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Accession Challenges to the CPTPP: Analyzing the Impacts of the UK and China's Applications on the Size and Scope of the CPTPP

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After nearly two decades of lengthy negotiations between open market countries situated in the Asia-Pacific region, the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP) was finally signed in 2018, aiming to increase liberalization in the trade of goods and services among its eleven member states – Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. Touted as a “21st Century” trade agreement,¹ the CPTPP targets not only tariff reductions, but also the reduction of other non-tariff barriers and ‘behind the border’ barriers to encourage deeper market integration among member states. The expansive agreement includes chapters on investment, labor, environmental protection, rules of origin, investment, and digital

trade.² Its digital trade chapter includes a commitment to open cross-border data flows and a prohibition on the practice of data localization. At the time of its creation, analysts at the Peterson Institute for International Economics predicted that the eleven-member CPTPP would increase global income by \$147 billion, with even more gains possible if its membership expanded to include other candidates in the region.³ Since then, formal applications for CPTPP membership have been submitted by the United Kingdom, China, and Taiwan, while other states like the Philippines, South Korea, Thailand, and the United States have indicated interests in joining.

This article attempts to document the challenges that the UK's and China's accession applications pose to the scope and strength of the CPTPP. The UK's application, while meeting many of the CPTPP's standards, highlights the issue of geographic dispersion within a regional trade agreement. On the other hand, China's application will test the strength of the CPTPP's standards themselves. The acceptance of each applicant country by current CPTPP members will have long-lasting implications on the legitimacy of the agreement. This article proceeds with an analysis of each challenge presented by the UK and China and concludes with implications for both the CPTPP as a whole and for the U.S. as an interconnected third-party and potential applicant.

UK Accession Bid: A Geographic Challenge

For some, the UK's application to the CPTPP in February 2021 may seem like an unlikely pairing, especially because of the country's location halfway around the world in the Atlantic Ocean. But it is not entirely unwarranted. After finalizing its lengthy departure from the European Union, the UK has been desperate to forge its own trade deals and rebuild the relationships it previously held as an EU member state. Since its departure, the UK has negotiated rollover trade agreements with 63 of its previous EU partners and three novel deals with Australia, Japan, and New Zealand.⁴ At the same time, recent trade data indicates a stunted recovery for the post-Brexit UK economy compared to the rest of the EU and the United States.⁵ In this context, CPTPP membership and the promise of a new market in the Asia-Pacific may be an ostensibly logical, albeit lofty, next step for the UK's fledgling trade policy. CPTPP membership is projected to bring the UK significant benefit through increased trade and market opportunities in the Asia-Pacific region. A report by the UK's Department for International Trade highlighted some of the potential membership benefits, including tariff-free trade for 99.9% of UK exports, to its services, agriculture, and

automotive industries.⁶ The report also noted the strong standards on labor, environment, digital trade, and rules of origin in which deeper integration might be facilitated by the CPTPP compared to the UK's existing bilateral trade deals with CPTPP member states. While the economic gains from the CPTPP are not projected to recoup all of the UK's post-Brexit losses,⁷ the benefits of membership and access to a rapidly growing international market are still tempting prospects for the country.

The prospect of membership in the CPTPP also highlights a secondary significance to the UK's aggressive trade diplomacy in the region. Because the application process requires unanimous consent from each of the group's eleven members,⁸ the recent UK-Japan Comprehensive Economic Partnership Agreement and other bilateral agreements can be seen as baby steps towards full-fledged membership in the CPTPP. And the results seem to be in the UK's favor. All eleven current members under Japan's chairmanship welcomed the UK to begin the negotiation process in early June, just five months after the UK submitted its initial application.⁹

