



International Trade Committee

Oral evidence: [UK trade negotiations: CPTPP accession](#), HC 13

Wednesday 25 January 2023

Ordered by the House of Commons to be published on 25 January 2023.

[Watch the meeting](#)

Members present: Angus Brendan MacNeil (Chair); Mark Garnier; Sir Mark Hendrick; Anthony Mangnall; Lloyd Russell-Moyle; Martin Vickers.

Questions 36 to 92

Witnesses

I: Dr Cosmina Dorobantu, Co-Director, Public Policy Programme, The Alan Turing Institute; Dr Kati Suominen, CEO, Nextrade Group; Sabina Ciofu, Associate Director, techUK.

II: Professor Kimberlee Weatherall, Professor of Law, University of Sydney; Lee Davies, Chief Executive, Chartered Institute of Patent Attorneys; Dr Bobby Mukherjee, Chair, IP Federation Trade Working Group.

Written evidence from witnesses:

- [Chartered Institute of Patent Attorneys](#) TTP0002
- [Chartered Institute of Patent Attorneys](#) TTP0013
- [IP Federation](#) TTP0017



Examination of witnesses

Witnesses: Dr Cosmina Dorobantu, Dr Kati Suominen and Sabina Ciofu.

Q36 **Chair:** Good morning and welcome to the International Trade Committee's public evidence session on membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, known more commonly as CPTPP.

We have two panels of three this morning, with quite an international flavour. On the first panel, we have contributors from Los Angeles; on the second panel, we have a contributor from Australia. Without further ado, I will ask the three members of the first panel to introduce themselves and give their name, rank and serial number.

Sabina Ciofu: Good morning. I am Sabina Ciofu, associate director for international policy and trade at techUK.

Dr Suominen: I am Kati Suominen. I am the founder and CEO of Nextrade Group. Thank you very much.

Chair: Is that a Finnish surname? We have been discussing this.

Dr Suominen: Yes, indeed.

Chair: Bullseye! We got it.

Dr Dorobantu: Hi, I am Cosmina Dorobantu. I am co-director of the public policy research programme at the Alan Turing Institute.

Chair: Thank you all very much. Thank you for joining us this morning. Dr Suominen, you are in Los Angeles at the moment, which makes it very early or very late. It is about 2.00 in the morning. Would that be correct?

Dr Suominen: That is right.

Q37 **Chair:** Thank you for joining us. To Dr Dorobantu, first of all, how does accession to the CPTPP contribute to the UK's post-Brexit ambitions for digital trade?

Dr Dorobantu: Thank you so much for that question. I want to talk a little bit about digital trade in general and the UK's ambition in this area. "Digital trade" is a broad term; it generally refers to trade enabled by electronic means. That applies to both goods and services. As academics, we know surprisingly little about digital trade. That is because, unless you can convince companies like Amazon or Google to let you study their vast databases, official statistics offer us very little about this not so new phenomenon right now.

The fact we know so little about digital trade is a problem. We assume it is a good thing—it sounds like a good thing—but, as economists, we would like to be able to tell you, the policymakers, things like how important digital trade is to the UK economy; whether it contributes to economic growth and, if so, how much; who the winners and losers are; how you incentivise it; and in which sectors it matters most.



HOUSE OF COMMONS

As academics, we remain mostly silent on these issues because we do not have the data that allow us to give you precise reliable answers. This is a problem because it leaves us trying to navigate new territory that we cannot see very well. One of the very few things we have managed to shed a little bit of light on in this vast new territory called digital trade is the fact that it is cumbersome.

Books like Thomas Friedman's "The World Is Flat" and speeches from Silicon Valley executives managed to convince us over the years that the internet will somehow dissolve national borders. The data tell us otherwise. E-commerce finds it much more difficult to cross international borders than traditional commerce.

In many of the studies I have conducted, I find that within the EU, an integrated trade bloc where borders should not matter much, the number of domestic e-commerce transactions was 55 times higher than the number of e-commerce transactions with other EU countries. That is a huge figure. If the aim is to bring that figure down, as with all trade-related things, greater integration is the answer. From that perspective, any trade agreement, CPTPP included, that removes some of the obstacles affecting cross-border digital transactions, is a good thing.

I want to say a few words about the UK's ambitions for digital trade as well.

Q38 Chair: Just before you go any further, you mentioned the issue of transactions within an EU member state being 55 times higher than the transactions across EU member states. Would that be a language issue?

Dr Dorobantu: It is hard to know what it is. It is a language issue, but it is an integration issue as well. This always comes as a surprise, but, if you put yourself in the shoes of an e-commerce customer, if you have a choice to buy from somewhere that is close to you, that is what you are going to do.

We do not buy things from abroad because it is much harder to return them. The distances are bigger. It is a language issue. It is a consumer recourse issue. It is all of those things.

Chair: I am sorry. I interrupted you there.

Dr Dorobantu: No, please interrupt me. When it comes to the UK's ambitions for digital trade, the vision is very much for the UK to be a global leader in digital trade. That is the right ambition to have. I support that, but I would like to see a bit more work and thinking on what bits of digital trade are going to make a difference for the UK. Which parts will allow it to become a global leader?

If I look at other countries that harbour those ambitions, they know exactly what they want from their digital trade chapters. If you take the US, for example, the US cares about its giant online platforms. In trade negotiations, it fights fiercely for provisions that enable these platforms to operate across borders with minimal hindrance.



HOUSE OF COMMONS

Take China. China cares about goods that are traded online and online censorship. That is easy. In its trade negotiations, China fights for provisions that allow it to expand its e-commerce platforms, logistics services and electronic payments while at the same time opposing anything that limits its ability to control what people see online.

The question is about what the UK cares about. Who are the frontrunners here? Who are the horses that will go on to win the race and whose interests the UK wants to protect in every single trade agreement it negotiates? That is a hard question to answer—I do not have the answer to it—but we need that answer before we can tell whether a trade agreement truly supports the UK's ambitions.

Tell me precisely what you want, what is best for this country and what will enable the UK to become a global leader in digital trade, and I can tell you whether these provisions get you there.

Chair: That is why the UK Government probably need a trade strategy, but up until now they keep telling us they do not need one. We remain lost in that enigma.

Q39 **Lloyd Russell-Moyle:** The e-commerce and digital provisions of the CPTPP were called the gold standard at the time they were negotiated. That was seven years ago now, and we have seen other agreements, Singapore, et cetera, develop bilaterally. How favourably do they compare today? Have they kept up with the pace or are they now looking rather old and tired?

Dr Dorobantu: The gold standard varies across time. Like you rightly point out, it changes as technologies change. It varies across regions. The gold standard for the US will be different from the gold standard for the EU, which will be different from the gold standard for the UK.

If we assume the UK's most recent gold standard is reflected in its recent trade agreements, the UK-Australia free trade agreement or the Digital Economy Agreement between the UK and Singapore, it is surprising how much of the original TPP wording is still in there. This wording, as you pointed out, was written a long time ago, but a lot of it still stands.

The more recent trade agreements have, as you would expect, beefed-up articles on things like online consumer protection, personal information protection, open internet access and so on. They also have new provisions on things like electronic contracts, invoicing, digital identities and things of that nature. Trade agreements have moved on, but they have not made leaps and bounds.

With that being said, there are two things I want to flag in CPTPP. The first one is the fact that the US, back in the day, when it was involved in drafting the TPP provisions, carved out the financial services sector from the scope of the electronic commerce chapter. The sector remains, to this day, outside the scope of the electronic commerce chapter. The UK will need to decide whether this is something that suits its interests or not.



HOUSE OF COMMONS

The second thing I want to flag are the CPTPP provisions regarding source code. This is article 14.17. To me, this is the most problematic bit of the electronic commerce chapter. "Source code" refers to the lines of code that instruct a machine how to perform a given task. Article 14.17 incorporates provisions that prohibit public authorities from requiring the transfer of or access to source code. This general prohibition appears in some form in many recent trade agreements, and it does matter.

On the one hand, it encourages trade by reassuring foreign software developers that they will not have to disclose the source code underlying their products and services. On the other hand, it limits the powers of governments and their agencies to examine source code. The wording in CPTPP on this particular matter is very rudimentary. The article only applies to mass-market software and the wording only carves out an exception for source code disclosure for patent applications and disputes.

To secure compliance with law and regulations beyond patents, the CPTPP provides for the possibility to require the modification of source code but not to require access to it. I firmly believe that this is problematic because the ever-expanding use of software and products and services means that countries' regulatory and judicial authorities face a growing number of situations where they need to determine whether software is consistent with regulatory or legal requirements. Access to source code is crucial for that, and the CPTPP provisions in this area limit that access.

If you look at the UK-Australia agreement, for example, that should be the gold standard for the UK when it comes to source code because it does a much better job at carving out an exception for Government agencies, regulatory bodies, administrative tribunals, judicial authorities or conformity assessment bodies, as it should.

Sabina Ciofu: Just to go back a little bit to the point the previous speaker made about what digital trade is, we have spoken about this matter in this Committee many times. It is well beyond e-commerce. It is mostly data flows, and it covers large sectors of the economy, especially for the UK.

