

# **BTHA position on UK CPTPP membership**

## Background to the BTHA

1. Founded in 1944, the British Toy and Hobby Association (BTHA) is the official organisation representing toy manufacturers in the UK. The BTHA's members range from large international toy firms to small family-run businesses. The BTHA is the voice of reputable UK toy manufacturers. We work hard to protect and promote the interests of our membership of toy makers at a national, European and international level. The BTHA prides itself on being able to provide strong and balanced representation for its members. We work with government, regulators and enforcement bodies in the UK to put forward the interests of British toy makers to ensure that we have the most advantageous regulatory regime in which the industry can thrive.
2. The UK toy industry is worth £3.3 billion making it the largest market in Europe and the fourth largest in the world. It is made up of around 80% of small to medium sized companies. The toy business is a global industry with networks of manufacturing and distributing across the globe. Many toys are designed and owned by UK, Australian, Canadian, European and American companies, made in countries such as China, Indonesia, Thailand and Taiwan but distributed worldwide. Many companies own and market their own brands but also distribute other company brands within their territory. This global network makes the CPTPP agreement of great interest to members. It also emphasises how important global cooperation on standards and technical barriers are to our industry.
3. If you have any questions about our submission or would like to discuss these concerns with our industry experts, please contact Natasha Crookes, Director of Public Affairs and Communications.

## BTHA support of CPTPP

4. The BTHA is supportive of the UK's application to access to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), as was recently published by the Department for International Trade (DIT). We are strongly supportive of the plan to secure increased trade and investment opportunities in the partnership and agree that the time for opening such opportunities has never been more important as the economy recovers from the unprecedented challenge posed by coronavirus.
5. The CPTPP agreement helps form alliances with source countries for toys as well as existing export markets for finished goods. Our members are also keen to increase trade with Asia-Pacific regions that offer significant growth opportunities.
6. As with any such international trade agreements, there is a need for negotiations. In light of the government's forthcoming discussions with the CPTPP members, we would like to point out the following issues that are important to the British toy industry.

## Safety regulation, standards and requirements

7. Most of the member countries have a system of toy safety requirements based on standards produced by the International Organization for Standardization (ISO). A notable exception to this is Canada but we recognise their regulatory system for toys is robust and proportionate. We would however always encourage countries, especially those forming trading partnerships, to tend toward regulatory harmonisation.

8. On a similar note, should the accession go ahead, the UK would be the only member who has a system of regulation based on a European style of conformity assessment against referenced EN standards. This system is the most stringent in the world meaning the UK requirements are significantly more onerous than that of the other members.
9. *The UK could attempt to create an advantage by deepening our alignment with and acceptance of the international standards for toy safety. Apart from alignment with the EU, the ISO standards represent the next best step towards having toy products that can be shipped globally.*
10. For any such trading agreement to work both sides must have equal market access and regulatory burden. It is clear in the case of toys, one side cannot simply accept the other's requirements without some regulatory reform.
11. We would ask that testing carried out in internationally recognised accredited laboratories is recognised by each of the members. Mexico has a toy safety system based on international standards but requires that toys are recertified by local bodies. In some cases, the testing applied is identical to that already applied by toy manufacturers. Recognition of International standards and international laboratory accreditation is important for free trade.
12. Finally, we would ask the UK to seek means of preventing or discouraging any divergence from this situation. An example would be Australia's recent publication of a mandatory standard for button and coin batteries in consumer products (WTO TBT Notification G/TBT/N/AUS/123). There is no doubt that these products pose a serious risk to children, but as noted by the Australian government, the international toy safety standard provides adequate protection (since they have listed it as a test standard). We were disappointed to see that the mandatory standard introduced additional requirements for toys, that would add little to the strict safety requirements already provided for in standards.
13. In light of the above, we wonder if toys might be considered for a sectoral Annex related to the specific lowering of TBT issues, such as those seen for the Pharmaceuticals, Cosmetics, Medical Devices, Packaged Foods, and Food Additives sectors.

## Intellectual Property

14. The UK has one of the best developed and applied IP regimes in the world. BTHA members have been able to use that framework to develop exciting and innovative products, designs and content that contribute to child development here in the UK and as we export products overseas.
15. Generally, with FTAs we request that provisions within IP Chapters of future FTAs should promote both ratification and adherence to the terms of the International Treaty provisions for recognition and enforcement of copyright, trademark, design and other IP rights, which provide the foundations for development of BTHA members' businesses.
16. The BTHA is a member of the Alliance for Intellectual Property and we are strongly supportive of the points they have made in their briefings on concerns regarding CPTPP. In particular we would note:
17. The CPTPP contains a provision on exceptions and limitations (Art.18.66) (which determines how content can be used by consumers without the permission of the copyright owner in clearly defined ways) titled "Balance in Copyright and Related Rights Systems" which urges the parties to "find an appropriate balance" in copyright systems "among other things by means of exceptions and limitations". We believe this creates an encouragement to

introduce more exceptions, which is unhelpful given the UK has thoroughly reviewed its exceptions regime in recent years and concluded that it strikes the right balance.

18. The CPTPP provisions concerning ISP safe harbours (Art.18.81-82) are suspended and the UK should ensure that they are *not* progressed via the Agreement. The liability of digital service providers and the responsibilities they have for helping to reduce online harms that take place on, or are facilitated by their services, is a topic of significant public discourse across the world, including in the UK. It is vital that the UK retains sovereignty on how it can regulate in this space. The UK should, at the very least, agree a legally binding side letter or a protocol to the effect that the UK would not be bound by these provisions of the pre-existing CPTPP, even if the original members agreed to lift the current suspension of this provision.
19. More specific to our industry there is a feeling among our members that some members of the CPTPP do not have adequate protection for intellectual property (IP) rights. Our members have expressed particular concern over the lack of IP protection in Vietnam and Malaysia. Both markets appear to have a high number of copycat products but members have found it difficult to take action due to the complexities in the requirements within IP legislation as well as within the enforcement systems. In the case of Malaysia, to enforce based on copyright law, there is a need to provide an extensive slate of information prior to enforcement actions which can be highly challenging for companies with a large portfolio of products. For both Malaysia and Vietnam, the spread of powers and lack of coordination between border enforcement officials, the police and the various government agencies have also complicated and made enforcement more difficult.
20. In addition to the points made by the IP alliance, our members have asked if greater attention could be placed on the policing of IP infringing products on e-commerce platforms. Online marketplaces, sadly, are often a significant source of counterfeit and unsafe products. We wonder if the CPTPP agreement could take some inspiration from the recently concluded Regional Comprehensive Economic Partnership (RCEP) agreement, which seeks effective enforcement in the digital environment.