

Written evidence from International Economics Consulting

TRADE AND ENVIRONMENT UNDER CPTPP AND IMPLICATIONS FOR THE UNITED KINGDOM

About the authors

International Economics Consulting (IEC) is an independent management consultancy firm, with offices in Vietnam, London, and Mauritius, specialised in providing strategic advisory services in the field of trade, investment, and public policy. It regularly provides advisory services to DIT, DG trade, UNCTAD, World Bank and UNESCAP. It completed a review this year on the CPTPP for Global Affairs Canada on labour and environment issues, and regularly produces work on trade and sustainable development.

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SUMMARY

This submission focuses on trade and environment, a hot topic in today's global context. The CPTPP is recognised for setting high standards for trade and sustainable development, including those on labour and environmental protection. With this ambitious scope, the CPTPP is expected to provide Parties with an opportunity to push forward innovative solutions to address the global environmental crisis. For the UK, this would be a positive step towards setting more binding commitments on environmental safeguards in comparison to its other trade agreements.

A. The CPTPP, the UK, and the environment

1. The UK's application to join CPTPP was approved by the CPTPP commission in June 2021. Among current CPTPP parties,¹ the UK already has existing FTAs with Australia (pending ratification), Canada, Chile (association agreement), Japan, Singapore, and Vietnam. In terms of trade in goods, the current CPTPP markets only account for approximately 7% of the UK's total trade (imports and exports) in 2021, whereas the CPTPP accounts for 15% of world trade. The significance of the CPTPP is small in comparison to the UK's trade with the EU (44%), the US (10%), and China (10%). In this light, the UK's access to the CPTPP reflects trade and non-trade objectives, such as the UK's geopolitical strategy in the Indo-Pacific region.² Nevertheless, the benefits of access to the CPTPP's larger and emerging markets (such as Indonesia and Malaysia) are extremely attractive for UK businesses, especially in terms of access to service markets in a strongly growing regional market.

2. Environment provisions in trade agreements is given significant importance nowadays. This is especially true for the countries in the Pacific rims and members of the CPTPP. Four of the CPTPP Parties – Australia, Malaysia, Mexico, and Peru – are recognised as "mega-diverse" regions for supporting more than 70 per cent of the biological diversity on earth.³ However, only three out of eleven CPTPP Parties recorded a level of CO2 emissions per capita lower than the world average in 2019, according to data from the World Bank (Figure 1). As CPTPP Parties are also deeply engaged in trade, their carbon footprint can be significant. For example, in 2019, Australia, Malaysia, and Vietnam were recorded as

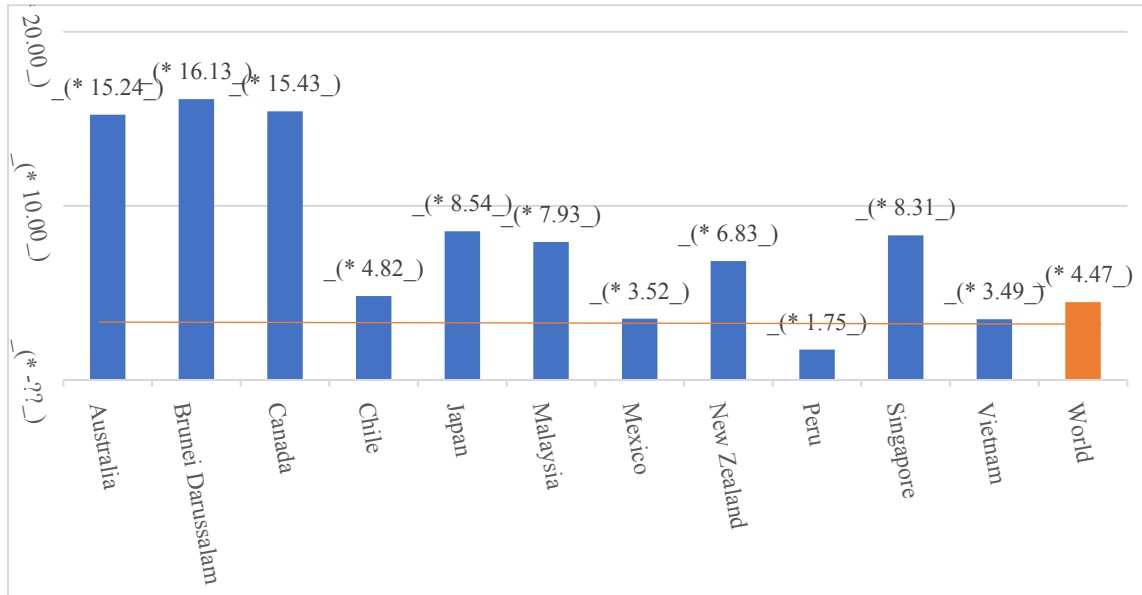
¹ Parties include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