I disagree with the point that the UK does not really know what its aim is in digital trade negotiations. That is not true. The UK is a services economy that knows very well that having very good services and digital provisions in trade agreements is a big advantage to the UK economy. The services of the UK economy have been digitally delivered internationally in a proportion of 80% to 90% over the last few years. We know that is a big aim of UK trade policy, and we very much support that.

Now, to the point about how CPTPP compares to other trade agreements, I agree with the previous speaker. CPTPP is very much a baseline. It has some provisions that have created the opportunity to build on those in bilateral agreements further down the line, specifically in the Digital Economy Agreement.



HOUSE OF COMMONS

We will see CPTPP evolving as well over time. We have seen through this review mechanisms that they are starting to focus on specific bits of emerging technology and regulatory co-operation. That is the main point that the new agreements add to CPTPP, which is a lot more focused on regulatory co-operation on issues like digital ID, artificial intelligence, cybersecurity and so on.

These new agreements add to that CPTPP baseline, but it is also important to know that the frontrunners in digital trade policy are CPTPP members. It is an iterative process. Everyone has learned through doing and, by getting industry feedback throughout the process, has kept improving both the CPTPP framework and the bilateral agreements that have come after Brexit.

Q40 **Lloyd Russell-Moyle:** Dr Kati, is the e-commerce chapter future-proofed? Is it flexible and able to grow into what we need it to be?

Dr Suominen: Yes, I agree with the prior speakers. The core provisions in the agreement have been proliferating in other agreements and have been exported by the current members. That is a good thing in the sense that we are starting to have a global standard or a set of global norms around digital trade that are consistent across geographies and different agreements. These provisions are also binding in most agreements. That is a very good thing as well.

The core provisions are still valid. There are, however, as you pointed out, other non-binding or best-endeavour provisions in these new agreements that reflect industry and businesses' interest to have much more interoperability in the digital economy. Perhaps the future ambition is not to add new things to those provisions but perhaps to deepen and cement some of those provisions and make them binding.

We may want to look at this more holistically. We should look not just at the e-commerce chapter but at the other chapters that are very important for the UK economy, like the services, IP and Government procurement chapters, when it comes to cloud computing services and things like that. We should think about the UK's aspirations in light of the whole agreement.

You are pointing to a burning question. How can countries, in light of fast and evolving technologies, keep updating trade rules? Perhaps a good way is to do exactly what you and others have been doing and establishing these non-binding rules that enable us to test which rules will work.

I want to mention a couple of other things. Something that we found important in our study—this has been reflected by Governments in the CPTPP as well as by companies in particular, whether it is SMEs or large US technology companies—is the implementation of what is on the table. You really need to pay attention to monitoring the implementation of these digital trade agreements.



HOUSE OF COMMONS

In CPTPP and beyond, we have found that there are some countries that have not necessarily complied with their obligations. I believe we need to step up the work to monitor implementation both from Governments as well as in dialogue with the private sector, as the prior speaker mentioned.

For the countries that are less advanced or are developing but want to engage in these agreements, capacity-building and further dialogue are needed to make use of these agreements, not just to have the rules but to ensure they are well implemented and that countries are capable of implementing them.

Q41 Anthony Mangnall: Very briefly, Cosmina, you mentioned the point about the UK-Australia deal being a pretty good example of digital trade standards and all of this stuff. I just wondered where you would rank the Japan-UK agreement, which updated these provisions, and the Singapore-UK digital partnership that has been agreed. Are these filtering through?

Dr Dorobantu: They are quite close to each other. You can see the recent thinking filtering through in all of that work. There are not massive differences between them. You can definitely see the advanced thinking going into them.

Q42 Sir Mark Hendrick: My question is to the panel as a whole. Some commentators looked at China's 2021 bid to accede to the CPTPP and identified a number of areas, including digital trade, where these issues may be problematic in the future. Given China's application to join the CPTPP, if it joins and verifiably meets CPTPP's e-commerce standards, would there be any reason for concern? Sabina, it is nice to see you after our meeting last year in Geneva.

Sabina Ciofu: Thank you. China has a very good record of promising to do a lot of things to join the WTO and then also to join the CPTPP, which is to discipline state-owned enterprise and industrial strategies as investor subsidies. They also have very poor record in implementing any of those promises. I am terribly sceptical that China can meet CPTPP requirement.

That said, China is very serious about trying to look like it is reforming its domestic laws to meet CPTPP requirements, especially when it comes to digital. They have a new data security law; they have a new cybersecurity law; they have a personal information protection law that in some very specific way claims to mirror GDPR. They are very serious about trying to join the CPTPP, but I do not think they will. Either the CPTPP rules do not really mean much or China cannot join. That is my interpretation.

Q43 Sir Mark Hendrick: Might they apply some of those rules domestically and switch them for international use?

Sabina Ciofu: China is not serious about bringing its digital policies in line with CPTPP rules. Other speakers might have other views, but in the



HOUSE OF COMMONS

current situation China cannot join, and it is not serious about changing its rules to meet CPTPP standards, especially if the UK joins and if some other countries join that are very like-minded with the Asia-Pacific countries that are already there.

Dr Dorobantu: China is interesting. It stayed quiet for many years on electronic commerce chapters. It started to reveal a little bit about its position six or seven years ago. That was mostly to indicate its willingness to discuss things like trade facilitation, digital certificates and electronic signatures—the things it cares about.

China obviously has regional ambitions to build an electronic silk road, and it will want to expand online trade facilitating and supporting services, logistics services and electronic payment services. It does care about that. It does not want the free flow of information across borders, a free and open internet and a prohibition on localisation requirements and transfers of source code. These are the precise provisions the US is keen on, which have made their way into CPTPP in one form or another.

How come China applied to join the CPTPP? My view is that China considers that it can live to some extent with some versions of the CPTPP rules. If we look at article 14.11 on the cross-border transfer of information by electronic means, for example, the article allows for the cross-border transfer of information when this activity is for the conduct of the business of a covered person. It is not a blanket free flow of information, which gives China room to put the activities it does not want covered by the article outside of the scope of the article.

Secondly, there is wording that says, “Nothing in this article shall prevent a party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective”. Internet regulation in China is a matter of national security and, as such, surely China will argue that national security is a legitimate public policy objective.

I agree with Sabina: China does not have any desire to change its domestic approach, but it is looking very carefully at the working of the CPTPP provision and it is thinking that the wording might just give enough space to build its own interpretation within it.

Q44 **Sir Mark Hendrick:** How realistic is it for China’s compliance with the chapter to be transparent and verifiable? How does that fit into it all?

Dr Dorobantu: What I would say there is that documents like the United States Trade Representative’s “2021 Report to Congress on China’s WTO Compliance” make for a very interesting read. If you strip away the US propaganda, which is there in the report, the point still remains that China’s record is poor. It takes years to litigate; it consumes significant resources; and it often requires additional efforts when China continues to fail to comply. Those are ongoing issues.

There are things in these reports that should act as signals for China stands. For example, there is the 2010 case the US launched against



HOUSE OF COMMONS

China for failure to allow US credit and debit card processing companies from supplying electronic payment services in China. In 2012, a WTO panel agreed with the US, and in 2013 China said, "Sure. We will comply with the panel's ruling". It was only in June 2020, 10 years after the US launched the case, that American Express became the very first foreign supplier of electronic payments services to secure a licence to operate in China. Take that for the example it is. They do not intend to change their approach.

Dr Suominen: I would agree with the prior speakers that China does not have a great record of complying with its promises. It should be held to a higher bar here rather than allowed to accede and given some sort of waiver to bring its laws and practices in line with CPTPP.

It is true that CPTPP has rather loose and open-ended language in many areas, like data privacy laws and so forth, that enable countries to comply with various types of laws as well. We did look at China's record vis-à-vis the CPTPP text, for instance, on data transfer and data localisation rules. To me at least, China does not meet those rules at all.

If we want to maintain CPTPP as the gold standard trade agreement, we need to ensure that the countries that accede are serious about upholding those rules and are implementing them. At the end of last year, I discovered that there is a great deal of concern about Vietnam's record of compliance and a concern that Vietnam not having a perfect record of complying with the agreement is giving China an opportunity to point to Vietnam and say, "Vietnam is not meeting its obligations either".

There are some other countries that have similarly questionable implementation records in certain areas. Again, monitoring the implementation of the agreement among its existing members is really critical for us to ensure CPTPP is the gold standard trade agreement it was meant to be, even in the traditional areas that it covers.

Q45 **Sir Mark Hendrick:** Finally, then, on that point, what if China joins the CPTPP with exemptions from parts of the e-commerce chapter? If they have some exemptions, what challenges are presented then?

Dr Dorobantu: It depends on what the exemptions are.

Q46 **Sir Mark Hendrick:** Let us say there was an exemption on data localisation.

Dr Dorobantu: I find it difficult to see how the agreement can work if China is the only member to have those exemptions.

