Raising awareness of WTO TBT obligations through the United Kingdom’s Regulation Impact Assessment

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During 2019-2020, the United Kingdom Government’s Regulatory Policy Committee carried out a 1-year pilot period, trialling a new question in our Regulatory Impact Assessment template.

The question evaluates impacts on international trade and investment arising from new policy design for regulatory measures, by Departments and Regulators that follow our Better Regulation Framework.

The question is:

Is this measure likely to impact on international trade or investment? Y / N

This question guides new regulations to analytically consider international trade and investment impacts, and helps ensure we meet our international (bilateral and multilateral) legal obligations. These arise from WTO commitments and preferential trade agreements.

For many UK Departments and Regulators, this question offers a new conceptual, analytical and legal challenge.

This has presented an opportunity for the Department for International Trade (DIT) to engage across Government, raising awareness of WTO obligations and providing training.
Features and implications of the trade question

Is this measure likely to impact on international trade or investment? Y / N

- **Short, simple and direct**
  - Short and direct question to invite engagement and further consideration.

- **Large breadth and scope**
  - Open question keeps scope broad for direct or indirect policy impacts.
  - As Departments and Regulators are likely to be aware of direct trade impacts anyway, this exercise particularly helps identify indirect/less obvious impact.

- **Invites Sub-Questions**
  - Breadth of question enables the question to be broken down and brainstormed.
  - This is a key feature of the question design as useful in organising the guidance around it.

- **Requires a judgement call**
  - “Likely” indicates that there is a judgement call to be made based on the Department or Regulator’s specialist knowledge.
  - The onus is on the Department or Regulator to involve DIT as needed, depending on the regulatory measure.

- **Qualitative, proportionate Response**
  - No mention of quantifiers like “significant”, as there is no threshold.
  - Emphasis is on the strength of the qualitative narrative of trade and investment impacts.
  - ONLY if needed, work with DIT to develop quantitative impact analysis.
Process for Departments/Regulators before submission of RIA

A. Locate the Regulation Impact Assessment’s (RIA) trade question and supplementary guidance

- The RIA Template can be found online here. The relevant question is on page 1.

Is this measure likely to impact on international trade or investment? Y / N

- Initial guidance is provided on page 5.
- The Better Regulation Framework (including Annexes) can be found online here. The relevant guidance is in Annex 3, pages 40-41.

B. Conceptualise: How regulatory measures can affect market access

- Regulatory Measures & Market Access Impact
- Regulatory Measures as Potential Non-Tariff Measures or Non-Tariff Barriers
- What Types of Regulatory Measures Count as Non-Tariff Measures?

C. Analyse: The economics of trade and investment

- Economic Framework: Where Do International Trade and Investment Fit In?
- Step 1: Establish Likely Direct/Indirect/No Impact
- Step 2: Consider and Work Through Sub-Questions
- Step 3: Write a Qualitative Summary of Impact

D. Legal implications: Ensure compliance with UK obligations

- WTO Commitments
- Bilateral and multilateral free trade agreements if relevant
- Bilateral Investment Treaties and other agreements.

DIT maintains contact throughout
Analysis Step 1: Establish if there is Likely Direct/Indirect/No Impact to Determine YES/NO and Level of DIT Involvement

1. Could the measure affect any domestic or foreign commercial transactions or decisions?
   - No – Likely no impact. Write a short qualitative summary to justify this.
   - Yes – There may be direct or indirect impact. Go to Q2.

2. Does the measure aim, primarily or secondarily, to affect trade/investment?
   - Yes – contact DIT at policy development stage. There is direct impact; detailed analysis is needed.
   - No – There may be direct or indirect impact, details need to be considered.
     - Go to Q3.

3. Work through sub-questions and make a YES/NO judgement. Is further and/or quantitative input from DIT required?
   - No – Write a qualitative summary of potential impact using the sub-questions to guide you.
   - Yes or unsure – Write a qualitative summary of potential impact and contact DIT to check if input is needed.
Analysis Step 2: Consider and Work Through Sub-Questions

- There is no set format but we encourage policy makers to consider the following YES/NO sub-questions to break the trade impact question down.

- Notably A and B focus on **economic impact**, while C and D focus on **legal implications** relating to the WTO concept of ‘Most Favoured Nation’.

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<th>Considerations for assessing impacts on trade and investment</th>
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UK constituent countries have an interest in UK-wide regulation as well as specific interests in areas of devolved competence, such as agriculture and health.

Some representatives have a broad interest in WTO engagement.
Any questions?

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