² Morita-Jaeger, M. (2021). [Accessing CPTPP without a national digital regulatory strategy? Hard policy challenges for the UK](#). UK Traded Policy Observatory.

³ DFAT (2019). [CPTPP outcomes: Environment](#).

net exporters of CO₂. This could be due to their significant agriculture and manufacturing export sectors, as well as a high propensity to export (Figure 2).

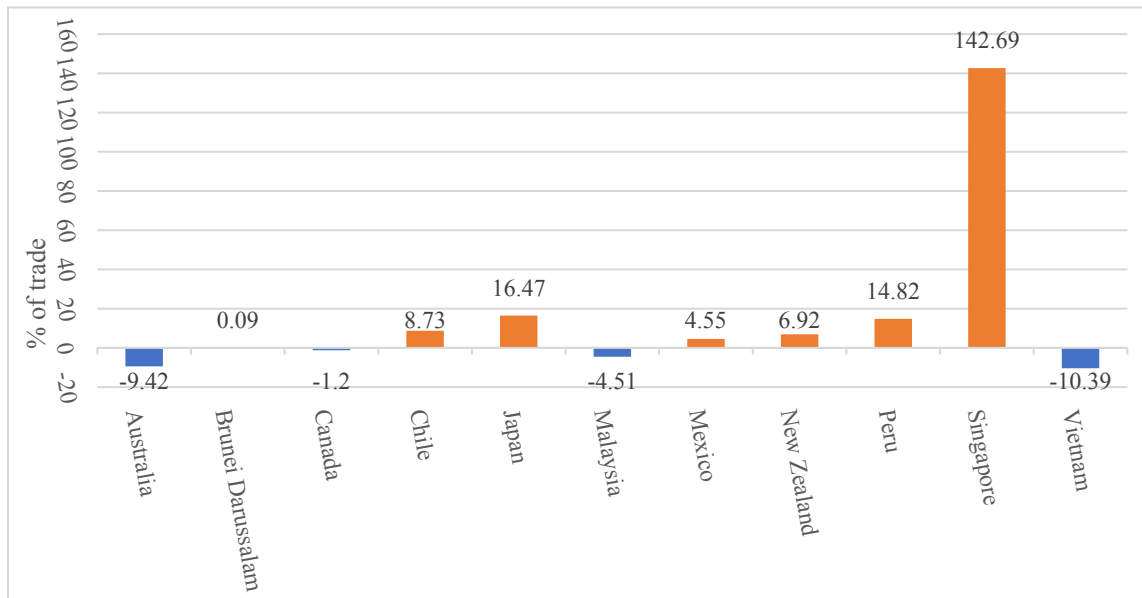
Figure 1. CO₂ emissions (metric tons per capita), 2019



Notes: Carbon dioxide emissions are those stemming from the burning of fossil fuels and the manufacture of cement. They include carbon dioxide produced during consumption of solid, liquid, and gas fuels and gas flaring. World average is shown as the orange line.

Source: [World Bank WDI \(2022\)](#).

