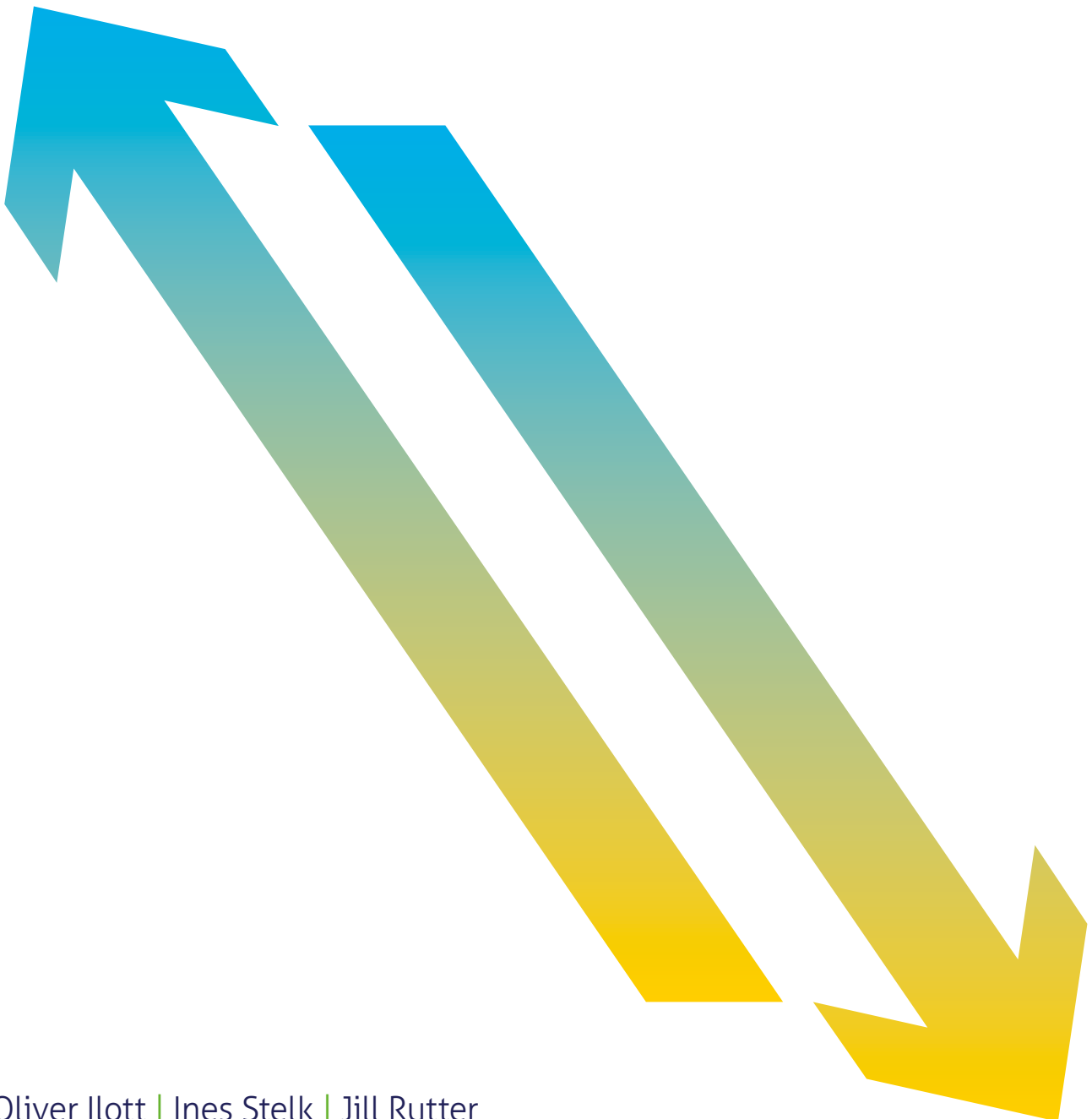


Taking back control of trade policy



Our Brexit work

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Nine key messages

The UK's exit from the European Union ('Brexit') means that the UK will be free to define its trade policy. Theresa May moved quickly to establish a new Department for International Trade (DIT) to manage these repatriated powers. This report sets out how the UK can become a powerful, independent player in international trade.

1. The Government needs a small cadre of specialist trade negotiators

Effective trade negotiators draw on years of experience. The normal way of staffing government departments – using generalists who quickly move on to other posts – will undermine any attempt to build this experience within government. Instead, government should develop a cadre of trade specialists whose career is anchored in this policy area.

2. The UK needs a cross-government trade strategy

One of the biggest risks is that trade might degenerate into a shopping list of 'deals for the sake of deals'. A strategy should set high-level objectives, and prioritise activity. It will have to link into the UK's wider economic strategy, such as the tax regime, regulatory environment, labour market and industrial policy. The trade strategy should pull together work from across Whitehall – a task that will be easiest if the strategy is coordinated by the Cabinet Office.

3. Trade policy requires ongoing engagement with devolved administrations, businesses and consumer and environmental groups

While trade policy is made in Westminster, trade deals will require changes to aspects of regulation, government procurement and other policies that are devolved. Although the Westminster Government can compel the devolved administrations to legislate in this way, it would be preferable to proceed on a genuinely cooperative basis. Moreover, while the Government will sign trade deals, it is businesses and consumer and environmental groups that will make use of them. The Government should establish a formal network of advisory committees to draw these voices into its policymaking.

4. Parliament needs a greater voice in trade deals

The current arrangements give Parliament a limited role. It can vote to delay the ratification of trade deals, or could prevent them being implemented by voting against changes to tariff rates or regulation. However, given the potential economic and policy implications of future trade deals, government should guarantee Parliament a direct vote on any future deals before they are ratified.

5. The Government should set up an independent body on trade

Independent bodies – such as the Office for Budget Responsibility and the Committee on Climate Change – make it easier for government to tackle vested interests, and can encourage more consistent long-term policymaking. Both of these are assets that the Government needs in trade policy.

6. The Government needs to recognise there is more to trade policy than trade deals

Announcing the start of negotiations on a trade deal is the easiest thing to do in trade policy. Running and concluding them is harder; other tools may be more effective for boosting trade. This is particularly true in financial services, in which commercial diplomacy and regulatory cooperation may be a more productive use of resources.

7. When the Government does turn to trade deals, prioritisation is vital

One of the main risks for DIT is that it initiates a large number of simultaneous negotiations, then finds itself unable to progress any of them effectively. It would be realistic to aim to run four to five negotiations at a time.

8. Prioritise carrying over existing EU free trade agreements, particularly those with Canada, Singapore, South Korea, Switzerland and Turkey

While the gains from entirely new deals are hypothetical, the losses from foregoing existing arrangements are assured. Maintaining these should be the Government's immediate priority, with the goal of having agreements in place for the moment that the UK leaves the European Union. It will struggle to replicate all of the European Union's deals within two years – it will have to prioritise.

9. Beyond the European Union's free trade agreements, the UK should start with Australia and New Zealand

Australia and New Zealand offer the UK an opportunity to build experience by negotiating with like-minded, medium-sized economies. The UK should avoid sinking resources into negotiations with the BRIC countries (Brazil, Russia, India and China) or the USA. The experience of other nations suggests that trade negotiations with Brazil, India or China would consume large amounts of precious negotiating resources, with little prospect of reaching an agreement. The USA can be a swift negotiator, but tends to move most quickly when its partners adopt a strategy of capitulation masquerading as negotiation. The UK needs to deploy its resources strategically – it will be more productive to return to such negotiations in the future.

1. The context

Introduction

The powers coming back from Brussels

Theresa May has set out a vision for a “truly global Britain”, a “great, global trading nation” that strikes deals across the world.¹ Good intentions alone will not make this vision a reality. This report sets out the practical steps that will be required in the new Department for International Trade (DIT) and across Whitehall to launch a successful UK trade policy, using the powers that are repatriated from Brussels.

Chapter 2 of this report outlines the people, processes and structures the UK will need to run its trade policy. Chapter 3 looks at how the Government will need to use these in the next two years, while the UK’s exit (‘Brexit’) from the European Union (EU) is negotiated. Chapter 4 proposes a different set of tasks, once Brexit is complete.

The UK has always maintained control over some policy levers that are relevant to trade policy. Through UK Trade & Investment it promoted UK exports overseas, while UK Export Finance provided access to finance and insurance for those looking to export. Both of these bodies have now been rolled into DIT, with UK Trade & Investment rebranded as International Trade and Investment. The UK has retained considerable discretion over its labour, industrial and tax policies, which can have a significant impact on its trade performance.

Nevertheless, Brexit will involve a substantial increase in the UK’s ability to pursue its own trade policy. Theresa May’s Lancaster House speech² made clear that on leaving the EU, the UK will:

- adopt its own schedule of obligations at the World Trade Organization (WTO), where it will negotiate multilateral deals
- negotiate its own bilateral (and plurilateral) free trade agreements (FTAs)
- set its own tariff rates
- manage its own regime of trade remedies
- enact its own trade and investment legislation.³

These new powers are the subject of this report. Our research is informed by 25 interviews with current and former trade officials from Australia, Canada, the EU, New Zealand and the USA.

The UK's deal with the EU and its independent trade policy

This report focuses on the UK's trade policy beyond its relationship with the EU (we will be mapping the prospects for a UK–EU FTA in a future publication). However, while this research focuses on the non-EU aspects of trade, it is important to recognise at the outset that any UK–EU deal will have repercussions for the UK's ability to conduct an independent trade policy.

The largest of these potential constraints has been ruled out already by government, which has said that it will leave the customs union and the EU's common external tariff. This will give the UK the ability to set its own tariff rates, a crucial bargaining chip in trade deals. For the purposes of this research, we have assumed that the 'customs agreement' with the EU that was suggested by the Prime Minister describes an arrangement that eases the passage of goods across the UK–EU border, but in no way links the UK's customs regime to that of the EU.

Other, non-tariff commitments in the UK–EU deal may limit the UK's future trade policy. The deal may commit the UK to a common EU framework in areas such as intellectual property, government procurement or financial services. This would make it harder for the UK to put these rules on the table for negotiations with third parties. There have been suggestions that the UK could operate a 'dual-facing' regulatory system, in which companies operate under one set of regulations for their trade with the EU and another set for their trade elsewhere, but there are questions about the additional technical complexity and compliance costs of such an arrangement.

