

THE REPRESENTATION OF SME INTERESTS IN FREE TRADE AGREEMENTS:

RECOMMENDATIONS FOR BEST PRACTICE

Published: January 2020

 @fsb_policy
fsb.org.uk

UKTPO | **US**
UK TRADE POLICY | UNIVERSITY
OBSERVATORY OF SUSSEX

fsb^{co}
Experts in Business

ACKNOWLEDGEMENTS

This report was authored by Dr Minako Morita- Jaeger and Dr Ingo Borchert on behalf of the UK Trade Policy Observatory (UKTPO).

ABOUT FSB

The Federation of Small Businesses (FSB) is the UK's leading business organisation representing small businesses. Established over 45 years ago to help our members succeed in business, we are a non-profit making and non-party political organisation that is led by our members, for our members. Our mission is to help smaller businesses achieve their ambitions. As experts in business, we offer our members a wide range of vital business services, including advice, financial expertise, support and a powerful voice in Government. FSB is also the UK's leading business campaigner, focused on delivering change that supports smaller businesses to grow and succeed.

ABOUT UKTPO

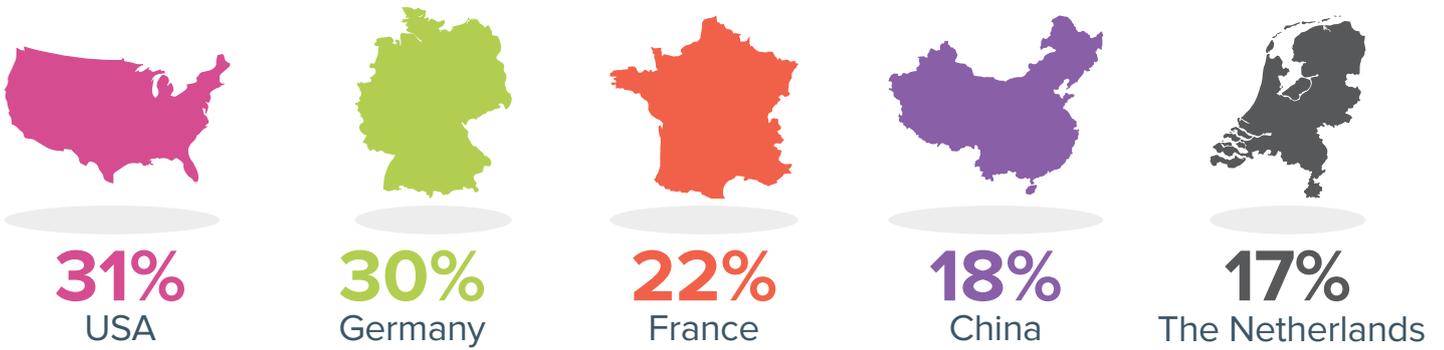
The UK Trade Policy Observatory (UKTPO), a partnership between the University of Sussex and Chatham House, is an independent expert group covering all aspects of trade policy straddling the domestic, international and multilateral level, with a particular focus on UK trade policy after Brexit. The UKTPO seeks to provide independent original research on UK and global trade and trade policy; impartial, evidence-based policy advice to stakeholders and policy makers; influential commentary and new contributions to current debates; and training on trade and trade policy for interested parties. The UKTPO's aim is to inform and engage as widely as possible.

The **top five countries** most commonly reported 'important' destination markets for **SME exporters** over the **next three years***



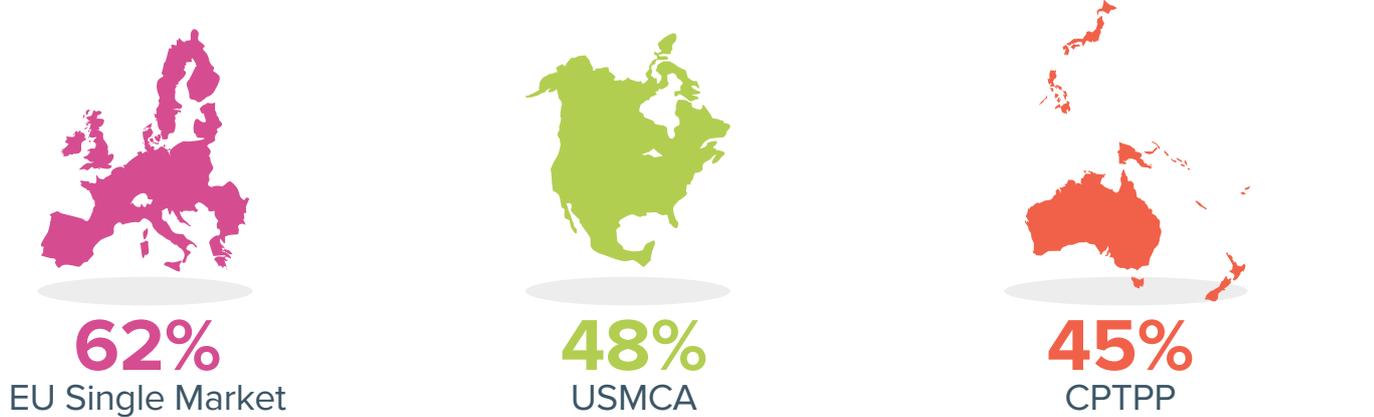
*(FSB Trade research survey 2019)

The **top five countries** most commonly reported 'important' origin markets for **SME importers** over the **next three years***



*(FSB Trade research survey 2019)

Importance of **FTA regions** for **SME exporters** over the **next three years***



*(FSB Trade research survey 2019)

Importance of **FTA regions** for **SME importers** over the **next three years***



*(FSB Trade research survey 2019)

CONTENTS

Executive Summary	6
1. Overview	9
1-1. Small and Medium-sized Enterprises (SMEs) and their participation in trade	9
1-2. Trade policy and SMEs	11
2. Evaluation of the selected Free Trade Agreements (FTAs)	14
2-1. Selection criteria.	14
2-2. SME interests in FTA provisions.	14
A. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	15
B. The EU-Japan Economic Partnership Agreement (EPA).	21
2-3. Implementation and SME support schemes	25
A. The CPTPP.	25
B. The EU-Japan EPA	28
3. Findings of best practice for SMEs in FTAs	30
4. Policy recommendations	32
5. References	34

FOREWORD

The UK is about to embark on one of the most important periods in its history as a trading nation, as negotiations begin in earnest on our future relationship with the EU and on a host of bilateral and plurilateral free trade agreements with our trading partners around the world.

Whatever combination of trading agreements we strike or accede to, it is essential that the distinct needs of smaller businesses are ‘baked’ into our future trade deals. Likewise, it is vital at this important juncture that smaller businesses are at the heart of the UK’s trade policymaking.

So how do we achieve this? At the very minimum we need to see a dedicated small business chapter embedded in each and every trading agreement that the UK is part of. This chapter must contain commitments on information awareness raising, identifying means of assisting smaller businesses to take advantage of trade agreements, and an architecture that allows for proper small business consultation on the application and performance of each respective agreement.

But it’s not just about a small business chapter – there are many other chapters within trade agreements – whether in relation to e-commerce, intellectual property enforcement and protection, or customs facilitation, to name but a few – where mitigations and enhancements for small businesses need to be hardwired in – right from the start.

For many smaller businesses, particularly micro-sized businesses, there is a careful calculation that each business owner makes between taking advantage of preferential terms within free trade agreements and absorbing the additional bureaucracy involved in utilising those terms.

In too many cases, smaller businesses are deciding that the complexity of claiming preference or taking advantage of other measures available to them offsets the benefits of trading on preferential terms. This must change.

A sensible starting point is to learn from free trade agreements that have been ratified or are on the brink of being ratified. Measures such as establishing a dedicated SME Committee including private-sector representation, using obligatory rather than best endeavours language to affirm the interests of smaller businesses, making permanent the prohibition on levying customs duties on electronic transmissions, and introducing an obligation to provide a Single Window arrangement that allows importers and exporters to electronically complete import and export requirements at a single entry point, can do much to support smaller business exporters and importers.

Above all, it is crucial that when negotiating the UK’s future partnership with the EU and when operating an independent trade policy, the Government puts in place appropriate architecture to ensure that the small business voice is heard loud and clear.



Chris Walker
FSB Trade Policy Unit Chair

EXECUTIVE SUMMARY

Small and Medium-sized Enterprises (SMEs) play an important role in the UK economy, accounting for 99.9% of businesses and 60% of private-sector employment.¹ Nevertheless, SME participation in international trade is known to be significantly lower than the trading activities of larger-sized businesses, and utilisation of the preferential market access afforded by Free Trade Agreements (FTAs) is undoubtedly lower amongst SMEs.

FTAs can facilitate trade in a number of ways. First, FTA provisions could reduce variable trade costs such as tariffs. Second, provisions could reduce trade barriers of a fixed-cost nature such as compliance with product standards. Third, they can provide long-range planning security by locking in conditions of doing business and underpin those conditions and rights with an accessible and effective dispute resolution mechanism. Fourth, they can reduce informational asymmetries through requirements of information exchange and designated help points.

This prompts the question of how trade policy can help SMEs to start trading or expand their sales abroad and encourage their utilisation of FTAs. This question is now particularly relevant as the UK is preparing to leave the EU, and the UK Government is looking towards negotiating a set of new FTAs with the EU and with non-EU countries. It is essential that the interests of SMEs are comprehensively integrated into future trade deals.

This study analyses how existing FTAs address SMEs' interests to identify best in class provisions that work for UK SMEs and areas where even good practice could usefully be enhanced to support UK SME traders. To this end, we have reviewed the relevant provisions in two recent 'mega-regionals' currently in force, which pay more attention to SMEs' interests than prior FTAs: namely the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Japan Economic Partnership Agreement (EPA), respectively. Although it is not yet ratified, we have also made some observations in relation to the U.S.-Mexico-Canada Trade Agreement (USMCA). In future trade negotiations, the UK Government must support SMEs—like any other UK business—by achieving (i) comprehensive market access; (ii) ambitious regulatory transparency and regulatory cooperation; and (iii) substantial trade facilitation. The most effective way of specifically enabling SMEs to trade internationally is for FTAs to address trade barriers that *de facto* or *de jure* represent fixed costs, which SMEs will typically find more difficult to surmount than larger businesses. Examples range from regulatory compliance costs, including, notably, rules of origin, to protecting intellectual property rights (IPRs). The recommendations emerging from our analysis of these two agreements and a brief consideration of relevant parts of the USMCA are set out in four groups below:

1. SME specific provisions (Small Business Chapter)

- Future FTAs should establish a dedicated SME Committee, which should consist of representatives from both the Government and the private sector. The SME Committee should have a meaningful say in all areas that affect the trading prospects of SMEs, including e-commerce, intellectual property rights (IPR) and rules of origin.
- A designated Help Desk for SMEs or “SME Contact Point” modelled on the EU-Japan Economic Partnership Agreement (EPA) would prove instrumental in overcoming lack of information and poor utilisation of FTAs
- For this SME Contact Point to act as a one-stop-shop, the information provided needs to be comprehensive and include, amongst others, customs regulations and procedures, especially regarding rules of origin; regulations concerning IPRs; technical regulations and standards, sanitary and phytosanitary measures; foreign investment regulations; business registration procedures; employment regulations; and taxation information.
- Both the CPTPP Agreement and the EU-Japan EPA provide very useful examples of public websites collating information on these agreements, e.g. chapter summaries and online query tools, in an accessible manner.

¹ BEIS, Business Population Estimates, Section 1.

- A dedicated SME help desk that acts as a single point of contact for SMEs could usefully provide information on other UK Government services designed to address export financing problems such as UK Export Finance, along the lines of Canada's 'CanExport program.' A system that continuously collects information on trade barriers that affect UK SMEs, by destination market, can feed into this help desk solution.
 - The value of future UK FTAs for SMEs will increase appreciably if obligatory language was used instead of 'best endeavour' in relation to clauses which affirm or recognise the distinct needs of SMEs. Even in the most ambitious FTAs to date, including CPTPP and EU-Japan EPA, a 'best endeavour' language prevails in many subject areas. Obligatory language would entail an actual commitment to implement agreed provisions pertaining to SMEs.
- 2. E-commerce.** Digital trade is crucial for SMEs that rely on online platforms of various sorts to connect to, and trade with, businesses and customers abroad.
- Prohibition to levy customs duties on electronic transmissions. This is increasingly important as provisions on prohibiting the imposition of customs duties on electronic transmissions confer a certainty that is otherwise crumbling outside FTAs. Recently, individual countries have expressed concerns about the WTO Moratorium on customs duties on electronic submissions (South Africa, India)², and others have introduced changes to their tariff classifications in preparation for potentially levying customs duties on electronic transmissions (Indonesia). This development could have potentially far-ranging ramifications for digital trade, e-commerce and perhaps data flows. As long as the WTO Moratorium was uncontested, such FTA provisions may have been largely affirmatory, but they may assume real value for firms that wish to participate in online trading under the auspices of an FTA.
 - Considering small business constraints when striking the balance between supporting free flows of data and customer privacy and security. Generally speaking, CPTPP puts more emphasis on facilitating e-commerce directly, including data flows, whereas the EU-Japan EPA tends to give more consideration to consumer privacy and security considerations, potentially at the expense of some increase in business costs.
 - Require any separate Committee on e-commerce to consider SME interests or require e-commerce to be included on the agendas of the Committee on SMEs. Although the CPTPP contains a cooperation clause for parties to support SMEs in relation to e-commerce, it is unclear how a cooperation clause for SMEs would be implemented since no formal structure, such as a Committee on E-commerce, is established. Also, e-commerce is not included in the agendas of the Committee on SMEs. Thus, the implementation mechanism of e-commerce cooperation for SMEs is weak, even in the case of the CPTPP. Under the USMCA, e-commerce issues are under the (non-exclusive) purview of the SME Committee, which includes oversight of implementation and operation of SME-related provisions throughout the USMCA agreement.
- 3. Intellectual Property Rights.** The protection and enforcement of IPRs is very important for UK SMEs.
- Future FTAs should include rules on strengthening the protection of IPRs in countries with less developed IPR systems.
 - The existence of an accessible and affordable enforcement mechanism to protect IPRs should be a priority or else trade in digital products and services that rely heavily on intellectual property could be stymied.
 - Differing rules regarding IPR exhaustion across FTA signatories lead to regulatory heterogeneity and an associated increase in costs. Future FTAs could address this concern by formulating consistent and similar exhaustion rules for IPR.
 - There should be an obligatory requirement rather than a 'best endeavour' approach in relation to co-operation between the parties in the areas covered by the IPR chapter.