Figure 2. Share of CO₂ embedded in trade, 2019



Notes: Share of carbon dioxide (CO₂) emissions embedded in trade, measured as emissions exported or imported as the percentage of domestic production emissions. Positive values (orange) represent net importers of CO₂ (i.e., "20%" would mean a country imported emissions equivalent to 20% of its domestic emissions). Negative values (blue) represent net exporters of CO₂. Source: [Our World in Data \(2022\)](#)

B. The CPTPP's environmental commitments go beyond typical trade and sustainable development provisions in the UK's other FTAs

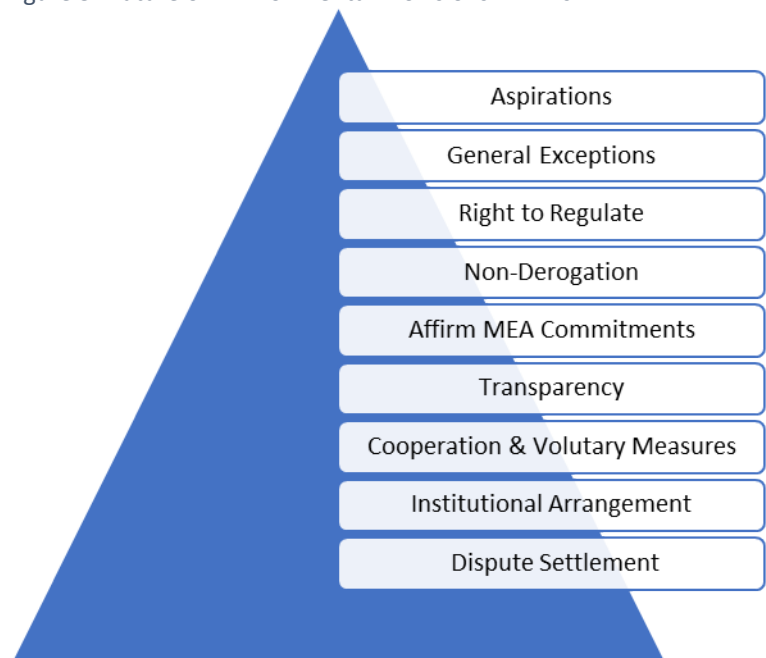
3. Provisions on environment protection, along with labour rights protection, account for a large share of commitments addressing the link between trade and sustainable development, while the attention paid to other areas such as gender, health, anti-corruption, and SME participation remains low. As observed, North-North FTAs with at least one Commonwealth member, contain provisions on the link between trade and protection of the environment or labour rights, on a more frequent basis than North-South FTAs.⁴ The nexus between trade and the environment has long been explored in a bid to ensure that trade between countries is not detrimental to the environment. As such many new generation FTAs, like the CPTPP, increasingly promote environmental protection to ensure that trade liberalisation does not lower environmental standards or contribute to increasing pollution and depleting natural resources.

4. Environmental provisions in trade agreements have been expanding in their coverage. It should however be noted that not all provisions have the same enforceability. That is, while some provisions present signatories' binding obligations, some only indicate their best-endeavour efforts and will depend on the parties' willingness to adhere to the commitments.

5. Traditionally, environmental provisions in FTAs have generally been included in the preamble of an agreement, indicating parties' aspirations to protect the environment. However, more and more FTAs, including the CPTPP, have dedicated an entire chapter to the environment. Most of the time, environmental provisions in FTAs may take the form of a general exceptions clause with similar wording to that of Article XX of the WTO General Agreement on Tariffs and Trade (GATT) and Article XIV of the General Agreement on Trade in Services (GATS). This allows parties to deviate from the rules prescribed in a trade agreement as necessary *"to protect human, animal, and plant life"* or *"to the conservation of exhaustible natural resources."* While most FTAs recognise a country's sovereign right to establish their own levels of domestic environmental protection via policy and laws (*"right to regulate"*), they also require that a country shall not waive or derogate from its environmental laws in a manner that weakens or reduces the protection afforded in those laws to encourage trade or investment between the Parties (*"non-derogation"*).

6. Like many FTAs, the CPTPP takes a further step to require that Parties affirm their commitment to implement the multilateral environmental agreements (MEAs) to which they are a party, via taking domestic measures related to the regulating areas of those MEAs. These might cover areas such as

Figure 3. Nature of Environmental Provisions in FTAs



Source: Authors

⁴ Baker, P. R. (2022). Sustainable Production and Trade Practices in Commonwealth Small States. The Commonwealth Secretariat: London. Forthcoming

protection of the ozone layer;⁵ protection of the marine environment from ship pollution;⁶ sustainable use and conservation of marine species;⁷ prevention, detection, control and, eradication of invasive alien species (via SPS measures); trade and biodiversity, and conservation and trade.⁸ Transparency measures have been broadened to cover not only the promotion of public awareness of environmental and compliance procedures, but also ensuring opportunities for public participation (including joint dialogue with civil society) and public submissions. Furthermore, provisions on environmental cooperation, capacity building, corporate social responsibility, voluntary mechanisms to enhance environmental performance, transition to low emissions and circular economy, etc.... are increasing present though only of best-endeavour nature.⁹ Last but not least are the provisions on institutional arrangements and dispute settlements.

