

# Report on the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill Legislative Consent Memoranda

March 2024

## Background

1. The Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill<sup>1</sup> (the Bill) was introduced in the House of Lords on 8 November 2023. The Minister for Economy laid a Legislative Consent Memorandum (LCM)<sup>2</sup> on the Bill before the Senedd on 8 December 2023.
2. On 12 December 2023, the Business Committee<sup>3</sup> referred the LCM, which relates to consent to Clauses 2, 3 and 4 of the Bill, to the Economy, Trade and Rural Affairs Committee<sup>4</sup> and the Legislation, Justice and Constitution Committee<sup>5</sup> with a reporting deadline of 15 March 2024<sup>6</sup>.
3. A Supplementary Legislative Consent Memorandum (LCM No. 2)<sup>7</sup> for the Bill was laid by the Minister for Rural Affairs and North Wales, and Trefnydd on 24 January 2024. The Supplementary LCM relates to Senedd consent to the amendment of Clause 4 of the Bill in the House of Lords. On 30 January 2024 the Business Committee referred SLCM (Memorandum No. 2) to the Economy,

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<sup>1</sup> [Trade \(Comprehensive and Progressive Agreement for Trans-Pacific Partnership\) Bill \[HL\] - Parliamentary Bills - UK Parliament](#)

<sup>2</sup> [LEGISLATIVE CONSENT MEMORANDUM \(senedd.wales\)](#)

<sup>3</sup> [Business Committee \(senedd.wales\)](#)

<sup>4</sup> [Economy, Trade, and Rural Affairs Committee \(senedd.wales\)](#)

<sup>5</sup> [Legislation, Justice and Constitution Committee \(senedd.wales\)](#)

<sup>6</sup> [cr-ld16220-e.pdf \(senedd.wales\)](#)

<sup>7</sup> [lcm-ld18283-e.pdf \(senedd.wales\)](#)



Trade and Rural Affairs Committee for scrutiny. The Committee considered both the LCM and SLCM (Memorandum No. 2) on 31 January 2024.

4. On 20 February 2024 the Business Committee brought forward the reporting deadline for both the LCM and SLCM from 15 March to 8 March 2024. This was following a recommendation made by the Minister for Rural Affairs and North Wales, and Trefnydd, as due to the parliamentary passage of the Bill, she anticipated the Senedd would need to debate and vote on the LCM on 12 March 2024.

## About the Bill

5. The long title of the Bill is “A Bill To Enable the implementation of, and the making of other provision in connection with, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership” (the CPTPP). The Bill consists of 8 clauses and 1 schedule.

6. The UK Government announced that it had signed the CPTPP free trade agreement on 16 July 2023.<sup>8</sup> The CPTPP comprises 11 Indo-Pacific states - Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The UK’s Business and Trade Secretary says the region “is projected to make up the majority of global growth in the future”.<sup>9</sup> The CPTPP agreement is expected to take effect in the second half of 2024, after parliamentary scrutiny and implementing legislation, and once the UK and CPTPP Parties have completed their respective domestic processes.

7. The LCM laid by Welsh Government states that “the UK Government’s 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).” 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.

8. Report stage on the Bill took place in the House of Lords on 16 January 2024, where one government amendment was agreed. The Bill then had its first reading in the House of Commons on 24 January 2024, with second reading on 29 January before moving to Commons Committee Stage from 20 February 2024.

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<sup>8</sup> [UK signs treaty to join vast Indo-Pacific trade group as new data shows major economic benefits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-signs-treaty-to-join-vast-indo-pacific-trade-group-as-new-data-shows-major-economic-benefits)

<sup>9</sup> [UK strikes biggest trade deal since Brexit to join major free trade bloc in Indo-Pacific - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-strikes-biggest-trade-deal-since-brexit-to-join-major-free-trade-bloc-in-indo-pacific)

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## Committee scrutiny and analysis of the CPTPP

9. At the same time as considering the LCM and SLCM, Members also considered an analysis of the CPTPP, including the Welsh Government’s perspective document<sup>10</sup> published on 26 October 2023, and a comparison of UK and Welsh Government views on the agreement’s contents.

