

# Spotlight on Post-Brexit Treaty Practice: Trade and Investment Treaties: A 360 Degree Review

20 July 2021

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## Introduction

On 15 June 2021, the United Kingdom announced the outline of its new free trade agreement (“FTA”) with Australia.<sup>1</sup> The announcement comes shortly after the entry into force of the UK-Japan Comprehensive Economic Partnership Agreement (the “CEPA”).<sup>2</sup>

The UK’s FTA with Australia is the first post-Brexit trade deal that the UK is negotiating from scratch. It represents a new phase in the UK’s post-Brexit treaty practice, in which, in the words of the UK government, it is “able to negotiate, sign and ratify new trade agreements”<sup>3</sup> and use its “voice as an independent trading nation.”<sup>4</sup> It also highlights an emerging trend of the UK turning towards the western and eastern hemispheres in pursuit of new trading partners and an expanded market base.<sup>5</sup> In particular, the UK government is negotiating to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the “CPTPP”) aimed at “widening [the UK’s] trading links” across Asia-Pacific and the Americas.<sup>6</sup>

This insight looks back at the UK’s treaty practice since the conclusion of the UK–EU Trade and Cooperation Agreement (the “TCA”) just over six months ago. It charts how the UK has approached treaties with EU and non-EU member states following its exit from the EU—some treaties have been reproduced from existing EU trade agreements, while others are being renegotiated (Section I). The insight then traces the UK’s

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<sup>1</sup> <https://www.gov.uk/government/news/uk-agrees-historic-trade-deal-with-australia>.

<sup>2</sup> <https://www.gov.uk/government/publications/ukjapan-agreement-for-a-comprehensive-economic-partnership-cs-japan-no12020>.

<sup>3</sup> <https://www.gov.uk/government/collections/the-uks-trade-agreements>.

<sup>4</sup> <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-japan/uk-japan-free-trade-agreement-the-uks-strategic-approach>.

<sup>5</sup> See, e.g. <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-japan/uk-japan-free-trade-agreement-the-uks-strategic-approach>.

<sup>6</sup> See ¶2.5, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf).

negotiations with new trading blocks, identifying the UK's stated priorities, the development of new trends (Section II); and, finally, it offers a perspective on future developments (Section III).

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## Brexit Transition Period

### The TCA

On 24 December 2020, the UK and EU concluded negotiations on the TCA. The agreement has been applied provisionally since 31 December 2020 pending full ratification by the EU.

The TCA aims to provide for multi-level UK-EU cooperation, including by ensuring the continuation of liberal trade policies, with “zero tariffs and zero quotas” to “preserve the immense benefits of free trade for millions of people”.<sup>7</sup> The stated “objective and scope” of the TCA’s Title II on “Services and Investment” is to “establish a favourable climate for the development of trade and investment” between the EU and the UK.<sup>8</sup> Title II includes some protections for investors, including by prohibiting certain market access barriers,<sup>9</sup> and imposing a positive obligation on each party to afford treatment to the other party’s investors and enterprises that is no less favourable than that afforded to their own investors and enterprises, as well as to investors and enterprises of third countries.<sup>10</sup>

In addition to its substantive provisions, the TCA establishes the institutional framework governing the UK-EU relationship. As the summary to the agreement states, it is “based on international law, not EU law”. There is no role for the Court of Justice of the European Union (“CJEU”) in its interpretation or enforcement.<sup>11</sup> While providing certain protections for the parties’ investors, the TCA does not provide them with direct enforcement rights to ensure those protections are respected. The agreement instead outlines an exclusive UK-EU state-to-state dispute settlement mechanism,<sup>12</sup> beginning with consultations in good faith,<sup>13</sup> followed by the establishment of an arbitration tribunal if the matter is not resolved.<sup>14</sup> While the arbitration tribunal’s rulings are

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<sup>7</sup> Foreword to the government summary of the TCA: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962125/TCA\\_SUMMARY\\_PDF\\_V1-.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962125/TCA_SUMMARY_PDF_V1-.pdf).

<sup>8</sup> TCA, art. 123.

<sup>9</sup> TCA, art. 128.