7. The CPTPP is often seen as an agreement with one of the most ambitious Environment Chapters, which covers nearly all the possible environment-related provisions. Compared to the UK's FTAs which have the most comprehensive environment chapters, such as the UK-Australia FTA or the UK-Canada FTA, the CPTPP has roughly a similar level of coverage. However, the CPTPP also embeds two important commitments which are not commonly included in any typical FTA, namely the commitments on fisheries subsidies and the dispute settlement mechanism applied to environment-related disputes.

C. Fisheries Subsidies Disciplines

8. In addition to tackling the problem of overfishing, unsustainable utilisation of fisheries resources and Illegal, Unreported and Unregulated (IUU) fishing using fisheries management systems that regulates marine wild capture fishing, Article 20.16 of the CPTPP also requires that Parties refrain from granting or maintaining harmful fisheries subsidies. These covers (i) subsidies for fishing that negatively affect fish stocks that are in an overfished condition; and (ii) subsidies provided to any fishing vessel while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing.

9. The prohibition of these 'harmful' fisheries subsidies resonates with the provisions of the World Trade Organisation's Agreement on Fisheries Subsidies ("Agreement on Fisheries Subsidies"). The Agreement on Fisheries Subsidies was recently adopted at the 12th Ministerial Conference (MC12) on 17 June 2022 and is pending acceptance from two-thirds of the WTO members to become effective¹⁰. When taking effect, this multilateral agreement can be expected to have a much larger geographical coverage and therefore impact against IUU fishing and unsustainable fishing practices than the CPTPP.

⁵ In accordance with commitments under the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987 (Montreal Protocol), including any future amendments thereto

⁶ In accordance with commitments under the International Convention for the Prevention of Pollution from Ships, done at London, November 2, 1973, as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, done at London, February 17, 1978, and the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 relating thereto, done at London, September 26, 1997 (MARPOL), including any future amendments thereto

⁷ In accordance with , the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York, December 4, 1995 (UN Fish Stocks Agreement), the FAO Code of Conduct for Responsible Fisheries, the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, (Compliance Agreement) done at Rome, November 24, 1993 and the 2001 IUU Fishing Plan of Action.

⁸ In accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

⁹ That means, those commitments are non-binding and parties have the choice to implement or not at their discretion. These provisions can be identified via the use of terms such as "parties 'may, recognise, shall endeavour to, shall encourage, etc."

¹⁰ See an analysis of the achievements in fishery subsidies made in MC12 in International Economics Consulting (2022). [MC12 Results exceed the low thresholds expected](#). CEO Insights 30 June.

