

Trade Bill (existing international trade and other related agreements)

Department for International Trade

RPC rating: fit for purpose

Overview

On 29 September 2017 the RPC issued a fit for purpose opinion on the impact assessment (IA) on the Trade Bill which was introduced during the 2017-19 Parliament.¹ The present document reviews a revised IA on the new version of the Trade Bill being introduced during the current Parliament. The new Trade Bill involves some changes, notably the addition of data collection measures and the establishment of an independent Trade Remedies Authority (TRA). The impact of the revised Bill has again been assessed against a baseline of a continuation of the existing trade agreements with third countries and membership of the Government Procurement Agreement (GPA)² provided under EU membership. Given that the proposal aims to replace this on a 'like-for-like' basis to ensure continuity, the Department expects no substantial additional costs to business. This appears to be a broadly reasonable assessment, which also seems to apply to the additions to the Bill. The Department also helpfully provides some description against a 'do nothing' counterfactual.

Although the RPC repeats its 'fit for purpose' rating for the revised IA it notes that the description of potential changes to secondary legislation and their associated possible impact should be strengthened significantly. In particular, the RPC is strongly of the view that the Department should include illustrative examples of the potential changes that could be made under the powers granted under the Bill, as was provided in the previous IA, or explain clearly why this is no longer appropriate. In addition, while the Department has addressed some of the comments from the previous RPC opinion, there remain significant and new areas for improvement, as described below.

¹ <https://www.gov.uk/government/publications/trade-bill-rpc-opinion>

² The GPA protects UK suppliers against discriminatory treatment by procuring governments in covered procurements. The GPA continues to apply for precisely 11 months from date of enactment.

Description of proposal

The UK left the European Union (EU) on 31 January 2020. It is the stated intent of the UK and the EU that the UK will continue to be treated as a Member State for all trade treaty purposes until the end of the transition period.

Current EU trade agreements with third countries cover Free Trade Agreements (FTAs), economic partnership agreements and association agreements. Annex B: Table 1 of the IA lists the countries with EU trade agreements and the value of that trade to the UK. The total value of trade under these agreements account for around 16 per cent of the UK's total trade (exports plus imports); trade with Switzerland, Norway and Japan³ accounts for just under half of this amount. The IA should however explicitly differentiate between countries whom the UK has concluded continuity or successor DTAs and those whose status is currently unresolved.

As the UK leaves the EU, the Government has committed to providing continuity as far as possible in existing trade and investment relationships with third countries. The Government has also committed to becoming a party to the GPA in the UK's own right following the transition period. The UK will therefore require a legislative framework to fully support such commitments.

The Bill creates powers that supplement existing legislative powers derived from the Taxation (Cross-border Trade) Act 2018 and the European Union (Withdrawal) Act 2018. The powers will enable:

- i. full discharge of obligations arising from existing international trade agreements with third countries, specifically the GPA, government procurement chapters of Trade Agreement Continuity⁴ agreements, and Mutual Recognition Agreements⁵ (MRAs) on conformity assessments;
- ii. establishment of an independent TRA as a Non-Departmental Public Body of the Department to act as the UK trade remedy investigatory body; and
- iii. collection of information on exporters and exporting activities across the UK, which will enable HMRC to share data with various departments and organisations, including the Department.

³ Including Iceland and Liechtenstein.

⁴ These agreements are legally distinct from the respective EU agreements. As of 8 January 2020, the UK Government has signed trade continuity agreements with 48 countries. This means that the UK has secured continuity for £109.4 billion of UK trade so far.

⁵ An MRA enables a business to get their product tested at a designated Conformity Assessment Body (CAB) in their home country against the destination country's regulations, and for this to be recognised and accepted in the country to which they are exporting.

Impacts of proposal

The RPC reviewed an IA of a previous version of the Bill and issued a ‘fit for purpose’ rating on 29 September 2017. The current IA on the new version of the Bill includes the impacts of the following amendments to the Bill:

- i. clarification of acts and agreements⁶ that have been entered into or implemented since the initial submission of the IA and interact with the powers in the Bill;
- ii. addition of powers granting the TRA independence and status as an arms-length body. The revised IA concludes that this addition will impose no direct costs on businesses as the body already exists within the Department; and
- iii. addition of powers relating to collection and sharing of export data (asking businesses whether or not they have exported goods and/or services in the previous year). The Department concludes that because the question is voluntary and binary (Yes/No), additional costs to businesses are negligible.