Sabina Ciofu: Yes, especially if all the members that are already in have to agree on China joining. I cannot see why they would accept China doing that.

Sir Mark Hendrick: Kati has just said that Vietnam may be going in the same direction as China, as an example. When the Committee visited Singapore, Malaysia and Vietnam towards the end of last year, we did



HOUSE OF COMMONS

find that the Asian countries from CPTPP were a lot more sympathetic towards China than some of the other countries that are planning to join the agreement.

Q47 Mark Garnier: I just want to come in on the whole point behind CPTPP. As we understood from the trip around these Asian countries last year, as Sir Mark mentioned, the whole point about CPTPP is that everybody agrees to what has been set up already and does not have a derogation or cannot get out of it. You agree to that, and then subsequently you can then help form the structure going forward. Is that not right?

Sabina Ciofu: Yes, that is exactly right. You can go from here in building further on the provisions. We have seen all the review mechanisms, the committees and the commission. The CPTPP members do get together every year to build on those provisions and move with the times in a way.

You do have some exemptions for some countries who were there from the beginning. That is work in progress in bringing them aboard on some provisions and so on. This idea would mean you have someone who is going to completely change the rules. They are going to join CPTPP now and completely change the rules, and I do not see how that could work.

Mark Garnier: Does anybody disagree with that? No. Thank you.

Q48 Anthony Mangnall: Could I disagree with that? Under the provisions of CPTPP, in article 29.2, there is an agreement for either proposing a lengthy transition period so they do not have to fulfil obligations or seeking a national security exemption. Why would this not come under a national security exemption, if China were to join?

I am asking this question for the express purpose of not going down the wormhole of China joining CPTPP. I do not happen to think that is very likely. Going back to article 29.2, why would China not be trying to use this on the very sizable and important issue around e-commerce, digital trade and everything else that goes with it? I am going to open that to the floor. Whoever wants to go in can go first.

Sabina Ciofu: Very quickly, I do not think they will not try to do that. They will very much try to justify it under the national security exemptions. I just do not see the current members of the CPTPP accepting that justification as valid.

Q49 Anthony Mangnall: Can I just come on to the Committee on Electronic Commerce? I want to go back to something, Cosmina, you were talking about around source code. Is this committee the body that would deal with any concern around source code, or would you be looking at another structure within CPTPP?

Dr Dorobantu: I am not sure of that answer. I do not know who would deal with it.

Q50 Anthony Mangnall: As I understand it, there is this body. If I may, I will come to you, Kati. We have this body. It meets once a year. We are



HOUSE OF COMMONS

unsure of the resources. We are not entirely sure whether there is a rotating chair on it. We are also a bit concerned about whether some of the more technologically advanced countries will have a very different perspective to some of the less technologically developed countries. How good is the Committee on Electronic Commerce on implementing and enhancing CPTPP's e-commerce provisions?

Dr Suominen: It is a good question. I met with Japan and Singapore some months ago. They are leading this committee and they are behind it. They are very serious about the need to monitor the implementation of this agreement and ensure it remains a gold standard agreement. They are very concerned about China, and they do not know exactly what to do with China.

My understanding—I do not know this for an absolute fact—is that the committee is composed of the member countries' trade officials, negotiating teams and teams in the Trade Ministries. It is one of the things that those individuals do. I do not believe there is a big structure there, but I may be wrong in this. Perhaps there are some changes.

The committee has, to my understanding, looked at the current implementation record of the various members. It has conducted a study last year on this privately. That has not been published. It has been starting to take the steps to think about how to ensure the agreement is monitored, how its implementation is monitored, and furthermore how we might consider future members of CPTPP and whether there could be a methodology there.

Again, I would think that this committee per se is a very good thing to have. This is somewhere the UK could focus its efforts and support the committee and its work. It is very critical that the committee works with the private sector in the region, the technology companies and SMEs as well, and listens to their views about what works and what does not in CPTPP. After all, they are the consumers of the agreement and drivers of trade, so to speak.

I support very much the aspirations of the committee, and it is a very good thing for the UK to support as well. However, I believe there also has to be closer private sector engagement and perhaps engagement also with academic and research institutions to think about, for instance, the issues Cosmina was raising earlier in terms of the impacts of these various provisions and particularly what they might entail to the developing countries that are considering to accede to the agreement.

Q51 **Anthony Mangnall:** I agree with everything you have said. I absolutely accept the aspiration of the committee. I see Singapore has done a report on e-commerce and has held a workshop. Is this just a case of CPTPP members that are interested in this subject leading the charge and going in the direction they want rather than the actual organisation and structure of CPTPP being able to push this issue?

Looking at it on paper, as we have done on this Committee, it looks quite lacklustre. It looks like they are looking at other countries to try to lead



HOUSE OF COMMONS

the way on this. From a British point of view, by the way, I am utterly delighted about that because we are doing quite a good job in this area and we could join CPTPP and then lead the charge on e-commerce and digital trade in a really effective manner. I just come back to the last point I asked. Is it really just for the countries that are more technologically advanced to drive the agenda on this area?

Dr Suominen: It could be that way. I do not know how involved other countries are, such as Chile, Malaysia or others. My sense is that Japan and Singapore are leading this charge. It would be a very good thing if the UK were to support them in this, involve the private sector and also think about these issues of capacity-building for issues like digital transformation in south-east Asian countries such as Vietnam that are looking for this kind of support from the membership.

Yes, the aspirations behind the committee are correct, and the members that are driving it are doing the best they can. There are delicate diplomatic issues that they do not necessarily want to raise. They would probably prefer to have the private sector articulate some of the concerns they have. Again, that just brings in the private sector and perhaps a country like the UK, which is used to articulating forcefully its position in international trade.

Q52 **Anthony Mangnall:** I will just come back to you on that because you have mentioned Japan. I asked about it already, but we have this agreement that advances digital trade with Japan and we now have this partnership with Singapore. Are Japan and Singapore the two countries that are advancing it and promoting e-commerce and that chapter? Are we seeing it at a bit of a standstill at the moment? Again, I am just wondering what is going on within the actual structure. Are members, minus the Singapore workshop and report, actively talking about upgrading standards or is it just pretty quiet at the moment?

Dr Suominen: Yes, that is a good question. I do not have full visibility. My sense is that there is more interest in implementing the current provisions than necessarily going beyond to explore new areas. That is my sense from meeting with some of these individuals.

Q53 **Anthony Mangnall:** Thank you for that. If I am allowed to be positive about something, it is quite welcome to see that there is a big opportunity for the United Kingdom to show some real leadership and perhaps create some new benchmark international rules on this.

I want to come to deficiencies in the implementing of source code and cybersecurity provisions that have been highlighted thus far. How important are such deficiencies to businesses looking to operate in the trans-Pacific region?

Dr Dorobantu: When it comes to source code provisions, I am not surprised that there are deficiencies. As I said, that particular bit of the agreement is poorly formulated. Even when you are going to be looking at the UK, there might be deficiencies just because there might be



HOUSE OF COMMONS

legitimate instances when you might want access to source code, which might mean you might want to go against it.

That being said, those provisions are very important to businesses. You do not want to enter a country where you think the Government can request your source code as a condition of market access. Equally, with cybersecurity, that is also crucial to businesses.

Dr Suominen: I do not necessarily have a view on this, but I would just mention that we did some survey work last year with businesses in the CPTPP region. We found that they regarded the implementation of the source code provisions and the data transfer provisions as being incomplete.

Fewer than 50% of the firms we surveyed in the region thought the members were doing a good job in protecting source code or data transfer regulations. I agree with Cosmina on the point that it is rather loose.

Q54 **Anthony Mangnall:** Sabina, we lost you briefly. We are on the same question around source code and cybersecurity provisions. Are you able to add anything to that?

Sabina Ciofu: I am sorry. I must have missed a little bit of what the previous speakers said. Yes, I fully agree that you can build on those provisions. The principle of protecting source code and not exchanging it for market access is very important in trade policy. As a principle, we need to protect that.

There is a lot you can do through regulatory co-operation mechanisms, building on the provisions, to assure the access that Cosmina was talking about for public authorities, researchers and so on, so we do have an overview. That is also part of the AI regulatory co-operation we are seeing built out in this trade agreement. Parties do see an advantage in keeping that conversation going and building on the provisions they already have.

That is broadly the point of CPTPP overall. You have a good baseline, but it is still a baseline. There is a lot of work to do, as technology advances and as conversations advance on domestic regulation and technology. There is a lot of work to do in having those conversations internationally. The e-commerce committee is particularly useful in that point. As we keep developing digital regulations, we need to have those conversations with our partners.

Q55 **Anthony Mangnall:** Is it moving quick enough?

Sabina Ciofu: We are moving more quickly than anything in legally binding international agreements. That is why we are seeing a lot of MOUs coming up in some of the digital economy agreements we signed up to last year. There is a lot more to do beyond a legally binding FTA to have conversations about things that we are not entirely sure how to regulate ourselves at this point.



HOUSE OF COMMONS

We are having conversations around what we do about AI, what we do about online safety and what we do about data protection with the new Data Bill. Everyone else is going through the same domestic process. These forums basically create the opportunity for those conversations to happen. The more you bring in industry and the national regulators, the better that will enable the conversation to build into something.

