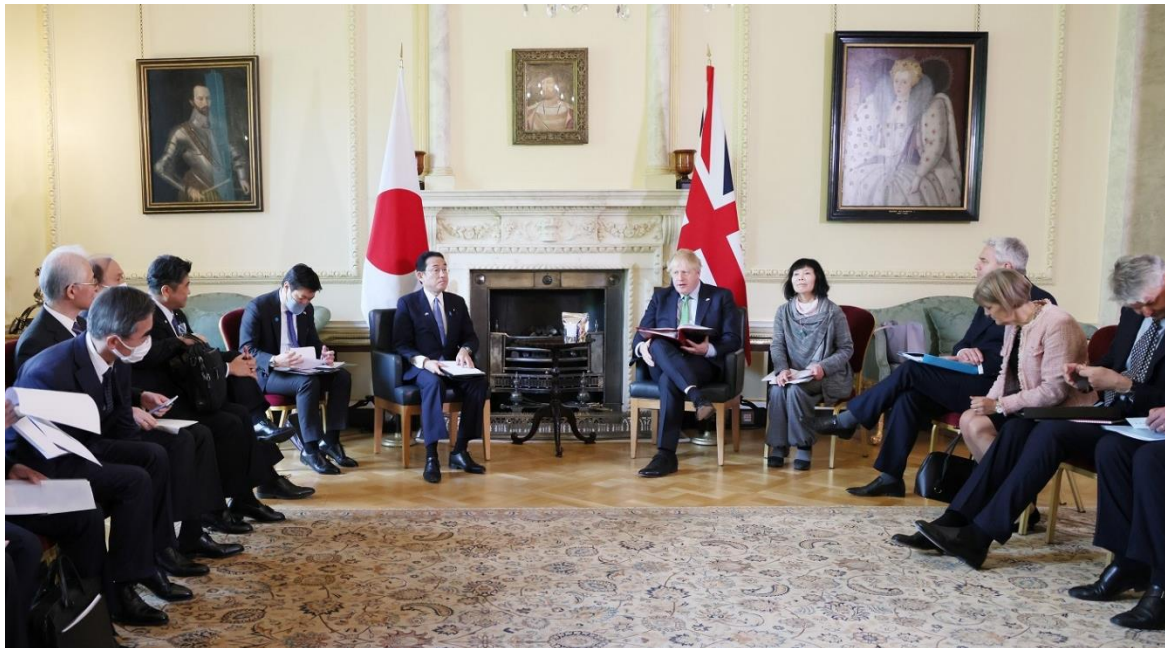




The Fate of the CPTPP: Effective use case as leader in free trade



On May 5, 2022, at a press conference on his visit to Southeast Asia and Europe, Prime Minister Kishida responded to a reporter's question, "...I believe that the UK joining [the TPP], which is an important partner in the field of trade and investment, and strategically, will be of great significance in forming a high standard, free and fair economic order in the Indo-Pacific region," he replied, expressing his expectations.

Photo: Cabinet Public Affairs Office

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While efforts to pursue free trade have stalled amid the growing geopolitical tensions, the time has come to restart the free trade agreement (FTA) strategy. The entry into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in all of the 11 original signatory countries and the United Kingdom's signing of a protocol to accede to the CPTPP in July 2023 may become triggers for doing so.

The U.S.-China confrontation has shifted from a tariff war to a struggle for high-technology supremacy and appears to be intensifying further. As seen in a speech given by U.S. National Security Adviser Jake Sullivan in April, meanwhile, the principle of protecting foundational technologies "with a small yard and a high fence" to strike a balance between advanced technology control and other economic areas has become clear.

In addition, the European Union's pledge to seek de-risking instead of decoupling is becoming widely accepted. This means that economic areas that are subjected to controls should be separated from others where freedom and dynamism should be sustained.

A study I conducted jointly with [Hayakawa Kazunobu](#), a senior researcher at the Institute of Developing Economies of the Japan External Trade Organization, and Ando Mitsuyo, a professor at Keio University, indicates that negative impacts of U.S. export controls on trade certainly exist for some products and companies, but have so far remained negligible at the macro and industrial levels.

U.S. high-tech export controls will be further enhanced with the involvement of Japan and other U.S. allies. However, there are moves in the business community that resist the expansion of controls. Unless there is a great deal of urgency, full decoupling may be averted. If so, we must not only discuss security, but also consider how to sustain the vitality of the economy.



Many policies related to the U.S.-China confrontation run counter to World Trade Organization (WTO) rules and other existing trade norms. WTO dispute settlement panels have ruled that U.S. and Chinese tariff hikes in the midst of the U.S.-China tariff war violate WTO rules. U.S. export controls and industrial policies being introduced in advanced economies are also likely to be incompatible with trade norms.

Even if it is difficult to encourage policy changes based on international rules, the rules-based international trade order must be maintained for areas that are unrelated to the security concerns of the parties to the conflict. In order to prevent the loosening of policy disciplines from spreading to emerging and developing economies, we must intentionally stimulate moves towards free trade.

Due to the United States' withdrawal from the CPTPP, it has become a forum of free trade-oriented countries sandwiched between the United States and China. The role played by Japan in coordinating between other CPTPP countries after the withdrawal by the United States has been highly regarded internationally as an indication of a new direction of Japan's economic diplomacy.

