

Select Committee on International Agreements

Oral evidence: Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Wednesday 10 March 2021

4 pm

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Members present: Lord Goldsmith (The Chair); Lord Foster of Bath; Lord Gold; Lord Kerr of Kinlochard; Lord Lansley; Baroness Liddell of Coatdyke; Lord Morris of Aberavon; Lord Oates; Lord Risby; The Earl of Sandwich.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 12

Witnesses

I: Catherine Brims, International Policy Advisor at The Law Society of England and Wales; Sean McGovern, Board Member at London Market Group, and CEO, UK and Lloyd's Market at AXA XL; James Sibley, Head of International Affairs at Federation of Small Businesses; Sally Jones, Partner, Trade Strategy, at Ernst & Young.

Examination of witnesses

Catherine Brims, Sean McGovern, James Sibley and Sally Jones.

Q1 **The Chair:** Good afternoon. This is an oral evidence session of the International Agreements Committee of the House of Lords. We welcome our witnesses—who I will identify in a moment—to a session on the CPTPP, that is to say the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, into which we are conducting an inquiry.

I am very pleased to be able to welcome Catherine Brims from The Law Society of England and Wales, international policy adviser; Mr Sean McGovern, board member at the London Market Group and chief executive officer, UK and Lloyd's Market at AXA XL; James Sibley, head of international affairs at the Federation of Small Businesses; and Sally Jones, who is a partner on trade strategy at Ernst & Young, or EY—I am never quite sure what I should be calling it these days. Welcome to you all. I am delighted to see you.

Members of the committee will take turns to put questions to you, and they may well make disclosures of personal interest as they do so—that will be relatively short. I will start and, as I do so, I will just make this declaration of interest: I am a partner in an international law firm and, therefore, issues concerning the practice of lawyers, both here and overseas—and indeed I am admitted to practise in some overseas territories—is a matter of personal interest to me.

Let me start by asking a question to you all, and I will put it in turn. What is your assessment of the CPTPP agreement, which the Government have announced they do intend to apply to accede to? In particular, what specific provisions would benefit the businesses you represent the most if the UK did accede to the CPTPP? I imagine you will have in mind particularly Chapters 10, 11 and 14, although that may not be right—10 covering cross-border trade and services; 11, financial services, and 14, electronic commerce. Please do not be restricted by that; I am interested very much to know what you have to say. Maybe I can take you in the order in which I introduced you. Can I start then with Catherine Brims?

Catherine Brims: Thank you, Chair. To begin, I think it is important to say that entry to the CPTPP will provide important benefits for the UK services sector. A number of UK businesses provide services across the Asia-Pacific region and many of the CPTPP member countries have growing economies.

While the distance may be a difficulty for some sectors, the CPTPP emphasises the importance of cross-border provision of legal services and, at the same time, technological advancements are allowing legal services to be provided seamlessly across continents. Increasing digitisation of services is happening rapidly in the Asia-Pacific region.

It is also worth mentioning that this will be the first time that the UK has entered into a trade agreement with some of these countries. It will also be the first time that a new signatory has sought accession to the CPTPP.

The terms on which it does so will be watched closely by other trading partners and, therefore, it provides an important platform and opportunity for the UK to show its leadership and its interests.

That said, of course, it will not change the legal services market overnight. It is simply a step towards increasing market access and other steps must be taken as well. This is an opportunity to increase dialogue and co-operation, and, as you have mentioned, the mechanisms provided in paragraphs 9 and 10 of the Professional Services Annex—*that is 10A*—provide a mechanism for addressing these behind-the-border barriers.

In that sense, joining has very little downside. I think the primary one that we can perceive as solicitors is that it might signal that the barriers to market access, which are already in place in a market, are accepted by us as fixed. I also wanted to draw the attention of the committee to the concerns raised by the Chartered Institute of Patent Attorneys on the potential incompatibility between the European Patent Convention and the CPTPP, as this may have an adverse effect on the UK's membership of the European Patent Office, through which the vast majority of UK patent attorneys conduct their transactions.

That said, paragraphs 9 and 10 of Annex 10A on professional services are, I think, the most important for the solicitor profession. They set out a principles-based framework on legal services that supports the ongoing development of the regulation of lawyers and of the legal services sector.

The Chair: Thank you for that. Could you identify one practical effect?

Catherine Brims: Absolutely. As I have mentioned, a number of the barriers for legal professions are behind the border. One of them might be, for instance, recognition of qualifications. An example of this would be that, for one of the CPTPP member countries, Japan, an English solicitor must have three years of post-qualification experience just to register as a foreign lawyer in the country. This consideration is listed in paragraph 10, so, while not easily addressed within the text of the agreement itself, it does provide us with a framework to continue this discussion with our counterparts.

The Chair: Thank you for that. Mr McGovern, how would you respond to my question?

Sean McGovern: Thank you, Chair, and thank you for the opportunity to give evidence this afternoon.

Just very briefly, let me say a little bit on why I am here and what I represent today. First, the London Market Group represents the speciality commercial insurance and reinsurance market in London, so it is all the companies that offer insurance and reinsurance and the brokers who bring in the business to London on behalf of corporate clients from all over the world.

As we look at trading issues, it is very important that for us to continue to be successful as the London insurance and reinsurance market we have the ability to access markets from London on a cross-border basis.

As we look at the CPTPP, we are supportive of the Government's application to join. Clearly, the 11 countries in that partnership vary considerably in economic scale, and the London insurance market already enjoys some very significant relationships with some countries, such as Canada, Japan, Australia and New Zealand, and less so with some of the smaller economies, such as Peru and Malaysia. As important are those other countries that have expressed an interest in joining, such as Colombia and Thailand, so this partnership has potential outside the existing members.

Looking at it purely from a trade point of view, on the assumption that the partnership increases trade, the London insurance market will benefit from that. There is a halo effect, given our role in supporting global commerce and global trade, so that is an indirect benefit.

Looking more directly, as you said, Chair, the CPTPP has a chapter on financial services and, in particular, provisions on insurance. We do think that is a valuable mechanism to encourage continuing opening up of markets across the world.

