

Dear Minister Liz Truss,

We are writing as a cross-party group of MPs who are deeply concerned by the lack of time, information and analysis available given to us and Parliament to consider the impact of the digital trade clauses in the UK-Japan Comprehensive Economic Partnership Agreement.<sup>1</sup>

We understand that Parliament must assent to the Agreement by December 7. We also understand that failure to pass the Agreement would cause severe problems for the continuity of a variety of trade arrangements. Nevertheless it is unacceptable to push forward clauses which the Government itself has major implications without a full debate.

The Government has claimed that the deal is ambitious and promotes the ‘free flow’ of data.<sup>2</sup> The deal appears to promote the “interoperability” of different data protection regimes, to recognise a wide variety of standards as potentially acceptable, and to reduce the scope to disallow data flows, where the Government believes these to be problematic.<sup>3</sup> The language promoting ‘data flows’ in the agreement echoes that of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),<sup>4</sup> which the Government says it wishes to conclude an agreement with.<sup>5</sup> Both the CPTPP and the Japan-UK Agreement appear to promote privately regulated data flows, which may in practice be both lax and hard to enforce.<sup>6</sup>

These clauses have profound implications for privacy and for international trade, particularly with our neighbours. Parliament needs to know:

1. If the ambitions in the Japan-UK Agreement for data flows are met, what kind of data protection systems will be regarded as sufficient for data protection?
2. Is there any assessment available of the ‘four step test’ contained within the UK-Japan Agreement to explain what legal challenges made be made against any restrictions to data flows the UK makes? What is the reason that the EU declined to sign such clauses with Japan?
3. Is there any assessment available of the efficacy of private regulation for data transfer schemes and of other data protection regimes the Government seeks to recognise?
4. Is there any assessment available of the implications for data privacy of these systems?
5. Is there any assessment available for the future of Adequacy with the European Union, should data flows of the types envisaged in the Japan-UK Agreement and CPTPP be enabled? Is there any assessment available of the impact on business of threats to or mitigations needed to maintain EU Adequacy, such as segregating EU data within the UK?
6. Is there any assessment available of Government’s ambitions for ‘data flows’ against domestic data protection law, to explain what would need to be weakened or changed, such as the current high standards for data flows?
7. Is there any assessment available on the impacts to business of being forced to compete directly with businesses with lower data protection standards, while maintaining higher standards domestically?

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<sup>1</sup> <https://www.gov.uk/government/collections/uk-japan-comprehensive-economic-partnership-agreement>

<sup>2</sup> See for instance <https://www.gov.uk/government/publications/uk-japan-cepa-digital-and-data-explainer> “CEPA goes further than the existing EU-Japan agreement on many aspects of digital trade with a number of cutting- edge rules that reflect the status of the UK and Japan as digital leaders.”

<sup>3</sup> Article 80.84 CEPA

<sup>4</sup> See <https://www.dfat.gov.au/sites/default/files/tpp-11-treaty-text.pdf> and <https://www.dfat.gov.au/sites/default/files/14-electronic-commerce.pdf> See Article 14.8 and 14.11 TPP

<sup>5</sup> <https://www.gov.uk/government/publications/uk-approach-to-joining-the-cptpp-trade-agreement>

<sup>6</sup> Article 8.84 CEPA

There are many other aspects to the digital aspects of the trade agreement with Japan which also need scrutiny, including those restricting algorithmic transparency and access to source code,<sup>7</sup> and Technical Protection Mechanisms. The Government needs to outline in each case what kinds of legislation and practice are allowed and disallowed.

The Government must make this information available immediately, to ensure that Parliament is not being asked to agree to this with incomplete information.

Yours sincerely

Diane Abbott MP

Deidre Brock MP

Kevin Brennan MP

Kate Buckey MP

Alistair Carmichael MP

Wendy Chamberlain MP

Daisy Cooper MP

Martyn Day MP

Andrew Gwynne MP

Christine Jardine MP

Ben Lake MP

Clive Lewis MP

Caroline Lucas MP

Layla Moran MP

Lloyd Russell-Moyle MP

Mick Whitley MP

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<sup>7</sup> <https://blogs.sussex.ac.uk/uktpo/2020/11/13/its-time-to-talk-digital-trade/>