10. The Welsh Government’s Perspective document says:

*“The value of total goods trade between Wales and CPTPP was around £2.5bn in the year ending June 2023, of which imports and exports were worth £1.3bn and £1.2bn respectively. Around 5.8% of Wales’ total goods exports were destined for CPTPP member countries during this time.”*

11. Some key points from the analysis include:

- The UK Government’s impact assessment published in July 2023 estimated that CPTPP will increase UK GDP by 0.08%, around £1.8 billion a year, in the long run (15 years).<sup>11</sup> The Office for Budget Responsibility later revised this to 0.04% in November 2023<sup>12</sup>;
- The UK Government’s Minister for International Trade<sup>13</sup> has set out the benefits to Wales as including a potential boost to the Welsh economy of “£110 million in the long run”; greater consumer choice from more goods imported from CPTPP countries due to reduced tariffs; over 99% of current UK goods exports to CPTPP will be eligible for zero tariffs; service and digital provisions making it “simpler” to sell services digitally and “easier” for Welsh tech firms to expand abroad; and access to new markets in Malaysia and Brunei with economies “worth over 340 billion in GDP in 2022.”;
- The Welsh Minister for Economy says that the impact on Welsh businesses and consumers, and Wales’s economy more broadly, “is not likely to be significant”, but acknowledges broader geopolitical matters factoring into the UK Government’s decision to join the bloc. The Minister sets out three broad areas which, he says, “make our response [to joining] somewhat less enthusiastic than our counterparts in the UK Government”;
- The first of these is the acceptance of an existing agreement rather than negotiating a new one from scratch, meaning signing up to aspects which Welsh Government might otherwise reject. He cites the CPTPP’s Investor State Dispute Settlement (ISDS) as an example;

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<sup>10</sup> [The UK’s accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: a Welsh Government perspective | GOV.WALES](#)

<sup>11</sup> [Impact assessment of the UK’s accession to the CPTPP executive summary \(web version\) - GOV.UK \(www.gov.uk\)](#)

<sup>12</sup> [Economic and fiscal outlook – November 2023 - Office for Budget Responsibility \(obr.uk\)](#)

<sup>13</sup> [Letter from the Minister for International Trade UK Government - 9 October 2023.pdf \(senedd.wales\)](#)

- Secondly the Minister says the added benefit of the agreement is limited by the fact the UK has existing bilateral agreements with many of the CPTPP signatories, so it's 'important to assess CPTPP on what it adds' and;
- Thirdly, the majority of Wales's goods exports (57.9%, £11.8bn) are to the EU. The Minister says: "It is vital that we do not lose sight of the importance of this market" and says new trade deals should be compatible with, and "must not harm", the UK-EU trading relationship, nor should they set a precedent for future trade deals with other partners in this regard;
- The Minister also said that engagement with the UK Government on CPTPP had been "varied". He described an initial lack of engagement which later improved, but then was followed by engagement that was: "Less positive, particularly when it came to discussions around the UK Government analysis on the impact of the deal."

12. The Committee agreed to write to the Minister for Economy to seek an update on the progress of preparations for the UK's CPTPP accession, and any developments with issues that were raised as concerns in the Welsh Government Perspective document. The Committee intends to monitor CPTPP during 2024 as entry into force approaches, and beyond.

## Provisions for which consent is sought

### Standing Orders

13. Standing Order 29 provides that the Welsh Ministers must lay an LCM where a UK Bill makes provision in relation to Wales:

- for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or
- which modifies the legislative competence of the Senedd.

### Clause 2 - Treatment of Conformity Assessment Bodies

14. Clause 1 of the Bill 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 Article 8.6 of the CPTPP by amending subordinate legislation. Article 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 two bodies located in one CPTPP territory over those located in another CPTPP territory.

