Agenda - Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

Lleoliad:
Fideo Gynadledda via Zoom
Dyddiad: Dydd Mawrth, 16 Mehefin 2020
Amser: 09.00

I gael rhagor o wybodaeth cysylltwch a:
Alun Davidson
Clerc y Pwyllgor
0300 200 6565
SeneddMADY@senedd.cymru

Yn unol â Rheol Sefydlog 34.19, penderfynodd y Cadeirydd wahardd y cyhoedd o gyfarfod y Pwyllgor er mwyn diogelu iechyd y cyhoedd.
Bydd y cyfarfod hwn yn cael ei ddarlledu'n fyw ar senedd.tv.

Cyfnod cofrestru
(09.00-09.30)

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau
(09.30-09.35)

2 Sesiwn graffu gyda Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
(09.35-10.30) (Tudalennau 1 - 70)

3 Papurau i'w nodi
(10.30-10.35)

3.1 Papur i'w nodi 1: Cyfwerthedd data a masnach ddigidol - papur gan yr Athro Elaine Fahey - 20 Ebrill 2020
(Tudalennau 71 - 85)

3.2 Papur i'w nodi 2: Gohebiaeth gan Gadeirydd Is-bwyllgor Cytundebau Rhyngwladol Ty'r Arglwyddi at y Cadeirydd am ymchwiliadau Ty'r Arglwyddi ar y trafodaethau masnach - 9 Mehefin 2020
(Tudalennau 86 - 95)

Senedd Cymru
Welsh Parliament

4 **Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod**

(10.35)

5 **Sesiwn graffu gyda Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol – trafod y dystiolaeth**

(10.35–10.50)

6 **Bil Cyfraith Ryngwladol Breifat (gweithredu cytundebau rhyngwladol)**

(10.50–11.00) (Tudalennau 96 – 104)

Mae cyfyngiadau ar y ddogfen hon

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Llywodraeth Cymru
Welsh Government

David Rees AS
Cadeirydd y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol
Senedd Cymru
Bae Caerdydd
CF99 1SN

5 Mehefin 2020

Annwyl Dai,

Diolch ichi am eich llythyr dyddiedig 22 Mai. Rwyf wedi ymateb i'r cwestiynau a nodwyd gennych isod; a byddwn yn hapus iawn i'w hegluro ymhellach yng nghyfarfod y Pwyllgor ar 16 Mehefin.

Rhaglen y Cytundeb Parhad Masnach

1. A yw argyfwng COVID-19 wedi arwain at unrhyw oedi wrth gyflawni rhaglen y Cytundeb Parhad Masnach, ac, os felly, beth yw'r goblygiadau i Gymru?

Mae Adran Masnach Ryngwladol Llywodraeth y DU (DIT) yn arwain y rhaglen Trafod a Chydgysylltu Parhad (CNC) (sy'n dwyn yr enw ffurfiol Rhaglen y Cytundeb Parhad Masnach) i atgynhyrchu 40 o'r cytundebau masnach a drefnwyd gan yr UE. O 25 Mawrth ymlaen, a phan gyflwynwyd y cyfyngiadau symud, roedd rhyw 20 o'r cytundebau hyn wedi'u llofnodi. Mae'r cytundebau hynny nad ydynt wedi'u trosglwyddo yn cynrychioli rhyw 6.9% o gyfanswm masnach Cymru o ran nwyddau (ac eithrio Japan sy'n cynrychioli 2.6% yn rhagor – gweler Atodiad A am fanylion pellach). O gymharu â hynny, mae'r UE yn cynrychioli rhyw 49% o gyfanswm masnach Cymru o ran nwyddau.

Mae cynnal trafodaethau cymhleth pan fo cyfyngiadau teithio yn eu lle ac nad oes modd cynnal cyfarfodydd wyneb yn wyneb yn sicr yn heriol ond caf fy nghynghori gan DIT fod gwaith yn parhau ar y rhaglen er gwaetha'r cyfyngiadau hyn.

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2. I ba raddau y mae eich adran yn gweithio gydag adran Gweinidog yr Economi a Thrafnidiaeth i baratoi busnesau Cymru ar gyfer effaith unrhyw oedi i raglen y Cytundeb Parhad Masnach?

Mae fy swyddogion, yn enwedig y rheini sy'n gweithio yn y maes Masnach a Mewnfuddsoddi, yn gweithio'n agos iawn gyda'r rheini yn isadran Busnes a Rhanbarthau Adran yr Economi a Thrafnidiaeth ar lefel strategol a gweithredol. Mae hynny'n cynnwys cyflawni amrywiaeth eang o weithgareddau i gefnogi busnesau drwy'r cyfnod heriol y maent yn ei wynebu yn sgil COVID-19 a diwedd y cyfnod pontio.

Defnyddiwn ddull cydgysylltiedig i sicrhau bod busnesau yn cael yr wybodaeth ddiweddaraf yn ogystal â chyngor pwrpasol ar effaith y newidiadau tebygol hyn i'r rheoliadau masnachu.

3. A ydych yn hyderus y bydd gweddill y cytundebau gyda gwledydd y mae Llywodraeth y DU yn ceisio sicrhau parhad â hwy yn cael eu trosglwyddo'n llwyddiannus cyn diwedd y cyfnod pontio?

Byddwch yn ymwybodol mai cyfrifoldeb Llywodraeth y DU yw'r trafodaethau gyda'r gwledydd sy'n weddill ac maent yn parhau. Dylid cofio bod llawer o ffactorau a fydd yn effeithio ar gasgliad llwyddiannus y trafodaethau hyn, gan gynnwys parodrwydd yr ochr arall a'r effaith y mae pandemig Covid-19 wedi'i chael ar allu'r ddwy ochr i rhith-drafod, ymhlith pethau eraill. Fodd bynnag, gan dybio bod Llywodraeth y DU yn gwrthod gofyn am estyniad i'r Cyfnod Pontio, rwy'n meddwl felly ei bod yn annhebygol iawn y bydd y cytundebau a fydd yn cymryd lle rhai'r UE i gyd wedi'u llofnodi erbyn 31 Rhagfyr.

4. Ni fydd y cytundeb a lofnododd y DU â Norwy a Gwlad yr Iâ ar nwyddau, ar 2 Ebrill 2019, yn dod i rym mwyach ar ddiwedd y cyfnod pontio. Mae Llywodraeth y DU wedi nodi awydd i weithio tuag at gytundeb newydd gyda Norwy a Gwlad yr Iâ yn ystod y cyfnod pontio. Gan fod hwn yn gytundeb arwyddocaol i Gymru, pa drafodaethau a gawsoch â Llywodraeth y DU mewn perthynas â chytundeb newydd gyda Norwy a Gwlad yr Iâ?

Gadewch imi eich sicrhau fy mod yn ymrwymedig i wneud popeth yn fy ngallu i sicrhau bod buddiannau Cymru yn cael eu cynrychioli'n llwyr yn nhrafodaethau masnach Llywodraeth y DU. Gallaf gadarnhau bod fy nhrafodaethau gyda Gweinidogion DIT yn ymdrin â gwledydd sy'n rhan o'r rhaglen CNC a gwledydd newydd FTA. Rwy'n parhau i bwyso ar Lywodraeth y DU i gyflenwi polisi masnach ryngwladol sy'n gweithio ar gyfer pob rhan o'r DU ac rwy'n parhau i bwysleisio'r angen i ddarparu cyfleoedd go iawn i'r llywodraethau datganoledig gyfrannu at ddatblygiad y polisi a'r broses drafod.

5. A ydych yn hyderus y gellir dod i gytundeb ar nwyddau rhwng y DU a Norwy a Gwlad yr Iâ erbyn diwedd y cyfnod pontio, ac, os nad yw'n bosibl, beth fyddai'r effaith bosibl ar economi Cymru?

Fel y gwyddoch, mae'r berthynas sydd wedi cydblethu rhwng Gwlad yr Iâ, Norwy a'r UE yn cyfyngu ar ba drefniadau masnachu y gellir eu parhau'n ddwyochrog rhwng y DU, Gwlad yr Iâ a Norwy. Yn benodol, mae cydweddu Gwlad yr Iâ a Norwy yn rheoleiddiol â'r farchnad sengl yn golygu ei bod yn amhosibl trafod y rhwystrau technegol i fasnach tan fod dyfodol y berthynas rhwng yr UE a'r DU yn glir. Fodd bynnag, gan nad yw Norwy na Gwlad yr Iâ yn rhan o Undeb Tollau gyda'r UE, maent yn gallu trafod tariffau, a oedd ffocws y cytundeb a drafodwyd yng nghyd-destun 'dim cytundeb'.

Yn ogystal â'r mater penodol ynghylch y cyfyngiadau ar ryddid Norwy a Gwlad yr Iâ i drafod materion rheoleiddiol, mae'r un ffactorau mwy cyffredinol sy'n effeithio ar drafodaethau a nodwyd yn fy ateb i gwestiwn 3 uchod yn berthnasol.

O ran masnachu gyda'r cenhedloedd hyn a'u heffaith bosibl:

- Norwy yw 24ain farchnad allforio fwyaf Cymru a'r 7fed marchnad allforio fwyaf.
- Gwlad yr Iâ yw 80fed farchnad allforio fwyaf a'r 87fed farchnad allforio fwyaf.

Heb y cytundeb yn ei le, mae manylion y sectorau y gellid effeithio fwyaf arnynt, o bosibl, i'w gweld yn Atodiad B. Fodd bynnag, mae'n werth nodi bod y tariffau mewn llawer o'r sectorau hyn yn isel iawn ac rwy'n parhau i gyflwyno'r achos i Lywodraeth y DU fod rhwystrau nad ydynt yn dariffau yn peri llawer mwy o ofid inni gyda'u heffeithiau yn debygol i fod lawer yn fwy nag effeithiau unrhyw dariffau.

Sefydliad Masnach y Byd

6. Daeth ymgynghoriad cyhoeddus Llywodraeth y DU ar Dariff Byd-eang y DU i ben ar 5 Mawrth 2020. A ymatebodd Llywodraeth Cymru i'r ymgynghoriad, ac os felly, a allwch roi copi inni o ymateb Llywodraeth Cymru?

Gallaf gadarnhau yr ysgrifennais at y Gweinidog Masnach, Conor Burns, ar 15 Mawrth yn nodi'n safbwyntiau ar ymgynghoriad Tariff Byd-eang Llywodraeth y DU. Atodaf gopi o'r llythyr hwnnw i'r ymateb hwn.

7. Pa gysylltiad y mae Llywodraeth Cymru wedi'i gael wrth ddatblygu polisi Tariff Byd-eang newydd y DU?

Fel y nodwyd gennyf uchod, ysgrifennais at y Gweinidog Gwladol ar y pryd yn esbonio ein safbwyntiau ar y cynigion o ran y tariff. Roedd fy swyddogion hefyd wedi cwrdd â thîm Llywodraeth y DU sy'n arwain ar yr ymgynghoriad tariff byd-eang yn ystod cyfnod yr ymgynghoriad a chawsant eu gwahodd hefyd i arsylwi mewn digwyddiad rhanddeiliaid a drefnwyd gan DIT. Rhoddwyd gwybod inni y byddai'r amserlenni newydd yn cael eu cyhoeddi o flaen llawn, er na chawsom lawer o rybudd o gwbl am hynny.

Rwy'n falch bod rhai o'r newidiadau a wnaed i'r cynigion gwreiddiol yn mynd i'r afael â rhai o'n pryderon, er enghraifft, drwy gynnal sawl tariff ar nwyddau amaethyddol. Fodd bynnag, mae ein cyfraniad cyffredinol at ddatblygiad y polisi Tariff Byd-eang newydd wedi bod yn gyfyngedig iawn gyda Gweinidogion Llywodraeth y DU yn ystyried y gwaith o ddatblygu tariffau (ffurf ar dreth) yn faes polisi sydd wedi'i ddargadw'n llwyr. Dro ar ôl tro, rwyf wedi dadlau gyda Llywodraeth y DU bod y ffiniau rhwng cymhwysedd sydd wedi'i ddargadw ac un sydd wedi'i ddatganoli yn aneglur mewn perthynas â pholisi masnach ac mae'r polisi tariff yn enghraifft ardderchog o hyn. Er bod datblygu tariffau a'u gweithredu yn wir yn faes polisi sydd wedi'i ddargadw, mae'r penderfyniadau ynghylch tariffau hefyd yn ymdrin â materion, megis y diwydiant amaethyddol yng Nghymru, sy'n ymwneud â meysydd o fewn cymhwyster datganoledig.

Cytundebau rhyngwladol nad ydynt yn ymwneud â masnach

8. A oes unrhyw gytundebau rhyngwladol nad ydynt yn ymwneud â masnach y mae Llywodraeth Cymru yn galw ar Lywodraeth y DU i gytuno iddynt cyn diwedd y cyfnod pontio?

Mae Llywodraeth Cymru wedi bod yn glir y dylai Llywodraeth y DU geisio parhau i gydweithredu a chydweithio â'r UE, gan gynnwys drwy'r amrywiaeth o gytundebau rhyngwladol sy'n bodoli rhwng y DU a'r UE. Mae'r cytundebau hyn yn destun trafodaeth. Rydym yn disgwyl eglurder ynghylch natur dyfodol y berthynas yn dilyn y cyfarfod pwyso a mesur yn nes ymlaen y mis hwn. Wedyn byddwn yn gallu asesu a oes unrhyw gytundebau rhyngwladol na fydd yn rhan o gytundebau ehangach y berthynas yn y dyfodol. Mae pob Gweinidog portffolio unigol yn gyfrifol am eu cytundebau rhyngwladol nad ydynt yn ymwneud â masnach eu hunain, sy'n sefyllfa debyg i honno ar lefel Llywodraeth y DU.

9. Pa asesiad y mae Llywodraeth Cymru wedi'i wneud o rwymedigaethau rhyngwladol mewn meysydd datganoledig, yn absenoldeb deddfwriaeth yr UE?

Dylai'r broses o ddatblygu 'cyfraith yr UE a ddargedwir' dros y blynyddoedd diwethaf olygu y bydd unrhyw rwymedigaeth ryngwladol barhaus a weithredwyd drwy gyfraith yr UE yn cael ei chadw ar lyfr statud y DU ar ddiwedd y cyfnod pontio.

Nid yw Llywodraeth Cymru eto wedi cynnal archwiliad cynhwysfawr o'r rhwymedigaethau rhyngwladol sy'n effeithio ar feysydd datganoledig, gyda'r Gweinidogion portffolio yn ysgwyddo'r prif gyfrifoldebau am rwymedigaethau rhyngwladol o fewn eu portffolio (er enghraifft, gyda Gweinidog yr Amgylchedd, Ynni a Materion Gwledig yn arwain ar bob mater sy'n ymwneud â chytundebau amgylcheddol rhyngwladol).

Fel yw'r achos ar hyn o bryd, pan gaiff polisïau eu datblygu neu ddeddfwriaeth ei llunio a fydd yn addasu cyfraith yr UE a ddargedwir, neu mewn gwirionedd, unrhyw faes arall o'r gyfraith yn y dyfodol, bydd Llywodraeth Cymru yn parhau i asesu cysylltiadau cynigion o'r fath â rhwymedigaethau rhyngwladol y DU. Bydd deunydd esboniadol cysylltiedig yn adlewyrchu'r fframwaith cyfreithiol rhyngwladol newydd a fydd yn cynnwys y ddeddfwriaeth honno, gan sicrhau bod unrhyw rwymedigaethau rhyngwladol perthnasol yn amlwg.

10. A fu unrhyw drafodaethau rhwng Llywodraeth Cymru a Llywodraeth y DU ar gytundebau rhyngwladol nad ydynt yn ymwneud â masnach?

