



**Trade and Investment Assessments:
Additional guidance for departments,
with case history examples**

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Summary and Key Points

This document was created to meet the recommendation in the review of the trade and investment (T&I) pilot, which recommended that additional guidance and training should be developed to assist departments in considering the impacts of T&I. This document provides practical guidance with 'case history' examples, which we hope will help departments explain whether their proposal can be expected to have T&I impacts and, where appropriate, improve their assessment of such impacts. It should be noted that this document does not add any additional framework requirements or rules for departments.

This guidance, among other things, aims to give an indication to departments as to what is expected of them analytically when answering the T&I question, this includes clarification between quantitative and qualitative asks (page 13) and areas that should be considered in T&I assessments - corresponding with Annex 3 of the Better Regulation Framework Guidance (BRFG) (pages 6 and 7). This guidance also includes a diagrammatic version of the annex on page 8.

Case histories examples used to aid departments in answering the T&I question

While the T&I question is binary (yes/no), the RPC recognises that there could be a range of responses to the T&I question, depending upon the measure's intended effects. The case examples aim to give examples of good practice and, where relevant, the RPC's suggested improvements.

This guidance provides illustrative examples, including in areas such as childcare, the Space sector, the banning of energy drinks to children, medicines and medical devices and the enactment of marine conservation zones.

FAQs/issues, other available resources, and other areas to consider sections

These sections have been developed to supplement the BRFG, providing policy teams with additional areas to consider, answers to commonly asked questions (collected as part of the review of the T&I pilot), and a convenient place to find a list of the resource and contacts available to policy teams when developing T&I assessments. Departments are encouraged to engage with BRE, DIT and the RPC where appropriate, the RPC particularly welcomes engagement with Departments at consultation stage when considering T&I impacts.

Purpose of this document

This document helps departments to consider trade and investment (T&I) impacts in regulatory impact assessments (IAs), providing practical guidance with ‘case history’ examples. This guidance aims to increase the quality of T&I assessments in IAs and set out the RPC’s expected best practice. Specifically, this document addresses the IA template “*T&I question*”: ***Is this measure likely to impact on international trade and investment?***¹

Departments need to contact DIT where T&I impacts have been demonstrated and should include a T&I assessment in their IAs to be consistent with the UK’s international obligations and strive to demonstrate Good Regulatory Practices² (GRPs).

Annex 3 of the BRFG includes a list of questions departments should consider when writing their IAs³. Additionally, it contains advice specific to a wide variety of potential regulatory situations, including: goods regulations; service regulations; the WTO Technical Barriers to Trade agreement (TBT); (other) international obligations; and other specific conditions that would result in departments being required to contact DIT.

This guidance was created following the review of the T&I questions pilot: “*More and better-quality guidance and training should be developed to assist departments in considering the impact of proposals on trade and investment.*” In addition, just under 70 per cent of BRU respondents asked for more guidance, training, case studies and examples from the RPC.

This document does not add any additional framework requirements or rules for departments.

Policy Background

The UK government’s trade priorities include: negotiating Free Trade Agreements (FTAs) with countries; continuing to abide by its World Trade Organisation (WTO) obligations; and demonstrating GRPs internationally. The policy-making process needs to reflect these goals when designing regulations. Therefore, DIT and BRE formally require and encourage departments to consider the effect that regulations might have on T&I.

T&I impacts should be analysed at an early stage, during policy development. The T&I question is a final check to ensure that impacts have been considered. Additionally, the UK’s international obligations under the WTO TBT agreement highlight the importance of the T&I question.

What is a trade and investment assessment and when is it required?

The T&I question **must be answered in all IAs** as stated in the BRFG. Specifically, a department should assess whether the measure could create a TBT. The justification and assessment should be proportionate to the size of the potential effect on T&I. Please see the [RPC’s proportionality guidance](#).

T&I and the RPC

DIT leads on T&I but has worked collaboratively on the T&I question with BRE and the RPC. Given that the RPC already scrutinises all major regulatory proposals⁴, it was asked to provide advice on T&I impacts to departments.

¹ IA template page 1; in ‘Yes/No’ format. Additionally, the IA template’s ‘evidence base’ page includes a paragraph specific to the T&I question.