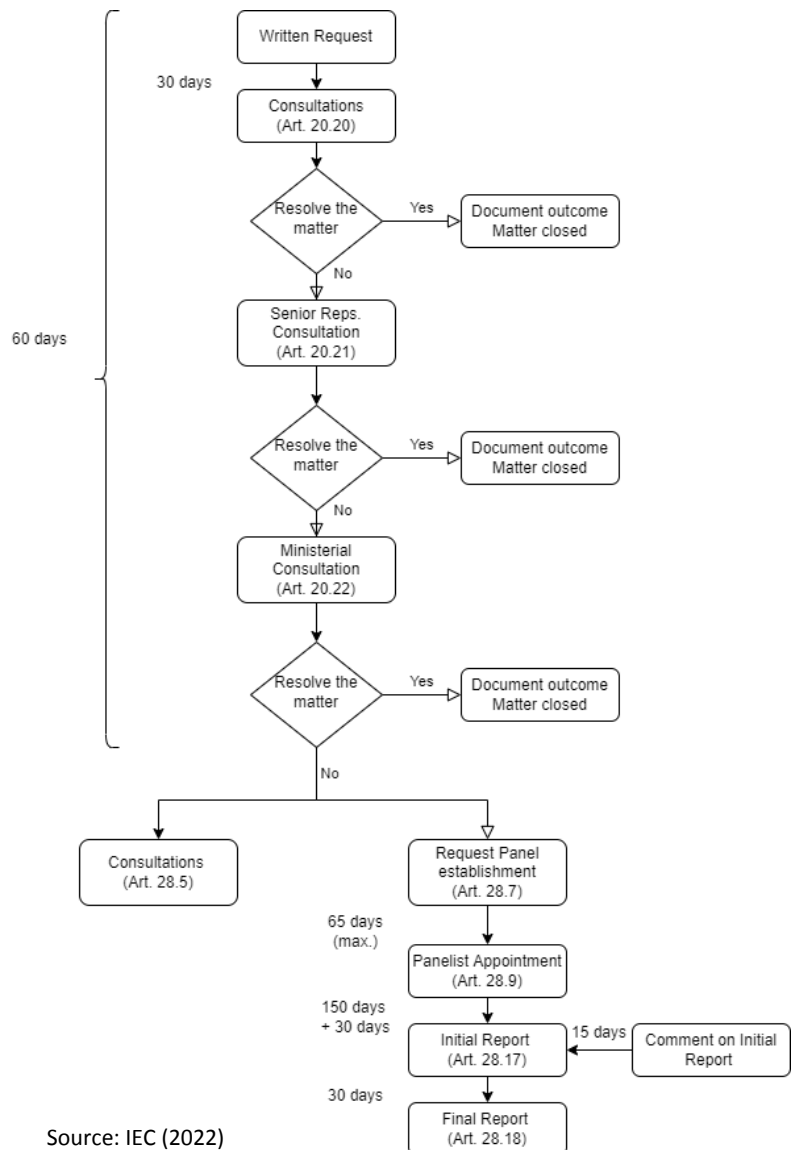
Both instruments, the Agreement on Fisheries Subsidies and the CPTPP, shall entail some scrutiny over the domestic regime on subsidy programmes predate the entry into force of both agreements to the UK, as well as reporting requirements. Additionally, given its interest in the fisheries sector, the UK should be at the forefront of both the regional and multilateral fora to contribute to the comprehensive disciplines for the effective operation of the agreements.

D. Enforceability of the dispute settlement mechanism

10. Most FTAs have a dedicated dispute settlement mechanism (DSM) for environment-related disputes, characterised by the typical two-step settlement: consultations and panel settlement. For example, under the UK-Japan FTA, the provision of Chapter 16 (Trade and Sustainable Development) states that in the event of disagreement between the Parties on any matter regarding the interpretation or application of this Chapter, the Parties shall only have recourse to the procedures set out in Article 16.17 (Government consultations) and Article 16.18 (Panel of Experts). Furthermore, the provisions of Chapter 16 shall not be subject to dispute settlement under Chapter 22 of the Agreement.

Figure 4. Environment dispute settlement under CPTPP

11. Due to the anticipated complexity and consequences of an adverse award to the respondent, the consultation process for environmental matters with access to an agreement’s general DSM can be cumbersome. For example, under the UK-Australia FTA, which is pending effect, the Environment Chapter’s Dispute Resolution provision states that Parties have to undergo three consultation phases - namely, Environment Consultations (Article 22.23), Joint Committee Consultations (Article 22.24) and Ministerial Consultations (Article 22.25) – within 120 days after the date of receipt of Environment Consultations request (or another period agreed by Parties), before they can move ahead to file a request under the general DSM of the entire Agreement. A similar process is applicable under the CPTPP Environment Chapter, whereby the Parties will need to go through Environment Consultations (Article 20.20), Senior Representative Consultations (Article 20.21) and Ministerial Consultations (Article 20.22) before they can trigger the process under the general Dispute Settlement Chapter¹¹ (Figure 4). Note that the total time for all three steps of consultations under the



Source: IEC (2022)

¹¹ See International Economics Consulting (2022). [CPTPP Environment Chapter Dispute Settlement Mechanism](#). June 14.

CPTPP's Environment Chapter is much shorter than that of the UK-Australia FTA, at only 60 days after the date of receipt of a request for Environment Consultation only, unless Parties agree otherwise.

