



Joining the CPTPP: opportunities and challenges for UK business

An informative guide for members

May 2021

What is the CPTPP?

The UK's intention to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) marks a significant step towards progressing our independent trade policy. As one of the largest free trade agreements in the world, these 11 countries represent close to 14% of total global GDP. This puts it just one percentage point behind the economy of the United States and provides a marketplace of over 500 million consumers. If treated as a single bloc, UK trade with the members of the CPTPP amounts to £110bn, which is smaller than UK trade with the EU, the US, or Germany, but ahead of China.

The 11 members of the CPTPP include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Most of these members are rapidly developing emerging economies and are set to become permanent players in the global economy. By 2030, the middle-class population in the Asia-Pacific is expected to increase from 1.38 billion people in 2015 to 3.49 billion people. According to the World Bank, in the past decade, the middle class in Latin America grew by at least 50% and now represents more than 30% of the population.

Running to 29 chapters, and covering trade in goods, services, government procurement, intellectual property, investment, transparency and dispute settlement, the CPTPP is seen by business experts as presenting some of the most liberal trade policy practice on offer. UK businesses stand to benefit from the deal's generous rules of origin that allow firms to make products for all different markets without the need to change parts or suppliers, as well as strong investment protections that include the right to compensation in the event of expropriation, protection against discrimination, and a centralised dispute mechanism.

This guide will detail the significant benefits joining the CPTPP could offer UK firms such as rules of origin, digitalisation of trade and increased demand for services, as well as the challenges that should not be overlooked and other key considerations for business.

