

TaPP MJMCE Joint Workshop: A Gold Standard UK-Switzerland FTA?

Summary

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This report is the outcome of a joint Trade & Public Policy (TaPP) Network and Manchester Jean Monnet Centre of Excellence (MJMCE) workshop on the ongoing UK-Switzerland trade negotiations.¹

Switzerland is a significant trading partner for the UK: in the period between 2022 Q3 and 2023 Q2, Switzerland was the UK's 7th largest trading partner, constituting 3.4% of the overall UK trade. As with other trading partners with pre-existing trade agreements with the EU, the UK negotiated an outcome to secure continuity of trading relations with Switzerland following withdrawal from the EU.

In the case of Switzerland, this was complicated by the fact that the EU-Swiss relationship is not covered by a single free trade agreement (FTA) but instead a set of bilateral agreements covering trade, fisheries, mutual recognition, agriculture, and so on.² A further complication was raised by the nature of the EU-Swiss relationship, whereby a number of these bilateral agreements are premised on legislative equivalence (e.g., in agriculture and mutual recognition), something that neither the UK nor Switzerland sought to pursue in their transitioned agreement. The current 2019 [UK-Switzerland trade agreement](#) incorporates these bilateral agreements, amending them where (for example, in the case of legislative equivalence) their approach was not considered desirable as the improved market access is necessarily linked to reduced flexibility in terms of regulatory autonomy.³ The gaps in coverage of the agreement, its fragmented nature, and its design (which reflects EU-Swiss relations) all spurred on the opening of negotiations in 2023 to conclude an [enhanced free trade agreement](#). The parties identified certain key objectives at the opening of negotiations:

A modern, comprehensive FTA will strengthen commitments to trade in areas including services, intellectual property rights, investment flows and digital trade, all of which are not included in our current agreement.

A new FTA will provide long-term legal certainty for business. It will enhance our Trade Agreement from 2019 and build on recent successes in our bilateral trading relations such as the extended Services Mobility Agreement and the Mutual Recognition Agreement in relation to Conformity Assessment, agreed last year. It will also reflect and complement our ongoing dialogues and areas of collaboration. It will further strengthen economic relations between Switzerland and the United Kingdom and provide an excellent basis for future cooperation opportunities, particularly on areas where both our countries are mutual leaders such as innovative research and development.⁴

To support analysis of an incoming UK-Switzerland enhanced FTA, the TaPP Network and MJMCE hosted a virtual workshop on Friday 1 December 2023, bringing together expertise from across the networks to consider the implications of the agreement. This report sets out the key insights from the workshop, which are of relevance

¹ The organisers are particularly grateful to Leah Tillmann-Morris for her invaluable assistance drafting and editing this report.

² Details can be found in a 2019 DIT report to Parliament available [here](#).

³ A similar decision was taken in relation to the trade agreements with Ukraine, Georgia, and Moldova where approximation to EU law was not transitioned for the UK agreements.

⁴ Full text available at <<https://www.gov.uk/government/news/uk-switzerland-joint-statement-may-2023>>

to both the current negotiation with Switzerland, and those with other international partners. Using, in part, the UK's recent agreements with New Zealand (UK-NZ) and Australia (UK-AU), possible negotiated outcomes are analysed in light of risks and opportunities for the UK.⁵

This note provides reflections on the following (expected) FTA chapters: financial services, mobility and services, SPS/Animal welfare, intellectual property, investment, digital trade, and procurement; and reflections on the following cross-cutting issues regulatory cooperation, environment and climate change, labour rights, health, and gender.

⁵ The texts of the UK - Australia and UK - New Zealand free trade agreements are available [here](#) and [here](#) respectively.

Financial Services

Bryan Mercurio (Chinese University of Hong Kong)

As with New Zealand and Australia, the potential financial services gains to be made from an FTA with Switzerland are great, and, financial services, representing a large proportion of Swiss and UK economies, will guide strategy for both parties. There are a number of key questions in the design of a financial services chapter. One is the question of who, what and which entities are covered in definitions of cross-border supply of financial services (e.g. territories/people etc). Another question is the scope of a service supplier for purposes of the chapter – the most common approaches include a *narrow* scope, limited to those institutions that are regulated and supervised as financial institutions within the domestic regulatory context, or *wider* scope, including regulated and supervised financial institutions as well as financial information providers (e.g. Bloomberg) and other entities within the sector. The UK agreements with Australia and New Zealand take the wider approach, whereas agreements such as the CPTPP adopt the narrower scope.

In negotiating the New Zealand and Australia agreements, the UK sought to secure a sound framework with ambitious commitments in market access and certainty for financial services suppliers. Since both are open economies, prioritising liberalisation of digital trade, and keen to collaborate in areas like FinTech and Green Finance, it was possible to develop modern agreements, with separate chapters on financial services and negative lists (unlike more traditional GATT or even CPTPP approaches).