² A paper by the European Commission in 2016 promoting transparency and involving stakeholders in the regulatory process - <https://trade.ec.europa.eu/doclib/html/154381.htm>

³ ‘International Trade and Investment Key Considerations’, Annex 3, BRFG. This document was created by DIT, based on the more detailed Technical Barriers to Trade (TBT) guidance.

⁴ De minimis policies should still consider T&I impacts as they may still be required to notify DIT.

While the quality of a department's T&I assessment does not affect the RPC's 'fitness for purpose' rating, the RPC will comment on the quality and proportionality of department's assessments overall. Prior to the review of the pilot, T&I assessments received informal comments in a separate RPC document. Following the pilot, the RPC will now include its T&I question comments in the main body of an RPCs published opinion⁵.

What this document is not

This document does not create new framework requirements or expand what the RPC can -red-rate' on to include assessment of T&I impacts. Equally, this document is not the sole guidance for assessment of T&I impacts. The RPC recommends policy teams consult Annex 3 of the BRFG, DIT's TBT guidance paper and/or contact DIT for analytical support.

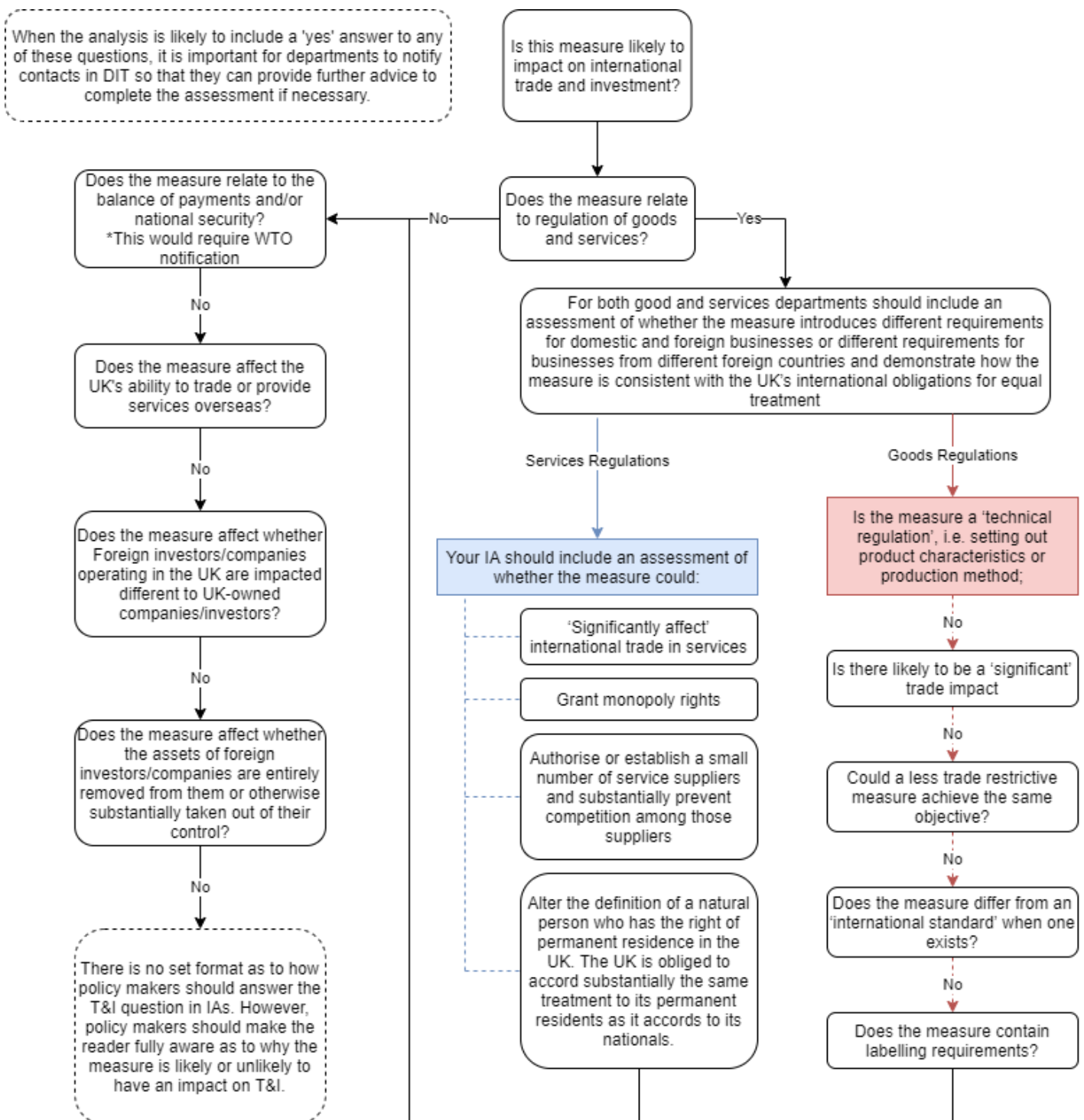
Flow Chart illustration of Annex 3 in the Better Regulation Framework guidance

