of Congress, '[New Zealand: Agreements with Five Countries Exclude Compulsory Investor-State Dispute Settlement Processes](#)', 26 March 2018

Japan is not in principle opposed to ISDS, and raises concerns that they will seek it in a new UK-Japan FTA.

The UK must exclude ISDS clauses, and consider alternative ways of ensuring investors have adequate protection. This could be done by requiring UK businesses to undertake due diligence before investing in Japan and encouraging businesses to seek to resolve issues in-country as soon as they arise, including by recourse to mediation. Companies can also make use of political risk insurance, such as the World Bank's Multilateral Investment Guarantee Agency (MIGA) or those available through private providers. The UK should also bring its trade and investment policy in line with its commitments on business and human rights and support moves to hold companies to account for infringements of these rights in third countries. This should include an accessible mechanism for communities to seek redress and enforceable penalties for companies.

7. The environment

Despite the close relationship between trade and the environment, international environmental commitments such as the Paris climate change agreement tend to be made in isolation from trade deals. Current trade rules place trade promotion and liberalisation ahead of climate goals: for example, ISDS might be used by private investors to challenge domestic environmental legislation, and WTO rules have regularly been used by states to challenge each other's subsidies for renewable energy industries (not one case has been brought against a state for fossil fuel subsidies). No trade deal currently in force contains any binding commitments to ensure that international trade supports climate targets.

Trade and investment deals pose a potential barrier to fighting climate change and developing better environmental policy. A new UK-Japan FTA presents an opportunity for rigorous, binding environmental clauses, to ensure that the UK's post-Brexit trade does not conflict with its international climate commitments.

The Government has repeatedly promised that there will be no regression on the UK's existing environmental legislation after Brexit. However, the Government also removed Level Playing Field (LPF) provisions, which cover environmental regulations, in the new EU Withdrawal Agreement. This is concerning given the urgency of combating climate change and meeting the UK's environmental targets - which now include net-zero emissions by 2050. Taking these standards seriously also means that there must be guaranteed non-regression in the case of a 'no deal' scenario with the EU, and a future UK-Japan partnership must not undermine this non-regression.

8. Brexit

Japan has emphasised access to European markets as a key priority for a future trade agreement with the UK. Some Japanese companies have moved their UK investments into mainland Europe; for example, Nissan cancelled planned investments into its UK production facilities, and Sony and Panasonic are moving their European headquarters to the Netherlands.²¹ Close alignment to the EU regulatory regime is also important for maintaining high social and environmental standards, and ensuring that these standards do not slip in post-Brexit trade agreements.²²

In addition to environmental regulations on goods and services, EU environmental law is also directed by key 'principles', such as the 'polluter pays' principle and the principles of precaution, prevention and rectifying pollution at source. Unlike EU environmental regulations, these principles are not translated into UK law through the European Union (Withdrawal) Act. However environmental

²¹ LSE Brexit Blog, ['Why the EU-Japan trade deal matters for Brexit'](#), March 2019

²² Trade Justice Movement, ['Dynamic Alignment and Regulatory Cooperation between the UK and the EU after Brexit'](#), September 2019

groups have rightly emphasised that the environmental principles, or similar equivalents, should continue to direct UK environmental legislation and retain binding force after Brexit, and the government has implied that some principles will be enshrined in a new 'Environmental Principles and Governance Bill'. It remains unclear whether this will include all the EU principles, and what powers the new environmental watchdog will have to enforce them - leading to criticism from many environmental groups.

The UK-Japan deal poses a further risk to the ambitions of the Environmental Principles and Governance Bill, since Japan does not honour the same principles in its environmental law. In the EU, the Precautionary Principle is enshrined in EU law which means that potentially harmful products and practices are not allowed until they are proven not to be environmentally damaging. Although the polluter pays principle appears in certain statute laws in Japan, this is a fundamentally different structure to the legally enforceable environmental principles which stand above EU law. Any UK-Japan FTA which encourages regulatory cooperation on environmental principles risks the UK having weaker protections post-Brexit, and diverging from EU principle-led environmental legislation.