² WTO General Council, Document #WT/GC/W/747, 26-27 July 2018.

- There should be a committee on IPR which must consider SME interests or require IPR issues to be included on the agendas of the Committee on SMEs.

4. Trade Facilitation. Bureaucratic delays and the “red tape” of customs procedures raise business costs regardless of business size. Trade facilitation aims at improving market access benefits in an FTA through the simplification, modernisation and harmonisation of export and import processes. However, the ‘fixed-cost’ nature of some of the solutions proposed for reducing trade costs means that they are of little benefit to SMEs. The UK’s most comprehensive facilitation scheme currently in place is the Authorised Economic Operator (AEO) scheme, but it has been recognised that its criteria are difficult to meet, particularly for SMEs, not least because the process could take about eight months in total to complete and may require investments in IT and changes to written processes.^{3 4} Generally, therefore, accreditation procedures for trusted trader regimes in FTAs should be designed to be accessible for SMEs who will largely lack the dedicated and specialised internal resources found in larger businesses.

- Inclusion of a competitive *de minimis* threshold⁵ for exempting shipments from customs duties. A higher *de minimis* threshold for express shipping can be expected to benefit SMEs engaged in e-commerce. Since exports by SMEs are often characterised by small consignment values, *de minimis* thresholds for exempting shipments from customs duties are of vital interest to SMEs. Moreover, it would clearly be preferable to have one threshold rule rather than import country-specific ones. The impact of a universal *de minimis* of \$1000 should be considered.
- Obligation to provide a Single Window arrangement that allows importers and exporters to electronically complete import and export requirements at a single entry point. This can be very beneficial for smaller traders. The CPTPP states each party shall endeavour (rather than be obliged) to provide a facility that allows importers and exporters to electronically complete import and export requirements at a single entry point (Article 5.6).
- Either the Committee on Rules of Origin or the Committee on Custom-Related Matters should be obliged to consider SME interests, or the SME Committee should be empowered to consider rules of origin and custom-related matters.

³ The criteria that need to be met for obtaining AEO status include (i) compliance with customs legislation and taxation rules and absence of criminal offences related to the economic activity, (ii) appropriate record-keeping, (iii) financial solvency, (iv) proven practical standards of competence or professional qualifications, and (v) appropriate security and safety measures, respectively.

⁴ UK Parliament, House of Lords European Union Committee, “Brexit: the customs challenge”, 20 September 2018, HL Paper 187, Chapter 3 para. 52.

⁵ Any value at or below the *de minimis* threshold would be exempt from customs duties

1. OVERVIEW

1.1. Small and Medium-sized Enterprises (SMEs) and their participation in trade

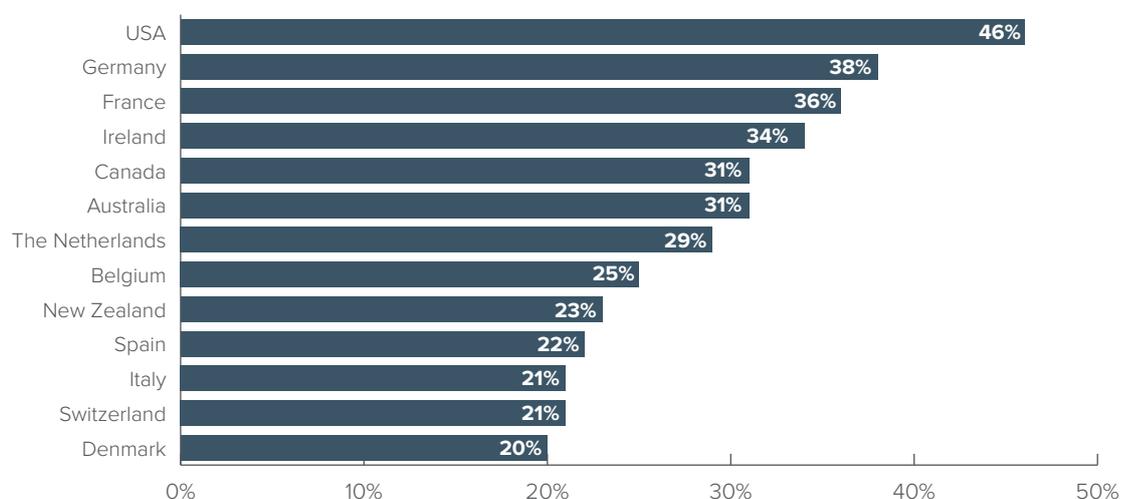
SMEs⁶ play an important role in national economies. In the OECD countries, SMEs account for approximately 99% of businesses and about 70% of private-sector jobs.⁷ In the UK, the number of SMEs shows a strong upward trend from the early 2010s. In 2018, the number of SMEs account for 99.9% of businesses. The number of people employed in UK SMEs is also increasing, accounting for about 60% of all private-sector employment. Turnover of UK SMEs accounted for £1,994 billion, which is 52% of the UK economy.⁸

Participation in global value chains and the digitisation of the economy are offering new and important avenues for SMEs' internationalisation. This holds the promise of improving SMEs' participation rate in international trade, which is significantly lower when compared to trading activities of larger-sized businesses. The utilisation of preferential market access when such conditions are available is also known to be low amongst SMEs. The reason is that SMEs face a range of specific constraints that render the absorption of trade costs relatively more difficult for them. These constraints could be related to 'internal' factors including financial and human resource constraints; staff qualifications; limited information about foreign markets or foreign regulations, or to 'external' impediments such as a lack of suitable institutional arrangements, challenging market conditions and trade and investment barriers.⁹

Free Trade Agreements are an important tool for SMEs seeking to trade internationally. FSB research indicates that amongst current small business exporters, more than a third (36%) stated they would find formal free trade agreements beneficial to supporting their exporting ambitions.¹⁰

Specifically, going forward in terms of the countries where smaller businesses exporters and/or importers would prioritise future trading relationships, FSB data is illuminating. Figure 1 shows the relative importance that current small business exporters attach to individual international markets as the most important destinations for their exporting ambitions over the next three years. Figure 2 displays the same ranking of market importance with regard to current small business importers' importing ambitions over the next three years.

Figure 1: Most commonly reported 'important' destination markets for SME exporters over the next three years (FSB Trade research survey 2019)



⁶ It should be noted that there is no standard international definition of SMEs, in particular, because the dimension "small" and "medium" of a firm are relative to the size of the domestic economy. The OECD defines SMEs as the firms employing up to 249 persons, with the breakdown of micro (1 to 9), small (10 to 49) and medium (50-249). This report uses the term SMEs as the generic term.

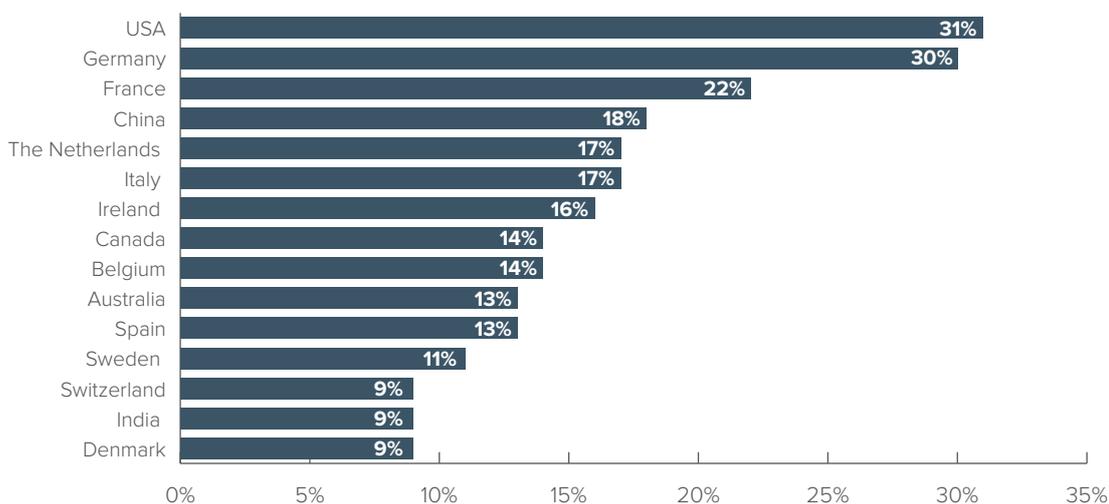
⁷ OECD (2017).

⁸ BEIS, Business Population Estimates.

⁹ European Commission (2011) and Hessel and Parker (2013).

¹⁰ FSB Customs Survey, 2018, <https://www.fsb.org.uk/media-centre/press-releases/finally-a-brexit-blueprint-but-much-more-work-to-do>.

Figure 2: Most commonly reported ‘important’ origin markets for SME importers over the next three years (FSB Trade research survey 2019)



FSB survey evidence shows that at the individual country level, the US, Germany and France are the export and import markets that current small business exporters and importers consider the most important for their exporting and importing ambitions, respectively, over the next three years.

FSB research also sheds light on the importance of markets at the trading bloc level. Table 1 shows the proportion of current small business exporters and importers that would see trading with countries within the EU Single Market and Customs Union, signatories of the USMCA and signatories of the CPTPP, as most important to their trading ambitions over the next three years. With regard to trading blocs, FSB evidence underlines the importance of the EU Single Market and EU Customs Union in relation to current and future exporting aspirations (column 2) and importing aspirations (column 3) of small business exporters and importers.

Table 1: Importance of FTA regions for SME traders in relation to their exporting and importing ambitions over the next three years (FSB Trade research survey 2019)

	SME Traders	
	Exporters	Importers
EU Single Market plus EU Customs Union	62%	55%
USMCA	48%	33%
CPTPP	45%	25%

1.2. Trade policy and SMEs

FTAs can facilitate trade for businesses in a number of ways. First, FTA provisions could reduce variable trade costs such as tariffs. Second, provisions could reduce trade barriers of a fixed-cost nature such as compliance with product standards. Third, they can provide long-range planning security by locking in conditions of doing business and underpin those conditions and rights with an accessible and effective dispute resolution mechanism. Fourth, FTAs can reduce informational asymmetries through requirements of information exchange and designated help points.

The relative importance of these principal channels differs significantly for SMEs. Due to their small size and accordingly smaller export values (or batch sizes), any barrier that introduces or raises fixed costs is relatively more of an impediment to trade for SMEs compared to large enterprises. Hence, SMEs stand to benefit the most from FTA features that either *de jure* or *de facto* reduce fixed costs of trading. This general insight applies to a range of topics that nowadays are typically included in ambitious FTAs; for instance, in the context of intellectual property rights (IPRs), the registration of trademarks, and steps to enforce those rights should this become necessary, each require a fixed amount of expenses that can represent a significant share of sales if export revenue from that foreign market is relatively small. Hence, provisions that ease the registration, maintenance and protection of intellectual property are of vital interest to SMEs. Another major component of fixed costs related to FTAs is the compliance cost associated with rules of origin (ROO).¹¹

Efforts to acquire information about foreign markets is another example of fixed costs. It is widely known that lack of information about foreign markets, about conditions of market access, or about concrete compliance with local regulations is hampering trade. The evidence that SMEs are often not exporting under FTA provisions even though they would be available ('FTA utilisation') is consistent with the view that lack of knowledge is a persistent problem.