In collaboration with DIT and BRE, the RPC has created a diagrammatic illustration of the BRFG Annex 3 in the form of a flow chart to aid departments in considering whether their measure has an impact on T&I. (see below). This flow chart does not contain any additional asks of departments that are not already required by the BRFG; it only illustrates them in a step by step approach.

Departments should aim to make it clear to the reader (if appropriate) as to why they have concluded that their policy does not have a trade and investment impact, if it is not otherwise clear why this would be the case. Where 'yes' is answered to any of the questions in the flow chart the department should notify contacts in DIT, so that further advice can be provided to complete the assessment (**as indicated in the top left box**). Please see the "contacts and resources" section for departmental emails.

⁵ Comments made by the RPC are now included in the 'Areas for Improvement' section of opinions where applicable.

Figure 1: Flow Chart



Answering the T&I question

While the yes/no T&I question is binary (yes/no), we recognise that there could be a range of responses to the T&I question, depending upon the measure's intended effects. The case examples below aim to give illustrations of good practice and, where relevant, RPC suggestions for improvement. The following sections outline case examples across the spectrum of possible conclusions, from a definitive "no", through to a definitive "yes". This list is not exhaustive:

- Answer: "No" - Obviously not relevant;
- Answer: "No" – Not 100% clear;
- Answer: "Yes" or "No" – grey area / unsure;
- Answer: "Yes" - Not 100% clear; and
- Answer: "Yes" – Clear and confident.

No - Obviously not relevant

For some proposed regulations, no significant T&I impacts are foreseen. In these cases, it will often be sufficient to simply respond 'No' to the question in the IA template and give only a very brief explanation in the main body of the IA. This might be the case, for example, where measures are entirely domestically focused in areas that do not involve firms with foreign interests. This might include cases where T&I impacts are theoretically possible but very far removed from the initial impact of the measure

Amendment to the Early Years Register and General Childcare Register, including threshold for compulsory registration 2014 (RPC13-1905(4)-FT-DfE) [final stage IA – Secondary legislation]

In this IA the Department identified that there were two sets of different requirements for childcare providers in the UK from two different registers. The IA states that it was unhelpful and confusing as those providing care for children of a variety of ages had to join both registers. Furthermore, some of the arrangements were unnecessarily prescriptive and did not effectively contribute to child safety or the quality of care.

The proposal is considered not have an impact on international trade and investment as the aim of the measure was to streamline the requirements to businesses of signing up to two registers (of which current providers were already members of). The RPC would expect any impact on T&I as a result of this measure to be highly speculative and very far removed from the initial impact (e.g. an overseas business choosing to invest in the UK solely because they only had to sign up to one register not two).

No – Not 100% clear

However, in most cases it will not be obvious that there would be no T&I impacts. While some legislation may not be expected to affect T&I, this may not be immediately clear. For example, the policy area may be commonly associated with T&I, there might be a similar piece of legislation that deals with T&I or the sector under question may have unusual characteristics that exempt it from having a T&I impact. Where applicable, this should be explained in the T&I section of an IA.

Departments that answer ‘No’ to the T&I question should give a justification proportionate to the potential uncertainty/ambiguity of the policy’s impacts on T&I. For example, policies associated with fishing would usually be expected to have a T&I impact given the size of the sector’s trade flows and the international status of the waters from which they are obtained. The policy team for the “Designation of the third tranche of marine conservation zones” explained in detail as to why their policy would have no T&I impacts (below).

Designation of third tranche of marine conservation zones Year (RPC-4197(2)-DEFRA) [final stage]

The objective of the policy was to designate a third and final tranche of ‘marine conservation zones’ (MCZs) in English inshore waters and offshore waters adjacent to England, Wales and Northern Ireland. The department described MCZs as an essential component of an ecologically coherent network of marine protected areas.