We look at this as a long-term play for the London market. Clearly, UK accession will send a strong political signal of the importance of the region and the partnership. It will give us an important seat at the table helping us shape the future direction of the CPTPP's rules. We would be the second largest economy, so our voice would be heard in there. It would give us the opportunity to continue to drive a UK agenda on the liberalisation of services and, in particular, cross-border financial services, which is what we do.

It is really setting the stage in the longer term to encourage markets to continue to remove unnecessary regulatory and other barriers, while at the same time obviously upholding high standards of regulatory rules, governance and other commitments.

The Chair: You have not identified any specific thing that this would change at the time of accession.

Sean McGovern: There is nothing specific that we will get from this agreement. As I said, the agreement is fairly conventional, from a financial services point of view, but it is important that we get a seat at that table. It gives us the opportunity to continue to really push for improved access for financial services and insurance, and it is an important complement to bilateral FTAs. We think the two are complementary. There is a degree to which a like-minded approach, through a collective multilateral arrangement, will have an influence on the approach countries take to bilateral agreements and, obviously, vice versa.

At the end of the day, as a market, many of the challenges we face are regulatory barriers. We believe that this agreement would form a firm foundation to really open up regulatory dialogue, co-operation and trust, which is the only way that we will get past some of these barriers that hinder our ability to trade in some of those markets.

The Chair: The message I am getting is that it is important in terms of scene setting but, as to actual changes in the regulations, that is for later discussions. Let me move to Mr Sibley next, please.

James Sibley: Thank you, Chair, and good afternoon, everyone. Thank you for the invitation to give evidence today.

Just to provide a bit of background on the Federation of Small Businesses—FSB—as the name suggests, we represent SMEs across the UK. We have around 160,000 members across the four nations of the UK and international trade is an important part of many of their business models.

In terms of CPTPP, we view potential UK accession to this agreement as a hugely welcome development to small firms that are looking either to expand or begin their trading journeys. In fact, we did a survey on this that we published last year, where around half of our small businesses who export said they view the CPTPP region as a priority market to access over the next three years, so we believe it could deliver benefits for those firms with that interest.

In addition, last year, in conjunction with the University of Sussex UK Trade Policy Observatory—UKTPO—FSB published a report, *The Representation of SME Interests in Free Trade Agreements*. This report identified CPTPP as one of the most advanced trade agreements that support SMEs currently in force. With small businesses it is important to understand that, when it comes to our members who export, the vast majority of them employ fewer than 50 employees. They generally do not have a bespoke, dedicated export department and they may not have in-house trade specialists, so for them it is proportionally harder to overcome in-market barriers.

In this sense, we feel the agreement comprehensively covers market liberalisation, regulatory transparency, co-operation and trade facilitation in a manner that would bring benefits to small firms looking to trade with the signatories to the CPTPP.

The Chair: Are you more likely to get them than through bilateral trade agreements with the countries in question?

James Sibley: In some cases, no. The bilateral agreements are very similar. For instance, the rolled-over agreement with Canada is quite similar to what you find in CPTPP. In other instances, CPTPP goes further. I will come back to digital trade because I think that is one of the prominent examples of that.

In the report that we published with UKTPO, we identified three particular areas that were beneficial for SMEs. The first was digital trade, which includes prohibiting levying of custom duties on electronic transactions and prohibiting data localisation. The chapter on intellectual property we felt was a good one for establishing predictable standards for the protection and enforcement of IPR across the region. Finally, particularly important to us is the inclusion of a comprehensive SME chapter, which includes provisions on information sharing and an SME committee charged with representing the interests of SMEs in the implementation of the agreement.

The Chair: We will come back to some of those in the individual questions, but thank you for identifying them. We recognise their importance. Let me go finally at this stage to Ms Jones, please.

Sally Jones: First off, thank you very much for having me. It is a pleasure to be here. I will pick up, Lord Goldsmith, on a couple of themes that you have brought out with your supplementaries.

As you rightly point out, this is an 11-member agreement that has already been negotiated, so we would be acceding to a done deal that inevitably limits the extent to which we can make changes to it, if at all. It is also part of the UK's wider strategy for the region and needs to be taken not just in and of itself but as part of that wider strategy, recognising that, of the 11 members, we have trade deals with seven of them and we are negotiating deals with two more.

Therefore, what it is really doing is establishing a baseline position from which the UK can springboard into the Asia-Pacific region more generally and it needs to be taken and evaluated on that basis. There are parts of it that do open up markets for our clients, in particular, much more than for us. If I were to call out one particular part that has not been mentioned yet, it would be the government procurement provisions, which do open up markets to businesses that would not otherwise have access to them. It is not entirely a baseline. There are some additive measures to it but it has to be taken for what it actually is rather than seen as a massive deal breaker. If I were to quote my dearly departed grandmother, "It is not perfect but it is better than a slap round the belly with a big wet fish".

The Chair: Thank you very much indeed for that. I will turn to individual members. I remind you all—as I should have done at the outset—that as you know this is being recorded and, indeed, for broadcast. There will be an opportunity to look at the transcript to correct it if you wish before it is actually published, but thank you. You have all thanked us for inviting you. I want to thank you all for being here. Let me turn then to Lord Kerr.

Q2 **Lord Kerr of Kinlochard:** Thank you, Mr Chairman, and thank you to our witnesses.

I do take Sally Jones's point that it is a deal. It is "take it or leave it"; we cannot change it. The bit that interests me is the exceptions, the negative

lists that seem to include quite a lot of exceptions and restrictions nationally. We all know that the EU single market in services was far from complete but, by comparison, this market in services looks a bit like a Swiss cheese, with more holes than cheese in some cases. How much does that matter and how seriously does it limit the advantages that the interests you represent will obtain from our access? Could I perhaps start with Sally on that one because I am sort of hanging it on her point?