For instance, evidence from Japanese businesses exporting to ASEAN economies, to India and to Oceania suggests that a 1% larger firm (in terms of employment) is 10% more likely to export under an FTA if one is available. This utilisation effect of firm size is even larger than the impact on the probability to export in the first place (7% for a 1% larger firm). The same study finds striking evidence that these informational asymmetries are barriers that only need to be overcome once, since businesses that have prior experience in utilising FTAs for exporting are more than 40% more likely to use an FTA for exporting to a new destination.¹²

Survey evidence from Indonesia, based upon 200 SMEs, shows that whilst nearly 80% of respondents knew about the ASEAN Economic Community, only a fraction (18%) were aware of the ASEAN Blueprint for SMEs, and again 63% of businesses did not use FTA forms even though they were actively exporting, predominantly for want of knowledge regarding their use.¹³ Lack of information is also the top reason cited by Malaysian SMEs for not using FTAs.¹⁴ Against this backdrop, provisions that encourage (or enforce) information exchange can more than proportionately benefit actual or prospective SME traders.

A 2018 report on the utilisation of preferences in EU FTAs finds that about two-thirds of EU exports to FTA partners use the respective FTA whereas up to 90% of imports enter the EU under FTA regimes. Whilst the report does not provide utilisation rates by trading firm size, it cautions that the aforementioned numbers are based upon the value of exports and thus may not necessarily imply that most companies use the FTAs; rather, it conjectures that there might be a large number of smaller businesses that do not take full advantage of the benefits of EU FTAs.¹⁵

¹¹ In a study on Japanese firms, Hayakawa (2015) finds that administrative procedures to certify ROO, and the establishment of a physical system or organisational divisions to certify ROO, constitute the major part of FTA fixed costs.

¹² Hayakawa (2015).

¹³ Anas et al. (2017).

¹⁴ Arundchelvan and Wignaraja (2015).

¹⁵ National Board of Trade Sweden and UNTAD (2018).

This is supported by FSB evidence¹⁶, which suggests that only 19% of smaller businesses exporting to the rest of the world (i.e. markets outside the EU) are currently using a free trade agreement to support their trade of goods and services, whereas 52% are not, while a further 29% don't know. Of the smaller businesses that are trading with the rest of the world but not using an FTA (or don't know) – this may be because they are trading with overseas markets for which no such formal agreement exists such as the US, Australia or Canada; or because they are not aware of any relevant FTA, or simply because they chose not to trade on preferential terms because of the complexity involved in either themselves or their intermediary utilising the relevant rules.

Freight forwarders and indeed software providers, via the electronic solutions that they provide, play an important role in ensuring that the correct rules are chosen to claim preferential trading arrangements. This facilitating role could be through direct or indirect representation.¹⁷ In any event, however, the legal liability for the selection and applicability of the correct rule rests with the smaller business. In conclusion, for many SMEs there is a balancing act between the cost and the benefit, respectively, of trading under preferential terms of an FTA, versus the administrative costs of understanding the relevant provisions within an FTA and knowing how they can best be utilised. The costs of the latter often outweigh the cost benefits of the former.

Although tariffs have been gradually lowered or removed, high tariffs persist as a major concern for SMEs, especially when it comes to exporting to developing countries.¹⁸ In addition to tariffs, non-tariff measures hinder SMEs' trade activities. Major trade barriers for SMEs include quotas and stringent rules of origin; different foreign technical standards and procedures; licensing procedures and certifications; complex custom procedures; export controls; lack of IPR enforcement; inefficient and opaque IP registration systems; and lack of transparency regarding regulations, standards, and licensing procedures. Although these barriers are common to businesses of all sizes, it should be underlined that trade barriers disproportionately affect SMEs due to the fact that smaller businesses may be more constrained in financial and human resource respects, or may have limited information. As a result, trade costs matter more for SMEs compared to larger firms, especially when encountering costs that are independent of the amount of their exports such as regulatory costs. This suggests that SMEs' participation in international trade would likely increase if trade policy effectively addressed trade costs that represent a more significant barrier for smaller businesses.

International economic law has conventionally focused on cross border activities of multinational enterprises (MNEs) and transnational corporations (TNCs) and particular consideration was not given to SMEs.¹⁹ It is only from around the middle of the 2010s when policy makers started to stress the importance of SMEs in domestic economies with a view to achieving inclusive economies and sustainable development in international policy debates. For example, the 2015 UN Sustainable Development Goals declared the need to facilitate access for SMEs to international trade and investment.²⁰

Nowadays, the interests of SMEs are increasingly taken into account within FTA frameworks. From 2000, the number of FTAs which incorporated SME-related provisions shows a significant increase. 65% of North-South FTAs and 31% of South-South FTAs that entered into force between 2000 and 2016 incorporated provisions on SMEs. The number further increased to 80% as for FTAs that entered into force between 2011 and 2015.²¹

Looking at existing FTAs, the approaches (e.g. scope, structure, and institutional arrangement) to support SMEs vary depending on FTA signatories. While promoting cooperation on SMEs is a common approach across existing FTAs, South-South FTAs focus more on exemptions from obligations and flexibilities for SMEs. North-South FTAs offer programmes supporting SMEs in developing country partners in the context of Aid for Trade.²²

16 FSB Customs Survey, 2018, <https://www.fsb.org.uk/media-centre/press-releases/finally-a-brex-it-blueprint-but-much-more-work-to-do>.

17 The default position is that a freight forwarder will provide direct representation unless contractually specified otherwise.

18 WTO (2016).

19 Rensmann (2017).

20 Rensmann (2017).

21 WTO (2016).

22 WTO (2016).

TREND OF SME SUPPORT IN FTA TEXTS

About one-half of all FTAs notified to the WTO (136 FTAs out of 270 FTAs) have SME-related provisions, although FTAs differ slightly in their definition of SMEs. Nearly half of the FTAs (117) use the term “Small and medium-sized business/company/enterprise,” whereas 28 FTAs use the term “Small business/enterprise/supplier/economic operator”, a further 26 apply the term “Micro, small and medium-sized enterprise/company”; and 10 FTAs refer to “small scale farmers/ agriculture/ fishery/mining/trade.”

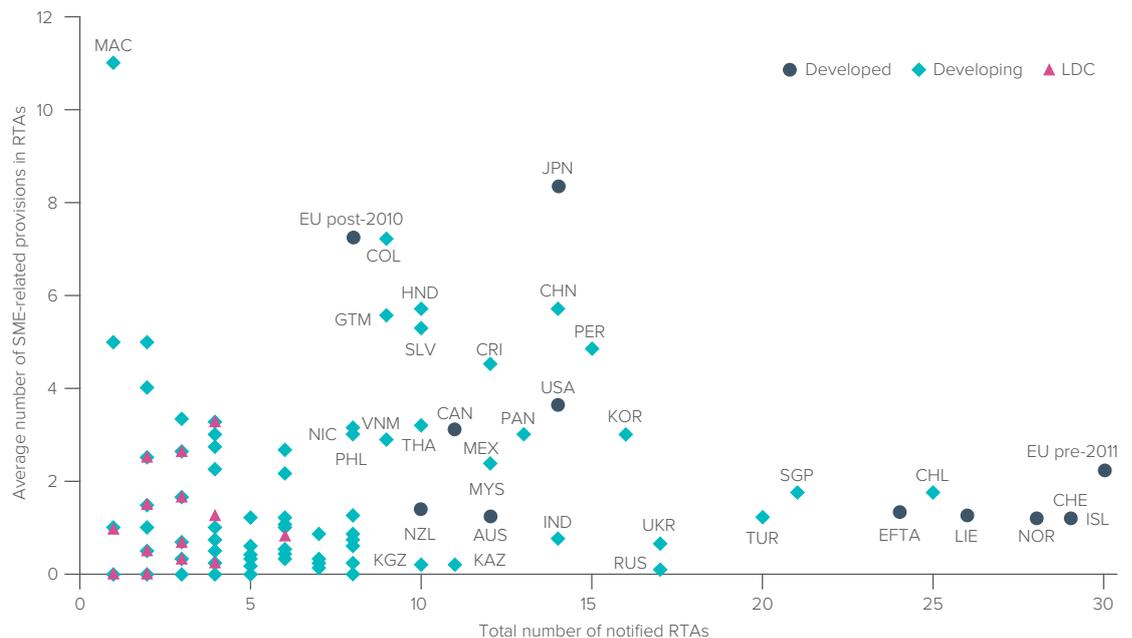
Major forms of SME-related provisions in these FTAs are:

- Promoting cooperation (92)
- Exemptions/Flexibilities for SMEs (e.g. domestic SME support programmes that are inconsistent with the obligations) (57)
- Recognition/affirmation of SMEs (21)
- Institutional arrangements for SMEs (15)
- Recommendation to support SMEs (10)
- Impact review for SMEs (7)

Source: WTO World Trade Report 2016

The EU and Japan are the two countries that frequently incorporate SME-related provisions into their FTAs (Figure 1). The EU started to pay more attention to SMEs in its FTAs after 2011 reflecting the EU policy objectives set out in its industrial policy.²³ Japan underlined the role of SMEs from an economic cooperation perspective in its FTAs with ASEAN countries concluded during the 2000s. Although types of SME provisions differ depending on FTA partners for both cases, it is observed that SME-related provisions in FTAs are evolving over time with growing awareness of the potential challenges that SMEs face.²⁴

Figure 3: Number of FTAs with provisions referring to SMEs by country



Source: WTO World Trade Report 2016, p119

23 See “Trade, Growth and World Affairs – Trade policy as a core component of the EU’s 2020 strategy”, the EC communication adopted in 2010 (<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/trade-growth-and-world-affairs-trade-policy-core-component-eus-2020-strategy>).
 24 WTO (2016).

2. EVALUATION OF THE SELECTED FTAS

2.1. Selection criteria

Prior to 'mega-regional' FTAs, SME-related provisions in south-south FTAs simply provided exemption clauses for SMEs and cooperation clauses for developing countries in the case of north-south FTA in limited circumstances. The 'mega-regional' FTAs concluded in the 2010s pay more attention to the constraints SMEs face in international trade and cover SME issues in a wide range of policy areas.²⁵ This study considers two 'mega-regional' FTAs that are currently in force and, overall, between them exhibit best in class provisions as they relate to addressing SME concerns in FTAs.²⁶

CPTPP: The CPTPP (entered into force in December 2018) is the latest 'mega regional FTA' that includes dynamically developing economies in Asia Pacific. There are two benefits of studying in detail the CPTPP agreement. First, the CPTPP is understood as one of the most advanced FTAs that supports SMEs that is currently in force.²⁷ The Agreement comprehensively covers market liberalisation; regulatory transparency and cooperation; and trade facilitation that would bring benefits to all size of firms. Second, the interests of American SMEs were embedded in the CPTPP provisions since in the large majority of cases the texts were not changed from the TPP, in which the US was an actor.²⁸ The trade deal with the US is a high policy priority for the UK government post-Brexit. Thus, understanding American interests in SME trade policy will be useful.

EU-Japan EPA: An analysis of the EU-Japan EPA (entered into force in February 2019) entails two specific benefits. First, the EU-Japan EPA shows the latest case of the EU's SME support under the FTA framework. This means that the UK government could potentially emulate the Agreement, or parts thereof, if it were to negotiate a comprehensive FTA with the EU.

Given the fact that the UK is currently a member of the FTA, it would be reasonable to assess how UK SMEs' interests are reflected and how the Agreement is implemented from the point of UK SMEs' interest.

2.2. SME interests in FTA provisions

The role of FTAs is to preferentially facilitate trade by (i) market liberalisation in goods and services; (ii) regulatory cooperation; and (iii) trade facilitation. General provisions could reduce trade barriers that raise a firm's fixed cost regardless of the size of firms. However, they might still be inadequate to activate trade by SMEs. Special provisions play a complementary role to general provisions. They focus on capacity constraints of SMEs in order to generate SME trade incentives.

In practice, FTA provisions supporting SMEs can be categorised into two types: (a) general provisions: provisions which are relevant to SMEs although there is no explicit references to SMEs; and (b) SME-related provisions/chapters which explicitly refer to SMEs.²⁹

Based on this understanding, this study principally evaluates general provisions and SME-related provisions in the areas of e-commerce, trade facilitation, IPR and a stand-alone SME chapter if there is one. We do not examine the degree of market liberalisation in this study.

²⁵ WTO (2016), Cernat and Lodrant (2017) and Rensmann (2017).

²⁶ We briefly consider lessons from the US, Mexico and Canada Free Trade Agreement (USMCA) at the end of section 2-3, which evaluates CPTPP and EU-Japan in-depth.

²⁷ Wang (2017).

²⁸ Wang (2017).

²⁹ Cernat and Lodrant (2017).

A. CPTPP

The CPTPP underlines the importance of supporting SMEs to improve their ability to participate in international trade and of their benefitting from the Agreement in its Preamble. The Agreement also notes necessity of special assistance for SMEs in participating in global markets (Article 21.1). To address SME constraints in particular, the Agreement stipulates SME-related provisions in many chapters together with a stand-alone SME chapter.

A.1 E-commerce

(i) General provisions

The CPTPP is regarded as an innovative FTA which contains extensive provisions to eliminate trade barriers to firms conducting e-commerce business and to promote digital trade.³⁰ The Agreement covers the imposition of customs duties on electronic transmissions; non-discriminatory treatment of digital products; use of international law and a convention for domestic electronic transactions framework;³¹ electronic authentication and electronic signatures; online consumer protection; personal information protection; paperless trading; principles on access to and use of the internet for electronic commerce; data transfer; internet interconnection charge sharing; data localisation; unsolicited commercial electronic messages; cybersecurity; and source code.