Mae swyddogion Llywodraeth y DU a Llywodraeth Cymru yn cyfathrebu'n rheolaidd ynghylch cytundebau rhyngwladol nad ydynt yn ymwneud â masnach sy'n effeithio ar gyfrifoldebau datganoledig, er enghraifft, ar hawliau pleidleisio cilyddol. Cânt eu cyflwyno at sylw'r Gweinidogion, a'r Senedd wedi hynny, ar yr adegau priodol.

Cyflawni'r Strategaeth Ryngwladol

11. A ydych yn bwriadu adolygu'r modd y caiff eich strategaeth ryngwladol a'i blaenoriaethau eu cyflawni, mewn ymateb i'r pandemig COVID-19, ac, os felly, sut?

Mae Covid-19 wedi effeithio'n fawr ar bawb a drafftiwyd y Strategaeth Ryngwladol cyn i'r pandemig ddod i'r amlwg. Mae'r byd fel y mae heddiw yn wahanol iawn ac er bod sawl ansicrwydd yn parhau ynghylch sut y bydd pethau'n datblygu wrth inni symud ymlaen, rydym yn gwybod bod y pandemig wedi effeithio ar economi Cymru a bydd yr effaith honno yn parhau. Yn fy rôl fel y Gweinidog Cysylltiadau Rhyngwladol, rhaid imi wneud popeth yn fy ngallu i ailadeiladu'r economi a'r wlad o safbwynt rhyngwladol. Rwyf wedi ail-flaenoriaethu ein gwaith brys i sicrhau bod y tîm rhyngwladol yn cyfrannu at yr ymdrech yn erbyn Covid. Mae hyn wedi cynnwys ymdrechion i helpu i ail-wladoli dinasyddion Cymru a oedd yn teithio dramor pan ddaeth y pandemig i'r amlwg ac ymdrechion i ddarparu PPE yng Nghymru. Rwy'n adolygu'r amserlen ar gyfer cyflawni'r Strategaeth Ryngwladol drwy ddatblygu sawl cynllun gweithredu mewn meysydd allweddol â blaenoriaeth.

Mae Cynllun Gweithredu ar Allforio a oedd eisoes wedi'i ddatblygu'n dda cyn y pandemig bellach wedi'i ail-lunio i gefnogi allforwyr mewn amgylchedd ar ôl Covid. Mae ein cynlluniau ar gyfer rhwydwaith diaspora yn symud ymlaen yn dda a bydd cynllun manwl ar gyfer datblygu ein cysylltiadau gyda'n rhanbarthau allweddol yn ystyried bellach sut y gallwn ddysgu o'n gilydd mewn byd ar ôl Covid. Rydym yn parhau i gysylltu â'n rhanbarthau allweddol yn Ewrop yn ystod yr argyfwng. Mae llawer o'n gwaith yn Affrica yn cael ei wneud yn ôl yr arfer o hyd ond rydym yn ymwybodol o'r effaith ddinistriol y gallai'r feirws yn ei chael yn Affrica Is-Sahara ac y bydd angen inni fod yn barod i ymateb lle y gallwn.

Mae fy adran wedi bod yn cyfrannu'n uniongyrchol at ymateb ehangach Llywodraeth Cymru i'r pandemig. Yn benodol, mae adrannau megis Addysg, Iechyd, yr Economi a Gwyddoniaeth wedi bod yn defnyddio gwybodaeth a gasglwyd o wledydd eraill gan fy nhimau tramor i lunio eu dull o fynd i'r afael â'r argyfwng ac i lywio polisïau Cymru ar, er enghraifft, ail-agor ysgolion ar ôl y cyfyngiadau symud. Mae'r gwaith hwn wedi dangos bod pob maes yn y llywodraeth yn gallu elwa ar y gwerth ychwanegol sy'n deillio o'n rhwydwaith tramor.

Mae'r sefyllfa yn newid o hyd, ac mae hynny'n golygu y bydd angen inni adolygu'r Strategaeth Ryngwladol a'i ganlyniadau yn rheolaidd wrth i'r pandemig fynd rhagddo.

Hyderaf y bydd yr atebion hyn yn rhoi diweddariad digonol ichi ynghylch yr agwedd ryngwladol ar waith fy mhortffolio a byddaf yn hapus iawn i ddarparu rhagor o wybodaeth ichi yn y cyfarfod ar 16 Mehefin.

Yn gywir,

Eluned Morgan AS/MS
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Atodiad A

Value of Welsh Goods Exports and Imports to TAC Partners - 2019						
Source: HMRC RTS		**OFFICIAL - SENSITIVE**				
Agreements not signed						
Agreement	**Lead UKG Dep.**	**Exports 2019 (£m)**	**% of Total Welsh Goods exports**	**Imports 2019 (£m)**	**Total bilateral trade year ending Dec 2019 (£m)**	**% of Total Welsh Trade in Goods**
Ivory Coast	FCO	1.3	0.0%	0.65	1.4	0.00%
Morocco	FCO	17.0	0.1%	11.8	28.7	0.08%
Albania	FCO	-	-	-	-	
Bosnia	FCO	-	-	-	-	
Cameroon	DFID	0.2	0.0%	0.9	1.1	0.00%
Macedonia	FCO	0.9	0.0%	0.1	1.0	0.00%
Monten.	FCO	-	-	-	-	
Serbia	FCO	4.0	0.0%	1.8	5.8	0.02%
Algeria	FCO	4.1	0.0%	445.1	449.2	1.25%
Canada	DIT	233.9	1.3%	468.3	702.1	1.96%
EAC (Kenya and Tanzania only)	DFID	13.8	0.1%	10.8	35.4	0.10%
Egypt	FCO	36.4	0.2%	41.8	78.2	0.22%
Ghana	DFID	4.6	0.0%	67.9	72.5	0.20%
Mexico	DIT	62.7	0.3%	74.7	137.4	0.38%
Moldova	FCO	-	-	-	-	
Ukraine	FCO	12.0	0.1%	27.9	39.9	0.11%
Japan	DIT	295.9	1.7%	639.2	935.1	2.61%
Turkey	DIT	338.6	1.9%	590.6	929.2	2.59%
Total		**1,025**	**5.8%**	**2,381**	**3,406**	**9.54%**
Total Welsh bilateral trade					**35,827**	

Ffynhonnell: Dadansoddiad LIC o Ystadegau Masnach Ryngwladol HMRC

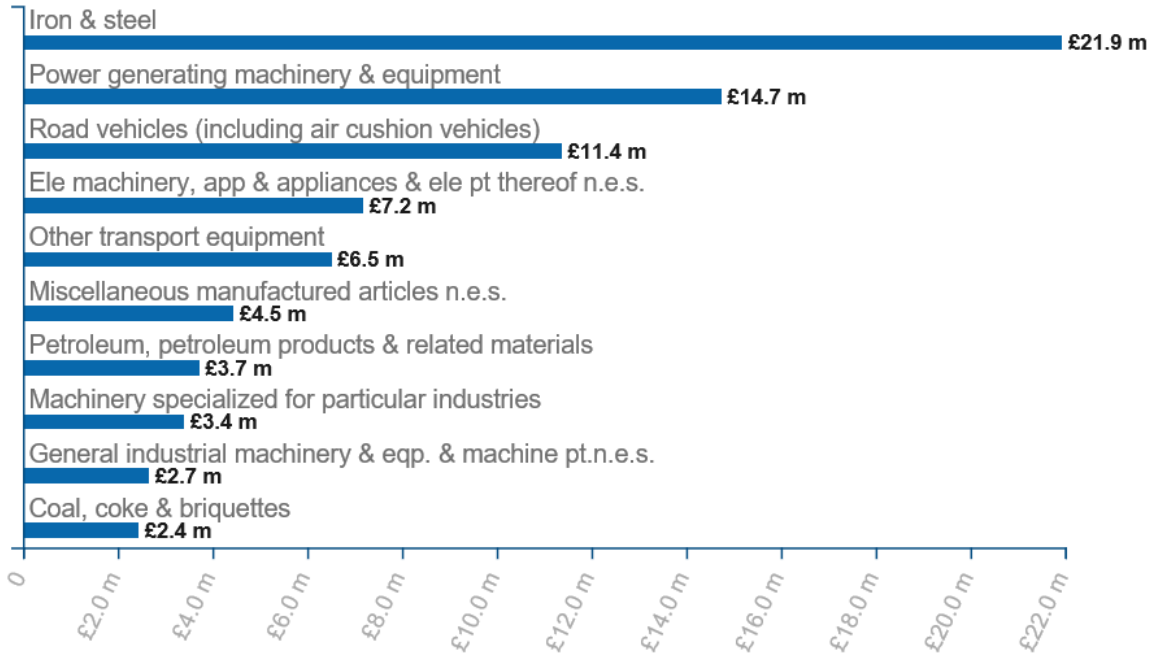
Atodiad B

Masnach Cymru gyda Norwy a Gwlad yr Iâ

Gwlad	Gwerth Allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth Mewnforion	% o gyfanswm Allforion Cymru	Ranc
Norwy	£101.6m	0.6%	24ain	£628.4m	3.5%	7fed
Gwlad yr Iâ	£5.5m	0.0%	80fed	£0.97m	0.0%	87fed

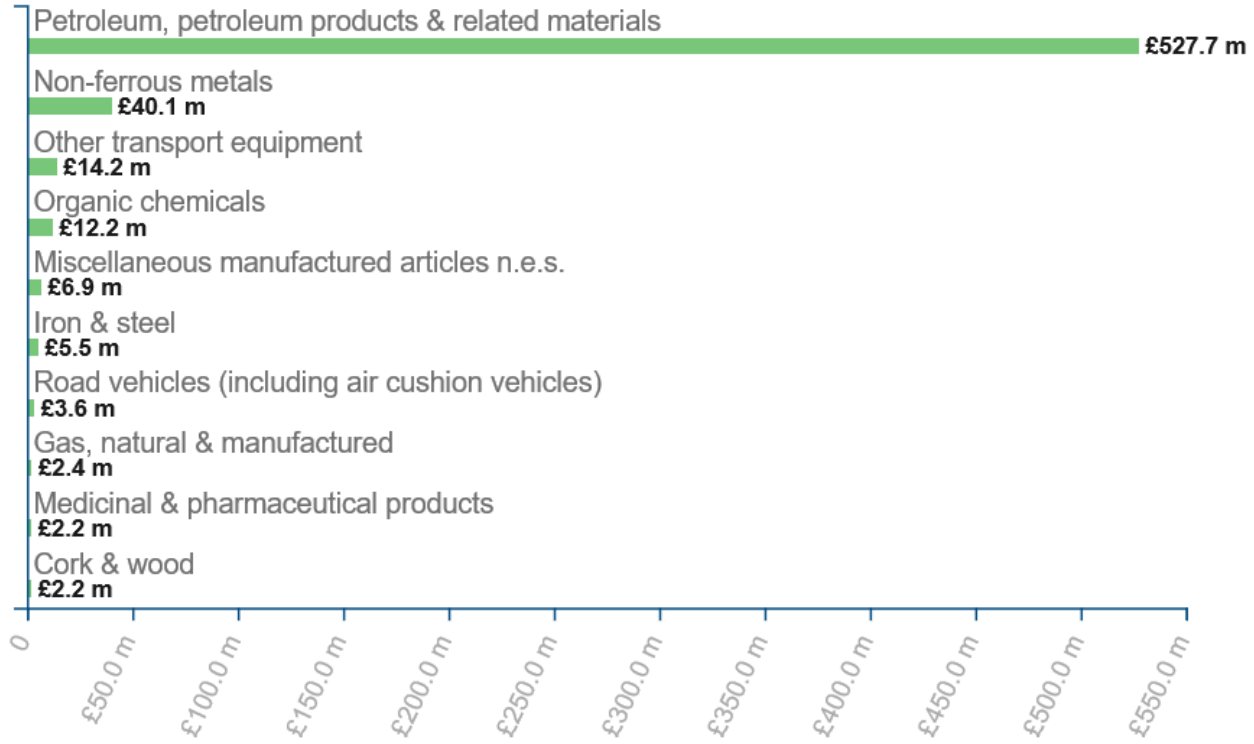
Ffynhonnell: Ystadegau Masnach Ryngwladol HMRC, 2019

Prif Nwyddau a Allforiwyd o Gymru i Norwy yn 2019



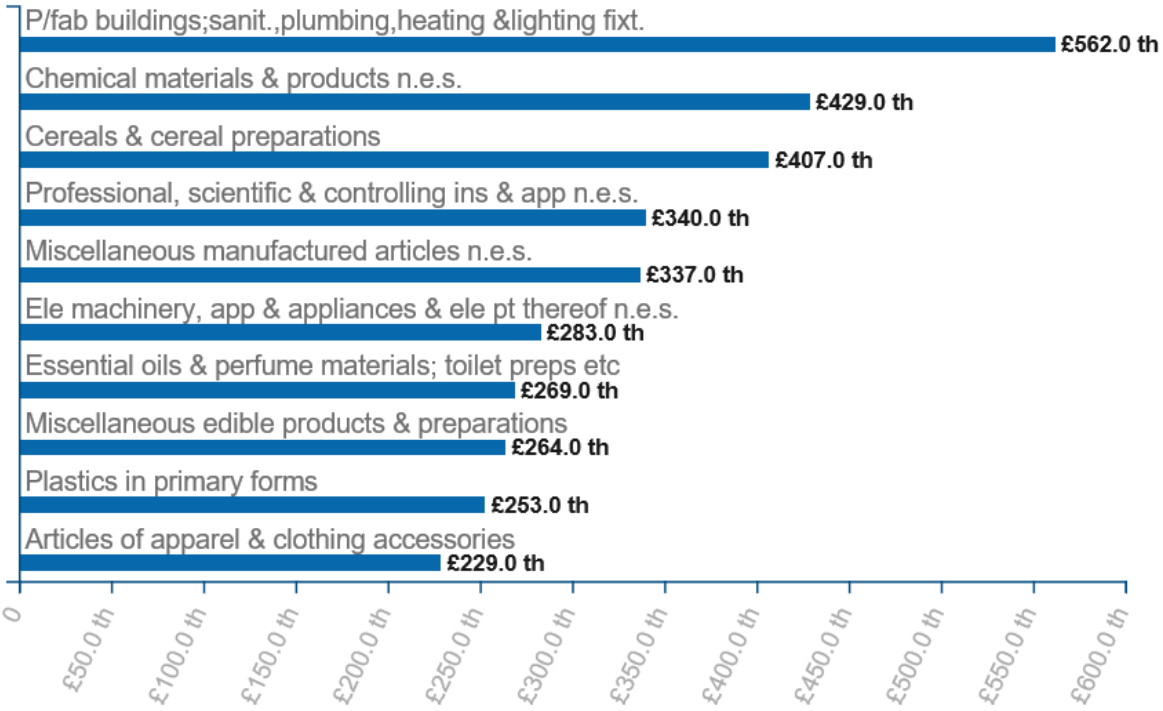
- Haearn a dur oedd y nwyddau a allforiwyd fwyaf o Gymru i Norwy yn 2019, gan gynrychioli 22% o gyfanswm allforion Cymru i Norwy.
- Norwy oedd y 12fed farchnad allforio fwyaf ar gyfer haearn a dur Cymru – tua 2.4% o gyfanswm allforion Cymru o'r cynhyrchion hyn.