The marine economy contains activities relating directly and indirectly to trade and have been subject to significant foreign investment. Areas affected include commercial fisheries, ports/harbours, renewable energy, oil and gas, and recreation. The Department argued that the designation of the 3rd tranche of MCZs was unlikely to substantially affect trade and investment for the following reasons:

- i) MCZs had been designated in areas of low commercial activity, largely avoiding core fishing grounds or oil and gas resources, which could be of trade interest;
- ii) Relevant industries had been consulted prior to designation, permitting significant time for any mitigation/movement required; and
- iii) While there was significant uncertainty as to the effect of environmental regulation on patterns of trade and investment, empirical evidence suggested these impacts were likely to be small. Further, the measure did not include different requirements for domestic and foreign businesses.

The RPC commended the department for consulting with other countries (France, Belgium and the Netherlands) on the proposal.

Yes/No – grey area / unsure

For many policies, the existence and/or the nature of T&I impacts could be unclear. These grey areas can be caused by contentious legislation, unclear policy impacts or expected uptake rates. They can also be dependent upon how industry reacts to a change. The department should provide a proportionate justification for its T&I answer.

The following case study attempts to illustrate that some T&I impacts may not be immediately obvious and could depend upon the response from industry to the regulation.

Banning the Sale of Energy Drinks to Children [Consultation stage IA – secondary legislation]

This policy aimed to reduce children’s overconsumption of caffeine caused by the excessive energy drinks consumption, through introducing an age threshold for purchase. While the department considered labelling initiatives, it concluded that *“such changes would influence the terms on which energy drinks could be imported and sold in England, potentially introducing a technical barrier to trade, and have therefore not been pursued.”*

However, the Department included a TBT assessment, which stated that substantial impacts on T&I were not expected, while acknowledging that this ban could reduce the number of imported energy drinks. The IA assumed a displacement effect of 90% (children swapping to soft drinks over energy drinks).

The Department's assessment is to be commended and could be improved further by gathering additional data on energy drinks imported into the UK.

T&I impacts in respect of vending machines were also important, given that the regulation would have required owners to modify their vending machines to consider the user's age. The potential TBT could make exporting to the UK more expensive than elsewhere.

In the example above, the T&I impacts are fairly certain. An example of greater uncertainty might be where the activity isn't currently trade-related but could become so in the future (or vice versa).

Yes- Not 100% clear

Some legislation will have T&I impacts whose extent may not be clear or obvious. These IAs would benefit from articulation of the potential nature and/or scale of the impact. This could be done through providing the size of trade flows and how the measure affects them, alongside identifying the major importing/exporting nations; and, if unable to quantify, then qualitatively explaining the potential impacts. While these are not required in T&I assessments, they could help to better articulate the impacts of the proposal.

Departments could consult industry stakeholders to gauge the market's size, as was included in the Space Industry IA, because it was enabling a trade-related market to form in the UK.

Space Industry Regulations 2020 [Consultation stage IA]

The Department for Transport and UK Space Agency identified that there is a large potential market and significant risks associated with enabling commercial spaceflight launches from the UK. The main barrier to the formation and development of a UK-based industry was considered to be too much uncertainty about how these risks will be managed, mitigated and distributed among stakeholders under current legislation. The proposal introduces minimum viable regulations required to enable commercial spaceflight launches from the UK, with the ambition of growing the UK's share of the global space economy from 5.1% to 15% by 2030.

Despite being able to identify that there would be some impact on trade flows resulting from the regulation, the Department could not estimate confidently the magnitude of these affects. Therefore, to give an indication of the potential scale, the department usefully provided the volume of imports/exports currently in the industry, current and forecasted industry growth rates and the main countries and stakeholders involved in the UK's space industry. Using these figures and qualitative explanations, the department was able to reach a considered response to the T&I question.

The Department committed to testing these assumptions and expectations at consultation. The DfT policy team engaged with the RPC through pre-submission meetings, including presenting their

proposed approach to assessing T&I impacts.. The final stage IA would benefit from including some further explanation of risks associated with T&I in this industry.