Moreover, the UK–EU deal may change the UK's trade policy objectives. Some goods or services may become more important to the UK's trade strategy if it can no longer find a buyer on the continent. In addition, the UK's level of access to the EU market will influence its value to others as a potential trading partner.

Notwithstanding these links, this research focuses on the prospects for non-EU trade. The distinction between the UK's trade with the EU, and its trade with everyone else, is reflected in the structure of government. The Department for Exiting the European Union will establish the UK's trading relationship with the EU, while DIT will cover the trade relationship with all other countries. They are two of the smallest departments in Whitehall, with budgets for day-to-day spending of less than £0.5 billion (bn) a year.⁴ The Department for Exiting the European Union is temporary, and will be abolished once Brexit is complete. DIT is envisaged as a permanent department, and may vie with the Foreign & Commonwealth Office to take up responsibility for the EU relationship once the Department for Exiting the European Union is dissolved.

This report focuses on the task for DIT, and for other Whitehall departments in supporting DIT.

The UK's new Department for International Trade (DIT)

DIT was created out of three building blocks: the preexisting, non-ministerial departments of UK Trade & Investment and UK Export Finance (which now describes itself as 'working alongside DIT' with its own chief executive and board), and the small Trade Policy Group in the old business department, which coordinated UK input into EU trade negotiations. Of these three divisions, the renamed International Trade and Investment is by far the largest (Table 1).⁵

Table 1: The three divisions of the Department for International Trade

| | UK Export Finance | International Trade and Investment (formerly UK Trade & Investment) | Trade Policy Group |
|----------------|--|--|--|
| Mission | Provides access to finance and insurance for those looking to export | Promotes UK exports overseas | Will take on trade competencies transferred from the EU |
| Staff | 233 full-time employees | 530 full-time employees (not including 180 Foreign & Commonwealth Office staff based in the UK and 1,187 abroad) | Approximately 300 full-time employees (as at early 2017) |
| Budget | £139 million (m) | £264m | £15m, with plans to reach £36m by 2019–20 |

This report focuses on the role of the new part of DIT: the Trade Policy Group. The Group began as a kernel of 50 existing civil servants who were transferred from trade policy jobs in the Department for Business, Energy & Industrial Strategy. It has quickly supplemented this core by hiring civil servants from elsewhere in Whitehall with previous trade experience, and through external recruitment. It also has joint teams, for example on commercial diplomacy, which it shares with the Foreign & Commonwealth Office.

Is DIT right for the job?

The Prime Minister's decision to establish a separate trade department, with a minister at the Cabinet table, was a clear statement that making use of the UK's new trade powers was a political priority. However, political prioritisation does not guarantee that the resultant department will hold together as a coherent set of powers.

Figure 1 compares the key differences between trade departments across the world. In other countries, stand-alone trade departments such as DIT are unusual. Many incorporate their trade function within other departments – normally, foreign affairs or industry. Canada and New Zealand have consolidated their foreign, development and trade policy portfolios into a single department. Japan and South Korea have used a combined trade and industry department. Of the 15 non-EU countries in the G20, only China, Indonesia, Turkey and the USA have independent trade departments.

Figure 1: Features of other trade departments



DIT is also unusual in the extent of its powers. Of the departments studied in this report (Australia, Canada, the EU, New Zealand and the USA), it is the only one to combine responsibility for export promotion, export finance, trade remedies and international negotiations. Across the non-EU G20 countries, only six combine these functions in a single department (of which only China and Indonesia also have a separate trade department).

One of the reasons that DIT’s model does not have many international precedents is that different aspects of trade policy have more in common with non-trade policies than they do with each other. Trade remedies – whereby a government retaliates against exporting practices in other countries that damage domestic producers – often sit in the business department, where they are closer to the industries they seek to protect. Export finance is a largely commercial, not political, function, in which many of the levers are held by the Treasury.

The decision to put all the UK’s trade policies under one roof (barring tariff rates, which probably will be set by the Chancellor), may have the counterintuitive impact of increasing the need for cross-departmental working: for example, if the application of trade remedies requires cooperation between DIT and the Department for Business, Energy & Industrial Strategy, rather than simply being a function inside the business department (Table 2).

Table 2: The role, remit and capacity of trade departments studied

| | EU | USA | Canada | New Zealand | Australia | UK |
|---|---|--|--|--|---|--|
| Set-up | | | | | | |
| Is the trade department separate from other government agencies? | YES – the European Commission has a separate Directorate-General for Trade (DG Trade) | YES – the Office of the US Trade Representative (USTR) forms part of the Executive Office of the President | NO – the Department of Foreign Affairs, Trade, and Development covers foreign affairs, international trade and development | NO – the Ministry of Foreign Affairs and Trade covers foreign affairs, trade, climate change and aid | NO – the Department of Foreign Affairs and Trade covers foreign trade and development assistance policy | YES – the Department for International Trade (DIT) |
| Size | Employs 593 staff (2016) | Employs approx. 250 staff | Employs approx. 10,000 staff (not all trade) | Employs approx. 650 staff in New Zealand (not all trade, additional overseas posts) | Employs approx. 2,600 staff in Australia (additional overseas posts) | Employs approx. 1,000 staff, of which 300 sit within the newly created Trade Policy Group |
| Powers | | | | | | |
| Trade remedies | YES | NO – trade defence is administered by the Department of Commerce. Investigations are conducted by both the Department of Commerce and the International Trade Commission | NO – trade defence is administered by the Department of Finance. Investigations are conducted by the Border Services Agency and International Trade Tribunal | NO – trade defence measures are administered by the Ministry of Business, Innovation and Employment | NO – trade defence is administered by the Department of Industry, Innovation and Science. Investigations are conducted by the Anti-dumping Commission and Productivity Commission | YES |
| Export promotion | NO – export promotion is managed by Member States | NO – approx. 20 federal government agencies are directly or indirectly involved in expert promotion, including the USTR | YES | YES | YES | YES – export promotion is covered by International Trade and Investment, which is now within DIT |
| Export finance | NO – export finance is managed by Member States | NO – the Export–Import Bank is an independent, self-sustaining executive branch agency | YES – Export Development Corporation-owned by the Government. It reports to Parliament via the Minister of International Trade | NO – the New Zealand Export Credit Office is based in the Treasury | YES – the Export Finance and Insurance Corporation is part of the Department | YES – export finance is covered by UK Export Finance, now part of DIT |

2. The tools we need

Introduction

This chapter sets out the tools that the Government will need in order to use the trade policy powers that it is taking back from Brussels:

- capacity in government
- a cross-Whitehall decision-making process
- an independent analytical body
- a method for engaging the devolved administrations
- a formal structure for ongoing stakeholder engagement
- a set of transparency obligations
- a greater role for Parliament.

Capacity in government

There is no shortcut for acquiring experienced trade negotiators

Not all officials working on trade are trade negotiators. Many of the skills required in the department are core civil service skills: analysis, strategy and stakeholder management. This means that it is possible for the Government to meet many of its staffing requirements by using generalists who can be retrained to acquire technical trade knowledge.

However, this approach will not work with the small but crucial cadre of trade negotiators that the Government will need. Technical knowledge will only take a negotiator so far. To be effective, they also need to be able to frame issues in an advantageous way, and to maintain collaborative working relationships. These skills are acquired through experience. Most of the interviewees for this study, who were working in foreign trade departments, emphasised this point. When asked what made a good negotiator, one Canadian chief negotiator prioritised experience over all forms of training:

[A good negotiator] may or may not have a degree in commerce or economics. They may or may not have experience on economic development issues. They may or may not have had direct training on negotiating in any sort of context, let alone trade negotiations – but they have had experience.

This experience is the major gap in the UK's capability. While the Trade Policy Group does house a core of officials who have worked on trade policy previously, it has very few who have sat in the negotiating chair. Building the necessary experience will be a serious challenge for Whitehall, which often prioritises generally applicable skills rather than specialist expertise.⁶

The UK Government is well aware of this challenge. It has set up a Trade Policy and Negotiations Faculty within the Foreign & Commonwealth Office to provide training to staff. Led by a former negotiator from the trade department in Brussels, the Faculty's curriculum has an appropriate skew towards practical and hands-on learning.

Beyond the work of the Faculty, the necessity of acquiring experience should influence DIT's approach. In the first instance, the UK should develop a trade strategy which starts by building experience through a series of smaller deals that are easier to achieve – despite the fact that this may run counter to political pressures (which we cover in detail in Chapter 4, see page 39).

Negotiating teams should be structured to include junior staff

The premium on experience in trade negotiations means that often, negotiating teams are structured with one eye on educating the next generation of negotiators. One negotiator from New Zealand described a system in which negotiators had a junior 'shadow' who performed largely administrative tasks, but was present at negotiations. In time, this shadow would step into the negotiating chair themselves. Many of the senior negotiators interviewed for this report had started their career by taking notes at the back of the room.

When it comes to staffing its negotiating teams, DIT's focus should be on the long term: the UK will have an independent trade policy for the foreseeable future. It needs to run each negotiation in part as a training exercise that prepares it for the next negotiation.

The UK is already well known internationally for the responsibility that it confers on junior members of staff – particularly in Europe, where UK representatives are frequently much younger than their counterparts. However, there is a world of difference between the current approach, in which younger members of staff are thrust into the negotiating seat, and an approach which slowly builds hands-on experience through membership of a team led by a senior and experienced negotiator.

Develop a specialist pipeline of negotiators

The average annual level of churn across Whitehall departments is 8% (measured as a percentage of end-of-year staff who joined in the past 12 months).⁷ In some departments (HM Treasury, Cabinet Office), it is more than 15%. If this is replicated in DIT, it will corrode the department's ability to retain the valuable experience that it accumulates. If building experience is DIT's main capacity objective for the next few years, retaining that experience poses a major challenge in three to four years' time.

This challenge will be particularly acute at DIT where – in common with departments such as HM Revenue & Customs, the Department for International Development, HM Treasury and the former Department of Energy & Climate Change – there is a powerful pull towards the private sector for many of its staff, once they have accrued some experience. Indeed, as businesses begin to establish their own trade specialists, DIT also will need to be able to pull in people from the private sector.

A common response to combating churn is to turn to the pay and benefits packages on offer. It is striking (if intuitive) that those departments in which the greatest share of employees wanted to leave within the next 12 months tended to be those in which they were least happy with their pay and benefits.⁸

DIT already has some leeway in this regard. Departments can make Brexit-related appointments with an annual salary up to £142,500 without seeking approval of the Civil Service Commission, compared with the normal £87,000. Moreover, Brexit-related appointments on fixed-term contracts can be for three years, rather than the normal two.⁹ DIT has used this allowance already to hire a number of staff on fixed-term, three-year contracts.