<sup>10</sup> TCA, arts. 129–130.

<sup>11</sup> Government Summary of the TCA (n 8), ¶6.

<sup>12</sup> TCA, art 697.

<sup>13</sup> TCA, art. 738.

<sup>14</sup> TCA, art. 739.

binding on the EU and the UK, it cannot create rights or obligations with respect to natural or legal persons, distinguishing such rulings from the CJEU's rulings.<sup>15</sup>

There is no investor-state dispute settlement mechanism in the TCA. Moreover, the TCA expressly provides that it cannot be invoked in the domestic legal systems of the UK and EU.<sup>16</sup> UK investors therefore cannot themselves invoke the TCA to hold EU Member States liable for alleged breaches of the agreement.

In addition, the TCA does not provide any clarity on the validity and enforcement of the UK's extant bilateral investment treaties ("BITs") with certain EU Member States.<sup>17</sup> The European Commission takes the position that those BITs should have been terminated by the UK during the Brexit transition period, when the 23 remaining EU Member States signed the Agreement on the Termination of Bilateral Investment Treaties between the Member States of the European Union, and has initiated infringement proceedings against the UK for its failure to do so.

### The Continuation of the Pre-Existing EU Treaties

Following Brexit, the UK no longer benefits from the EU's trade and investment agreements with non-EU states, which it previously enjoyed by virtue of its membership in the EU. It has therefore sought to reproduce the provisions and effects of those trading agreements in new agreements.<sup>18</sup> This is the case with regard to 24 agreements, covering 37 countries, which have been fully ratified by both the UK and its treaty partner(s) (as of 1 June 2021). A further 26 agreements are subject either to (i) provisional application pending full ratification—a well-established mechanism in international treaty practice to provide practical effect to agreements ahead of their entry into force, or (ii) various bridging mechanisms to ensure continuity where the UK or its treaty partners are unable fully to ratify or provisionally apply the agreement (e.g., Memoranda of Understanding or Exchange of Diplomatic Notes—are in place for four States).<sup>19</sup> A full list of these treaties is available at <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries>.

For instance, the UK, Colombia, Peru and Ecuador have successfully negotiated the UK-Andean FTA to replace the EU-Andean FTA. The UK agreement incorporates the EU-Andean FTA by reference (*mutatis mutandis*), subject to certain amendments set out in its annex. Also, on 8 July 2021 the UK signed a FTA with Norway, Iceland and

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<sup>15</sup> TCA, art. 754(2).

<sup>16</sup> TCA, art. 5(1).

<sup>17</sup> Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Romania, Slovakia, and Slovenia.

<sup>18</sup> As of 1 January 2021, the EU's trade agreements no longer apply to the UK. See <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries>.

<sup>19</sup> <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries>.

Liechtenstein, which supersedes the existing continuity agreements covering goods. The UK government has announced that the agreement will boost critical sectors like digital, financial, and professional business services. The FTA will allow fintech firms to provide financial services in Norway, Iceland and Liechtenstein and will encourage the use of electronic documents, contracts and signatures to cut costs for businesses.<sup>20</sup>

The UK has opted not to change the pre-existing agreements' investment protections, including the relevant investor-state dispute settlement ("ISDS") provisions.<sup>21</sup> This means that investment chapters are adopted *mutatis mutandis* regardless of whether they contain ISDS mechanisms, although some mechanisms are subject to review. Therefore, the UK-Andean FTA adopted the EU-Andean FTA's provisions on investment protection that do not provide for ISDS. On the other hand, the UK-Singapore FTA has retained the ISDS provisions in Chapter 3 of the EU-Singapore FTA.<sup>22</sup>

## The Renegotiation of the EU's Trade Agreements

The UK government is also in the process of negotiating replacement trade agreements with several countries where it has chosen not to replicate the applicable EU treaties. The UK has also signalled its desire to renegotiate certain existing UK agreements, like its FTA with Canada (reproduced from the EU's trade agreement with Canada), into longer term trade deals.<sup>23</sup>

