

Comprehensive and Progressive Agreement for Trans-Pacific Partnership



Terms of Reference for Conducting the General Review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) endorsed at CPTPP Ministerial meeting on 15 November 2023 PST

The CPTPP entered into force on 30 December 2018 for Australia, Canada, Japan, Mexico, New Zealand and Singapore and entered into force on 14 January 2019 for Viet Nam; on 19 September 2021 for Peru; on 29 November 2022 for Malaysia; on 21 February 2023 for Chile; and on 12 July 2023 for Brunei Darussalam. The United Kingdom will be the first economy to accede to the CPTPP when the Protocol on the Accession of the United Kingdom to CPTPP, signed in Auckland, New Zealand, on 16 July 2023, enters into force.

Acknowledging that at the first CPTPP Commission meeting held in Tokyo on 19 January 2019, Ministers expressed their “firm commitment to fully implement the Agreement, which sends a strong signal in support of free trade; puts in place high-standard and well-balanced rules suitable for the 21st century; boosts economic growth; and benefits businesses, consumers, families, farmers and workers from their nations;”¹

Acknowledging the vital role trade plays in facilitating increased employment, productivity and incomes, Members reassert their ongoing commitment that these benefits are shared across society, and in particular that women, Indigenous Peoples, micro, small and medium-sized enterprises, other under-represented groups and all regions in our economies benefit from trade. The CPTPP seeks to promote high levels of environmental protection, improve working conditions and living standards, recognise the importance of cultural identity and diversity among and within the Members, and support the growth and development of micro, small and medium sized enterprises by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

Considering that the CPTPP is a vehicle for promoting free trade and economic integration in the Asia-Pacific region and beyond. CPTPP Members maintain a strong commitment to upholding and supporting the rules-based multilateral trading system, with the World Trade Organization (WTO) at its core, including as a means for responding to economic coercion;

Reaffirming the CPTPP Members’ commitment to “review the operation of this Agreement with a view to updating and enhancing this Agreement, through negotiations, as appropriate, to ensure that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting the Parties;”²

Members will pursue further work on the General Review as described in this Terms of Reference³, building on the previous work including the preliminary technical exchanges on the evaluation of the

¹ Comprehensive and Progressive Agreement for Trans-Pacific Partnership Ministerial Statement issued at Tokyo, Japan, on 19 January 2019.

² The TPP as incorporated into the CPTPP, Chapter 27 Administrative and Institutional Provisions, Article 27.2.3.

³ For greater certainty, this Terms of Reference is a reference point that will guide the work on the General Review. It does not contain any legally binding elements.

Agreement in 2021 and the analytical studies undertaken on the impact of the Agreement and the discussions at the research conference in 2022.

Objectives

In order to review the operation of this Agreement with a view to updating and enhancing the CPTPP, the objectives of the General Review will be to:

- Review the operation of the CPTPP to ensure the disciplines contained in the Agreement remain relevant to the trade and investment issues and challenges confronting the Members.
- Identify provisions that would benefit from revision or updating, and the potential for the development of new provisions or Chapters.
- Review the operation of the CPTPP with a view to identifying ways to facilitate maximum utilisation of the CPTPP by traders and investors and to improve the uptake of the Agreement.
- Ensure the Agreement remains of the highest possible standard.

Scope

The General Review will consider how the Agreement could:

- Facilitate maximum utilisation of the CPTPP by traders and investors and to improve the uptake of the Agreement, particularly by micro, small and medium enterprises (MSMEs).
- Continue to promote trade and investment to bring economic growth and social benefits, create new opportunities for workers and businesses, contribute to raising living standards, benefit consumers, reduce poverty and promote sustainable growth;
- Reinforce the links between trade, the CPTPP, and evolving global environmental issues including climate change and biodiversity loss;
- Continue to uphold labour rights improve working conditions and living standards, strengthen cooperation and capacity on labour issues;
- Take into account developments in international fora and the level of ambition in other agreements concluded by Members;
- Demonstrate leadership on emerging issues in areas such as the digital and the green economy;
- Explore opportunities to promote inclusive and sustainable outcomes, including with respect to trade and Indigenous Peoples, where applicable to the Members;
- Support global value chains, and strengthen supply chain resilience to help Members to withstand external shocks and disruption;
- Explore ways to further address the challenges posed by market-distorting practices;
- Further reflect on Members' interests in the context of the CPTPP's Investor-State Dispute Settlement mechanism;
- Identify areas of mutual interest to ensure the Agreement remains the Gold Standard for trade agreements;
- Affirm the Agreement's full implementation and identify areas for cooperation towards better operation of the Agreement;
- Identify ways to improve the monitoring mechanism of the CPTPP to ensure effective implementation and operation of the Agreement as well as any related side instruments between Members (as decided by the parties to each instrument);

- Further complement the rules based multilateral trading system, with the World Trade Organisation (WTO) at its core, including as a means for responding to economic coercion.

Methodology for the General Review of CPTPP

The review provisions in the CPTPP are contained in Chapter 27 Administrative and Institutional Provisions (Article 27.2: Functions of the Commission, Articles 27.2.1(b), 27.2.3, and 27.2.4 (please see Annex)).