The key differences between the Australia and New Zealand financial services chapters include a narrower set of substantive provisions from the Chapters on Investment and Services being incorporated into the Financial Services Chapter in the UK-NZ FTA; whereas the UK-AU agreement incorporates all of the major substantive provisions from Investment and Services (and in so doing is similar to most modern agreements, including the CPTPP). The Financial Services chapters of both the UK-AU and UK-NZ agreements contain the expected provisions such as National Treatment, as well as modern provisions on financial data and information that complement the digital trade chapter by prohibiting a party from restricting a financial service supplier of the other Party from transferring information where such transfers are necessary for the conduct of the ordinary business of the financial service supplier. The agreements also prohibit a Party from requiring, as a condition for conducting business in the Party's territory, a financial service supplier of the other Party to use, store, or process information in the Party's territory (with limited public policy exceptions).

Other issues worth noting include:

- Both agreements provide the widest possible prudential carve-out which gives scope and space to governments. Besides the usual caveat, that prudential measures that do not conform with the provisions of the Agreement shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement, there is no further qualification or limitation of the prudential clause, such as applied on a non-discriminatory basis, not to be applied to all financial sectors or a complete sub-sector, that the measure not be manifestly disproportionate to the attainment of its objective, etc.
- Both agreements contain provisions on transparency and sustainable finance.
- The UK-NZ FTA includes a provision on diversity in finance
- The UK-AU FTA contains extensive, but largely hortatory, provisions facilitating electronic payments, supporting interoperability and adopting/shaping international standards, and as mentioned, extensive provisions on regulatory cooperation.
- Neither agreement is subject to investor-state dispute settlement.

Gauging the actual gains of such agreements is complex. On the one hand, benefits can be expected to come from transparency, licensing and mutual recognition, as well as related issues covered in strong digital and other

chapters. An absence of investor state dispute settlement (ISDS) as an enforcement mechanism may raise concerns from some that these liberalisation commitments will become ineffective where instances of complexities and non-compatibility arise. In the UK-NZ case of dispute settlement, the requirement to have “expertise” and “experience” in proceedings essentially keeps the door closed to new voices in arbitration, while in both, cross-retaliation (e.g. suspension of financial services provisions) following a breach of any other chapter of the agreement is precluded.

Of note, the trade agreement with Switzerland will follow a pact on financial services cooperation concluded between the UK and Switzerland in December 2023. Titled the [Berne Financial Services Agreement](#), the Agreement is designed to, among other things, provide preferential access that allow for the provision of financial services (including asset management, banking, and investment services) to the Swiss domestic market more easily, and vice versa. In this regard, it is notable that the Agreement provides for mutual recognition of each other’s domestic laws and regulations on financial services. Moreover, the Agreement allows British insurance brokers to operate in the Swiss market without establishing a base there or going through the Swiss registration process – at this moment, the UK will be the only country exempt from this new requirement.

The approach taken in the Agreement is innovative, as it provides for increased access in financial services while maintaining high standards of regulation, market fairness and investor protection. It does not restrict either party from introducing domestic regulations but does provide a base for the two countries to work together in strengthening international financial standards. Something that they may choose to build on in a subsequent FTA.

Mobility & Services

Tonia Novitz (University of Bristol)

As two countries with strong service economies, services will be central to the strategic approach of both the UK and Switzerland. Switzerland is the UK’s third largest trading partner for services, after the EU and the US. Somewhat surprisingly, however, the services trading relationship to date has been dealt with via obligations of the WTO, and there has only been one significant intervention: the temporary [Services Mobility Agreement](#) (SMA), adopted in 2020, in the wake of Brexit. The SMA includes provision for expected elements e.g. transparency, mutual recognition of qualifications, etc. However, the SMA is in other respects extremely lopsided, with different obligations set out for Switzerland and the UK, in Annex 1 and 2 respectively. Under Annex 1, Switzerland allows British service suppliers to come for 90 days in a calendar year (Article 2.1) with no ‘short stay’ work permit (Article 4.1), but during this period work must be compliant with Article 6.2, which demands compliance with all the laws and regulations of Switzerland regarding social security and work measures, including Swiss minimum wage, collective wage agreements, etc. By contrast, Annex 2 on the UK side essentially seems to lay the foundation for an FTA chapter on mobility, allowing 12 months (subject to requirements) in a 24-month period (para. 11), as well as a labour-related clause seen in other recent agreements (e.g. UK-AU FTA) that temporary presence is not to interfere with or affect the outcome of any labour or management dispute or negotiation (para. 6). Perhaps most notable is the preclusion of agency workers, which seems to be an attempt to avoid exploitation (para. 2), given EU experience with temporary work agencies’ abuse of posting opportunities in construction and assembly line work ([Novitz and Andijasevic, 2020](#)).

Otherwise, immigration and labour standards provisions appear in different - but often siloed - forms across different agreements and regulations. For example, both Switzerland and the UK remain bound as WTO members by GATS Mode 4, and have obligations as members of the UN agency, the International Labour Organization (ILO). The experience of FTAs is that a labour chapter will be kept nominally separate from a chapter relating to ‘temporary entry for business persons’ (see the UK-AU FTA Chapter 11 & UK-NZ FTA Chapter 13). The question is how these can be integrated to ensure *integrated protection of labour standards* as regards professional services.