New agreements are being negotiated with Algeria, Bosnia and Herzegovina and Montenegro.<sup>24</sup> As Montenegro is a member of the WTO, its trade with the UK takes place under WTO terms.<sup>25</sup> Algeria and Bosnia and Herzegovina are not members of the World Trade Organisation (the "WTO") and trade therefore currently takes place under the UK's Generalised Scheme of Preferences for imports (Algeria<sup>26</sup>) or under WTO terms, *i.e.*, the UK's new 'Global Tariff' for imports (Bosnia and Herzegovina<sup>27</sup>).<sup>28</sup>

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<sup>20</sup> See <https://www.gov.uk/government/news/united-kingdom-signs-free-trade-deal-with-norway-iceland-and-liechtenstein>.

<sup>21</sup> See *e.g.* UK-Canada FTA, art. V.

<sup>22</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/944339/CS\\_Singapore\\_1.2020\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944339/CS_Singapore_1.2020_Free_Trade_Agreement.pdf).

<sup>23</sup> <https://www.gov.uk/government/news/uk-and-canadian-trade-ministers-celebrate-trade-deal-ratification>.

<sup>24</sup> <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries>.

<sup>25</sup> Montenegro has been a WTO member since 2012.

<sup>26</sup> As a developing country, imports from Algeria have reduced rates of import duty on certain goods. See <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries#trade-agreements-still-in-discussion>.

<sup>27</sup> In November 2020 the UK indicated that it would not be extend the EU's stabilisation agreements with Bosnia, Serbia and Algeria. See <https://committees.parliament.uk/publications/3803/documents/38124/default/>. In April 2021, Serbia and the UK entered into a Partnership Trade and Cooperation Agreement, which allowed

Previous EU agreements with these countries did not contain detailed investment chapters or provision for ISDS. It therefore remains to be seen whether the new treaties will contain such provisions and reach further than their predecessors in this respect.

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## Expanding the UK's Market, Looking East & New Trading Blocks

### The CEPA

CEPA entered into force on 1 January 2021, following the UK's exclusion from the treaty relations established by the EU-Japan Economic Partnership Agreement (the "EPA"). The agreement is meant to *"give UK businesses a gateway to the Asia-Pacific region and help to increase the resilience and diversity of our supply chains"*.<sup>29</sup>

The agreement replicates many provisions in the EPA and includes almost identical chapters on trade and sustainable development. However, according to the UK government, the CEPA goes *"beyond the EU-Japan trade deal"* and *"includes major wins that would be impossible as part of the EU"*.<sup>30</sup> The key differences between the two agreements lie in the provisions on e-commerce, intellectual property and financial services.<sup>31</sup> The CEPA contains new provisions on cross-border transfers<sup>32</sup> to help drive data flows, while at the same time, securing higher levels of data protection.<sup>33</sup> It also does away with data localisation rules,<sup>34</sup> designed to help businesses avoid the costs of establishing servers in each jurisdiction for data processing. Furthermore, the CEPA encourages the use of e-signatures<sup>35</sup> and e-contracts<sup>36</sup> to help digitalise supply chains and transactions, and strengthens protections for algorithm and encryption technologies.<sup>37</sup> In relation to intellectual property, the CEPA grants longer protections

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businesses to continue trading as they did before 1 January 2021. As regards Bosnia, the UK applies its Global Tariff to incoming Bosnian goods while UK imports into Bosnia are afforded MFN treatment in line with WTO rules. See <http://www.bhembassy.co.uk/2020/12/29/obavjestenje-o-trgovinskom-rezimu-bosne-i-hercegovine-i-ujedinjenog-kraljevstva-velike-britanije-i-sjeverne-irske-nakon-postignutog-dogovora-o-buducim-odnosima-evropske-unije-i-ujedinjenog-kraljevstva/>.

<sup>28</sup> <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries>.

<sup>29</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf).

<sup>30</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf).

<sup>31</sup> CEPA Chapter 8 (Trade in Services, Investment Liberalisation and Electronic Commerce), sections E-5 and F, and Chapter 14 (Intellectual Property).

<sup>32</sup> CEPA, art. 8.84.