Nonetheless, changes to pay and benefits in DIT will have a limited impact for two reasons. First, the proliferation of short-term contracts described above *increases* the risk of churn in the department, once these contracts expire. Second, trade specialists will be required across Whitehall, not just in DIT (as covered in the next section). Therefore, changes to DIT's pay and benefits package cannot address the need to retain expertise across government. This means that non-financial and cross-departmental tools are required to retain trade expertise in government.

The Government should develop a specialist cadre of officials working on trade. It should establish a system in which civil servants working on this issue expect to lead a career anchored in trade policy, rather than cycling through it on their way to other generalist positions.

The first step should be to establish a trade 'profession' in Whitehall. The civil service comprises several professions including policy, operational delivery, various corporate functions and more specialist ones (such as finance, law and communications). Each profession provides a career framework and learning hub for 'officials' working in relevant areas. The Government has taken a step in this direction: its job advertisement for a chief negotiator included the detail that the successful applicant would be 'head of the Trade profession for the UK Civil Service'.¹⁰

The Government needs to convert this line in a job advert into reality, and should supplement this with a dedicated graduate entry point for trade specialists. The best example of this is the Department for International Development: a department with a clear specialism, a dedicated graduate entry point and one of the lowest churn rates in Whitehall at less than 5%.

Other departments are building trade capacity too slowly

One of the most consistent messages from across this study's interviews with negotiators from Canada, the EU and the USA, was that trade departments are the leaders and coordinators of a process that draws on resources and expertise from across government. As one interviewee put it: "In the case of trade, you really can't succeed without the active participation of the whole list of government departments."

The breadth of trade deals – which cover sectors such as agriculture (Department for Environment, Food & Rural Affairs – Defra), financial services (HM Treasury) or telecommunications (Department for Culture, Media & Sport) – ensures that much of Whitehall will have a stake in trade policy. This is increasingly the case as trade deals become more sophisticated, covering issues such as intellectual property, investment, competition and procurement that sit within briefs across government.

In the USA, every aspect of a trade negotiation involves more than 20 government agencies. While the 250 staff at the Office of the US Trade Representative (USTR) take

the lead, there is a comparable number working on trade full time in other agencies. In the course of a multi-year negotiation, thousands of officials across government might contribute at some point to a trade deal. For this reason, the USTR was described by interviewees as a coordinator as much as a negotiator.

In Whitehall, this will require most departments and some arm's-length bodies to develop their own trade capacity – building technical knowledge and, in some cases, negotiation expertise.

At the highest level, the need for cooperation arises because trade policy is a tool serving many functions. Diplomatic, domestic political, and commercial interests will all be reflected in a trade strategy. (We set out on page 33 the process by which departments such as the Cabinet Office, the Foreign & Commonwealth Office, HM Treasury and the Department for Business, Energy & Industrial Strategy should contribute to setting the UK's trade agenda.)

At a more involved level, implementation of trade agreements almost always falls to the departments that do not have 'Trade' in their title. The UK's trade deals may require regulatory changes that need legislation from Defra, the Departments for Business, Energy & Industrial Strategy and Culture, Media & Sport and HM Treasury, which may then be enforced by regulators such as Ofcom and Ofgem. The Government may also be tempted to engage in 'side deals': policies that compensate domestic industries losing out in the face of increased international competition, which will require policymaking outside DIT. In addition, encouraging businesses to make use of the market access secured under an FTA will require outreach programmes outside DIT (this is covered in more detail in Chapter 4, page 45).

At the most detailed level, cross-department cooperation will be required during actual trade negotiations. In politically sensitive or technically complex areas, trade departments sometimes co-lead negotiations with notionally 'non-trade' departments.

In the USA, the USTR shares competence for finance or services negotiations with the Treasury, and shares investment with the Department of State. In the EU, the Directorate-General for Agriculture and Rural Development always takes the lead in negotiating the agricultural chapters of trade deals, while an official from the European Commission's Directorate-General for Health and Food Safety co-leads with the Directorate-General for Trade on the sanitary-phytosanitary chapter. Similarly, as one former trade official explained, in Canada:

The lead negotiator for financial services will be from the Department of Finance. In our goods negotiations, given the importance of agricultural goods, we typically have a co-lead that will be from the Department of Agriculture, and we will also have a co-lead from the Department of Finance.

The inherently cross-government nature of trade policy means that it is not just DIT that needs to be building its trade capacity. This need is recognised in Whitehall, but progress is mixed. Defra and HM Treasury have moved quickly to expand existing trade policy teams, and the two departments will have a significant role in trade policy. The Department for Business, Energy & Industrial Strategy also has made a series of recent

hires in this area, but departments such as Health appear to be moving more slowly. If the Government does not build trade capacity across Whitehall, it risks conducting negotiations without a proper appreciation of the issues at stake and their potential impact on domestic policy.

A cross-Whitehall decision-making process

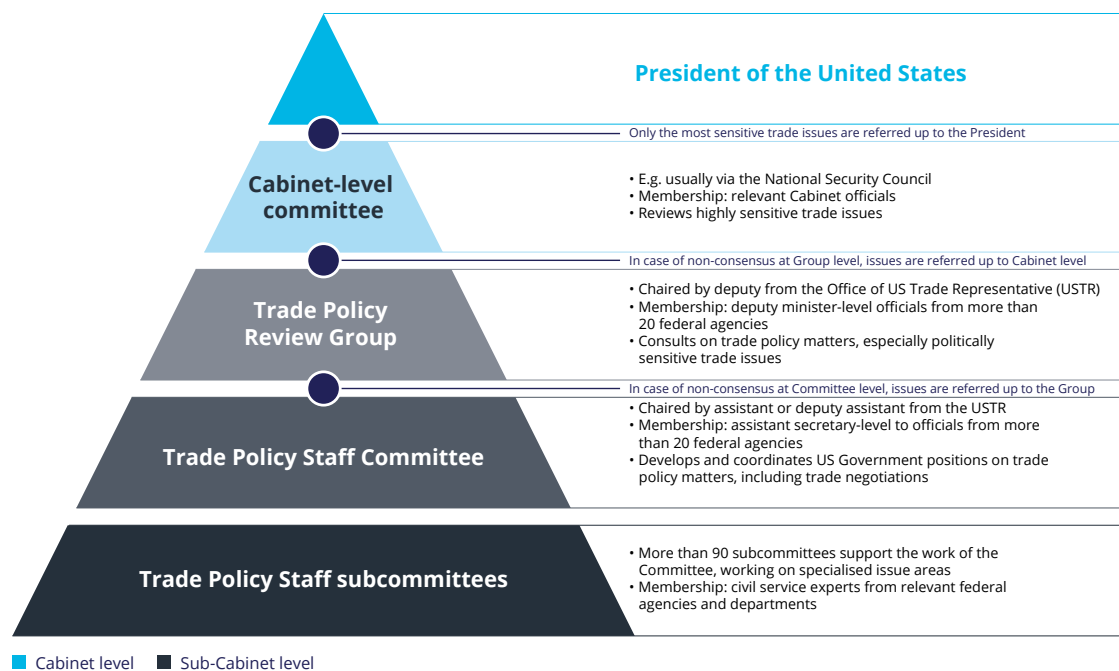
The Department for Trade needs a framework for engaging other departments

Working across departments in any area of policy can introduce delays and logjams. The interviewees highlighted the risk that trade directorates could become caught in a morass of cross-government coordination.

To mitigate this risk, the USA has adopted a highly formalised system of interagency dispute resolution. As an example for DIT, the US system comes with several health warnings. Reflecting the different division of powers in the USA, the interagency structure is embedded in statute – a step that would never be replicated in the UK. It also remains to be seen whether the structure will be dismantled (or sidelined) under the new President. Nonetheless, the US example does demonstrate the need for a coherent system for making decisions and resolving disputes between the large number of government organisations with a stake in trade policy.

The USA has four levels of interagency committees, through which input on trade issues is gathered and trade policy positions developed (Figure 2). Full consensus in these committees is required for a decision to be adopted. In case of non-consensus, issues are referred up to the next level of decision-making.

Figure 2: US interagency dispute escalation system



Source: Huenemann, J., 'On the trade policy-making process in the United States', in *The Trade Policymaking Process: Level one of the two level game – country studies in the Western Hemisphere*, Inter-American Development Bank, 2002, p. 68; Office of the US Trade Representative, *Strategic Plan FY 2013–FY 2016*, retrieved 24 April 2017, <https://ustr.gov/sites/default/files/USTR%20FY%202013%20FY%202016%20Strategic%20Plan.pdf>; Environmental Protection Agency, 'Steps in Development of U.S. Proposed Text for Trade Agreement Negotiations', 2014, retrieved 24 April 2017, www.epa.gov/sites/production/files/2014-04/documents/ustrade.pdf

Most decisions are made at the lower level of this ladder: an annual average of 285 policy papers and negotiating documents are signed off in 54 annual meetings of the lower-level Trade Policy Staff Committee and Trade Policy Review Group committees. Only the most disputed or politically sensitive trade issues are dealt with by Cabinet officials or the president.*

The advantage of this system is that it provides a clear method for resolving disputes, meaning that the most difficult issues can be tackled effectively. The disadvantage is that the need to push each issue through the process creates inefficiencies, when 'easy wins' might have been resolved more quickly in informal conversations. The US approach does appear burdensome and, due to its statutory underpinning, inflexible. It is a response to the particular distribution of powers between the president and Congress.

However, the need to coordinate trade policy across government will be felt in the UK too. It will require the right machinery to be established at both the ministerial and official levels. In many ways, this will look very similar to the sort of arrangements that the UK has had in the past to coordinate policy towards the EU: with working groups on the detail feeding up to more senior official coordination, and big issues or unresolved differences being referred to ministers.

A number of interdepartmental working groups have already sprung up, covering issues such as the WTO and agricultural protections, which feed into the Government's Trade Policy Strategy Board Committee. A number of interviewees that we spoke to outside DIT argued that this system, in its infancy, still required time to embed itself as a dispute resolution process, and that there may be a need to create further official-level forums as the Government's understanding of trade issues develops. People need to know where and how the key decisions are being made, so the current ad hoc system should be formalised.

It will not always be possible to resolve cross-government disputes at an official level. When this happens, ministers will be drawn in (Box 1).