In relation to non-discriminatory principles, CPTPP signatories are not allowed to discriminate against digital products (e.g. electronically transmitted computer programs, videos, and recordings) from other parties or digital products of which the author, performer, producer, developer or owner are of other parties (Article 14.4). Specifically, SMEs might find it easier to produce and trade internationally digital products because the cost structure of doing so is more favourable to smaller businesses compared to 'like' conventional products; for instance, physical book printing vs kindle/e-books. In that sense, the prohibition to discriminate against digital products in FTAs opens up tangible opportunities in signatory markets that SMEs are well placed to take advantage of.

The same is true for the prohibition to levy customs duties on electronic transmissions. Against the backdrop of most recent events in 2019, it is worth emphasising that the CPTPP provisions on prohibiting the imposition of customs duties on electronic transmissions confer a certainty that is otherwise crumbling outside FTAs. Recently, individual countries have expressed concerns about the WTO Moratorium on customs duties on electronic submissions (South Africa, India)³², and others have introduced changes to their tariff classifications in preparation for potentially levying customs duties on electronic transmissions (Indonesia). This development could have potentially far-ranging ramifications for digital trade, e-commerce and perhaps data flows.

As long as the WTO Moratorium was uncontested, such FTA provisions may have been largely affirmatory, but they may assume real value for firms such as SMEs that wish to participate in online trading amongst FTA parties.

CPTPP broadly prohibits data localisation with some exceptions in government data and financial services and a four-step test for national security (Article 14.11.2). The exception of financial services is deemed to be important for Fintech where new SMEs are gaining a competitive advantage.³³

The CPTPP Agreement is widely perceived as having achieved the most advanced provisions as regards e-commerce and digital trade amongst FTAs in force, including commitments to the free flow of data and access to the Internet. These provisions benefit all businesses that take advantage of the opportunities presented by e-commerce; in particular, digitisation enables SMEs to potentially scale up rapidly to global markets and/or to employ cloud services to enhance efficiency. Thus, digital trade is crucial for SMEs that rely on online platforms of various sorts to connect to, and trade with, businesses and customers abroad.

³⁰ Abe and Collins (2018).

³¹ UNICTRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts (CPTPP, Chapter 14, Article 14.5)

³² WTO General Council, Document #WT/GC/W/747, 26-27 July 2018.

³³ Abe and Collins 2018.

However, there are inevitable trade-offs with supporting the free trade of data and objectives including in relation to consumer privacy. The UK's future FTAs present an opportunity to find solutions which strike the right balance between supporting the free trade of data (which is so important to many small business cross border traders) and protecting consumer privacy (which is important to maintaining and building demand for e-commerce services). It is important to recognise that, generally, regulatory requirements that restrict the flow of data (e.g. data localisation requirements) will have a disproportionate impact on smaller businesses in relation to the costs of compliance.

It is also important to ensure small businesses using e-commerce (and indeed any other users) are not priced out of international digital trade or face unsatisfactory conditions of service because a limited number of platforms obtain oligopolistic or political economy advantages that grant them disproportionate pricing or policy power.

(ii) SME-related provisions

The e-commerce chapter of the CPTPP contains SME-related provisions which outline cooperation among the CPTPP members to assist SMEs (Article 14.15). These include:

- Information exchange on regulations, policies, enforcement and compliance regarding personal information protection; online consumer protection; unsolicited commercial electronic messages; security in electronic communications; authentication; and e-government.
- Information exchange on consumer access to products and services offered online among the Parties.
- The Parties participate actively in regional and multilateral fora to promote the development of electronic commerce.
- The Parties encourage the developing private-sector methods of self-regulation that foster electronic commerce (e.g. codes of conduct, model contracts, guidelines and enforcement mechanisms).

It is unclear, however, how a cooperation clause for SMEs would be implemented as no formal structure, such as a Committee on E-commerce, is established. Also, e-commerce is not included in the agendas of the Committee on SMEs (A.4 Chapter on SMEs). Thus, it is observed that implementation mechanisms of e-commerce cooperation for SMEs are weak, even in the case of the CPTPP. The yet to be ratified USMCA allows for e-commerce issues to come under the purview of the SME Committee.³⁴

A.2 Intellectual Property Rights (IPRs)

(i) General provisions

The CPTPP contains a comprehensive chapter on IPRs, and establishes a transparent and predictable standard for the protection and enforcement of IPRs in the Asia-Pacific region that cover the countries with less developed IPR systems. In this regard, SMEs would benefit from a consistent minimum standard of rules across the region. The CPTPP IPRs chapter includes provisions in almost all categories of IPRs protection and enforcement (i.e. trademarks, geographical indications, industrial designs, copyright and related rights, patents, agricultural chemical products, trade secrets, and civil, criminal and border enforcement). The following describes major points of the general provisions.

³⁴ At the time of writing, the version of USMCA that Mexico had ratified in June 2019 has been superseded by a revision that arose from internal renegotiations between the White House and the US Congress over Democrats' concerns about labour and environmental standards. The revised agreement would now seemingly need to be ratified again by all three signatories.

The CPTPP Members are required to ratify or accede to a number of international IP treaties, such as the Patent Cooperation Treaty, Paris Convention, and Bern Convention. The Agreement also requires national treatment of IPRs (Articles 18.3-18.8).

- Trademarks: The CPTPP provides rules on protection against infringing uses of trademarks (e.g. brand names and symbols, rules in respect of non-traditional marks such as sound marks and scent marks). The trademarks section also includes obligations to ensure transparent and efficient rules and procedures across the CPTPP region (Chapter 18, Section C).
- Patents: The CPTPP contains rules on patent protection for inventions in all fields of technology, and rules on transparency and efficiency of patent administration systems. The Agreement suspends certain TPP obligations on patentable subjects dealing with new uses, new methods and new processes of using a known product, and inventions derived from plants, as well as an obligation on patent term adjustment.³⁵ The Agreement contains a 10-year obligation on data protection for agricultural chemical products, and pharmaceutical obligations relating to patent linkages and regulatory review exceptions (Section F).
- Geographical indications: The CPTPP includes rules on transparent and fair administrative systems for the protection of geographical indications (GIs), including rules on opposition and cancellation of future GIs.
- Industrial designs: The Agreement contains rules on the protection of designs against unauthorized use in line with the Hague Agreement (Section G).
- Copyright and related rights: The Agreement contains rules reflecting and building upon the WIPO “Internet treaties” (Section H).

Since IPR enforcement is the major barrier that SMEs face, IPR provisions are notably important. The CPTPP provides rules for the civil, criminal and border enforcement of IP rights, including the application of these rules to the online environment. This includes comprehensive rules on civil procedures and remedies available to IP rights holders, as well as criminal measures to address counterfeiting and piracy. On border measures, the Agreement includes requirements to establish means for border officials to work with rights holders, as well as legal authority to detain suspected counterfeit or pirated goods (Section I).

For SMEs, incorporation of exhaustion of IPR would also matter since CPTPP members are not prevented from determining whether, or under what conditions, the exhaustion of IPR applies under its domestic legal system (Article 18.11). This may limit SMEs’ IPR certainty since it implies exhaustion of the IPR system is not the same across CPTPP signatories. As such, this constitutes an example of regulatory heterogeneity in the sense that the legal framework differs across destination markets, thereby potentially multiplying both informational and pecuniary costs. It would be beneficial, for all businesses but in particular for SMEs, if rules regarding IPR exhaustion were consistent and similar across FTA signatories.

(ii) SME-related provisions

There is one SME-related provision in the area of cooperation. The CPTPP includes provisions on further cooperation between the CPTPP Parties in the areas covered by the IPR chapter. The IPR issues relevant to SMEs are listed in the areas of cooperation (Article 18.13). However, this is an endeavour approach and no specific Committee to implement the issue is designated. Since IPR issues are not listed in the Committee on SMEs’ agenda, it is not clear how cooperation would be promoted in the future.

³⁵ Upreti, P. N. (2018).

(iii) Link to digital trade

Success in digital trade, and potentially investment that involves intangible assets, requires a number of conditions to be in place to do with, for example, the non-discriminatory treatment of digital products, cross-border data flows, and enforceable protection of intellectual property rights. It would appear to be a hallmark of ambitious and effective FTAs that these aspects are covered comprehensively so as to create conditions that are actually conducive to enhancing digital trade, including and perhaps especially so for SMEs. In that sense the scope and architecture of FTAs matter as well, and the CPTPP agreement may be viewed as a good example in which carefully chosen breadth actually creates depth.

A.3 Trade Facilitation³⁶**(i) General provisions**

Bureaucratic delays and the “red tape” of customs procedures raise business costs regardless of business size. Trade facilitation aims at improving market access benefits in an FTA through the simplification, modernisation and harmonisation of export and import processes. In this regard, businesses of all sizes can benefit from saving transportation time and reducing transaction costs associated with international trade.³⁷ The CPTPP comprehensively covers trade facilitation in Chapter 5. The major points are explained as follows.

Customs cooperation: Each CPTPP party is required to share information on trade facilitation measures (advance notice of any administrative, legal, or regulatory implementation and change, or modification applicable to this chapter) among its signatory governments (Article 5.2). SMEs could indirectly benefit from this provision since the information exchange creates transparency and enhances cooperation amongst customs authorities, with firms including SMEs benefitting from efficient customs operations.

Advance rulings: Each party is required to provide advance rulings on tariff classification; the origin of a good; and the application of customs valuation criteria together with necessary information within 150 days of receiving the request. The CPTPP parties shall endeavour to make its advance rulings publicly available, including online, subject to any confidentiality requirements (Article 5.3). Improvement of transparency on advance rulings would also benefit SMEs.

Response to requests for advice or information: On request from an importer in its territory, or an exporter or producer in the territory of another Party, the CPTPP parties shall provide advice or information on issues such as the requirements to qualify for quotas; the application of duty drawback and duty relief; the eligibility requirements for goods under the goods re-entered after repair and alteration article; country of origin marking; or other matters the parties may decide (Article 5.4).

Review and appeal: Each party shall ensure that any entity receiving a customs determination has access to recourse through administrative or judicial review (Article 5.5).

Automation: Each party shall endeavour to use international standards related to the release of goods; making electronic systems accessible; employing electronic systems for risk analysis and targeting; and implementing common standards and elements for import and export data based on the World Customs Organization’s data model. Each party shall also endeavour to provide a facility that allows importers and exporters to electronically complete import and export requirements at a single entry point (Article 5.6). A single window arrangement is particularly important for SME exporters. Note, however, that these provisions are ‘best endeavours’ rather than obligatory.

Express shipments: Each party is required to adopt or maintain customs procedures for express shipments while maintaining appropriate customs control. These procedures shall fulfill some conditions, such as allowing single submissions of information (if possible by electronic means) to cover multiple goods in an express shipment (Article 5.7: (a) to (f)).

³⁶ The CPTPP, Chapter 5 Customs Administration and Trade Facilitation

³⁷ International Trade Centre (2018).

Release of goods: Each party shall adopt or maintain procedures allowing for the efficient release of goods prior to the final determination of payment of duties, taxes and fees based on simplified electronic measures (Article 5.10).

Publication: Each party is required to publish information relevant to the import and export of goods; maintain enquiry points to receive inquiries regarding customs matters; and provide the interested entities with opportunities to comment on proposed changes to custom related regulations (Article 5.11).

It is expected that the CPTPP will improve transparency of customs procedures and improve efficiency of customs clearance. If the general provisions on trade facilitation are fully implemented at each CPTPP country level, especially in developing countries, SMEs would benefit greatly from the Agreement.

(ii) SME-related provisions

There is only one provision referring to SMEs regarding trade facilitation (a threshold below which express shipments are exempt from the payment of customs duties). There is no agreement on the *de minimis* threshold.³⁸ Instead, the Agreement requires CPTPP members to review the threshold periodically taking into account certain factors, including impact on SMEs. Other factors include inflation rates, impact on risk management, and administrative cost of collecting duties compared to the amount of duties (Art 5.7.1 (f)).

A.4 Chapter on SMEs (Chapter 24)

The CPTPP has a stand-alone chapter on SMEs to provide a joint support mechanism for SMEs. The SMEs chapter consists of the two pillars: (i) information sharing and (ii) a committee on SMEs. Dispute Settlement does not apply to the Chapter on SMEs.

(i) Information sharing

The provisions on information sharing (Article 24.1) guide the architecture of the government website on the CPTPP. Each CPTPP member is required to establish its own publicly accessible website. The content of the website should include: (a) the text of the Agreement, including all Annexes, tariff schedules and product specific rules and origin; (b) a summary of the Agreement; (c) descriptions of the provisions and additional useful information particularly designed for SMEs so that they can benefit from the opportunities provided by the Agreement.

On the website, it should include the website links to other CPTPP members' websites and the websites of its government agencies and other appropriate entities that contain useful information for those who are interested in trading, investing and doing business in its member's territory.

Each CPTPP member shall regularly review and update the information above.

³⁸ There are calls for a global *de minimis* threshold of 1,000 USD.

(ii) Committee on SMEs.