As the CPTPP represents the highest level of trade liberalization and international rules for emerging and developing economies, applications for accession to the CPTPP amount to firm commitments to free trade. Following the United Kingdom, China and Taiwan applied for accession to the CPTPP. Later, three Latin American countries and Ukraine followed suit (see table). Other countries such as South Korea, Thailand, the Philippines, and Colombia have been considering acceding to the CPTPP.

Developments regarding the CPTPP

2016	Feb	The TPP is signed by 12 countries including the United States
2017	Jan	The United States announces its withdrawal from the TPP
	Nov	Agreement in principle among 11 countries
2018	Mar	The CPTPP is signed by 11 countries
	Dec	The CPTPP enters into force in six countries (Mexico, Japan, Singapore, New Zealand, Canada, and Australia)
2021	Feb	The United Kingdom applies for accession to the CPTPP (establishment of a working group on the accession in June 2021, effective conclusion of negotiations in March 2023, signing of a protocol for accession in July 2023, domestic procedures in each country)
	Sep	China and Taiwan apply for accession to the CPTPP
	Dec	Ecuador applies for accession to the CPTPP
2022	Aug	Costa Rica applies for accession to the CPTPP
	Dec	Uruguay applies for accession to the CPTPP
2023	May	Ukraine applies for accession to the CPTPP
	Jul	Brunei becomes the 11th country to put the CPTPP into force (The CPTPP entered into force in Vietnam in January 2019, in Peru in September 2021, in Malaysia in November 2022, and in Chile in February 2023)

The CPTPP is an important forum in that it emphasizes the importance of free trade even under geopolitical tensions.



The following three points should be considered when considering allowing new participants in the CPTPP:

First, the implementation of the commitments in the agreement should be monitored, with rules clarified.

In particular, the chapter on electronic commerce stipulates three CPTPP e-commerce principles: cross-border free flow of data, the prohibition of data localization requirements for domestic information control, and the prohibition of forced disclosure of source code as software design information. As for the first two principles, however, public policy and security exceptions are allowed. Nevertheless, CPTPP provisions fall short of clarifying how far exceptions are allowed. Boundaries of exceptions should be clarified in preparation for responding to new CPTPP accession applications from countries such as China.

For instance, there are doubts about the compatibility of Vietnam's 2019 cybersecurity law with the prohibition of data localization requirements. The compatibility of laws in the existing CPTPP member countries with the CPTPP should be examined in detail to ensure that any international rules that are developed are effective.

Regarding security exceptions, a WTO dispute settlement panel, though based on a different context, made an important decision in December 2022 regarding measures under Section 232 of the U.S. Trade Expansion Act for steel and aluminum product imports into the United States. The panel rejected the notion that the appropriateness of the security exception is a matter for the instigating parties to decide for themselves, and expanded on the circumstances under which such exceptions would be recognized.

Second, when considering the accession of new potential members, the CPTPP members should comply with an Annex on accession procedures presented at the first meeting of the CPTPP Commission in January 2019 in order to dispel the impression that the process is driven by political considerations.

According to the annex, any economy aspiring to accede to the CPTPP must file an application for the accession and obtain the approval of all existing CPTPP members twice: once for the commencement of the accession process and once for the final terms and conditions for the accession reflecting the results of negotiations. In addition, any aspirant must demonstrate the means by which it can comply with all existing rules contained in the CPTPP.

Existing CPTPP members such as Vietnam, Malaysia, and Singapore obtained a number of exemptions under the state-owned enterprise chapter as a result of negotiations in developing the CPTPP. However, as the existing member countries are not required to make additional commitments in new accession negotiations, aspirant economies are naturally required to have a high level of discipline.

Given the above procedural provisions, it is natural that accession negotiations cannot be started for countries that engage in repeated, so-called, economic coercion, and fail to comply with international rules. Additionally, negotiations should obviously begin with those applicants that are prepared to proceed and that have completed the necessary procedures and not in the order in which formal applications have been filed.

Third, the CPTPP must be updated as necessary to remain a frontrunning, living agreement.

In particular, international rules on the digital economy have been updated through the Japan-U.S.

Digital Trade Agreement, and international agreements such as the Digital Economic Partnership Agreement (DEPA) are emerging. When it comes to data governance, harmonization between U.S. and European approaches remains an issue. The creation of disciplines on government access to private data, as a major matter of concern, has also become a hot topic. Norms related to artificial intelligence are also an important challenge. These matters must be considered along with potential connection between the CPTPP and the Indo-Pacific Economic Framework (IPEF) which is currently under negotiation.

Utilizing the CPTPP while considering its complementarity with other major free trade agreements such as the Regional Comprehensive Economic Partnership (RCEP) in East Asia could be a powerful combination in achieving a balance between security and the economy. We should make effective use of this international framework created through Japan's economic diplomacy.

Translated by the Research Institute of Economy, Trade and Industry (RIETI).* The article first appeared in the “Keizai kyoshitsu” column of The Nikkei newspaper on 8 September 2023 under the title, “TPP no Yukue: Jiyuboeki sendo e yuko katsuyo wo (The Fate of the CPTPP: Effective use case as leader in free trade).” The Nikkei, 8 September 2023. (Courtesy of the author)

*RIETI: <http://www.rieti.go.jp/en/index.html>

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