

Greener UK – Written Evidence (CPT0027)

1. Greener UK is a coalition of 12 major environmental organisations, with a combined public membership of over 8 million. We came together to ensure that environmental protections are maintained and enhanced during the Brexit process, particularly through ambitious domestic legislation. Now that we have left the EU, we are urging the UK and devolved governments to build on our high environmental standards and protections, including when negotiating trade agreements.

Question 9: Are there any relevant concerns about the implications of CPTPP for UK policy objectives on climate change and environmental protection?

2. Joining the CPTPP could restrict the UK's ability to achieve its climate and environmental targets. In addition to increasing the power of investors to challenge climate and environmental policies through investor state dispute settlement mechanism (see question 26 below), it also restricts governments from supporting domestic green technology and sets out rules for government procurement.
3. The CPTPP contains a chapter on 'Technical Barriers to Trade' which could prevent the government from introducing new environment friendly regulations, labels and standards. It requires that members treat products imported from other members in a way no less favourable than domestic products and it requires that members do not adopt technical regulations which are more trade-restrictive than necessary.¹
4. Supporting domestic renewable technology is a significant aspect of transitioning away from fossil fuels and will be an essential part of the transition to net zero by 2050. However, CPTPP sets out rules for government procurement, wherein governments would not be allowed to impose the use of "domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade or similar action to encourage local development or to improve a Party's balance of payments accounts".² This means that the government could face challenges on policies to support the development of local industries or mandate "green purchasing" in government contracts which is often used to build local capacity to generate renewable energy.³ Rather

¹ Friends of the Earth International, [Dangerous Liaisons: The New Trade Trio](#), October 2015

² Article 15.1, Comprehensive and Progressive Agreement for Trans-Pacific Partnership

³ Sierra Club, [A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate](#),

than support the government's ambitions to enhance environment and climate objectives, these provisions would constrain green policies.

5. In order to join the agreement, the UK could also be required to eliminate or reduce the tariffs imposed on the import of products containing palm oil. This could lead to an increase in the production and import of such products and thus cause greater deforestation in palm oil exporting countries such as Malaysia.⁴ While the UK has now eliminated the use of palm oil based fuel,⁵ the UK may also be required to re-evaluate its approach on the use of palm oil as a biofuel by member countries such as Malaysia.⁶
6. Therefore, the government must commission an environmental impact assessment before beginning the formal negotiating process and at regular intervals throughout the life of the agreement. 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.
7. The government must also ensure that civil society remains engaged in all stages of accession to the CPTPP. Civil society across the four countries of the UK must be able to participate meaningfully in this process through consultation and engagement with the government and parliamentary committees (such as this one) and the government must ensure that their views are incorporated into future negotiations. Parliamentarians should also be given a vote on the government's negotiating objectives, as well as a debate and vote on the final deal, prior to accession. Scrutiny is an essential way of involving environmental expertise, as well as businesses, unions, civil society groups and members of the public in decision making.⁷
8. The Department for International Trade's public consultation on CPTPP was held in 2018.⁸ It is worth noting that since then the government has brought in new legislation such as net zero emissions by 2050 which would not have been considered in the

December 2015

⁴ Charles Victor Barber and Bo Li, [With US out of TPP, so are measures to curb illegal logging](#), March 2018, WRI

⁵ Dr Nina Skorupska, [Will the UK stand firm on the environment when negotiating new trade deals?](#), February 2016

⁶ Financial Times, [Britain could seal Asian trade deal by adopting a fresh attitude to palm oil](#), 11 February 2020

⁷ Greener UK & Aldersgate Group, [The importance of trade scrutiny for the environment](#), December 2020

⁸ Department for International Trade, [Trade with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership public consultation](#), 20 July 2018

consultation at the time. Many organisations have also increased their expertise on trade since 2018 and should have the opportunity to input into a new consultation.

Question 15: Would accession to the CPTPP require any divergence from the regulatory standards that the UK and EU currently still share? What would be the implications of this?

9. The UK and the EU currently have relatively high regulatory standards in areas such as environmental protection and animal welfare. The UK and the EU apply the precautionary principle when regulating – an important tool that supports good quality decision making in cases of scientific uncertainty. The precautionary principle provides that the introduction of measures designed to protect the environment and public health should not be precluded on the basis of scientific uncertainty or lack of consensus. This is important as it enables a proactive response to potential risk, rather than having to wait to take action until a harm is proven.
10. However, the provisions in the CPTPP more closely reflect the US approach to precaution, which can make it more difficult to regulate to reduce potential harm, risking lower standards as a result. Compared to the EU and the UK approach, it places additional restrictions and burdens on a regulator seeking to take precautionary action to protect the environment or public health which must be based on 'documented and objective scientific evidence'.⁹ This would make it harder for the UK to apply the precautionary principle and would result in divergence from the EU's approach to regulatory standards.¹⁰

Question 18: How can the UK ensure that its food standards and animal welfare standards are not undermined?