Thus, key questions for the UK-Switzerland FTA will be whether to move away from placing labour standards solely in the labour chapter, and whether standards can be mainstreamed into the mobility chapter. The UK-AU FTA provides some precedent for this, avoiding any obligation regarding immigration requirements (Article 11.6) but addressing issues concerning labour disputes including employment of those involved in such a dispute (Article 11.4.6) and stating that ‘each Party’s measures regarding employment shall continue to apply, including those concerning minimum wages or collective wage agreements’ (Article 11.4.7). There could also be integration of – or at the very least, cross-referencing of chapters on - gender equality, such as salary discriminatory distinctions/thresholds, or topics like sustainability, building on EU experience of ‘trade and sustainable development’ chapters in FTAs.

Other important questions will centre on the FTA’s treatment of movement of temporary agency workers, cross-border operation, and the extent of attempts to distinguish immigration and mobility of services (politically high stakes). Looking forward, these provisions will also need to be coherent with the UK’s digital services expansion strategy (e.g. potential use of algorithmic black boxes), and address expanding task-based platform work (e.g. logistics and delivery).

SPS/ Animal welfare

Fiona Smith (University of Leeds)

Although smaller than Swiss and British services sectors in financial terms, Sanitary and Phytosanitary (SPS) and animal welfare are often some of the most politicised and contentious agreements to negotiate. The UK’s top agri-food exports to Switzerland are scotch whisky, breakfast cereals and beef, while fresh and chilled cuts of lamb are in the top 25 exports. The UK’s top agri-food imports are coffee, chocolate, soft drinks, wine, and juices. The negotiation comes at a pivotal point for the UK, following its accession to the CPTPP which has a different attitude to SPS risk than the EU. While some focus has narrowed to animal health rather than broader animal welfare issues, the UK has a strong legacy on food safety, food quality and GI protections.

As noted above, while the 2019 UK-Switzerland FTA incorporates many elements of the EU-Switzerland bilateral agreements, it selectively disapplies sections not applicable to the UK post-Brexit. It incorporates the EU agreement’s mutual market access, reduces selected tariffs, and removes certain barriers, but excludes certain annexes (4-6 & 11) which are sticking points for the UK post-Brexit, since they rely on dynamic regulatory alignment to create a common veterinary area between the EU and Switzerland. This provides important context in relation to SPS measures and animal welfare.

Lessons to learn from the UK-Australia and UK-New Zealand FTAs:

SPS

- To avoid potential conflict between ‘**evidenced risk**’ and ‘**precautionary**’ approaches to risk regulation, the UK-Switzerland agreement could draw from the UK-NZ FTA (5.8.1), which requires accordance with international standards, guidelines and recommendations on risk analysis (rather than “on science”, as in the UK-AU FTA (6.5) which could be interpreted as more narrow).
- Including **regional variations** for SPS measures would allow flexibility, given the UK’s devolved competence for agriculture (as seen in both the UK-NZ FTA (6.6) and the UK-AU FTA (5.7)). The UK’s usual strategy of seeking zero tariff quota deals (especially for beef, fruit and veg) may be more difficult to pursue with Switzerland, which is protective of agri-food, and may want to condition access based on SPS or quality.
- Determining **equivalence** in country standards along existing international standards for equivalence, which is a regulatory neutral solution (as seen in the UK-NZ FTA (5.6)).

- Taking the opportunity to allow **digital checks** for compliance with SPS requirements (as seen in both the UK-AU and UK-NZ FTAs) would accord with the UK's interest in moving to behind the border checks and digital documents. Including **governance** arrangements, such as technical groups, could create opportunities to discuss difficult issues (e.g. equivalence) away from political heat (as seen in the UK-NZ FTA).

Animal Welfare

- If **ambitious**, the agreement could follow provisions in the UK-NZ FTA (6.4&6.5), such as no rollback commitments, opportunities for collaboration in international forms like the OIE and protection of rights to regulate.
- However, the UK-Switzerland agreement could aim to go even further than both, by recognising the **context of the food system**, and the connections between agri-food production, climate and biodiversity, food consumption and public health, and labour exploitation (as seen in the UK-EU Trade Cooperation Agreement). The circular economy idea that encompasses the health agenda and way we produce is gaining traction, and could be especially relevant given the public health links of the UK's top Swiss agrifood imports (chocolate, wine, etc).

The best outcome for the UK would be to build on the text of the excluded annexes in the existing agreements, without going so far as to create dynamic regulatory alignment with the EU, and to have two **thematic chapters** in the new FTA dealing with all SPS issues, and with all animal welfare issues, rather than split across several chapters as in the UK-NZ and UK-AU FTAs, and for those chapter to be subject to dispute settlement, unlike the UK-NZ and UK-AU FTAs. Certain **legal ambiguities** in the UK-AU and UK-NZ FTAs, including on the importing state's right of refusal (on SPS equivalence grounds), or on parties' right to resort to precautionary measures (for which the UK is currently dependent on GATT Article 20), should be avoided.

Intellectual property

Yenkong Ngangjoh Hodu (University of Manchester)

The intellectual property (IP) chapter of an FTA is important because IP motivates companies and people to enhance innovation. As a facilitator of business ascension and wider economic growth, the protection of IP rights is essential. It is a key part of the UK exports, and IP is comparably significant in the Swiss export markets too.