Q56 Mark Garnier: Dr Suominen, perhaps I could start with you. I want to get back to this point about how the UK could be very influential, given our digital expertise. How would we be able to use that expertise to improve the e-commerce chapter within the agreement?

Beyond that, how would we then be able to go and ensure the implementation was carried out across the whole bloc?

Dr Suominen: There are a number of business associations and businesses in the region that are already seeking to improve the agreement. Perhaps it would involve UK businesses on the one hand advocating, with other companies, the next set of rules or the implementation of the current rules and also providing insight to Governments in the CPTPP on how the agreement is working for businesses and what should be improved. There is probably something to do with the UK business community, which is outstanding on these issues.

For the UK Government, it could be about supporting the thinking about the next steps. What provisions could the CPTPP come to encompass? How could the existing ones be better implemented? How could the implementation be monitored? Those are absolutely things that would add a great deal of value.

Furthermore, I understand that you have had a very active development agenda. Perhaps there is a role for the UK's development agenda to support countries that are looking to accede or have acceded but are not necessarily able to meet the rules or that do not want to meet the rules but want to have some further dialogue on these issues.

There is a very critical role for different parts of your Government and the business community. You are the country that is globalising this. That will have a great deal of influence in the CPTPP going forward as well.

Q57 Mark Garnier: Sabina, I see you nodding enthusiastically. I would be delighted to hear your view. Do the UK Government have that influence? Will it be able to deliver that alongside the expertise of our businesses?

Sabina Ciofu: I agree with the previous speaker. There is a lot we can contribute to those discussions, building on the fact that we have developed a pretty successful digital trade policy in just a few years. We have built this digital-only trade agreement. The UK is part of some of the more advanced bilateral trade agreements we have now.

There is a lot of expertise the UK can contribute to the discussion. I would also really agree with the point about the development agenda. It is really important. As we keep developing this expertise and we become



HOUSE OF COMMONS

better and better at doing digital-only trade agreements, the risk is that it is a few countries that are front-running, by developing all these co-operation mechanisms, having conversations about emerging technology and all of that, while all the others remain behind and you build that growing digital gap within some of the blocs of trading nations.

It is really important that there is a lot more thought given to the development agenda and how we use aid money to build capacity in some of those Governments and their Trade Ministries and so on, if we are to have any success with the CPTPP and also, more broadly, at the WTO, where there is a negotiation of 80-plus countries and so on. That alignment of the development and trade agenda is really important.

Q58 Mark Garnier: Presumably, if we are going to use development money for that, it would have to be compliant with all the OECD rules. It sounds to me like a very good argument for why we should go back to 0.7% rather than stay at 0.5%. I will just get that in.

Dr Dorobantu, following from all of that, clearly the other witnesses have said the UK does have a strong influence. What is interesting is that we are a great nation, but we are on the other side of the planet. I was going to say “the elephant in the room”. The bear in the Pacific is China. Ultimately, if it comes to a conflict between the influence the UK can bring with our expertise and the influence which China can bring, who is going to win?

Dr Dorobantu: That is a great question. The hope for us is that the UK would win. That should be part of the UK’s thinking and strategy.

What I would add on top of what the other two witnesses have said—this is something the Alan Turing Institute has been saying for a very long time—is that the UK has a real opportunity to drive the global conversation, not just on digital trade but on the regulation and governance of AI and emerging technologies as well.

The world is looking to the UK for that leadership. China will not provide it. They have chosen their path. Their path does not lead to the safe and responsible implementation of those systems. The US has its own interests. The UK has amazing access to research and academic expertise. Some of the brightest and most exciting academic work is happening in this country. It also has trusted regulatory regimes and innovative regulators.

That is a winning combination. If you ask me, the UK can easily lead when it comes to AI and those technologies. Regulation and governance are the low-hanging fruit. That is where I believe the UK should put its power and influence towards.

Q59 Mark Garnier: That is very helpful. Dr Suominen, I would be very interested in your views about the UK’s ability to influence that part of the world when China is such a big influence.

Dr Suominen: Yes, China is increasingly relevant as a source of imports and as a target of exports from CPTPP members. At the same time, a lot



HOUSE OF COMMONS

of the members are interested in having a third party, whether it is the US or the UK, play a very key role in the region. There are probably many CPTPP members that would really welcome another like-minded country into the mix who can support the aspirations of the agreement.

I fully agree. You have all the capabilities. You have great credibility. You can really make a significant difference. Perhaps there are some members that are more inclined to listen to China because they have a tight trade relationship, a development relationship or what-have-you. I believe that you have a fantastic set-up, given what the prior speaker was saying and given the advances you have made with your own trade agenda in the region to build on this and work with like-minded CPTPP members to play that important role that many countries are looking for in the region to counterbalance China.

Q60 Mark Garnier: That is very helpful. Thank you very much. Sabina, there are a number of countries that have less than brilliant regimes, particularly Malaysia, Mexico, Peru and Vietnam. They potentially have the most scope to improve their digital trade regimes. On the assumption that they will do it, how will British businesses take advantage of that in terms of opportunities in those markets?

Sabina Ciofu: Thank you for that question. There is real opportunity in like-minded regimes. We have seen that digital trade, and trade in general, increases exponentially the more aligned we are, in terms of values and principles when it comes to regulating the digital economy.

There is an important advantage in bringing the whole of the CPTPP bloc within range through similar thinking on digital regulation. Is that going to happen overnight? That is unlikely. There is a lot of work to do there. All the committees will play that role.

Ultimately, it is important, when the UK does join the club, that it is not seen as a bit of an arrogant lecturer on these matters. It is important that you play a humble role in the beginning, understand where everyone is coming from, see where you can play a helpful role and approach the relationships with, let us say, less digitally front-running countries within CPTPP in a constructive way by thinking about where you can help as opposed to saying, "This is everything we have done and we think everyone else should follow it", which is unlikely to work.

Mark Garnier: That is very helpful. Thank you very much.

Sir Mark Hendrick: I want to come in on this point very quickly. On the one hand, we seem to be saying that the UK is a leader in a lot of the technologies, setting the standards and paving the way. I quite agreed with Sabina when she said there is a danger that some of the more advanced nations in terms of IT technology more generally, such as the UK and Japan, could cause a gap between those that are seen as leaders in these areas and those that are further behind.

One of the things that was said earlier, which I found quite striking and with which I do agree, was that with these agreements we are trying to



HOUSE OF COMMONS

set baseline standards, a lowest common denominator rather than a highest common factor, where everybody can take part and you can encourage trade.

On this question of whether or not the UK would be more influential than China, surely the potential volume of trade and the political muscle the Chinese have by being very close to the CPTPP area, while we are on the other side of the globe, will play a major role in how much latitude those other countries give China. It not just about us sitting here in London telling people, "We have the best technology. We know we are better than everybody else. Listen to us, please".

It is a bit like Sabina was saying. We have been doing a bit of flag-waving around this Committee today, but we will need to show some humility when we finally do join. We should not tell everybody that we are better than everybody else, as seems to be the theme in this meeting here today. It is more of a comment than a question.

- Q61 **Chair:** Finally, the UK finds itself in and around CPTPP or in discussions about CPTPP because of Brexit. The GDP gain here is between 0.06% and 0.08%, which is about a 62nd or an 83rd of the value of the loss the UK is incurring with Brexit. For members of CPTPP, for those that are already in it, how does the ease of digital trade and e-commerce compare to that between members of the European Union as it is currently constituted? Sabina Ciofu, you might be the best on that.

Sabina Ciofu: It is not necessarily a straightforward comparison. The single market is the single market. It is a very different structure to a trade agreement. The single market provides trade, freedom of movement and the rest of it, which the CPTPP does not do to the same extent.

There is a difference between a trade agreement and the EU single market, which is a very different organisation. Trade is going to be a lot easier within a single market than within countries as part of a trading bloc. This is the fundamental difference between the two.

Now, that is not to say that there is no value in it. In general, we need to look at value in trade beyond the percentage of GDP. It goes back to the previous comment. We are in a phase of multilateralism where global open trade is in desperate need of champions. When you think of China and when you think of the US not having a trade policy right now, the UK can play an important role.

That is not just there on its own; that is with CPTPP partners or with the European Union. There are bodies where we need to work together to advance this agenda. The single market and CPTPP are two very different bodies. The single market provides extra opportunity.

- Q62 **Chair:** Cosmina Dorobantu, at the very beginning you mentioned that even within the single market there is a tendency to trade closely or to conduct commerce within national borders in the single market. I take on board what Sarina Ciofu says about the single market being a different structure to a trade bloc, but do you have any final comments?



HOUSE OF COMMONS

Dr Dorobantu: I am not aware of any data for the CPTPP countries so I would not be able to tell you what the situation is there. In a way, it goes back to my original comment: we are in the dark. If it is so cumbersome for e-commerce to cross borders within the European Union, I would expect it to be even more cumbersome to cross borders in a region that has even less integration than that.