The IA appraises the proposal against a counterfactual where the UK continues to be treated as an EU Member State for the purposes of existing EU trade agreements with third countries continue and the GPA. This allows a more precise evaluation of the impacts to the UK. 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 agreements and the GPA. This will give the most meaningful assessment of the impact on those affected*” [paragraph 33]. The Department also provides some description against a ‘do nothing’ counterfactual. Whilst there are areas for improvement regarding the ‘do nothing’ counterfactual discussed below, the RPC believes that the appropriate counterfactual has been used.

The IA explains that costs and benefits could not be monetised due to the difficulty of estimating the number of businesses affected by the powers granted under the Bill. The IA, therefore, does not provide an equivalent annual net direct cost to business (EANDCB).

The Department explains why it does not give a robust number of businesses affected by the powers granted under the Bill, nor the costs to those representative

⁶ Including the European Union (Withdrawal) Act 2018 and the Taxation (Cross-border Trade) Act 2018.

businesses. However, it provides indicative figures using administrative data from HMRC to estimate that over 150,000 UK (VAT-registered) businesses export goods to non-EU countries; this picture is fleshed out by ONS data indicating a total of over 340,000 (14 per cent) of non-financial registered businesses export and/or import goods and/or services. Both estimates are based on data relating to 2018 (paragraph 75).

The powers to enable the implementation of transitioned agreements, such as the GPA, trade continuity agreements and MRAs, are not expected to result in any direct costs to businesses or consumers. This does not however apply to FTAs coming into force or extended during the transition period. The Department states its commitment to preserve as much of the *status quo* for businesses and consumers as possible (paragraph 26).

The Department acknowledges, however, that specific changes to secondary legislation may impose transitional or familiarisation costs on businesses. These costs would potentially affect businesses whose production and/or supply chains run through third countries. The Department expects these costs to be negligible, given that the anticipated impact of this proposal is to maintain continuity for businesses. The RPC expects any potentially discriminatory costs to be evaluated in subsequent secondary legislation IAs, including costs that result from restructuring import, export or production habits post-transition, as a result of any valuation or certification changes.

Quality of submission

The overall assessment that the powers under the Bill are unlikely to have significant *direct* impacts on business appears to be broadly reasonable, against the counterfactual of continuing existing trade agreements with third countries and membership of the GPA as provided under EU membership. This is because the current arrangements provide for the continuation of those arrangements until the end of the transition period. The proposal contains powers to enable the government to replace these arrangements on a 'like-for-like' basis to ensure continuity, where existing legislation does not provide sufficient powers to do so. The Department also provides a satisfactory explanation of why the new data collection measures and the new independent TRA are unlikely to involve significant costs.

The Department also helpfully provides some description against a 'do nothing' counterfactual. The RPC finds that the IA is still 'fit for purpose' against the criteria that we base this assessment on (calculation of EANDCB and assessment of the

impact on small and micro businesses). However, the description of potential changes to secondary legislation, and their associated possible impact, should be strengthened significantly. In particular, the RPC is strongly of the view that the Department should include illustrative examples of the potential changes that could be made under the powers granted under the Bill, as was provided in the previous IA, or explain clearly why providing this information is no longer appropriate. Also, the IA does not contain any discussion of a possible increase in workload for the TRA which may require additional resources. While the Department has addressed some of the comments from the previous RPC opinion, there remain significant and new areas for improvement, as described below.

Areas addressed from previous opinion

The RPC welcomes the fact that a number of its comments on the former IA have been addressed by the Department; these include post-implementation reviews, societal and aggregated impacts of the policy and particularly non-tariff measures. The RPC commends the inclusion of an expanded section in Annex A of the updated IA addressing the types of NTMs that may arise in the context of international engagements.

The IA would benefit significantly from improvement in the following areas

Risk: The revised IA has a very short section on “risks and uncertainty” (paragraph 97). Although there is discussion of the risks associated with the ‘do nothing’ option, the IA would be significantly improved from further discussion of risks of costs to businesses in the preferred option 2, in addition to any indirect costs that could result from precautionary business responses to risk. In particular, the IA would benefit from discussion of the risk that under the preferred option the UK would not be able to fully transition from current EU trade agreements with third countries to equivalent agreements, with the same conditions, and within the anticipated time period should be properly addressed in the IA. This assessment should include: a discussion of the agreements already concluded (including any changes in conditions); evidence that such transition of obligations would maintain trade volumes; and a consideration of potential complications such as clauses within existing trade agreements that prevent parties from enter into subsequent agreements that disadvantage other parties to the original agreement.