Sally Jones: Thank you very much, Lord Kerr. Yes, every deal has its reservations and its non-conformities. The more that they can be explored and understood the better. I will confess to you right now that I am still working through all those in the context of my clients. For EY's business, it does not make a great deal of difference, if I am being absolutely honest, because the nature of the regulation of the audit profession means that we need to have independent partnerships anyway. There is not a great deal of additional market access I would expect the UK/EY firm to derive from this, so the reservations to us are less important than they will be to our clients without a doubt.

Within that context, I would point out that these are 11 large and established service economies. Therefore, they will have their own self-interests that are inevitably represented through those reservations. But I come back to my previous point that it is considerably better than nothing.

Lord Kerr of Kinlochard: Yes. Perhaps Ms Brims would like to comment.

Catherine Brims: Absolutely, thank you. To follow on from my fellow witnesses' comments, a number of the barriers are, of course, behind the border. Therefore, the reservations will not necessarily have the same impact.

What I want to draw attention to, of course, is Annex 10A on professional services, which sets out a principles-based framework on legal services that supports the ongoing development of the regulation of foreign lawyers and the legal services sector. For some member countries this is one of the first FTAs that explicitly covers market access commitments on legal services, and it goes beyond other FTAs by specifically encouraging member countries to allow foreign lawyers to operate on a fly-in/fly-out basis and on a fully integrated basis with domestic lawyers.

You made a very apt point about the Swiss cheese. One of the difficulties that we are facing is that the interaction of multiple bilateral agreements across jurisdictions creates complications that, in addition to Swiss cheese, has been called the noodle bowl of FTAs or the soup of FTAs.

I think it is generally accepted that a single multilateral agreement does provide greater transparency and consistency in this. There is the potential in this agreement to provide innovation in some areas—particularly in services—through this dialogue and co-operation and to set a framework of a common basis across CPTPP member countries.

Lord Kerr of Kinlochard: Thank you. Mr McGovern?

Sean McGovern: Thank you, Lord Kerr. From an insurance standpoint, as I mentioned earlier, the financial services chapter is fairly standard. It does recognise cross-border trade and insurance for maritime, commercial aviation and goods in transit. That is a fairly common provision in trade agreements. It is based on GATS¹ commitments, and it is core to a lot of the business that we write.

It also recognises cross-border trade in reinsurance, which is very important, and some members of the partnership also recognise the role of brokers in these transactions. However, we have better market access in some of these partner countries than in others. With Australia, New Zealand and Singapore we have very few regulatory barriers. Countries such as Malaysia have regulatory barriers in place.

Therefore, we see this agreement as giving us a base on which to build on some of the good practice that we see in some countries—such as New Zealand and Australia—and to try to import that into the CPTPP overall or, indeed, into the bilateral agreements we will try to strike with some of those countries. It is really providing an opportunity to open a broader dialogue with these countries, with the aim of reducing regulatory barriers and building up a level of understanding and trust about how other countries do it and how they have got comfortable in taking away some of these barriers.

We see it as a fairly standard financial services chapter. The GATS commitments allow countries to carve out prudential provisions that are regarded as being for safeguarding the financial system or consumers. We see a varied practice of that across all these member countries, so we are trying to get to a more liberalised approach across all 11 members of the partnership. We think that having a seat at the table will help us achieve that.

Lord Kerr of Kinlochard: That is your long-term play argument. You agree that it will not be possible to change any of these negative exceptions lists as we come through the door. Over time, you may be able to achieve greater liberalisation but not as we come in. These lists will apply the moment we join.

Sean McGovern: Yes, you are absolutely right. We have to be realistic. The UK will be acceding to an existing agreement but that agreement will not remain static. It will be subject to reviews, and there will be opportunities to modify it as it continues to develop and as new countries join and it evolves.

Lord Kerr of Kinlochard: Thank you. Mr Sibley?

James Sibley: I would agree. I concur with my fellow panellists. In terms of Chapter 10, CPTPP largely locks in existing market access, which in itself is not to be underestimated for small firms which are looking for stability when trading internationally.

¹ General Agreement on Trade in Services

Going back to your Swiss cheese point, I think this is particularly the case in Chapter 12, on temporary entry for business visitors, which is something that for a small firm trying to navigate can be incredibly complicated. As Catherine mentioned, this is due to the range of bilateral side agreements and commitments that lie under CPTPP, which can be quite difficult to navigate. They do grant market access in several areas and they do streamline processes for small firms, which is important, but to unlock these provisions a small firm needs to navigate quite a wide range.

For instance, different CPTPP signatories, for an independent professional who is looking to make use of this, will have different qualifications or years of experience requirements. Some signatories will impose a market labour test, while some do not or some have reserved the right to, so it can get very complicated and we always ask our Government to support small firms in terms of allowing them to understand these provisions more easily.

Lord Kerr of Kinlochard: Thank you very much.

Q3 Lord Morris of Aberavon: Lord Chairman, I would like to explore further the advantages of the CPTPP compared with the existing bilateral deals with seven existing members. What does the CPTPP offer the services sector beyond what has already been gained or could be gained by bilateral agreements with individual member countries?

Sean McGovern: From our point of view, we would see this as something that could be entered into but without being at the exclusion of bilateral FTAs, which we believe should continue to run in parallel. Clearly, the Government should continue to push for improved access for services—financial services and insurance, from our point of view—as much as possible, using every tool in the toolbox, so that is bilateral agreements in addition to multilateral agreements such as this one.

Perhaps I could illustrate it by example. If you look at the agreement that was reached with Japan, that is an example of a trade agreement that has made more progress than the existing terms of the CPTPP on the issue of regulatory barriers. What CEPA has done is it has embedded within the agreement that regulators in Japan and in the UK have to take account of international regulatory standards in how they regulate their markets. They have to give each other advance communication about planned regulatory initiatives in their individual countries that could impact the other country.