BOX 1: THE ROLE OF MINISTERS

Ministers have an important role in trade policy. The Secretary of State will provide high-level sponsorship and direction for flagship policies and trade negotiations. Junior ministers will be more involved in the delivery of these initiatives, monitoring progress and providing momentum. Past Institute for Government research suggests that these junior ministers will have a crucial role to play in prioritising DIT's business, particularly when new policies or negotiations jostle for attention with preexisting commitments.¹¹

* The Cabinet-level committee used to dealing with politically sensitive or disputed trade issues varies, depending on the administration and preferences of the president at the time. While according to statute, the Trade Policy Committee of the Cabinet used to be the forum where trade matters were decided, in reality, different presidents have developed their own Cabinet-level structures. Over the past decade, the National Security Council fulfilled this role. In December 2016, the then-outgoing President, Barack Obama, created the National Trade Council as a new entity in the executive branch to deal with these issues.

For the most part, negotiations are led and run by officials. It is not a sensible use of ministerial time to have them sit around a negotiating table haggling over details; it is only at the very end of this process – when a handful of issues remain unresolved – that negotiators step back and ask ministers to step up to the negotiating table to conclude the deal.

Many of our interviewees spoke about this 'endgame' as a phase that had to be carefully planned by officials. Officials from both sides would attempt to ensure that there were an equal number of unresolved issues that could be handed over to the respective ministers in each country, creating an expectation that this list could be easily divided into an equal number of wins and concessions for both sides.

Once the deal is agreed, ministers will argue the case for the agreement before Parliament (assuming that the Government does indeed grant Parliament a vote on trade deals, see page 27).

Given the lengths of time involved, very few trade deals will be seen through to completion by a single minister. Therefore, the UK's trade strategy (as described on page 30) will have to act as a constraint on ministers' tendency to reinvent the agendas of their predecessors.¹²

An independent analytical body

The Government should set up an independent analytical body for trade

Two of our case study countries – Australia and the USA – have benefited from independent government organisations dedicated to providing impartial analysis on trade policy options (Box 2).

BOX 2: INDEPENDENT GOVERNMENT ORGANISATIONS

Australia: Productivity Commission¹³

The Productivity Commission is an independent advisory body that provides analysis on economic performance, long-term prosperity and living standards to the Australian government. The Commission was established in 1998, but can trace its roots to the Tariff Board of the 1920s. Its scope has broadened considerably, and in addition to trade it now covers employment, education, productivity and social policy.¹⁴

The Commission has a budget of AU\$31m, the vast majority of which (AU\$24m) is used to employ 163 members of staff, many of them economists.¹⁵

While the Government can request research from the Commission, it has no influence over the findings and conclusions that the Commission reaches. Moreover, by statutory requirement, the Commission has to subject its work, advice and processes to public scrutiny, as well as take a broad approach to its research, limiting influence by special interest groups. There is no

formal requirement for the Government to act on the basis of the Commission's recommendations.

The Productivity Commission produces guidance on policy and regulatory issues covering all sectors of the economy and different levels and areas of government, including international trade. Recent reports have covered bilateral and regional trade agreements, developments in anti-dumping arrangements and service exports.¹⁶ On many of these topics, the Commission's independence has allowed it to air findings that would have been too sensitive for ministers. In February 2016, the Commission argued that Australia's politically sensitive trade defence policies (which protect Australian industries from 'unfair' practices abroad) 'are making Australia, on a national welfare basis, worse off'.¹⁷

USA: United States International Trade Commission (USITC)

The USITC is an independent federal agency that conducts independent economic analysis in the areas of tariffs, international trade and US competitiveness, including official assessments of the economic effects of US trade agreements. It supports trade policymakers in the executive branch and Congress via research, briefings and testimony at congressional hearings. The USITC was established by Congress in 1916, and since then has had its responsibilities protected on a statutory basis via a number of legislative acts. In 2016, it had a budget of US\$91m.¹⁸

In addition to its research responsibilities, the USITC also maintains the Harmonized Tariff Schedule of the United States and acts as a quasi-judicial body, investigating and adjudicating matters such as intellectual property rights infringements as well as administering the trade remedy laws of the USA.

Often, USITC staff are seconded to the USTR for long-term detailed assignments, or serve as technical advisers to the USTR's Trade Policy Staff Committee.

The UK should establish an equivalent, independent body to advise on trade. The use of such an organisation provides a number of advantages to Australia and the USA, as follows.

It provides dedicated resources for a function that otherwise gets squeezed

The need to run trade negotiations places a heavy demand on trade directorates, meaning that often their analytical function is squeezed. One chief negotiator described how this resulted in the department's analytical function relying on an informal relationship with outside experts:

The whole branch was focused on supporting or conducting negotiations. What I had to do, eventually, was outsource the policy function to the academic community. I established a kind of informal trade policy network of the people still working on trade policy issues in the academic world... it was just that we were overworked on the negotiating side.

Creating a dedicated analytical body at arm's-length from DIT could minimise the risk that this analytical work is overlooked. Conversely, an independent body could prevent *too much* trade analysis: there is a risk that all of the various departments involved in trade could commission their own, potentially conflicting, analysis to support their own purposes. For example, during the Trans-Pacific Partnership negotiations, Japan's agriculture ministry published its own alternative impact assessment to the trade department, which directly contradicted the trade department's analysis. Having a single arbiter of truth in Whitehall could prevent this type of conflict.

It makes it easier for government to take on entrenched interests

In the politics of trade, liberalisation is opposed by less competitive domestic industries which benefit from protection. These industries often form powerful, entrenched interests, and UK policymakers have been insulated from these pressures while trade policy has been run from Brussels. Government will find it easier to challenge these entrenched interests using analysis that has the credibility of independence.

As one interviewee observed of Australia's Productivity Commission:

That sort of institutional arrangement is very important and does help. It doesn't guarantee, but it does keep the department focused on the net benefit to the community as a whole, rather than individual interest lobbies. So it is an important body to have.

This type of neutral arbiter also could prevent individual departments from becoming clients for their sectors.

A recent Institute for Government report¹⁹ found that the use of an equivalent independent analytical body in another area of policy – the Committee on Climate Change – had served exactly this function. Its independence and analytical capacity enabled it to develop a politically uncontested evidence base for policymaking. In part, this was possible because of the Committee's narrow remit, which kept it out of more explicitly political issues.

This experience suggests that the UK's independent trade body should mirror the narrow remit of America's USITC, rather than the broader remit of Australia's Productivity Commission.

Independent analysis maintains long-term focus

In the same report on long-term policymaking,²⁰ the Institute found that independent advisory bodies were an effective way of fostering policy continuity between different governments. Often, the most effective trade strategies are those with long time horizons.

Independent advisory bodies create a stable and enduring body of analysis which, to some extent, combats the cycle of reinvention that is common in government policymaking. Their independence from government also means that they are separated from normal personnel churn in Whitehall, allowing them to develop lasting expertise.

A method for engaging the devolved administrations

Engage the devolved administrations early on in trade policy

The Devolution Acts of 1998 (Scotland Act 1998, Northern Ireland Act 1998 and Government of Wales Act 1998) left international trade as a matter reserved to Westminster. Nevertheless, trade deals may have implications for a number of devolved areas of policymaking. In Scotland, Holyrood currently makes decisions relating to environmental protection, transport and health, all of which might be influenced by the outcome of a UK trade deal. This means that the UK Government must find a way to involve the devolved administrations as it prepares for negotiations.

Canada provides a useful comparator. The federal government in Ottawa, like the UK Government in Westminster, is technically able to make trade policy without reference to its provinces. However, as one of our interviewees observed: "In Canada they don't need the sign-off of the provinces – but if you don't get their buy-in, it's political hell."

Moreover, the need to involve devolved governments can become a legal necessity when negotiating a deep and comprehensive deal that touches on strictly devolved issues. While the division of powers between federal government and provinces in Canada does not map onto the division between Westminster and the devolved administrations, one negotiator recalled that in the Comprehensive Economic and Trade Agreement negotiations:

The Europeans made it clear that a prerequisite of having an agreement with Canada would be that there would be actual concessions at the provincial level, like on procurement, government purchasing practices, alcoholic beverages and some other things.

This created, for the first time, a legal necessity for Canada to engage its provinces in trade policy. Without changing the statutory powers of the provinces in relation to trade, the Canadian Government has begun to involve representatives from the provinces in actual discussions. As one former deputy minister for trade explained:

We've set a precedent in recent years, where the provinces are involved directly in the negotiations. They are part of the preparatory process, and when we go into a negotiation, representatives from interested provinces may be outside the room. Once the negotiation for that session is over, our lead negotiator on a subject would go and debrief them.

It is enormously time-consuming, but in our case necessary for political reasons – as well as the fact that some of the issues under negotiation may fall under the authority of the provinces for implementation.

In the UK, deals might be similarly entangled, requiring concessions and legislation at a devolved level. On paper, it would be possible for the secretary of state in Westminster to compel the devolved administrations to legislate (or refrain from legislating) in any way necessary to allow the UK to fulfil its international obligations – but the political ramifications of using that kind of power are self-evident.

Instead, there is a clear need for the UK to create a model for engaging the devolved administrations in trade discussions. This should be part of the 'common framework' with the devolved administrations, which the Government, in its Great Repeal Bill white paper, said it needed to develop to coordinate policy after Brexit. This could include establishing a Joint Ministerial Committee on International Trade (there is already a Joint Ministerial Committee on EU Negotiations), but also will require official-level forums for discussion of more detailed policy issues. This would build on the existing methods of cooperation that are used when the UK lobbies Brussels on EU regulations and directives related to devolved areas.

If a working arrangement is not found, the Westminster Government will find itself either in a 'political hell' of making trade policy without reference to the devolved administrations, or negotiating deals that are limited in their scope.

A formal structure for ongoing stakeholder engagement

Government needs a formal process for engaging stakeholders

It is vital that businesses, consumer groups and other interested stakeholders are engaged in trade negotiations. One review of trade policy in Australia found that 'without the expert input that comes from high-quality stakeholder consultation, DFAT [Department of Foreign Affairs and Trade] cannot achieve the best possible negotiating outcomes.'²¹

Stakeholder engagement is not just a case of mustering expertise; it also allows governments to co-opt external groups as policy advocates. In the EU, the European Commission has sought closer links with businesses in particular as a way of increasing its leverage over its own constituents – in this case, the Member States.²²

The key distinction that emerged from our interviews was between countries that ran this engagement of businesses and other groups through a formal structure, and those that relied on existing relationships and ad hoc conversations.