<sup>33</sup> CEPA, art. 8.80.

<sup>34</sup> CEPA, art. 8.85.

<sup>35</sup> CEPA, art. 8.77.

<sup>36</sup> CEPA, art. 8.76.

<sup>37</sup> CEPA, art. 8.73 and 8.86.

for industrial designs compared to the EPA,<sup>38</sup> and allows the parties to obtain more geographical protections for their products to limit unauthorised replication.<sup>39</sup> With respect to financial services, the CEPA strengthens regulatory cooperation between the UK and Japan,<sup>40</sup> and introduces new rules to facilitate obtaining licenses.<sup>41</sup> In addition, the provisions on rules of origin appear to be less stringent under the CEPA than under the EPA. According to the government, the CEPA's provisions could potentially increase the volume of trade in areas such as textile products, sugar confectionary and biscuits.<sup>42</sup> More generally, by aligning the UK more closely with Japan, the CEPA marks a further step towards the UK joining the CPTPP.<sup>43</sup>

In terms of protections, the CEPA contains provisions on Market Access (CEPA 8.7; 8); National Treatment (CEPA 2.7; 8.8; 8.16); Most-Favored-Nation Treatment (CEPA 8.9; 8.17); Performance Requirements (CEPA 8.11); and Denial of Benefits (CEPA 8.13; 8.19)

Like the EPA, the CEPA does not have an ISDS mechanism but does contain a provision in which the State Parties promise to review the inclusion of such a mechanism.<sup>44</sup> Article 22 sets out the State-to-State dispute resolution mechanism concerning the interpretation and application of the CEPA, which envisions a panel of three arbitrators rendering decisions by majority vote.<sup>45</sup>

## The UK-Australia Trade Deal

In September 2016, a joint working group was established for the UK and Australia to discuss the parameters of a future trade agreement. On 18 July 2018, the UK government announced public consultations on future post-Brexit trade negotiations with Australia.

On 23 April 2021, the UK and Australian governments issued a joint statement confirming that consensus had been reached on the “*vast majority of the elements of a new comprehensive free trade agreement*”<sup>46</sup> and on 15 June 2021, the two governments announced that they had reached an “*agreement in principle*”, promising an imminent publication of the text of the agreement.

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<sup>38</sup> CEPA, art. 14.35.

<sup>39</sup> CEPA, art. 14.26 to 14.34.

<sup>40</sup> CEPA, art. 8.67.

<sup>41</sup> CEPA, art. 8.64.

<sup>42</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf).

<sup>43</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf).

<sup>44</sup> CEPA, art. 8.5.

<sup>45</sup> CEPA, art. 22.2.

<sup>46</sup> <https://www.gov.uk/government/news/joint-statement-on-uk-australia-trade-talks>.

The UK government is promoting the trade deal as “historic”, seeking to “remove barriers for business” and “intensify cooperation on security, climate change and science and tech”.<sup>47</sup> It has also suggested that the deal represents a stepping-stone towards joining CPTPP<sup>48</sup> and part of the “government’s top strategic trade priority of using our voice as a new independent trading nation”.<sup>49</sup>

Although details of the agreement have not been announced, the UK government has stated that it will eliminate tariffs on all UK goods, although sensitive agricultural products will be protected by 15-year transition periods. It is expected that barriers for trade in services will be removed. It has also been reported that the agreement will include an ISDS mechanism but this has not been confirmed by either State.

Certain organisations, including Greenpeace UK and the WWF, consider that the new deal may impact the UK’s commitment to a world-leading 78% reduction of emissions by 2035.<sup>50</sup> These organisations highlight that in order to honour its environmental commitments, the UK must support sustainable farming in all countries from which it imports food. It is still unclear whether the deal will incorporate and uphold strict standards on environmental protection and animal welfare. If it does not, there are fears that countries with lower standards will seek to conclude similar agreements with the UK, which will ultimately result in weaker overall regulation.<sup>51</sup>

## The CPTPP

On 1 February 2021, the UK formally requested accession to the CPTPP. The States party to the CPTPP at present include: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam.<sup>52</sup> Other countries reported to be seeking accession are the US,<sup>53</sup> Taiwan,<sup>54</sup> Colombia,<sup>55</sup> Indonesia,<sup>56</sup> South Korea,<sup>57</sup> Thailand,<sup>58</sup> China<sup>59</sup> and the Philippines.<sup>60</sup>

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<sup>47</sup> <https://www.gov.uk/government/news/uk-agrees-historic-trade-deal-with-australia>.