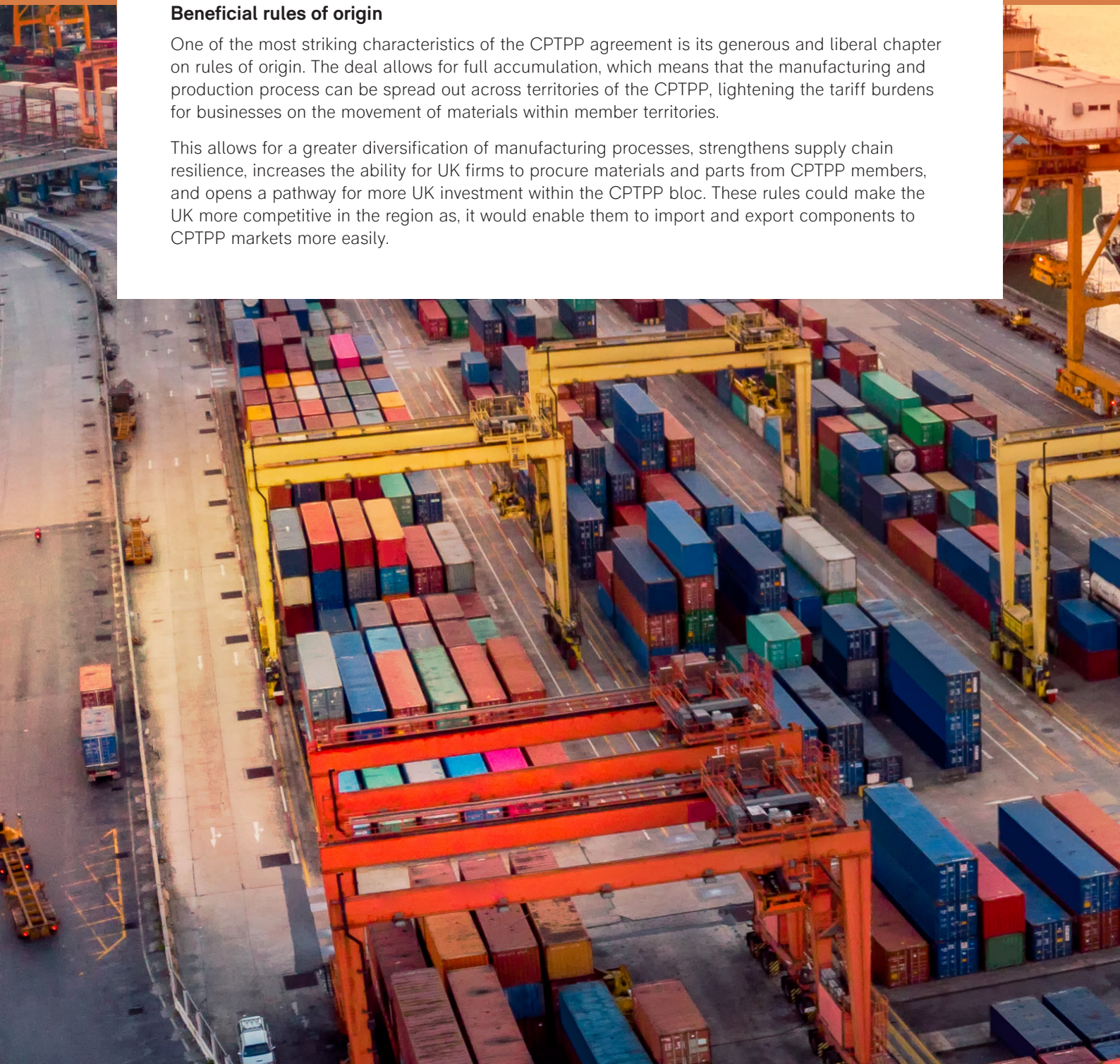


Joining the CPTPP: what's in it for UK business?

Beneficial rules of origin

One of the most striking characteristics of the CPTPP agreement is its generous and liberal chapter on rules of origin. The deal allows for full accumulation, which means that the manufacturing and production process can be spread out across territories of the CPTPP, lightening the tariff burdens for businesses on the movement of materials within member territories.

This allows for a greater diversification of manufacturing processes, strengthens supply chain resilience, increases the ability for UK firms to procure materials and parts from CPTPP members, and opens a pathway for more UK investment within the CPTPP bloc. These rules could make the UK more competitive in the region as, it would enable them to import and export components to CPTPP markets more easily.



How these changes will impact UK firms

These new rules will benefit sectors such as spirits producers, who will welcome the ability to conduct more trans-shipments of non-perishable products between ports of multiple CPTPP members. Currently, trans-shipments can be extremely costly or even inhibited as MFN tariffs would apply when taking products from one third country (any country outside the EU) to another.

There are potential opportunities for the UK auto sector, as Japan, Mexico, and Canada are major export destinations for the UK (although CPTPP members only make up 9.1% of UK auto exports). But businesses should be aware that the UK's intricate supply-chain relationship with the EU means that many companies could struggle to meet the CPTPP's regional value content requirement due to costs and low incentives to disconnect existing supply chains. This said, the UK could benefit from an accelerated auto tariff phase out with Vietnam (with which the UK only has a 15-year tariff phase out) and Malaysia (which does not have a bilateral trade deal with the UK), potentially providing incentive to reorient supply chains.

The UK must also look to secure a special automotive carveout with Japan while it liberalises trade in finished vehicles with other CPTPP nations. Under CPTPP's current form, Japanese manufacturers will be able to access the UK market much earlier than the access set by the UK-Japan trade agreement, which would risk saturation of the UK market.

In agriculture, the full accumulation of rules of origin is not seen as a game changing feature, as the Asia Pacific will never be a distribution hub for UK products due to its geography and costs associated with transporting perishable goods. And because New Zealand, Australia, Canada and Mexico are all significant agricultural exporters, generous rules of origin could encourage the saturation of the UK agriculture market with imported products.

Digitalisation of trade

UK businesses who are eager for the government to pursue modernised agreements on digitalisation of trade should be encouraged by CPTPP, as the deal's language on digital trade matches much of the UK government's ambition in its other trade negotiations. For issues like the prevention of forced data localisation and source code disclosure, CPTPP includes similar language to the UK-Japan FTA and the US-Mexico-Canada Agreement (the basis for US-UK FTA talks).

However, given these more stringent strings attached in CPTPP, the UK has a better opportunity to revolutionise digital trading flows through plurilateral agreements with individual CPTPP members like the Digital Economy Partnership Agreement (DEPA) with New Zealand, Chile, and Singapore or the Australia-Singapore Digital Economy Agreement (DEA). The UK needs to start a dialogue with business to review the DEPA and DEA – checking to see what works and does not work for them, and how they can replicate or join such agreements to spur the UK digital economy forward.

Opportunities for UK global leadership

Digital trade is also an arena in which the UK could look to use CPTPP as a vehicle to improve global standards and craft new standards fit for the future. CPTPP's convening power could provide a platform for the UK to build the necessary commercial and diplomatic relationships in the region, help identify shared interests and be a unified voice on the world stage. A potential route is through the DEPA, an ambitious agreement that seeks to standardise areas like paperless trade, safe cross border data flows, and an ethical approach to AI regulation. Given that it has been created by three CPTPP members (New Zealand, Singapore, and Chile), the UK's accession to CPTPP could make it easier to join the DEPA and lobby for the adopting of its provisions at a wider multilateral level.

