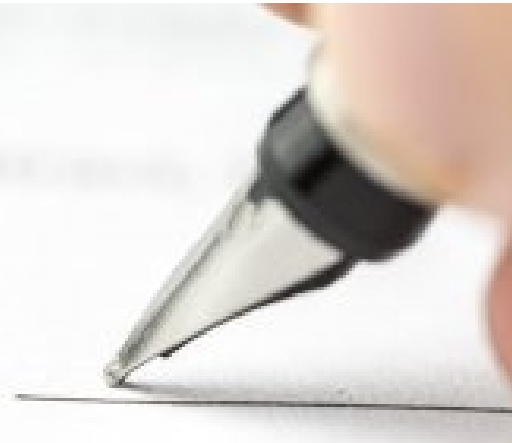


UK ACCESSION TO THE CPTPP (PART 2): KEY LESSONS FOR OTHER ACCESSION CANDIDATES

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INTRODUCTION

"As the first accession to the Comprehensive Agreement for Trans-Pacific Partnership ("CPTPP"), the UK's experience sets a strong precedent for future accession candidates."

As the first accession to the Comprehensive Agreement for Trans-Pacific Partnership ("CPTPP"), the UK's experience sets a strong precedent for future accession candidates. The release of the UK's Accession Protocol text also provides economies interested in acceding to the CPTPP new insights into what to expect from the accession process. This article sets out some implications for CPTPP accession candidates from the UK's accession, to inform how they can best prepare themselves for a quick and efficient accession negotiation.

HISTORY OF THE UK'S ACCESSION

The UK formally requested to join the CPTPP on 1 February 2021 following active engagement with CPTPP members. On 2 June 2021, the CPTPP members agreed to begin an accession process for the UK and established an Accession Working Group with subsidiary bodies to negotiate the terms and conditions of the accession. The negotiation took approximately two years and substantial conclusion was announced on 31 March 2023. The text of the UK's Accession Protocol was then legally verified and translated into French and Spanish ahead of its signing on 16 July 2023.

KEY LESSONS FOR FUTURE ACCESSION CANDIDATES

The UK's experience highlights a number of considerations future accession candidates to the CPTPP should keep in mind.

Timing

"The time taken for any specific accession will largely depend on the quality of market access offers the candidate is able to provide and the extent of party-specific exceptions (if any) it seeks from CPTPP members."

The UK's accession negotiations took just over two years to complete. This period included Covid-19 disruptions and the UK negotiating several other major free trade agreements at the same time. This timeline compares favourably to both WTO accessions (which can take up to ten years or longer, although they involve a far larger number of negotiating economies) and the negotiation of full, independent free trade agreements with all of the parties. We can expect future accessions to benefit from the lessons CPTPP members will learn from the UK's experience to speed up the process. Ultimately, though, the time taken for any specific accession will largely depend on the quality of market access offers the candidate is able to provide and the extent of party-specific exceptions (if any) it seeks from CPTPP members.

Standard of market access commitments

The UK's market access commitments across goods, services, investment and government procurement are largely at a similar quality level to that offered by other CPTPP members. This suggests CPTPP members will hold the line on their stated intention to only accept the highest quality offers from acceding economies. Future accession candidates should not expect to be able to get by with a 'lowest common denominator' approach to market access or offers that lowers the overall average quality of market access under the CPTPP.

Limited scope for party-specific exceptions

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The UK also achieved some limited party-specific exceptions, either in the text of its Accession Protocol or via side instruments it executed with other economies. Most notably, the UK has exceptions for the Windsor Framework (previously known as the Northern Ireland Protocol) and in relation to certain patent grace periods it required due to it being a party to other intellectual property treaties that are not consistent with the CPTPP's intellectual property rules.

These exceptions are all linked to clear national sensitivities, have precedent in the UK's existing FTAs, and some have built-in review and other mechanisms to ameliorate their impact upon trade. A prime example of this is the UK's Windsor Framework exception, which allows the UK to take measures that are inconsistent with the CPTPP where this is to implement the Windsor Framework it has agreed with the EU regarding Northern Ireland. This is a matter of clear national and international sensitivity, without which the UK

would have been unable to enter into the CPTPP. It also contains built-in review and consultation mechanisms that provide CPTPP members with oversight of the extent to which the exception impacts upon trade.

Future accession candidates should carefully consider whether they need any party-specific exceptions, how these could be justified, and what protections could be built in to make them more palatable to CPTPP members. For example, potential candidates could examine the original CPTPP to see what relevant party-specific exceptions it contains, and consider the precedent set by their own past trade agreements. They may also start considering what form these exceptions could take in light of the UK's Accession Protocol.

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Accession Working Group Report

Alongside the UK's Accession Protocol, the CPTPP Accession Working Group also produced a detailed report on the negotiation of the UK's accession. This document summarises at a high-level the negotiations across various working groups, and notes some key developments, sticking points and justifications used to accept certain outcomes from the UK. This provides a useful tool for understanding the outcomes in the UK's Accession Protocol, and some of the non-legally binding understandings reached during negotiations (for example on tariff differentials and fisheries subsidies).

NEXT STEPS FOR THE UK AND CPTPP MEMBERS

The UK's Accession Protocol will enter into force either: 60 days after the UK and all CPTPP members have notified their completion of relevant domestic procedures for entry into force, if this occurs within the next 15 months; or, after the expiry of the 15-month period, once the UK and six CPTPP members have notified their completion of relevant domestic procedures for entry into force.

Some CPTPP members have indicated that they will not be in a rush to move to the next accession. There are also strong geopolitical considerations at play in the various members' considerations of how future accessions will be treated. CPTPP members have highlighted they are also looking to progress the agreement's third-year general review and learn from the UK's experience for future accessions.¹ They further emphasised the need for accession candidates to *"meet the high standards of the Agreement"* and have a *"demonstrated pattern of complying with their trade commitments"*, while noting *"the importance of an accession process that ensures the Agreement remains dynamic and living"*. However, any indefinite or overly lengthy slow down would risk undermining the credibility and centrality of the agreement to the region's trade architecture, particularly given the Regional Comprehensive Economic Partnership (the ASEAN-centred regional trade agreement) is also open for accessions as of 1 July 2023.

CONCLUSION

Now that CPTPP's first accession is complete, we can expect it to form a template for future accessions. While some tweaks to the process are likely for future economies, there is now a relatively clear procedural path for how CPTPP accessions will occur, greater clarity in relation to the standard of commitments that will be acceptable to CPTPP members, and the precedent of party-specific exceptions. Future candidates should carefully consider the UK's Accession Protocol, along with the Accession Working Group's report, to consider the implications for their accession.

If the CPTPP members delay in commencing their next accession negotiation, that will also provide time for other economies to fully digest the UK's experience and plan accordingly. In doing so, they may wish to consider how best to structure and justify their market access offers, what sensitivities they may need to protect through the accession (and how this could be done), and how best to engage with CPTPP members in the accession process. These are complex and novel matters, on which experienced and practical advice can make a world of difference to ensuring a robust and effective accession strategy is adopted.

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WFW has deep experience and expertise in trade and investment negotiations across the Indo-Pacific region. For more information in relation to this article, please reach out to 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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[1] CPTPP, Joint Ministerial Statement on the Occasion of the Seventh Commission Meeting (CPTPP/JS/2023/001), available at: <https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/Joint-Ministerial-Statement-of-the-7th-CPTPP-Commisison-Meeting.pdf>.

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