12. The key reason for differentiation between the chapter-specific DSM and the agreement's general DSM is in the enforceability of the final report of the dispute settlement process. Under the Environment chapter-specific DSM - such as in the UK-Japan FTA, which presents a 'softer' approach to environment DSM – there is no enforcement mechanism for the finding and suggestion of the Final Report by the Panel of Experts, except for the publication of the Final Report, reporting to the domestic advisory group, and monitoring by the Committee on Trade and Sustainable Development. On the other hand, for environmental disputes with access to the agreement's general DSM, compensation and the suspension of concessions or other benefits under the FTA are available if the responding Party does not comply with the Panel's final report. Even though it is generally recognised that mutually agreed solutions are preferred, the ability to access a system that provides remedies for the complaining Party can serve as an incentive for compliance.

E. How the Government can make the most of the opportunities offered by CPTPP membership, and how the UK can address any related challenges

13. While it is not expected that the CPTPP environment provisions would cause many compliance challenges for the UK, it is essential that trade does not undermine the UK's climate and environmental goals. Many CPTPP provisions are aligned with the UK's environmental goals, for example, the provision promoting environmental goods and services under the CPTPP and the UK's green trade policy.¹² In its CPTPP Accession Strategy, the UK claims to have the ambition of becoming a constructive member of CPTPP and participate enthusiastically in its sustainability-related fora. To prove this claim, under the broad scope of coverage of the CPTPP, albeit some being of best-endeavour nature, is plausible that the UK can play an active role in pushing forward the environmental agenda in line with the multilateral initiatives (such as the WTO Structured Discussions on Trade and Environmental Sustainability (TESSD) or the Environmental Goods Agreement negotiations) and the UK's policy agenda to ensure a high level of environmental protection and net zero commitment.

14. One possible shortcoming of the CPTPP is the lack of a provision on obliging members to undertake sustainability impact assessments. As a legacy from such provisions being present EU agreements, such a requirement is included in many of the UK's current FTAs such as the UK-Japan FTA (a North-North agreement), or the UK-Vietnam FTA (a North-South agreement). Under such provisions, Parties are either required or encouraged to *"jointly or individually, review, monitor and assess the impact of the implementation [of the Agreement] on sustainable development through their respective policies, practices, participative processes and institutions."* Among the eleven current CPTPP Parties, seemingly only Canada has published an Environmental Assessment of the Agreement.¹³ Given the diverse membership of the CPTPP, environmental impact assessments (EIA) can provide important evidence for environment-related policymaking. Typically, EIAs should be conducted before beginning the formal negotiating process and at regular intervals throughout the life of the agreement to monitor its effects. This should cover the environmental impacts of the agreement both within the UK and with the other parties to ensure the global environmental impacts are fully understood, the results of which should be taken into account and mitigated if necessary.

15. On the new area of harmful fisheries subsidies, given the situation with the WTO Agreement on Fisheries Subsidies, it is unclear how CPTPP Parties will actively implement these provisions at their own

¹² Board of Trade (2021, July). [Green Trade. A Board of Trade Report.](#)

¹³ Government of Canada (2018, October 26). [Final Environmental Assessment of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.](#)

initiative, or whether they will wait for the resulting disciplines to be concluded at the multilateral level, for which a timeline is currently unknown. As the CPTPP pioneered in this area, it would be significant to see the CPTPP Parties push forth the implementation of this provision and communicate it to the WTO forum to lead by example on the WTO Agreement on Fisheries Subsidies. With its capacity for independent trade policy, the UK could play an active role in this process.

16. While the CPTPP, like other FTAs, allows countries with policy space in determining their own levels of domestic environmental protection and environmental priorities, the strong enforceability structure of the DSM could cause regulatory concerns. It should be noted however that the dispute resolution under the panel process can prove to be complicated for the complainant, given that any alleged violations must be “in a manner affecting trade or investment between the Parties” and the burden of proof is on the complainant. That being said, while the CPTPP Environment chapter contains strong enforcement mechanisms, it also allows for many opportunities for dialogues and cooperation. For matters as sensitive and technical as the environment, a cooperative approach may prove to be beneficial for countries to work together in setting good examples and best practices.