Post Brexit, the UK has wanted to seek a higher standard of protection than common international standards (such as the WTO standards). With very few exceptions, these high ambitions were largely met in the extensive provisions of the UK-AU FTA (with certain sectors, notably the audio-visual sector, excluded on request). However, the key outstanding area was geographical indication (GI), which was afforded no real protection beyond the rendezvous in two years (2025), to the anger and dismay of farmers and Scotch whisky providers in the UK.

Although the current Swiss-UK agreement has no IP/GI chapter, both parties have indicated their intention for this. Learning from the Australian experience, the UK's priorities will be to seek the same high level of protection for copyright, etc, but also, as a matter of great concern, to seek provisions on **GI protection**. This could become a contentious issue between the UK and Switzerland, particularly on protected agrifood products such as cheese. In the UK-Swiss case, moreover, both parties will need higher protection in the **pharmaceutical** sphere (i.e. extension of patents for medicaments etc). Both have relatively high (8-10) years of protection (compared, for example, to the 5 years in Australia), and given both offensive interests in the sector, as well as stronger incentives and shifting mindset since the pandemic, the agreement is likely to tend to harmonisation towards the higher end. Lastly, the **broadcasting** sector is likely to receive continued special attention, as the UK will

want to maintain the public nature of the broadcasting sector – and both the UK and Switzerland will seek to emulate the model of their FTA in their respective future trade negotiations.

Investment

Nicolette Butler (University of Manchester)

The UK-AU FTA is the key precedent for the investment chapter of the UK’s negotiations with Switzerland. Largely, the UK-AU FTA is modelled on the CPTPP (concluded fast under the pressure of political timetables); it was replicated in various substantive (but vaguely drafted) provisions, such as international minimum standard of treatment, fair and equitable treatment (FET), and the annex on indirect expropriation, as well as the CPTPP’s (widely considered to be ineffective) right to regulate.

However, there are certain *differences between UK-AU and CPTPP* worth noting:

- Firstly, there is no inclusion of investor state dispute settlement (ISDS) in the UK-AU FTA; it instead uses the general dispute settlement mechanism. While this was a measure pursued by the UK, the inclusion of ISDS in the latest Switzerland-Indonesia FTA indicates it could become an issue in negotiations.
- Secondly, the UK-AU FTA limits the definitions of investor and investment, which has important implications for determining the range of situations to which obligations in the investment chapter apply.⁶
- Thirdly, the general exceptions provisions (from GATT and GATS) are incorporated into the investment chapter (unlike in CPTPP, where they don’t apply to investment).
- Lastly, the UK-AU FTA goes further than CPTPP in terms of investment liberalisation commitments, including additional prohibitions on performance requirements, prohibitions on imposing nationality or residency requirements for senior managers and boards of directors, and market access obligations.

Given this precedent, *future recommendations for UK-Switzerland* include:

- Moving away from more **traditional, and vague, forms of legal drafting**, particularly for provisions that tend to be interpreted liberally by tribunals (e.g. expropriation, Fair and Equitable Treatment (FET), Most Favoured Nation (MFN) and National Treatment (NT)). Getting legal protections right can reduce the need for mechanisms such as ISDS.
- Formulating a more effective provision on **right to regulate** and solving the inherent problems in current format.
- Drafting **exceptions provisions** more carefully, and specifically for investment, rather than importing exceptions from trade provisions (e.g. GATT), as has been a general trend created by states.
- Considering creating **interpretive guidance**, to promote even greater legal clarity and predictability, for the avoidance of doubt, and to give states more control over the texts, once negotiated
- Maintaining a **nuanced approach to ISDS**. It is currently unclear what the UK government’s position on ISDS is, and where the UK ought to go is still under internal discussion, leading to a gap between substance and procedure. So far, Switzerland and the UK have mainly been users of these provisions rather than having claims made against them, and both partners might benefit from a more nuanced approach, i.e. including ISDS in some chapters/agreements but not others.

⁶ For (i) *legal entities as investors*, UK-AU goes further than CPTPP, requiring the entity be “carrying out substantial business activities in the territory”, or be owned or controlled by a national or enterprise with substantial business activities there; for (ii) *natural persons as investors*, UK-AU is unclear about the status about dual UK & AU nationals; and for (iii) *the definition of investment*, UK-AU requires an asset has “characteristics of an investment”, e.g. commitment of capital, expectation of gain/profit, assumption of risk, thereby excluding certain assets from qualifying as a protected investment

Digital Trade

Shamel Azmeh (University of Manchester)

Digital trade holds a fascinating status as an area that is both an issue that is cross-cutting of all other chapters, and, as an area of a dynamic trade policy which is growing and changing. The UK has wanted to position itself as a leader, including with standalone agreements with Singapore and Ukraine as well as digital trade chapters in the Australian and New Zealand FTAs. Switzerland and the UK have several similarities and opportunities for mutual benefit with regards to their large digital-intensive services sectors, high ambitions in digital trade, and appetite for substantive and harmonised digital trade regulation (e.g. through proactive participation in the WTO's JSI). Recent UK trade agreements have focussed on a number of issues:

- i) **Digital trade facilitation**, including (permanent) commitments for tariff-free electronic transmission, paperless trade, electronic signatures and authentication, and digital identities.
- ii) **Data governance**, including a commitment to free cross-border flow of data and bans on data localisation measures. The UK-AU FTA even promoted public access to government data. This, and financial data governance, could be controversial with Switzerland.
- iii) **Source code and algorithms** which may have restrictions from government access, as in UK-AU FTA.
- iv) **Digital inclusion**, which in the UK's agreements with Ukraine and Singapore centred around internet access, SMEs and gender issues. Notably, digital trade chapters tend *not* to deal with digital labour, equality, etc, which tend to be found in other chapters.
- v) **Innovation and cooperation** clauses to facilitate experimentation, innovation and anticipation of emergence of new technologies, as in the UK-AU FTA and the digital agreements with Ukraine and Singapore (e.g. the digital trade agreement with Ukraine contains provisions related to cooperation on the governance of "Emerging Technology"). The governance structure of cooperation varies, but possible mechanisms include the "digital economy dialogue" in the Singapore DEA to bring researchers and industry to come together.

Nevertheless, digital trade is a shifting global picture. While the above issues have become common in digital chapters in trade agreements, recent discussions of the implications of these measures have taken place. In the US, for example, the United States Trade Representative (USTR) has in November 2023 suspended key elements of digital trade in the [Indo-Pacific Economic Framework \(IPEF\)](#) initiative and [at the WTO](#), reflecting debates in the US administration and Congress on the implications of these rules for issues such as competition, tech regulation, and personal data. The UK's opportunities for innovation may lie especially in data analytics and AI, although for a number of issue areas (e.g. data governance), the UK may be required to uphold EU standards.

Public procurement

Albert Sanchez-Graells (University of Bristol)

Negotiations with Switzerland in public procurement seem to face two primary challenges. First, that the legal structure of Swiss and UK FTAs is different for procurement chapters. This is acknowledged in the UK's strategic approach document,⁷ but there is no clear indication of the UK's willingness to follow either the Swiss or its own approach. Second, it is unclear to what extent the UK seeks to obtain market access substantially beyond

⁷Department for Business & Trade, '[UK-Switzerland Free Trade Agreement. The UK's Strategic Approach](#)' (15 May 2023) at 25.

Switzerland's commitments under in the World Trade Organization Government Procurement Agreement (WTO GPA), and how that reflects market access under EU-UK TCA.

Regarding the structure of the procurement chapter, it would be advisable for the UK-Switzerland FTA to follow the 'Swiss model' and to incorporate by reference the WTO GPA obligations already binding the UK and Switzerland, as well as making explicit in the FTA itself, all additional obligations for the parties, if any.⁸ This would simplify the current three-layered structure arising from the current 2019 UK-Switzerland Trade Agreement which in part refers to the WTO GPA, in part incorporates by reference the EU-Switzerland Agreement on certain aspects of government procurement,⁹ and in part establishes additional bilateral rules. However, it should be noted that the procurement chapter in the UK-Switzerland Trade Agreement was designed to generate continuity in case the UK did not manage to join the WTO GPA by 'Brexit day'.¹⁰ As the UK did secure WTO GPA membership in time, the transitory nature of the procurement chapter in the UK-Switzerland Trade Agreement was rendered largely redundant. Whether any regulation in a procurement chapter in the future UK-Switzerland FTA is required will depend on whether there are market access obligations beyond those arising from the WTO GPA itself.

Regarding market access, the UK's strategic approach document indicates that 'The UK will seek to maximise access for UK businesses to compete for procurements at all levels of Swiss government, whilst ensuring appropriate protections remain in place for key public services such as NHS health and care services and broadcasting'; and that there is interest in securing 'greater access to Swiss public sector procurement contracts. Consistency of access and rules across EEA EFTA and the EU is desirable for businesses.' This is a slightly puzzling position, as the Swiss Annexes to the GPA already include all levels of Swiss government (including federal, cantonal, and local).¹¹ Concerning substantive coverage, it should be noted that the EU-UK TCA goes beyond WTO GPA obligations in relation to utilities procurement in the gas and heat industry, as well as in relation to a limited number of local services (old Part B services). Those obligations are partly contained in the current 2019 UK-Switzerland Trade Agreement, although not in relation to local services. It seems unlikely that Switzerland would be willing to grant enhanced access to the UK but not the EU/EEA in industries such as telecoms, rail, and financial and professional services. It also seems unlikely that the UK would be able to grant Switzerland market access beyond EU-UK TCA commitments. Given all this, the need for a procurement chapter in the future UK-Switzerland FTA seems questionable and, if there was limited practical value in GPA+ liberalisation, legal certainty would be enhanced by limiting UK-Swiss procurement liberalisation to WTO GPA commitments.

Regulatory Cooperation

Christian Delev (University of Bristol)

Regulatory cooperation chapters and clauses often receive less attention than other areas of negotiation, however they are essential in bundling the agreement that emerges, determining whether the agreement will have a long life, and whether dialogue and diplomacy can be established on the basis of regulatory trust.