9. Energy policy

It is difficult to overestimate the importance of the energy sector to both climate change and the global economy. The high costs and potential profits of energy exploration and production make energy the single largest destination for foreign direct investment (FDI).²³ Much of this investment is protected by ISDS (discussed earlier) in Bilateral Investment Treaties (BITs), which makes it very difficult for governments to control or limit this investment. Yet controlling the energy industry is essential if the UK is to meet its international commitments on climate change, as defined in the COP21 Paris Agreement. It is essential that a UK-Japan FTA does not include ISDS, which can be taken advantage of by energy companies to challenge environmental policy, and that the deal does not include an Energy Chapter to encourage further investment in fossil fuels. The Government will be aware of opposition from local communities across the country to fracking. There is evidence that fracking poses a severe threat to climate change through fugitive methane emissions, making it worse for climate change than coal on some measures.²⁴ It is important, for our natural environment and our climate change commitments, that a UK-Japan trade deal is not used as an opportunity for Japan fracking firms to begin exploration in the UK.

The Energy Charter Treaty (ECT) governs a significant proportion of trade and investment in the energy sector. The treaty offers protections to investors, including national treatment (i.e. ensuring that foreign firms are treated the same as domestic firms). Japan and the UK are both members of the ECT, and one concern is that a new trade deal could further increase the protections offered to energy firms under the ECT. It is important that the UK retains the power to control its domestic energy policy, particularly in relation to developing a green energy sector and safeguarding environmental protections.

10. Public services

TJM is concerned about the potential effect of a UK-Japan FTA on the provision of public services in the UK. Proposals for TTIP would have seen significant liberalisation of services. The inclusion of a negative list for public services would have given the provisions significant scope, including services that might be developed in future; the inclusion of a ratchet clause would have made it extremely difficult to reverse privatisation, even where private provision is demonstrably failing. The net effect of this is to reduce the state's ability to ensure that public services are operated in the public interest,

²³ Financial Times (2015), 'The FDI Report 2015: Global Greenfield Investment Trends'

²⁴ Parliamentary Assembly to the Council of Europe Committee on Social Affairs, Health and Sustainable Development (2016), 'The exploration and exploitation of non-conventional hydrocarbons in Europe' <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23190&lang=en>

rather than in the interest of private profit. Many public services are already provided by a combination of state and private sector finance, something which is controversial among many voters, who are concerned that this decreases the quality of service provision and increases the cost to individuals. Because trade deals tend to limit exemptions to services not provided in competition with a private provider, the vast majority of UK services would be covered. Liberalising trade in services could encourage this trend further, without democratic support, and with potential implications for social welfare.

The Cato Institute, an influential American think tank, recently set out its proposal for a UK-US FTA which would "open all government procurement markets to goods and services providers from the other party... It should open all services markets without exception to competition from providers of the other party."²⁵ It would be worrying if a similar model were pursued for a UK-Japan FTA. Second, as mentioned earlier, the services provisions in a UK-Japan FTA could be based on TTIP or the Trade in Services Agreement (TiSA), a plurilateral treaty which aims to liberalise services, particularly in transport, healthcare and banking.²⁶

TiSA aimed to further liberalise trade and investment in services, and expand "regulatory disciplines" on all services sectors, including many public services.²⁷ The "disciplines," or treaty rules, would provide all foreign providers access to domestic markets at "no less favorable" conditions than those offered to domestic suppliers and would restrict governments' ability to regulate, purchase and provide services. This would essentially change the regulation of many public and privatized or commercial services from serving the public interest to serving the profit interests of private, foreign corporations.²⁸ A number of our members are trade unions who represent UK public services workers, have deep concerns about the deal.

a. The NHS

One particular area of concern is healthcare, which is largely provided by the publicly-owned NHS in the UK, and is also the country's single largest employer.²⁹ Because the NHS already operates in competition with a number of private sector employers, it will be covered by services provisions in trade deals unless the government seeks a specific exemption. Including the NHS in a UK-Japan deal would lock-in and put pressure on the government to increase privatisation. Legal advice commissioned by Unite Union led to the conclusion from leading QC Michael Bowsher, a former chair of the Bar Council's EU law committee, that the NHS would not have been adequately protected from liberalisation under the proposed TTIP deal.³⁰ TJM is confident that the government is aware of the public outcry which would be generated were the NHS to be included in a UK-Japan deal; it is the view of many of our members that post-Brexit trade deals, including a UK-Japan FTA, must exclude the NHS as well as other public services.