<sup>48</sup> <https://www.gov.uk/government/news/uk-agrees-historic-trade-deal-with-australia>.

<sup>49</sup> <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-australia/uk-australia-free-trade-agreement-the-uks-strategic-approach>.

<sup>50</sup> UK Government, UK enshrines new target in law to slash emissions by 78% by 2035, (2021). See <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>.

<sup>51</sup> [https://www.wwf.org.uk/sites/default/files/2021-](https://www.wwf.org.uk/sites/default/files/2021-05/WWF%20UK%20Australia%20Deal%20Plty%20Briefing%20%281%29.pdf)

[05/WWF%20UK%20Australia%20Deal%20Plty%20Briefing%20%281%29.pdf](https://www.wwf.org.uk/sites/default/files/2021-05/WWF%20UK%20Australia%20Deal%20Plty%20Briefing%20%281%29.pdf);

<https://www.businessgreen.com/news/4032884/destructive-uk-australia-free-trade-deal-sparks-outrage-environmental>.

<sup>52</sup> The CPTPP entered into force on 30 December 2018 for Australia, Canada, Japan, Mexico, New Zealand and Singapore, and on 14 January 2019 for Vietnam. The CPTPP will enter into force for Brunei Darussalam, Chile, Malaysia and Peru 60 days after they complete their respective ratification processes.

<sup>53</sup> <https://www.cnn.com/2018/01/25/trump-says-he-would-reconsider-trans-pacific-partnership-trade-deal.html>.

<sup>54</sup> <https://english.president.gov.tw/NEWS/4906>.

The CPTPP's main protections include provisions on National Treatment (CPTPP 9.4), Most-Favored-Nation Treatment (CPTPP 9.5), Minimum Standard of Treatment (CPTPP 9.6), Direct and Indirect Expropriation (CPTPP 9.8), Transfers of Funds (CPTPP 9.9), and Performance Requirements (CPTPP 9.10).

The CPTPP's investment chapter also includes mandatory ISDS provisions for disputes concerning the treatment of covered investments.<sup>61</sup> The disputing parties are first obliged to engage in consultations and negotiations to settle any dispute that arises (CPTPP 9.18). If the "investment dispute has not been resolved within six months", the claimant may submit a request for arbitration in accordance with the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules (CPTPP 9.19(4)).

Certain States have entered into bilateral arrangements ("Side Letters") excluding the CPTPP's compulsory ISDS mechanism. New Zealand, for example, signed such Side Letters with Brunei, Malaysia, Peru, Vietnam and Australia in 2018. It is currently unclear whether the UK will seek to limit access to the ISDS mechanism should it accede to the treaty.

Chapter 28 of the CPTPP also provides for State-to-State dispute resolution for disputes concerning the agreement's interpretation or application, or if a contracting party considers an actual or proposed measure of another party would fail to meet the CPTPP's objectives.<sup>62</sup> Moreover, even if a measure of one party is consistent with the CPTPP's objectives, another party may still engage the mechanism if it considers that the measure is nullifying or impairing a benefit that it expected to accrue under various provisions of the agreement.<sup>63</sup>

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<sup>55</sup> <https://www.japantimes.co.jp/news/2018/07/19/business/tpp-countries-start-accession-talks-new-members-2019/>.

<sup>56</sup> <https://www.japantimes.co.jp/news/2018/07/19/business/tpp-countries-start-accession-talks-new-members-2019/>.

<sup>57</sup> <https://www.japantimes.co.jp/news/2018/07/19/business/tpp-countries-start-accession-talks-new-members-2019/>.

<sup>58</sup> <https://www.japantimes.co.jp/news/2018/07/19/business/tpp-countries-start-accession-talks-new-members-2019/>.