Formal engagement

At one end of the spectrum, the most formal set-up is in the USA. The consultation process was established by Congress in 1974, although it has undergone a number of revisions. Today, 28 different private sector advisory committees with a total of approximately 700 advisers provide confidential information and advice on proposed trade agreements, comment on US draft proposals, and advise on the operation of a trade agreement once it has come into force. The membership of these groups extends to non-business interests, such as non-governmental organisations and consumer groups.

In the USA, this framework has a statutory basis. While the framework ensures that the Government has access to necessary business and non-business expertise, negotiators from outside the USA felt that it was an insufficiently flexible system that required endless rounds of consultation. High volumes of contact came at the expense of in-depth conversations.

In the late 1980s and early 1990s, Canada created its own system based on the US model, although it was not based in statute, and therefore had a much greater degree of flexibility. This system, known as Sector Advisory Groups on International Trade

(SAGIT), was used by Canada in the US–Canada FTA negotiations, and sustained through the North American Free Trade Agreement (NAFTA) and Uruguay Round of WTO negotiations.

Informal engagement

However, since the 1990s Canada has slowly unwound this formal structure. As one interviewee explained:

Over the years, after the Uruguay Round, with the Doha Round kind of drifting off into infinity, with many negotiations under way – many of them smaller negotiations – with a lot of our approaches and interests well established, the interest in these permanent committees began to wane, and one by one they petered out. Since that time, even in respect of larger negotiations like Canada–Europe, we have proceeded with ad hoc consultative committees.

Some raised doubts about whether this move to an informal approach was the right one. Regarding business engagement during the Trans-Pacific Partnership negotiations, one Canadian interviewee observed that “a lot of it was done on a very ad hoc basis or through trade associations – and it just never worked”. Interviewees described an ongoing debate in Canada about whether to return to a more formalised structure.

What was clear from all of the interviewees was that both formal and informal engagement structures, managed through official channels, were preferable to the unofficial forms of engagement which increased the risk of trade policy being captured by vested interests. As one interviewee stated:

[The minister] would go off sailing on Sydney Harbour, and all his sailing mates – or almost all of his sailing mates – by coincidence happened to be senior executives in big textile producing firms... He’d come back on Monday, having been sailing with them at the weekend, and all the briefing and so on that he’d received the previous week would sort of disappear, and he’d come back with new questions and doubts.

On balance, the evidence from our interviews suggests that the UK should adopt a formal system of engagement, creating a series of advisory councils. At this early stage, it would seem heavy-handed and needlessly inflexible to place this structure on a statutory footing (as with the US example).

There have been some suggestions that DIT could sidestep the need to establish new committees by repurposing the Government’s existing sector councils.²³ However, these bodies will only provide a poor proxy for the type of engagement that DIT needs – their membership, which comprises chief executives, is too high-level to provide advice on the detail of negotiating texts. The councils meet two or three times a year, which would prevent them from engaging in an ongoing basis during negotiations. Moreover, coverage both within and between councils may fall short of DIT’s requirements.

Instead of repurposing existing arrangements, DIT should establish its own, formal system of advisory councils, as noted above. Previous Institute for Government

research into business engagement suggests that each of these councils should have between 20 and 30 members.²⁴ It is crucial that this membership represents not only business voices, but also non-governmental organisations and consumer groups.

A typical negotiating team is broken down into smaller teams for each chapter of an FTA, and the advisory councils should mirror this structure, with one for each chapter. Additional councils may be required on the non-FTA aspects of trade policy, particularly trade remedies. Government will have to accept that it will take some time before these bodies settle in and become a truly effective contribution to government policymaking – it may take 18 to 24 months to develop the necessary level of mutual understanding and trust.²⁵

Members of these councils need to be able to access confidential information

In both the original Canadian SAGIT structure and US advisory committees, membership was granted to the individual, not their organisation. If a representative from one organisation could not attend, the business was not allowed to send a replacement for them. These individuals were selected on the basis of their expertise on particular issues of trade policy. The UK has adopted a similar protocol for engaging specialist advice in other areas – for example, Defra’s Animal Health and Welfare Board²⁶ – and should do so in its trade advisory committees.

In the USA, members joining advisory councils have to sign non-disclosure agreements. This includes provisions ensuring that information is not shared with other parts of their organisation. In return, those individuals are able to access confidential negotiating information. As one interviewee stated:

[Advisers] get access to our negotiating documents, policy papers. They get access just like any federal employee here at USTR, or our other partner agencies that will be working on negotiations.

Most interviewees felt that this level of access was vital to the effectiveness of this stakeholder engagement. A review of Australian practices, where such access is not granted, found that ‘high quality consultation cannot be achieved if stakeholders have no knowledge of the content of agreements’.²⁷

If the UK is to adopt a similar system, the Government will need to counter the accusation that these councils, with their high level of confidential access, represent a ‘capture’ of government policymaking by a narrow set of corporate interests. During the Transatlantic Trade and Investment Partnership negotiations, the USA faced widespread accusations of this kind. That experience emphasises the importance of ensuring that membership of the advisory committees in the UK is diverse, including non-governmental organisations and consumer groups as well as businesses.

In addition, the ease with which DIT can adopt this kind of system will depend on whether it intends to operate as a high-security foreign policy department, or a low-security domestic policy department. At present this appears to be unresolved, but it will have a large impact on the ease with which confidential negotiating texts and other documents can be shared with outsiders.

A set of transparency obligations

Public engagement with trade deals has become an increasingly fraught issue. Policymakers around the world have struggled to respond, in part because the motivation behind public opinion on these issues is poorly understood.

One approach suggests that an individual's attitude to trade policy is based on their ability to gain from a proposed policy (i.e. arising from their 'individual factor endowment', such as level of education and skill).²⁸ Another approach suggests that it is determined not by their own individual exposure, but on their 'perception of trade's impact on the economy as a whole rather than on its impact on their own personal livelihood'.²⁹ A further approach argues that people's attitudes towards trade are determined not by its economic impact, but by its implications for other issues such as food quality, sovereignty and public services.³⁰

One common response to the increase in public engagement with trade has been to improve the transparency of policymaking. This is particularly true for the USA and the EU, where interviewees described a degree of surprise at the public response to the Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership.

To date, the UK Government has been partially insulated from these forces by the EU's control of trade policy – but having been shielded from the backlash, the UK cannot afford to ignore the lessons.

The Department for International Trade should have statutory transparency requirements

The extent of the public debate and opposition to the Transatlantic Trade and Investment Partnership led the EU to make previously classified documents open to public scrutiny, making these negotiations its most transparent to date.

In its latest 'Trade for All' strategy,³¹ the European Commission committed to making standard, for all its trade negotiations, some of the transparency actions taken in the transatlantic partnership. On top of its existing measures, the European Council has chosen to disclose its negotiating directives immediately after adoption; as a matter of course, the European Commission now publishes EU texts online during negotiations and the final text immediately after agreement, prior to conclusion of the legal 'scrubbing' process.

In the USA, the latest Trade Promotion Authority Act of 2015 includes provisions to increase US transparency in trade negotiations by:

- creating a chief transparency officer position in the USTR
- requiring the USTR to publish negotiation objectives prior to initiating trade talks
- publishing the impact assessment of a given trade agreement
- releasing the negotiating text before signature.

Across most of our case studies there is a general trend towards greater transparency. Given the potentially heightened public interest in the UK's international standing post-Brexit, the UK Government should follow this trend.

Therefore, the Government should give DIT a statutory requirement to publish:

- a trade strategy (see page 30)
- the negotiating objectives for each bilateral, plurilateral or multilateral negotiation
- the impact assessments conducted prior to negotiations
- the legal text of FTAs, once negotiations are concluded but before the agreement is signed
- evaluations of trade agreements after they have come into force – although if, as per the above recommendation, the UK adopts an independent advisory body, then this organisation should be responsible
- guidelines on its anti-dumping policy – the UK Government has argued that the EU should publish guidelines to provide transparency to, and predictability in, the process; it should heed its own advice³²
- non-confidential versions of complaint documents in trade defence cases after initiation – to give interested parties an early opportunity to challenge allegations of dumping, including the supporting data for these.³³

Include a commitment to publishing negotiating mandates

Government ministers must be disabused of their view – often repeated, but never correct – that published mandates approved by ministerial and parliamentary colleagues make negotiators’ jobs more difficult. The opposite is true.³⁴

Mandates give negotiators direction, limit their ability for concession and force governments to be realistic about potential negotiating outcomes. In the EU, the negotiating mandate is set through a formal process: it is drafted by the European Commission, and passed to the European Council to be edited and approved. In the USA, the Trade Promotion Authority is issued by Congress, and provides a mandate for the USTR in its negotiations. Both of these models involve the drafting and agreement of formal documents.

The UK should follow the same process, with DIT drafting a formal negotiating mandate, obtaining collective agreement in Cabinet, and publishing the document.

In the USA, the Trade Promotion Authority is published as a matter of course. The EU recently published its mandates for the Comprehensive Economic and Trade Agreement and Transatlantic Trade and Investment Partnership negotiations. Both of these experiences indicate that while a degree of confidentiality is necessary for running negotiations, this does not have to extend to the negotiating mandate. Therefore, the UK Government should publish this Cabinet-approved mandate.

The Department for International Trade needs to say how it will use public engagement to inform its decision-making

Some interviewees described their trade department’s schedule of consultations, stakeholder engagement sessions, public submissions and roadshows. For example, the USA holds 90-day consultation periods prior to every trade agreement, to give the public the opportunity to comment.

Although the importance of public engagement with trade deals is recognised, it can be difficult to manage. While many of our interviewees cited examples of good public engagement on trade, very few were prepared to say that their own country had perfected the process. In addition, they generally stressed the importance of striking a balance between being transparent and ensuring the right level of disclosure – of being open, not wide open.

DIT should learn lessons from other sectors. In the early 2000s, the UK Government was surprised by the strength of the public backlash to farm trials of genetically modified food. Policymakers and politicians misread public attitudes, and the policy had to be withdrawn. Government attempted to learn this lesson with 'GM Nation?', a vast national citizen engagement exercise. The experience also led to the creation of Sciencewise, a government-funded programme that runs public engagement exercises on scientific issues. Through a series of public deliberations, citizens' juries and smaller exercises, Sciencewise has been able to provide government with a better window into public attitudes in this controversial area. While it has not changed public opinion to an extent that would allow any movement on the issue of genetic modification, it is credited with allowing movement on areas such as mitochondrial DNA transfer.³⁵

The lesson for DIT is clear: it should not take public attitudes for granted, particularly on issues such as regulation and health and safety, or it may find the public acting as a veto-player on its policymaking. Deliberative engagement exercises will provide DIT with a more nuanced understanding.

