

Greener UK briefing on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

June 2021

It is essential that the negotiation of trade agreements does not undermine the UK's climate and environmental goals. These goals include our net zero target, nature restoration target in the Environment Bill and also the UK's obligations as the host of the UN climate conference COP26.

In January 2021, the UK government announced its intent to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a trade agreement between 11 Asian and Pacific countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.¹ This agreement was finalised in 2018, and the UK government will therefore have limited scope to shape the deal. However, the UK will negotiate tariffs and bilateral arrangements ('side letters') with members and could request carve outs for exemption of certain chapters.

The UK already has trade agreements with 7 CPTPP member countries and is in the process of negotiating agreements with Australia and New Zealand. The economic impacts of joining the deal are therefore uncertain and whilst the Secretary of State for International Trade has implied that the CPTPP will be a high standards deal,² it poses a number of risks for the environment.

Weakening environmental safeguards

The government has promised not to compromise the UK's high standards in future trade agreements.³ Members of the public strongly support maintaining high standards and research in a number of 'red wall' constituencies indicates that these voters expect and hope that regulations will be strengthened, rather than weakened.⁴

However, joining the CPTPP could increase pressure to weaken our environmental, food and animal welfare standards. The agreement does not contain a meaningful commitment to non-regression and instead contains provisions that encourage mutual recognition of standards, which could encourage a 'race to bottom' on standards to reduce the costs of production so that domestic products can compete with imports from other members.⁵ Australia for example, allows the use of practices banned in the UK such as mulesing and use of barren battery cages for storing hens and much greater use of pesticides in food production.⁶

Regulatory cooperation efforts often prioritise increasing trade over measures intended to protect public health and the environment and can risk slowing the rate at which protections are put in place. These measures can help in distinguishing between so-called 'like' products that appear the same but have been produced with different environmental impacts, such as organically or sustainably. While some claim that countries are prohibited from doing so by the World Trade Organisation (WTO), import restrictions can be designed to ensure that they are WTO compliant. The US's Marine Mammal Protection Act introduces regulations on import of seafood to meet environmental policy objectives within the WTO framework.⁷

Impacting environmental health

The UK has higher regulatory standards than other members of the CPTPP in areas such as environmental protection and animal welfare. The UK applies the precautionary principle when regulating, which is an important tool that supports good quality decision making in cases of scientific uncertainty. For example, the precautionary principle supported the banning of harmful pesticides such as neonicotinoids.⁸ It enables a proactive response to potential risk, rather than having to wait to take action until a harm is proven.

However, the provisions in the CPTPP more closely reflect the US approach to precaution, which can make it more difficult to regulate to reduce potential harm, risking lower standards as a result. Compared to the UK approach, it places additional restrictions and burdens on a regulator seeking to take precautionary action to protect the environment or public health which must be based on 'documented and objective scientific evidence'.⁹ These restrictions would make it harder for the UK to apply the precautionary principle to restrict the entry of products such as those containing harmful pesticides and chlorine washed chicken.¹⁰

Undermining climate commitments

The UK needs to display exemplary global leadership on climate action as the president of both COP26 and the G7. The UK recently signed the Trade and Cooperation Agreement with the EU, which contains climate change as one of its 'essential elements', where failure by one party to respect the Paris Agreement could allow the other to annul the deal. In contrast, the CPTPP does not contain any mention of climate change and contains provisions which could actively undermine the UK's efforts to reach its net zero targets.

Giving investors power to sue governments in private courts

The CPTPP contains provisions on investor state dispute settlement (ISDS) which have concerning implications for environment and public policy. ISDS enables foreign investors to challenge states where state action has, or potentially will, negatively impact the profitability of an investment.

These provisions can also result in 'regulatory chill', where states are discouraged from introducing regulations which could harm the profits of investors even if these are in the interest of public welfare, including environmental protections. This occurs because of the risk of legal action by a foreign investor, on the basis that the regulation impedes the investor's ability to operate in the state.

ISDS has been used by companies to challenge a broad range of measures taken to improve environmental standards and phase out fossil fuels. For example, a coal mining company Westmoreland has launched an ISDS complaint against Canada for phasing out coal-fired power stations,¹¹ an electricity generation company RWE sued the Dutch government for its plans to phase out coal¹² and the Italian government was sued for banning offshore oil drilling.¹³

ISDS in practice: Vattenfall AB vs Germany

In 2007, the Swedish energy corporation, Vattenfall AB, was granted a provisional permit to build a coal-fired power plant near the city of Hamburg. In an effort to protect the river Elbe from the wastewaters dumped from the plant and prospective carbon emissions, the government imposed environmental restrictions before the final approval of its construction. Vattenfall launched an ISDS claim against Germany, stating that the

environmental rules amounted to expropriation and violated Germany's obligation under the Energy Charter Treaty to give foreign investors 'fair and equitable treatment'.