Prif Nwyddau a Fewnforiwyd i Gymru o Norwy yn 2019



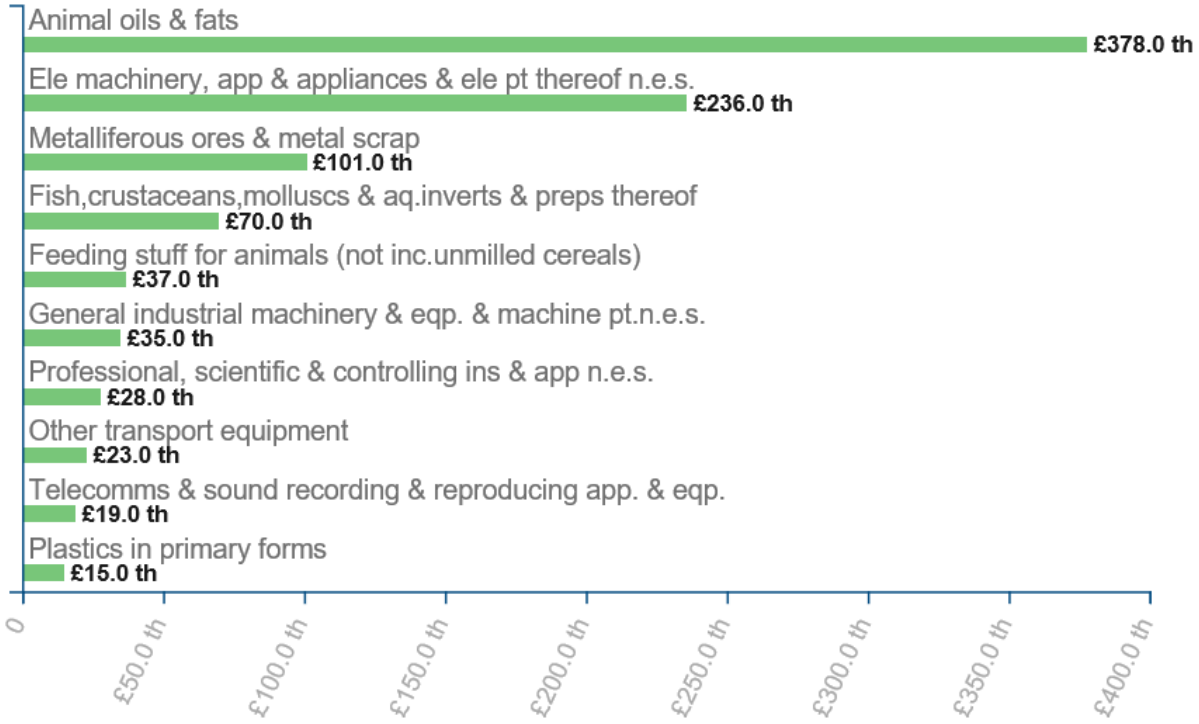
- Petrolewm a chynhyrchion petrolewm oedd y prif nwyddau a fewnforiwyd i Gymru o Norwy yn 2019, gan gynrychioli tua 84% o'r holl nwyddau.
- Norwy oedd yr 2il farchnad fewnforio fwyaf ar gyfer y sector hwn, gan gynrychioli 13.7% o gyfanswm mewnforion Cymru o fewn y sector hwn.

Prif Nwyddau a Allforiwyd o Gymru i Wlad yr Iâ yn 2019



- Nwyddau yn ymwneud ag adeiladau, plymwaith, gwres a goleuadau oedd wedi cyfrannu fwyaf at y nwyddau a allforiwyd o Gymru i Wlad yr Iâ yn 2019, gan gynrychioli tua 10% o gyfanswm yr allforion i Wlad yr Iâ.
- Gwlad yr Iâ oedd y 7fed farchnad allforio fwyaf ar gyfer y sector hwn, gan gynrychioli tua 2.3% o gyfanswm allforion Cymru o fewn y sector hwn.

Prif Nwyddau a Mewnforiwyd i Gymru o Wlad yr Iâ yn 2019



- Olewau a brasterau anifeiliaid oedd wedi cyfrannu fwyaf at y nwyddau a fewnforiwyd i Gymru o Wlad yr Iâ, gan gynrychioli tua 39% o'r holl nwyddau.
- Gwlad yr Iâ oedd y farchnad fewnforio fwyaf ar gyfer olewau a brasterau anifeiliaid, gan gynrychioli 35.2% o fewnforion Cymru o fewn y sector hwn.

<u>Masnach Cymru mewn Sectorau nad ydynt yn rhan o'r Cytundeb</u>

Masnach o ran Gwasanaethau

Mae ystadegau arbrofol ONS ar fasnach ranbarthol o ran gwasanaethau yn dangos mai gwerth mewnforion ac allforion gwasanaethau Cymreig oedd £4.7 biliwn ac £8.3 biliwn yn y drefn honno. Nid oes data ar ddadansoddiad gwledydd felly nid yw'n bosibl pennu gwerth masnach gwasanaethau rhwng Cymru a Norwy/Gwlad yr Iâ

Anifeiliaid Byw (heblaw am anifeiliaid isadran 03)

Gwerth Cyfanswm Masnach Cymru o ran Anifeiliaid Byw oedd £58.9miliwn yn 2019, gyda gwerth yr allforion a'r mewnforion yn £47.9 miliwn a £11.0 miliwn yn y drefn honno.

Gwlad	Gwerth yr allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth y mewnforion	% o gyfanswm Mewnforion Cymru	Ranc
Norwy	£13,000	0%	41fed	£1,000	0%	13eg
Gwlad yr Iâ	Dim data			Dim data		

Ffynhonnell: Ystadegau Masnach Ranbarthol HMRC

Cynhyrchion Anifeiliaid:

Cig a pharatoadau cig

Gwlad	Gwerth yr allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth y mewnforion	% o gyfanswm Mewnforion Cymru	Ranc
Norwy	£3,000	0%	56fed	£0	0%	69ain
Gwlad yr Iâ	£83,000	0.1%	35ain	£0	0%	56fed

Ffynhonnell: Ystadegau Masnach Ranbarthol HMRC

Cynhyrchion llaeth ac wyau adar

Gwlad	Gwerth yr allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth y mewnforion	% o gyfanswm Mewnforion Cymru	Ranc
Norwy	£400,000	0.3%	30ain	£253,000	0.4%	14eg
Gwlad yr Iâ	£102,000	0.1%	42fed	£0	0%	66ain

Ffynhonnell: Ystadegau Masnach Ranbarthol HMRC

Lledr, crwyn a chrwyn ffwr

Gwlad	Gwerth yr allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth y mewnforion	% o gyfanswm Mewnforion Cymru	Ranc
Norwy	Dim data			Dim data		
Gwlad yr Iâ	Dim data			Dim data		

Ffynhonnell: Ystadegau Masnach Ranbarthol HMRC

Deunyddiau anifeiliaid a llysiau crai

Gwlad	Gwerth yr allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth y mewnforion	% o gyfanswm Mewnforion Cymru	Ranc
Norwy	£31,000	0.6%	24ain	£34,000	0.1%	26ain
Gwlad yr Iâ	£2,000	0%	55fed	£0	0%	41fed

Ffynhonnell: Ystadegau Masnach Ranbarthol HMRC

Olewau a brasterau anifeiliaid

Gwlad	Gwerth yr allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth y mewnforion	% o gyfanswm Mewnforion Cymru	Ranc
Norwy	£0	0%	34ain	£120,000	11.2%	5ed
Gwlad yr Iâ	£0	0%	31ain	£378,000	35.2%	1af

Ffynhonnell: Ystadegau Masnach Ranbarthol HMRC

Sut mae Norwy a Gwlad yr Iâ yn cymharu â'r gwledydd y mae DIT yn eu blaenoriaethu ar gyfer cytundebau masnach?

Gwlad	Gwerth yr allforion	% o gyfanswm Allforion Cymru	Ranc	Gwerth y mewnforion	% o gyfanswm Mewnforion Cymru	Ranc
Norwy	£101.6m	0.6%	24ain	£628.4m	3.5%	7fed
Gwlad yr Iâ	£5.5m	0.0%	80fed	£1.0m	0.0%	87fed
Awstralia	£132.3m	0.8%	20fed	£65.5m	0.4%	41fed
Seland Newydd	£26.2m	0.1%	47fed	£14.1m	0.1%	63ain
Yr Unol Daleithiau	£2.7bn	15.5%	3ydd	£3.2bn	17.6%	1af
CPTPP:						
Awstralia	£132.3m	0.8%	20fed	£65.5m	0.4%	41fed
Seland Newydd	£26.2m	0.1%	47fed	£14.1m	0.1%	63ain
Chile	£10.9m	0.1%	65ain	£9.0m	0.1%	67ain
Periw	£2.3m	0%	89fed	£6.0m	0.0%	69ain
Canada	£233.9m	1.3%	14eg	£468.3m	2.6%	11eg
Mecsico	£62.7m	0.3%	33ain	£74.7m	0.4%	38ain
Malaysia	£32.3m	0.2%	45fed	£34.2m	0.2%	51fed
Brunei	-	-	-	-	-	-
Fiet-nam	£12.8m	0.1%	58fed	£50.4m	0.3%	44fed
Singapôr	£222.3m	1.3%	15fed	£178.3m	1.0%	25ain
Japan	£295.9m	1.7%	11eg	£639.2m	3.5%	6ed

Ffynhonnell: Ystadegau Masnach Ranbarthol HMRC, 2019

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Llywodraeth Cymru
Welsh Government

The Rt Hon Conor Burns MP
Minister of State
Department for International Trade
King Charles Street
Whitehall, London
SW1A 2AH
Burns.Correspondence@trade.gov.uk

15 March 2020

Dear Conor

When we last met, I promised to write with the views of the Welsh Government on the proposed UK Global Tariff (UKGT). **The Welsh Government's view is that the UK Global Tariff (UKGT) should continue to mirror the EU Common External Tariff (CET)** until such time as the future agreement with the EU has been settled and specific proposals have been subject to impact assessment, sensitivity analysis and fuller business engagement. This consultation is a useful first step, but more substantive analysis and engagement is required before making changes.

As a minimum, we would expect to see the following impacts considered in further analysis and subject to further consultation, in line with the requirements set out in the Taxation (Cross-border Trade) Act 2018:

- Impact on supply chains and flows of goods to and from the UK.
- The potential for unfair competition, such as where labour, environmental, health and safety or animal welfare standards fall below our own. Seemingly technical adjustments have the potential to affect this balance, opening up producers in low margin industries like agriculture to unfair competition.
- Risk of unintended consequences, as we simply do not know what effect these changes will have in related sectors across the Welsh economy, with risks associated with those operating at tight margins or with highly integrated supply chains.
- SMEs represent a vital part of the Welsh economy and risks to SMEs need to be fully considered and understood.

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- The UK's objectives in the Taxation (Cross-border Trade) Act 2018 requires the interests of consumers and producers to be taken into account and the UK Government is best placed to carry out this assessment to inform that debate.

- Impact on consumer prices, including whether the scale of the tariff changes makes it highly unlikely lower tariffs will pass through to consumer prices. Consumer impacts are most likely in areas where the changes significantly open up the UK market, with the counteracting impact on domestic production.

UK businesses are used to working with the CET where a preferential arrangement is not already in place. Retaining the CET therefore represents maintaining the status quo for importers. There are potentially significant risks of unintended consequences at a time of already major upheaval for businesses. Delaying any substantive changes also allows for a more iterative and meaningful engagement with businesses to ensure any changes are not rushed, are based on the most complete information possible, and avoid unintended consequences.

The experience of the UK no-deal tariff schedule proposals illustrates the consequences of unilaterally liberalising tariffs on future trade negotiations (with Canada no longer seeing any benefit to negotiating with the UK). We should therefore be equally conscious that while removing tariffs considered as 'nuisance' or with limited production in the UK may appear to be sensible, they would reduce negotiating leverage in future trade negotiations. These are tariffs that could provide easy wins for the UK in negotiations (subject to impact assessments); where preferential liberalisation will be attractive to trade partners but cost the UK little. It is not clear that liberalising them unilaterally, however, offers sufficient additional benefit that would outweigh this given the risk of unintended consequences, particularly for those industries operating at low margins.

Finally, I would welcome further information about the UK Government's intentions for applied tariffs under the UKGT should it fail to reach an agreement with the EU on a free trade agreement. No deal at the end of the year will result in the CET being applied to exports from the UK to the EU. Is the proposed UKGT intended to apply in this scenario or will revisions need to be made? Will the UK consider temporary measures (e.g. tariff suspensions) to protect consumers and importers? Will there be a process established by which potential future tariff suspensions can be proposed?

Attached to this letter at Annex A is further detail behind my comments above. I am copying this letter to the Secretary of State for International Trade and President of the Board of Trade, Minister of State for International Trade Gregg Hands MP, and the Secretary of State for Wales.

Best Wishes

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Eluned Morgan AC/AM
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Minister for International Relations and the Welsh Language

Llywodraeth Cymru
Welsh Government

Our ref: MA-EM-01622-20

David Rees AS
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Mick Antoniw AS
Cadeirydd y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
Senedd Cymru
Bae Caerdydd, CF99 1SN

29 May 2020

Annwyl David a Mick,

Y Bil Masnach: Cydsyniad Deddfwriaethol

Diolch am eich llythyr dyddiedig 07 Mai 2020 yn gofyn am ragor o wybodaeth yn sgil cyflwyno Memorandwm Cydsyniad Deddfwriaethol ar gyfer y Bil Masnach. Rwy'n ddiolchgar i'ch dau bwyllgor am graffu ar y Bil a'r elfennau y ceisir cydsyniad deddfwriaethol ar eu cyfer. Yn eich llythyr, rydych yn gofyn nifer o gwestiynau ac rwyf am ateb pob un yn ei dro.

Rhan 1, Cymal 1: Yn ymwneud â'r Cytundeb ar Gaffael gan Lywodraethau (GPA)

C1: Pa gyrff cyhoeddus o Gymru y bydd Llywodraeth Cymru yn ceisio eu cynnwys mewn unrhyw restr ddiwygiedig yn Anecs 1 i Atodiad 1 y Deyrnas Unedig i'r GPA?

Mae Llywodraeth y DU wedi cytuno i ddiweddaru ei hamserlen ar gyfer y GPA yn sgil ymuno ag ef. Swyddfa'r Cabinet sy'n arwain y gwaith hwn a bu'n trafod yn rheolaidd â swyddogion Llywodraeth Cymru am newidiadau posibl i'r cyrff cyhoeddus a restrir Anecs 1. Ein disgwyliadau ar hyn o bryd yw y bydd y newidiadau arfaethedig yn rhai technegol eu natur gan mwyaf, er enghraifft newid enwau'r cyrff a restrir i adlewyrchu eu teitlau cyfredol. Felly dyma lle mae ein gwaith yn canolbwyntio ar hyn o bryd.

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C2: Pa drafodaethau y mae'r Gweinidog wedi'u cael gyda Llywodraeth y DU ynghylch ehangder y pŵer i wneud rheoliadau yng Nghymal 1, yn benodol o ran gallu Gweinidogion y DU a Chymru i wneud rheoliadau ar gyfer gweithredu'r GPA fel y gwelant yn "briodol"?

Nid ydym wedi cael sgwrs benodol gyda Gweinidogion y DU am hyd a lled y pwerau yng Nghymal 1 i wneud rheoliadau. Ond mae is-gymal (1) yn cyfyngu'r pŵer i'r dibenion penodol a restrir, hynny yw i drafod mynediad y DU i'r GPA a'i haelodaeth ohono. Rydym wedi cael trafodaethau da â Swyddfa Cabinet Llywodraeth y DU am y ddarpariaeth allai fod ei hangen o dan gymal 1 i roi'r GPA ar waith. Byddwn yn dal i drafod y mater hwn â Swyddfa'r Cabinet ac yn hysbysu'n pwyllgorau maes o law os bydd Gweinidogion Cymru'n rhoi eu cydsyniad i unrhyw rai o reoliadau Llywodraeth y DU o dan gymal 1 mewn meysydd datganoledig.

C3: O ystyried y ffaith ei bod yn ymddangos bod angen adolygu'r rhestr o gyrff cyhoeddus Cymru, a'r cyfeiriad at yr angen am ddiweddariad yn y Nodiadau Esboniadol, pam ydych chi'n ystyried mai'r weithdrefn negyddol yw'r weithdrefn briodol ar gyfer gwneud y rheoliadau hyn?