**15.** Conformity assessment procedures provide assurance that products meet relevant regulatory requirements. Examples of conformity assessment procedures include testing, certification and inspection. Some products require conformity assessment procedures to be carried out by third-party organisations called conformity assessment bodies (CABs). Some of the UK’s legislation requires CABs to be based in the UK, Great Britain, or in a country with which the UK has a relevant mutual recognition agreement.

**16.** When the CPTPP enters into force, the UK will be required to ensure that CABs established in the territories of CPTPP Parties are treated no less favourably than CABs located domestically. To comply with this obligation, the UK must amend its legislation to allow CABs established in CPTPP Parties to apply for approval to carry out conformity assessment for the Great Britain market. The Bill therefore confers a power on the Secretary of State to amend relevant legislation to enable this to occur.

**17.** The Senedd has legislative competence to observe and implement international obligations in devolved areas. To the extent that the Secretary of State may use the power to legislate in respect of CABs in devolved areas (such as food, agricultural produce, seeds, animal feed) the Bill has a purpose that is within the legislative competence of the Senedd and requires consent under Standing Order 29.

**18.** The Welsh Government considers that consent is required for clause 2, whereas the UK Government does not believe consent is required, but has given no explanation for this position.

**19.** In the LCM the Welsh Government does not recommend that consent be given to clause 2 as it is currently drafted. The Welsh Government does not believe it appropriate for the power in clause 2 to be given to the Secretary of State alone. It appears that the Welsh Government wants the clause 2 power to be a “concurrent plus” power (i.e. a power that both the Welsh Ministers and the UK Ministers can exercise, with the UK Ministers requiring the consent of the Welsh Ministers before exercising the power in a devolved area).

### **Clause 3 - Government Procurement**

**20.** Clause 3 sets out the amendments that will apply to domestic government procurement regulations to enact the additional obligations included in the CPTPP. The Schedule to the Bill relates to amendments to procurement regulations.

**21.** When the CPTPP enters into force, the UK will be required to implement its rules on fair, transparent and non-discriminatory procurement. The Bill achieves this by amending domestic procurement legislation, namely the Procurement Act 2023 and various regulations such as the Public Contracts Regulations 2015. For example:

- The Bill amends the list of contracts that are “exempt contracts” under the Procurement Act 2023 (i.e. the list of contracts that are exempt from the procurement framework established by the Procurement Act 2023). This is to ensure that the Procurement Act 2023 framework will comply with the CPTPP rules for procurements organised and funded by international organisations.
- The Bill amends the Procurement Act 2023 to give effect to the UK’s market access commitments to CPTPP suppliers.

**22.** The Senedd has legislative competence to observe and implement international obligations in devolved areas. Procurement, including the procurement provisions in the Bill, is devolved. The changes that the Bill makes to the procurement framework in Wales have a purpose within the legislative competence of the Senedd, which means that consent is required under Standing Order 29.

**23.** The Welsh Government and UK Government both agree that consent is required for clause 3.

**24.** The Welsh Government recommends that consent be given to clause 3. It is, on the whole, content with the changes that the Bill makes to the procurement framework. The Welsh Government says that while the situation is not ideal, it is “the best option for taking forward these technical, clarificatory changes to secondary procurement legislation”.

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

**25.** Clause 4 relates to the CPTPP’s intellectual property chapter and 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.

**26.** Geographical indications (GIs) protect the names of products which have a special relationship with their geographical origin. Welsh examples include Conwy Mussels, Pembrokeshire Early Potatoes and Welsh Lamb.

**27.** The CPTPP requires procedures to be in place that allow persons to object to an application for GI protection and to seek the cancellation of a protected GI. To comply with this, the Bill will amend domestic GI law in relation to agricultural products and foodstuffs (agri-foods).

**28.** The Senedd has legislative competence to observe and implement international obligations in devolved areas.

**29.** The Welsh Government believes that consent is required because this area of law relates to agri-foods, which is devolved. However, LCM No. 1 and the SLCM (Memorandum No. 2) also note that this area of law is closely linked to the reserved matter of intellectual property, and that the

arguments around competence are finely balanced. The UK Government believes that this area is outside the Senedd's legislative competence because it relates to the reserved matter of intellectual property. During the process of the UK's withdrawal from the EU, the Welsh Government and UK Government repeatedly disagreed as to whether this area of law was devolved.