Yes – Clear and confident

For measures with clear T&I impacts, departments should complete a T&I assessment within their IAs following the BRFG's list of required considerations. In addition to this, departments need to check those impacts with DIT to determine if quantitative analysis is required. At this point, DIT will consider whether the measure requires WTO notification, in line with the UK's legal obligations. Where clear T&I impacts are to be expected, if the IA is submitted to the RPC at consultation stage the RPC secretariat can also provide advice to departments on completing their T&I assessment, where appropriate to do so.

What should be addressed

The BRFG provides the following requirements related to T&I, in the following categories:

- Service regulations;
- Technical Barriers to Trade;
- Sanitary and Phytosanitary Measures; and
- Other areas.

Service regulations

If a policy affects the service industry, departments should assess whether the measure could:

- grant monopoly⁶ rights within markets; or
- authorise or establish a small number of suppliers within a market; or prevent competition between the suppliers.

Both goods and service regulations should be assessed as to whether the measure introduces requirements that differ between domestic and foreign businesses (this includes discriminatory and/or trade barrier affects), or different requirements for businesses from different foreign countries; and the IA should demonstrate consistency with the UK's international obligations for equal treatment.

Technical Barriers to Trade (TBT)

The T&I question and accompanying guidance aims to promote awareness of TBTs as these can influence the negotiations of future FTAs. Departments should establish whether their measure affects a significant⁷ volume of trade and could present a technical barrier to trade (i.e. does it set out specific characteristics of a product, e.g. size, shape, design, labelling, packaging) or affect the process used to create a product. Departments should also establish whether a relevant international standard

⁶ Or exclusivity rights.

⁷ To establish significance (which can be positive/negative), the following should be considered: value or other importance in respect of the importing/exporting country concerned; potential growth of imports; and compliance difficulties for producers in other countries.

exists and whether it has been used as a basis for the measure. If a department's policy fits any of these descriptions it should notify DIT for further advice. If it is not a technical regulation or conformity assessment procedure and it does not significantly affect trade, there is no need to notify DIT, but if there is uncertainty seek advice from DIT.

Mandating Calorie Labelling of Food and Drink in Out-of- Home Settings (RPC-4216(3)-DH) [final stage IA]

The Department of Health and Social care noted that a significant proportion of consumers' energy intake comes from eating out-of-home. The Department's IA describes the adverse selection problem of consumers having limited access to energy information (such as calorie content), making it difficult for them to make informed choices and identify healthier options. The proposal was, therefore, to mandate a calorie labelling scheme.

While the Department did not explicitly state the impacts that this regulation could have on T&I, the Department did consider the international context of this regulation: The IA identified that calorie menu labelling is already mandatory in the US and parts of Australia, with countries such as Ireland and Canada considering similar regulations. So while a proportion of the UK food industry is owned by foreign companies (e.g. from the US) the regulation could be said to not place a disproportionate burden on foreign companies, as the regulation applies to all food and drink products sold in all out-of-home settings domestic and foreign. The IA would, however, have benefited from considering the indirect impacts the policy might have on the manufacturing industry as some businesses may wish to import packaging with calorie labelling on them, similar to what would be mandated at retail level.

Other areas

It is also worth noting that measures relating to the balance of payments⁸ and national security measures may also require notification and departments should contact DIT.

T&I assessments might additionally benefit from considering

The following suggestions are not required for consideration by the BRFG, but they may help departments improve the quality of their T&I assessments:

- International standards;

⁸ The difference in total value between payments into and out of a country over a period.

- Quantitative vs qualitative;
- Separating trade and investment impacts; and
- Value chain.

International standards

The T&I question encourages departments to consider the impact of TBTs. This issue is particularly prevalent when considering harmonisation of standards between markets. The creation of new International standards can impose additional costs on domestic producers and markets⁹; whilst the introduction of local/domestic standards can create a barrier to importers and/or UK exporters who want to access overseas markets.

Medicines and Medical Devices Bill 2020 (RPC-4422(1)-DHSC) [Final stage IA]

This Bill was introduced to replace existing EU powers following the EU Withdrawal agreement ensuring the UK can maintain an up to date, dynamic system for regulating the medicines and medical devices sectors as well as enacting changes to medical devices enforcement and information sharing powers.