It established a Japan-UK financial regulatory forum. That provides a formal mechanism for UK financial services regulators and Japanese financial services regulators to regularly meet to discuss bilateral co-operation and consider co-ordinated positions as they engage with international regulators around the world. I can see that that might be regarded as a relatively modest step, but it is actually important because, as I say, many of the barriers that we face, particularly in emerging markets, are regulatory barriers. They can be regarded as being

protectionist barriers and, ultimately, to break them down we need to show countries what has been agreed in the Japan FTA and encourage them—either bilaterally or through amendments to the CPTPP—to adopt something similar. We can then chip away at some of those regulatory barriers that for high-growth countries, which we regard many of these countries to be, will stand in the way of our ability to do cross-border business with clients in those countries.

Lord Morris of Aberavon: Thank you very much. Does anyone want to comment further?

The Chair: Ms Brims or Ms Jones, do you want to comment further?

Sally Jones: Yes. Can I give a little context here? When I am advising one of my clients about how best to enter a new market in this area, I need automatically to look at at least three different things. That is this deal, CPTPP—assuming that we accede to it—but also the bilaterals and the commitments that each of the countries have made at the WTO as well. You therefore have three separate levels of market access and this may not be the best one for my client in that industry, depending on what it wants to do, and we might end up looking to the bilaterals or we might end up looking to domestic regulation.

One of the points I wanted to come back on from Lord Kerr was that just because there is a reservation in the deal does not mean that it is used in anger by that country in practice. Reservations are really difficult to understand what they mean, particularly when they are simply unbound reservations, which means the country reserves the right to itself to limit access almost as it chooses. On top of those three international agreements that I talked about—CPTPP, WTO, GATS commitments, plus any bilaterals—you also have to look at how domestic regulation is applied in practice. That comes particularly to the fore with things like digital provisions. I think I would like at some point in this to come back to digital provisions.

The Chair: We can do that.

Sally Jones: This kind of mismatch inevitably means that it is not very easy for countries to say, “CPTPP does this for me” or “The bilateral does that for me”. You have to look at each individual company’s facts and circumstances to understand what advantages it can and cannot take.

The Chair: Lord Foster will ask about digital provisions very shortly once Lord Morris has finished his questions.

Lord Morris of Aberavon: If we were to look at the agreements without the advantage of rose-tinted spectacles, would you agree that the potential benefits that go beyond bilateral deals are likely to be very limited? I think it was Mr McGovern who mentioned modest steps. Am I right in thinking they are likely to be very limited?

Sally Jones: Is that to me, Lord Morris?

Lord Morris of Aberavon: One of you or all—

Sally Jones: I am happy to have a punt at it and then pass it over to my more learned colleagues.

Yes, these are inevitably limited steps but they are better than no steps at all. They leave the ground open for further steps to be taken in the future. Particularly around domestic regulation and reservations, I think that there is definitely a push within the context of all the bilateral, plurilateral and multilateral negotiations to use them as a springboard to better things.

The Chair: Is that back to your fish, Ms Jones?

Sally Jones: Back to the fish, yes.

The Chair: All right, Ms Brims, do you want to add to that, please?

Catherine Brims: Certainly. I think a lot has been said by my fellow witnesses. Just to reiterate, this is a very difficult area to regulate and, in that sense, I think the CPTPP is but one step and more need to be taken. It does not necessarily suggest that this is a small step, but it needs to be considered within the wider picture.

It is important to stress two points. One is that the continuing regulatory dialogue and the principles-based approach, which is very much in the CPTPP, create potential for these like-minded trading countries to show a level of leadership, particularly in the legal services sector, in the development of their foreign lawyer regulatory systems.

This is a signal towards other non-party countries to push forward progressive, values-based trade. There is also the creation of a professional services working group within the CPTPP, which is a positive development. It reflects recognition of the importance of cross-border trade in legal services. It also shows a commitment to a framework to guide further development in market access, allowing member countries to continue to drive improvements. In this respect, the CPTPP has been referred to very much as a 'living agreement'.

The Chair: Thank you. We should go on to digital trade provisions, which have been mentioned once or twice by witnesses.

Q4 **Lord Foster of Bath:** Thank you, all four of you, for being with us. Just before I pose my question, could I just say to Catherine that I think the committee would be very grateful if you could write separately and expand upon the point you made to the Chair earlier about your concerns about the conflict between the EU and the CPTPP arrangements in respect of patents, and any thoughts you might have on what we might be able to do about that.

As many of you have already said, services are increasingly being digitalised and, therefore, Chapter 14 is clearly very important. I would be grateful if each of you could just set out which digital trade-related

aspects of Chapter 14 you think are particularly helpful to organisations and businesses within the UK. When we get to James, I would be particularly grateful if you could comment on the views expressed to us by others that the ban on data localisation and the ban on forced transfer of service source codes is particularly helpful to SMEs and start-ups. We will start with Catherine more generally.

Catherine Brims: For the legal services sector specifically, mechanisms that protect personal data processed by law firms are of crucial importance as they safeguard the principles of client confidentiality and legal professional privilege. The right to consult a lawyer in confidence is a cornerstone of professional obligations for lawyers, and legal professional privilege is treated under English law as a fundamental common law right and a human law right that plays a crucial role in ensuring the proper administration of justice and the rule of law. In this situation, we believe that these protections should be remembered and safeguarded when provisions on cross-border data flows, data legalisation and personal data are proposed.

In addition, more generally, provisions that provide greater clarity and certainty for businesses operating internationally in the digital sector are always a welcome development.

At the moment, lawyers are operating under a patchwork of different provisions, different legislation—as was mentioned by my fellow witness earlier that facilitate digital trade. This covers the recognition of e-signatures and other similar mechanisms, which of course is also a welcome development.

Lord Foster of Bath: Just before I bring the others in, are you confident with the data adequacy set-up in each of the current 11 member countries?

Catherine Brims: It is worth recalling that an adequacy decision has been granted to several of the CPTPP member countries, so these should be looked at in terms of the UK's position as well.

Lord Foster of Bath: Yes. There are, of course, some questions even about our own data adequacy, in terms of the EU in the future, but anyway we will perhaps have to deal with that in due course. Can we turn to Sean, please?