The other thing I would be careful of is that we do not know how much digital trade contributes to an economy. That is something we need to study a lot more as academic researchers. I sometimes hear that digital trade is a promise or it is what will help the UK deliver in this post-Brexit world. Of course it is an area of opportunity, it is an area for the future and it is an area that the UK must turn its attention to, but, in the short term, it is not going to make up for the UK's exit from the European Union. It does not have that potential. No matter what sort of trade agreement you join, it cannot do that.

Chair: Time, as ever in these events, defeats us. Can I thank you all? Thank you to Sabina Ciofu, Cosmina Dorobantu and, in particular, Kati Suominen, on the east side of the Pacific. It is 3 am, so that is a sterling effort. We hope you sleep well, and we hope we have not caused any undue nightmares.

Dr Suominen: No, it is my pleasure. Thank you so much for having me.

Chair: This Committee might be guilty of that at times. Thank you all very much.

Examination of witnesses

Witnesses: Professor Kimberlee Weatherall, Lee Davies and Dr Bobby Mukherjee.

Q63 **Chair:** Good morning and welcome to part 2 of our discussion. In the last group we had somebody on the east side of the Pacific. This time we are going to the west side of the Pacific, to Australia. We have Professor Kim Weatherall there. Also joining us we have Lee Davies and Bobby Mukherjee. I will ask you all to introduce yourselves. Please give us your name, rank and serial number.

Professor Weatherall: I am Professor Kim Weatherall. I am a professor of law in the faculty of law at the University of Sydney. I am an expert on IP and trade agreements.

Chair: It is just after 11 am here in London. It was 3 am in Los Angeles. What time is it with you in Sydney?

Professor Weatherall: It is far more civilised. It is only 10 pm.

Chair: It is 10 pm. That is far more civilised. It is 10 pm on Wednesday evening. You can tell us what happens in Prime Minister's Questions.



HOUSE OF COMMONS

Lee Davies: My name is Lee Davies. I am the chief executive of the Chartered Institute of Patent Attorneys.

Dr Mukherjee: Good morning. Thank you for the invitation to appear before the Committee. I am Bobby Mukherjee. I am representing the IP Federation today in my capacity as chair of the IP Federation trade working group.

Q64 **Chair:** Professor Weatherall, the Government have described CPTPP as setting coherent and consistent IP standards and rules across the region. To what extent do you share the assessment the UK Government have come out with?

Professor Weatherall: I am afraid I have to disagree with that assessment. The IP chapter does not create or require members to create a common set of IP laws or rules. It sets a common baseline, but, beyond that, countries can have more extensive protection; they can vary in all kinds of different ways. From the perspective of promoting economic integration or reducing costs for business, it is very different to set a baseline versus setting a common set of rules. Businesses will continue to face different rules in every CPTPP country.

There is also another problem, which I have outlined in a number of my publications. There is this claim that there is this coherent or consistent of standards. Frankly, this 75-page chapter is a bit of a nightmare of legalese. There is a lot of ambiguity in a lot of the provisions. Some of the provisions simply defy sensible interpretation, like the trade secrets provision. In some cases, footnotes completely change the meaning of text so it is hard to understand.

Finally, the IP chapter adds to, rather than replaces, existing international obligations. For example, in the case of Australia, we have a free trade agreement with the United States and we have the CPTPP. The free trade agreement with the United States sets more prescriptive standards in some areas, which means that the rules that apply to us are quite different in a considerable number of areas compared to the CPTPP.

Working out what any given country's obligations are depends on looking at a whole lot of different agreements. It is even true that in some cases the text is qualified in side letters as between countries, so you cannot even look at the text and know what the obligations are between two countries.

I am sorry: I have to disagree. There is a lot of variation in the rules that apply even to each of the countries within the CPTPP.

Q65 **Chair:** It sounds like you are saying that the common baseline might just be that we all agree we are on planet earth. What is the common baseline?

Professor Weatherall: It is actually a lot more detailed than that. If you think about the way IP works internationally, we have a common baseline in the TRIPS agreement, which is part of the WTO set of agreements.



HOUSE OF COMMONS

CPTPP adds more obligations for CPTPP countries on top of what is in TRIPS.

It is also important to appreciate that, for a country like Australia, for example, because of the way TRIPS works, anything we agree in the CPTPP applies to the IP in relation to every member of the WTO. That is why I say the standards that apply to each country depend on what each country has signed up to in addition to the CPTPP. It is quite a complex legal arrangement that is created here.

Q66 Chair: For anyone watching, TRIPS is the Trade-Related Aspects of Intellectual Property Rights. Talking about international property, can I turn to the IP Federation? Upon accession, the UK will be bound by the IP obligations in the CPTPP and will have separate obligations to both Australia and New Zealand. How easy is it going to be for business to understand and, crucially, to navigate these various obligations that might be there?

Dr Mukherjee: That is a good question. Multilateral treaties take longer to negotiate than bilaterals. It is understandable that both might cover similar ground. Conflicting obligations are unhelpful to business when they occur so they need to be properly understood, as our businesses need as much certainty and clarity as possible to help them navigate and uphold laws, agreements and regulations in the countries in which they operate across the world.

Business also recognises what is practical. CPTPP may contain some IP provisions that are different from the UK-Australia and UK-New Zealand bilaterals, but they are not necessarily conflicting. In practical terms, the burden on businesses is manageable, in the IP Federation's view. Harmonisation is what business really needs.

Q67 Mark Garnier: Dr Mukherjee, perhaps I can carry on with you. Are trade deals the best way of upholding IP standards, or indeed setting IP standards?

Dr Mukherjee: Thank you for that question. There might be better ways than trade agreements, but the reality is that states do negotiate trade deals, and it is beneficial for them to contain IP chapters that can raise IP standards or at least cement them. Membership of trade agreements leads to enhanced discussion and co-operation between states, which can lead to improved IP standards. As a previous speaker said, TRIPS is an example of a valuable multilateral trade agreement.

The answer to your question is "not necessarily". As noted in our written evidence submission, one of the key general principles the Government should adopt in adopting all new free trade agreements is that the value of existing agreements should not be undermined. Many aspects of IP are aligned with overarching international treaties. Such treaties impose minimum standards on their members, allowing them to implement additional measures in their own national laws.



HOUSE OF COMMONS

In the context of the Government's current FTA negotiations to secure the best suite of trade deals, the UK will need to ensure that any agreement with one nation does not come at a cost in negotiation with another or in continued membership of an overarching treaty. A clear and coherent UK trade strategy, which informs the IP approach, amongst other things, is thus needed.

Having said that, I would add that the IP Federation welcomes the Government's assurances and efforts to date to uphold its existing treaty obligations, especially in relation to the UK's longstanding and valuable membership of the non-EU European Patent Convention, the EPC, which I am sure we will come to a bit later.

I have a final point on this. Multilateral and bilateral trade agreements both have their place. Some issues are better dealt with multilaterally rather than bilaterally. IP issues such as patent grace periods and internal adjustment are best addressed not in bilaterals but in multilateral treaties and initiatives for harmonising IP.

Of course, the CPTPP is a multilateral agreement, but its membership is still relatively limited. Businesses must devise their strategies by taking a global view, not merely a trans-Pacific one. The CPTPP would not provide a solution that would meet our business needs in relation to grace periods, for example.

There are of course well-established and broader multilateral processes for IP harmonisation, such as WIPO B+, that offer the most effective solutions from the perspective of business.

Q68 Mark Garnier: Dr Weatherall, you were saying that some of the text was a bit questionable in some of these agreements. Do you want to add anything to that?

Professor Weatherall: I will add to that. I would back up what Dr Mukherjee has just said, which is that in many ways the better place to set standards is at a multilateral level precisely because business operates globally, not just within regions.

I would add that there are real and emerging problems with the IP rules in bilateral and regional agreements in the challenges they are creating for consistency. Some of the ways some of the agreements are being negotiated is starting to stand in the way of the development of global standards on IP co-operation. The most striking example would be something like the patent grace period problem, which I know you have a discussion on.

Another one would be the CPTPP provisions on geographical indications, which pose a not insignificant challenge for CPTPP countries wanting to deepen trade relations with regions like Europe, for whom GI protection is an important ask. That is because the CPTPP was effectively designed in the American style, which is to try to make it more challenging to recognise GIs that conflict with existing trademarks. We are seeing these



HOUSE OF COMMONS

areas emerge where the standards in these regional agreements stand in the way of global co-operation. That is a problem.

The other problem with detailed standards in regional agreements like this is that the rules have been hard to change. Given that we are in the midst of a major technological moment, with the development in AI and in the future quantum, and we are in the midst of a pandemic that has raised fundamental questions about access to and distribution of vaccines and medicines, to suggest that we know what the right set of detailed rules is now for the next five, 10 or 30 years is arrogant and probably misplaced.

I appreciate that for the UK now, coming into these rules, it is a question of, "Can we accept these rules?" That is a matter the Committee needs to seriously consider, for example, in relation to patents.

Mark Garnier: That is very helpful. Thank you very much.