The medicine industry is heavily linked to international standards harmonisation. The Medicines and Healthcare products Regulatory Agency (MHRA) is the UK's national regulator for human medicines, as well as medical devices, clinical trials and blood. The MHRA plays a pivotal role in ensuring appropriate standards are met in the UK with the use of licences and seizing of falsified medical products. The IA estimates that some 70%-80% of medicines used in the UK are imported from other countries and the UK has formed global strategic alliances with other countries to harmonise standards, share information and co-ordinate inspections and enforcement activities. This demonstrates the measures clear links to international activities and agreements.

The Department identified the following regarding benefits of future secondary legislation in this area when considering international standards and best practices: *“Regulating the sector in the future can ensure the UK's regulations accommodate world best practice and standards, ensuring we are competitive in our pursuit of free trade agreements. The benefit of enabling international trade agreements is that the UK industry could gain market share in other countries. Customers in the UK could also gain from greater price competition and choice.”* The RPC would expect any secondary legislation following this Bill to further include T&I considerations, as appropriate

Quantitative vs qualitative

The pilot recommended the promotion of qualitative analysis, after the T&I quantitative analysis was found to be low quality and in limited quantity. The requirement for quantitative data appears to dissuade departments from considering T&I impacts. Therefore, the BRE is requiring qualitative analysis, accompanied by quantitative assessment, where proportionate. This does not overwrite the requirements for T&I considerations in the BRFG Annex 3, but it is designed to encourage more extensive analysis of T&I impacts.

Separating trade and investment impacts

⁹ Domestic standards can create barriers by creating different sets of requirements for manufacturers to design to. Consequently, international standards serve to align requirements globally, making it easier for manufacturer to place a product on multiple markets without making customisations for each territory.

Departments may wish to distinguish between the trade and the investment impacts of their policies, as this may help identify additional affected areas. As demonstrated in the flow chart version of the BRFG Annex 3 for separating goods and services, there may be merit in separating trade and investment impacts as well. Considering whether the policy has an impact specifically regarding investment from foreign businesses into the UK could potentially help identify additional areas impacted.

Value chain

Similarly, the impacts of a policy might be better evaluated by considering a value chain of a good or service. This method of analysis is good at identifying stakeholders that could be affected at different stages of a process or production chain.

Common issues/ FAQ

Finally, we include the following common issues and questions raised by departments, to aid in T&I assessment.

When should we conduct modelling?

The RPC acknowledges that some departments have limited access to modelling tools. However, where proportionate, departments could attempt to estimate trade and investment impacts using available models. Where this is not possible and when deemed appropriate by DIT, support is available within DIT to aid policy teams.

What if the industry size is unknown and/or some data is unavailable?

Where robust figures are unavailable, or the industry size has not been reliably measured, departments should present a qualified estimate of the size of industry. Where possible, departments should also attempt to identify the major foreign trade partners in that industry.

If we answer ‘yes’ incorrectly, will we be penalised for it?

The question aims to promote consideration of T&I impacts in the policy-making process. If a department demonstrates due consideration in reaching an answer, the RPC will not specifically criticise departments for an “incorrect” answer. The RPC is likely to comment in the ‘areas for improvement’ section of the opinion if this is the case, but this will **not** affect the IA’s rating.

What if the policy analysis is too high-level to know the scale of T&I impacts (e.g. primary stage)?

Where a department is only able to provide high level speculation about the T&I impacts, it should still attempt to give an indication of the size of the industry and trade flows.

Departments should consider the RPC’s guidance on assessment at [primary legislation](#) stage. When the RPC is unable to validate an EANDCB at the primary legislation IA stage, departments are expected to submit a subsequent IA at secondary stage. Departments can then revisit their T&I assessments and provide more information, when available.

Can we answer ‘N/a’ instead of ‘no’?

Some departments requested a return of the 'n/a' option in the IA template. BRE, DIT and RPC agreed that this option did not promote T&I impact analysis. Where departments think T&I impacts are not applicable, they should answer 'no' and should include a short explanation.

Contacts and resources available

IA template cover letter: <https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies>

DIT's TBT guidance: Available through your BRU or directly from DIT's TBTEnquiriesUK@trade.gov.uk address

BRFG Annex 3: <https://www.gov.uk/government/publications/better-regulation-framework>

DIT's BRU email: dit.bru@trade.gov.uk

BRE's email: betterregulation@beis.gov.uk

You can also consult your RPC departmental leads, if you are unsure as to who this is please contact Regulatoryenquiries@rpc.gov.uk