<sup>59</sup> <https://www.caixinglobal.com/2020-05-29/premier-sends-powerful-signal-for-china-to-join-asia-pacifics-largest-trade-pact-101560855.html>.

<sup>60</sup> <https://www.pna.gov.ph/articles/1135395>.

<sup>61</sup> CPTPP, Chapter 9.B.

<sup>62</sup> CPTPP, art. 28.3.

<sup>63</sup> See e.g. CPTPP Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 8 (Technical Barriers to Trade), Chapter 10 (Cross-Border Trade in Services) or Chapter 15 (Government Procurement).

The CPTPP also contains important provisions on transparency and accessibility. For example, the Government Procurement chapter provides for the transparency and accessibility of procurement information,<sup>64</sup> tackling corruption<sup>65</sup> and facilitating the participation of “SMEs” in government procurement.<sup>66</sup>

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## Conclusion and Outlook

The UK government has taken some steps to redress the legal uncertainty that Brexit created in the context of trade and investment, by reaffirming or renegotiating existing trade and investment agreements. The UK government also appears to be following up on its promise to diversify its trade partners. Its current focus in this regard is the CPTPP.

The opportunity to renegotiate existing agreements and enter into new ones has allowed the UK to clarify the scope of trade and investment protections it considers desirable, albeit the UK’s stance on ISDS remains unclear. For example, the UK-Canada FTA has suspended the application of the EU-Canada Comprehensive Economic and Trade Agreement’s ISDS mechanism, which is subject to review. On the other hand, and in contrast to the EU’s reformist approach towards ISDS, the CEPA leaves open the possibility of incorporating an ISDS mechanism in the future. It remains to be seen whether the UK will accept the CPTPP’s ISDS provisions or circumvent them by concluding Side Letters with other CPTPP signatories.

As explained above, the UK government is placing particular focus on its accession to the CPTPP. The government’s published strategy document makes clear that the UK’s primary motivation for joining the CPTPP is the economic opportunities that membership brings and the goal of providing UK businesses with greater access to rapidly expanding markets in Mexico, Malaysia, and Vietnam, as well as mature consumer-focused economies, such as Canada and Australia. The government has also stated that it will “ensure that CPTPP accession negotiations are consistent with the UK’s wider interests and the government’s policies and priorities”.<sup>67</sup> Arguably this should include ensuring consistency with the UK’s existing arrangements with Australia, Japan and Canada. It remains to be seen how the UK intends to ensure such consistency. The government also believes that the diversity of the CPTPP’s membership will strengthen

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<sup>64</sup> CPTPP, art. 15.17.

<sup>65</sup> CPTPP, art. 15.18.

<sup>66</sup> CPTPP, art. 15.22.

<sup>67</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf).

supply chains and bolster the UK's economic resilience.<sup>68</sup> For example, the CPTPP's diverse membership could mean that UK businesses will have access to more competitive imports, which can create jobs and boost wages at home.<sup>69</sup>

CPTPP membership will also allow the UK to champion free and fair trade and fight protectionism.<sup>70</sup> Similarly, it gives the UK a platform to engage with countries with a combined population of 500 million on trade-related issues, such as data privacy and e-commerce, environment and climate change, labour standards, and women's economic empowerment.<sup>71</sup>

The UK's approach to CPTPP accession has been underpinned by public consultations with individuals, businesses, NGOs and public sector bodies. Recently published consultation responses noted that CPTPP accession should protect the National Health Service, deliver on labour and food safety standards, include ISDS mechanisms, and uphold transparency and scrutiny.<sup>72</sup> Finally, the CPTPP would allow the UK to develop strategic foreign policy and defence alliances in the region.<sup>73</sup>

Debevoise continues to closely follow and report on any developments in this arena.

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Please do not hesitate to contact us with any questions.

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<sup>68</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf), p.5.

<sup>69</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf), p.5.

<sup>70</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf), p. 10.

<sup>71</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf), p. 8.

<sup>72</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995485/cptpp-strategic-case-accessible-v1.1.pdf), p. 16.

<sup>73</sup> See <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>.

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