⁸ On the importance for the UK to adopt this regulatory strategy more generally, see A Sanchez-Graells, 'The growing thicket of multi-layered procurement liberalisation between WTO GPA parties, as evidenced in post-Brexit UK' (2022) 49(3) *Legal Issues of Economic Integration* 247-268.

⁹ Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement - Final Act - Joint Declarations [2002] [OJ L114/430](#).

¹⁰ Department for Business & Trade, '[Continuing the UK's trade relationship with the Swiss Confederation: parliamentary report](#)' (20 February 2019) paras 82-89.

¹¹ See Switzerland's Annexes 1-3 to the [WTO GPA](#).

Effective cooperation is instrumental, if not essential, in facilitating harmonisation and addressing any issues that might arise over time.

The UK-AU FTA has two dedicated chapters, Chapter 26: Good Regulatory Practices and Chapter 27: Cooperation, which mainly build on the cooperation framework found in the CPTPP. These chapters include provisions covering the promotion of regulatory compatibility, transparency and effectiveness, as well as obligations on how regulatory impact assessments must be conducted, public consultations to inform decision-making, and on the use of plain language and public accessibility of publication. Importantly, these rely on institutions for facilitation; domestic Contact Points, and a Committee on Cooperation with a mandate for implementation, promoting and facilitating trade and investment, and pursuit of economic opportunities (albeit limited to “trade and” areas –that is, gender, labour, etc)). The similarities with the UK-NZ FTA provisions (in Chapter 21: Good Regulatory Practice and Regulatory Cooperation), include an emphasis on transparency and requirements that parties “must maintain” internal coordination process and “endeavour to carry out “proportionate impact assessments” of proposed major regulatory measures and periodic reviews of measures “at intervals [each party] deems appropriate”. However, the framework for cooperation is envisaged through contact points and certain activities rather than a designated institution.

Drawing lessons for UK-Swiss cooperation, this suggests that there is no “one size fits all approach” – the sought-after gold standard must not be allowed to become “golden shackles”; i.e. a replication of approaches that operate well in one context which might not be relevant or useful when applied in another. The form and degree of UK-Swiss cooperation should suit the regulatory convergence and economic integration between partners, addressing issues such as scope (of regulatory cooperation), input legitimacy and transparency of publication, good governance assurances and broader cooperation duties. At a minimum, it will be necessary to ensure domestic contact points that can establish dialogue, to set meetings and cooperation activities periodically, and require dialogue with stakeholders to ensure decisions are informed. An Australian-style Committee on Cooperation is uncertain in the Swiss context: it could allow more cohesion and opportunities for dialogue, but also step on other committees’ toes. For both of these approaches, budgeting is an essential issue to ensure the provisions can actually be executed and the institutions maintained: the bodies with ringfenced resourcing will likely be more impactful.

Beyond the design of institutions, maintaining momentum, and building in openness to coordination, can be core challenges. Trade agreements can rely on specific obligations, either within designated regulatory coordination chapters, or by putting these into chapters that are binding, including stricter timetables that ensure coordination remains non-political and technical. Ensuring an adequate degree of openness, to civil society and commercial actors, seeking to influence implementation, can be achieved through regular meetings (e.g. the EU’s attempts). While potentially challenging at first, once norms develop, these fora become ingrained, and it becomes easier for such actors to navigate and to get involved.

Environment and Climate change

Emily Lydgate (University of Sussex)

Extracting lessons from the UK-AU and UK-NZ FTAs for the Swiss negotiations should start with a recognition that negotiating optics are very different. Rather than formalising an exciting expansion and deepening of ties with allies in the Pacific, the UK-Switzerland agreement will be shaped by a dynamic of triangulation, which is unique for countries that both have deep regulatory integration with the EU. In the initial continuity agreement phase of Brexit negotiations, the UK (unsurprisingly) elected not to roll over the Swiss agreements that would have put them within the remit of the European Environment Agency and require regulatory alignment across a large range of EU environmental laws. While this may seem to be a blank slate, additional reference points have subsequently come from the UK’s renegotiation on climate and environment with the EU in the TCA; in particular, a model including commitments to climate non-regression, with a stronger enforcement mechanism, and a

rudimentary requirement for dynamic alignment on the environment. As such, the dynamic for a future Swiss agreement is less binary as between full alignment or none.

Against this background, there are a number of objectives that the UK and Switzerland will want to achieve in their climate and environment negotiations:

- i) **Carbon Pricing** is inescapably a triangular issue with the EU. While Switzerland has linked carbon pricing to the EU ETS, the UK government has sent opaque and confusing signals on its intentions leading to the plummeting of UK carbon price, which could be concerning for the Swiss. A future Labour government seems more likely to link back with the EU, which would absolve it from CBAM charges and requirements, in which case the UK would have a lot to learn from the Switzerland's experience as the only country that has done this successfully. (The FTA could underline a position on climate pricing and accounting methodologies, selecting or prioritising some of the vast number of channels that work towards cohesion.)
- ii) **Investment in climate & environment goods and services:** as an agreement between two global leaders in banking and financial services, this represents an opportunity to send strong signals about the importance of green finance and green investment, and an opportunity for dialogue between regulators on how to approach issues that straddle the finance and environment side of the FTA. This has precedents: typically, in the trade and environment chapter this may be covered in a non-regression requirement that covers investment; while in the UK-NZ FTA, both sides agreed not to provide export finance for fossil fuel development (it is also explicitly listed in the UK's strategy documents).