Q69 **Lloyd Russell-Moyle:** Professor Weatherall, you were critical of the balance struck in the TPP between creators, investors and distributors on the one hand, and members of the public, public institutions and follow-on investors on the other hand. To what extent has the suspension of some of the articles in the IP chapter alleviated your concerns?

Professor Weatherall: As you rightly point out, the view I have expressed in my pretty extensive published work on the TPP IP chapter is that it does not strike much of a balance between creators and members of the public. It is true that some of the most controversial and problematic provisions have been suspended: the patent term extension provisions; the additional protection for biologics; the frankly ludicrously outdated, confusing and inconsistent online service provider provisions; and the anti-circumvention rules, which are more debatable.

The reality is still that the chapter does not show equal concern for all stakeholders in the IP system. The IP chapter embodies extensive, detailed and strong rights for IP owners, well beyond the international standards set in TRIPS and, moreover, explicitly allows countries to expand IP protection with very few limits. On the other hand, with reference to the interest of the many other stakeholders in the system, whether it be users, libraries, galleries, archives, educational institutions or the broader public, the text at most recognises that these are important without actively requiring member states to protect or promote those interests in any concrete way.

There are notable things the text could have done to protect those interests. It could have required members to ratify the Marrakesh Treaty to facilitate access to copyrighted material for people who are blind or visually impaired. It could have dealt with well accepted global exceptions in copyright, which it did not do. In this sense, there is a real missed opportunity to address some of those concrete questions of balance that are not dealt with in the existing treaties.



HOUSE OF COMMONS

Is it better than it was? The short answer is yes. The biologics provisions and some of the medicines provisions were particularly controversial and problematic. Is it a balanced chapter? No, it is not a balanced chapter. It gives very little protection to user interests and the public interest.

Q70 **Lloyd Russell-Moyle:** There has been a lot of debate in our negotiations with India about Britain trying to push for TRIPS waivers to be removed on drug patent issues and generics. If the CPTPP model is taken, is that unduly restrictive of life-saving medicines and drug development?

Professor Weatherall: If this were to be the model generally, there are certainly some challenges that would be faced by India in relation to some of the provisions it has. I think it is section 3(d) on patentable subject matter in the Indian Patents Act that enable some of the generic activity. That is probably inconsistent with the subject matter extension provision in the CPTPP. That provision is currently suspended, but it is potentially to be expanded.

In relation to access to medicines, you can get right down into the weeds of these provisions. It is probably not worth doing so in this hearing because a lot of the weediest provisions are precisely the ones that have been suspended. The point to make about questions of access to medicines is, again, there is nothing in this agreement that really promotes the ability for TRIPS waivers or the flexibilities in TRIPS. There is a reference to Doha, but it is not affirmatively developed in any way.

There is certainly nothing in this agreement that actively promotes access to medicines. If this were to become a global model, there would certainly be challenges for the generics industry.

Q71 **Lloyd Russell-Moyle:** I assume that there would be a similar answer, if we were to look at it from a climate change lens as well. One of the big arguments between the global north and global south is around the transfer of technologies and the ability to use patented technologies for free. I assume that answer on medicines could be relayed equally on climate change and environmental technology transfer.

Professor Weatherall: There is even less. When it comes to access to medicines, we have the Doha Declaration. That is specifically referenced in the text as something that is important. There is no equivalent in relation to climate change technologies.

I would be happy to forward to you a chapter I published a couple of years ago with some colleagues that pointed out the sheer absence of dealing with the questions around IP and climate change in WIPO and in any of the systems in WIPO. I would be happy to forward that to you, if it would be of any assistance.

Lloyd Russell-Moyle: That would be interesting.

Professor Weatherall: I will send it on.

Chair: That would be useful. Thank you.



Q72 Anthony Mangnall: Could I just bring in Mr Davies very quickly on patents? Do you want to say anything about what has been mentioned already about this, especially regarding protection and enforcement measures within CPTPP and the impact on patents?

Lee Davies: I cannot add anything to the analysis Professor Weatherall has given to us. Professor Weatherall is an expert in this area; I am just not down with the detail.

I can say something about where we find ourselves in relation to CPTPP and the UK's accession. To do that, perhaps you will indulge me if I just speak briefly about where we are currently. The European Patent Organisation was created as a result of the European Patent Convention. It is 50 years old this year so we are in our celebration year. The EPC is a multinational treaty comprising 39 member states, and it lives outside of and independent of the European Union.

We did some economic analysis when the UK said that it would look to accede to CPTPP. We calculated that the European patent system generates approximately £1 billion gross value added annually to the UK economy and is at least 75% of the work of the UK's patent profession. It is big business for us. We became concerned that the requirement to introduce a grace period into UK international law was potentially inconsistent with the EPC and could give rise to legal challenge in relation to the UK's membership of the EPC.

CIPA supports fully the UK Government's aspirations for international trade. We want to see the UK within the CPTPP. The intellectual property system exists to facilitate the innovation that is so important for our economic growth. We have engaged with Government up to ministerial level and with Members across both Houses, including with members of this Committee. We have provided briefing papers to Government and to colleagues in the Department for International Trade. We have appreciated so many MPs and peers listening to us. There are a number around this table today that we have had conversations with, and we are really confident that our messages have been heard and understood by Government.

The Government are committed to protecting their existing international commitments. In their opening gambit for accession to CPTPP, they state quite clearly that they want to preserve and protect the UK's place in the EPC. That position has been confirmed to us in writing by Ministers. We are confident that we have had a good hearing. We appreciate the opportunity to give evidence today. We are not complacent. We recognise that things can swing at the last moment in trade negotiations. That is where we are currently.

Q73 Anthony Mangnall: That is really helpful. I am just going to ask a little bit more, and then I will bring Professor Weatherall back in on this. Is there a gold standard mechanism that protects you out there in the world that perhaps might be replicated, enforced or put in place within CPTPP or something you would like to see?



HOUSE OF COMMONS

Lee Davies: Is there a gold standard? There are many standards. We would say that our place in the EPC is a gold standard. The UK's membership of the EPC has helped the UK profession establish itself as one of the pre-eminent patent attorney professions globally. We would look to that.

I would fall back on something that Dr Mukherjee said. The gold standard is about harmonisation. It is about looking beyond the minutiae of free trade agreements, bilateral or multilateral, and trying to achieve something much grander.

Sir Mark Hendrick: Something that works.

Lee Davies: That is global patent law harmonisation. There has been good work on this, and there is still much more work to do, but that for us would be the gold standard.

Q74 **Anthony Mangnall:** That is very helpful. Sir Mark Hendrick was saying "something that works", which is probably the right thing to be saying.

Professor Weatherall, can I bring you back on this? This is touching on stuff that you have already said. How successful are CPTPP's IP chapters? How successfully have they been implemented and enforced? On the previous panel we spoke a little bit about the Committee on Electronic Commerce, which, to be honest, on paper looks a bit lacklustre. Are there mechanisms there to be able to enforce and protect IP?

Professor Weatherall: Yes. It is interesting because in some ways the question misunderstands what the IP chapter really does and what the negotiating position of the parties was coming into the IP chapter.

The short point is that most of the parties that negotiated the original TPP worked quite hard to minimise the changes they would need to make to their system. Remember that the IP chapter of the CPTPP sets out what rights, exceptions, coverage and remedies must be in place in the legal systems of member countries in relation to IP. It is not a commitment to enforce intellectual property actively. It is not a commitment to allocate certain resources or actively engage in prosecution of IP crimes or the like. It is simply a matter of changing your laws to fit the rules that are set out in the CPTPP.

When you talk about how successfully it has been implemented and enforced, as far as I am aware, countries are moving, in accordance with any transitional provisions, to change their laws. The suspensions of the more controversial provisions guaranteed that many countries would not have to change anything at all. Changing enforcement outcomes is neither the goal or a likely outcome of the text of the IP chapter.

Q75 **Anthony Mangnall:** I was going to ask whether you felt it was providing businesses with the confidence that this has the right system and structure in place. Do you feel that it is in the right place? I am going to bring in Dr Mukherjee in a second on a similar point. I just wondered whether that works for businesses as it currently stands.



HOUSE OF COMMONS

Professor Weatherall: I cannot speak to the confidence of businesses. I have not engaged in a survey; I have not seen any empirical work to that effect. I would be surprised if it changed much, again because it has not required significant changes in most of the countries. I stand to be corrected on that because I am not aware of any empirical work on the question.

Q76 **Anthony Mangnall:** Dr Mukherjee, can I just bring you in on this idea? If the UK is a global leader in IP, does it have something it can offer CPTPP? Especially, does it have something it can offer other countries that are members of CPTPP to improve, increase or enhance their regimes?

Dr Mukherjee: Yes, absolutely. The IP Federation would strongly encourage the Government to be ambitious in seeking every opportunity to export the UK's IP standards system by pressing its trading partners to introduce IP standards largely equivalent to the world-class standards we have here. That would improve the ecosystem for innovation, which is so important to the world economy and the UK's innovative businesses, however large or small.

