

LEGISLATIVE CONSENT MEMORANDUM

TRADE (COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP (CPTPP)) BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Trade (CPTPP) Bill (“the Bill”) was introduced to the House of Commons on 8 Nov 2023. A link to the Bill is available at Doc 1.

Policy Objectives

3. The UK Government’s (UKG) stated policy objective for the Bill is to provide the necessary measures for changes in domestic legislation to meet its obligations under the CPTPP free trade agreement, relating to the entry into force. Specifically, this relates to technical barriers to trade (TBT), government procurement, and intellectual property (IP).

Summary of the Bill

4. The Bill is required to enable the implementation of the CPTPP Agreement, specifically to amend areas of UK domestic legislation. The Bill must be in force before formal entry into force of the Agreement to ensure that the UK is not in breach of any obligations set out in the Agreement.
5. The Bill contains eight clauses and one schedule, including:
 - **Clause 1** – defines the meaning of the CPTPP and the UK accession protocol for the purposes of the bill.
 - **Clause 2** – Treatment of Conformity Assessment Bodies, gives the Secretary of State a power by regulations to implement Art 8.6 of the CPTPP by amending subordinate legislation. Art 8.6 requires the UK not to discriminate against conformity assessment bodies located in other CPTPP territories in favour of bodies located in UK territory, or in favour of bodies located in one CPTPP territory over those located in another CPTPP territory.
 - **Clause 3** – Government Procurement, sets out the amendments that will apply to domestic government procurement regulations to enact the additional obligations included in the CPTPP Agreement.
 - **Clause 4** - Designations of Origin and Geographical Indications (GIs) – The CPTPP’s intellectual property chapter covers several areas, including patents, GIs, copyright and related rights, trademarks and designs. The chapter sets minimum standards of protections in CPTPP parties’ domestic regimes.
 - **Clause 5** - Performers’ Rights. This clause adds two new kinds of protections in respect of performers’ rights under the Copyright, Designs and Patents Act 1988. It also amends a power to restrict performers’ rights in certain cases. That power allows the Secretary

of State to restrict the protection afforded to a performance other than in cases where the performers' rights exist by reference to a connection with the UK, the Channel Islands, the Isle of Man and Gibraltar.

- **Clause 6** – Territorial Extent, sets out the jurisdictions in which the Bill provisions will form part of the law.
 - **Clause 7** - Commencement, sets out the dates on which the Bill provisions come into force.
 - **Clause 8** – Short Title, sets down how the Bill may be cited as the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2023.
6. Clauses 1, 6, 7 and 8 are considered technical provisions which do not encode substantive policy choices; they are concerned with how the CPTPP Bill works rather than what the law contains and for this reason we do not as a matter of practice generally include these kinds of clauses within Legislative Consent Memoranda.
7. There have been no amendments made to the Bill at this current time.

Provisions in the Bill for which consent is required

Clause 2 – Treatment of Conformity Assessment Bodies

8. Clause 2 is a power to make regulations-
- (a) implementing CPTPP Art 8.6,
 - (b) by amending subordinate legislation.
9. Art 8.6 contains an international obligation requiring non-discrimination against and between conformity assessment bodies located in CPTPP territories. The Senedd has competence to observe and implement international obligations in devolved areas¹.
10. The non-discrimination obligation operates in the context of CPTPP Chapter 8 which applies to the development, adoption and application of technical regulations, standards and conformity assessment procedures *of central level of government bodies*². In general, *central level of government* means, for the UK, HMG³; and in relation to Chapter 8 in particular, technical regulations, standards and conformity assessment procedures *of HMG* are to be considered as being *of central level of government*, including when HMG is acting in respect of Wales⁴.
11. Our understanding is that Art 8.6.1 and Art 5 of the Accession Protocol are together intended to capture cases where the development, adoption and application of technical regulations, standards and conformity assessment procedures occurs-

¹ GOWA Sch 7A paragraph 10.