Llywodraeth y DU benderfynodd yr y weithdrefn Seneddol a dilyn y penderfyniad hwnnw ydym ni. Esbonnir rhesymau Llywodraeth y DU am ei phenderfyniad yn y Memorandwm Pwerau Dirprwyedig, sef yr angen am gyflymder a'r ffaith y bydd Senedd y DU yn ystyried telerau ymaelodi â'r GPA hefyd o dan weithdrefn Deddf Diwygio Cyfansoddiadol a Llywodraethu 2010.

Gan mai cytundeb rhyngwladol yw'r GPA, ni cheir defnyddio cymal 1 y Bil i newid unrhyw ran o'r cytundeb, gan gynnwys Anecs 1. Yr unig ffordd i ddiweddaru'r Anecs yw trwy ddilyn y broses a ddisgrifir yn Erthygl XIX y GPA. Gellir wedyn defnyddio pwerau cymal 1 i roi ymrwymiadau rhyngwladol y DU ar waith mewn cyfraith ddomestig. Er enghraifft, trwy ddiwygio deddfwriaeth ddomestig fel Rheoliadau Contractau Caffael 2015 i sicrhau bod y rhestr o awdurdodau contractio'r llywodraeth ganol y mae'r rheoliadau hyn yn eu cwmpasu yn gyson ag ymrwymiadau'r DU o dan y GPA. Gan na ellir defnyddio pwerau cymal 1 ond i roi ymrwymiadau ar waith sy'n deillio o gyfraith ryngwladol, yn ymarferol, ychydig iawn o ddisgresiwn mewn gwirionedd sydd gan Weinidogion y DU a Gweinidogion Cymru.

C4: *Mae'r Memorandwm Pwerau Dirprwyedig yn nodi bod angen gwneud rheoliadau Cymal 1 yn gyflym, p'un a yw hynny, er enghraifft, mewn ymateb i fynediad y DU i'r GPA fel aelod annibynnol neu mewn ymateb i anghydfod â pharti GPA arall. Mae'r Memorandwm Pwerau Dirprwyedig yn awgrymu bod y weithdrefn penderfyniad negyddol yn rhoi cyfle i Weinidogion y DU a Chymru weithredu mor gyflym â hynny. Pa ystyriaeth a roddwyd i gymhwyso'r weithdrefn gwneud cadarnhaol i'r pwerau gwneud rheoliadau yng Nghymal 1?*

Gan mai Llywodraeth y DU wnaeth y penderfyniad ynghylch y weithdrefn, ni allaf gynnig sylw ar y ffactorau y gwnaeth eu hystyried pan benderfynodd nad oedd angen dilyn y weithdrefn gadarnhaol i gymal 1.

Er bod Llywodraeth y DU wedi nodi cyflymder fel un o'r ffactorau i gefnogi'r weithdrefn negyddol yn y Memorandwm Pwerau Dirprwyedig, nid wyf yn ymwybodol o unrhyw sefyllfa lle byddai'r angen i wneud rheoliadau a'u dwyn i rym mor gyflym yn cyfiawnhau defnyddio'r weithdrefn gadarnhaol 'gwnaed'. Rwy'n fodlon bod y weithdrefn negyddol yn taro'r cydbwysedd iawn yn yr achos hwn.

<u>Disgwyliadau Gweinidogion y DU</u>

C5: *A allwch chi egluro ar ba sail y gwnaed y cytundeb i ailddatgan yr ymrwymiadau hyn? Er enghraifft, a gadarnhawyd hyn mewn llythyrau rhwng Gweinidogion neu ai ymrwymiad llafar ydoedd?*

Cefais addewidion mewn llythyrau rhyngof a'r Gweinidog Polisi Masnach bryd hynny, Conor Burns AS y DU, y caiff yr holl ymrwymiadau a wnaed i Lywodraeth Cymru yn ystod taith rannol yr hen Fil Masnach eu hailddatgan yn ystod taith y Bil hwn. Rwyf hefyd wedi codi ac ysgrifennu at Greg Hands, AS, Gweinidog Polisi Masnach y DU i ofyn iddo gadarnhau y byddai'n anrhydeddu addewidion ei ragflaenydd ac y byddai'n ailadrodd yr ymrwymiadau hyn yn Nhŷ'r Cyffredin pan drafodir y Bil yno.

C6: Pa gamau y byddwch yn eu cymryd pe na bai'r ymrwymiadau hyn yn cael eu hailddatgan?

Mae argymhelliad Llywodraeth Cymru yn y Memorandwm Cydsyniad Deddfwriaethol bod cydsyniad y Senedd i'r Bil yn amodol ar addewidion Llywodraeth y DU y bydd yn anrhydeddu'r ymrwymiadau a wnaeth yn Senedd y DU yn ystod taith rannol y Bil Masnach gwreiddiol. Os na chaiff yr ymrwymiadau hynny eu hailadrodd yn Nhŷ'r Cyffredin, yna caiff yr argymhelliad ei ailystyried cyn gwahodd y Senedd i roi ei chydsyniad deddfwriaethol. Rwyf wedi egluro hyn i Greg Hands AS.

C7: *Mae'r Bil yn creu pwerau cydredol newydd y gellir eu harfer mewn meysydd datganoledig gan Lywodraeth Cymru a Llywodraeth y DU. A yw Llywodraeth Cymru wedi cael trafodaethau â Llywodraeth y DU am yr effaith y mae hyn yn ei chael ar gymhwysedd deddfwriaethol Senedd Cymru, yn benodol y prawf a nodir ym mharagraff 11 o Atodlen 7B i Ddeddf Llywodraeth Cymru 2006?*

Gallaf gadarnhau bod trafodaethau wedi'u cynnal â Llywodraeth y DU am effaith y Bil ar gymhwysedd deddfwriaethol y Senedd. Rwy'n rhagweld y caiff Gorchymyn Adran 109 ei ddwyn ymlaen cyn hir ac y bydd yn mynd i'r afael â phroblem y swyddogaethau cydredol rydych yn tynnu'n sylw ato.

<u>Ymestyn y cyfnod y gellir defnyddio pwerau Cymal 2</u>

Q8: *A allwch gadarnhau bod Llywodraeth Cymru yn fodlon â chyfnod o bum mlynedd y gellir defnyddio'r pwerau hyn?*

Byddwch eisoes yn gwybod mai consyrn pennaf Llywodraeth Cymru yn wreiddiol wrth holi Llywodraeth y DU am y cymal machlud oedd sicrhau y byddai'n trafod â'r Gweinyddiaethau Datganoledig, hynny cyn penderfynu a ddylid estyn hyd y cymal machlud a sut y dylid gwneud hynny,. Rwy'n fodlon â'r addewidion rydym wedi'u cael gan Lywodraeth y DU yn hynny o beth. O ystyried y nifer fawr o gytundebau masnach y bydd angen eu gwneud o bosibl o dan y ddarpariaeth hon, gall Llywodraeth Cymru werthfawrogi y bydd angen bod y pwerau hyn ar gael am gyfnod rhesymol o amser. Nid ydym yn ymwybodol ar hyn o bryd bod problem â'r cyfnod machlud o bum mlynedd.

C9: *Er ein bod yn nodi eich bod yn ceisio ymrwymiad gan Weinidogion y DU i ymgysylltu â Llywodraethau Datganoledig cyn estyn y cyfnod y gellir defnyddio pwerau Cymal 2 o dan y Bil, beth yw eich barn ar yr awgrym y dylai unrhyw estyniad i'r cyfnod o bum mlynedd hefyd fod yn ddarostyngedig i gydsyniad Senedd Cymru, i'r graddau y mae hyn yn ymwneud â phwerau wedi'u dirprwyo i Weinidogion Cymru?*

Mae cwmpas y pŵer yng nghymal 2, gan gynnwys gallu'r Ysgrifennydd Gwladol i estyn y ddarpariaeth machlud, wedi'i gynnwys fel un o ddarpariaethau'r Bil y ceisir cydsyniad y Senedd ar ei gyfer yn y Memorandwm Cydsyniad Deddfwriaethol a osodwyd ar 2 Ebrill 2020.

Roedd Llywodraeth Cymru o'r farn bod ymrwymiadau Llywodraeth y DU i ymdrin â'r weithrediaeth yn hytrach na'r ddeddfwrfa yn briodol yn yr achos hwn, o gofio bod y mater yn ymwneud yn benodol ag arfer swyddogaeth a roddir i'r weithrediaeth o dan amgylchiadau penodol iawn.

Datblygodd Llywodraethau Cymru a'r Alban set gyffredin o ddiwygiadau i'r Bil ym mis Ionawr 2018 oedd yn rhoi dyletswydd statudol ar yr Ysgrifennydd Gwladol i ymgynghori â Gweinidogion Cymru a Gweinidogion yr Alban ar estyn hyd y cymal machlud a sut i wneud hynny. Er na chafodd y diwygiadau hynny eu derbyn, llwyddwyd i gael addewid gan Lywodraeth y DU ar lawr Tŷ'r Cyffredin y byddai'n trafod â'r gweinyddiaethau datganoledig cyn estyn y cyfnod y ceid gwneud rheoliadau cymal 2 ynddo yn ystod taith rannol y Bil Masnach gwreiddiol yn ystod sesiwn Seneddol 2017-19 y DU.

Cyn belled â bod yr ymrwymiadau hynny'n cael eu hailddatgan yn ystod taith y Bil cyfredol, mae Llywodraeth Cymru wedi argymell bod y Senedd yn rhoi ei chydsyniad i'r ddarpariaeth yn y Bil.

C10: *Beth yw eich barn am y pŵer yng Nghymal 2(6)(a) sy'n galluogi Gweinidogion y DU i ddiwygio Deddf Llywodraeth Cymru 2006 trwy reoliadau? Pam ydych chi'n ystyried bod hwn yn bŵer priodol? A ydych wedi cyflwyno sylwadau i Lywodraeth y DU ynghylch y pŵer hwn?*

Rwy'n fodlon â'r pŵer yng nghymal 2(6)(a) ac nid wyf wedi holi Llywodraeth y DU am y cymal penodol hwn. Er nad oes unrhyw beth i rwystro Gweinidog y Goron rhag diwygio Deddf Llywodraeth Cymru (DLlC) 2006, mae cymal 2(6)(a) yn cyfyngu unrhyw ddiwygiadau i ddeddfwriaeth sylfaenol, i'r graddau bod darpariaeth yn bodloni'r diffiniad a geir yn adran 6(7) o Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 o gyfraith yr UE a ddargedwir. Ychydig iawn o ddarpariaethau yn DLlC all ddod o dan gwmpas y diffiniad hwn ac nid yw Llywodraeth y DU wedi dangos ei bod am arfer pwerau cymal 2 i wneud diwygiadau o'r fath.

Ar sail hynny, nid wyf o'r farn bod angen eithrio DLlC o'r categori o ddeddfwriaeth sylfaenol y gall Gweinidog y Goron ei ddiwygio o dan gymal 2(6)(a).

Gan obeithio bod fy atebion i'ch cwestiynau'n foddhaol.

Yn gywir,

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29 Ebrill 2020

Annwyl Dai a Mick,

Ysgrifennais atoch ar 21 Ebrill er mwyn eich hysbysu y byddai cyfarfod arall o'r Fforwm Gweinidogol ar gyfer Masnach yn cael ei gynnal ar 22 Ebrill. Cytunais i ysgrifennu atoch eto ar ôl y cyfarfod hwnnw.

Cafodd y cyfarfod a gynhaliwyd ar 22 Ebrill ei gadeirio gan Conor Burns, y Gweinidog dros Fasnach Ryngwladol. Roedd Gweinidog Masnach yr Alban a'r Gweinidogion ar gyfer rhannau eraill o'r DU hefyd yn bresennol.

Gwnaeth y cyfarfod ganolbwyntio'n bennaf ar drafod yr ymateb i bandemig COVID-19 ac edrych ar y gwaith yr oedd angen ei wneud er mwyn cefnogi unrhyw gamau i adfer yr economi unwaith y byddai'r argyfwng ar ben. Mae'r gwaith o baratoi ar gyfer trafodaethau â'r gwledydd sydd â blaenoriaeth yn parhau a chred yr Adran Fasnach ei fod yn rhan bwysig o unrhyw ymdrechion i adfer yr economi.

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Yn ystod gweddill y cyfarfod cafwyd diweddariadau ynghylch amseriad Bil Masnach y DU a hynt y gwaith sy'n gysylltiedig â Thariffau Byd Eang. Hwn oedd ail gyfarfod y Fforwm ond mae'r gwaith ymgysylltu yn bositif ac mae fy swyddogion yn parhau i gydweithio'n agos â swyddogion Llywodraeth y DU er mwyn symud y gwaith hwn yn ei flaen.

Nid oes gennym ddyddiad ar gyfer y cyfarfod nesaf eto ond byddai'n ysgrifennu atoch eto cyn y bydd unrhyw gyfarfodydd eraill yn cael eu cynnal.

Yr eiddoch,

Eluned Morgan AC/AM
Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

An assessment of the EU-Japan EPA and its implications for a UK-Japan Free Trade Agreement

Dr. Jappe Eckhardt

(University of York)

Introduction

Negotiations between the EU and Japan on a free trade agreement were launched in March 2013. After 18 rounds of negotiations, a political agreement in principle was reached during the EU-Japan Summit in Brussels in 2017. The consolidated text of the agreement was finalised at the end of 2017 and not much later, on 18 April 2018, the Commission proposed to the Council the signature and conclusion of the Economic Partnership Agreement (EPA) with Japan. The Council adopted the decision to sign the agreement on 6 July 2018 and forwarded the draft Council decision on the conclusion of the EPA and the agreement itself to the European Parliament for approval. The EPA was signed at the EU–Japan Summit in Tokyo, on 17 July 2018.[1]

In this document I will analyse the EU-Japan EPA, focusing in particular on what the agreement covers (e.g. tariff liberalisation, services provisions, technical barriers to trade); the MFN provisions relating to services and goods included in the EU-Japan EPA, and its implications for the UK; and how the EU-Japan EPA could be enhanced or improved to benefit businesses and specific sectors in Wales.

This analysis is based on an assessment of the Agreement itself, [2] a series of reports on the agreement and analyses comparing the EPA to other EU trade agreements, as well as some of my own research on EU trade agreements/policy.

[1] https://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-eu-japan-epa

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0192#document2

Coverage of the EU-Japan EPA

Tariffs

Tariffs were one of the most controversial negotiation topics[3] and are covered in Chapter 2 and Annex 2-A of the agreement. Japan demanded *inter alia* duty-free exports of motor vehicles, automotive parts, and electronics, while the EU pushed for liberalization of Japanese agricultural imports, as well as dismantling of the remaining industrial tariffs on textiles, clothing, cosmetics and chemicals.

General observations on tariff elimination/reduction:

- EU and Japan have agreed to liberalize almost all their bilateral trade (i.e. ca. 95–99%) on the basis of tariff lines and imports. That is, Japan eliminates 86 % of tariff lines on EU goods on entry into force and 97 % of tariff lines within 15 years. The EU will liberalise 96 % of tariff lines for Japanese goods on entry into force and 99 % of tariff lines by the end of the staging period.[4]
- Exceptions were made for rice and seaweed, which are excluded, but all other agriculture/food products are included
- It must be said that for some products there are relatively long (up to 15 years) transition periods

Observations on EU's tariff elimination/reduction:

- Transition period for many electric machineries 3 years but tariffs already very low, with the exceptions of certain monitors (up to 10 years)
- For most fish, 15 years transition and also on other food stuff relatively long transition periods
- Tariffs on leather goods/footwear will be eliminated within 10 years
- Tariffs on imports of motor vehicles and vehicle parts will go down to 0% after a transitional period of seven years

Observations on Japan's tariff elimination/reduction:

[3] See also: https://www.cesifo.org/DocDL/CESifo-Forum-2019-2-june.pdf
[4] https://bruegel.org/wp-content/uploads/2018/10/EXPO_STU2018603880_EN.pdf

- Japan immediately eliminates tariffs for EU producers in chemicals, textiles, apparel, metals, plastics and jewellery;
- Imports of leather goods/shoes will go down to 0% only after 10 years;
- Japan will apply similar long or even longer transition periods for food/agriculture goods such as wood (7 years), chocolate, confectionery, pasta, pork (10 years), cheese and beef (15 years). Only the import of European wine into Japan was made duty-free immediately upon the agreement's entering into force.

