

Department of Foreign Affairs and Trade's response to Questions on Notice from the Joint Standing Committee on Treaties, received on 18 June 2024, in relation to the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement For Trans-Pacific Partnership

Question on Notice: To what extent is the Government trying to improve the way we assess [supply chain] benefits [...] that give us confidence that those expected supply chain benefits are in fact being delivered.

Response: The Government negotiates free trade agreements (FTAs) to facilitate greater access to regional supply chains at the request of Australian business. Firms are looking for flexibility in terms of location of production and assembly, and trade rules that allow for preferential tariffs based on regional accumulation of the value of a product. Firms are also looking for diversified supply chains that provide resilience in times of trade disruption.

Regional supply chains can be highly complex and, as the Committee notes, it is difficult to assess all their benefits for Australian producers and exporters. However, relevant government agencies do, in particular circumstances, examine sector-specific supply chain issues in consultation with industry stakeholders. For example, the Office of Supply Chain Resilience assesses disruption risk in Australia's critical supply chains, including monitoring Australia's supply chain vulnerability and criticality through data analysis and engagement with stakeholders in industry.

While FTAs open up opportunities for businesses to diversify their supply chain opportunities, whether businesses ultimately take up these opportunities comes down to a commercial decision.

Question on Notice: In summary, the Committee's question explores whether the benefits gained under the bilateral FTA for the Australian wine sector would have been diminished by non-tariff barriers, created by domestic tax arrangements, but for the commitments placed on the UK under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Response: The Australia–United Kingdom Free Trade Agreement (AUKFTA) removed tariffs on wine, providing Australian wine producers with an advantage over competitors that do not have preferential access to the UK market.

Separately, the UK Government is continuing to advance changes to its alcohol excise duty system. The UK's objectives are to simplify its excise system and reduce alcohol consumption. The changes apply to all wines regardless of origin, including domestic and imported wine.

The UK is introducing a progressive, incremental rate of duty that increases for wines according to levels of alcohol by volume. A transitional duty, which has fewer rate increases and is therefore simpler for the wine sector to implement, has been in place since August 2023.

The Australian wine sector has expressed strong concerns over the increased costs and complexity of implementing the reforms. The sector is advocating for the transitional duty to be made permanent. The transitional duty expires on 1 February 2025, from which time there will be 27 different taxation bands from 8.0 per cent to 14.5 per cent alcohol by volume.

Domestic tax arrangements are not normally the subject of FTA negotiations. While the UK's domestic tax arrangements are an internal matter for the UK Government, the Australian Government has engaged - and will continue to engage - with UK counterparts to advocate for the interests of Australian wine producers on this issue.

Question on Notice: In summary, the Committee's question asked about the non-indexation of British pensions for British nationals and dual citizens in Australia, as raised in the submission, and for an update on the broader bilateral arrangements.

Response: The Australian Government has raised concerns about the non-indexation of UK pensions in Australia with the UK Government on multiple occasions. The Department of Social Services leads on social security policy.

Most recently:

- In November 2022, the Minister for Social Services, the Hon Amanda Rishworth MP wrote to her counterpart (the UK Secretary of State for Work and Pensions) to advocate for a change to the UK pension indexation policy.
- In May 2023, Minister Rishworth wrote to the UK Secretary of State for Work and Pensions to express Australia's interest in entering into social security agreement negotiations with the UK, conditional on resolving the indexation issue.
- In June 2023, Minister Rishworth raised the issue with the UK Minister for Disabled People, Health and Work at the Conference of States Parties to the UN Convention on the Rights of Persons with Disabilities.
- In January 2024, Minister Rishworth wrote to the UK Secretary of State for Work and Pensions to reiterate Australia's continuing interest in resolving the indexation issue and openness to discussing ways to move forward on the issue.

The Australian Government also continues to engage with the UK Government on this issue through other channels, including representations by the Australian High Commission in London.

To date, the UK Government has indicated it has no plans to change its policy on indexation or enter into negotiations for a social security agreement with Australia.

The Agreement on Social Security Between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland (the Agreement) commenced in 1992 and replaced an earlier social security agreement between Australia and the UK dating back to 1958. The Agreement (and its

predecessor) did not provide for the indexation of UK pensions paid to people living in Australia.

The Australian Government served notice of the termination of the Agreement on the UK Government on 1 March 2000, in response to the UK Government's ongoing refusal to renegotiate the Agreement or otherwise provide for the indexation of UK pensions in Australia. The Agreement subsequently terminated on 1 March 2001.

Question on Notice: A request to provide more detail on the benefits to Australia from the services related provisions in the UK Accession Protocol for mobility and professional services suppliers.

Response: Generally, the UK's commitments on trade in services under the CPTPP would offer a slight improvement over its commitments in the Australia-United Kingdom Free Trade Agreement (AUKFTA). This includes commitments providing for greater transparency, and increased professional mobility, for Australian services suppliers.