² Art 8.3.1: [TTP TBT Chapter Text - Jan 2015 \(dfat.gov.au\)](#).

³ Accession Protocol Art 2: [cptpp-accession-protocol-united-kingdom-cptpp.pdf \(dfat.gov.au\)](#).

⁴ Accession Protocol Art 5: [cptpp-accession-protocol-united-kingdom-cptpp.pdf \(dfat.gov.au\)](#); no distinction is made with regard to cases where HMG acts in respect of Wales in reserved as opposed to devolved areas.

- (A) by means of Acts of the UK Parliament⁵, including cases where the relevant provision in Acts cover devolved areas⁶;
- (B) by means of action by UKG and executive agencies of UKG⁷, e.g. FSA, including cases where UKG and its executive agencies are acting in devolved areas.
12. As regards (A), UK Acts can apply in devolved areas and can give UKG and its executive agencies powers to act in devolved areas.
13. As regards (B), UKG and its executive agencies, among others, can act in devolved areas under powers given by UK Acts and under powers given by retained direct EU legislation.
14. We conclude from this that the non-discrimination obligation in Art 8.6 applies in respect of devolved provision contained in UK Acts and in respect of provision made by UKG and its executive agencies when acting in devolved areas.
15. The clause 2 power is a power to implement the non-discrimination obligation (and other aspects of Art 8.6) by amending subordinate legislation. *Subordinate legislation* is defined in clause 2 so that it means *Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments*
- (a) *made or to be made under any Act [of the UK Parliament] or*
 - (b) *to be made on or after IP completion day under any retained direct EU legislation other than retained direct EU CAP legislation as so defined or*
 - (c) *made or to be made on or after exit day under retained direct EU CAP legislation as defined in section 2 of the Direct Payments to Farmers (Legislative Continuity) Act 2020.*
16. This means clause 2 can be used to implement the Art 8.6 non-discrimination obligation by amending devolved provision contained in subordinate legislation made or to be made by UKG or its executive agencies under existing and future powers given by any legislation of the kind listed at (a) to (c) above.
17. Welsh Government considers the Senedd has competence to give that same power to Welsh Ministers at least as regards the areas identified in the second column in the table set out in the Annex.
18. CPTPP Chapter 8 does not apply to government procurement or to sanitary and phytosanitary measures covered by CPTPP Chapter 7. Welsh Government has taken these exclusions into consideration in reaching the views set out in this Memorandum on clause 2; in short we do not consider they alter the conclusion on competence.

Clause 3 – Government Procurement

19. There is a respectable argument that the procurement clauses, specifically Clause 3 and Schedules Part 1 and Part 3, are within devolved competence.
20. The Bill makes changes to domestic legislation in order to bring the UK's public procurement systems in line with the UK's obligations under the CPTPP. We would note however that public procurement is typically devolved and within the Welsh Government's competence.

⁵ We understand that Chapter 8 is intended to capture UKG Acts even though strictly speaking Acts are acts of Parliament not HMG.

⁶ I.e. not just where Acts apply to Wales in reserved areas.

⁷ We have not looked into other bodies which might be covered by the concept of central government bodies as we do not consider the answer capable of altering the conclusions about competence.

21. My officials were involved in the development of the policy requiring the Bill – namely the government procurement chapters of the CPTPP agreement. Officials have regular meetings with both DBT negotiation and procurement policy teams. The changes needed as a result of the government procurement chapters were discussed with officials before they were agreed finally as part of the negotiations.
22. However, my officials were not involved in the development of the Bill itself. Officials were party to discussions with DBT procurement policy officials when the prospect of a bill being brought to the UK Parliament was first raised. Throughout these discussions Welsh Government officials met with UK Government officials from DBT and Cabinet Office and made clear at these meetings that a bill which granted concurrent plus powers was essential in securing Welsh Government consent. My officials were given first sight of the draft Bill on 24 October.
23. This Bill interacts with the UK's accession to join the CPTPP. The Bill must be passed and receive Royal Assent before formal entry into force of the Agreements to ensure that the UK is not in breach of its obligations under the Agreements when they enter into force. The UK Government has indicated it is seeking to gain Royal Assent during Spring 2024.
24. The Bill also interacts with the Procurement Act 2023 which is introducing a new legislative system to govern public procurement. Royal Assent was granted on 26 October 2023. The Procurement Act 2023 is available [here](#). It should be noted that the Bill also amends the existing public procurement regulations – namely the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016, and the Utilities Contracts Regulations 2016. These regulations will be repealed upon commencement of the Procurement Act, and it is anticipated that the Procurement Act will come into force in Autumn 2024.