The IA would benefit from exploring the scenario and associated costs where there is not continuity of procurement and mutual recognition obligations for businesses. The RPC would expect a proportionate assessment of risks, including sectoral and regional aspects, in IAs accompanying secondary legislation.

Small and Micro Business Assessment (SaMBA): The IA includes a SaMBA, which provides data on the current size distribution of UK importers and exporters potentially affected by the proposal. The SaMBA also notes that the UK's commitment to contribute to the specific GPA working group that is considering best practice in supporting the participation of small and micro business (SMB) in trade. On the basis that the Department does not anticipate any significant impacts on businesses (let alone SMBs), the SaMBA does not go into detail on potential disproportionate impacts on, possibly exemption of SMBs or mitigation of these impacts for SMBs. The Department has committed to producing IAs on associated secondary legislation, subject to the better regulation framework requirements. The RPC expects all such IAs to include SaMBAs that address appropriately any disproportionate impacts on SMBs and possible exemption or mitigation of such affects. It is also important for these assessments to differentiate more clearly between small and medium enterprises and small and micro businesses.

Devolved administrations: The previous RPC opinion commented on the original potential new legislative freedoms for devolved administrations (DAs). The updated IA has removed this mention, but it remains unclear as to whether such legislative freedom is proposed to exist under the Bill. The IA would benefit from clarification as to the legislative powers of DAs after implementation, particularly with respect to sectoral and regional effects.

Cross-border procurement: The IA should explain whether the Department has sought additional information on cross-border procurement, as recommended in the previous opinion, and how it has used the information it has gathered to improve the quality of the IA.

The 'do nothing' scenario: The Department has helpfully provided a description of the 'do nothing' scenario. This would be improved by discussing the agreements that the UK has already concluded in its own right, such as with South Korea, Norway and Iceland, which would appear to take effect in the 'do nothing' scenario.

Cost of preferred option: The previous RPC opinion recommended that the Department should change or provide context to the characterisation of costs being regarded as "likely small". The revised IA characterises these as "n/a". This is not consistent with wording used later in the IA stating that "there may be some familiarisation costs". The IA suggests that there are "no immediate costs or benefits to businesses associated with the primary powers" in the Bill (paragraph 31). The IA should therefore change "n/a" to a more applicable term or provide context to its use.

The IA would also benefit from considering whether there will be additional costs to businesses of maintaining continuity of existing agreements, such as obtaining legal or tax advice.

Areas for improvement arising from changes to the Bill

MRA impacts on businesses: The revised IA explains why it is not possible to give the exact number of businesses affected by the Bill to amend domestic legislation relating to MRAs and therefore does not monetise the impact, although it would have been helpful if the Department provided a range or other approximate indication for the number of businesses potentially affected. The IA should attempt to monetise the costs outlined in the ‘do nothing’ option of a requirement for UK exports to undergo multiple (foreign as well as domestic) conformity assessments. This approach would give a better indication as to the potential scope of the impacts.

Familiarisation costs: The Department has agreed to submit “any subsequent Impact assessment(s) that accompany secondary legislation where relevant” (paragraph 97). The RPC commends this commitment and would particularly like to see these IAs evaluate the potential aggregated familiarisation costs that the Department was unable to quantify in this IA as required by the Better Regulation Framework.

Establishing an Independent TRA: The Department states that “the proposed measures [to establish an independent TRA] are not expected to result in additional costs to businesses... given the primary purpose is a change in legal status only” (paragraph 81). The IA would benefit from outlining the costs associated with running an independent body even if they are borne by the UK government, alongside outlining intended enforcement powers possessed by the TRA that may impact businesses.

Data collection: The IA would benefit from a discussion as to whether there may be any issues regarding the representativeness of the data collected, given that the question will be voluntary.

Departmental assessment

Classification	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 the framework rules for the 2017-19 Parliament: qualifying regulatory provision To be determined once the framework rules for the current Parliament are set. ⁷
Small and micro business assessment	Sufficient

Regulatory Policy Committee

⁷ The Government is yet to set the better regulation framework for the current Parliament. This includes the setting of a business impact target, its scope and metric, and the appointment of an independent verification body. The RPC is, therefore, unable to confirm the BIT classification, or validate the estimated business impact figures, for any regulatory proposal at present.