Sean McGovern: The CPTPP is obviously a forward-leaning agreement more generally on digital trade, and that is a good thing. Obviously, we see some restrictions in many markets on restrictions on data flows. However, at present, the CPTPP carves financial services out of the ban on data localisation, which is unfortunate and so should be reconsidered perhaps as part of the negotiations. Of course, we have some inconsistencies between the provisions on digital trade in the CPTPP on financial services versus some of the bilateral agreements.

For example, our agreement with Japan bans data localisation in financial services. So we have a situation where we have a bilateral with Japan,

which is where we need it to be from a digital trade point of view, which bans data localisation, but the CPTPP provisions carve financial services out and effectively allow for data localisation. That would need to be ironed out, either as part of the negotiations for accession or as part of a longer-term plan to try to improve the terms of the partnership.

Lord Foster of Bath: Thank you. That is very helpful.

James Sibley: I can speak to the prohibition of data localisation requirements. These are quite important for small firms, particularly requirements that may mean that small firms have to use servers in a particular jurisdiction. The reason for this is costs. It can significantly increase a small firm's costs if it has to rent servers in different jurisdictions or if it precludes them from using certain cloud-based computing. Small firms often operate on tight margins, and this can be a significant cost. So we welcomed this while acknowledging the carve-outs in certain areas such as financial, as Sean has said.

The forced transfer of code is important, particularly for start-ups. Having that level of protection in the agreement is useful. We welcome it. We see it as a best-in-class provision to include in a free trade agreement and this is something we identified in our report with the UK Trade Policy Observatory.

The other feature of the digital trade e-commerce chapter that I mentioned is the prohibition on the levying of duties on electronic transmissions. This locks in existing conditions, but it is important, because you see around countries the world certain countries toying with the idea of levying duties on electronic transmissions. This would introduce quite significant costs if it was done, so prohibiting it among the 11 signatory countries of CPTPP is a welcome development.

Sally Jones: I might fall out with you on this, Lord Foster, because I think the digital provision is quite exciting. I know I am a geek, I absolutely accept that, but I think these are important because, generally speaking in the world, there is a European model for data protection, which is exclusive, complicated and difficult to use, and then there is an increasing co-operative consistency developing among other countries, such as the US, Japan and the CPTPP countries, which is looking at something much more open in the context of business transfers.

The fact that we are signing up to this is a real positive. I hope that these are the future for future digital chapters both in UK deals and more generally around the world. I do not share your concerns about adequacy in a GDPR EU context. Given that Japan and Canada both have adequacy decisions and Canada has legislation on its statute books very similar to the UK's, it is difficult to see a logical justification for why we would be denied an adequacy decision, given that Canada has one. I am hopeful that what we are looking at here is the future rather than something that should cause us concern.

Lord Foster of Bath: I am very grateful for that. I am not sure we

disagree, but if you want to write to us with further thoughts on that the committee would be very grateful. Thank you.

The Chair: Lord Foster, thank you very much indeed. I will move to Lord Oates. I am just looking at the clock. I would like to try to conclude this perhaps about 5.15 pm, maybe just a little bit after that, so we should structure our questioning and answering with that in mind. We are getting very useful information, so that was not intended to give any other impression.

Q5 **Lord Oates:** Could you give us your assessment of the provisions on the temporary movement of skilled professionals and on the mutual recognition of professional qualifications, in particular whether you think they go far enough to provide any real, genuine and concrete benefits for UK businesses, and which of the CPTPP countries you think offer the best opportunities for UK businesses? Perhaps I could start with Catherine.

Catherine Brims: Absolutely. I will try to keep this brief, although there are several parts of that question I want to answer.

To begin with, English and Welsh solicitors already enjoy a high level of access to some member countries' legal services markets, but there are restrictions in place that create barriers for legal practice in all of them, and more so in some than others. These generally include recognition of legal qualifications, limitations on business structures through which lawyers can operate, and restrictions on professional involvement in a broader range of activities.

The major difficulty for trade and legal services generally is that these barriers are behind the border. They are not easily addressed in trade agreements, and recognition of professional qualifications is particularly pertinent here. I think we have said that the CPTPP does not necessarily include strong commitments for immediate liberalisation. It provides mechanisms to address such barriers in paragraphs 9 and 10 of the professional services Annex 10A.

This is a principles-based framework for legal services that is capable of supporting medium and long-term reform. It is intended to guide parties in future reforms to domestic regulation that could go above and beyond.

On mobility, the CPTPP specifically encourages members to allow lawyers to provide legal services on a fly-in/fly-out basis and on a fully integrated basis with domestic lawyers. As many of you will be aware, UK law firms rely very much on the temporary entry of business persons in order to provide fly-in/fly-out services.

On your question about whether this goes far enough and which countries are of greatest interest, I think the most important markets for our members are Malaysia, Singapore, Japan and Australia. To give one example of the barriers, I think I have already mentioned that in Japan you must have three years' post-qualification experience in order to register as a foreign lawyer.

Another example perhaps is Malaysia, where it is quite difficult to establish a firm. There are two options to do so. One is the qualified foreign law firm licence, issued on a three-year basis, which reduces certainty for business and is tied to a number of interesting restrictions, including a need to practise in the Islamic finance area.

The other option is an international partnership, which requires the Malaysian partner to hold at least 60% of the equity share and voting rights, which I suppose is a hard sell. In terms of developing this further, the framework in a CPTPP allows us to continue these discussions, raising these issues and addressing these.

Lord Oates: Thanks very much. Sally, do you have thoughts?

Sally Jones: Yes. I come at it from a fairly operational perspective and, in preparing for this session, I asked around within my firm, "How often do we actually send people on business trips to the area?" The answer is, "Not very often at all". When we do send people to the regions for business trips it typically gets planned for months in advance to get as much bang from our buck as we can. We have never had all that much of an issue getting our people out for business visits when we needed them—is the honest answer. We do not expect to need to rely on these schemes particularly.

Geography matters enormously. Everybody knows about the gravity model for goods, which says that you trade more with countries that are closer to you. The same is true for services, partly because business visits are just more expensive, and it is therefore prohibitive. When we send people we also use overlapping schemes like the APEC visas.