Clause 4 - Designations of Origin and Geographical Indications (GIs)

25. Geographical indications and designations of origin (the latter known as a type of geographical indication) (GIs), protect the names of products which have a special relationship with their geographical origin. There are currently 19 Welsh GIs including Welsh Lamb, Anglesey Sea Salt and Single Malt Welsh Whisky. The CPTPP's intellectual property chapter sets out procedures that must be in place to allow parties to oppose an application for the protection of a GI, and to seek the cancellation of a registered GI. The government has stated that legislation will be needed to amend the domestic legislative framework that regulates Great Britain's GI scheme for certain agricultural products and foodstuffs ('agri-foods').
26. Clause 4 amends the domestic framework which governs designation of origin and geographical indications, namely:-
 - a) retained Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs (Regulation 1151/2012);
 - b) retained Commission Delegated Regulation (EU) No 664/2014 with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules (CDR 664/2014); and
 - c) retained Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (CIR 668/2014).

27. As part of the UK's withdrawal from the EU, amendments to correct deficiencies in these retained EU Regulations (and other related retained EU law) were made by the UKG in relation to Wales. The UKG did not always seek the WG/Senedd's consent to these changes, asserting GIs are intellectual property and reserved to the UKG. However, WG has consistently seen GIs as aspects of agri-food sector and laid written statements before the Senedd under Standing Order 30C *Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd* disputing the UKG's view.
28. This is a complicated area of law where GIs have been intertwined with both the common agricultural market and intellectual property and arguments are finely balanced as to where the dividing line might lie in respect of what is reserved and what is devolved. The Welsh Government's view is that an LCM is appropriate regardless because clause 4 clearly impacts the devolved areas of agri-food.

UKG view on the need for consent

29. UKG only consider clause 3 (Procurement) to engage the Sewel Convention by legislating on matters which are within devolved competence. The Minister for Investment wrote to the Minister for Economy on 8 November outlining their devolution analysis and seeking for the Legislative Consent Motion process to commence.
30. The Welsh Government's view is that Clause 2 (Conformity Assessments) and Clause 4 (Designations of Origin and Geographical Indications) also engage the Sewel Convention and require consent.
31. UKG considers clause 5 as reserved and that the Senedd's consent is not required. Welsh Government agrees with this assessment.
32. UKG's view can be found in the table on page 15 of the Explanatory Notes to the Bill.⁸

Reasons for making these provisions for Wales in Trade (CPTPP) Bill

Clause 2 – treatment of conformity assessment bodies

33. Welsh Government does not consider it appropriate for clause 2 in its current form to be exercisable in devolved areas. This is because the power is conferred on the Secretary of State alone and does not therefore properly reflect the devolution settlement.
34. Welsh Government considers that if appropriate changes are made to clause 2 then in principle it could be appropriate for the Bill to make provision giving power to implement Art 8.6 in devolved areas because-
 - (a) the scope of the power is limited in law - it can only be used to implement Art 8.6 and only by amending subordinate legislation, and
 - (b) the scope of what can be done with the power in devolved areas at this time is very limited indeed – we are not aware of any subordinate legislation in devolved areas that could be amended by clause 2.