Improved IP standards in markets outside the UK promote access for innovative British products to those markets, which should be prominent in the UK's approach when negotiating all new free trade agreements. We do recognise, though, to be practical, that exporting UK standards is difficult in practice when seeking to join an existing plurilateral agreement such as the CPTPP.

Should the UK become a CPTPP party, which is what we strongly support, that would then hopefully enable the UK, in the fullness of time, to influence positively CPTPP development from within. In that context, there would be potential opportunities to the mutual benefit of all CPTPP parties to effect tangible improvements. An example would be improvements to the enforcement systems of CPTPP parties in terms of relatively nascent CPTPP state IP regimes so they could align their IP standards with our own.

Enforcement mechanisms should be appropriate, fair and consistent. It is important that third-party IP is respected and businesses can assert their valid IP rights against blatant infringements reliably and swiftly, as and when required, with a positive resolution in such nascent regimes.

The last point I would like to make for the IP Federation is that we would like to see evidence of the UK Government being ambitious in taking such opportunities and achieving IP improvements in partner countries.

Anthony Mangnall: That is really helpful. Thank you very much.

Q77 **Martin Vickers:** I want to go to Professor Weatherall first on this one. Are the IP provisions in the CPTPP complementary to the operations of UK business? What improvements to the IP chapter could the UK push for to better facilitate business operating across borders?



Professor Weatherall: That is a good question. In some of my published work on this, I have argued that, if the goal of the chapter were to promote the activities of businesses that act across borders and want to engage in trade across borders, you want to reduce the barriers to trade in goods and services across countries that include IP. You would do something a little bit different. You would do one of two things. You could adopt provisions that aimed at creating more of a single market. I appreciate that might be a controversial thing to say in the UK, but I mean to enable trade throughout the region in legitimately produced goods. You deal with questions like parallel importation and things like that.

If that is too ambitious—and it probably is—you would look at the actual barriers that are likely to be experienced by businesses that want to engage in export and cross-border trade. Those barriers could include, for example, challenges that arise from when you have to apply for rights in a whole lot of different countries. As things are at the moment, if you are applying for patents or trademarks across countries, you will face different rules, different application requirements, different requirements about how the diagrams should be done, et cetera. In effect, you almost have a new application in each country. It is not quite that bad, but it is close.

You would focus on finding ways to address that, such as international co-operation to streamline applications and facilitate common applications for patents and trademarks across countries. You would be focusing on co-operation between patent offices, trademark offices, et cetera.

I would be hesitant to suggest that you write any of those rules into a trade agreement, but, if there were a way to try to improve things, it would be to build out those co-operative mechanisms. If there is potential in the CPTPP to assist business, it is likely to be through co-operative mechanisms, forums and relationships that develop around the agreement through co-operation between the offices.

I would be sceptical about how much the CPTPP contributes here. As I am sure Dr Mukherjee and Lee Davies would agree, there is quite a lot of co-operation going on in this space. The patent offices and trademark offices are actively co-operating globally and not just within the mechanism of the CPTPP. That is where I would see potential.

As I say, I am relatively sceptical that there is much in the IP chapter, as it stands, that will specifically help those businesses trade across borders. As I said, you do not have a common or consistent set of rules; you do not have any single market being developed in this chapter. If I were looking for a way to promote businesses, it would be through the co-operative mechanisms.

Q78 **Martin Vickers:** Dr Mukherjee, would you wish to add anything to that?



HOUSE OF COMMONS

Dr Mukherjee: No, Professor Weatherall has made some very good points there. All I would say is that it is really important to have those agreed standards for IP to reduce trade barriers and to boost competitiveness and prosperity. Having those co-operative mechanisms is absolutely key to making this work going forward.

Q79 **Sir Mark Hendrick:** Professor Weatherall, China has submitted an application to join the CPTPP. How realistic is it that it could meet the standards required in the IP chapter?

Professor Weatherall: That is another good question. I would go back to a point I made before. It is important to understand what the IP chapter does. The vast majority of the IP chapter is concerned with having laws that match the standards stated and the systems stated in the IP chapter—for example, what is protectable subject matter or what rights must be granted—rather than achieving certain goals or achieving a certain level of enforcement. There nothing in the agreement that requires a certain level of enforcement or active engagement to be achieved.

To comply with the IP chapter, any country, including China, really only has to have, not universally but in most cases, laws that match the standards stated. The reality is that China has engaged in a significant amount of amendment of its law in 2019, 2020 and 2021 in copyright, patent and trademark, in the major areas, as well as issuing a number of judicial interpretations in that period. As a result of those, China has already amended much of its law to match the standard stated in the CPTPP, particularly the non-suspended parts of it.

There was an article in the *Journal of Intellectual Property Law and Practice* last year that outlined this in more detail. Again, I am happy to flick a reference or send on a copy to the Committee, if that would be helpful. The reality is that, if China has a problem with the CPTPP or complying with the standards in the CPTPP, I am more sceptical than you might think that the IP chapter is going to be the problem. They have made the changes to their law, and there is nothing in the agreement that requires them to meet certain amounts of prosecution, for example.

Q80 **Sir Mark Hendrick:** Just following on from that, in September 2021 China Trade Monitor stated that China's intellectual property framework ranks above that of Vietnam, Brunei, Chile and Peru. As you say, there have already been significant changes to law.

Professor Weatherall: Yes, this would not surprise me. China has been actively engaging with the IP system for a few years now. It sees certain areas where it has some comparative advantage. In setting the legal standards, China has made very significant progress. That is not to say there are not issues in every country around enforcement, but, again, the IP chapter does not set out a goal for enforcement that you have to achieve for compliance.

Q81 **Sir Mark Hendrick:** Dr Mukherjee, what is the significance of China as an IP player? How could this affect the CPTPP, should China be successful



HOUSE OF COMMONS

in its accession bid?

Dr Mukherjee: Building on Professor Weatherall's comments, I would say that China is undoubtedly a very significant IP player in the world. It has taken steps to upgrade its IP system in recent years, which is welcome. Indeed, many IP Federation members operate in China, investing and building IP rights and navigating third-party rights there. It is a key market for them.

Let me just give you an example of the magnitude of the activity going on there. Looking at the numbers of patent filings worldwide, for example—I dug these numbers out recently—China is the dominant player, way ahead of everyone else. China's IP office received around 1.59 million patent applications in 2021, which is about 47% of the total 3.4 million filed worldwide in that year. That is similar in magnitude to the combined total of the next 12 offices ranked from second to 13th. If you just look at the volume—I am not talking about the content—that gives an idea to the Committee of how active work is in that part of the world.

When we talk about harmonisation activities, it is really important to have China on board to be part of that process. Of course, there are mechanisms in place to make that happen.

Lee Davies: I will add a small point about China. It is just an echo of what Professor Weatherall and Dr Mukherjee have said. We have talked elsewhere in this session about harmonisation. Hopefully we will come back to it at some point, as we give more evidence. China is an active player in harmonisation. It is one of the IP5, one of the big five patent offices, with the US, Japan, South Korea and, of course, the European Patent Office. It is already locked into those discussions about broader global harmonisation, and that should be welcomed.

Q82 **Chair:** Turning to the Chartered Institute of Patent Attorneys, you said earlier on that you have interacted with a number of Members of the House of Commons and the House of Lords on your concerns around CPTPP. In particular, it is worthwhile understanding the difference in approaches to patents that there are within the European Patent Convention versus what might come with CPTPP.

Lee Davies: Yes. The biggest is the one we have already mentioned, which is the grace period issue. There are no grace period provisions in the European Patent Convention. There is a requirement for a grace period within CPTPP. As Professor Weatherall has indicated, that is not necessarily applied uniformly across CPTPP members states.

Our concern is that, if the UK introduces a grace period of sorts, whenever that grace period might look like, we are potentially inconsistent with our existing obligations as a member of CPTPP and we expose ourselves to the potential for legal challenge from wherever that might come, perhaps from one of our neighbours in the EPC that would have significant economic benefit from seeing the UK not have CPTPP membership.



HOUSE OF COMMONS

Q83 Chair: You have mentioned in the past that the value to your members in the UK of being part of the European Patent Convention. That should not be confused with the European Union; it is a larger grouping than the European Union. Can you let us know the size of the work you do, the number of people you have employed and the value that brings to the UK as well

Lee Davies: Starting with the value—we touched on it earlier—it is £1 billion gross value added to the UK economy. 75% of that is work that is either coming from the UK or through the UK internationally filing into the European patent system.

The size of the profession has been growing steadily year on year largely because of our pre-eminent position in the European patent system. We currently have somewhere in the region of 3,000 UK patent attorneys, who are also European patent attorneys. It is a profession that takes a long time to train to be a member of. Our student body is half the size of our professional body.

There are approximately 1,500 students currently training to become UK and European patent attorneys. Beyond that, there is a big ecosystem in firms, be they large firms or small firms, around patent administration and other support services. As small as we are, we think we are large and significant in terms of the value added that we bring to the UK economy.