It is yet another example of looking not just at this thing but at the whole environment and working out the best and cheapest way to get your people where you need them, and generally that can be achieved.

Lord Oates: And on a mutual recognition of qualifications?

Sally Jones: Again, for my profession there is not much that will ever help, absent a full mutual recognition agreement, which this is not. There is a requalification requirement in all the countries involved.

Lord Oates: Thank you. Sean, do you have anything to add?

Sean McGovern: For the insurance industry, clearly mutual recognition is important. It is not a major challenge for us. It tends to focus in particular on skills loss adjusting, and obviously if we are adjusting a very complex claim we want to make sure that we have the ability to send appropriate qualified loss adjusters in. It is important that their qualifications are recognised and that they can get visa entry into those countries, so mutual recognition is important.

It is not a major challenge, and in some cases the issue is better dealt with in bilateral negotiations, because those are often dealt with as individual charter or insurance industry qualifications. So it is not a major

issue, but it is an important one for allowing for the free movement of professionals to support the business.

Lord Oates: Thanks. James, is there anything on this from you?

James Sibley: For the FSB and our membership, the areas of temporary entry for business visitors of particular interest to us are those relating to independent professional and contractual service providers.

As for what benefits this will deliver, as has been mentioned, geography matters. There are certain provisions that provide a level of new market access in CPTPP. Some of this will depend on what the UK itself grants, because a lot of these provisions are granted on a reciprocal basis between CPTPP signatories, so I caveat it with that.

For instance, Australia has removed resident market labour testing for contractual service suppliers, which can be a significant barrier for a contractual service supplier to deliver services, if that is a requirement. That is not seen elsewhere, so New Zealand and Brunei for instance specify that one can be required. This goes back to the point I made to Lord Kerr that CPTPP delivers some benefits in this area, but you have to navigate quite a complicated patchwork of what is in CPTPP and then what is in the bilateral agreements between signatory countries. If you can do that, you can unlock certain requirements that have been removed or processes that have been streamlined, which can be beneficial.

The Chair: Thank you. We have talked a bit about SMEs already, but Lord Sandwich will pick up on that further.

Q6 **The Earl of Sandwich:** My question is primarily for James Sibley. You have already covered much of the ground. My specific question is: what provisions in the agreement could benefit the SMEs in particular? I have a friend in Saigon who is trading pepper and spices. He is pleased with the Vietnam EPA, but to my surprise he is also quite enthusiastic about CPTPP, of which Vietnam was a founder member.

I am not yet convinced. I did not find the SME chapters very inspiring. I know you found some of the other ones valuable, and we have heard from other witnesses that digital trading is the obvious advantage, saving much of the cost of setting up a business, but maybe there are downsides as well. There has been a bit of euphoria today. For instance, will the DIT provide enough guidance? You said that it was going to be hard to navigate?

James Sibley: In defence of SME chapters, one of the primary reasons why we have long argued for the inclusion of SME chapters in FTAs generally, and the reason we have been pleased to see a comprehensive SME chapter in CPTPP, is to overcome that information gap that you have. The SME chapter in CPTPP includes provisions on providing easy-to-access information for SMEs to understand how they can make use of the agreement, which is important. You often find with SMEs that they may not even be aware of what is in an agreement and what they can access.

They may not even be aware of the agreement, so there is a lot to be done once you have signed and ratified an FTA to try to overcome that. SME chapters do provide one route to do that.

The other thing with the SME chapter is the requirement for an SME committee to be established. One of the things that we often say with FTAs is that it is not just the negotiation but the implementation of the FTA that matters for SMEs. Having that SME committee in place ensures that there is a route for SMEs to raise issues with implementation that can be a barrier to actually unlocking opportunities available to them.

In terms of opportunities and benefits elsewhere in CPTPP, you mentioned digital trade, which I have spoken about in this session. CPTPP is a best-in-class agreement on digital trade, as Sally has said. The provisions on data localisation, on data flows, are really beneficial for small firms that are relying on data in their international trade.

One thing I would draw attention to that has not been mentioned yet is what is in the agreement on payments. In a report on digital trade that we did back in 2019 we found that, for services exporters, payments are the second most common issue as a barrier to delivering exports. I have spoken to small businesses that have had to do things like call up their customer to ask for their advice on how they should pay. I have had businesses that have had to arrange meetings with the customer's bank to be paid, so including provisions on electronic payments, which are in the CPTPP, will deliver real benefits.

I would also mention intellectual property, and this goes back to the question earlier about the benefits of CPTPP over bilateral agreements. I think there is an aggregate benefit to being part of an 11-party regional agreement in some areas, and intellectual property is one of them. CPTPP sets a minimum standard for IPR and enforcement across the CPTPP area. That is a good thing for small firms that often trade on their intellectual property, particularly in services.

The Earl of Sandwich: Chair, I am happy with that, unless anyone wants to make a further comment.

The Chair: Thank you very much, Lord Sandwich. Let us move on a little bit. Lord Risby will pick up on another aspect.

Q7 **Lord Risby:** This is a question for Sean. We dealt with financial services in a response to the Chair, which is very important in the insurance sector, of course. The question of regulatory dialogue well also touched upon. There was a very positive sense of what could be achieved with this relationship, but at the same time it will evolve in the future. This is a baseline situation. Could you identify a spectre at the feast? I say that because, invariably, there are enormous sensitivities when it comes to financial services. Does anything stand out in your mind that could be difficult?

Sean McGovern: I honestly do not think so, because the segment of the market that we participate in supports large corporate clients that are

represented by insurance intermediaries. So we do not operate at the more sensitive end of financial services. In many of these countries, concerns about financial literacy and so on may be partly why some of the prudential measures and the conduct measures are in place.

We believe that we can help these economies ultimately to de-risk, because as many of these economies continue to develop they have significant emerging risks. Cyber is one of them, but they also have significant exposure to natural catastrophe risk. As their economy develops, that economic risk goes up and they need to improve the insurance and reinsurance penetration into their markets. So we do believe that this is truly a win-win situation.