A Committee on SMEs is established under the CPTPP (Article 24.2). The first meeting has to have taken place within one year of the date of entry into force of the Agreement.³⁹ Regular meetings following the first meeting are to be held ‘as necessary’. Collaboration with appropriate experts and international donor organisations to carry out SME related programmes and activities is proposed.

The activities of the Committee include:

- a. Identifying ways to assist SMEs so that they can take advantage of the commercial opportunities arising from the Agreement.
- b. Exchanging experiences and best practices in supporting SME exporters (e.g. training programmes, trade education, and trade finance); identifying commercial partners in other Member countries, and good business credentials.
- c. Developing and promoting seminars, workshops or other activities to inform SMEs of benefits of using the Agreement.
- d. Exploring opportunities for capacity building to developing country Members.
- e. Recommending information that would be useful to add to CPTPP government websites for SMEs.
- f. Reviewing and coordinating work programmes with other committees established under the CPTPP (e.g. the Committee on Government Procurement, the Committee on Competitiveness and Business Facilitation) and relevant international bodies in order to avoid duplication of work and to seek cooperation.
- g. Facilitating developing programmes which assist SMEs’ participation into the global supply chain.
- h. Exchanging information on monitoring the implementation of SME-related provisions in the Agreement.
- i. Submitting a regular activity report in order to make recommendations to the CPTPP Commission.
- j. Considering any other possible matters to improve SMEs’ ability to benefit from the Agreement.

A.5 SME-related provisions in other chapters

The CPTPP promotes co-operation among members to support SMEs’ trade and investment activities in other chapters. The cooperation clauses for SMEs exist in the area of SPS (Chapter 7), TBT (Chapter 8), rules of origin (Chapter 3), government procurement (Chapter 15), labour (Chapter 19), environment (Chapter 20), cooperation and capacity building (Chapter 21), competitiveness and business facilitation (Chapter 22), development (Chapter 23), regulatory coherence (Chapter 25), and transparency and anti-corruption (Chapter 26).

As for government procurement, the CPTPP includes three SME-related clauses (Article 15.21, 15. 22, and 15.23). The Agreement acknowledges the importance of facilitating the participation of SMEs in government procurement. At the same time, if a party maintains a measure providing preferential treatment for SMEs, the signatory is required to keep criteria for eligibility transparent. To facilitate SMEs’ participation in procurement (Article 15.21), the Agreement requires the signatories to (i) provide comprehensive procurement-related information in a single electronic portal; (ii) endeavour to make all tender documentation available free of charge; (iii) conduct procurement by electronic means; and (iv) consider the size, design and structure of the procurement, including the use of subcontracting by SMEs. In the cooperation clause (Article 15.20) and the Committee on Government Procurement (Article 15.23), facilitation of SMEs’ participation is specifically noted.

³⁹ At the time of writing, CPTPP has entered into force in Australia, Canada, Japan, Mexico, New Zealand, Singapore and Vietnam. The Agreement has not yet entered into force in Chile, Peru and Malaysia.

There are no specific mutual recognition agreements arrangement with regard to professional qualifications in the CPTPP. Annex 10-A: Professional Services refers to recognition of professional qualifications, licensing or registration, but even for engineering and architectural services, which are the most advanced cases in the Agreement, a party shall only 'encourage' its relevant body that operates APEC Engineer or APEC Architect Registers to enter into MRAs with the relevant bodies of other parties (Annex 10-A-7). The Professional Services Working Group is assigned a mandate to hold annual meetings, but the MRA issue is not included in its implementation agenda.

B. EU-Japan Economic Partnership Agreement

The EU-Japan EPA emphasises that the needs of business communities, in particular those of SMEs, should be considered in order to strengthen the economic, trade and investment relations of the two Parties (Preamble).

B.1 E-commerce

(i) General provisions

The EU-Japan EPA does not have a stand-alone chapter on e-commerce. The e-commerce related provisions are stipulated in Section F of Chapter 8 on Trade in Services, Investment Liberalisation and Electronic Commerce (Electronic Commerce: Article 8.70-8.81). It covers areas including no custom duties on electronic transmissions; source code; domestic regulation; principle of no prior authorisation; conclusion of contracts by electronic means; e-authentication and e-signature; consumer protection; unsolicited commercial electronic message; cooperation; and free flow of data.

Both parties recognise the importance of the principle of technological neutrality in e-commerce. The Agreement stipulates that if there is any inconsistency between the e-commerce provisions and other Chapters' provisions, the other's provisions shall prevail to the extent of the inconsistency.

The strong feature of the generalised provisions on e-commerce is that they are in line with the EU's general policy approach to the digital economy. First, it emphasises consumer safety and security. In the preamble, the Agreement underlines the importance of establishing an environment of trust and confidence to promote electronic commerce in its objectives. Also, one Party could require source code from the other Party when there are security concerns; GATT Article XX (the General Exception clause), and prudential carve-out could be applied.⁴⁰ The provisions for unsolicited commercial electronic messages are strict. For example, the Agreement requires each Party to provide resources against suppliers of unsolicited commercial electronic messages that do not comply with the measures regarding unsolicited commercial electronic messages.

Second, whilst the European approach recognises that e-commerce presents highly desirable opportunities for SMEs to participate in international trade, or to expand their business facilitated by digital trade and free flows of data, the EU-Japan agreement also contains a warning about the potential anti-competitive dangers in digital markets. Accordingly, the agreement stipulates that the ability of courts, administrative tribunals and competition authorities to remedy a violation of competition law shall not be affected by the provision (Article 8.73.2).

While the Agreement puts emphasis on consumer protection, consumer protection provisions in the Agreement respect the other Party's laws and regulation. It stipulates that the Parties 'recognise' the importance of adopting and maintaining transparent and effective consumer protection measures; of cooperation between their respective competent authorities; and of adopting or maintaining measures to protect the personal data of electronic commerce users.

⁴⁰ The EU-Japan EPA, Article 8.73.3. Article 1.5 (Security concern), Article 8.3 (GATT XX exception), and Article 8.65 (Prudential carve-out).

With regard to the free flow of data (Article 8.81), the EU and Japan mutually agreed to recognise each other's data protection systems as equivalent in January 2019.⁴¹ The implication of the decision is critical because SMEs are, as a result, legally assured of safe data flows across the EU and Japan. However, it is the EU that conducts periodical reviews of adequacy finding. The EU's decision provides that a first review takes place within two years and after that at least every four years (or two years if necessary). Adequacy reviews may result in suspension or repeal of the decision. In this context, free flow of data between the EU and Japan is not unconditionally provided to market players including SMEs. The current adequacy decision is separate from the trade agreement but there is an ongoing debate about bundling adequacy decisions within FTAs.

Unlike in the CPTPP, there are no provisions regarding prohibition of data localisation and consumers' access to and use of the internet. This may inhibit the development of e-commerce and may lead to service suppliers not realising the full potential of economies of scale, but puts more emphasis on privacy protection.

It is possible this could indirectly stimulate demand if enhanced privacy leads to consumers feeling more confident in embracing online transactions. However, regulatory requirements such as those in relation to data localisation would have a disproportionate impact on smaller businesses, for example in relation to increased costs of compliance.

(ii) SME-related provision

There is only one SME-related provision regarding cooperation. The Agreement stipulates maintaining a dialogue on e-commerce regulatory matters and best practices, whilst challenges for SMEs in the use of e-commerce are included in the agenda (Article 8.80 (e)). Other agenda items include consumer protection, cybersecurity, combatting unsolicited commercial electronic messages, the recognition of certificates of electronic signatures issued to the public, the facilitation of cross-border certification services, intellectual property, and e-government.

B.2 Intellectual Property Rights (IPR)

(i) General provisions

The EU-Japan EPA covers IPR comprehensively in Chapter 14, including protections on copyright protection; trademarks; geographical indications (GI); industrial designs; trade secrets; patents; minimum common rules for regulatory test data protection for pharmaceuticals; and civil enforcement provisions. SMEs can benefit from the high-level provisions on IPR protection and enforcement. SMEs that sell GI products could particularly benefit from the enhanced bilateral cooperation between the EU and Japan in the area of GI.

Below is a summary of the major points of the IPR chapter.

The general provisions provide obligations of granting adequate, effective and non-discriminatory protection of intellectual property and enforcement of intellectual property against infringement. Both parties confirm commitment to eight international IPR treaties, including the TRIPs Agreement, the Paris Convention, the Bern Convention, and the WIPO Copyright Treaty, respectively (Chapter 14, Section A).

Since both the EU and Japan have advanced IPR systems, both governments enhanced their commitments under the WTO in line with domestic IPR systems and developed cooperation in the areas of interests, such as GI, trade secrets, and patent protection for pharmaceutical products and crop protection. As for GI, 71 foods and food products from the EU and 48 foods and food products from Japan, respectively, are registered as GI products under the imported Party's system.⁴²

As for enforcement, the EU-Japan EPA covers enforcement of civil remedies; protection against misappropriation of trade secrets; and border measures (Chapter 14, Section C).

⁴¹ Commission Implementing Decision (EU) 2019/419 of 23 January 2019.

⁴² Ministry of Agriculture, Forestry and Fisheries, Japan (http://www.maff.go.jp/j/shokusan/gi_act/designation2/attach/pdf/index-17.pdf)

The EU and Japan agreed to cooperate on IP policy, covering areas such as development of domestic and international IP policy; IP administration and registration systems; improving awareness of IPR; IPR and SMEs; implementation of multilateral IP Agreements (e.g. WIPO related agreements); and the fight against infringements of IP (Article 14.52).

The Committee on Intellectual Property was established to review and monitor implementation of the IP Chapter (Article 14.53). SMEs are not included in the agenda in any particular way.

(ii) SME-related provision

As noted above, IP issues relevant to SMEs are listed as one of the areas covered for cooperation to further promote trade and investment between the two Parties (Article 14,52.2(d)(i)).

B.3 Trade Facilitation

(i) General provisions

The EU-Japan EPA stipulates that the trade facilitation provisions apply to each Party's legislation; other trade-related laws and regulations; and general administrative procedures related to trade and cooperation between the two Parties. The trade facilitation chapter is comprehensive and of a high-standard. It encompasses: transparency; procedures for import, export and transit; release of goods; simplification of customs procedures; advance rulings; appeal and review; risk management; post-clearance audit; transit and transshipment; customs cooperation; and temporary admission. If they are effectively implemented, delays in transport and firms' transport costs are expected to be reduced. This should benefit SMEs that normally export or import small amounts of goods and cannot hire specialists (eg. a customs broker or freight forwarder) to handle border paperwork and procedures.

In order to effectively simplify and facilitate customs procedures, the EU-Japan EPA outlines (i) use of advanced systems based on information and communications technology and (ii) facilitation of the exchange of electronic data between traders or operators, its customs authority and other trade-related agencies (Article. 4.4). As for release of goods, both Parties shall allow for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods (Article. 4.5 (b)).

The EU-Japan EPA also enhances cooperation among the customs authorities to further develop trade facilitation and improve supply chains security. The areas of cooperation include: cooperation on further simplification of customs procedures, taking into account the evolution of trade practices; cooperation on harmonisation of data requirements for customs purposes in line with applicable international standards; cooperation on improvement of their risk management techniques (Article 4.12.2).

The Committee on Rules of Origin and Custom-Related Matters is in charge of effective implementation and operation of trade facilitation provisions. Implementation of trade facilitation from the SMEs perspective may be reviewed here, but SMEs are not specified on the Committee's agenda (Article 4.14).

(ii) SME-related provisions

There is one SME-related provision regarding the simplification of customs procedures. Both Parties are required to simplify their requirements and formalities for customs procedures to reduce the time and costs for traders or operators, including SMEs.

B.4 Chapter on SMEs

There is a stand-alone chapter on SMEs (Chapter 20: Small and Medium-sized Enterprises) in the EU-Japan EPA. The chapter consists of the two subjects: information sharing and SME contact points.

(i) Information sharing

Each government has to establish and maintain a website and regularly update it (Article 20.2). The website has to be easy to use for SMEs and information has to be available in English language.

The website must contain the following:

- The text of the Agreement, its Annexes, tariff schedules and product-specific rules of origin;
- A summary of the Agreement
- Information designed for SMEs (provisions considered particularly relevant to SMEs and any additional information benefitting SMEs relating to the matter);
- Links to the equivalent website of the other Party,
- Links to the websites of its government authorities; the websites of other appropriate entities useful for SMEs interested in trading, investing or doing business in that Party; and the website of the EU-Japan Centre for Industrial Cooperation.
- The links to the websites of its government authorities have to contain: (i) customs related issues: legislation and procedures, description of the procedures, the practical steps, the forms, documents and other information required for importation into, exportation from, or transit through the customs territory of that Party; (ii) IPR: laws and regulations including procedures; (iii) technical regulations and conformity assessment procedures; (iv) sanitary and phytosanitary measures for importation and exportation; (v) government procurement: publication of notices and other relevant information; (vi) business registration procedures; and (vii) taxes collected during the importation procedures.
- The website on SMEs has to be linked to a database that is electronically searchable by tariff nomenclature code. In addition, it is intended that it should include some information regarding access to the Party's market.⁴³

(ii) SME contact points

Each party is required to designate a 'SME Contact Point' to implement the Chapter on SMEs. The functions of the 'SME Contact Point' are precisely defined. For example, the SME Contact Point shall ensure the needs of SMEs in implementing the Agreement; monitor the implementation of information sharing, regularly submit a report on their activities and make recommendations to the EU-Japan EPA Joint Committee.