Furthermore, the United Kingdom may already meet most of the open market practices and standards required by the agreement. Although some significant negotiations may be required to harmonize the different regulatory approaches to data protection and agriculture,¹⁰ its low tariff schedule and strong labor, environmental, and intellectual property protections already meet and exceed the CPTPP's criteria. UK trade negotiators believe that an agreement may be reached sometime in 2022.¹¹ Additionally, as a free enterprise economy, it may feel at home in a liberal trading bloc consisting of similarly positioned economies in the Asia-Pacific. After submitting its initial application, Japan welcomed the UK's membership in the CPTPP as an extension of its view of a "free and open Indo-Pacific"

and said it would “spare no effort to support the UK” and its accession bid.¹²

Still, there remains one glaring disparity between the UK and its potential CPTPP members – geography. While the full text of the CPTPP provides no specific regional or geographic membership requirement, the CPTPP is still, by design and by name, a regional trade agreement. As such, the question of geography should remain salient throughout the UK’s accession process. Each of the CPTPP member states and the UK are members of the overarching World Trade Organization (WTO) and thus subject to the WTO regulations on regional trade agreements (RTAs). Article 24 of the WTO’s General Agreement on Tariffs and Trade (GATT) permits the formation of a free trade area or customs union with preferential intra-bloc tariff treatment as long as each members’ external tariffs do not exceed their MFN rates.¹³ However, the GATT provides a very loose definition of what constitutes a member state with no regional or geographic requirement, likely because it was not written with the possibility of a future transregional trade area in mind. The UK’s CPTPP application is perhaps the first and most prominent instance of a geographically distinct country attempting to join an explicitly regional trade agreement. Most existing RTAs, including NAFTA (now USMCA) and MERCOSUR in South America, are built around states with existing geographic arrangements, often directly connected by physical land borders. Although it encompasses seemingly disparate countries from the Asian continent to others located in North and South America, all members of the Comprehensive and Progressive Agreement on Trans-Pacific Partnership are still physically connected by their Pacific Ocean coastlines. The United Kingdom, on the other hand, does not have any geographic claim to the Asia-Pacific region, except for a few small island territories. Acknowledging this challenge, analysts at the Peterson Institute for International Economics proposed a rebranding of the CPTPP’s title to remove

its ties to the Pacific region and open the door for membership from applicants around the world.¹⁴ In doing so, this act would fundamentally change the regional trade organization of the CPTPP and place it at odds with the pre-existing multilateral governance maintained by the WTO. As a result, the CPTPP’s decision to admit the UK may have long-lasting implications on the future of multilateral trade liberalization.

China Accession Bid: A Rules-Based Challenge

Compared to the UK, China’s formal application to join the high-standard CPTPP may seem more like a routine accession process. On many separate occasions, Chinese President Xi Jinping and other senior officials praised the CPTPP’s progress and signaled interest in joining their neighboring countries in the agreement.¹⁵ However, China’s application may face significantly more scrutiny by CPTPP members due to the large gap between the country’s current practices and the high standards imposed by the CPTPP. With the accession process beginning soon, China must receive a unanimous consensus from all existing members before an accession working group may even be formed.

To its credit, China has been slowly liberalizing its own policies on foreign investment, intellectual property, and state-owned enterprises, although it still has a long way to go until it meets the criteria required by the CPTPP. On e-commerce and the handling of cross-border data flows, China’s 2021 Data Security Law further entrenches its controversial practice of data localization and requires operators, including foreign multinationals operating in China, to store their data created in servers located physically within China’s borders.¹⁶ This practice is explicitly prohibited under Chapter 14 of the CPTPP.¹⁷ On state-owned enterprises, while China has made some indications towards reforming its system of heavy subsidies and government involvement, such a regulatory

environment may be difficult to change. Even if an agreement is reached on this front, other states may question China's commitment to SOE reform. Most notably, China made similar promises in 2001 before its U.S.-supported accession to the WTO without much compliance afterward.¹⁸ At that time, a much less developed China pledged to reduce its influence over domestic producers and phase out its industrial subsidies in accordance with the WTO's rules. Yet, the U.S. Trade Representative has repeatedly found that China's compliance with these rules was poor, especially in light of its massive Made in China 2025 industrial policy program.¹⁹ Finally, China has also had a rocky history with labor, intellectual property, and environmental protections, none of which match the standards codified by the CPTPP. For example, China's alleged human rights abuses in the Xinjiang region have spurred widespread condemnation, including from CPTPP member states Canada, Australia, and New Zealand.²⁰

