UK ACCESSION TO THE CPTPP (PART 1): BENEFITS FOR INVESTORS AND TRADERS

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INTRODUCTION

The United Kingdom's ("UK") accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") reached a major milestone on Sunday 16 July 2023, with the signing of the UK's Accession Protocol (the "Protocol"). The Protocol sets out the terms and conditions of the UK's accession, the UK's market access commitments to CPTPP members, and also modifies some aspects of how the CPTPP apply for the UK. It is also accompanied by a range of bilateral side letters regarding issues of interest between the UK and specific CPTPP members. This article sets out some of the key benefits the accession brings to traders and investors in the UK and the CPTPP region.

The CPTPP is one of the highest quality trade agreements in force, with wide ranging and deep commitments on a range of areas including goods, services, investment, digital trade, mobility, and intellectual property. It contains high standard environmental, labour and anti-corruption provisions that aim to level the playing field and ensure CPTPP members maintain protections for workers and the environment. It offers a range of benefits for UK industry as well as for investors and traders in CPTPP economies wishing to strengthen their ties with the UK.

BENEFITS TO GOODS AND SERVICES TRADERS

The UK already has free trade agreements ("FTAs") – either agreements continuing the application of European Union FTAs following Brexit or new FTAs such as those with Australia and New Zealand – with all of the CPTPP economies except Malaysia and Brunei.

However, the high-quality and plurilateral nature of the CPTPP means there are still tangible benefits for goods and services traders in the UK and in CPTPP economies, including:

- new preferential tariff commitments on a range of goods traded between the UK and CPTPP economies (and vice-versa), including on automotive parts, dairy products and alcoholic beverages;

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- application of the CPTPP's rules of origin to UK inputs to goods traded within the CPTPP region – meaning CPTPP exporters will be able to count input from the UK for the purpose of qualifying for preferential tariff treatment under the CPTPP. For example, car manufacturers within CPTPP economies can incorporate UK parts into their vehicles and still export those cars with preferential tariff treatment into other CPTPP economies;
- modern and high-quality services and investment rules will apply between UK and CPTPP economies, including on professional and financial services and mutual recognition. This will help remove obstacles to entry and reduce friction in the cross-border provision of services, providing greater certainty for service suppliers. For example, the UK can now participate in the CPTPP's Professional Services Working Group which works on mutual recognition and the regulation of cross-border professional services; and
- new and improved commitments on the travel of businesspeople between the UK and several CPTPP economies, providing greater certainty for investors and traders operating between the region and the UK.

While goods and services traders don't have direct access to dispute settlement to enforce these rights, the CPTPP has a fully functioning State-to-State dispute settlement mechanism that can be used to resolve obstacles to trade. The first such case is currently underway and already demonstrates the ability of industry to use CPTPP to resolve trade-related issues via their government.

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UK investors into most CPTPP economies, and most CPTPP investors into the UK, will soon benefit from one of the most modern investment chapters found within an international trade agreement. This includes strong protections for investors and their investments.

CPTPP's investment chapter includes:

- protections against unlawful expropriation;
- guarantees of a minimum standard of treatment and full protection and security; and
- protections against discrimination – including as between domestic and foreign investors and between investors from different countries.

These need to be read in the context of the particular exceptions contained in the investment chapter, including for specific non-conforming measures and certain public policy interests such as tobacco regulation.

Of particular interest to many investors will be the availability of investor-state dispute settlement ("ISDS") to allow them to directly enforce the rights contained in the Investment Chapter. The CPTPP's ISDS mechanism is modern and transparent, enabling investors to access an independent arbitral tribunal to enforce their rights under the Investment Chapter, and also certain investment-related provisions in the Financial Services Chapter.

As part of its accession, the UK has also agreed that the CPTPP's ISDS provisions will not apply to Australian and New Zealand investors in the UK, nor to UK investors in either Australia or New Zealand. Thus, UK investors looking to invest in the CPTPP region, or investors looking to invest out of the CPTPP region to the UK, should consider the implications of different corporate structures to the availability of dispute settlement.

NEXT STEPS

In the 15 months after its signing, the Protocol will enter into force 60 days after the UK deposits its instrument of accession and all 11 existing CPTPP parties have notified that they have completed their relevant legal procedures. After that 15 month period, the Protocol will enter into force 60 days after the UK has deposited its instrument of accession and six existing CPTPP parties have made the relevant notifications. The Protocol requires the UK to lodge its instrument of accession within 12 months (although the CPTPP Commission may extend this time period). Entry into force is expected to occur within the next 12 to 18 months, although may take longer for some economies than others.

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CONCLUSION

Investors and industry in the UK and CPTPP economies will now be eagerly awaiting the completion of the relevant domestic processes to allow the UK's accession to enter into force. Goods traders will need to consider how the accession might benefit them and how they can potentially access those benefits – including those traders with access to multiple FTAs where it may not be immediately clear which best benefits their supply chain. Investors should consider what new rights the accession may give them and if there are any actions they need to take to better protect their interests in the UK or CPTPP markets. Once the Protocol enters into force, the CPTPP will provide a powerful new tool for the resolution of trade and investment irritants and further enhance trade between the UK and the ever more important Indo-Pacific region.

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WFW has deep experience and expertise in international dispute resolution and trade and investment law across the Indo-Pacific region. For more information in relation to this article, please reach out to one of one of our listed authors or another of our industry specialists including: Singapore Partner Sumeet Malhotra, Bangkok Partner Steven Burkill, Hong Kong Partner Marcus Gordon or London Partner Mike Phillips.

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