B.5 SME-related provisions in the other chapters

SMEs benefit from certain provisions that reinforce cooperation between the two Parties.

In the chapter on Transparency – transparent regulatory environment (Chapter 17), SMEs are mentioned as operators for which a transparent, effective and predictable regulatory environment should be provided (Article 17.2).

Also, in the chapter on good regulatory practices (Chapter 18), there is one SME-related provision. The EU-Japan EPA foresees carrying out an impact assessment of major regulatory measures under preparation. An impact assessment is recommended to consider the potential social, economic and environmental impact, including on SMEs (Article 18.8).

There is no SME-provision in the government procurement chapter (Chapter 10).

⁴³ (i) rates of customs duty to be applied by the Party to the originating goods of the other Party, the MFN applied rates of customs duty and tariff rate quotas established by the Party; (ii) customs or other fees; other tariff measures; (iii) other tariff measures; (iv) rules of origin; (v) duty drawback deferral or other types of relief that reduce, refund or exempt customs duties; (vi) criteria used to determine the customs value of goods; (vii) country of origin making requirements; and (viii) other relevant measures.

As for mutual recognition of professional qualifications, each party is required to encourage the relevant professional bodies in its territory to provide joint recommendations on mutual recognition to the EU-Japan EPA Committee (Article 8.35).

2.3. Implementation and SME support schemes

Technical capacity to understand FTAs and access to information is a major challenge for SMEs due to their resource constraints. We examine implementation and SME support schemes established under the CPTPP and the EU-Japan EPA.

A. CPTPP

As explained before (2-1. Chapter on SMEs), the CPTPP sets up an information sharing scheme and the Committee on SMEs to effectively implement SME related issues under the CPTPP. The CPTPP signatories must provide online information that assist SMEs, such as trading information; regulations concerning customs, intellectual property settings and investment; business registration procedures; tax information and employment law.

As of July 2019, the six CPTPP member countries (Australia, Canada, Japan, Singapore, Malaysia and New Zealand) have SME support websites. Comparing the OECD members of the CPTPP signatories: Australia; Canada, Japan and New Zealand, the way they implement SME support websites looks slightly different. New Zealand's website is well designed from the user's perspective. It explicitly takes into account SMEs' constraints in accessing information and succeeds in translating the CPTPP agreement into the business context. The websites of Australia and Canada look similar. They summarise the Agreement well, but are not as business friendly as New Zealand's website. Whereas Japan's CPTPP website on SMEs is simple, Japan has a separate SMEs support portal.

New Zealand

Small businesses, officially defined as a company with 1-19 employees, make an important contribution to the NZ economy. Given that NZ is a small economy, the term SMEs is not ordinarily used and there is no official definition of 'mid-size businesses' in NZ.⁴⁴ 'Small businesses' account for 97% of NZ firms in terms of number, generate 28% of GDP and account for 29% of total employment.⁴⁵ Although the contribution of 'mid-sized business' (if defined as a company with 20-99 employees) to the NZ economy is increasing, the number of these firms is still only 2.2% of total firms and they create 5% of total employment.⁴⁶

For NZ, the CPTPP is the first FTA which incorporates a stand-alone chapter on SMEs. Following the CPTPP requirement to establish a government website to support SMEs, NZ set up the website: 'Supporting SMEs'.⁴⁷ The websites for NZ's other nine FTAs (NZ-Australia, ASEAN-Australia-NZ, NZ-Malaysia, NZ-Thailand, Trans-Pacific Strategic Economic Partnership (P4), NZ-Korea, NZ-China, and NZ-Singapore) also cover facts and figures; agreement highlights; using the FTA; and media and resources. However, these websites do not provide any support information for SMEs.

The information on the CPTPP website covers the requirement of the CPTPP's Chapter on SMEs. In addition to the requirement, the sections of Māori interests; regional benefits; and common questions are included in the website.

The section, 'Supporting SMEs', provides useful additional information for SMEs. As for tariff elimination/reductions, it provides information explaining how to use FTAs with links to the 'tariff finder tool' website as well as the website of The Ministry of Foreign Affairs and Trade (MFAT) helpdesk to help improve NZ firms' market access.⁴⁸

⁴⁴ The power and potential of the mid-size business – NZ mid-market report 2019, Grant Thornton.

⁴⁵ New Zealand's support for Small Business, Ministry of Business, Innovation and Employment of NZ, May 2018. Given that NZ is a small economy, there is no official definition on 'mid-size business'

⁴⁶ The power and potential of the mid-size business – NZ mid-market report 2019, Grant Thornton.

⁴⁷ <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/supporting-smes/> (accessed on 16 July, 2019).

⁴⁸ MFAT helpdesk focuses on advice on non-tariff barriers.

Also, there is a section that summarises the benefits which NZ SMEs can enjoy from the CPTPP. As for non-tariff barriers, the website explains that minimising unnecessary labelling requirements provided in the wine and distilled spirits annex would reduce export costs of NZ wines in CPTPP markets. With regard to trade facilitation, it is explained that speedy clearance of goods (releasing normal trade within 48 hours and express shipments within 6 hours) is expected to reduce the financial and administrative burden for SMEs. Also, the section highlights the provisions of free provision of tender documentation, conducting procurement through electronic means, and consideration of the design of the procurement including possible subcontracting in the Chapter on government procurement. It explains that the Chapter is expected to facilitate participation of SMEs in government procurement. As for the Chapter on Regulatory Coherence, it describes the obligation to establish good quality regulatory management systems in each CPTPP signatory. It also points out that publicly available regulatory measures would increase transparency for SMEs in doing business.

In addition to information, the NZ government has established a practical support system for NZ SMEs to help their business succeed in global markets. If an SME encounters a trade barrier, the enterprise can confidentially register its trade barrier by clicking the 'register your barrier to trade' button on the SME support website or by making contact with the domestic authorities (Table 2). The government agency is required to reply to the firm within 2 working days, and work out next steps within 6 weeks.

Table 2: NZ government agencies in charge of responding to SMEs' trade barrier concerns

Sector/Issue	Type of barriers listed as examples	Government authorities
Manufacturing	Standards, regulations, rules in selling to foreign governments, and any other types of restrictions blocking exports	Ministry of Business, Innovation and Employment
Services and Investment	Unfairly prevented from exporting services offshore	Ministry of Foreign Affairs and Trade
Education Services	Any barriers relating to teaching international students in New Zealand or overseas	Education New Zealand
Food and Primary Industries	Food safety and standards or animal welfare	Ministry for Primary Industries
Customs	Problems relating to border clearance issues, tariff classification, and rules of origin	New Zealand Customs.

Source: NZ government website (<https://tradebarriers.govt.nz/>)

For SMEs in other countries trading, investing or doing business in New Zealand, useful links are provided. These include: NZ Customs Service relating to importing to NZ; guide to NZ's standards and conformance system; NZ's tax policy and collecting tax (Inland Revenue Department website); guide to importing plant and animal products into NZ; information on government procurement system; information on business registration; regulations and procedures concerning IP.

Canada

Canadian SMEs account for 99% of firms in Canada in terms of number and create 90% of employment. In spite of their vital role in the Canadian economy, only 11% of SMEs do business internationally. Therefore, the Canadian government underlines the importance of supporting Canadian SMEs' internationalisation using the CPTPP.

To implement the information-sharing requirement in the Chapter on SMEs, the Canadian government established the website ‘CPTPP and SMEs’.⁴⁹ The website summarises CPTPP’s major benefits for SMEs, such as tariff elimination on 99% of current Canadian exports; improved services trade market access and investment protection, and simplified customs procedures.

For SMEs that need any export related assistance, there is a link to the Trade Commissioner Service that has trade offices across Canada and 161 offices outside Canada. SMEs can submit any questions online.⁵⁰ To support export financing problems, the link to information on financing solutions, such as the government’s fund targeting SMEs’ exports called ‘CanExport program’, is provided. There are also links to CPTPP chapter summaries, the schedules of tariff eliminations of the CPTPP signatories, and other relevant resources for SMEs, respectively.

The information for other CPTPP members is provided by country. The information includes an economic fact sheet; and the link to (i) members’ CPTPP websites, tariff elimination schedule and tariff-rate quotas, (ii) rules of origin, (iii) services schedule, (iv) commitments for temporary entry for business persons, and (v) government procurement schedule.

Japan

SMEs account for more than 99% of the total number of firms and create two thirds of private-sector jobs in Japan. SMEs’ output accounts for over 50% of its economy. Japan implemented Chapter 24 by establishing their website, ‘Related information on Chapter 24’.⁵¹ The website provides links to useful information in accordance with the ministry in charge.

For example, the Ministry of Economy, Trade and Industry’s website provides general information that supports the internationalisation of SMEs using the TPP (in Japanese only). The information covers a general explanation of the CPTPP; detailed guidance on using CPTPP’s preferential tariffs; and a list of helpdesks relevant to subject (Table 3).⁵²

Table 3: Japan’s government agencies in charge of responding to SMEs’ enquiries

Issue	Helpdesk
General interest in exporting/doing business abroad	JETRO (Japan External Trade Organisation) ‘EPA (Economic Partnership Agreement) advisor’ in Tokyo and outside Japan (online and telephone enquiries are also available)
Rules of Origin procedural enquiry	EPA Desk (https://epa-info.go.jp)
Enquiry about manufactured products (tariffs and rules of origins)	METI (by telephone or online) ⁵³
Export custom procedure	Japan Customs ⁵⁴
Special advice for SMEs’ international business	(i) METI’s nine regional offices across Japan and (ii) Organization for Small & Medium Enterprises and Regional Innovation, JAPAN, ten regional offices across Japan
Regulations and procedures regarding IP and obtaining IP	Japan Patent Office
Geographical indications (GI)	Ministry of Agriculture, Forestry and Fisheries

Source: the METI website (only in Japanese): https://www.meti.go.jp/policy/external_economy/trade/tpp.html and the MOFA website: https://www.mofa.go.jp/ecm/ep/page23e_000533.html.

49 https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/cptpp_small_medium_sized_enterprises-ptpgp_pme.aspx?lang=eng. Accessed on 17, July 2019.

50 https://www.tradecommissioner.gc.ca/trade_commissioners-delegates_commerciaux/contact-us-contactez-nous.aspx?lang=eng&ga=2.66063662.1440084302.1563189410-764203568.1540899005

51 https://www.mofa.go.jp/ecm/ep/page23e_000533.html

52 In addition to information from the METI website (only in Japanese): https://www.meti.go.jp/policy/external_economy/trade/tpp.html, information from the MOFA website: https://www.mofa.go.jp/ecm/ep/page23e_000533.html is added in the table.

53 http://www.meti.go.jp/policy/trade_policy/epa/contact/

54 <http://www.customs.go.jp/english/exp-imp/index.htm>

The links to Japanese laws and regulations relating to importing and exporting (e.g. technical regulations, standards; and sanitary and phytosanitary measures); business registration procedures; employment regulations; and taxation (in English) are provided on the MOFA website, “Related information on Chapter 24”. On the METI website, there is the link to the JETRO events page that targets promoting Japanese firms’ internationalisation, including utilising FTAs (only in Japanese).⁵⁵

In addition to the above two major websites for the CPTPP run by the MOFA and METI, there is an independent SME portal which supports SMEs’ business, called ‘SME Support Japan’.⁵⁶

B. EU-Japan EPA

Both the EU and Japan have established websites, which cover the subjects listed in the Chapter on SMEs: Information Sharing and are updating their contents.

EU

The website, ‘SMEs and the EU-Japan EPA’ covers: information on the Agreement; additional information for SMEs; extra support; EPA-Rules of origin; EPA and SMEs; summary of EPA; how EPA benefits SMEs; Specific EPA references to SMEs.⁵⁷ Also, there is another website designed for SMEs from Japan, The website explains how to prepare customs documents; follow rules of origin; pay the correct customs and excise duties; follow the rules on patents, innovations, intellectual property, geographical indications; follow the EU’s technical regulations; follow the EU’s rules on animal, plant and food safety; and follow bids for government contracts in the EU.