In the review process, Members will take into account the work of all committees, working groups and any other subsidiary bodies established under this Agreement, relevant developments in international fora and in trade and investment policy, and input from non-governmental persons or groups of the Members as appropriate. Chapter specific reviews mandated within the Agreement are important inputs for the CPTPP General Review.

In order to provide insights into utilisation, Members will exchange the necessary data, where available, on utilisation and trade flows (merchandise and Trade in Services).

The review process will be overseen by a Coordinating Group for the General Review and will be informed by assessment at the Chapter level.

The Coordinating Group for the General Review will be made up of a representative from each CPTPP Member and will report to Senior Officials. The General Review Coordinating Group will be chaired by the CPTPP Commission Chair and co-chaired by the Vice Chairs.

Each CPTPP Chapter will prepare a report, including any specific recommendations for potentially updating and enhancing the CPTPP without prejudging any further process, consistent with our objective “to ensure that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting the Parties.”⁴

Chapters will work together in clusters as appropriate to ensure the review process is run in an efficient manner and to promote consistency. Where there is no existing Committee, the contact points for the relevant Chapter will support the General Review process. The Coordinating Group for the General Review will also be able to establish additional working groups as required to consider new or additional Chapters.

The final report by the Coordinating Group for the General Review will be presented to Senior Officials for discussion and confirmation by consensus. If confirmed, the CPTPP General Review Report will be referred to the 2025 Commission (unless it is ready sooner) with a set of recommendations from Senior Officials on next steps.

The Coordinating Group for the General Review will proceed according to Article 27.3 without prejudice to any decisions the membership might take in future, while advancing in good faith our objectives to review the CPTPP in accordance with Article 27.2.1(b). Alongside the General Review process, Members are free to progress their own assessments of the Agreement and the impacts being delivered.

⁴ The TPP as incorporated into the CPTPP, Chapter 27 Administrative and Institutional Provisions, Article 27.2.3.

Article 27.2: Functions of the Commission

1. The Commission shall:

- a) consider any matter relating to the implementation or operation of this Agreement;
- b) review, within three years of the date of entry into force of this Agreement and at least every five years thereafter, the
- c) economic relationship and partnership among the Parties;
- d) consider any proposal to amend or modify this Agreement;
- e) supervise the work of all committees, working groups and any other subsidiary bodies established under this Agreement;
- f) consider ways to further enhance trade and investment between the Parties;
- g) establish the Rules of Procedure referred to in Article 28.13 (Rules of Procedure for Panels), and, where appropriate, amend those Rules;
- h) review the roster of panel chairs established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) every three years and, when appropriate, constitute a new roster; and
- i) determine whether this Agreement may enter into force for an original signatory notifying pursuant to Article 30.5.4 (Entry into Force).

2. The Commission may:

- a) establish, refer matters to, or consider matters raised by, any ad hoc or standing committee, working group or any other subsidiary body;
- b) merge or dissolve any committees, working groups or other subsidiary bodies established under this Agreement in order to improve the functioning of this Agreement;
- c) consider and adopt, subject to completion of any necessary legal procedures by each Party, a modification to this Agreement of:¹
 - i. the Schedules to Annex 2-D (Tariff Commitments), by accelerating tariff elimination;
 - ii. the rules of origin established in Annex 3-D (Product-Specific Rules of Origin) and Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin); or
 - iii. the lists of entities, covered goods and services, and thresholds contained in each Party's Annex to Chapter 15 (Government Procurement);
- d) develop arrangements for implementing this Agreement;
- e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;
- f) issue interpretations of the provisions of this Agreement;
- g) seek the advice of non-governmental persons or groups on any matter falling within the Commission's functions; and
- h) take any other action as the Parties may agree.

3. Pursuant to paragraph 1(b), the Commission shall review the operation of this Agreement with a view to updating and enhancing this Agreement, through negotiations, as appropriate, to ensure that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting the Parties.

4. In conducting a review pursuant to paragraph 3, the Commission shall take into account:

¹ Chile shall implement the actions of the Commission through Acuerdos de Ejecución, in accordance with Article 54, numeral 1, fourth paragraph of the Political Constitution of the Republic of Chile (Constitución Política de la República de Chile).

- a) the work of all committees, working groups and any other subsidiary bodies established under this Agreement;
- b) relevant developments in international fora; and
- c) as appropriate, input from non-governmental persons or groups of the Parties.

Article 27.3: Decision-Making

1. The Commission and all subsidiary bodies established under this Agreement shall take all decisions by consensus, except as otherwise provided in this Agreement, or as otherwise decided by the Parties.² Except as otherwise provided in this Agreement, the Commission or any subsidiary body shall be deemed to have taken a decision by consensus if no Party present at any meeting when a decision is taken objects to the proposed decision.

2. For the purposes of Article 27.2.2(f) (Functions of the Commission), a decision of the Commission shall be taken by agreement of all Parties. A decision shall be deemed to be reached if a Party which does not indicate agreement when the Commission considers the issue does not object in writing to the interpretation considered by the Commission within five days of that consideration.

² Footnote 2: For greater certainty, any such decision on alternative decision-making by the Parties shall itself be taken by consensus.