⁸ [Trade \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership\) \(parliament.uk\)](https://www.parliament.uk).

35. The Minister for Economy is writing to Lord Johnston, Minister for Investment, to set out our position and explain that we cannot recommend consent to clause 2 as it is currently drafted.
36. **Recommendation:** The Welsh Government does not recommend consent is given to Clause 2 as it is currently drafted.

Clause 3 – procurement

37. The Welsh Government agree there is a need for secondary procurement legislation changes to ensure the UKG are compliant with the CPTPP Government Procurement obligations.
38. On the whole Procurement officials are satisfied, with the secondary legislation changes as they are considered necessary technical amendments to the devolved public procurement rules as they apply in Wales, as well as equivalent amendments to the rules in the rest of the UK.
39. The changes to procurement regulations are being detailed on the face of the Bill and no new powers are being created or conferred, which whilst not ideal, is the best option for taking forward these technical, clarificatory changes to secondary procurement legislation.
40. Officials have had close engagement with UKG throughout the CPTPP negotiation within procurement, where consistent opportunities have been provided to present areas of importance.
41. **Recommendation:** The Welsh Government recommend consent is given to Clause 3.

Clause 4 – designations of origin and geographical indication

42. Clause 4 implements CPTPP obligations in a narrow policy area and in a legal landscape which is complex and contested. Welsh Government recommends that consent is given because there is no policy divergence between the UK Government and Welsh Government on the issue being implemented, and because in view of the scope of what is being done and the complexities involved it makes sense for this provision to be made in this Bill at this time.
43. **Recommendation:** The Welsh Government recommends consent to Clause 4.

Financial implications

44. There are no direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill.

Conclusion

45. Although we recommend consent to Clauses 3 and 4, we cannot recommend consent to Clause 2.

Vaughan Gething MS
Minister for Economy
8 December 2023

ANNEX – areas in which Welsh Government considers the Senedd could give a power to implement the non-discrimination obligation in CPTPP Art 8.6

Reserved	Devolved
Section - C7 Product standards, safety and liability	
77. The subject matter of all technical standards and requirements in relation to products that had effect immediately before IP completion day in pursuance of an obligation under EU law.	<ol style="list-style-type: none"> 1. The subject matter of technical standards and requirements in relation to products that did not have effect immediately before IP completion day in pursuance of an obligation under EU law. 2. The subject matter of technical standards and requirements in relation to products that [did]had effect immediately before IP completion day in pursuance of an obligation under EU law as regards <ul style="list-style-type: none"> • Food, food products and food contact materials. • Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment).
78. The national accreditation body and the accreditation of bodies that certify or assess conformity to technical standards in relation to products or environmental management systems.	<ol style="list-style-type: none"> 1. The national accreditation body and the accreditation of bodies that certify or assess conformity to technical standards in relation to products or environmental management systems as regards <ul style="list-style-type: none"> • Food, food products and food contact materials. • Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment). 2. The national accreditation body and the accreditation of bodies that certify or assess conformity to non-technical standards in relation to products or environmental management systems. 3. The national accreditation body and the accreditation of bodies that certify or assess conformity to requirements other than requirements which are technical standards within the meaning of para 78.
A. Product safety and liability.	Product safety and liability as regards <ol style="list-style-type: none"> 4. Food, food products and food contact materials. 5. Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment).
B. Product labelling.	Product labelling as regards <ol style="list-style-type: none"> 6. Food, food products and food contact materials. 7. Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment).
Exceptions	
<ul style="list-style-type: none"> • Food, food products and food contact materials. 	
<ul style="list-style-type: none"> • Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment). 	
Interpretation	
<ul style="list-style-type: none"> • “Food” has the same meaning as in Section C5. 	

<ul style="list-style-type: none">• ““Food contact materials”” and ““food products”” have the same meaning as in Section C6.	
<ul style="list-style-type: none">• ““National accreditation body”” means the body appointed for the purposes of Article 4(1) of Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93.	