There are subtler ways for private investor interests to affect healthcare provision. For example, the inclusion of ISDS could prevent future nationalisation of currently privately provided healthcare services or deter the government from introducing health legislation, as private investors could threaten to sue the government for lost profit. ISDS was used against Slovakia when it sought to bring health insurance back into the public sector³¹ and against Japan for legislating for plain cigarette packaging.³² Another concern is that allowing Japan firms to bid for public health contracts

²⁵ The Guardian, '[Rightwing think tanks unveil radical plan for US-UK Brexit trade deal](#)', 18 September 2018

²⁶ European Commission, '[Trade in Services Agreement \(TiSA\)](#)', accessed October 2019

²⁷ European Parliament Directorate General for External Policies, '[Financial services liberalisation and TiSA: implications for EU Free Trade Agreements](#)', 2016

²⁸ Public Services International, '[Brief on the Trade in Services Agreement \(TiSA\)](#)', 2013

²⁹ ONS, '[Public Sector Employment. Q3 2012](#)', 2012

³⁰ The Guardian, '[TTIP deal poses 'real and serious risk' to NHS, says leading QC](#)', 22 February 2016

³¹ Investment Treaty News, '[Achmea: The Beginning of the End for ISDS in and with Europe?](#)', 24 April 2018

³² The Guardian, '[Revealed: \\$39m cost of defending Japan's tobacco plain packaging laws](#)', 1 July 2018

might pave the way for greater liberalisation, and convergence towards a Japan public-private model of healthcare, where more of the costs are covered by individuals rather than the state.

b. Local authorities and procurement

Local authorities provide many vital public services, such as in housing, education and environmental protection, and are also responsible for giving planning permission. For example, local authorities are responsible for establishing local clean air zones to tackle air pollution, and could block fracking companies from operating on land where it is deemed a health or environmental hazard. Provisions on things like investment protection and regulatory cooperation could prevent local authorities from taking decisions in the interest of their local area.

Local 'ethical procurement' policies could also be affected by post-Brexit trade deals. EU rules allow for environmental and social considerations in awarding contracts; for example, local authorities can decide to procure only Fairtrade or organic produce. Local authorities are also allowed to ensure that procurement benefits small and medium-sized businesses in the area – for instance a number of cities, including Manchester and Glasgow, have become Sustainable Food Cities, and are trying to use more locally sourced, sustainable food in the public sector. The Scottish Parliament has also passed a new public procurement act that allows Scottish public bodies to promote the environmental and social wellbeing of the area when buying goods or services. These kinds of measures might not be possible under a new UK-Japan FTA if the deal demands that procurement does not favour local industries, for example by including a ban on local content requirements. The ostensible aim of preventing protectionism must not be used to undermine ethical procurement powers for local authorities.

11. Human rights

A number of rights have already been discussed: a UK-Japan FTA poses a potential threat to democracy and scrutiny, environmental protections, rule of law, health regulations, product standards and public services. In addition to this it is worth highlighting a number of other rights that can be threatened via the mechanisms of ISDS and certain kinds of regulatory cooperation.

12. Labour rights

Workers are currently protected by domestic and EU legislation, which enshrines their right to organise, guarantees minimum wages and ensures protection from discrimination. Workers also enjoy rights related to health and safety at work, maternity and paternity leave, holiday entitlement and working hours. Those rights which are guaranteed in EU law are being translated into UK law through the European Union (Withdrawal) Act. As with other rights, workers' rights are one area which can be affected by FTAs.

Some recent trade deals, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), of which Japan is a member, contain specific chapters on labour rights. Whilst TJM supports international collaboration to raise working standards, these FTA chapters fall far short of offering adequate protections to workers. The New Zealand NGO 'TPP Legal' analysed the Labour chapter in the proposed Trans-Pacific Partnership. They concluded that "The 1998 ILO Declaration on Fundamental Principles and Rights at Work is the primary source of the TPPA labour standards – this is problematic as it is vague, was not intended for the trade and investment arena and could be interpreted inconsistently with international labour conventions and recommendations."³³ Because Labour is a chapter within the CPTPP and the agreement includes ISDS provisions, ISDS can be used against governments for domestic changes to labour rights. Furthermore, there is no

³³ Harré, Laila; ['TPPA Labour Chapter - Not a Gold Standard'](#), TPP Legal, Expert Paper #8, 2017

meaningful role provided for trade unions or other stakeholders in these agreements in labour rights regulation. Lastly and importantly, TPP Legal found that “There has been a disappointing lack of enforcement of labour commitments under the US FTAs that the TPPA Labour Chapter is modelled on – in fact not a single complaint has progressed to a concluded panel decision.”³⁴

As fewer labour rights can mean lower costs for businesses, a CPTPP-style deal with Japan could put deregulatory pressure on UK labour rights, and encourage firms to cut standards, for example by offering more zero hours or temporary contracts. Any regulatory cooperation on labour rights which does not raise standards, with binding enforcement, could encourage this deregulatory process further.