The UK's schedule of commitments on Temporary Entry expanded commitments as follows, compared to AUKFTA: commitments to provide access for professionals working for non-profit organisations and working rights for dependants of intra-corporate transferees.

Specific services improvements the UK has made beyond AUKFTA include: commitments in relation to audio-visual services; narrower exemptions for entertainment services; inclusion of new future services; greater clarity on which parts of its legal regime are captured by its services reservations; the ability to lock future improvements to UK portfolio management services – and no requirement for financial service suppliers (other than a branch) to adopt a specific legal form when establishing in the UK.

Question on Notice: The Committee asked whether Article 18.38 of the CPTPP won't apply to the UK until it is able to make those changes [contained in the Article] ... [and] are we to understand that the UK accepts that is an obligation on them and they are committed to making that change, or is it more ... that they are essentially exempted from the application of that article until they undertake that domestic reform? ... [T]here would be a concern if the upshot of that was that there was not as great patent protection for Australian innovators vis-a-vis the UK under the CPTPP as it was vis-a-vis all the other member countries. Anyway, I am happy for you to take that on notice and come back to it, because it is not quite clear how that works and how it is going to be resolved going forward.

Response: The grace period for the UK is stipulated, in the Side Letter, to end when amendments are adopted to the European Patent Convention and, as needed, to the Strasbourg Patent Convention to incorporate provisions which are substantially the same as Article 18.38 of the TPP as incorporated into the CPTPP. The UK's commitment in the Side Letter is that it shall endeavour to promote harmonisation in international fora regarding a grace period that is consistent with Article 18.38.

The text of Article 18.38 is as follows:

Article 18.38: Grace Period

Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure:

- (a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and
- (b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.

The Agreement (i.e. the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement For Trans-Pacific Partnership, including the associated Side Letters) has been reached between the Governments of the Parties to the CPTPP and the UK. Australian businesses will receive the same treatment as the businesses of Governments of the Parties to the CPTPP.

The UK's commitments apply to all CPTPP members, as stipulated in the Side Letter.

Question on Notice: Whether the UK has made any public comment on whether it would support economies such as Taiwan joining the CPTPP.

Response: The UK Government supports expanding the CPTPP membership through accessions. It has maintained a country agnostic approach.

Question on Notice: In summary, the Committee's question asked which CPTPP members will ratify next.

Response: Australia is committed to being part of the quorum of six Parties that facilitates the UK's membership to the CPTPP. However, the exact date this occurs depends on when other existing CPTPP Parties complete their domestic processes. In June, Viet Nam's National Assembly made a decision to endorse the UK's membership of the CPTPP, and we expect that this will become formalised within a few weeks of that decision. This will make Viet Nam the fifth CPTPP Party to complete its domestic processes after Japan, Singapore, Chile and New Zealand.

Question on Notice: How long has the UK been in the assessment process, if you like, that has led to this point—from the time they first indicated an interest in joining to get to this point where at least five or six nations are actually looking at actually ratifying that?

Response: The UK formally applied to accede to the CPTPP on 1 February 2021. On 2 June 2021, the CPTPP Commission agreed to commence an accession process with the UK. An Accession Working Group was established and commenced on 28 September 2021. On 31 March 2023, the negotiations for the accession of the UK to the CPTPP were concluded. The Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement For Trans-Pacific Partnership represents the outcome of these negotiations with the UK. On 16 July 2023, Australia - together with the other CPTPP Parties - signed the Protocol. Following signature, CPTPP Parties commenced their respective domestic treaty processes to bring the Protocol into force.

Question on Notice: In summary, the Committee's question was whether there is an obligation on CPTPP members, including new members, to make public bilateral arrangements such as the ones represented in the Side Letters between the UK and Australia.

Response: There are no explicit requirements in the CPTPP Agreement, UK Accession Protocol or Commission decisions that obligate CPTPP Parties to publish Side Letters. The Side Letters which Australia signed in connection with the UK Accession Protocol, that modify or clarify how certain obligations in the CPTPP Agreement apply as between Australia and the UK, are legally binding and, as such, they are tabled and subject to Parliamentary scrutiny as a treaty.

Australia has published the Side Letters on the Department of Foreign Affairs and Trade [website](#). Side Letters between Australia and other CPTPP countries are also published here.

Other CPTPP Parties have similar letters published online, including the UK. The UK has published, on its website, copies of Side Letters it has with all CPTPP Parties. The UK has Side Letters on the 'Intellectual Property Grace Period' with all CPTPP Parties. It has also published Side Letters with different CPTPP Parties on a range of issues including Article 18.53 [Measures Relating to the Marketing of Certain Pharmaceutical Products], Geographical Indications, Agriculture Chemical Test Data, Electronic Payment Card Services, and Investment Screening.