Non-Tariff Barriers (NTBs)

NTBs are covered in Chapter 7 of the Agreement. Most significantly, Japan is aligning itself with international standards on:

- medical devices (Quality Management Systems);
- textile labelling (ISO8 international care labelling);
- motor vehicles (UNECE9 international vehicle regulations), which means it will eliminate all legal barriers to market access in the sector and recognize European test procedures and product standards, as well as cooperate with Europe in setting international motor vehicle standards in the future;
- and pharmaceuticals (ICH10).

In addition, Japan will simplify approval and clearance procedures for sanitary and phytosanitary (SPS) and will allow several food supplements, while also agreeing on no longer treating imported beer from Europe as an alcoholic soft drink for tax and regulatory purposes.

This is a significant regulatory shift for Japan, which will promote EU exports by reducing the financial and administrative burden for firms, arising from dual testing and complex conformity assessment procedures. It is important to note that provisions in the agreement allows the EU to reintroduce tariffs on cars if Japan reneges on its commitments on NTBs.

Services

In the services chapter (chapter 8), both parties agreed on a rational, transparent, non-discriminatory regulation that would improve mutual market access and limit regulatory discrimination but would not override national regulatory sovereignty. Concrete agreements were reached in the areas of:

- telecommunications;
- financial services;
- insurance;
- and postal and courier services.

Notably, both sides allow not just service providers and corporate transferees to enter each other's' markets, but also their spouses and children to accompany them (mode 4). This is a far-reaching provision.

Various areas were, however, explicitly excluded from the agreement:

- public services;
- audio-visual services;
- maritime cabotage,
- parts of air transport

Finally, in the field of e-commerce, both sides were able to largely agree on uniform standards but could not bridge the differences in data protection (see also next section on "Investment").

Investment

The agreement also contains provisions to promote and facilitate bilateral investment (Chapter 8) and, as no prior investment agreement existed between any of the EU Member States and Japan, the investment provisions are expected to "play an important role in establishing a fair and predictable investment climate between the partners."[5]

[5] https://bruegel.org/wp-content/uploads/2018/10/EXPO_STU2018603880_EN.pdf

However, one of the factors which contributed to reaching an agreement between the EU and Japan is that the EPA did not include investment protection standards, and their negotiations take place outside the framework of the EPA.[6] If the EU and Japan had pressed to include investment protection in the deal, this would have caused a non-agreement due to how important this aspect is to both parties. Both parties suggested different mechanisms: the EU pushed for an investment court system (ICS), which is open to receive disputes,[7] while Japan preferred a traditional "investor-state dispute settlement" mechanism through binding arbitration.[8]

In the end, a special Committee on Trade in Services, Investment Liberalization, and Electronic Commerce was set up (see Art. 8.4 in the Agreement).

Public procurement

The provisions on Public Procurement go further than commitments by the EU and Japan in the WTO's Government Procurement Agreement (GPA). That is, both parties commit to transparent, electronically supported tender texts, mutual recognition of test results and selection criteria, and a further opening of procurement markets through the inclusion of hospitals, universities, and all municipalities with more than 300,000 inhabitants. In the construction industry, Japan has assured a fair tendering practice. The national railway procurement markets are to be opened up on both sides. The privatized railway companies of Japan are explicitly included. Japan's Operation Safety Clause, whose deliberately broad interpretation regularly led to European tenders not being considered, is to be lifted one year after the agreement enters into force.[9]

Non-trade issues (NTIs)

Another noteworthy element of the Agreement is the chapter on Sustainable Development (Chapter 16). From the 2002 European Commission Communication underlining the contribution of trade policy to sustainable development, through to its more recent "Trade

[6] https://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-eu-japan-epa
[7] https://www.hoganlovellsbrexit.com/blog/eu-japan-economic-partnership-agreement
[8] https://www.thenewfederalist.eu/essay-the-success-of-the-eu-japan-epa-negotiations?lang=fr
[9] https://www.cesifo.org/DocDL/CESifo-Forum-2019-2-june.pdf

for All' strategy, the EU has sought to combine market opening with sustainable development and trade objectives for quite a while now. In light of this, the EU has indicated that ratification of future trade agreements will be contingent on partners adhering to the Paris Climate Accord, with the EU Japan EPA being the first to incorporate such a requirement.

Yet, chapter 16 does preserves parties' right to regulate and determine their own domestic policies to protect human, animal and plant health. The chapter calls for upholding existing standards for protecting consumers, labour rights and the environment while preventing the parties from waiving these protections in order to promote trade and investment. In the case of labour standards, the Agreement contains obligations for parties to make sustained efforts to ratify fundamental ILO conventions. Japan has ratified six of the eight fundamental conventions and hence must make progress on ratification of the remaining two, which concern the abolition of forced labour (C105) and discrimination in employment and occupation (C111).[10]

MFN provisions

The EU-Japan EPA includes MFN provisions in both goods and services.

The MFN in goods is covered in Art 2.8.4 and applies to certain goods where tariff reduction is incomplete/phased in. MFN may apply if the parties grant quicker/larger tariff reduction to a third party. The agreement states the following:

> "Where a Party reduces its most-favoured-nation applied rate of customs duty, that duty rate shall apply to an originating good of the other Party if, and for as long as, it is lower than the customs duty rate on the same good calculated in accordance with Annex 2-A."

With respect to services and investment, the EU has included MFN provisions in most of its recent trade agreements. These provisions commit both parties to granting the other party any more favourable treatment accorded to a third country, irrespective of whether this is

[10] https://bruegel.org/wp-content/uploads/2018/10/EXPO_STU2018603880_EN.pdf

done through a trade agreement or not. EU's trade agreements with Canada, South Korea and Japan all contain such MFN clauses and are therefore the most far reaching EU agreements when it comes to MFN in services.

In the EU-Japan EPA, MFN is included in the following ways:

- Mode 1 (Cross border trade in services) – covered in art 8.17
- Mode 2 (Consumption of services abroad) – covered in art 8.17
- Mode 3 (Commercial presence) – covered in art 8.9
- Mode 4 (Presence of natural persons) – covered in art 8.24 and incorporates MFN provisions from art 8.17 and 8.24

The implications for the UK are significant. Not so much in trade in goods because the EU-Japan EPA already liberalises close to 100% of tariffs on goods, so Japan can't give the UK a much better deal than the EU. However, when it comes to services, Japan's hands are tied. That is, the MFN clauses in the agreement with the EU prohibit Japan from granting any better treatment to the UK than has already been granted to the EU. If they would give the UK a more favourable deal, they would be required to extend the same concessions to the EU, an economy six times the size of the UK without getting anything in return. This is almost certainly out of the question for Japan.[11] There are some exceptions, which I outline below in the next section.

Could the EU-Japan EPA be enhanced/ improved to benefit businesses and specific sectors in Wales?

In order to assess the importance of a UK-Japan free trade agreement and whether the EU-Japan EPA could be enhanced/improved, it is useful to look at some trade figures. In 2018, total UK exports to Japan were $8,4bn making it the UK's 15th largest export destination (with 1.72% of all UK exports going to Japan). In terms of imports, in 2018 UK imported $12.9bn from Japan (or 1.93% of all imports), making it the UKs 13th most important importer. The UK runs a trade deficit of $4.5bn with Japan.

[11] For a further discussion see: https://blogs.sussex.ac.uk/uktpo/publications/most-favoured-nation-clauses-in-eu-trade-agreements-one-more-hurdle-for-uk-negotiators/

UK's top 15 export partners, and UK imports to those countries (2018)

Partner	Export ($)	Export (%)	Import ($)	Import (%)	Balance
United States	$65,314,679,369	13.40%	$63,254,031,855	9.45%	$2,060,647,514
Germany	$46,747,014,385	9.60%	$91,572,791,790	13.70%	-$44,825,777,405
Netherlands	$33,141,747,062	6.80%	$55,191,792,154	8.24%	-$22,050,045,092
France	$31,893,335,257	6.55%	$37,684,580,890	5.63%	-$5,791,245,633
Ireland	$28,189,852,970	5.79%	$18,782,081,311	2.80%	$9,407,771,659
China	$27,701,127,815	5.69%	$63,377,249,212	9.46%	-$35,676,121,397
Switzerland	$25,595,567,707	5.26%	$7,408,327,492	1.11%	$18,187,240,215
Belgium	$18,948,870,157	3.89%	$34,648,283,261	5.17%	-$15,699,413,104
Italy	$13,960,746,895	2.87%	$26,547,720,582	3.96%	-$12,586,973,687
Spain	$13,933,328,007	2.86%	$21,071,045,073	3.15%	-$7,137,717,066
Turkey	$13,672,463,759	2.81%	$11,543,920,899	1.72%	$2,128,542,860
Hong Kong	$10,302,330,407	2.12%	$2,455,292,416	0.37%	$7,847,037,991
UAE	$10,102,093,053	2.07%	$2,217,444,194	0.33%	$7,884,648,859
Japan	$8,394,471,904	1.72%	$12,914,918,761	1.93%	-$4,520,446,857

Source: UN Comtrade (2018)

Wales' trade figures show that that Wales exported £296mn worth of goods and services to Japan, up from £177mn in 2013, making Japan its 15th most important export destination.

Table 2: Wales exports to Japan (£m) 2013-2019

2013	177
2014	195
2015	158
2016	282
2017	199
2018	250
2019	296

Source: data obtained from https://statswales.gov.wales/Catalogue/Business-Economy-and-Labour-Market/Businesses/Exports/welshexports-by-quarter-destination

Although Japan is not in the top 10 of the UK's (and Wales) most important trading partners, it is one of its most important investors. With more than 1,000 Japanese companies operating in the UK, employing nearly 100,000 people (up since June 2016) — Japan is a crucial contributor to the UK economy. In fact, with a value of more than £60bn, Japan is the second-largest non-EU investor in the UK.[12] The figures for Wales are even more impressive: Japan is the third-highest provider of FDI, on par with France and Germany.[13]

In terms of where the UK can improve the EU-Japan EPA, it is important to state that in almost all areas it's highly unlikely that the UK will improve on the EU-Japan EPA. If improvement is possible, it will be mainly in the area of investments and trade in services. That is the, the EU agreement with Japan produced most gains for manufacturing sectors, as well as agriculture and fishery, and fewer gains for the services and investment-oriented UK economy. Although there is the issue of MFN provisions (see above), the agreement could be improved from a UK/Wales perspective in those sectors/areas that are not included in the agreement, as they fall outside MFN. This is definitely the case for E-commerce (where there are outstanding issues related to EU data protection laws) and some part of the services industries. To be sure, E-commerce is included in the EU-Japan agreement but covers only certain areas (see chapter 8, section F, articles 8.72 and further) and in the areas that are not covered the UK could potentially get a better deal. Having said this, the EU and Japan have agreed to continue their negotiations on this and other issues, as part of the "Committee on Trade in Services, Investment Liberalization, and Electronic Commerce," so this could change in the foreseeable future. As part of these negotiations, the EU and Japan are also engaged in further negotiations on investment protection standards and the adoption of an Investment Court System (ICS). The latter is preferred by the EU, in response to criticism on ISDS, while the Japanese govt prefers standard ISDS. I think the ICS is an interesting idea, but the UK/Wales could opt for standard ISDS, which would make it easier to reach agreement on this issue with Japan than the EU.

[12] https://www.cityam.com/why-the-uk-should-upgrade-the-eu-trade-deal-with-japan/
[13] https://tradeandinvest.wales/wales-and-japan-overview

A final remark about the future EU-UK trade deal is in order. That is, without a far-reaching free trade agreement between the UK and the EU, most Japanese firms (and hence Japanese negotiators) will not care too much about any UK-Japan trade agreement. Japanese companies have already started to 'vote with their feet' – e.g. Nissan cancelled planned investments into its UK production facilities, and Sony and Panasonic are moving their European headquarters to the Netherlands – [14] and this is likely to continue unless the EU and the UK sign a trade agreement that is as close as possible to the current arrangement.

[14] https://blogs.lse.ac.uk/brexit/2019/03/22/why-the-eu-japan-trade-deal-matters-for-brexit/

Mae cyfyngiadau ar y ddogfen hon

Table of Contents

1. Introduction

This research briefing provides an impartial assessment and summary in a research briefing on key issues as to digital trade and data equivalences post-Brexit for the External Affairs Committee of Senedd Cymru primarily from a legal perspective.

The paper provides an overview of the concept of Digital Trade, of key negotiation objectives of the UK, EU and US as to Digital Trade, of best practice Digital Trade provisions in trade agreements, issues relating to data flows and equivalences and the parameters of how they relate to the digital economy of Wales. A summary of conclusions follows thereafter.

The paper is based on materials published and available on 20 April 2020 only.

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20 April, 2020

1.1 Overview: No universal formula for data or e-commerce in international economic law

Digital trade and the digital economy are universally agreed to be the key elements of the successful development of the future economy. While data and digital information may have joined 'oil, tanks and money' as the key currency of international affairs,[1] from a legal perspective the complex place of data presents a challenge. There is no universal formula for data issues in a trade agreement, which may cross-cut everything from cybersecurity, intellectual property, transparency to frictionless movement of tech workers. It is also complex to capture digital services in statistics as to their precise importance to the economy, because of the difficulty of defining digital services and business. Nonetheless, it is a truth universally acknowledged that every ambitious twenty-first century trade agreement is in want of a holistic and robust chapter on electronic commerce (e-commerce mainly hereafter).[2] Governments and organisations are learning how to engage in this complex new field. Whereas most Regional Trade Agreements (RTAs) treat e-commerce as its own standalone chapter, outside of the EU, only a few embed e-commerce provisions as part of a broader chapter. Yet, tech sectors are predominantly services-based sectors and increasingly perceive FTAs to be ineffective for their needs.

No World Trade Organisation (WTO) member classified as a developing country by the United Nations or a low-income country by the World Bank has agreed an RTA with an e-commerce chapter.[3] Historically, not even advanced economies have sought a broad e-commerce chapter.[4] Certain country agreements have been uniquely consistent across their respective provisions relating to data e.g. South Korea e-commerce chapters as to consumer protection, paperless trading and data protection.

The EU has tended to conclude RTAs with a chapter dedicated to Trade in Services Establishment and Electronic Commerce. It has historically adopted a somewhat inconsistent approach to e-commerce, which it tends to merge with Trade in services, establishment and electronic commerce i.e. rather than giving e-commerce (or indeed digital trade) a standalone chapter. In more contemporary agreements such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA), a standalone e-commerce chapter is found. By contrast, the EU-Japan Economic Partnership Agreement (EPA) has a broad chapter that covers trade in services, investment liberalisation and e-commerce.

The latest US-China Phase One Trade Agreement does not address emerging issues such as privacy protection and data regulation relating to digital trade, despite the significance of US-Sino relations for ICT and tech issues. National security issues relating to Huawei and the sales of 5G equipment are also left unaddressed by the agreement. There are thus striking inconsistencies even across some of the largest scale trade agreements as to how to formulate digital trade.

The transformations of the Internet have also been associated with new measures that inhibit digital trade, such as, 'data localisation' measures, e.g. requiring localisation of data servers and providers, local content policies, or discrimination against digital services or providers not locally based, to gain jurisdictional control. However, there are important regulatory gaps emerging as to such issues.

