

Trade Bill (existing international trade and other related agreements)

Department for International Trade

RPC rating: fit for purpose

Description of proposal

The UK currently enters into commitments or obligations in international trade agreements with ‘third’ (i.e. non-EU) countries as a member of the European Union (EU). The Government have committed to providing continuity in existing trade and investment relationships with third countries. This will require the transition of existing EU-third country free trade agreements (FTAs), and other EU preferential trade arrangements, into domestic law. Changes required to implement such obligations into domestic law are currently given effect largely via directly-applicable EU regulations and decisions, or through secondary legislation under a power in the European Communities Act 1972. Upon leaving the EU, the UK will need a legislative framework to enable it to implement such obligations. The proposal within the Trade Bill is to create powers to implement non-tariff obligations of trade agreements via secondary legislation. Complementary powers to implement changes to tariff-related measures are being sought in the Customs Bill.

Upon leaving the EU, the UK will also have to rejoin the Government Procurement Agreement (GPA)¹ as an independent member. The powers will, therefore, also cover any procurement obligations arising from the UK’s independent membership of the GPA.

The European Union (Withdrawal) Bill proposes to preserve existing EU legislation flowing from current EU trade agreements, and provide powers to enable this legislation to be amended to work domestically in the UK. If the Bill is passed, it should allow many of the UK’s existing international trade obligations flowing from signed and fully-implemented agreements to continue to have effect in domestic law on EU exit. The EU (Withdrawal) Bill will not, however, provide powers to give effect to any legislative change required to replicate the terms of agreements that have not been implemented fully by EU legislation prior to EU exit day. In addition, the powers in the EU (Withdrawal) Bill are limited to two years after EU exit day and would not,

¹ The GPA is a plurilateral agreement within the World Trade Organisation framework. The GPA provides mutual access to government procurement markets.

therefore, allow for changes necessary to ensure that transitional adoption agreements continue to be operable after that date. This explains the requirement for the provisions in the Trade Bill.

Impacts of proposal

There are currently around 40 EU trade agreements with third countries at various stages of development. These agreements cover FTAs, economic partnership agreements and association agreements. Table 1 of the impact assessment (IA) lists the countries that have signed trade agreements with the EU and the value of that trade. Overall, these account for 13 per cent of the UK's total trade (exports plus imports). Trade with Switzerland, Canada and Norway² accounts for about half of this.

The Department explains why it is not possible to give an exact number of businesses affected by the power (paragraph 49). However, it provides indicative figures, including administrative data from HMRC that show over 141,000 UK (VAT-registered) businesses exporting goods to non-EU countries and ONS data showing over 320,000 (15 per cent) of non-financial registered businesses either exporting or importing goods or services (both data relating to 2015). Tables 2 and 3 of the IA present indicative figures on the top five goods and services exported to, and imported from, some of the countries potentially in scope of the power. Goods (both exports and imports) is headed by 'pearls, precious or semi-precious stones and precious metals'. Services is headed by 'travel' (imports) and 'other business services' (exports).

The impact of the IA's two options - the do nothing and the preferred option outlined above - have been compared against a counterfactual of the (continuation of) existing EU trade agreements with third countries and membership of the GPA. The Department explains: "*This is the most appropriate baseline for comparison because the policy measure involves the replacement of an already existing level of provision provided by existing EU agreements and the GPA. This will give the most meaningful assessment of the impact on those affected*" (paragraph 22). Given that the powers will be used to retain trade agreements in place at EU exit, the Department explains that it would be preserving, as far as is possible, the status quo and that there should not be significant costs to businesses or consumers (paragraph 62).

² Including Iceland and Liechtenstein.

The Department acknowledges, however, that specific changes to secondary legislation may result in some transitional or familiarisation costs to businesses. This would potentially affect businesses that export to, or import from, countries with which the EU has a trade agreement. As noted above, the IA provides an indication of the potential number and type of businesses likely to be affected. The Department explains why it is not possible to estimate this cost and, therefore, provide a meaningful equivalent annual net direct cost to business figure at this stage. In summary, this is because:

- uncertainty over the number of agreements in scope at exit day and the number and detail of specific changes to domestic legislation that will need to be made;
- since changes required to domestic law to implement international agreements are currently given effect largely via directly applicable regulations, there are limited examples available of previous implementation through secondary legislation; and
- negotiations on the UK's withdrawal from the EU will have implications for the way in which the agreements are transitionally adopted.

The Department does, however, set out hypothetical examples to illustrate the potential changes that could be made under the powers and the associated impact on business. These examples cover Mutual Recognition Agreements (MRAs), geographical indications, safeguard provisions in trade agreements and updates to the GPA (pages 14-15). In these illustrations, familiarisation costs are generally described as minimal. For example, in the case of MRAs, the IA explains that familiarisation would involve referring to an updated list of organisations providing 'conformity assessments' on the relevant website.

Quality of submission

The Department has provided a sufficient assessment of the impact of the proposal at this stage. The IA does a good job of explaining a fairly technical area very clearly. The IA includes an indication of the number and type of businesses affected, illustrative examples of the nature and size of this impact and a clear explanation for why a more quantitative assessment is not possible at this stage. The Department states that: "*The impact of secondary legislation made under the Bill will be assessed in line with the appropriate framework when there is an impact on business*" (paragraph 67). Subject to the better regulation framework requirements that will apply to this parliament, the RPC would expect to see these assessments in

order to validate the impacts on business and to scrutinise the analysis of any wider societal impacts.

