

# The Welsh Government's Legislative Consent Memoranda on the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill

February 2024



# 1. Background

## The Comprehensive and Progressive Agreement for Trans-Pacific Partnership

1. In July 2023, the UK Government formally agreed to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).<sup>1</sup> At the time, it stated:

*“The accession of the UK to the CPTPP will facilitate the establishment of a deeper trading relationship between the UK and all 11 of the original signatories. This will build upon existing trade agreements with Australia, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore and Vietnam and further open growing markets to UK businesses in Malaysia and Brunei. Joining CPTPP will further liberalise the flow of international trade and investments between the UK and CPTPP countries, reducing or removing existing barriers among them.”<sup>2</sup>*

2. The UK Government also stated that both primary and subordinate legislation would be required in order to ensure the UK is compliant with the CPTPP.<sup>3</sup>

3. We issued a report on the Protocol on the accession of the UK to the CPTPP in September 2023.<sup>4</sup>

4. In October 2023, the Welsh Government published a report setting out its perspective on the UK's accession to the CPTPP. Within its report, the Welsh Government stated:

*“CPTPP may offer opportunities with countries which we currently do not have a trade deal with, for example Malaysia. CPTPP may also create some additional market access in the*

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<sup>1</sup> UK Government, [Collection: The UK and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#)

<sup>2</sup> UK Government, [Draft Explanatory Memorandum on the accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#), paragraph 2.6

<sup>3</sup> UK Government, [Draft Explanatory Memorandum on the accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#), paragraphs 5.1–5.7

<sup>4</sup> Legislation, Justice and Constitution Committee, [International agreements: Agreements considered on 11 September 2023](#), September 2023

*Indo-pacific region. However, we do not agree that gaining access to the CPTPP market should be of the greatest priority, given the EU remains our more important trading partner.”<sup>5</sup>*

5. The Welsh Government's report also stated:

*“Whilst only the UK government has the power to conclude international agreements that bind the whole of the UK, the Welsh Government has the power, under Section 62 of the Government of Wales Act 2006, to make representations about any matter affecting Wales. We have sought to engage with the UK Government on the negotiation of all new FTAs as constructively as possible, given the impact trade agreements can have across society in Wales.*

*The Senedd also has the power to pass laws relating to the observation and implementation of international obligations, meaning both the Welsh Government and the Senedd have a crucial role in implementing any legislative changes needed in devolved area as a result on new FTAs.”<sup>6</sup>*

## **The Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill**

6. The Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill<sup>7</sup> (the Bill) was introduced into the House of Lords on 8 November 2023. It is sponsored by the Department for Business and Trade.

7. Its long title states that it is a Bill to enable the implementation of, and the making of other provision in connection with, the CPTPP.<sup>8</sup>

8. The Explanatory Notes to the Bill as introduced state that it will ensure the UK will be compliant with the CPTPP by making changes to domestic law in three areas:

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<sup>5</sup> Welsh Government, [The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: a Welsh Government perspective](#), October 2023, paragraphs 2.7

<sup>6</sup> Welsh Government, [The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: a Welsh Government perspective](#), October 2023, paragraphs 5.1–5.2

<sup>7</sup> [Trade \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership\) Bill](#), as introduced (HL Bill 4)

<sup>8</sup> Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill

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- technical barriers to trade;
- government procurement; and
- intellectual property.<sup>9</sup>

9. The Bill completed its passage in the House of Lords on 23 January 2024, and received its First Reading in the House of Commons on the next day.<sup>10</sup> The Bill entered Commons Committee stage on 20 February 2024.<sup>11</sup>

## **The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)**

10. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

11. On 8 December 2023, Vaughan Gething MS, Minister for Economy, laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.<sup>12</sup>

12. On 24 January 2024, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of a government amendment to the Bill which was agreed at Lords Report Stage on 16 January 2024.<sup>13</sup>

13. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Economy, Trade and Rural Affairs Committee should report on both the Memorandum and Memorandum No. 2. At the time of agreeing our report, the reporting deadline was 15 March 2024.<sup>14</sup>

