



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

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. 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 questions, this includes clarification between quantitative and qualitative asks and areas that should be considered in T&I assessments - corresponding with Annex 5 of the Better Regulation Framework (BRF) guidance

Case studies used to aid departments in answering the T&I questions

The RPC recognises that there could be a range of responses to the T&I questions, 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.

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

These sections have been developed to supplement the BRF guidance, 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 DBT and the RPC where appropriate, the RPC particularly welcomes engagement with Departments at options 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 OA/IAs and sets out the RPC's expected best practice. Departments need to contact DBT where T&I impacts have been demonstrated and should include a T&I assessment in their OA/IAs to be consistent with the UK's international obligations and strive to demonstrate Good Regulatory Practices¹ (GRPs).

Annex 5 of the BRF includes a list of questions departments should consider when writing their OA/IAs². 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 DBT.

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, DBT formally requires and encourages 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?

Impacts on trade **must be addressed in all OA/IAs**. If a measure is expected to have no impact on trade, it should be noted and explained why, but no further analysis would normally be required. 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

DBT leads on T&I worked collaboratively on the T&I question with Regulation Directorate (then BRE) and the RPC. Given that the RPC already scrutinises all major regulatory proposals³, it was asked to provide advice on T&I impacts to departments.

Under the new OA template, trade and investment impacts would typically be reported in part B of the 'regulatory scorecard'. In these terms, the quality of the department's

¹ 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>

² 'International Trade and Investment Key Considerations', Annex 5, BRFG. This document was created by DIT, based on the more detailed Technical Barriers to Trade (TBT) guidance.

³ De minimis policies should still consider T&I impacts as they may still be required to notify DBT.

assessment of these impacts will not affect the RPC's 'fitness for purpose' (green/red) rating. However, the RPC will assess and comment on the quality and proportionality of the department's assessment.

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 5 of the BRF, DBT's TBT guidance paper and/or contact DBT for analytical support.

Answering the T&I questions

We recognise that there could be a range of responses to the T&I questions, 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 is 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 was considered not to 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 may be addressed

The guidance relating to the previous better regulation framework included 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 monopoly⁴ 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 significant⁵ 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 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 DBT 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 DBT, but if there is uncertainty seek advice from DBT.

⁴ Or exclusivity rights.

⁵ 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.

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 payments⁶ and national security measures may also require notification and departments should contact DBT.

T&I assessments might additionally benefit from considering

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

- International standards;
- Separating trade and investment impacts; and
- Value chain.

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

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 markets⁷; 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 have 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

Separating trade and investment impacts

Departments may wish to distinguish between the trade and the investment impacts of their policies, as this may help identify additional affected areas. Considering whether the policy has an impact specifically regarding investment from foreign businesses into the UK could potentially help identify additional areas impacted.

⁷ 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.

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 DBT, support is available within DBT to aid policy teams.

What if the industry size is unknown and/or some data are 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 if this is the case, but this will not affect the IA’s green/red 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.

Contacts and resources available

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

BRF guidance: <https://www.gov.uk/government/publications/better-regulation-framework>

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