



Lords International Agreements Committee
Inquiry into the UK's accession to the Comprehensive and Progressive Agreement
for Trans-Pacific Partnership (CPTPP)
Bar Council written evidence

About us

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Scope of response

This short submission addresses the topics the Committee sought evidence on.

1. The Bar Council welcomes the fact that the Government is now negotiating accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). As the representative body of barristers of England and Wales, we limit our remarks to the aspects of the Agreement that concern the provision of legal services and in particular to the temporary provision of legal services (Mode 4 of the General Agreement on Trade in Services (GATS)), since the dominant practice model of the Bar relies heavily on this form of market access.
2. The CPTPP creates a favourable framework for the negotiation of market access for legal services, including for the self-employed Bar. The CPTPP parties expressly recognise, in Annex 10-A, paragraph 9:

“that transnational legal services that cover the laws of multiple jurisdictions play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.”¹

3. Paragraph 10 provides that in regulating foreign lawyers and transnational legal services, member countries are required to ‘encourage its relevant [professional] bodies to consider, subject to its laws and regulations’, whether and in what manner, *inter alia*, foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction and prepare for and appear in commercial arbitration, conciliation and mediation proceedings and that Fly in, fly out (FIFO) is

¹ <https://www.iilj.org/wp-content/uploads/2018/03/CPTPP-consolidated.pdf>, p. 270

accommodated as a mode of supply of transnational legal services.² The Bar Council is placed to engage in the development of relevant bilateral or multilateral agreements between professional bodies to grow international legal practice for our members with CPTPP jurisdictions. We are already engaged in such work in Europe and will develop this further in relation to a number of priority jurisdictions as part of two-year project to develop the practice rights of our members.

4. As with the other Free Trade Agreements (FTAs) and the Trade Cooperation Agreement (TCA), the important detail is found in each State party's Annexes. There are also a large number of bilateral side letters.
5. A majority have made specific commitments on mode 4 access (FIFO), including for independent professionals. FIFO commitments are generally stated to be extended on the basis of reciprocity, which means access is likely to turn on the UK's position on FIFO for independent professionals.

The Bar Council
March 2021

² See Fn. 1