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<sup>9</sup> Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, Explanatory Notes, paragraph 1

<sup>10</sup> Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, as brought from the Lords (HC Bill 153)

<sup>11</sup> Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, Stages

<sup>12</sup> Welsh Government, Legislative Consent Memorandum, Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, 8 December 2023

<sup>13</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, 24 January 2024

<sup>14</sup> Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill, December

## Provision for which the Senedd's consent is required

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**14.** The Welsh Government's assessment is that the following provisions in the Bill require the Senedd's consent, as set out in paragraphs 8 to 28 of the Memorandum, and paragraphs 8 to 10 of Memorandum No. 2:

- clause 2 (Treatment of conformity assessment bodies etc);
- clause 3 (Procurement); and
- clause 4 (Designations of origin and geographical indications).

**15.** The UK Government's view is that the legislative consent process would only be engaged in relation to Wales for clause 3 of the Bill.<sup>15</sup>

## The Welsh Government's position

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**16.** The Minister for Economy recommends that the Senedd's consent should be given to the inclusion of devolved provision within clauses 3 and 4 of the Bill only.<sup>16</sup> The Minister for Rural Affairs and North Wales, and Trefnydd, also states that consent should be given to the government amendment to clause 4.<sup>17</sup>

**17.** With regard to clause 3 of the Bill, the Minister for Economy states:

*"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.*

*Officials have had close engagement with UKG throughout the CPTPP negotiation within procurement, where consistent opportunities have been provided to present areas of importance."<sup>18</sup>*

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2023; Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Trade \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership\) Bill](#), January 2024

<sup>15</sup> Explanatory Notes, Annex A – Territorial extent and application in the United Kingdom

<sup>16</sup> Memorandum, paragraph 45

<sup>17</sup> Memorandum No. 2, paragraph 15

<sup>18</sup> Memorandum, paragraphs 39–40

**18.** The Welsh Government does not recommend that consent be given to clause 2 “as currently drafted.”<sup>19</sup> The Minister for Economy’s view, as stated in the Memorandum, is that because the power within the clause is conferred on the Secretary of State alone, it “does not therefore properly reflect the devolution settlement.”<sup>20</sup>

**19.** The Minister for Economy does however state in respect of clause 2:

*“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 [of the CPTPP] 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.”<sup>21</sup>*

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<sup>19</sup> Memorandum, paragraph 36

<sup>20</sup> Memorandum, paragraph 33

<sup>21</sup> Memorandum, paragraph 34

## 2. Committee consideration

**20.** We considered the Memorandum and Memorandum No. 2 at our meeting on 29 January 2024.<sup>22</sup>

**21.** We agreed our report at our meeting on 19 February 2024.<sup>23</sup>

### Our view

#### Provisions requiring legislative consent

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**22.** We note that there are areas of disagreement between the Welsh Government and the UK Government as to which clauses of the Bill require the Senedd's consent.

**23.** We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum and Memorandum No 2.

**24.** We agree with the Welsh Government's assessment that clauses 2, 3 and 4 of the Bill require the consent of the Senedd.

**Conclusion 1.** We consider that the clauses of the Bill set out in the Memorandum and Memorandum No. 2 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

#### Clause 2 – Technical barriers to trade

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**25.** We note the Minister for Economy's view, as stated in the Memorandum, that because the power within clause 2 of the Bill is conferred on the Secretary of State alone, it "does not therefore properly reflect the devolution settlement."<sup>24</sup> We also note the Minister's view that the scope of this power is however "limited in law", and that the scope of its exercise in devolved areas at present "is very limited indeed".<sup>25</sup>

**26.** We further note that, at the time of the laying of the Memorandum, the Minister was writing to the Lord Johnston, Minister for Investment, to set out the

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<sup>22</sup> ~~Legislation, Justice and Constitution Committee~~, 29 January 2024

<sup>23</sup> ~~Legislation, Justice and Constitution Committee~~, 19 February 2024

<sup>24</sup> Memorandum, paragraph 33

<sup>25</sup> Memorandum, paragraph 34

Welsh Government's position on this clause and to explain that it could not recommend consent in respect of the clause as currently drafted.<sup>26</sup>

**27.** We believe that the Welsh Government should provide us with further information about its position in respect of this clause, and the desired outcomes of any amendments which it would like to be made to the clause.