A recent Institute for Government report on public engagement³⁶ found that while many UK Government organisations recognised the importance of engagement, and were aware of the toolkit of sophisticated engagement techniques, there was a lack of clarity about what to do with this material once it had been collected. Individual teams could commission public engagement exercises, but the organisations as a whole were not set up to incorporate this material into their decision-making process. The result was that exercises undertaken in good faith went to waste.

To avoid the same mistake, DIT needs to be explicit about how any public engagement exercises will be incorporated into its decision-making.

A greater role for Parliament

Parliament should have a meaningful vote on trade deals

All of our case studies involve a ratification process in which trade deals have to be agreed by the national legislature (Table 3). In some countries this is a statutory requirement, while in others it is a firmly established convention.

In the UK, trade deals will be ratified according to the Constitutional Reform and Governance Act 2010. This requires the Government to lay before Parliament any trade deals it wishes to ratify, along with an explanatory memorandum. During the subsequent 21 days, the House of Commons can choose to vote on the deal. If it does choose to vote, and votes against the deal, then a further 21-day sitting period is triggered. If the Commons continues to vote against the deal, these 21-day periods accrue indefinitely, and the Government is not able to ratify the deal. There is no precedent to suggest how quickly the Government would drop or renegotiate a deal that faced persistent parliamentary opposition.

On paper, these arrangements mean that the UK Parliament will exercise a significantly weaker form of legislative constraint on negotiators than in Australia, the EU, New Zealand or the USA. In each of these, the legislature is guaranteed a vote on the deal: one in which a single rejection will collapse the talks, or send negotiators back to the table (rather than in the UK, where an ongoing series of votes is required).

However, while the UK Parliament has less power over the deal itself, it will be able to constrain the Government's trade negotiations through other means. The UK legal order is fundamentally dualist: international treaties have no effect without an Act of Parliament implementing them. Trade deals will require changes to tariff rates, and often to regulation. It is probable that tariff rates will be set by statutory instruments made by the Treasury under the forthcoming Customs Bill. If Parliament does not want to implement the trade agreement, it can simply pray against those amendments. Similarly, amendments to regulation contained in a trade agreement may well require new primary legislation, which Parliament also could vote down.

Nevertheless, the restriction of Parliament's influence on these indirect forms of constraint introduces two risks. The first is that it weakens the UK's negotiating power in trade deals. Negotiations take place on two levels: internationally at the negotiating table, and domestically where both negotiators need to get approval for any agreement. Negotiators who are constrained on this domestic level – for example by powerful legislatures – have less room for manoeuvre at the international level. This limits their ability to make concessions, making them a more powerful negotiator.⁴⁰ As discussed later (page 44), the EU's tortuous ratification process makes it a powerful (if slow) negotiator – although in some instances, it can find itself so constrained that it is unable to make a deal work at all. The current UK set-up does not confer these benefits.

The second risk is that parliamentary opposition to trade deals will find other outlets. Historically, in Canada the Government has been able to bypass its Parliament in the ratification of deals. However, in 1993, Parliament's dissatisfaction with NAFTA triggered a general election in Canada that toppled the Government and nearly collapsed negotiations. Denied the ability to veto the deal, Parliament collapsed the Government.

Table 3: Ratification processes for free trade agreements

| Countries | Ratification process |
|-------------------------|---|
| Australia ³⁷ | <p>The Joint Standing Committee on Treaties reviews the agreement and calls for public submissions before presenting the legislation required to implement the agreement to Parliament. After the implementing legislation has been passed by both the House of Representatives and the Senate, final ratification of the agreement takes place. Parliament votes only on the implementing legislation, rather than the full text of the agreement.</p> |
| Canada ³⁸ | <p>The ratification process is controlled by the executive. After an agreement is signed, the full text is tabled in the House of Commons for consideration and discussion. After 21 sitting days, the Cabinet can take action to ratify the agreement by authorising the signature of an Instrument of Ratification or Accession. The executive has the authority to ratify an agreement – taking account of, but not being bound by, parliamentary review.</p> <p>In order to take legal effect, the agreement has to be implemented into Canadian domestic law via an implementing bill. Parliament votes on and can suggest changes to the implementing legislation, but not the agreement itself. Implementing legislation also may be required at the provincial level.</p> |
| EU ³⁹ | <p>The process for ratifying an FTA depends on whether it is a 'mixed agreement' (i.e. includes provisions that fall under Member State responsibility), or relates only to issues of EU competence.</p> <p>In case of a mixed agreement, both the European Parliament and all individual Member States have to agree the deal according to their own national processes. Where these states have devolved relevant competencies to subnational government, regional legislatures also may have to vote on the deal.</p> <p>For an agreement relating only to powers held by the EU, the deal can be signed off by a qualified majority of Member States in the European Council, and a majority in the European Parliament (following engagement with the Parliament's International Trade Committee).</p> |
| New Zealand | <p>The Foreign Affairs, Defence and Trade Select Committee reviews the agreement, and calls for public submissions as part of the parliamentary treaty examination process. It is then agreed by Parliament.</p> |
| USA | <p>FTAs must be enacted via an implementing law, requiring majority votes from the Senate and House, as well as the president's signature.</p> <p>To facilitate the ratification of trade agreements, the Trade Promotion Authority is enacted via legislation in the USA. This sets out congressional guidance on trade policy priorities as well as requirements for consultations with Congress, the private sector and other stakeholders that the US Government has to follow in negotiations. Provided that it adheres to these requirements, Congress in return provides fast-track agreement via a simple 'up or down' vote on the deal.</p> <p>In order to be ratified, treaties (such as bilateral investment treaties) require that two-thirds of the US Senate have given their advice and consent.</p> |

Source: The Knesset – Research and Information Center, *The Role of the Parliament in the Ratification of International Treaties and Agreements: Comparative survey*, 10 July 2003, retrieved 24 April 2017, www.knesset.gov.il/mmm/data/pdf/me00647.pdf

The UK could reduce these risks by increasing Parliament's role in agreeing deals. In Canada, as in the UK, some trade agreements have required specific legislative changes which have to be approved by Parliament; but since 2008, Canada has decided to expand parliamentary involvement in the ratification process through convention.

In Canada, a new system was adopted in which the Government would table the agreement in Parliament for 21 days prior to ratification. While the executive retained the power to sign and ratify trade agreements, it is nevertheless a well-established convention to consult Parliament. As one interviewee stated:

There is no law in Canada that says that trade agreements have to be ratified by Parliament. The Government has the authority to negotiate and to sign. It's not like the US, where trade agreements have to go before Congress for approval – we don't have to do that. We do it because we have, by convention over the years, indicated that we will place trade agreements before Parliament for examination and debate.

The UK Government should take a similar approach. It should use the Trade Bill to give a statutory guarantee that it will always schedule time for parliamentary debate, and for a vote on any future trade deals under the Constitutional Reform and Governance Act 2010. This would be a departure from the UK's standard approach to approving international treaties, but given the political sensitivity for trade, and the far-reaching implications of deals for domestic policy, it would be prudent to give Parliament a greater role in agreeing deals.

A parliamentary committee should have privileged access to negotiating texts

This potential vote at the end of a trade negotiation will force government to engage Parliament from the beginning: although the ratification process comes after the negotiations, its influence is felt from the start. Negotiators do not want to waste time notionally agreeing a deal which is then rejected by the legislature – they operate with one eye on the ratification process.

This means that it is rare for legislatures in any country to actually vote against a trade deal. When legislatures reject trade deals, it 'indicates a failure of the legislature to exercise influence over the executive, rather than a successful influence attempt'.⁴¹ Engaging Parliament and allowing it to exercise some leverage over the course of negotiations is the most effective way to minimise the risk that the Government may mistakenly agree a deal that Parliament refuses to approve.

There is a balancing act in managing this engagement, since full transparency with parliamentarians during the negotiating process increases the risk of leaks. One way of striking this balance is to give a specific group of parliamentarians privileged access to negotiating texts. This might involve creating a body with a role comparable to that of the UK Parliament's Intelligence and Security Committee. The Committee has the power to scrutinise the expenditure, administration, policy and operations of the security agencies, and its members are subject to Section 1(1)(b) of the Official Secrets Act 1989, with access to highly classified material. Mirroring the Committee, the membership of a new trade body could include members from both the House of Commons and the House of Lords.

If the Government were to adopt this recommendation, it would face a choice between setting up a new group of parliamentarians to undertake the task, or expanding the remit of the existing International Trade Committee to give it these powers. If it were to follow the model of the Intelligence and Security Committee, the Government would set up a new group; the members of the Intelligence and Security Select Committee are all senior politicians and Privy Councillors. All members are nominated by the prime minister (in consultation with the Leader of the Opposition) before being appointed by Parliament – a notably different system from the normal select committee election process.

3. What to do with these tools in the next two years

Introduction

Once DIT has the capacity, cross-Whitehall framework and engagement structures that it needs, it can begin its task of 'ensuring the UK takes advantage of the huge opportunities open to us'.⁴² This requires one set of actions in the next two years (covered in this chapter) when the UK is still a member of the EU and preparing to run an independent trade policy. It will require a different set of actions once the UK has left the EU, and can pursue this policy (covered in the next chapter).

Set a trade strategy

One of the biggest risks facing DIT is that it fails to act strategically. Many interviewees warned that in the absence of a strategy, trade departments fall into a pattern of chasing political whims, pursuing a trade strategy based on 'keeping up with the minister' and delivering a series of 'announceables' to coincide with the minister's travel schedule. Almost all of our interviews highlighted the need for the Government (in conjunction with the devolved administrations, as above) to publish a trade strategy.

Australia's failure to establish a trade strategy serves as a warning. In a 2010 review of the impact of bilateral and regional trade agreements on Australia's trade and economic performance, the Productivity Commission identified a number of problems with the Government's approach. The Commission's key criticism centred on the lack of a wider strategy, resulting in non-strategic selection and prioritisation of trade partners, and a rush into trade negotiations where other options for advancing trade policy objectives might have been more effective:

The Commission is concerned that, at least in some quarters, there tends to be a mindset of 'agreements for agreements' sake' ... Some negotiations have run on for several years with few signs that a worthwhile outcome is close. The resources devoted to different negotiations are not made public, and it is not clear that other trade liberalisation options are given sufficient consideration before decisions to pursue BRTAs [Bilateral and Regional Trade Agreements] are taken.⁴³

In response to this analysis, the Productivity Commission argued for 'the formal development and publication of an overall trade policy strategy'. The UK should learn this lesson, as the risk that vague political ambitions could dictate DIT's work is one of the biggest threats to its effective functioning.