CPTPP could impact UK firms' ability to transfer EU data to a third country. Under the terms of the UK's adequacy deal with the EU, it is the UK government's responsibility to safeguard EU data transfers from the UK into third countries that do not have their own adequacy deals with the EU. The UK should not risk the viability of its own data adequacy deal with the EU if it cannot properly commit resources to overseeing the increased flow of data to 11 new countries. The UK must tread carefully in not overextending its commitments in this sector.

Increased demand for services

In services trade, CPTPP provides an opportunity to build up brand UK reputation in the region as UK businesses gain exposure to a rapidly growing and higher-spending middle class across the Pacific Rim. For example, Mexico is positioned to become the world's seventh-largest economy by 2050, and middle-class earners already make up 20% of its population. As these nations develop knowledge economies of their own instead of relying on exporting raw materials, income levels will rise – and demand for services with it. Sectors that stand to benefit include education services providers, cybersecurity, surveillance technology, and financial education.

Increasing urbanisation in the region in markets like Malaysia and Vietnam is also noteworthy, as it will provide UK firms the chance to contract in procurement and infrastructure sectors such as architecture, engineering, and construction. This is because many CPTPP countries are still looking to use large infrastructure projects as a bedrock of growth.

Securing additional measures for UK business mobility into the Asia Pacific bloc should also excite British firms. Multiple CPTPP signatories such as Singapore, New Zealand, and Chile have established their own terms for the temporary entry and residency for workers from other CPTPP signatories in their country. The UK should also look to secure dialogue on the mutual recognition of professional qualifications so UK professionals can more easily contract in these markets. However, this will probably need to be achieved via side letters with individual signatories.

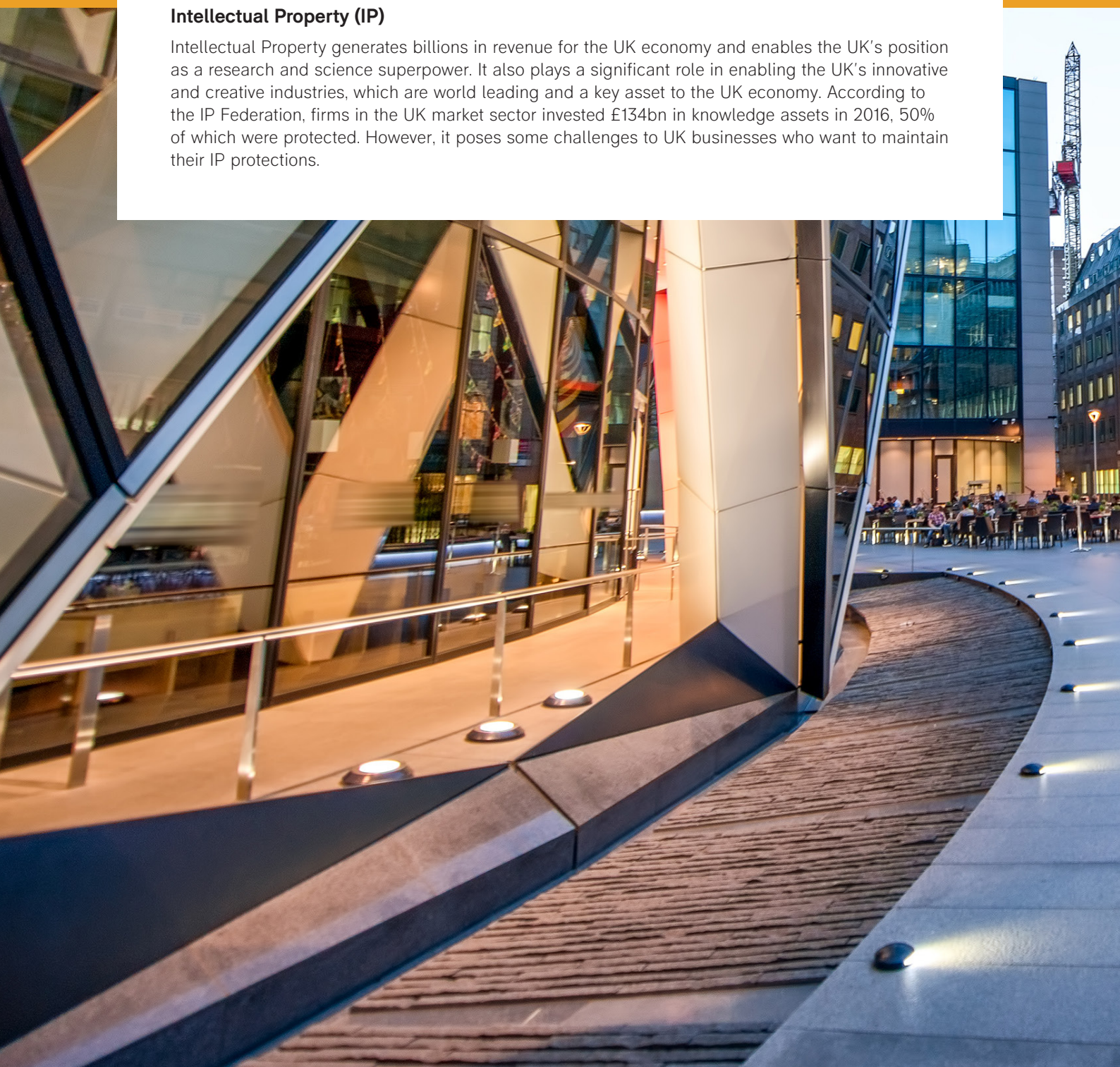
Businesses should see that the primary benefits for services trade in CPTPP come as the result of deepening ties to a thriving market rather than any terms of the text itself. As Brand UK is strengthened in the region due to closer political relationships and greater business attention rather than better market access, this will help businesses develop new opportunities of their own. CPTPP partners will likely be more willing to negotiate deep services concessions inside letters or bilateral agreements than in a multilateral forum. For example, Canada made deeper market access commitments in CETA on municipal government procurement, recognition of credentials, and labour mobility than in CPTPP.