**30.** Since the publication of the first LCM, an amendment of clause 4 of the Bill was agreed at Report Stage in the House of Lords that will further modify Article 54. The SLCM states that it relates "to the test for cancelling a protected Designation of Origin or Geographical Indication where the registered name of the Designation of Origin or Geographical Indication has been the subject of a name change application under Article 53 (amendment of a product specification), of Regulation (EU) 1151/2012". The SLCM states "this is a complicated area of law where Designations of Origin or Geographical Indications 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 a Supplementary LCM is appropriate in relation to the amendment regardless, because clause 4 clearly impacts the devolved areas of agri-food.

**31.** The Committee agrees with the Welsh Government view that the purpose of these amendments to clause 4 relate to agri-foods and food production, which is devolved, and therefore consent is required under Standing Order 29.

**32.** The Welsh Government recommends that consent be given to clause 4 (including the amendment agreed at Report stage). The Welsh Government states there is no policy divergence between the UK Government and the Welsh Government and, given the limited scope of the changes being made to the GI framework and the complexities involved "it makes sense for the provision to be made in this Bill at this time".

## Clause 5 - Performers' Rights

**33.** Clause 5 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.

**34.** In relation to copyright and related rights, each CPTPP Party is required to provide certain rights to performers and producers who meet the eligibility criteria for protection as specified in the CPTPP. The CPTPP sets out that Parties are required to afford rights to:

- performers and producers of phonograms that are nationals of another CPTPP Party; and

- performances or phonograms first published or fixed in the territory of another CPTPP Party

35. The eligibility criteria under the CPTPP by which performers can qualify for rights in their performances is wider than the criteria currently provided for in UK law. This means that some performers who should qualify for protection under the CPTPP would not get this unless changes are made to the domestic regime. The Bill therefore expands the eligibility criteria by which performers can qualify for rights in their performances in the UK.

36. These changes relate to copyright and intellectual property, which are reserved matters. Both the Welsh Government and the UK Government therefore agree that consent is not required for clause 5.

37. Clauses 6, 7 and 8 of the Bill relate to Territorial Extent, Commencement and the Short Title.

## Financial Implications

38. Paragraph 44 of the LCM No.1 states:

*“There are no direct financial implications for the Welsh Government or the Senedd arising from the powers in the Bill.”*

39. Paragraph 14 of LCM No. 2 goes on to add:

*“While there are no direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships in its overall economic effect.”*

## The Committee’s view

40. Having considered legal advice, Members agree with the Welsh Government view that consent is required for clauses 2, 3 and 4 of the Bill, whereas the UK Government believes that consent is required only for clause 3.

41. The Committee would welcome further information from Welsh Ministers about what discussions have taken place with the UK Government to explain why it does not consider consent is needed to clause 2, where the Secretary of State for Wales would be given powers to legislate with respect to Conformity Assessment Bodies in devolved areas such as food, agricultural produce, seeds and animal feed.

42. The Committee also notes the ongoing difference of views between the two governments as to whether clause 4 relates to agri-food and food production, which is devolved, or intellectual



property, which is not. The Committee notes that GI law and standards of protection for Welsh GI products are of vital importance to the Welsh economy. The Committee agrees with the Welsh Government view that the purpose of clause 4 relates to agri-foods, and that GI law is fundamentally about food and food production, which is devolved. It therefore agrees with the Welsh Government view that consent is required for clause 4 of the Bill, although also notes that Welsh Government is recommending the Senedd consents to this clause of the Bill.

**Conclusion 1.** The Committee recommends the Senedd gives consent to clauses 3 and 4 of the Bill. However, due to the limited time offered to scrutinise the LCM, the Committee is not in a position at this time to make a recommendation regarding Senedd consent to clause 2 of the Bill.