Producing the trade strategy should force government to set out the business case for seeking an agreement through costly negotiations, protecting decision-makers from the trap of pursuing deals for the sake of deals. It should give policymakers cause to examine the limitations to trade deals, and to explore the alternative to deals that could have more impact on trade (see page 31). There is a real risk that the new department (which might be seen as a 'new toy' in Whitehall) is pulled in too many

BOX 3: THE EU'S TRADE STRATEGY – 'TRADE FOR ALL'

In October 2015, the European Commission published its latest trade strategy, *Trade for All: Towards a more responsible trade and investment policy*.

The strategy responds to the increased attention and criticism that the Commission has received over its lack of transparency on trade. It seeks to realign trade and investment ambitions with the EU's values – such as human rights, sustainable development and high-quality regulation – by focusing on three key principles:

1. higher effectiveness of trade agreements – ensuring that they deliver the envisioned economic opportunities
2. higher transparency – by opening up trade negotiations to more public scrutiny
3. a greater focus on promoting the EU's core values abroad – e.g. via trade agreements.

Following on from these high-level guiding principles, the trade strategy outlines specific short-term and long-term goals, including plans for multilateral and bilateral negotiations. Specifically, the EU currently prioritises:

- concluding ongoing trade negotiations and major projects such as the Doha Round and Transatlantic Trade and Investment Partnership
- opening new negotiations in the Asia-Pacific region, specifically with Australia and New Zealand, in addition to African countries
- modernising existing free trade and customs union arrangements with Chile, Mexico and Turkey.

Source: Directorate-General for Trade, *Trade for All: Towards a more responsible trade and investment policy*, 2015, retrieved 24 April 2017,

http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf; Directorate-General for Trade, *Factsheet: Transparency in EU negotiations*, June 2013, retrieved 24 April 2017, http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151381.pdf

directions to be effective – the development of a strategy should offer the opportunity for discipline in the Government's approach.

The strategy needs to be more than a wish list of potential trade deals

Trade strategies typically cover both high-level objectives and specific proposals for trade deals (as in Box 3). Canada's Global Markets Action Plan⁴⁴ takes the same approach, setting out the multi-stage process used to identify trading partners and the list of priority partners that emerges from this process. However, the UK trade strategy should not succumb to the myopia which views trade strategy as simply a sequence of high-profile deals. In many instances a formal trade agreement will not be the most appropriate way of achieving a trade objective.

Negotiations are extremely costly in terms of the time, financial and human resources required. Once these resources have been spent, there is no guarantee that a satisfactory deal will be reached. Government should start by asking what problem it is trying to solve. It may find that, instead of an FTA, there are other ways of achieving this objective, including:

- commercial diplomacy and market development assistance – e.g. helping developing countries to build robust regulatory regimes for financial services, creating an environment in which UK firms can do business
- targeted negotiations focused on a specific issue – e.g. a dual tax treaty or investment protection agreement
- litigation under domestic law, existing international agreements or via the WTO
- unilateral policy actions – e.g. regulatory reform, tax reform, tariff cuts or adjustment of the tariff schedule.

FTAs are particularly limited in their ability to increase services trade, which is the largest share of UK exports. One review of trade data for 42 countries found that membership of many FTAs is not associated with any significant increase in bilateral services trade.⁴⁵ In financial services, one of the UK's key offensive interests, this is in part because countries entering into negotiations do not expect to trade away their control of prudential and conduct regulation. The ability to regulate the financial products on sale in a country is not something that negotiators are prepared to treat as a bargaining chip, in the head-to-head exchange of concessions in an FTA. Even the Comprehensive Economic and Trade Agreement – the EU's deal with Canada, and one of the most sophisticated agreements in the world – does not make significant headway on financial services. It contains limited measures on cross-border supply and commercial presence.

Instead, financial services trade might be boosted more effectively through the types of commercial diplomacy, market development assistance or targeted negotiations described above. In 2016, the UK's Financial Conduct Authority signed a series of regulatory cooperation agreements with the Monetary Authority of Singapore covering financial technology ('fintech'). In time, this direction relationship between regulators may lead to greater convergence than could have been achieved in the tête-à-tête context of an FTA.

This means that the UK's trade strategy needs to be clear that FTAs are just one tool for boosting trade. Other options may be much more effective in achieving trade policy objectives, and DIT's 'trade audits' are a positive start. These are bilateral forums in which the Government discusses trade barriers with another country, and identifies how they might be removed.⁴⁶

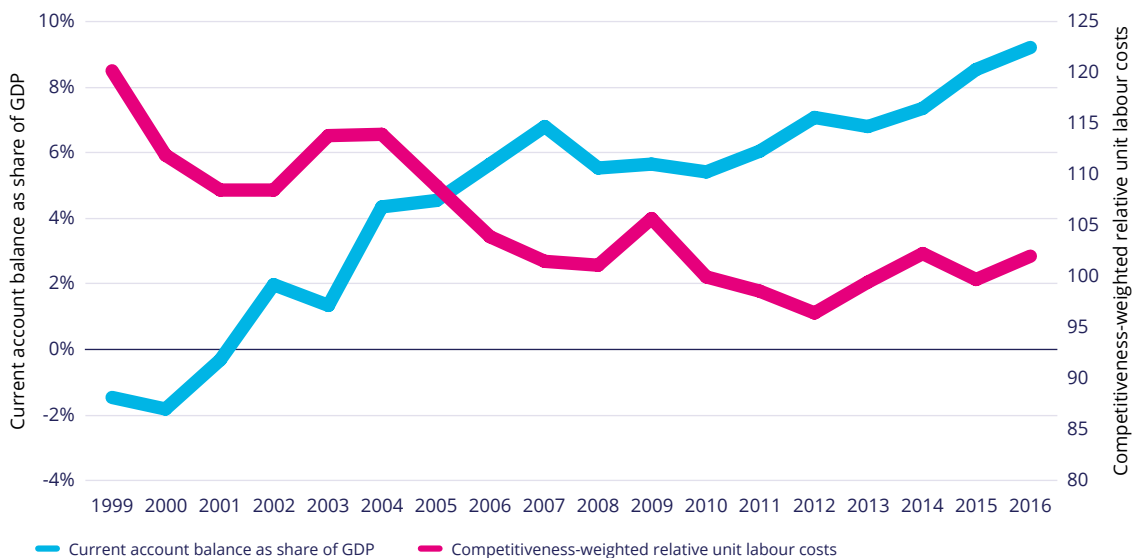
In addition, a serious trade strategy will be prepared to recommend in some instances that no action is taken at all. As one interviewee stated: "Ministers don't like to be seen as doing nothing, but often, when you have considered the matter, it is a viable, it is a useful, option to simply let it go."

The strategy should incorporate domestic policy, and be coordinated by the Cabinet Office

Trade performance is determined only partly by the actions of international trade departments. Domestic policies such as education, industrial strategy, tax policy and labour regime all have a significant impact on the UK's trade performance. The very different trading performance of EU Member States underlines this starkly. Germany has run a trade surplus of more than 5% of gross domestic product (GDP) for the past decade, while at the same time France has run a deficit of 2% of GDP.⁴⁷ During this time they have shared a trade department – the Directorate-General for Trade in Brussels – and the same currency.

The difference is their domestic policy: the improvement of Germany's trade performance is explained in part by a dramatic reduction in the competition-weighted relative unit cost of labour.⁴⁸ This was spurred by the Hartz reforms of the labour market, which began in the mid-2000s (Figure 3).⁴⁹

Figure 3: German trade surplus and labour competitiveness



Source: IfG analysis of OECD, Economic Outlook Annex Tables, March 2017 (indexed 2010=100).

For this reason, trade strategies often are embedded in wider domestic economic policies. Canada's 2007 Global Commerce Strategy formed part of the wider national competitiveness strategy, Advantage Canada, which was drafted by the Department of Finance.⁵⁰

Therefore, the UK's trade strategy should incorporate commitments on domestic policy and be coherent with its foreign policy – meaning that the strategy will need to bind together activity across Whitehall, including the prime minister's industrial strategy. There is a risk that this cross-department support might not be forthcoming if the plan is drafted in isolation by DIT. Instead, government should replicate its process for the National Security Strategy, and put the Cabinet Office in charge.

The National Security Strategy and Strategic Defence and Security Review provides a 'whole of government' response to the security challenges facing the UK. It is drafted by the National Security Secretariat in the Cabinet Office, which works directly with

the Prime Minister's Office, Foreign & Commonwealth Office, Ministry of Defence, Department for International Development and Home Office. Putting the Cabinet Office in charge of the process, rather than any specific department to lead, moves the strategy closer to the prime minister, and therefore makes it easier to coordinate across government.

The same approach should be applied to a new trade strategy, which should be produced by the Cabinet Office, with close prime ministerial involvement, working with departments such as the Foreign & Commonwealth Office, HM Treasury, the Department for Business, Energy & Industrial Strategy and Defra, as well as DIT. This also will ensure that the trade strategy includes domestic economic policies. Regulatory reform, macroeconomic policy, industrial strategy and trade policy should all work together, and wider contextual issues such as national security concerns, foreign policy or public opinion should be reflected in the strategy.

Establish schedules at the World Trade Organization

The UK is a member of the WTO in its own right. However, at present the UK operates in the WTO under the EU's set of 'schedules': a list of commitments that sets the terms of the EU's tariffs, its quotas and limits on subsidies. The UK will need to agree its own set of schedules at the WTO. This task must be completed in the next two years, while Brexit is negotiated. The UK's WTO schedules will form the basis for its future trade policy.

The Government says that it plans 'to replicate our existing trade regime as far as possible in our new schedules'.⁵¹ This is a sensible approach, as it involves minimal disruption and reduces the scope for other WTO members to object to the UK's new schedules. For tariff levels in particular, copying and pasting should be straightforward.

However, the copying and pasting approach will not work for all aspects of the schedules. There are some areas – notably, on quotas and subsidy limits – where the UK must reach an agreement on what share of the EU figure it takes. In reality, this will be a three-way negotiation between the UK, EU and other WTO members, because it will lead to a reduction in the EU's quotas and subsidy limits. Moreover, even if the UK and EU reach an agreement on dividing quotas, other countries may object. Currently, New Zealand is able to export just under 230,000 tonnes of sheep meat into the EU each year without any tariff, compared with the almost 13% tariff for exporters that are not part of the quota. The UK and EU would need to decide how to divide up this quota.