There are also links that provide information or advice about setting up a business in the EU. At the EU member state level, a firm interested in doing business can make contact with a national contact point through the e-government portals called ‘National Points of Single Contact’.⁵⁸

The website of ‘The EU Trade Helpdesk’ provides comprehensive information for exporters that would like to export to the EU. For example, if one inputs the export product’s tariff nomenclature code, the system provides information on how to bring the product on the EU market.⁵⁹

Japan

The website called ‘Related Information on the Japan-EU EPA Chapter 20 (Small and Medium-sized Enterprises)’ provides information both in Japanese and in English. The contents are in line with the requirement in Chapter 20: Information Sharing. Each link provides Japanese law and regulations relevant to the subject and information in detail. Some of the information is targeted at Japanese SMEs to support export to the EU (or doing business with the EU) and is only available in Japanese. The European Union Economic Affairs Division, Economic Affairs Bureau, Ministry of Foreign Affairs is designated as the contact point.⁶⁰

EPA Helpdesk⁶¹

Cooperation under the EU-Japan EPA goes beyond information on the website of each party and promotion activities at the signatory level. Interestingly, the EU and Japan established the ‘EPA Helpdesk’ at the EU-Japan Centre for Industrial Cooperation, which was co-financed by the European Commission and the Japanese Government.⁶² The Helpdesk offers advisory services to companies that have enquiries on using the EU-Japan EPA for their business. Other than that, the ‘EPA Helpdesk’ offers a wide variety of activities with a special focus on assisting European SMEs. For example, it publishes a series of information packages for SMEs to take advantage of the Agreement (e.g. GIs, public procurement, dairy products, wine, spirits and beers and processed agricultural products). It also organises thematic webinars. As of July 2019, five webinars (rules of origin, public procurement, wine, spirits and beers, GIs, dairy products, and meat products) have already been held.

55 <https://www.jetro.go.jp/events.html>

56 <http://www.smrj.go.jp/english/>

57 https://madb.europa.eu/madb/fta_japan.htm#sme_japan

58 https://ec.europa.eu/growth/single-market/services/services-directive/in-practice/contact_en. Accessed on 20th July, 2019.

59 <https://trade.ec.europa.eu/tradehelp/>. Accessed on 20th July, 2019.

60 https://www.mofa.go.jp/ecm/ie/page23e_000546.html. Accessed on 20th July, 2019.

61 <https://www.eu-japan.eu/epa-helpdesk>. Accessed on 21st July, 2019.

62 The EU-Japan Centre for Industrial Cooperation was established in 1987 to promote industrial, trade and investment cooperation and to exchange experience and know-how between EU and Japanese businesses.

In general, the EU-Japan Centre for Industrial Cooperation is playing an important role in promoting internationalisation of EU and Japanese SMEs. The organisation is currently enhancing the function of supporting SMEs' trade and investment activities in the EU and Japan.⁶³ For EU SMEs, it established a 'Step in Japan' (the help desk) that offers logistical support to start business in Japan (e.g. free office space; full access to meeting and seminar facilities; and a help desk for information inquiries on business in Japan free of charge).⁶⁴ Separately, the EU-Japan Centre for Industrial Cooperation provides a range of services for Japanese SMEs that are interested in doing business targeting EU markets, such as finding a business partner in Europe.⁶⁵

The EU-Japan Centre for Industrial Cooperation also organises policy dialogues between governments and the private sector, including an annual EU-Japan Business Round Table. At the 2019 Round Table, the topic 'how SMEs can take advantage of the EU-Japan EPA' was included in its agenda.

USMCA

This section has evaluated in detail the formulation and implementation of provisions in those two 'mega-regional' FTAs that are currently in force and, between them, exhibit best in class provisions for addressing SME concerns. By contrast, the agreement between the US, Mexico and Canada (USMCA) is not yet in force. At the time of writing, internal renegotiations between the White House and the US Congress have led to a revised agreement that would now need to be ratified again by all three signatories. There is thus considerable uncertainty about USMCA and its possible impact on SMEs; at the same time, however, the agreement may be informative about the US's approach towards SMEs in its future FTAs, and therefore a brief summative comparison of USMCA with CPTPP and EU-Japan, respectively, with regard to SME provisions seems warranted.

The approach taken in USMCA towards SMEs does not seem to go qualitatively beyond what we find in CPTPP despite the fact that a dedicated chapter on SMEs is new to USMCA compared to its predecessor NAFTA. For example, like CPTPP, the USMCA's SME Committee comprises only government officials, and the participation of private-sector representatives is not institutionally provided for, as part of the Committee. However, there is a 'Trilateral SME Dialogue' as a kind of stakeholder forum, e.g. for private-sector representatives, NGOs, or academics, amongst others, to convey to the SME Committee their views on any matter within the scope of the USMCA agreement. While provisions on information sharing are possibly a little more far-reaching than in the CPTPP, they are still mostly expressed in 'best endeavour' terms rather than obligatory language. The USMCA recognises that many aspects of trade relevant for SMEs reside in other chapters, and so the ability of the SME Committee to reach out and make effective changes for SMEs is crucial.

63 <https://www.eu-japan.eu/support-smes>. Accessed on 21st July, 2019.

64 <https://www.eu-japan.eu/logistical-support-step-japan>

65 <https://www.een-japan.eu/ja> (in Japanese).

3. FINDINGS OF BEST PRACTICE FOR SMES IN FTAS

Through general provisions on comprehensive market access, ambitious regulatory transparency and cooperation, and trade facilitation measures, respectively, FTAs can be instrumental in opening up foreign markets for UK business including SMEs. To address the specific barriers to trade faced by SMEs, emanating from certain constraints germane to smaller firms, SME-specific provisions are required, as are SME support schemes to effectively implement an agreement.⁶⁶ Against this backdrop, we compare and evaluate CPTPP and the EU-Japan EPA, respectively, using the three standards set out below.

THREE STANDARDS TO FIND BEST PRACTICE FOR SMES

Standard 1 Market liberalisation and general provisions: The degree of: (i) market liberalisation in goods and services; (ii) regulatory transparency and cooperation to reduce unnecessary incompatibility; and (iii) trade facilitation regardless of the size of companies.

Standard 2 SME-related provisions/chapter: The quality of SME-related provisions, whether it plays good governance roles that address SME constraints or redress trade barriers disproportionately affect SMEs.

Standard 3 SME support schemes: Shared information among FTA signatories and national level support schemes to improve SMEs' awareness and understanding of an FTA to maximise opportunities for SMEs.

Standard 1: Market liberalisation and general provisions

Both the CPTPP and the EU-Japan EPA are called 'mega-regional FTAs'. Although this report does not evaluate the degree of market liberalisation covered in these Agreements, it is understood that, relative to other FTAs, both FTAs achieved far-reaching trade liberalisation in goods and services and provide substantial rules covering a wide range of areas, including trade facilitation, IPRs and e-commerce.⁶⁷ In addition, regulatory transparency and cooperation are addressed in stand-alone chapters.

At the same time, CPTPP and the EU-Japan EPA exhibit different approaches towards regulating areas such as e-commerce and digital trade. The major policy challenge with regard to e-commerce is to strike an optimal balance between supporting an innovative and competitive digital economy whilst protecting consumer privacy and security. Generally speaking, CPTPP puts more emphasis on facilitating e-commerce including data flows whereas the EU-Japan EPA tends to give more consideration to consumer privacy and security considerations, potentially at some cost in terms of economic efficiency. SMEs will find e-commerce provisions under either agreement helpful for breaking into foreign markets. Even to the extent that the EU-Japan EPA could be perceived as having less far-reaching e-commerce provisions, it is worth remembering that strong consumer privacy rules are likely to create the trusted online environment that is arguably a precondition for demand-driven growth.

From the SME perspective, tariff reductions really have to be accompanied by trade facilitation measures. Trade facilitation is critical for SMEs since reduction in paperwork and simplification of the procedural steps in clearance as well as transparent information directly reduce transport costs and delays. The two FTAs provide good practice in this regard. For instance, CPTPP requires signatories to adopt or maintain expedited customs procedures for express shipments, ensuring that express shipments are released within six hours after submission of the necessary customs documents, and within 48 hours for normal goods. There is also no requirement for third-party certification of

⁶⁶ Business Europe expressed concern about the low utilisation rate of EU-Korea FTA by SMEs (48%), for example. Business Europe Speaking Point (2018).

⁶⁷ See Urata (2018) and Frenkel, M. and Walter, B. (2017), for example.

origin under CPTPP as exporters can self-certify that products meet the CPTPP rules of origin.⁶⁸ The trade facilitation chapter in EU-Japan endeavours (at least) to ensure that customs procedures are consistent with international standards and do not include mandatory use of customs brokers or pre-shipment inspections.

In relation to IPR, cooperation on enforcement of IPR becomes critical for SMEs when it comes to FTA countries with less developed IPR systems. Also, accessibility and affordability of IPR protection and enforcement (e.g. patents, trademarks, copyright, geographical indications, and trade secrets) would matter most for SMEs with internal constraints. As for food products, protection of SME exporters' GI products has to be secured. Also, capacity-building to improve SMEs' understanding of FTA partner's IPR system would help SMEs.

Although a specific analysis of services trade policy for SMEs in the CPTPP and the EU-Japan EPA is beyond the scope of this report, trade barriers that services suppliers encounter, such as nationality requirements; minimum capital requirements; quantitative restrictions; a lack of mutual recognition of licensing; credentials and standards; government subsidies; and piracy, have to be addressed in appropriate FTA chapters, not necessarily in the chapter on services trade and investment.⁶⁹

Standard 2: SME-related provisions

Among recent FTAs, it is not uncommon to include SME-related provision for the promotion of cooperation for SMEs among FTA signatories. Both the CPTPP and the EU-Japan EPA address aspects of particular interest to SMEs mainly in the form of cooperation. Those FTAs that involve developing countries provide exemptions for domestic SME in terms of compliance with costly obligations set forth in the agreement, or provide other kinds of flexibilities only available to SMEs.⁷⁰ However, this is neither the case for the CPTPP nor for the EU-Japan EPA. Also, both FTAs sometimes include provisions that recognise or affirm the needs of SMEs; however, these are typically best endeavours clauses rather than obligations.

The most remarkable development that the CPTPP and the EU-Japan EPA have made is a stand-alone SME chapter. There are two important areas to highlight. First, both Agreements guide the type of information included on government websites in the information sharing section. These provisions use an obligation clause (although the CPTPP clarifies that SME Chapter is outside the scope of dispute settlement). The information sharing provisions in the EU-Japan EPA provide more detailed guidance than the CPTPP's. Second, both the CPTPP and the EU-Japan EPA designated an SME support scheme to maximise the opportunities arising from the agreements. The CPTPP established a 'Committee on SMEs' while the EU-Japan EPA designated 'SME contact points' at the signatory level. Although both represent significant progress relative to existing FTAs, and although they are not mutually exclusive, 'SME contact points' are the more effective since they can directly advise SMEs on a daily basis.

Standard 3: SME support schemes

Since both the CPTPP and the EU-Japan EPA entered into force within the last year, it is premature to evaluate the effectiveness of the schemes. However, it is clear that each FTA signatory of both FTAs is making significant progress in disseminating information and providing practical support for SMEs. Especially, the 'EPA Helpdesk' established at the EU-Japan Centre for Industrial Cooperation can be underlined as best practice. The 'EPA Helpdesk' provides SME support activities beyond online information services. The daily support activities for SMEs, such as webinars about the technical issues in the EU-Japan EPA, logistical support, and matching services, would help SMEs overcome internal and external constraints and activate SMEs' cross-border business between the EU and Japan.

68 Government of New Zealand, CPTPP's trade facilitation, available at <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/understanding-cptpp/trade-facilitation>.

69 Adlung and Soprana (2010).

70 WTO (2016).

4. POLICY RECOMMENDATIONS

As the UK looks to negotiate a set of new FTAs, including a comprehensive agreement with the EU 27, it is vital that full consideration is given to how best to support SMEs. By evaluating the representation of SMEs' interests in the CPTPP and the EU-Japan EPA, respectively, this report sheds light on how two recent 'mega-regional' FTAs address SMEs trade concerns. The following policy recommendations emerge from our analysis.

- In future trade negotiations, the UK Government should support SMEs—like any other UK business—by achieving (i) comprehensive market access; (ii) ambitious regulatory transparency and regulatory cooperation; (iii) substantial trade facilitation and (iv) reduced administration.
- The most effective way of specifically enabling SMEs to trade internationally is for FTAs to address trade barriers that *de facto* or *de jure* represent fixed costs, which SMEs will typically find more difficult to surmount than larger businesses. Examples range from regulatory compliance costs, including notably rules of origin, to protecting intellectual property rights. Any flexibility in this regard, e.g. improved ease of registering intellectual property, will be particularly helpful for smaller businesses.
- Trade facilitation: the simplification of cross-border arrangements as well as transparent customs regulation and procedure is critical for UK SMEs to reduce trading costs. At the same time, in line with the aforementioned observation, general provisions on trade facilitation have to be accompanied by an implementation mechanism that addresses the disproportionate burden that fixed trading costs present for SMEs. For instance, trusted trader regimes meant to facilitate trade may *de facto* become useful to SMEs only when accompanied by a lean accreditation procedure to reduce upfront fixed trade costs for SMEs.
- The exploration and implementation of such provisions or initiatives rely on meaningful collaboration amongst FTA signatories, which in turn requires an appropriate institutional structure. This would typically be a dedicated SME Committee with two salient features.
 - First, Committee membership should have representation from both the Government and the private sector, respectively, to ensure representativeness and timely input from the private sector.
 - Second, many if not most areas of critical concern to SMEs actually stretch beyond the narrow realm of a typical SME chapter, e.g. e-commerce, IPR or trade facilitation. These topics are often subject to separate FTA chapters and may be overseen by separate Committees (e.g. on e-commerce). It will be salient to either bring SME aspects of these areas under the purview of the SME Committee, or else have institutional provisions for the SME Committee to reach out and liaise with other committees established under the FTA, so that solutions that facilitate trade for SMEs are not frustrated by “silo design.”
- Even in the most ambitious FTAs to date, including CPTPP and EU-Japan EPA, a ‘best endeavour’ language prevails in many subject areas. The value of future UK FTAs for SMEs, in terms of planning security and level of ambition, would increase appreciably if obligatory language were used for as many of the aforementioned key aspects as possible. It is important that FTA provisions actually entail a commitment to implement agreed provisions, rather than merely ‘encouraging’ certain steps to be taken.