11. Joining the CPTPP could increase pressure to weaken our food and animal welfare standards, which are currently among the highest in the world. The agreement does not contain a meaningful commitment to non-regression and instead contains provisions that require mutual recognition of standards, which could have a deregulatory effect and cause standards to be reduced to the lowest common denominator. Mutual recognition of standards could incentivise regulators to lower high standards to reduce the costs of production so that domestic products can compete with imports

⁹ Article 7.9.2, Comprehensive and Progressive Agreement for Trans-Pacific Partnership

¹⁰ Sofia Boza, [Sanitary and phytosanitary measures in the context of the CPTPP agreement](#), Bio-based and Applied Economics 7(1): 87-98, 2018

from the other parties.¹¹ Australia for example, allows the use of growth hormones and much greater use of pesticides in food production.¹²

12. Regulatory cooperation efforts often prioritise trade over measures intended to protect public health and the environment, and risk slowing the rate at which further protections are introduced. There has also been long-running opposition to measures that could help to distinguish between so-called 'like' products that appear the same but have been produced with different environmental impacts, e.g. organically or sustainably.¹³
13. The UK government must guarantee that meaningful and enforceable commitments to non-regression are included in the bilateral agreements signed with the member countries to prohibit any weakening of environmental laws or protections.

Question 26: How should the UK approach the investor-state dispute settlement (ISDS) provision in CPTPP? Should the UK seek exemption from ISDS by signing side letters with CPTPP member countries?

14. The CPTPP contains provisions on investor state dispute settlement which have concerning implications for environment and public policy. ISDS enables foreign investors to challenge states where state action has, or potentially will, negatively impact the profitability of an investment. They act as a form of risk insurance for the investors, the cost of which has to be borne by taxpayers. Studies have shown that the average cost of defending a case is upwards of \$8 million.¹⁴
15. These provisions can also result in 'regulatory chill', where states are discouraged from introducing public interest regulations which could harm the profits of investors even if the regulations are in the interest of public welfare, including environmental protections. This occurs because of the risk or actuality of legal action by a foreign investor on the basis that the regulation impedes the investor's ability to operate in the state.
16. These provisions have been used by companies to challenge a broad range of measures taken to improve environmental standards

¹¹ Marija Bartl, [Making transnational markets: the institutional politics behind TTIP](#), Europe and the World 1(1) 1-37, 2017

¹² Future British Standards Coalition, [Safeguarding Standards](#), November 2020

¹³ Greener UK, [Putting climate change at the heart of trade policy](#), June 2020

¹⁴ Gaukrodger, D. and K. Gordon, "Investor-state dispute settlement: a scoping paper for the 11 investment policy community", OECD Working Papers on International Investment, 2012/03, OECD, 2012, p19

and phase out fossil fuels. For example, Swedish energy company Vattenfall launched an ISDS claim against Germany for introducing regulation to improve water quality,¹⁵ coal mining company Westmoreland has launched an ISDS complaint against Canada for phasing out coal-fired power stations¹⁶ and the Italian government was sued for banning offshore oil drilling.¹⁷

17. While the CPTPP incorporates clauses from WTO rules that provide exceptions for public interest, these exceptions can only be claimed as a defence once a case has been initiated against a country. In practice, it has been very difficult for countries to successfully claim the benefits of these exceptions as the burden of proof to claim the exceptions are very high.¹⁸

18. Whilst the UK has not had any ISDS claims to date, this is due to our Bilateral Investment Treaties thus far being with capital importing countries. However, an FTA with Australia or the US would be a step change here – the US is one of the largest investors in the UK.¹⁹ Therefore, our existing Bilateral Investment Treaties cannot be representative. If the UK signs up to ISDS in CPTPP it could be expected to sign ISDS in future FTAs, such as with the US.

19. It is therefore imperative that the UK seeks exemption from ISDS provisions and negotiate 'opt outs' from this section of the deal. New Zealand has signed bilateral 'side letters' with member states agreeing to limit the application of the ISDS provisions. The UK must follow New Zealand's approach and negotiate side letters with all the 11 member countries.

12 March 2021

¹⁵ Case C-142/16 Commission v Germany, 2017

¹⁶ Westmoreland Coal Company v Government of Canada, ICSID Case No. UNCT/20/3

¹⁷ Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v Italian Republic ICSID Case No. ARB/17/14

¹⁸ Trade Justice Movement, [Alternative trade for the planet: aligning trade policy with climate and environmental goals](#), December 2020

¹⁹ LSE for The Department for Business, Innovation and Skills, [Costs and benefits of an EU-USA investment protection treaty](#), 2013