Joining the CPTPP: what challenges could UK business face?

Intellectual Property (IP)

Intellectual Property generates billions in revenue for the UK economy and enables the UK's position as a research and science superpower. It also plays a significant role in enabling the UK's innovative and creative industries, which are world leading and a key asset to the UK economy. According to the IP Federation, firms in the UK market sector invested £134bn in knowledge assets in 2016, 50% of which were protected. However, it poses some challenges to UK businesses who want to maintain their IP protections.



Impact on existing UK patent law

The patent provisions in the CPTPP agreement branch off from the UK patent law and European Patent Convention (EPC) of which the UK is a member. Since the patent grace period and patent term adjustment provisions in the CPTPP are inconsistent with the EPC, it's possible that the UK's membership in the EPC could be threatened.

Under UK patent rules and the EPC, an inventor who has publicly disclosed their invention prior to filing a patent application is barred from then seeking valid protection from it. The CPTPP requires that all members should provide a 12-month grace period for disclosures by an applicant in which a patent can still be filed, meaning an inventor can file a patent application within 12 months of disclosing the idea. This in theory provides additional protection for businesses who may want to disclose ideas before filing for a patent application. However, this would only apply to UK patent applications and not European, causing a separation in the two approaches used to gain IP protection in the UK.

If, in CPTPP discussions, the UK does not make clear its firm resolve to remain in the EPC, as it has in negotiating objectives for bilateral agreements, it will weaken its position in those other bilateral negotiations. The UK should not enter commitments that jeopardise its membership of the EPC. One way of doing so might be to agree that the CPTPP grace period is waived for the UK. Another is by agreeing to a side letter on IP, like the one agreed in the UK-Japan CEPA, which reads: "The Parties shall continue to cooperate to enhance international substantive patent law harmonisation, inter alia on grace period, prior user rights and publication of pending patent applications."

Impact of joining CPTPP without IP carveouts

Joining CPTPP without the necessary IP provisions would result in a relocation of R&D, European IP management and supply chain from the UK, damaging domestic IP support and resulting in the loss of high value jobs. It would also lower IP support in the UK, especially to SMEs and young innovative businesses, adding at least 150% to their IP costs. The UK is currently the most successful European generator of high growth firms, which make the transition from SME to capitalisation nearly £1bn.

A UK departure from the EPC would hamper growth especially for SMEs, tech start-ups and research institutions. An immediate and significant increase in business costs for firms seeking to protect inventions in both the UK and remaining EPC countries where patent filings and prosecution would be duplicated.