While both areas could be opportunities also for non-regulatory communication and innovation, it is also possible that they look very similar to some of the UK-AU and UK-NZ provisions. The trade and environment chapter of the UK-AU FTA is largely copy-pasted from the CPTPP, but has an important enforcement mechanism backed by a sanction (following the US model), and although it mentioned climate change and the Paris Agreement, it did not explicitly commit to 1.5 degree target. The UK-NZ FTA was stronger and included groundbreaking clauses on fossil fuel subsidy elimination and phase out of export finance for fossil fuels (similar to the NZ-EU FTA, so clearly driven by New Zealand). Given that Switzerland is not a big fossil fuel producer, the latter is more relevant.

Labour rights

James Harrison (University of Warwick)

Designing a labour chapter in a free trade agreement should start with the question of the purpose of a labour chapter. The chapter may seek to achieve several aims: to demonstrate a shared commitment to fundamental values, to identify and address potential or actual problems in labour protections of parties, to address labour impacts of the agreement itself, or even to demonstrate leadership internationally. While not mutually exclusive, consideration of such aims is important for understanding previous agreements, and lessons that can be transferred into future agreements.

Labour provisions in the NZ and AU FTAs broadly follow the labour provisions model of many FTAs globally. The set of labour commitments focus primarily on ILO Fundamental Rights, including a) freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced or compulsory labour; c) the effective abolition of child labour and, a prohibition of the worst forms of child labour; and d) the elimination of discrimination in respect of employment and occupation. They stipulate cooperative activity around issues such as modern slavery, corporate social responsibility (CSR), and gender equality in the workplace, with institutions of an independent advisory group and inter-governmental committees to ensure this.

The important innovation of these recent agreements is to make labour provisions subject to a *binding* dispute settlement process if the other party does not comply, leading to “compensation and the suspension of concessions or other obligations [as] temporary measures available”. While this has been championed as seriously strengthening the chapter, its importance depends on the willingness of both parties to bring cases. Governments are unlikely to bring cases unless under pressure from civil society; thus, strengthening this provision would require allowing non-state actors (e.g. trade unions) to bring complaints. The Single Entry Point of the EU and the USMCA provide exemplars. The EU model also recognises the need for a tailored action plan for identifying sectors where labour issues could arise, rather than relying on generic trade agreement models and formulae - for the UK and Switzerland, migrant labour in the agriculture might be an example.

The USMCA model in particular allows complaints mechanisms to target individual units of production (i.e. factories) rather than whole states. This model has its own difficulties: to be effective, it depends on dedicated funds and institutions (e.g. an advisory group that identifies priority issues), and there is also a recognition that, over time corporate resistance to trade unions instigating cases could grow. Lastly, while this might not be such a problem in the context of UK-Switzerland, if the UK were to seek a similar model with other partners, especially developing countries it could replicate similar concerns around unequal treatment of labour violations in the US and Mexico under USMCA (in reality it is only those in Mexico that will be targeted). New versions should ensure parity of treatment across trade partners.

Notably, none of these previous agreements should be simply transplanted. The kernel of the idea of a new form of dispute settlement in the USMCA could help to structure a chapter relevant to the UK, but labour provisions in a UK-Swiss context should respond to more specified issues, such as digital economy labour standards and agriculture.

Health

Ben Hawkins (University of Cambridge) & Chris Holden (University of York)

Trade agreements have impacts on health in various ways: the cross-border movements of people and goods that have implications for communicable diseases; recruitment of health professionals and recognition of professional qualifications; and access to and pricing of medicines and medical technologies. They can have structural effects on population health and are relevant to the developing field of study on commercial determinants of health (CDoH), given economic impacts such as distributional effects on poverty and inequality (geographically and sectorally). Regulation of health-impacting products, such as alcohol and tobacco can be impacted by regulatory cooperation chapters, ISDS mechanisms, and implementation of agreements via joint councils and committees which often receive less scrutiny than trade negotiations.

The size and structure of the UK and Swiss economies means that the health impacts of agreements may be more limited than for other recently concluded (e.g. Australia) and ongoing negotiations for the UK (e.g. India & the US). Key issues within the negotiations relating to health are likely to centre around the movement of professionals within medical professional sectors and pharmaceuticals trade (incl. pricing and availability measures).