I think this is more about educating and working with economies to understand that we are not operating in competition with local insurance markets. In fact, we are operating to complement their insurance markets, because a lot of their insurance markets are simply not deep enough to be able to absorb these kinds of large-scale and catastrophic risks. We can work as a search tank, as a complement to the local market. Indeed, that is how we operate with many of our markets around the world.

This also gives us an opportunity to see how market access can continue to be improved. We believe that over the long run, if everybody becomes more confident about how cross-border insurance and reinsurance operates—New Zealand is a very good example, given the experience there, as is our relationship with the US in paying out claims there—it allows you to expand the risks that can be exported. That ultimately is our overall goal.

At the moment, as I say, the agreement captures fairly standard MAT—marine, aviation and transport—risks as being exportable. We would like to see the range of risks that can be exported out of economies grow, because that will allow us to absorb those risks and do that business on a cross-border basis, so I do not think there is any mischief here that we should be concerned about.

Lord Risby: Can I just quickly ask Catherine about regulatory co-operation? There is a chapter on that, but I notice something called the regulatory coherence chapter, and it has this broad definition, as I understand it. What does it mean in practice in terms of practicable applicability?

Catherine Brims: I am afraid I cannot speak very much to the regulatory coherence chapter. I am not as familiar with it. As I have said, the important part for legal services is very much the professional services Annex 10A and then paragraphs 9 and 10, which are specifically directed at legal services and contain specific principles to be considered. They actively list some of the behind-the-border barriers and this is a very good opportunity, a very good framework, for us to continue discussions on these particular barriers.

Lord Risby: Thank you.

Q8 **Lord Gold:** Good afternoon, everyone. My questions assume that we have joined CPTPP. Do you see any conflict with existing UK law? Will we have to introduce new law? Are there any regulatory issues that we need to worry about with regard to differences of approach? Moving on, is there any clash with our trade with the EU if we join up with CPTPP? That question is addressed to you all.

Sally Jones: I am happy to kick off and say that the truth is: not to my knowledge. However, as part of the UK's accession commitment, the Government will lay out how our existing laws may comply or otherwise with CPTPP. One of the things I wanted to land as a point is that it would be great if that could be made public so that people like us witnesses could take a look at it and make a better fist of understanding it, both for our own businesses and on behalf of our clients.

The Chair: That point is noted. Thank you very much for saying that. Catherine Brims, do you want to add anything on this?

Catherine Brims: I would just reiterate, from the perspective of market access for solicitors, that I am not aware of any reservations or any issues with the regulation apart from the issue of patent attorneys, of course, which I can follow up with the committee later in writing.

The Chair: Thank you very much indeed. James or Sean, anything to add?

Sean McGovern: I will just confirm that, like Sally said, I am not aware of any without seeing the Government's own impact assessment. Certainly, I am not aware of any change or conflict or other issue that would arise in relation to domestic regulation or raise any questions about our relationship with the EU.

James Sibley: I do not think I have too much to add. Much has been made of the data flows element of CPTPP. I would just reiterate the point made earlier that there are signatories to CPTPP that have adequacy decisions with the EU. As the UK has UK GDPR in place, we do not think that that will be an issue in the future.

The Chair: We hope that your confidence is not misplaced. It is a big issue.

Q9 **Lord Gold:** Lord Chair, as we still have 10 minutes and there is only one other person who has a question, can I address something to Catherine particularly on mutual recognition of qualifications? We look at this very much in terms of people from here going over there, but it is mutual. Would the Law Society have any issues or concerns with foreign practitioners who have achieved their qualification in one of the CPTPP countries coming over here and being able to immediately practise?

Catherine Brims: To begin with, the regulation of the profession is under the power of the Solicitors Regulatory Authority, or the SRA. Therefore, I cannot comment on the ins and outs of the mutual

recognition point. When we say mutual recognition, it is important to consider the wider context. For example, recognition could take into account the experience that a lawyer has. Certainly, a foreign lawyer at the moment can come into the UK and practise their home country law, which is necessarily available to English and Welsh solicitors in all CPTPP countries. This has to do with the recognition of qualifications, which is not necessarily mutual recognition. As I said, the decision on mutual recognition needs to involve our regulatory arm, so I would be hesitant to say any more at this point in time.

The Chair: Thank you. They are the regulatory arms for the other parts of the legal profession which the Law Society and the SRA do not actually regulate, so it is for the Bar and the legal executives.

Lord Morris of Aberavon: Would there be a language barrier? Would there be difficulty in practising in this country because of any obligations of the professionals as regards language?

Catherine Brims: If I may talk to the situation at the moment, a foreign lawyer can choose to requalify by undertaking a test. It is in the process of changing, but the important thing to stress is that in passing this test you will need to have a certain language requirement, so this is very much considered in these discussions.

Q10 **Baroness Liddell of Coatdyke:** A big part of my question has already been answered in that it has come across quite strongly that you think that one of the great advantages of joining CPTPP is the ability to change things over time. I am intrigued as to how you go about that, given that the text and rules are unlikely to be changed as part of the accession process. Often there is more sophisticated regulation affecting right across these services, so they come at a cost and they are much more expensive. How will you decide what the key issues are? How will you then influence other countries when there are going to be barriers in the way right from the very beginning of joining? This is for everybody. Sally, you look as though you are chomping at the bit there.

Sally Jones: You read me so well. There are a couple of points to make that are not mutually exclusive. The first point, which is slightly punchy, is that there is a possibility that in a post-Biden era the US may seek to join CPTPP, as it left the negotiations before. To the extent that that happens, the timing of the UK's accession will have an influence on the extent to which the US influences the CPTPP and others. There is a definite point to be made about the extent to which our influence will matter, depending on whether or not and the timing of any US re-joining. Secondly, as you rightly say, this a pre-existing agreement from a very dynamic, forward-looking, cutting-edge region. It would be wrong, I put to you, for the UK to try to change it too much.

There are sectors or areas where we have an absolute global advantage, where we are recognised around the globe as being the best—law tech is one, fin tech is another, insurance is third—and where we genuinely can add a level of expertise that might not otherwise be there. We may well

be welcomed by at least some of the other countries there, because we are known for being really good in those areas.