**Recommendation 1.** The Welsh Government should provide further information about its position in respect of clause 2 of the Bill, and the desired outcomes of any amendments which it would like to be made to the clause.

**28.** In addition, since over two months have now elapsed since the laying of the Memorandum, we believe that the Welsh Government should provide an update on its engagement with the UK Government in respect of this clause.

**Recommendation 2.** The Welsh Government should provide an update on its engagement with the UK Government in respect of clause 2 of the Bill.

### **International obligations**

**29.** We note that, in October 2023, the Welsh Government published a report on the UK's accession to the CPTPP.<sup>27</sup> We agree with the Welsh Government's statement in the report that both it and the Senedd have a crucial role in implementing any legislative changes needed in devolved areas as a result of new free trade agreements.

**Conclusion 2.** As the Committee responsible for the constitutional impacts of external affairs, we believe that both the Senedd and the Welsh Government have a crucial role in implementing any legislative changes needed in devolved areas as a result of new international free trade agreements.

**30.** We note the Welsh Government's use of section 62 of the *Government of Wales Act 2006* to make representations about any matter affecting Wales, as referred to in its report on the UK's accession to CPTPP.<sup>28</sup>

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<sup>26</sup> Memorandum, paragraph 35

<sup>27</sup> Welsh Government, *The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: a Welsh Government perspective*, October 2023

<sup>28</sup> Welsh Government, *The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: a Welsh Government perspective*, October 2023, paragraph 5.1

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**Conclusion 3.** We welcome the Welsh Government's reliance on section 62 of the *Government of Wales Act 2006* to make representations about any matter affecting Wales, as it relates to international obligations.

**31.** We welcome the comprehensive level of detail provided by the Welsh Government in its report on the UK's accession to CPTPP as it relates to the implementation of international obligations in a devolved context. The Welsh Government's approach of producing such a report has assisted our scrutiny of the memoranda tabled by the Welsh Government in respect of the Bill.

**Recommendation 3.** The Welsh Government should replicate and build upon the approach taken in reporting its perspectives on the UK's accession to the CPTPP for future international free trade agreements agreed by the UK Government.

### **Impact on UK-EU relations**

**32.** We note the Welsh Government's view, as stated in its report on the UK's accession to the CPTPP, that the requirement in the agreement (implemented by clause 2) for the governments of the UK to comply with the provision of National Treatment of Conformity Assessment Bodies:

*"... could set an unhelpful precedent for future trade deals whereby, other trade partners may seek to use opportunity to try and influence the UK to change its accreditation system for conformity assessment. Changes to the UK's accreditation system for conformity assessment could potentially lead to risks in product safety and divergence from the EU, which in turn will lead to increased barriers for Welsh and UK businesses in trading with our biggest trading partner."<sup>29</sup>*

**33.** We also note the confirmation provided by the Welsh Government within its report that the UK was able to secure an exemption from one of the provisions of the agreement in order to ensure the UK's compliance with the UK-EU Withdrawal Agreement:

*"The UK was able to secure an exemption from one of the provisions within the annex that prohibits CPTPP members from being able to restrict the use of traditional terms (such as 'chateau' and 'tawny') in their wines and spirits imports. This*

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<sup>29</sup> Welsh Government, *The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: a Welsh Government perspective*, October 2023, paragraph 6.82

*provision would have conflicted with the obligation that the UK has with the EU under the UK-EU Withdrawal Agreement to protect 'traditional terms' for wine. In securing this exemption, the UK can meet its obligations under both the CPTPP Agreement and the UK-EU Withdrawal Agreement."*<sup>30</sup>

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<sup>30</sup> Welsh Government, The UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: a Welsh Government perspective, October 2023, paragraph 6.90