In terms of public health, the overall economic and distributional effects of the agreement are likely to be limited in terms of both aggregate GDP and health inequalities. Regarding agri-food and drinks sectors, the pressures coming from UK farming unions defending members from foreign competitors with lower production standards and economies of scale (as seen in recent agreements e.g. the UK-AU FTA) will be less relevant, given comparatively high Swiss standards and highly protected agricultural sector. UK food producers will be seeking expanded access and GI protection, e.g. for Scotch Whisky, but this too will have limited health impacts for the UK. Of greater potential importance would be the potential use of the agreement by tobacco and alcohol, and other health harming industries to oppose health policy, especially if ISDS mechanisms are included in the

agreement. The UK's proposed policies, to ban tobacco sales to those currently 14 and under, and stringent regulations of e-cigarettes, may provoke challenges from the tobacco industry. There is a recent precedent of global tobacco companies based in Switzerland (i.e. Philip Morris International) using a Swiss bilateral investment treaty to challenge tobacco control measures in a third country (i.e. the introduction of on-package warning labels in Uruguay). Even where no such challenges arise, their mere possibility may lead to a chilling effect and *de facto* shrinking of regulatory space on unhealthy products – giving health advocates a strong rationale to advocate for a public health carve-out of ISDS measures (CPTPP serves as a precedent), as well as specific provisions to protect the right to regulate to protect public health and to insulate regulatory committees and implementation of mechanisms from industry influence along the lines envisaged by the Framework Convention on Tobacco Control Article 5.3. While the inclusion of ISDS in the agreement is unlikely, this cannot be ruled out. Even where ISDS is not included, commercial actors may use regulatory cooperation, discussed above, in similar ways to stymie the development of effective health policies.

Political forces can influence health measures in trade agreements for the better or worse. The political salience of the NHS means that the UK has strong incentives to present agreements in ways that will support public health services. The NHS has been explicitly listed in a number of chapters under the UK-AU FTA and further detailed scrutiny is required to assess what the effects of UK trade strategies on the NHS are. Overall, the UK-AU agreement has been seen as a missed opportunity, negotiated at pace, on the basis of the government's political priorities, rather than a full assessment of the wider health impacts. More broadly, areas most important for health can appear outside of health chapters of an FTA. While in the EU, there have been strong movements to increase transparency and public engagement with the development of trade objectives, the UK has struggled to maintain internal and cross-departmental transparency and strategic coherence within government (a hangover from Brexit and the guarded nature of TCA negotiations).

Gender

Anne Thies (University of Glasgow)

The inclusion of gender provisions in trade agreements is still a relatively fringe occurrence; thus, negotiators of chapters on trade and gender have generally observed the necessity to be constructive and pragmatic, rather than pursuing the full ambition for content and visibility that might be implied by domestic policy, institutions, and attitudes.

The UK's approach is clear on gender equality, and recent agreements signed by the UK (both [AU](#) and [NZ](#) FTAs (Ch. 24 & 25)) have included chapters on gender mainstreaming that recognise the importance of addressing trade barriers that affect women. By contrast, Switzerland has had no chapters on gender in its trade agreements to date. Switzerland has had an unfortunate history as a straggler on gender issues among western counterparts, with universal suffrage only granted in 1971; however, gender issues have had decades to expand into mainstream politics, with strategies such as the Swiss [Gender Strategy 2030](#) demonstrating the political commitment to achieving gender equality across all areas of public policy and society. In the [World Economic Forum's Global Gender Gap Report 2023](#), Switzerland ranks not far below the UK, at 21st, compared to the UK's 15th.

While it may not be realistic to expect a designated gender chapter in the UK-Switzerland FTA, some of the purposes of such a chapter could be achieved via mainstreaming and integration in other chapters. While [the positioning of cross-cutting issues remains subject to ongoing negotiation, the inclusion of labour rights has been part of Switzerland's negotiation objectives related to trade and sustainability](#) from the beginning. This could allow also for targeting businesses on gender equality (e.g. corporate responsibility, holding companies to account to perform due diligence in supply chains) – although this would require UK enthusiasm and willingness to include such commitment, going beyond the integration of international treaty obligations under the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)) and [relevant Conventions of International Labour Organization \(ILO\)](#) into the FTA. Other innovative and proactive provisions

could go beyond measures for non-discrimination, and begin to include measures regarding the facilitation of participation. The [2022 UK-Singapore Digital Economy Agreement](#) contains provisions on digital inclusion, and e.g. the [NZ-UK FTA includes a chapter on digital trade recognising the importance of digital inclusion of, inter alia, women](#). Facilitating digital inclusion could be very relevant to Switzerland, where [less than 10% of information and communications technology \(ICT\) graduates are women](#), possibly reflecting that the digital world overall is far less accessible to women. Another gender-proactive approach could include measures on SMEs targeted for women, considering that the strengthening of SMEs, together with sustainable development, digitalisation and increased exporting, has been placed at the heart of [Switzerland's current vision for economic promotion](#).

Conclusions

Silke Trommer (University of Manchester, MJMCE) & Gregory Messenger (University of Bristol, TaPP Network)

Free trade agreements customarily follow on from negotiating partners last concluded agreements. For the UK, this means using its hybrid EU/US model that it has developed over the course of negotiations with Australia and New Zealand (with an eye to acceding to CPTPP). In the case of Switzerland, there are sufficient specific dynamics in the relationship that have to be taken into account (in particular, the triangular relationship with the EU). As such, the agreement will be both important as another step in the UK's developing trade agreement network, but could also lay markers for future UK agreements with other partners in some areas. This report sought to bring together those UK-Switzerland specific points of interest, and those that may have wider application.