Given this list of regulatory challenges, the question remains about China's reasoning for submitting its application in the first place. First and foremost, the timing of China's application should be noted, announced just one day after the signing of the Australia-UK-U.S. defense alliance on September 16, 2021.²¹ While Chinese media denied this had any effect on its decision, the timing invites questions about China's concerns about rising U.S. security and economic influence in the region. Thus, China's application should be understood not only in light of its economic aims but also its strategic goals in the Asia-Pacific. With the continuation of the U.S.-China trade war and growing technological rivalry, China's application may be an attempt to deepen its ties within the region in the absence of U.S. participation in the agreement. The Global Times, a Chinese state-owned tabloid, called the move a show of China's "leadership in global trade" amidst an "increasingly isolated" U.S.²² Additionally, China's application was submitted a week before Taiwan submitted its own

CPTPP application, although the island had been in talks with Japan prior to its application.²³ While CPTPP rules allow for the admission of separate customs territories, China's early application may force members to consider its membership before addressing that of Taiwan. Still, it remains to be seen how receptive the CPTPP may be towards China's application as negotiations commence in the near future.

Implications

Even before the present membership applications, the CPTPP was already poised to be one of the world's most important free trade areas. The size and scope of the agreement were groundbreaking at its time, spanning a wide range of regulatory issues from investment, intellectual property, digital trade, and environmental protection. The high standards established by the agreement were considered the gold standard amidst increasing trade protection around the world.²⁴ The accession challenges posed in 2021 by the UK and China underscore this fact. However, the accession applications also present with them two novel concerns to the CPTPP and carry with them long-lasting implications for both the structure of the international trading order and the actors within it.

The UK's application calls into question the geography of the agreement and has implications for the future of multilateral trade negotiations. If successful, the CPTPP would become the world's most prominent transregional trade agreement and may open the door to future applicants from geographically dispersed regions around the world. If other RTAs embrace a similar transregional approach to membership, potential member states may then be able to shop around between different RTAs based on their possible economic benefit and the strength of their regulatory standards. Thus, transregional membership would allow for the easier creation of

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RTAs with differing levels of commitment and a complicated web of RTA memberships around the world. Trade scholars often argue that the development of multiple RTAs negatively correlates with the WTO’s goal of global trade liberalization because the division of the world’s economy into multiple disparate regional trading blocs removes the incentive toward multilateral trade liberalization and inter-bloc cooperation.²⁵ The end result could produce RTAs comprised only of “coalitions of the willing,” member states with already similar market practices, and the potential for significant inter-bloc conflict between RTAs of different strengths.

On the other hand, China’s application will test the strength of the CPTPP’s standards themselves depending on the negotiation terms. Any agreement reached without certain protections or necessary oversight mechanisms would be seen as weakening the mutual strength of the agreement and its principles. For potentially interested members, the results of these negotiations may have a heavy impact on the desirability of CPTPP membership and the gains from liberalization they may receive.

Given the two pending challenges to the CPTPP’s composition, the best course of action for the United States and its involvement in the CPTPP may simply be to wait. The decision on whether or not to return to the CPTPP is an incredibly intricate one for the U.S., balancing its international interests with other

domestic political concerns.²⁶ Whatever the outcome, its potential action on the CPTPP should be divorced from any comparative statics to the proceedings of the UK’s or China’s accession processes. In fact, the successful accession of either candidate may create a CPTPP that is unrecognizable from the one that the U.S. is applying to. From this perspective, the U.S.’ future trade policy should reaffirm to its allies its commitment to free trade in the face of rising protectionist sentiment at home and abroad, but such action can be taken at both the unilateral, bilateral, and multilateral levels. In response to China’s application, the U.S. should support its CPTPP allies like Canada, Australia, and Japan in maintaining the strength of the liberalization standards rather than hastily placing its own accession application into the mix. At the same time, the U.S., along with its fellow free-market economies around the world, should continue pushing for higher standards and deeper liberalization on the multilateral level, especially with respect to the issues of digital trade and electronic commerce. Bilateral and regional agreements like the CPTPP and the U.S.’ recent Digital Trade Agreement with Japan represent significant advances towards removing restrictions on this emerging dimension of international trade, especially in light of the COVID-19 pandemic.²⁷ The next step for the U.S. and its allies should be to multilateralize these advancements on the international stage.

ENDNOTES

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