Our point is not just about our place in the EPC. Competitive UK businesses that are trying to grow an international portfolio will, with the UK in the CPTPP, still want to be filing protection in the European system. They absolutely will. It is their nearest market; it is the market they will be engaging with and where they will want protection.

Our concern is that, if there is any potential for the erosion of the UK patent attorney profession in this, it is not just the loss of that business that we have talked about, that £1 billion of gross value added to the UK economy. It is the loss of the UK creative industries having access to expert patent attorneys because the profession has contracted. There is that angle to consider as well.

Q84 Chair: What percentage of European patents under the European Patent Convention are being filed through UK patent attorneys?

Lee Davies: I will look across to Dr Mukherjee because he had his finger on some stats earlier. He might have his finger on that one. Otherwise, I am going to have to come back to you with the stats on that one.¹

Q85 Chair: Dr Mukherjee, do you have any idea?

¹ Note from witness: The statistics aren't easily accessible. But by extracting monthly data directly from the European Patent Register we have been able to generate figures for last year. So, of the 179,419 patent applications published by the European Patent Office in 2022, 46,370 had a UK representative, which represents 25.8% of the total.



HOUSE OF COMMONS

Dr Mukherjee: We would have to take that one out of the session to give you a full answer. It is significant. Just to reinforce what the chief executive of CIPA has said, this incompatibility issue is a serious risk.

From an industry perspective, agreeing to such provisions will raise uncertainty. It raises uncertainty over the UK's membership of the EPC and the very existence of a question of that would lead to many years of uncertainty, a weakening of the IP system and a permanent loss of international and overseas businesses in the UK. It undermines the UK's global aspirations to be a technology and science superpower and to attract industry into this country. We all want that to happen. This is a real risk. It is something that needs to be addressed.

Q86 Chair: We are talking of about the patent business being worth £1 billion a year to the United Kingdom. We are hearing that being in CPTPP is a £1.8 billion gain, which is 0.06% or 0.08% of GDP. You are a sizable figure. There is a potential gain of £1.8 billion, but you are saying there is a risk to £1 billion. How great is the risk to the £1 billion? Is it a risk of £1 billion? Is it £500 million? Is it £250 million?

Lee Davies: Much depends on where we find ourselves, if the UK were to be in the CPTPP. Will we have managed that accession with provisions that enable us to be quite confident about our place in the EPC or will we be facing an uncertain future? You will appreciate that the legal system works around uncertainty. If there is any uncertainty placed over the UK's place in the EPC, our competitors will use that to their advantage.

We would either see an immediate challenge that we got some resolution from. The likelihood is that we would see a much longer-term challenge played out in various tribunals and courts. For us, if we lose the EPC work, we lose 75% of the work of the UK patent profession. It is inconceivable that the profession could retain its size and status with just 25% of its workload. You would see a contraction. I would say the risk is real in terms of that £1 billion. It is a very real risk.

Q87 Chair: That is interesting. The UK is going to be engaging in CPTPP for a GDP gain of 0.06% to 0.08%, but it is putting at risk a 0.33% GDP industry, which is a definite that is there at the moment, for a potential gain. You would probably think it is playing with fire. Would you agree with that on the intellectual property side, Mr Davies?

Lee Davies: Yes, absolutely. We have had very good conversations with Government about this. We have had in writing now several times from successive Ministers a recognition of the importance of this work and the UK's commitment not to put at risk its place in the EPC.

Q88 Chair: How confident are you that the UK will remain in the EPC?

Lee Davies: It all depends on the outcome of the negotiations. We have some indications of where those are going. We know the UK is looking at proposals that would help us arrive at a position whereby we could safeguard a place in the EPC, but we are not complacent. We know that



HOUSE OF COMMONS

negotiations are fragile and that compromise may need to be made at the last moment, which is why we are keen to keep the issue live.

Dr Mukherjee: There will be a number of issues of national interest here, which the Government will need to weigh in the course of the negotiations, but the primary purpose of the IP system is to serve and support innovative business. The terms of CPTPP accession should take full account of the impact on British business.

It is therefore absolutely critical that the Government are resolute in negotiating acceptable CPTPP accession terms relating to patent grace period and patent term adjustment. A failure to do so would risk undermining the Government's aspirations to make UK a science and technology superpower and a global innovation hub and lead to all those losses the chief executive of CIPA referred to.

There are different possible ways forward to ensure the UK accedes to CPTPP on terms compatible with the European Patent Convention. The IP Federation has proactively worked with the UK Government, and we are grateful for the constructive discussions we have had with them. It is not an easy job that Government officials have to do. This is such an important thing in a complex area. We continue to work with the DIT IPO officials in Government on this, with a hope that we will get a solution. That risk is a serious one and it needs to be addressed.

Q89 Sir Mark Hendrick: Very quickly, I am wearing two hats on this Committee. I have a constituency interest in central Lancashire, which has a major employer in the form of BAE Systems. I can see from his CV that Dr Mukherjee has advised BAE Systems about the CPC issue. When the Committee was out in south-east Asia, we met with BAE. I am looking in particular at James, one of our advisers. I know the Chair was not there, and one or two other colleagues were not there.

BAE said that whether they could continue along EPC lines was a huge issue for them. Dr Mukherjee, if we cannot get agreement on this issue, could this be a deal-breaker for UK accession to CPTPP?

Dr Mukherjee: That is a good question. As you know, I am representing the IP Federation today, which is 41 IP-intensive companies across sectors. What I can say is that this is a serious risk. We are grateful that we are able to air our position on it with you today. We are working closely with Government—we are all on the same side—to arrive at a possible way forward that ensures that we join the CPTPP to get all those benefits and, at the same time, we accede on terms that are compatible with the European Patent Convention.

Sir Mark Hendrick: You do not believe the two are mutually exclusive. That is what you are saying.

Chair: No, he does not seem to. Time is short.

Q90 Martin Vickers: I want to go to Dr Mukherjee first on this one. Is there a benefit to the other CPTPP parties if the UK were to accede to the CTPP with a carve-out for the grace period?



HOUSE OF COMMONS

Dr Mukherjee: There are different possible ways forward to ensure the UK accedes to the CPTPP on terms compatible with the European Patent Convention. The IP Federation has proactively engaged with overseas business counterparts in existing CPTPP member states. What is clear from all our engagements is that the UK joining the CPTPP would be beneficial for existing CPTPP member states. Supporting a suitable mechanism to provide that compatibility smooths the way for the UK to accede and hence for existing CPTPP member states to gain that benefit, so we are all happy.

It is also worth noting here the tremendous value of the UK's influence within the non-EU European Patent Convention on the development of European patent law and policy, including in patent law harmonisation initiatives, which is beneficial for existing CPTPP member states. The UK's role is particularly valuable for countries with a common law tradition, such as Australia and Canada, for which the UK is often the sole advocate in Europe.

Q91 **Martin Vickers:** The IP Federation has discussed working towards an internationally harmonised grace period. In what timeframe might that be achieved, Dr Mukherjee?

Dr Mukherjee: As to timeframe, no one knows. There are well-established multilateral processes for IP harmonisation involving, amongst others, the UK, the US and the EU member states. These are already addressing issues such as the grace period. This mechanism offers the most effective solutions from the perspective of business.

The IP Federation continues to be a very active supporter of the substantive patent law harmonisation process. It is significant to note that this is a live process. For example, the non-EU European Patent Office will be holding two international symposia on the subject later this year. It is incredibly important that this harmonisation work continues to be supported by us all to reach the right conclusion.

Of course, this work is challenging. We all know that. The grace period is only one element of a broader package under consideration. If the political will is there, industry will play its part, and I am confident it can be achieved. I remain optimistic. That is my view.

Martin Vickers: We should always end on a note of optimism.

Q92 **Chair:** I am tempted to go back to Sydney and see whether that optimism is reflected, given the earlier remarks. Are you feeling optimistic about that, Professor Weatherall?

Professor Weatherall: Am I feeling optimistic about patent harmonisation?

Chair: Yes, we heard a note of optimism there.



HOUSE OF COMMONS

Professor Weatherall: It is good to be optimistic. Patent system harmonisation has been an ongoing goal for decades and decades, so I will not be holding my breath for immediate changes.

I want to go back to one thing, which is that patent is not the only area where there is work to be done on harmonisation that is not yet dealt with by the CPTPP text. Another obvious area that has come to my attention in recent times—a lot of my research is in the space of machine learning and AI—is that there is a lot of room for discussion around exceptions and co-operation in the copyright system around research, text and data mining.

It is probably worth noting that, while the UK has a text and data mining exception and is considering broadening that, a lot of CPTPP countries do not have any such exception, Australia being one of them.

It is worth noting that it is not just about patent, although I appreciate that in this particular Committee there is obviously an emphasis on that area.

Chair: Thank you very much for that. It is useful to flag that up. We have ended on a note of what might be short-term pessimism but very long-term optimism, so we shall wait and see. Thank you, all, for joining us. WE have the Western Pacific in Australia and we had the Eastern Pacific earlier. Thank you to the Chartered Institute of Patent Attorneys and the IP Federation. We are very grateful. Thank you.