- Lack of information, or information asymmetries, are a major reason behind reduced trade participation of SMEs and low utilisation rates of FTAs, even if helpful provisions are in place. Hence, a designated Help Desk for SMEs, or “SME Contact Point” modelled on the EU-Japan EPA will prove useful.
 - In order for this SME Contact Point to act as a one-stop-shop, the information provided needs to be comprehensive and include, amongst others, customs regulations and procedures, especially regarding rules of origin; regulations concerning IPRs; technical regulations and standards, sanitary and phytosanitary measures; foreign investment regulations; business registration procedures; employment regulations; and taxation information.
 - Both the CPTPP Agreement and the EU-Japan EPA provide very useful examples of public websites collating information on these agreements, e.g. chapter summaries and online query tools, in an accessible manner.
 - A dedicated SME help desk that acts as a single point of contact for SMEs could usefully provide information on other UK Government services designed to address export financing problems such as UK Export Finance, along the lines of Canada’s ‘CanExport program.’ A system that continuously collects information on trade barriers that affect UK SMEs, by destination market, can feed into this help desk solution.
- The protection and enforcement of IPRs matter substantially for UK SMEs.
 - Hence, future FTAs should include rules on strengthening the protection of IPRs in countries with less developed IPR systems,
 - The existence of an accessible and affordable enforcement mechanism to protect IPRs should be a priority, or else trade in digital products and services that rely heavily on intellectual property could be stymied.
 - Differing rules regarding IPR exhaustion across FTA signatories lead to regulatory heterogeneity and an associated increase in costs. Future FTAs could address this concern by formulating consistent and similar exhaustion rules for IPR.

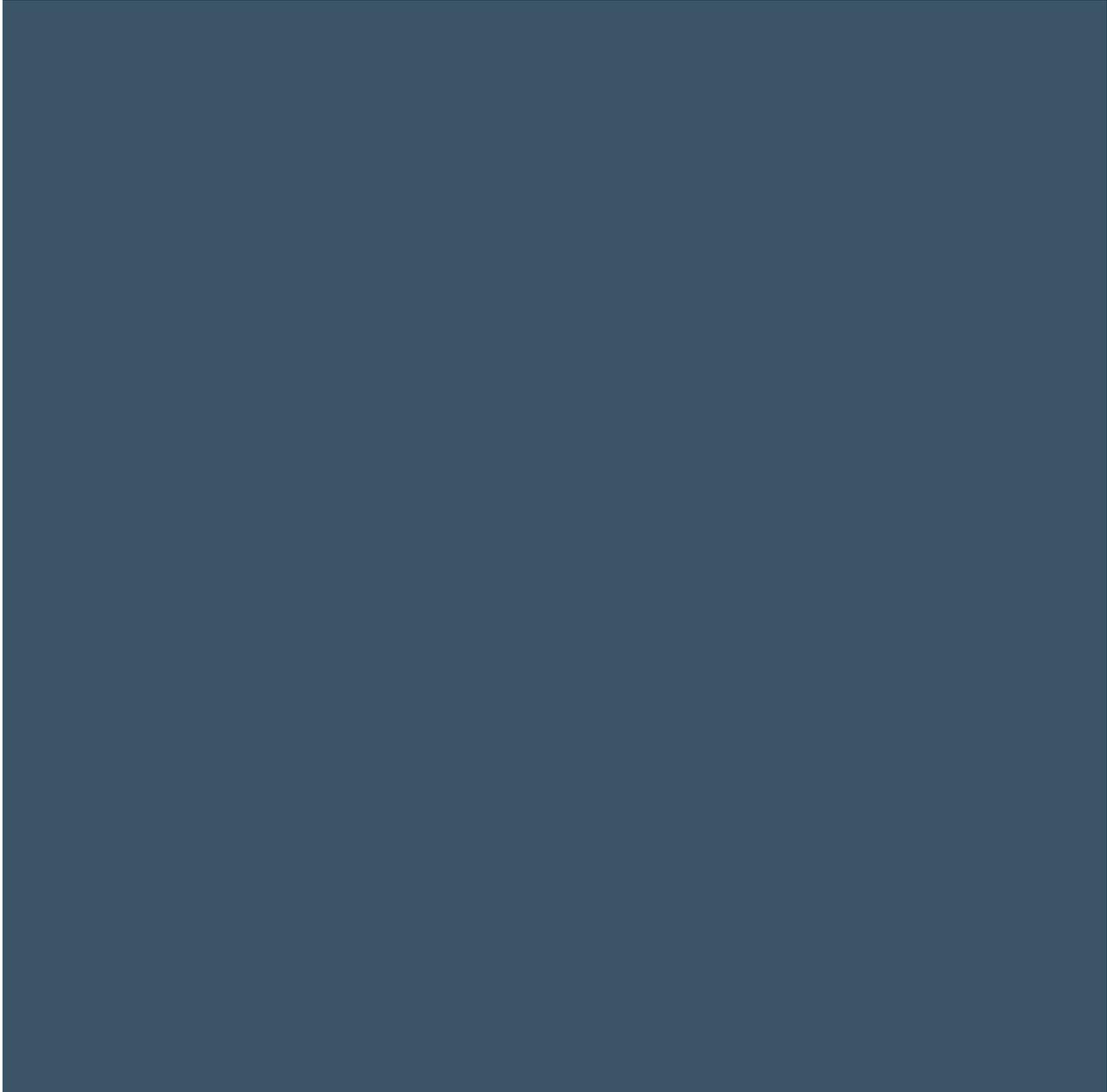
SME support schemes

- It is important to note that the success of SMEs in international markets depends on far more than just FTAs. The recommendations made in this Report shed light on certain specific features of future FTAs that would greatly help SMEs in their ambition to export to, and source from, international markets. At the same time, there are many initiatives that can address SMEs’ internal constraints such as lack of financial and human resources and access to information. These are complementary to our policy recommendations, because they would allow SMEs to take greater advantage of the FTA provisions. For this reason, the UK government should establish broader SME support schemes in addition to seeking SME-friendly FTAs.

REFERENCES

- ADB (2011). Asia's Free Trade Agreements –How is business responding?
- Adlung, R. and Soprana, M. (2010). Trade Policy for SMEs from a GATS Perspective. in Rensmann, T. (ed.), *SMEs in International Economic Law*, Oxford University Press.
- Anas, Titik, Carlos Mangunsong and Nur Afni Panjaitan (2017), “Indonesian SME Participation in ASEAN Economic Integration”, *Journal of Southeast Asian Economies* Vol. 34, No. 1, Special Focus: Southeast Asian SMEs and Regional Economic Integration (April 2017), pp. 77-117.
- Arudchelvan, M., and G. Wignaraja (2015), “SME Internationalization through Global Value Chains and Free Trade Agreements: Malaysian Evidence”, ADBI Working Paper 515, Tokyo: Asian Development Bank Institute.
- Battisti, M., Jurado, T., and Perry, M. (2014). Understanding small-firm reactions to free trade agreements: Qualitative evidence from New Zealand, *Journal of Small Business and Enterprise Development*, 05/13/2014, Vol.21(2), pp.327-344.
- Battisti, M., Perry, M. (2008). Creating Opportunity for Small-Firm Exporters through Regional Free Trade Agreements: A Strategic Perspective from New Zealand, *Australasian Journal of Regional Studies*, Vol. 14 (3), pp275-285.
- Brown, R., Zegarra, J.L., Wilson, J. O. S. (2018). What Happens if the Rules Change? The Impact of Brexit on the Future Strategic Intentions of UK SMEs, SSRN paper.
- Cernat, L. and Lodrant, M. (2017). SME Provisions in Trade Agreements and the Case of TTIP, in Rensmann, T. (ed.), *SMEs in International Economic Law*, Oxford University Press.
- Cernat, L., Norman-López, A., and Duch T-Figueras, A. (2014). SMEs Are More Important Than You Think! Challenges and Opportunities for EU exporting SMEs, European Commission, Chief Economist Note, Issue 3, September 2014.
- Collins, D. A. and Abe, Y. (2018). The CPTPP and Digital Trade: Embracing E-Commerce Opportunities for SMEs in Japan and Canada. *Transnational Dispute Management*.
- Cusolito, AP, Safadi, R, and Taglioni, D. (2016). Inclusive Global Value Chains: Policy Options for Small and Medium Enterprises and Low-Income Countries, World Bank and OECD.
- European Commission (2018). Annual Report on European SMEs 2017/2018–SMEs growing beyond borders.
- European Commission (2015). Internationalisation of Small and Medium-sized Enterprises, Report 2015, Flash Eurobarometers 421, European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.
- ECSIP (2013). Study on Support Services for SMEs in International Business - Final report for DG Enterprise and Industry, European Commission, ENTR/90/PP/2011/FC.
- European Commission (2011). Opportunities for the Internationalisation of European SMEs Final Report.
- Federation of Small Business (2016). Destination Export –The Small Business Export Landscape. July 2016.
- Frenkel, M. and Walter, B. (2017). The EU-Japan Economic Partnership Agreement: Relevance, Content and Policy Implications, *Intereconomics*, Vol.52(6), pp.358-363.
- Fliess, B. and C. Busquets (2006), The Role of Trade Barriers in SME Internationalisation, OECD Trade Policy Papers, No. 45, OECD Publishing, Paris.
- Hayakawa, Kazunobu (2015), “Does firm size matter in exporting and using FTA schemes?”, *The Journal of International Trade & Economic Development*, 24:7, 883-905.
- Hessels, J., Parker, S, C. (2013). Constraints, internationalization and growth: A cross-country analysis of European SMEs, *Journal of World Business*, 1/2013, Vol.48(1), pp.137-148
- International Trade Centre (2018). Supporting SMEs through trade facilitation reforms: Toolkit for policymakers, Geneva.

- Lejarraga, L., Lopez-Rizzo, H., Oberhofer, H., Stone, S. and Sheperd, B. (2014). Small and Medium-Sized Enterprises in Global Markets: A Differential Approach for Services?, OECD Trade Policy Papers, No. 165, OECD Publishing.
- National Board of Trade Sweden and UNTAD (2018), The Use of the EU's Free Trade Agreements – Exporter and Importer Utilisation of Preferential Tariffs. Available at <https://www.kommers.se/Documents/dokumentarkiv/publikationer/2018/Publ-The-use-of-the-eus-ftas.pdf>.
- Neeraj, R.S. (2019). Trade Rules for the Digital Economy: Charting New Waters at the WTO, *World Trade Review*, Vol.18(S1), pp.S121-S141.
- Nilsson, L. and Preillon, N. (2018). EU Exports, Preferences Utilisation and Duty Savings by Member State, Sector and Partner Country, European Commission, Issue 2, June 2018.
- OECD (2017). Entrepreneurship at Glance 2017, OECD Paris.
- OECD (2017). Enhancing the Contributions of SMEs in a Global and Digitalised Economy, the Report for the meeting of the OECD Council at ministerial level, Paris
- Rensmann, T. (2017). Introduction, in Rensmann, T. (ed.), *SMEs in International Economic Law*, Oxford University Press.
- Urata, S. (2018). The Trans-Pacific Partnership: Origin, Evolution, Special Features and Economic Implications, *Journal of Southeast Asian Economies*, Vol.35(1), p.22(17).
- US International Trade Commission (2010). Small and Medium-Sized Enterprises: Characteristics and Performance, USITC Publication 4189, Investigation No 332-510, November 2010.
- Wang, H. (2017). An Asian Perspective on SMEs in International Economic Law Opportunities and Challenges Arising from the TPP, in Rensmann, T. (ed.), *SMEs in International Economic Law*, Oxford University Press.
- WTO (2016). World Trade Report 2016 Levelling the trading field for SMEs, WTO.



© Federation of Small Businesses

fsb.org.uk

 [federationofsmallbusinesses](https://www.facebook.com/federationofsmallbusinesses)

 [@fsb_policy](https://twitter.com/fsb_policy)

 [@fsb_uk](https://www.instagram.com/fsb_uk)

If you require this document in an alternative format please email:
accessability@fsb.org.uk

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of FSB. While every effort has been made to ensure the accuracy of the facts and data contained in this publication, no responsibility can be accepted by FSB for errors or omissions or their consequences. Articles that appear in the report are written in general terms only. They are not intended to be a comprehensive statement of the issues raised and should not be relied upon for any specific purposes. Readers should seek appropriate professional advice regarding the application to their specific circumstances of the issues raised in any article.

This report can be downloaded from FSB website at www.fsb.org.uk