Against the backdrop of pre-Internet WTO law, many of these disruptive changes have demanded regulatory solutions outside the multilateral trade forum and States around the world have used in particular the venue of Preferential Trade Agreements (PTAs) to fill in the gaps of the WTO framework.[5] As a result, the framework that now regulates contemporary digital trade is not coherent and is highly fragmented.

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[1] Henry Farrell and Abraham Newman, *Of Privacy and Power* (Princeton University Press, 2019) 173.
[2] Richard Wolfe, 'Learning about Digital Trade: Privacy and E-Commerce in CETA and TPP' (2019) 18(S1) *World Trade Review* S63-S84.
[3] Mark Wu, 'Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral Trade System" RTA Exchange (International Centre for Trade and Sustainable Development and Inter-American Development Bank', (2017) available at <https://perma.cc/KHM9-33U> accessed on 20 April 2020.
[4] Ibid 8.
[5] Mira Burri, Rodrigo Polanco, 'Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset' (2020) 23 *Journal of International Economic Law* 187–220. Henry Gao, 'The Regulation of Digital Trade in the TPP: Trade Rules for the Digital Age' in Julien Chaisse, Henry Gao and Chang-fa Lo (eds.), *Paradigm Shift in International Economic Law Rule-Making* (Springer, 2017) 345.

1.2 No settled definition of Digital Trade

There is no settled definition of 'digital trade' or 'electronic commerce', and so characterisations differ greatly.[6] Digital trade is said to be understood in two fashions—narrow and broad. As to the narrow understanding: digital trade is equated to commerce in products and services delivered via the Internet. The second fashion is much broader and relates to enabling innovation and the free flow of information in the digital networked environment. This distinction is far from academic and has profound policy implications. For instance, in WTO negotiations, China has promoted a narrow view of digital trade, focussing upon trade in goods online, while the US and others have subscribed for a more inclusive approach. The US approach tends to focus more on the 'digital' nature of digital trade, while the Chinese approach prefers to address the issue from the traditional 'trade' perspective.

Later US FTAs started to include more comprehensive rules on e-commerce. Structurally, e-commerce was elevated from a small number of articles in other chapters into a stand-alone chapter. Substantively, e-commerce disciplines also expand from passive non-interference obligations into more positive requirements that spell out what the government needs to do for e-commerce businesses. This new model of e-commerce obligations started out in the 2004 FTAs the US signed with Australia, Chile, and Singapore, respectively, and culminated in the Trans-Pacific Partnership (TPP) that was concluded in 2016. While the Trump Administration withdrew from the TPP, the e-commerce chapter was heavily influenced by the US and has been incorporated into the new Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that the remaining 11 TPP-members signed in March 2018. The "digital trade" provisions in the United States-Mexico-Canada Agreement (USMCA) largely follow TPP's model. However, the USMCA deviates from TPP in its framing. While TPP used "electronic commerce" as an umbrella term, in line with WTO terminology, USMCA has shifted toward "digital trade," which avoids some of the confusion caused by the colloquial use of "e-commerce" for online shopping.[7] It is reasonable to expect that similar provisions will be reflected in future US FTAs.

1.3 No settled definition of Electronic Commerce

There is no settled definition of electronic commerce or e-commerce. At its broadest, electronic commerce involves conducting business using most modern communication instruments: telephone, fax, television, electronic payment and money transfer systems, Electronic Data Interchange, and the Internet. The WTO recognizes that commercial transactions can be broken into three stages: the advertising and searching stage, the ordering and payment stage, and the delivery stage.

In early 2016, e-commerce gained 'renewed interests' among WTO Members, where seven proposals were tabled by major WTO Members such as the US, the EU, Japan and Brazil. The US proposal appeared to be encouraged by its success in the Trade in Services Agreement (TiSA) and TPP negotiations. Electronic commerce has wound its way into both a WTO Ministerial Decision and a Joint Ministerial Statement, but also became the subject of a joint initiative by the WTO, the World Economic Forum, and the Electronic World Trade Platform (eWTP), the first of its kind in the WTO. With these signs, e-commerce was set to become one of the first Doha issues to bear fruit. Currently, however, the negotiations on a plurilateral agreement on e-commerce kicked off in 2019 covering a range of rules on digital trade are currently stalled. The negotiations have been structured around 8 focus groups, 'enabling digital trade / e-commerce', 'openness and digital trade/ e-commerce', trust, cross-cutting issues and telecommunications.

However, due to the divergence of views among the WTO membership, efforts to revamp the rules in the WTO have largely failed. Given the lack of progress in the WTO, the US, as the champion of digital

[6] Andrew D Mitchell, 'Towards Compatibility: The Future of Electronic Commerce within the Global Trading System' (2001) 4 *Journal of International Economic Law* 4 685–686.
[7] Thomas Streinz, 'Digital Megaregulation Uncontested? TPP's Model for the Global Digital Economy in Benedict Kingsbury, David M. Malone, Paul Mertenskötter, Richard B. Stewart, Thomas Streinz and Atsushi Sunami (eds.) *Megaregulation Contested* (OUP 2019) 312-342, 317.

trade, had turned to various bilateral, plurilateral, and regional initiatives to push for the internationalisation of digital trade rules which are based on the regulatory philosophy and approach in the US to tackle trade barriers facing the US companies. Meanwhile, although initially reluctant to engage, China has also become more willing in negotiating e-commerce rules in its recent FTAs. A 1998 WTO moratorium on import duties on e-commerce transmissions is due to lapse in Summer 2020, with concerns from developing countries as to lost government revenue where trade becomes less goods-intensive and more digital.

1.4 Complex emerging relationship of RTAs with data protection and data privacy

While approximately 80 or more RTAs include provisions on privacy, in the most large-scale formulation of trade agreements, such as the CPTPP and USMCA, data has been overlooked as to its precise relationship to privacy. For example, USMCA has a chapter (Ch. 19) on digital trade and not e-commerce unlike CPTPP (Ch. 14) and so distinct differences between two major agreements exist as to international privacy regimes cited, data localisation, interactive computer services and so on. It is thus not clear what precise implications these agreements have for the prevention of algorithmic bias, protection of critical infrastructure or the protection of national security as between the agreements, which appears a missed opportunity and concern, given their scale.[8] One of the most progressive of EU trade deals, the EU-Canada Comprehensive Economic and Trade Agreement (CETA), has numerous provisions cross-cutting data yet without regulating its flow or positively providing protections to personal data.[9] By contrast, data protection provisions feature in the EU-Japan EPA and more recent iterations of the EU's digital trade chapters, e.g. draft provisions of the EU-Mexico Modernised Global Agreement, Digital Trade Chapter, Art. XX. The EU-Japan EPA is discussed above in Section 3.

[8] See Patrick Le Blond, 'Digital Trade at the WTO- The CPTPP and CUSMA Pose Challenges to Canadian Data Regulation' CIGI Papers No. 227 — October 2019 available at <https://www.cigionline.org/sites/default/files/documents/no.227.pdf> accessed on 20 April 2020. Elaine Fahey and Isabella Mancini, 'The EU as an Intentional or Accidental Convergence Actor? Learning From the EU-Japan Data Adequacy Negotiations,' (2020) 7 *International Trade Law and Regulation* forthcoming.

[9] Instead, data protection either falls under the exceptions (see 28.3(2)(c)(ii) Comprehensive Economic Trade Agreement (CETA) or becomes an object for which the Parties shall "maintain or adopt" (Article 16.4 CETA) or measures or "adequate safeguards" (Article 13.15 CETA) to ensure its protection.

2. Negotiation objectives of UK on Digital Trade with key negotiation partners

It is useful to outline the current state of negotiation objectives as to Digital Trade with two of the UK's most significant trade negotiation partners, namely the EU and US. However, at the time of writing, the objectives are mostly published in short-form in the absence of legal text (with the exception of the EU).

2.1 The UK Government objectives to the UK-EU partnership negotiations and Digital Trade

The UK Government, 'The Future Relationship with the EU: The UK's Approach to Negotiations' February 2020 outlined its objectives as to the UK-EU future relationship negotiations as to digital trade as follows:[10]

'Chapter 17: Digital Trade:

> 56. The Agreement should promote trade in digital services and facilitate modern forms of trade in both services and goods and in both new, technology-intensive businesses and traditional industries.
>
> 57. The Agreement should include commitments on market access and regulatory governance of digital trade. Commitments on market access should minimise barriers to the supply of digital services provided from the territory of a party into the territory of the other party and will provide a clear and predictable basis upon which business can invest. This should lock in regulatory certainty, while preserving the UK's regulatory autonomy.
>
> 58. The Agreement should include provisions to promote an open, secure and trustworthy online environment; encourage regulatory cooperation and a strategic dialogue on emerging technologies; and stimulate e-commerce through measures that facilitate the cross-border flow of data. Elements of this could draw upon international best practice and ongoing negotiations, for example negotiations on the WTO's Joint Statement Initiative on E-Commerce.
>
> 59. Digital is a growing, dynamic sector. Reflecting this, the digital provisions in recent EU Free Trade Agreements have been evolving. The provisions on digital trade in the Agreement could, in specific areas, go beyond those precedents to reflect the direction of travel in current digital trade negotiations. For example, provisions on electronic authentication have continued to evolve as part of EU Free Trade Agreement negotiations with Australia and Mexico and at the WTO, and this should be reflected in the Agreement'.

Although brief, the objectives outlined appear broad and modern and aligning well with the EU best practice to date on Digital Trade, although neither the Australia nor Mexico negotiations are complete and so they are possibly not the most optimal guides to best practice.

2.2 The EU negotiation mandate and proposed text on digital trade

The EU Negotiation Directives for the future EU-UK partnership provide as follows:[11]

'5. Digital Trade

> 47. In the context of the increasing digitalisation of trade covering both services and goods the envisaged partnership should include provisions aiming at facilitating digital trade, addressing unjustified barriers to trade by electronic means, and ensuring an open, secure and trustworthy online environment for businesses and consumers, such as on electronic trust and authentication services or on not requiring prior authorisation solely on the grounds that the service is provided by electronic means. They should also provide for consumer protection in the online environment and on unsolicited direct marketing communication. These provisions should address data flows subject to exceptions for legitimate public policy objectives, while not affecting the Union's personal data protection rules.

[10] The UK Government, 'The Future Relationship with the EU: The UK's Approach to Negotiations' (3 February 2020) available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf> accessed on 20 April 2020.

[11] 'Annex to Council Decision Authorising the Opening of Negotiations with the United Kingdom of Great Britain and Northern Ireland for a New Partnership Agreement' Brussels (25 February 2020) (OR. en) 5870/20 ADD 1 REV 3 UK 3.

> 48. The envisaged partnership should provide for cooperation in multilateral and multistakeholder fora in areas of mutual interest, and establish a dialogue to exchange information, experience and best practice relating to emerging technologies.'

2.3 Draft EU treaty text proposal March 2020

In the draft EU text of a treaty published in 18 March 2020, there are three chapters to the draft text published on Digital Trade set out in Title VIII.[12] The EU proposal contains general provisions in Ch. I, cross-border data flows, including location prohibitions, provisions on the protection of personal data are provided for in Ch. II and specific provisions on e-commerce are set out in Ch. III. These include provisions on customs duties on electronic transmissions, prohibitions on prior authorisation of services because of online provision, provisions on the conclusion of contracts by electronic means, electronic authentication and electronic trust services, provisions on the transfer or access to source code of software, online consumer trust, unsolicited direct marketing communications and regulatory cooperation provisions.

The provisions are broadly similar to the EU-Australia FTA negotiation texts chapter on Digital Trade of 2018 and thus aligning with the UK objectives. The provisions are highly 'contemporary' and sit well with the relatively ambitious EU and UK negotiation objectives but beyond this are difficult to evaluate further at this point in time. They are arguably better understood by considering the essential elements of digital trade and contemporary examples of best practice trade agreements, considered in Section 3 below.

2.4 UK negotiations with US Digital Trade objectives

The UK has published in early March its trade negotiation objectives with the US, which are as follows to:[13]

> '-Secure cutting-edge provisions which maximise opportunities for digital trade across all sectors of the economy.
> -Include provisions that facilitate the free flow of data, whilst ensuring that the UK's high standards of personal data protection are maintained, and include provisions to prevent unjustified data localisation requirements.
> -Promote appropriate protections for consumers online and ensure the Government maintains its ability to protect users from emerging online harms.
> -Support the reduction or abolition of business and consumer restrictions relating to access to the US digital market.
> -Ensure customs duties are not imposed on electronic transmissions.
> -Promote a world-leading eco-system for digital trade that supports businesses of all sizes, across the UK…'

2.5 The US Trade Representative (USTR) negotiations with the UK and Digital Trade

The US Trade Representative (USTR) has outlined a key place for digital trade in their negotiation objectives and Digital Trade appears to be a significant issue on the agenda throughout the 6 rounds of negotiations at the time of writing:[14]

> 'A new U.S.-UK trade agreement could address [global] challenges, as well as provide an opportunity to develop new approaches to emerging trade areas where the United States and

[12] 'Draft text of the Agreement on the New Partnership with the United Kingdom' (18 March 2020) available at <https://ec.europa.eu/info/publications/draft-text-agreement-new-partnership-united-kingdom_en> accessed on 20 April 2020.
[13] Department of International Trade, 'The UK's approach to trade negotiations with the US: UK-US Free Trade Agreement' (2 March 2020) available at <https://www.gov.uk/government/publications/the-uks-approach-to-trade-negotiations-with-the-us> accessed on 20 April 2020.
[14] USTR United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives (February 2019) available at <https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf> accessed on 20 April 2020.

> the UK share common interests and are global leaders, such as digital trade and financial services…'
>
> '…Digital Trade in Goods and Services and Cross-Border Data Flows:
> - Secure commitments not to impose customs duties on digital products (e.g., software, music, video, e-books).
> - Ensure non-discriminatory treatment of digital products transmitted electronically and guarantee that these products will not face government
> -sanctioned discrimination based on the nationality or territory in which the product is produced.
> - Establish state-of-the-art rules to ensure that the UK does not impose measures that restrict cross-border data flows and does not require the use or installation of local computing facilities.
> - Establish rules to prevent governments from mandating the disclosure of computer source code or algorithms.
> - Establish rules that limit non-IPR civil liability of online platforms for third-party content, subject to the Parties' rights to adopt non-discriminatory measures for legitimate public policy objectives or that are necessary to protect public morals….
>
> Intellectual Property
>
> …-Provide strong protection and enforcement for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property, including in a manner that facilitates legitimate digital trade, including, but not limited to, technological protection measures…'

The negotiation objectives of the UK and US appear heavily centred upon the importance of Digital Trade and reflect considerable support from stakeholders and participants.[15] Nonetheless, significant gaps between the EU and US approaches exist as to the balance of regulating data/ Digital Trade so that it respects privacy and leaving room for innovation. The place of the GDPR and Privacy Shield is likely to continue to prove to be vulnerable as between the two negotiations and force the UK to make starker policy choices as to the economy, privacy and data flows. Transatlantic data flows are discussed below in Section 4.

[15] Cf Heather A. Conley, Allie Renison, Kati Suominen 'US-UK Digital Policy Roadmap for the Future' CSIS/ IoD (November 2019) available at <https://csis-prod.s3.amazonaws.com/s3fs-public/publication/191126__US-UKDigitalTrade_WEB_v2.pdf> accessed on 20 April 2020.