A new UK-Japan FTA must include a trade and sustainable development chapter that contains an independent dispute settlement mechanism to enforce commitments to uphold International Labour Organisation core conventions and promote the Decent Work agenda. Trade unions should be given a role to monitor adherence to commitments on labour rights and be part of the process to trigger investigations into reports of rights abuses. Where abuses are found a dispute settlement mechanism should be able to levy fines or require other penalties like tariffs against the offending parties

13. *Gender rights*

TJM is pleased that the Government has made gender equality a priority in its trade policy, namely through the Department for International Trade’s “gender-responsive approach to trade” and the Commonwealth ‘SheTrades’ campaign. However there is more to be done to ensure that gender provisions are secured in future trade deals, including a UK-Japan FTA. In December 2017, 118 WTO members supported a Joint Declaration on Trade and Women’s Economic Empowerment at the Ministerial Conference.

A number of trade deals now include gender chapters and countries including the UK have a renewed focus on female entrepreneurship. International action to address the gendered impacts of trade policy is welcome. However, this will not be effective if it is limited to non-binding declarations, gender chapters in trade deals or initiatives to increase women’s access to export markets. The government must ensure that a future UK-Japan FTA complies with the UK’s commitments under international human rights law. Comprehensive gender impact assessments should be conducted, together with human rights and sustainable development assessments, and their findings should be taken into account. Where a conflict is identified, commitments on gender equality and other human rights, must be given precedence over other trade rules in the FTA.

14. *Digital trade*

The EU-Japan EPA contains some concerning provisions on e-commerce which should not be replicated in a UK-Japan FTA. A UK-Japan deal should not prohibit controls on cross-border data flow, nor should it ban requirements that computing facilities are localised. Mandating the uncontrolled flow of data across borders, even with decent personal data protection, risks cementing in place a data ownership model that favours major tech corporations over citizens and facilitates growing wealth inequality. Ownership and control models for data are evolving fast, and some versions that better serve social justice may require localisation or data flow controls. We should not tie our hands by fixing the rules on data flow or the localisation of computing activities at this early stage.

³⁴ Ibid.

A UK-Japan deal should not prohibit disclosure or sharing requirements relating to source code or algorithms. There are many reasons why a government or regulatory authority may require a company to disclose or share its source code and algorithms. These include, *inter alia*:

- Checks for safety and regulatory compliance. The Volkswagen emissions test scandal, which involved programming car software to spot test conditions and lower emissions accordingly, is an example of why regulators may require disclosure of source code.³⁵ Such disclosure should not be restricted to specific investigations (as some e-commerce provisions have suggested) but should be permitted as a standard requirement so that regulators can have adequate oversight.
- Checks for nondiscrimination, for example in computer-based decisions on hiring and firing, pay and bonuses, credit scoring, benefits and visa decisions,
- Enabling the repair or repurposing of goods that contain smart technology, including in ways that were not foreseen when the original contract was signed. For instance car software source code may need to be transferred to companies providing electric conversions as part of our progress towards Net Zero.

Provisions on e-signatures, e-contracts and other matters should be handled with caution. Although the full impacts of digital trade are not yet known, it is important that the UK retains the policy space to make regulations for the digital economy, without fear that this could conflict with commitments made in trade agreements.

What is the name of the organisation you are responding on behalf of?

The Trade Justice Movement

What is your Company Number with Companies House?

04712743

Which area(s) does your organisation represent?

Health; Labour / Workers Rights; Human Rights; Religious interests/groups; International Development; Food; Environment; Animals; Farmers; Product regulation / safety; Digital / Technology

Does your organisation have a presence / operate in Japan?

No

How many members does your group represent in total?

0-90 (separate organisations)

Have any of your members been in contact with your organisation about trade and / or investment with Japan?

Yes

³⁵ Science Daily, '[Computer code that Volkswagen used to cheat emissions tests uncovered](#)', May 2017