The RPC welcomes the explicit discussion of the counterfactual in the IA and agrees with the Department's assessment that the (continuation of) existing agreements with third countries and membership of the GPA is the most appropriate baseline for comparison. This means that the 'do nothing' option would have a (non-monetised) negative net present value (NPV) (rather than zero, as in the common case where the baseline and 'do nothing' option are the same). This reflects the increased risk in this option that the UK would not be able to transition all obligations of the existing EU agreements in a timely way, with consequent negative impacts on business and wider society.

The IA provides a useful summary of estimates of the economic benefits of existing free trade agreements (pages 8-9 and annex B). For example, the recent EU-South Korea FTA has been estimated by Copenhagen Economics to result in a net welfare gain to the UK economy of around £0.5 billion per year. In providing powers to implement obligations through secondary legislation, the Department's preferred option mitigates the risk that the UK would not be able to transition all obligations of the existing EU agreements in a timely way. It, therefore, reduces the risk that these economic benefits may be eroded. Since the baseline for comparison is the (continuation of the) existing agreements with third countries and membership of the GPA, the preferred option would also have a negative NPV (mainly accounted for by transitional costs such as familiarisation) but much less so than the do nothing option. Overall, the Department's approach presents the comparison of options in an appropriate way.

The RPC welcomes the commitment to undertake post-implementation reviews (PIR) of subsequent changes to secondary legislation (paragraph 88). The IA would benefit from saying briefly how this might be undertaken, in particular whether a single over-arching PIR covering the full set of changes might be the most appropriate approach.

The IA could be improved in the following areas.

Wider societal impacts. The IA includes short sections covering impacts on consumers and government (paragraphs 58 and 59). The IA would benefit from some further discussion of such wider societal impacts, including those on employees.

Risk. The IA has a very short section on ‘risks and assumptions’ (paragraph 81), although there is discussion of the risks associated with the do nothing option elsewhere in the IA. The IA would benefit from further discussion of risk, in particular the risk even under the preferred option of the UK not being able to fully transition its current trade agreements, as a member of the EU, with third countries into a bilateral agreement with the same provisions. This should include evidence that the transition of obligations is sufficient to maintain trade volumes, addressing potential issues such as where existing trade agreements include clauses that no party can enter into subsequent agreements that disadvantages the other party.

Small and micro business assessment (SaMBA). The IA includes a SaMBA (pages 15-16). This provides indicative figures, using ONS and BEIS Small Business Survey data, on the size of the small businesses population potentially affected by the proposal. Since the policy objective is to provide continuity of existing trade arrangements it is not expected that there will be significant impacts on small businesses. The SaMBA does, however, acknowledge that any familiarisation costs could affect small businesses more significantly than larger businesses. The SaMBA refers to existing Departmental engagement with small business stakeholders and states that more specific engagement will occur as the Trade Bill passes through Parliament. The IA would benefit from providing, or referencing to, further details of this engagement and how it might lead to mitigation of any significant impacts on small businesses.

Businesses engaged in cross-border procurement activities. The IA notes that “Leaving the GPA would have a significant impact on UK businesses that specialise in the provision of public goods and services...” (paragraph 55) but that “It is not possible to estimate the number of UK businesses who engage in cross-border procurement activities...” (paragraph 75). The IA would benefit from reviewing studies, such as by the OECD and the EU, into cross-border procurement, and explaining why it is not possible to provide an indicative figure of at least the number of UK businesses potentially affected.

Familiarisation costs. The IA’s consideration of this issue would benefit from discussing the impact of ‘rules of origin’ requirements and whether this might mean that familiarisation costs extend significantly beyond exporter or importers.

Aggregated business impact. The IA should provide greater recognition that, even if the impact per business is expected to be small, aggregate and total impact could be significant because of the large number of businesses potentially affected and the linkages among those businesses serving specific trade-dominated sectors. The

Department should accordingly change, or provide context to, the characterisation of costs being “*likely small*” in the summary sheets of the IA.

Focus on non-tariff elements of trade agreements. The IA’s discussion of trade benefits would benefit from identifying more clearly the specific role of non-tariff elements in trade agreements.

Devolved administrations (DAs). The IA explains that devolved settlements mean that DAs cannot presently pass laws that are incompatible with EU law and that this has the effect of ensuring a common, cross-UK approach for the implementation of EU trade agreements, even in areas of devolved competence (paragraph 9). The IA also explains that the proposal’s powers will be made available to the DAs, allowing them to implement obligations of trade agreements in areas of devolved competence (paragraph 19). The IA would benefit from exploring further the implications of the new legislative freedom for DAs in this area.

Relationship to other IAs. Although not within the scope of the present IA, the IA would benefit from clarifying how (i.e. in which subsequent IAs) the costs and benefits to the UK of the following will be captured:

- moving from the current EU-UK trade arrangements to alternative arrangements with the EU; and
- subsequent negotiated changes to trade arrangements with third countries.

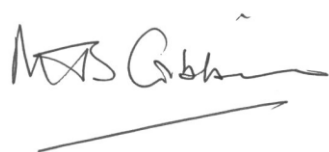
On the latter it would be helpful to confirm that this would be undertaken against a counterfactual of remaining within the current (EU) third country agreement.

Departmental assessment

Classification	Under framework rules for the 2015-17 parliament: qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	Not monetised
Business net present value	Not monetised
Societal net present value	Not monetised

RPC assessment

Classification	Under framework rules for the 2015-17 parliament: qualifying regulatory provision
Small and micro business assessment	Fit for purpose



Michael Gibbons CBE, Chairman