3. Focussing upon good practice: EU-Japan EPA Digital Trade Provisions

3.1 Overview

As stated above, while many new generation trade agreements have provisions on digital trade, they are neither consistent, coherent nor cohesive. New datasets on digital trade provisions of all new preferential trade agreements are revealing, whereby several trade agreements with e-commerce chapters (47 treaties) include provisions to promote and facilitate e-commerce yet which vary considerably.[16] The EU's recent Economic Partnership Agreement (EPA) with Japan a useful study of best contemporary modern practice in next generation trade agreements with a developed economy. Key provisions of the EPA (in Ch. 8 thereof) are outlined here by way of example.[17]

3.2 Sample Provisions

Promotion and facilitation of e-commence

- Several agreements explicitly agree to promote the development of electronic commerce only between the parties, or its wider global use or development and the EU-Japan EPA is notable as to the formulation of the latter: the EU-Japan EPA, Art. 8.70.

- The EPA includes specific commitments on domestic regulation, meaning that each party shall ensure that all its measures of general application affecting electronic commerce are administered in a reasonable, objective, and impartial manner. This is accompanied by a best effort commitment not to impose prior authorization or any other requirement having equivalent effect on the provision of services by electronic means: the EU-Japan EPA, Arts 8.74, 8.75 and 8.76.

Legal effect, validity enforceability of contracts

- The EPA includes provisions that parties shall not adopt or maintain measures regulating electronic transactions that deny the legal effect, validity or enforceability of a contract, solely on the grounds that it is concluded by electronic means; or otherwise create obstacles to the use of contracts concluded by electronic promotion: the EU-Japan EPA, Arts 8.74, 8.75 and 8.76.

Specificity of commitments

- While some agreements aim to 'facilitate trade in digital products' or through 'electronic means or technologies', and to improve the effectiveness and efficiency of electronic commerce, or consider e-commerce facilitation as part of general common cooperation activities, other agreements have more concrete obligations- such as the EU-Japan EPA.

Legal signatures

- The EPA has provisions which aim to prevent the denial of the legal validity of a signature solely on the basis that the signature is in electronic form, following the framework of the United Nations Convention on the Use of Electronic Communications in International Contracts: EU-Japan EPA, Art. 8.77.3.

Regulatory cooperation

- The EPA has important cooperation commitments that are understood to be best practice e.g. to 'maintain a dialogue' on regulatory issues such as the facilitation of cross-border certification services and which thus seek to institutionalise cooperation as between the parties: the EU-Japan EPA, Art. 8.80.2(d).

[16] Mira Burri and Rodrigo Polanco, 'Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset' (2020) 23 *Journal of International Economic Law* 187–220.

[17] 'Agreement between the European Union and Japan for an Economic Partnership' (27 December 2018) OJ L 330/3 3–899; Council Decision (EU) 2018/1197 'On the Signing, on Behalf of the European Union, and Provisional Application of the Strategic Partnership Agreement between the European Union and its Member States, of the one Part, and Japan, of the other Part' (24 August 2018) OJ L 216/1 1-3; 'Strategic Partnership Agreement between the European Union and its Member States, of the one Part, and Japan, of the other Part' (24 August 2018) OJ L 216/4, 4-22.

Personal data

- While some agreements merely recognize the protection of personal information in different ways as to processing and dissemination of data, records and accounts and so on or that it should be protected, in several treaties parties specifically commit to adopt or maintain legislation or regulations that protect the personal pursue remedies and how businesses can comply with any: the EU-Japan EPA Art. 8.81.

Future flows of data

- The agreement reassesses within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement: the EU-Japan EPA Art. 8.81.

Non-imposition of customs duties on electronic transmissions

- The agreement prohibits customs duties on electronic transmissions: the EU-Japan EPA Art. 8.72.

4. Data Flows, Equivalence and Adequacy Decisions

4.1 Data Flows

Data is an increasingly multifaceted concept that is bound up with trade and commercial matters as much as security and law enforcement issues, as the global issues relating to Huawei 5G indicate. This renders combined attention to trade and security, particularly law enforcement issues, essential. Increased digitalisation of information, the rising power of private companies delimiting access to that information and the cross-border nature of investigations involving digital evidence have changed our understanding of access to data and jurisdictional limits on access.[18] The place of the EU as a first-mover internationally on best practice in data protection and data flows on account of the high standards of the General Data Protection Regulation (GDPR) will be unavoidably significant for the UK going forward. A European Strategy for Data was published in February 2020 designed to develop a Single Market in Data by 2025 and a Common European Data Space, focussing upon tackling inter alia fragmentation between Members States in 9 areas, ranging from industrial manufacturing to health, financial, energy, and agricultural data,[19] which was accompanied by a significant White Paper on Artificial Intelligence.[20] It will become significant how the UK engages aligns, communicates or regulates with these developments.

4.2 Adequacy Decisions and Partial Adequacy Decisions

EU regimes on data equivalences are highly instructive and also critical for the UK going forward. The EU now has data transfer regimes and flows with third countries which count as some of the largest in the globe (e.g. EU-US Privacy Shield, 2016 covering over one billion citizens, EU-Japan Data Adequacy Decision, 2018, relating to the world's largest safe data flow area between the EU and Japan). These safe flows are principally achieved through an Adequacy Decision. An Adequacy Decision is the EU's primary way of facilitating the free flow of personal data from the EU to third countries for general and commercial purposes. While the level of protection in the third country must be 'essentially equivalent' to that guaranteed by EU law, the means may differ from that employed within the EU. The European Commission has the power to determine, on the basis of article 45 of Regulation (EU) 2016/679 (the GDPR) whether a country outside the EU offers an adequate level of data protection and examines wider factors such as the country's judicial system, the rule of law and its national security policies and as a result, the overall system for data protection must be deemed 'essentially equivalent' to the EU's for a positive decision to be made, it is periodically reviewed by the European Commission and it can be revoked at any time. While the European Commission has never revoked an adequacy decision following a review, the CJEU has. The concept of an 'adequate' level of protection has been significantly developed by the CJEU in Case C-263/14 *Schrems v. Data Protection Commissioner* relating to arrangements with the US, where 'partial' Adequacy Decisions exist involving self-certification practices, similar to arrangements in place with Canada. These adequacy decisions do not cover data exchanges in the law enforcement sector which are governed by the 'Police Directive' (article 36 of Directive (EU) 2016/680).

While the UK Prime Minister has confirmed UK plans to diverge from the EU data protection standards in February 2020, the UK has also, after specific recommendation from Parliament, set out in detail recently the groundwork for an Adequacy Decision with the EU going forward.[21] In a detailed series of documents, they aim to ease negotiations and indicate that the UK has adequacy as a third country from the perspective of the standards applied by the European Commission. This shows the UK's intention

[18] Jennifer Daskal, 'Privacy and Security across Borders' (2019) *Yale Law Journal Forum* 1029-1051 available at <https://www.yalelawjournal.org/pdf/Daskal_v3q35qwf.pdf> accessed on 20 April 2020.
[19] Communication from The Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions 'A European Strategy for Data' COM (19 February 2020) 66 final (Brussels).
[20] European Commission, White Paper 'On Artificial Intelligence- A European Approach to Excellence and Trust' COM (19 February 2020) 65 final (Brussels).
[21] UK Government, 'Explanatory Framework for Adequacy Discussions' (12 March 2020) available at <https://www.gov.uk/government/publications/explanatory-framework-for-adequacy-discussions> accessed on 20 April 2020.

to protect data and digital trade to a high degree and to adhere to EU standards, practices and norms as far as possible as a third country, in particular, as to the GDPR. Under the GDPR, alternative legal vehicles for transfers of personal data include: Binding Corporate Rules, Standard Contractual Clauses and Approved Codes of Conduct, or certification. However, as the UK Government has noted, none of these alternatives are as wide-ranging as an adequacy decision and can also be costly and onerous for businesses, especially for small and medium sized enterprises (SMEs). An Adequacy Decision for the UK is, however, not a foregone conclusion. There is no timeline for such a decision, and it is not permanent. Significant concerns remain, as to the far-reaching provisions of the UK Investigatory Powers Act 2016 and CJEU litigation concerning the UK's surveillance practices.[22] There are considerable economic implications from the uncertainty affecting business concerned with the depth of alignment which will follow- whether it is before or after the transition period, the gaps arising in between and the costs to SMEs in particular are significant issues. A future UK-US Privacy Shield-equivalent also seems necessary and is championed by many. However, this may challenge the EU-UK-US relations, where insistence on lower data standards or weaker institutionalisation of data flows by the US could compromise the UK-EU relations. The capacity of the US to develop a GDPR equivalent is also a possibility mooted. Already, however, there are significant the UK-EU-US transatlantic differences emerging on exchange of electronic evidence e.g. the contradictions between the UK-US e-evidence agreement hastily concluded where the EU-US e-evidence agreements are still being negotiated to deal with the US CLOUD Act, concerning US law enforcement access to data located abroad, where considerable gaps and differences appear to have emerged.

There is much evidence of the support that SMEs increasingly require, given the economic impact of data regulation, where many services rely more and more on data.[23] It is important for the Senedd to continue to actively support the work of the Information Commissioner's Office (ICO) actions regionally within the UK e.g. as to the Codes of Conduct and Certification, which play a critical role in the operation of data flows, enforcement, compliance and to vigorously support local businesses in operating best practices as to data, irrespective of the regime in place.

[22] See Oliver Patel and Nathan Lea, 'EU-UK Data Flows, Brexit and No-Deal: Adequacy or Disarray?' (23 August 2019) available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3441698> accessed on 20 April 2020.
[23] Matthias Bauer, Martina F. Ferracane, Erik van der Marel, 'Tracing the Economic Impact of Regulations on the Free Flow of Data and Data Localization', GCIG Paper No. 30, Global Commission on Internet Governance Paper Series (10 May 2016), <https://www.cigionline.org/publications/tracing-economic-impact-regulations-free-flow-data-and-data-localization> accessed on 20 April 2020.

5. The Digital Economy and Wales

Wales will need to advocate Digital Trade provision that can address its broader underlying economic issues and to obtain a working definition of digital trade that aligns best with the needs of Wales. The broader economic, social or technical impact of trade agreements on devolved territories cannot be ignored because the differing economic profiles of territories within the UK means that it is not beyond the realm of possibility that the negotiation of a trade agreement that creates broad economic benefits for the UK as a whole may lead to losses in certain devolved regions.[24]

In 'Delivering a Digital Wales: The Welsh Government's Outline Framework for Action December' 2010, The Welsh Government identified 'the digital economy as a key element in Economic Renewal: a new direction and as critical enabler in the rural economy.'[25] In Wales 4.0 Delivering Economic Transformation for a Better Future of Work: Review of Digital Innovation for the Economy and the Future of Work in Wales (September 2019), the Welsh Government stated that it:

> '… should set an ambitious vision for Wales 4.0 in response to the challenges and opportunities posed by the fourth industrial revolution … This vision should be informed by commencing a national conversation with citizens on the future of work and the economy in Wales …[on] digital innovation (including … AI).'[26]

However, despite these policy statements and commitments, the Welsh Economy Research Unit Digital Maturity Survey for Wales 2019 paints a mixed picture of the preparedness of business as to digitalisation. It stated that:

> 'Although the overall picture is one of businesses increasingly adopting and using digital technologies in Wales … the transition towards digitalisation is likely to be bumpy when viewed at the regional level, with some indicators going up, while others going down…
>
> …Digitally disengaged 15% (12%) Passive Exploiters 38% (34%) Active Exploiters 31% (36%) Digitally Embedded 16% (18%) 'FIGURE 04' – Digital maturity groups in Wales, % of SMEs in 2019 (2018 in brackets)… Businesses tending to be standard broadband users, with a high proportion of employees with below average ICT skills.'[27]

Support for digital skills training in the regional workforce appears to be critical. There has been much evidence that the rapid growth in digital services in the UK has been fuelled by input from non-UK migrants, in particular EU nationals moving to the UK to fill high-skills jobs, long in advance of Brexit.[28] The specific needs of the region as to migration and employment will need to continue to be carefully delineated, relative to these issues.

More broadly, the regional place of Wales in the UK digital trade policy needs further careful examination. For instance, according to the Department of International Trade as it outlined the UK's approach to the US trade negotiations in early 2020:

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[24] Billy A. Melo Araujo 'UK post-Brexit Trade Agreements and Devolution' (2019) 39 *Legal Studies* 555-578, 559-560.
[25] Welsh Assembly Government, 'Delivering a Digital Wales: The Welsh Assembly Government's Outline Framework for Action' (December 2010) <https://gov.wales/sites/default/files/publications/2019-07/delivering-a-digital-wales.pdf> accessed on 20 April 2020, 17.
[26] Welsh Government, 'Wales 4.0 Delivering Economic Transformation for a Better Future of Work: Review of Digital Innovation for the Economy and the Future of Work in Wales' (September 2019) <https://gov.wales/sites/default/files/publications/2019-09/delivering-economic-transformation-for-a-better-future-of-work.pdf> accessed on 20 April 2020, 10.
[27] Welsh Economy Research Unit, 'Superfast Broadband Business Exploitation Project Digital Maturity Survey for Wales 2019' (7 February 2020) <https://www.cardiff.ac.uk/__data/assets/pdf_file/0008/1883591/DMS-Report-2019-0-4.pdf> accessed on 20 April 2020, 4, 42.
28 House of Lords European Union Committee 18th Report of Session 2016-2017: 'Brexit: Trade in Non-Financial Services' (22 March 2017) conclusions, para. 158 available at <https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/135/135.pdf> accessed on 20 April 2020.

> 'London and the South East will see benefits to the UK's dynamic and globally competitive professional business services, while agreements on digital trade and copyright frameworks will provide a boost for innovative UK tech firms.' [29]

Digital Trade as a policy field appears both historically and currently focussed upon a specific region of the UK, not Wales and this necessitates careful reflection about gains and losses from this strategic focus. On 19 March 2020, the Government published the Finance Bill 2020, which includes the final provisions of the UK's Digital Services Tax (DST). From 1 April 2020, the government will introduce a new 2% tax on the revenues of search engines, social media services and online marketplaces which derive value from the UK users. The precise effects of a UK digital services tax across the UK needs further exploration, also given possible US tariff measures if imposed.

Overall, Welsh policy ambitions will need to be carefully aligned to the specific challenges of UK Digital Trade policy- and also vice versa.

[29] Department of International Trade, 'The UK's Approach to Trade Negotiations with the US: UK-US Free Trade Agreement' (02 March 2020) containing 27 references to Digital Trade available at <https://www.gov.uk/government/publications/the-uks-approach-to-trade-negotiations-with-the-us> accessed on 20 April 2020.

6. Summary of Conclusions

- Digital Trade has no consistent formula in trade agreements. There is no settled definition of digital trade and there is no settled definition as to e-commerce
- Major trade agreements, however modern or large-scale, have a complex relationship with data privacy
- The negotiating objectives of the UK and EU appear broad, ambitious and represent best practice as to Digital Trade.
- The negotiation objectives of the UK and US priorities Digital Trade to a high degree but will likely face considerable hurdles in aligning the UK-EU arrangements with the UK-US arrangements as to standards, data privacy and data flows.
- The Digital Trade provisions of the EU-Japan Economic Partnership Agreement (EPA) are a good model of best practice in next generation trade agreements.
- The UK has shown firm intent thus far to acquire an Adequacy Decision from the EU and to maintain high data protection and data flow standards in line with EU law, although stark policy choices may soon become apparent as between the UK-EU and the UK-US negotiations.
- Policy-makers in Wales need to be cognisant about the costs of supporting SMEs effectively in implementing data regulation/ Digital Trade.
- Urgent attention is needed by policy-makers in Wales as to broader supports for the digital economy having regard to infrastructure, skills, training and employment needs.
- Policy-makers in Wales need to be cognisant about the definition of digital trade most optimal for Wales which align with the needs of its digital economy.