There would also be a significant impact on the UK's world class IP professional services base. UK IP professionals are used by foreign companies across the globe to file and prosecute a high proportion of all patent applications at the EPO, generating fees of around £1bn per year and exports of £0.75bn. If the UK were not a member of the EPC, this work would go to IP professionals in other European countries. Lastly, there would be an erosion of the UK's influence in establishing global IP policy as part of the trilateral patent offices.

Investor State Dispute Settlement mechanism (ISDS)

The investment chapter of the CPTPP contains the ISDS mechanism. The provision allows companies to sue governments over decisions that impact their corporate profits, even if those decisions are made in the public interest. Arbitrators are paid on a case-by-case basis, and benefit from an increase in claims. Because governments may not use the ISDS system to sue investors, if arbitrators have bias toward companies or investors, they might encourage further investor claims to benefit from them commercially.

The Code of Conduct for ISDS Proceedings was established in CPTPP, to address legitimacy concerns that arise when a system allows adjudicators to act as arbitrator in one case and legal counsel in another (double hatting). This provides for some objectivity in to the ISDS process, which other agreements like North American Free Trade Agreement (NAFTA) lack.

What does this mean for UK business?

While the ISDS mechanism is more transparent and objective in CPTPP compared to other agreements, but there is still risk of the UK becoming disproportionately targeted through ISDS, as Canada and the US had been in NAFTA, with 15 and 21 cases made against them, respectively.

There could also be environmental implications of the UK being exposed to the ISDS mechanism. The ISDS mechanism allows foreign businesses to challenge climate policies in courts. It has previously been used by energy companies to challenge governments from introducing legislation due to concerns about the high cost of defending cases. It is important to establish some carveouts to protect the UK against opportunistic litigation and to avoid discouraging governments from being ambitious with their climate policies.

As an example, New Zealand signed side letters with five members of CPTPP – Brunei, Malaysia, Peru, Vietnam, and Australia – to exclude compulsory ISDS. However, signatories with existing bilateral trade deals with the UK could use the terms of them to counter any carveouts.

Agriculture

The CPTPP has a contrasting impact on UK agriculture, some countries offer opportunity whilst others pose more of a threat, given the scale of agricultural production and focus on exports within those countries. The CPTPP includes major global agricultural exporters such as New Zealand, Australia, Canada, and Mexico. And so, there is a risk they will ask for concessions in agriculture in exchange for carveouts in other areas.

Services

CPTPP presents some red flags for services firms. Legal firms suggest the investor state dispute settlement mechanism in CPTPP could expose the UK to opportunistic and bad-faith litigation from Asia-Pacific businesses, while financial firms are concerned with maintaining the terms of bespoke regulatory deals with CPTPP members like Canada. The Audio Visual (AV) services industry would prefer that the UK seek a complete carveout of AV services from the intellectual property chapters of the CPTPP agreement as it did in the UK-Japan deal.

New export markets vs. increased competition at home

Generous rules of origin could encourage the saturation of the UK agri-market with imported products. The product specific rules in CPTPP may also undermine those agreed bilaterally. For example, the UK-Japan agreement requires malt to be wholly originating, for example, made using UK barley only. Whereas, under CPTPP the PSR for malt allows a chapter change meaning barley could be imported into the UK, malted, and exported under preference at the expense of UK farmers.

In the long term, Southeast Asian economies present the most opportunity for UK exports amongst the CPTPP members. This is especially true for UK meat and dairy products where opportunities are created due to the increasing middle class and urbanisation. Global consumption of beef, lamb, pork, and dairy products are expected to grow by 16%. UK negotiators must look to tackle complex non-tariff barriers which exist in accessing some of these markets for the opportunities to be realised.

On environmental, animal welfare, labour & planning regulations, some CPTPP members are much lower than that of the UK. The UK must ensure its market is not undermined by the import of more competitive goods, which have benefitted from less rigorous regulations and therefore lower costs of production.

Key considerations for business

The UK's position for negotiation

Beyond the scope of the deal's benefits and challenges, the UK government will also need to consider its accession to CPTPP as well as its ability to influence the agreement, its other trade priorities, and the wider geopolitical environment. Close partnership between UK business and the government will be vital to avoid unwanted trade-offs between CPTPP and the rest of the UK's global trade strategy.

CPTPP will be a different challenge for the UK than any bilateral negotiation. Attempting to renegotiate the terms of an existing multilateral agreement with 11 nations is a more difficult proposition than negotiating a new deal with one partner. It will be challenging, for example, to change the CPTPP text in a more favourable direction on issues such as animal welfare or protecting UK intellectual property commitments to the EPO. As such, any offensive carveout goals in CPTPP will need to be achieved through side letters, where greater ambition may be possible with some of the more like-minded members. Side letters on automobile tariffs, audio-visual services, sustainability, cybersecurity safeguards, and IP could be a good starting point.