To halt further uncertainty and prevent a large sum of compensation, the German government settled the case with Vattenfall in 2010. The settlement included a commitment by Germany to drop its additional environmental requirements and issue the permits required by Vattenfall to proceed.¹⁴

The CPTPP does incorporate clauses from WTO rules that provide exceptions for public interest, but these exceptions can only be claimed as a defence once a case has been initiated against a country. In practice, it has been very difficult for countries to successfully claim the benefits of these exceptions as the burden of proof to claim them are very high.¹⁵ Whilst the UK has not had any ISDS claims to date, our Bilateral Investment Treaties have been with capital importing countries. If the UK signs up to ISDS in CPTPP it could be expected to support ISDS in other trade deals. A trade deal with the US would be a step change, as the US is one of the largest investors in the UK.¹⁶

Due to public concerns around loss of sovereignty and lack of transparency in ISDS mechanisms, New Zealand has signed side letters with 5 CPTPP member countries (Australia, Vietnam, Peru, Malaysia and Brunei) to restrict or limit the application of the ISDS provisions. The UK government must follow New Zealand's approach and negotiate side letters with member countries to exclude the application of the ISDS provisions in the agreement.¹⁷

Restricting government's ambition for a green industrial revolution¹⁸

Supporting domestic renewable technology is a significant aspect of the Prime Minister's plan to level up across the country and build green jobs and industries in the UK. Decarbonising the energy sector plays an essential part of the transition to net zero. However, the CPTPP sets out rules for government procurement, wherein governments would not be allowed to impose the use of "domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade or similar action to encourage local development or to improve a Party's balance of payments accounts".¹⁹ This means that the government could face challenges on policies to support the development of local industries or mandate "green purchasing" in government contracts which is often used to build local capacity to generate renewable energy.²⁰

The CPTPP also contains a chapter on 'Technical Barriers to Trade' which could prevent the government from introducing new environment friendly regulations, labels and standards.²¹ Rather than support the government's ambitions, these provisions would constrain green policies.

Increasing tropical deforestation

In order to join the agreement, the UK could be required to eliminate or reduce the tariffs imposed on the import of products containing palm oil. This could lead to an increase in the production and import of such products and thus cause greater deforestation in palm oil exporting countries such as Malaysia.²² The UK may also be required to re-evaluate its approach on the use of palm oil as a biofuel, which it has nearly eliminated from use.²³

Effects of palm oil production on biodiversity

A decrease in tariffs on products containing palm oil would see an increase in the amount of these products imported from countries such as Malaysia into the UK. The growing demand for palm oil would lead to an increase in the rate of deforestation and land

conversion and affect species such as orangutans that are threatened with extinction owing to the destruction of their natural habitat. The Island of Borneo is home to one of the oldest tropical rainforests in the world. Around 50% of all deforestation on the island between 2005 to 2015 was related to palm oil developments, destroying homes of orangutans and leopards, which are native to the island.²⁴

Recommendations

1. The UK must seek exemptions from provisions that impact its environmental and climate goals and negotiate 'opt outs' from those sections of the deal. New Zealand has signed bilateral 'side letters' with member states agreeing to limit the application of the ISDS provisions. The UK must follow New Zealand's approach and negotiate side letters with all the 11 member countries. The UK government must also ensure that meaningful and enforceable commitments to non-regression are included in the bilateral arrangements signed with the member countries to prohibit any weakening of environmental laws or protections.
2. In addition to its scoping assessment, the government must also commission an environmental impact assessment before beginning the formal negotiating process and at regular intervals throughout the life of the agreement. This should cover the environmental impacts of the agreement both within the UK and with the other parties to ensure the global environmental impacts are fully understood. The results of which should be taken into account and mitigated if necessary.
3. The government promised to facilitate a debate on negotiating objectives in the House of Lords and on new trade deals in either house at the request of parliamentary committees during debates on the Trade Bill. Parliamentarians must be given a vote on the government's negotiating objectives, as well as a debate and vote on the final deal, prior to accession to the CPTPP. Parliamentary scrutiny is an essential way of involving environmental expertise in negotiations, as well as businesses, unions, civil society groups and members of the public in decision making.
4. The government must ensure that civil society across the four countries of the UK remains engaged in all stages of accession to the CPTPP and their views are incorporated into future negotiations. The Department for International Trade's public consultation on the CPTPP was held in 2018, prior to the introduction of new legislation such as net zero emissions by 2050. Many organisations have also increased their expertise on trade since 2018 and should have ongoing opportunities to input into the negotiations.

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Endnotes

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