HOUSE OF LORDS

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David Rees MS
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9 June 2020

House of Lords inquiries on trade negotiations

Dear Mr Rees,

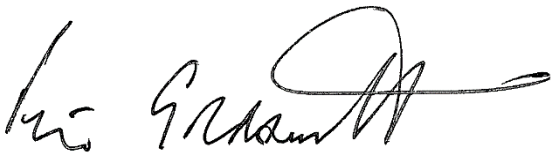
I am writing as the Chair of a new Lords Committee, the International Agreements Sub-Committee, which is currently part of the EU Select Committee 'family' within the Lords structure. Our remit is to scrutinise the UK Government's negotiation and conclusion of international agreements, including free trade agreements. This will include scrutinising concluded agreements under the Constitutional Reform and Governance Act 2010, as well as conducting forward-looking work on trade negotiations that are under way.

I hope that we might be able to work together constructively in the coming months and years on all international agreements that might be of mutual interest, but I am writing now to let you know about a particular inquiry that we have just launched into the UK-US trade negotiations. I enclose a copy of our Call for Evidence, which illustrates the areas on which we will be focusing during our initial work. We expect this inquiry to run for the length of the negotiations, and we will undoubtedly cover a range of further issues as negotiations progress.

The Committee would very much welcome a response from your Committee to the Call for Evidence. Given that the potential impacts of a deal will be wide-ranging, I know that other committees and members at the Welsh Parliament will also have an interest in these issues, and so I'd be grateful if you could share this letter with other Chairs whose Committees may have an interest.

I am copying this letter to Lord Kinnoull, Chair of the EU Select Committee, and Stuart Stoner, Clerk to the EU Select Committee.

Yours sincerely,



Rt Hon. the Lord Goldsmith QC
Chair of the House of Lords International Agreements Sub-Committee

HOUSE OF LORDS

House of Lords
European Union Committee
International Agreements Sub-Committee

The new House of Lords EU International Agreements Sub-Committee (IAC), chaired by Lord Goldsmith, has launched in inquiry into the ongoing UK-US trade negotiations towards a new full free trade agreement.

This is a public call for written evidence to be submitted to the Committee. The Committee's scrutiny of these negotiations will consider a wide range of issues, and we expect this call for evidence to remain open during the course of the negotiations, but **we would be grateful for submissions on one, some or all of the points set out below by Friday 26 June**, in the first instance.

A revised call for written evidence may be issued in due course, as negotiations progress, and all those who have previously made written submissions will be notified of this and invited to make an additional submission, if they wish.

When preparing your response, please bear in mind that short, concise submissions are preferred, and responses must not be any longer than six sides of A4. Bullet points are acceptable. You do not need to address every question below. Equally, if there are any crucial issues not captured by the questions we pose, please highlight what they are and explain their salience.

The process for making submissions is set out in Annex 1, but if you have any questions or require any adjustments to enable you to respond, please contact the staff of the Committee at HLIntlAgreements@parliament.uk.

Background

The Government has made agreeing a comprehensive free trade agreement ("FTA") with the US an early priority for the UK's independent trade policy. The US is the UK's largest bilateral trading partner and largest export market outside of the EU. Total trade between the two countries was worth over £220.9bn in 2019. A UK-US trade deal may bring significant risks and opportunities to the UK. Moreover, it may involve important trade-offs with the UK's negotiations with the EU.

Trade negotiations between the UK and US were officially launched on Tuesday 5 May 2020. The UK Secretary of State for International Trade, Liz Truss, and US Trade Representative, Robert Lighthizer, began the first round of negotiations, which lasted for approximately two weeks.

International trade has been especially affected by the COVID-19 crisis, with trade flows falling and urgent discussions taking place at national and international levels about the robustness of global supply chains. These talks are thus taking place in a new and unexpected context, different to the context in which the two countries' negotiating objectives were established.

The International Agreements Committee is responsible for scrutinising how the Government conducts international agreements, including trade treaties, and the final content of those agreements. The UK-US trade deal is the first major, wholly new agreement pursued by a post-Brexit UK, and this inquiry will focus on the Government's aims and objectives, the progress of negotiations, and the possible impacts of a final deal for people and businesses across the UK. It is not yet known when the talks will conclude, but this inquiry will run for the duration of those talks.

Inquiry focus

The inquiry will focus on core areas that are likely flashpoints in the trade negotiations between the UK and US. In the first instance, the Committee expects to take oral evidence before the summer focusing on **agriculture**, **healthcare and drug pricing**, and **digital trade and services**.

In the agriculture and food sector, the reduction of tariffs on US agricultural goods, the lower food hygiene and safety standards of the US, and the impact of a trade deal on UK animal welfare standards have been raised as key concerns by stakeholders and are areas where the inquiry seeks evidence.

With regards to healthcare, the inquiry will seek views on the impact of a trade deal on the National Health Service (NHS), in particular on the prices of drugs that are made available via the NHS.

Finally, the inquiry will also seek evidence on digital trade and services in the trade negotiations, including the consequences the negotiations may have for UK rules – such as the UK's Digital Services Tax, data protection, copyright, and consumer protection, including protecting users from online harms – and how any deal might affect the UK's digital services industry, including but not limited to FinTech, games, and other innovative digital products.

Additionally, evidence is sought on the potential impacts of a trade deal on regions in the UK and how different areas, regions and nations across the country might either benefit from the deal or miss out.

The Sub-Committee seeks evidence on the following areas of interest, which are phrased as questions for the ease of respondents. **Submissions need not address all questions.**

Areas of interest

General and cross-cutting issues

We welcome broad responses to these general questions, as well as specific responses to them regarding one or more of the key themes set out below (for example, covering the Government's objectives on agriculture, healthcare, or digital trade specifically).

Context of the negotiations and the UK's approach

1. Does the Department for International Trade (DIT)'s strategic approach, published on 2 March 2020, set out the right objectives for negotiations? How effectively does that strategic approach represent the interests of different groups and regions across the country, including the devolved nations, businesses, civil society, and individuals?

2. How reliable do you find the DIT's assessment of the potential impacts of the proposed agreement with the US, either as set out in the strategic approach or elsewhere?

3. What are some of the major points of disagreement that have emerged in the US' recent trade negotiations that the Committee should be aware of when scrutinising UK-US negotiations?

4. Both countries have expressed their aspiration for reaching a comprehensive FTA on an ambitious timescale. In what circumstances might the UK and US pursue a 'mini-deal' trade agreement instead of a comprehensive FTA? What areas are most likely to be included in any initial 'mini-deal' on tariffs?

5. To what extent might negotiations with the EU on a future relationship conflict with negotiations with the US on a trade deal, given that these negotiations are happening in parallel? What are the major trade-offs involved? And what effect could a UK-US trade deal have on the UK's future ability to negotiate deals with other countries?

6. Broadly, what approach should the UK Government take in balancing the needs of individual consumers, such as greater choice or lower prices as a result of greater competition, and the needs of UK businesses? How can the Government ensure that any outcome has a net positive result for the country, especially in the light of the impacts of COVID-19 locally, regionally, nationally and globally?

7. The United States Congress will scrutinise the US Government's negotiations with the UK and any final deal. What do you think will be the key issues for Congress and legislators in the US? How will the influence of US legislators be felt in the course of these negotiations?

8. What implications might an FTA with the US have for the UK's other international commitments in areas such as environmental protection and climate change? How might the deal affect the UK's national objectives in these areas, such as the Government's commitment to reaching net-zero by 2050?

Impact on the devolved nations and UK regions

We welcome responses to these questions directly, as well as responses to questions elsewhere that consider these issues in relation to one or more of the themes set out below (for example, covering the Department for International Trade's objectives on agriculture, healthcare, or digital trade specifically).

9. Do the devolved nations of the UK have any specific interests that need to be protected as part of the negotiation of a UK-wide trade deal with the US?

10. What are the costs and benefits of a UK-US trade deal to the various regions of the UK? We would be especially interested in detailed economic analyses on this point.

11. The Department for International Trade (DIT) has conducted a preliminary impact assessment that outlines the gross value added (GVA) of a UK-US trade deal on regions in the UK, as part of its negotiating objectives. How do you evaluate the economic analysis behind the DIT's the impact assessment? The impact assessment suggests that the trade deal could increase GVA in Scotland, Wales, the North East, and the Midlands in particular. How do you evaluate this assertion?

12. The impact assessment does not take into account the dynamic effects of a UK-US trade deal on the regions. What are some possible economic assessments of the dynamic effects of the trade deal, over time, on regions or on the UK as a whole?

Other areas of negotiation

We welcome responses to these questions directly, as well as responses to questions elsewhere that consider these issues in relation to one or more of the themes set out below (for example, the implications that an investor-state dispute settlement agreement might have for healthcare, or how the agriculture and food industries might be affected by negotiated changes in tariffs).

13. Both countries' stated objectives include opening up opportunities for investors who are seeking to invest in the other country and securing rights and protections for their investors. What investor-state dispute settlement (ISDS) arrangements do you think would be appropriate in this deal? What are the possible risks or opportunities for the UK in negotiating any ISDS arrangements?

14. The UK has developed a new trade remedies framework based on the "key principles" of "transparency, efficiency, impartiality and proportionality". What impact might these negotiations and any deal with the US have on the UK's establishment of its own trade remedies regime? What are the possible risks or opportunities for the UK in negotiations with the US on these issues?

15. Both countries' stated objectives include provisions relating to government procurement and areas that they intend to exclude from negotiations, including sub-federal programs and defence programs (US objectives), and key public services,

such as the NHS (UK objectives). What are likely to be the key points of both agreement and contention in negotiations about government procurement? What are the possible risks of opportunities for the UK?

16. The UK has recently launched a new UK Global Tariff. Negotiations with the US will include specific agreements on tariffs, and if the two countries were eventually to agree a 'mini-deal' ahead of a full FTA, this would likely include provisions regarding tariffs. With the possibility of a 'mini-deal' in mind, what should be the UK Government's initial focus in negotiating reductions in US tariffs on UK goods? What do you think should be the UK Government's red lines when it comes to tariffs on US goods entering the UK?

17. The UK Government is seeking "ambitious commitments" from the US regarding trade in services. What general or sector-specific rules, including on financial and aviation services, should the UK be seeking to support the UK's service exporters?

Specific sectoral issues

Agriculture and food

The US's published negotiating objectives state that the US will seek to "eliminate practices that unfairly decrease U.S. market access opportunities or distort agricultural markets to the detriment of the United States". Objectives also include "promot[ing] greater regulatory compatibility to reduce burdens associated with unnecessary differences in regulations and standards" and "establish[ing] specific commitments for trade in products developed through agricultural biotechnologies".

The Government has stated it would "uphold the UK's high levels of public, animal, and plant health, including food safety" and "any trade agreement with the US must work for UK consumers, farmers and companies and the Government will strongly defend our right to regulate in these areas in the public interest".

The US' negotiating objectives include preventing any "improper use of the UK's system for protecting or recognizing geographical indications" from "undermining market access for US products", while the UK's objectives highlight the need to "maintain effective protection of food and drink names" that reflect geographical origins to ensure consumers are "not confused or misled" and "have access to a competitive range of products".

18. The new UK Global Tariff would maintain tariffs on agricultural products such as lamb, beef and poultry to protect UK industry. What provisions do you think the UK should seek to agree with the US on tariffs for agricultural goods imports to the UK? What economic consequences might there be for farmers and the agriculture and food industries of a US deal that diverged significantly from the new UK Global Tariff? We would be particularly interested in any detailed economic analyses on these points.

19. How might the UK agriculture and food industries approach any new competition that might arise from a UK-US deal? What opportunities are there for UK

companies that might wish to export more to the US under a new deal? We would again be particularly interested in any economic analyses on these points.

20. More broadly, what might be the consequences of a deal with the US that included agricultural goods for Sanitary and Phytosanitary Standards (SPS) and animal welfare standards domestically in the UK?

21. What concessions will the US be seeking regarding indicators of geographical origins on food and drinks, and how do you think the UK Government should respond? What do you think is the right balance between ensuring that consumers "are not confused or misled" but also "have access to a competitive range of products"? What are the likely effects on producers of new arrangements on indicators of geographical origins, in particular small- and medium-sized businesses?

Healthcare, in particular drug pricing

The US's published negotiating objectives include "seek[ing] standards to ensure that government regulatory reimbursement regimes [for pharmaceuticals and medical devices] are transparent, provide procedural fairness, are nondiscriminatory, and provide full market access for U.S. products".

The Government has indicated that the "NHS will not be on the table. The price the NHS pays for drugs will not be on the table. The services the NHS provides will not be on the table. The NHS is not, and never will be, for sale to the private sector, whether overseas or domestic."

22. How realistic is the UK's approach on the issue of pharmaceuticals and medical devices? How does it compare with precedents that might be seen in other recent US trade negotiations either relating to healthcare specifically or other public services?

23. What would be the effects if the cap on NHS drug prices were removed or raised? Would drug prices still be affordable to the NHS, and would it have a direct impact on the average household?

24. What effects might a US deal that included some provisions on drug/medical devices pricing have on the British pharmaceutical and life sciences industries?

25. How might any other provisions agreed as part of a deal, such as on investor-state dispute settlement, affect the NHS in particular and the wider healthcare industry in the UK?

Digital trade and services

The US's published negotiating objectives include "secur[ing] commitments not to impose customs duties on digital products" and "ensur[ing] non-discriminatory treatment of digital products".

The Government has indicated both its intention to maintain the UK's high standards in data protection and protection against online harms and its ambition to "promote a world-leading eco-system for digital trade". It has stated that "in areas such as data flows, blockchain, driverless cars and quantum technology we have the opportunity to help shape global rules through ambitious digital trade provisions".

26. The Government's negotiating objectives note their objective of "maximising the UK's reach in emerging fields like global data flows and Artificial Intelligence". What are the opportunities for the UK in agreeing new provisions on digital trade and services with the US, in these and other areas? What are the key barriers to increased digital trade that these negotiations need to address?

27. The UK Government has recently introduced a Digital Services Tax, which applies to search engines and social media companies. What would be the consequences for the UK if such a tax were subject to negotiation as part of a US deal on digital trade and services?

28. How might negotiated digital trade provisions serve as enablers for leading UK industries, such as the creative and audio-visual industries? What provisions would bring the most benefit and so should be the highest priority in this area?

29. What might be the trade-offs for the UK in agreeing ambitious digital trade provisions with the US? How might the UK's data protection standards and provisions for protecting users from online harms be affected by any deal?

ANNEX 1: GUIDANCE FOR SUBMISSIONS

Written submissions should be made online using the written submission form available at https://committees.parliament.uk/call-for-evidence/164/ukus-trade-negotiations/.

We expect this call for evidence to remain open throughout the course of the UK-US negotiations, but **we would be grateful for submissions by close of play on Friday 26 June**, in the first instance. A revised call for evidence may be issued as negotiations progress, and those who have already made written submissions will be notified of this and invited to make any additional submission, should they so wish.

For any questions, please contact the Committee staff at HLIntlAgreements@parliament.uk or by telephoning 020 7219 4840.

Short submissions are preferred. A submission longer than six pages should include a one-page summary.

Paragraphs should be numbered. All submissions made through the written submission form will be acknowledged automatically by email.

Evidence that is accepted by the Committee may be published online at any stage; when it is so published it becomes subject to parliamentary copyright and is protected by parliamentary privilege. Submissions that have been previously published will not be accepted as evidence.

Once you have received acknowledgement that the evidence has been accepted you will receive a further email, and at this point you may publicise or publish your evidence yourself. In doing so you must indicate that it was prepared for the Committee, and you should be aware that your publication or re-publication of your evidence may not be protected by parliamentary privilege.

Personal contact details will be removed from evidence before publication but will be retained by the Committee Office and used for specific purposes relating to the Committee's work, for instance to seek additional information.

Substantive communications to the Committee about the inquiry should be addressed through the clerk of the Committee, whether or not they are intended to constitute formal evidence to the Committee.

You can follow the progress of the inquiry at:
https://committees.parliament.uk/committee/448/eu-international-agreements-subcommittee/.

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