Maintaining defensive posture

The UK will also need to have strong defensive positioning, so it does not give up too much to get a seat at the table. When Canada finally joined the TPP discussion in 2012, some nations worked hard (and were ultimately successful) in securing market access concessions in Canadian agriculture, as they knew the size of the TPP bloc gave them more leverage than they would have in a bilateral setting. Clear red lines from business on areas such as agriculture TRQs will need to be explained to the government in advance.

Given that the UK is also planning to negotiate separate bilateral FTAs with CPTPP signatories like Australia, New Zealand, Canada, and Mexico, this is uniquely relevant. The longer it takes for the UK to negotiate bilateral deals with these countries, the more this could complicate the UK's efforts to secure good carveout agreements in CPTPP, as bilateral terms would no doubt form the basis for any side letters with these partners. On the other hand, countries could be encouraged to use CPTPP as arbitrage to squeeze the UK on two fronts in hopes of securing additional market access wins in a bilateral deal. Business input will be vital to ensure that the UK does not weaken its negotiating position in either setting.

The likelihood of the US joining the CPTPP

The prospect of the US joining the agreement is worth serious consideration, as it would, impact UK global supply chains, provide greater market access to the UK's single largest trade and investment partner, and transform the CPTPP from a mostly regional trading bloc into a global power player that would impact the future rules of trade.

President Biden has promised that any new trade deal negotiated during his administration will need to include strong environmental and labour chapters, meaning that these issues would be targets of reform in the event the US returns to the table. This would provide an opportunity for the UK to partner with the US on climate-proofing the CPTPP, turning it into the gold standard for future bilateral and multilateral trade initiatives to follow.

The US would also look to reactivate provisions of the TPP that were removed in the CPTPP on copyright enforcement, patent protections, and safe harbour for internet service providers – which would impact British firms in areas such as life sciences. However, like the Trump administration, Biden's team has expressed scepticism of sweeping ISDS provisions, so it would be unlikely for them to prioritise a reform of this chapter.

Political considerations

If the US were to re-join, they would almost certainly need signatories to agree to reforms and adjustments so it could become politically feasible for sceptical Democrats in Congress (who are not united on trade policy).

However, given that trade and foreign policy are not currently top-level priorities for President Biden, it is unlikely that his administration will re-join the CPTPP in his first term. His administration has been hesitant to endorse the CPTPP, claiming that while it offers a potential overlap with US geostrategic interests, it also represents a bygone era of American trade policy that prioritised some industries over the interests of the working class.

The US is instead likely to focus on the enforcement and implementation of existing agreements such as the Phase 1 deal with China and the US-Mexico-Canada agreement. But if the US does change tune, UK businesses would be opened to the world's largest consumer market and would be able to widen their supply chains like never before.

About the CBI

Founded by Royal Charter in 1965, the CBI is a non-profit business organisation that speaks on behalf of 190,000 UK businesses of all sizes and from across all sectors, employing nearly 7 million people between them. The CBI's mission is to promote the conditions in which businesses of all sizes and sectors in the UK can compete and prosper for the benefit of all.

About the CBI International Team

Trade between the United Kingdom and its international partners is the cornerstone of our economy. It creates new jobs, raises productivity and increases prosperity across the country, and indeed, the world. The CBI is working to deepen the vital partnership between business and government to ensure the UK's export and global trade strategy supports investment and growth across the economy. To ensure the voice of business is heard around the world, the CBI remains close to and responsive to its members through its offices across the UK as well as in Brussels, Beijing, New Delhi, and Washington, D.C.

Resources to help you further understand CPTPP:

1. [Read the UK government's formal request to join the CPTPP detailing the UK's position and next steps](#)
2. [Read the House of Commons Library CPTPP to understand the accession process and UK trade with CPTPP countries](#)
3. [Read the Institute for Government's CPTPP explainer and FAQs.](#)

Produced by [Hemi Bhatti](#) and [John Bleed](#) in the [International Trade](#) team. To share your views on this topic or ask us a question, contact:



Hemi Bhatti
Principal Policy Adviser
hemita.bhatti@cbi.org.uk



John Bleed
Senior Policy Advisor
John.Bleed@cbi.org.uk