There will be other areas where we are not known for having a particular global advantage, and the UK would do well to recognise that and to leave those bits well alone and leave other countries that have expertise in those areas to take the leading light in that regard. Playing to our strengths will lead to a natural evolution over time, rather than a natural inclination for the UK to meddle and change. I hope that makes sense.

Baroness Liddell of Coatdyke: Thanks, Sally, it does. Who else wants to say something?

Sean McGovern: The only thing I would add, because I agree with what Sally has said, is that this 11-country partnership has countries with very different philosophies, approaches and practices when it comes to the regulation of financial services. There is an opportunity for the UK over time—this group will not stand still, it will continue to evolve—to make common cause with like-minded countries to help, as I said before, to export some of that philosophy, regulatory practice and approach into countries that are not quite where we are.

There is that opportunity to make that common cause. It is not us being arrogant, going in and trying to seek changes; it is just trying to partner up with other members that have a very similar approach to financial services and financial services regulation and to encourage change over the longer term. I think that would be a very good thing to embark on.

Baroness Liddell of Coatdyke: Catherine or James, do you want to come in?

Catherine Brims: Your first question is about the mechanisms and how we see these changes. Certainly, we are eager for the UK to use membership of the CPTPP to broaden market access through some of the tools that I have already mentioned, such as the Professional Services Annex and the Professional Services Working Group. There is also the opportunity of using side letters to make our interests known.

You have also asked about our key asks, so thank you. I can answer that question. In terms of trade agreements, we seek the ability for UK lawyers to be able to do five things: the ability to advise clients on home country laws and public and private international law to the extent that they are entitled to practise in their home jurisdiction; the ability to provide advice through commercial presence for firms; temporary practice—the fly-in/fly-out that I mentioned earlier; and establishment rights for individuals. We also ask for a clear, transparent and proportionate path to requalification into the host state profession; the ability to represent and advise clients in arbitration, conciliation, mediation and international proceedings and the ability to act as arbitrators, mediators and conciliators; and the ability to partner with, employ and be employed by local lawyers.

Along with these five aims, we also seek greater clarity in the definition of legal services and the consideration of legal professional privilege, as I mentioned earlier. These points, as I said, can be pursued through the mechanisms that are already in the CPTPP. Alongside this is, of course, the need to have regulatory dialogue and continually increase market access through this co-operation and discussion. We encourage the Government very much to seize these opportunities, with professional and legal services being such a strength of the UK's trade.

James Sibley: I will just add one thing that builds on a point that Sean made. The CPTPP brings together countries with particularly progressive and innovative trade policies. I am thinking here of the likes of New Zealand, Canada, Singapore and Chile. This extends to their treatment of SMEs and their promotion of SMEs in trade. To its credit, DIT has taken this on board in our engagement with it, and it puts SMEs at the heart of a lot of our trade policy work. There is a role for the UK to work with like-minded partners within CPTPP to develop that trade policy further and promote the usage of FTAs, and promote the involvement of SMEs in international trade more generally. There is a lot that can be done there, including promoting CPTPP, but it is not limited to that.

Q11 **The Chair:** Thank you very much. I want to ask one final question, because we have no other scheduled questions. I very much thank you all for what you have said, because it is very, very helpful.

Is it all worth the effort? That is the question. It would be good to know from you whether you think it is. The Government have a lot to do. They are obviously working on other trade agreements, bilateral trade agreements and so forth, and a lot has been made of the possible accession to the CPTPP. The question to you all is: is it worth the effort?

Sally Jones: Yes, it is definitely worth the effort, for all the reasons we have outlined. It is worth it for its springboard aspect, and because it gives us direct conversations with New Zealand and with Chile. New Zealand and Chile, but also Norway, are doing fantastic work on sustainability and environment and promoting greener trade, the whole sustainability agenda. We have not touched on that, but the fact that we have direct dialogue with those countries through CPTPP is another advantage that must not be overlooked. I am a big fan.

Catherine Brims: I support what my fellow witness has said. Also, to reiterate, single multilateral agreements provide greater transparency and greater consistency across the region. There is a real opportunity here to join a set of like-minded countries to push forward progressive WTO plus values-based trade.

James Sibley: I would say yes, and primarily because as we emerge from Covid and the economic shock that our small firms have experienced we see trade as a significant part of the recovery. Government should be doing everything in its power to make that easier for small firms and to support small firms that are looking to make use of these opportunities.

Sean McGovern: I will not repeat much of what I said. I think it is worth it. It is, after all, the third largest free trade area in the world. We would need a good reason not to want to be at that table. It does contain within its membership many countries that we regard as being high-growth markets for us over the medium to longer term. Yes, we think it is absolutely worth it.

The Chair: I take all that as being more positive than Sally Jones's grandmother's fish. Before we conclude the meeting, Lord Lansley, who has not asked a question, wants to come in at this point, and I am very happy to bring him in.

Q12 **Lord Lansley:** You are very kind, Lord Chair. Happily my question follows on from that conversation, but maybe it is particularly for Ms Jones, looking into the broader context. Do you think that our accession to CPTPP and our relationship with those countries would be of benefit, and that we should regard it as being useful in relation to the General Agreement on Trade in Services and developing the role of the WTO further? I should mention that I am the UK chair of the UK-Japan 21st Century Group, so I am interested particularly in our Japanese friends' relationship with us.

Sally Jones: I am really glad you asked that question, because the ongoing multilateral and plurilateral conversations at the WTO mean that it is really important that we are part of all the other conversations that feed into those. This is one of those, but so too is our relationship with the EU and our set of bilateral relations with 63 other countries. The more of these conversations we have, the better informed we will be in our WTO-level conversations, and the more we will be able to build on our GATS commitments. I see this as very complementary to, rather than in any way detracting from, our WTO position.

The Chair: Thank you all very much indeed for your time. I really mean that. Thanks also for the additional bits and pieces—not bits and pieces, that undervalues them completely—that you have promised to provide to us. With that, I thank you very much.