Countries that currently benefit from quotas will not want to see these simply divided between the EU and the UK, as this will reduce their flexibility as to which market they can sell to. If UK demand falls, it is useful for New Zealand to simply shift its sales to the continent, and vice versa. Therefore, it is likely that the UK will offer quotas that are slightly larger than the share of the EU quota that it currently consumes.

Even so, while the task of establishing UK schedules at the WTO is vitally important and far from straightforward, it is an area in which the Government is already taking the right approach.

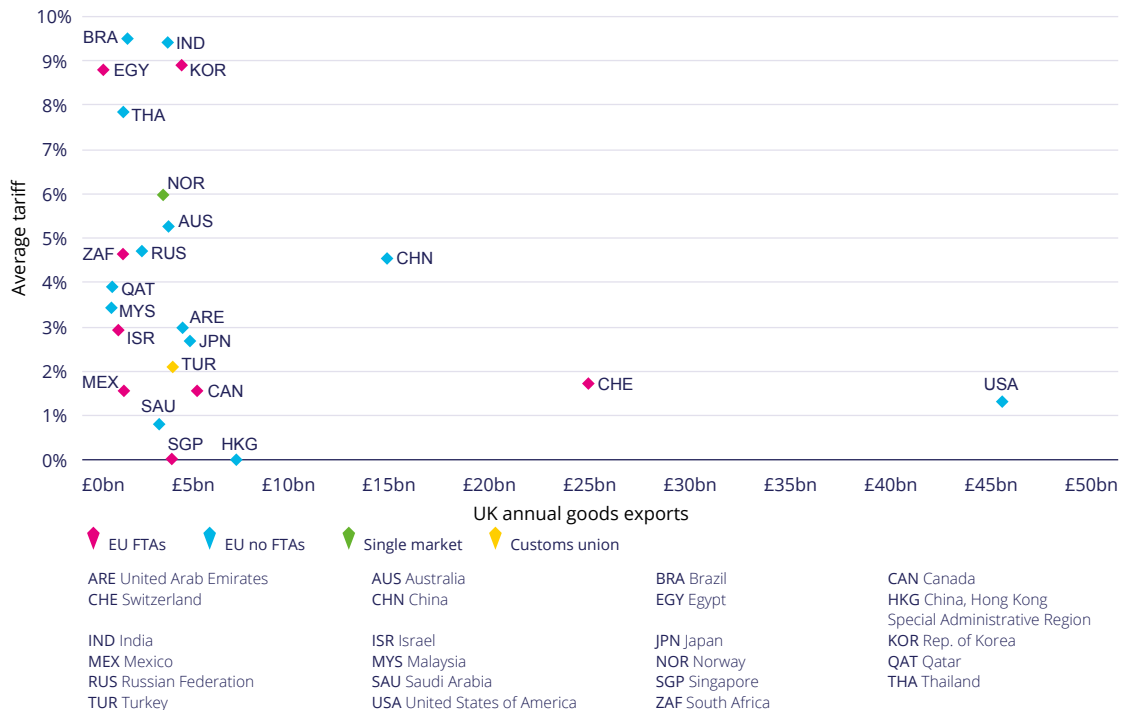
Agree deals to copy existing EU free trade agreements

There are 23 countries outside the EU to which the UK exports more than £1bn worth of goods a year. Through existing EU trade agreements, the UK currently has preferential access to nine of these markets, with a tenth – Norway – granted through its European Economic Area (EEA) membership. The UK will not automatically inherit these deals on leaving the EU; if it wants to replicate these agreements, the text will have to be copied into a new agreement that is negotiated with the third country.

In the short term, it is the potential loss of these deals that would have the biggest impact on trade in goods in the UK (with many of these agreements providing only limited access to services markets). While the gains from entirely new deals are hypothetical, the losses from foregoing these existing arrangements are assured. These should be the UK Government’s immediate priority.

The deals with Canada, South Korea, Singapore, Switzerland and Turkey are particularly valuable. Losing these would mean reverting to a trading relationship based on each country’s Most Favoured Nation tariff regime. Figure 4 compares the size of UK exports against the average tariff which could be applied if existing deals are not carried over, split between countries where the EU has a deal (pink), does not have a deal (blue), or which are part of the single market (green).

Figure 4: UK annual goods exports and average applied Most Favoured Nation tariff rates, 23 non-EU countries



Source: Institute for Government analysis of World Bank Trade Barrier Index and Comtrade data.

Switzerland stands out as the largest trading partner to which the UK might lose preferential access if the existing EU deal is not replicated, with more than £25bn of goods exports. While its tariff levels are generally low, a slight increase in the cost of trade could have a large negative impact on UK trade performance, harming exports and putting up prices for consumers by reducing imports. South Korea signed a deal with the EU in 2011 – if this deal were lost, UK exports of £5bn could face an average tariff approaching 9%. Canada (£6bn), Singapore (£4bn) and Turkey (£4bn) round out the list of priority goods markets, where a loss of the existing deal would increase trade costs significantly.

Replicating these deals will be easiest if the UK makes only minimal changes to the text (although they will still require agreement by the other country). However, these agreements were negotiated by the EU, acting with the interests of all its members in mind, and they may not perfectly reflect UK priorities and interests. Neither will the Government currently have a perfect grasp of their content – the UK approach to these deals when they were first negotiated by the EU will have been to prioritise a few key issues on which to lobby the EU and influence its negotiating position, rather than attempting to take a comprehensive view on every part of the agreement.

For the UK Government, now, to reach that kind of comprehensive understanding is a colossal task. Each of the deals with Canada and Korea runs to more than 1,300 pages. The Government may decide that there are priority chapters on which it would like to focus its attention, but any attempt to get a comprehensive grasp on the content of the deals will slow the process, and increase the risk that the UK is not able to copy across these deals inside two years. Were the UK to find points where it does want to change the deals, the need to negotiate this with the partner would further increase that risk.

Government should state upfront that it does not intend to tinker with or ‘improve’ the deals at all, and will focus on simply replicating them. This fits with the Government’s wider approach of continuity on Brexit, as seen in the Great Repeal Bill and the rectification of the WTO schedule.

Even if changes are kept to a minimum, the UK should recognise that it may not be possible to copy across all of the existing EU agreements inside two years. Instead, it should prioritise those deals with the greatest economic value and where reverting to Most Favoured Nation tariffs would be most damaging, namely Canada, South Korea, Switzerland, Singapore and Turkey.

Prepare a model UK free trade agreement

Over time, most of the major trading nations have developed a model FTA that they use as a template across negotiations. In part, this reflects the fact that countries tend to have a relatively stable set of trade preferences.

Perhaps more importantly, the complexity of FTAs means that there is a natural economy in recycling text from one deal to another. Using text from an existing agreement means that a negotiator can be confident that it has been tested ‘in the field’ and withstood any legal challenges. Over time, the model FTA is improved gradually to reflect a deepening understanding of the country’s trade preferences. As one former negotiator explained:

When you are proposing text in a trade negotiation, it is always good to use text that you have used before. That is not a copyright violation, that is just being sensible – because if it is existing text it may have been adjudicated somewhere, it might have been challenged and interpreted by a dispute settlement body of some kind, so that the meaning of every piece of language is well understood.

The result of the widespread use of model FTAs is that different agreements with a common trade partner often have identical clauses or chapters. There are more than 100 existing deals which take 80% or more of their text from an earlier agreement.⁵² At present, the UK does not have a model FTA. If the UK were to negotiate every FTA from scratch, it would be diverting from a well-established international convention. Instead, it should develop a model FTA of its own.

To save time, the UK should look to existing agreements to lift sections into a UK model agreement. One former negotiator advised: “Certainly from the other friendly countries, I would say: learn as much as you can, and ‘steal’ as much of the good stuff as you can.”

The UK can cannibalise a number of different documents. The Canadian model free trade agreement is a mix of chapters from NAFTA, the Comprehensive Economic and Trade Agreement and the Trans-Pacific Partnership, as one interviewee stated:

[At the start of negotiations] I will bring my model for how trade agreements should look and that will be – well, in the old days, it would look exactly like the NAFTA – in the modern day, it would look a little more like the Canada–Europe trade agreement, or even the TPP [Trans-Pacific Partnership] chapters.

This ‘magpie-like’ approach should give the UK a starting point from which to develop its own model FTA.

When they are agreed, the UK’s deals will not perfectly match this model: a country’s ability to see its model FTA reflected in the final deal is a function of their power. Weaker countries still draft model FTAs, but expect them to be watered down through negotiation. Of the Trans-Pacific Partnership, 45% incorporates text from past US deals with non-Partnership countries, while only 25% of the text comes from Japanese deals.⁵³

Model text is used less frequently in 21st-century trade issues such as environment, movement of people or telecommunications. These issues are relatively new to trade agreements, and common standards or country preferences have not solidified yet. There is less text out there for the UK to copy, and a greater chance that innovative UK text will be copied by others.

Establish UK policies towards developing countries

The Generalised Scheme of Preferences (GSP) is a non-reciprocal approach in which developing countries pay lower or zero tariffs to access EU markets. Those countries that also implement conventions relating to human and labour rights, environment and good governance get 'GSP+' access, which removes tariff entirely. For the least developed countries, the 'everything but arms' arrangements grant duty-free, quota-free access to all products, except for arms and ammunition.⁵⁴

There are now 11 WTO members with GSP schemes, including Australia, Canada, the EU, New Zealand and the USA.⁵⁵ The UK should prepare its own GSP policy for introduction the moment the UK leaves the EU. This can be designed and implemented unilaterally.

The European Partnership Agreements may be more difficult to carry over. These are reciprocal agreements in which African, Caribbean and Pacific countries receive tariff-free access to the EU, but must open up their own markets in return.⁵⁶ Copying over these deals will be more difficult than replicating the GSP, because they will require negotiation with, and agreement from, the other countries.

If the UK finds that it cannot copy over these deals in time for its departure from the EU, it could achieve a temporary solution by requesting waivers from the WTO to grant non-reciprocal preferences to African, Caribbean and Pacific developing countries. There are precedents for such arrangements: the USA has WTO waivers for its trade preference initiatives with the Caribbean (the Caribbean Basin Initiative) and Africa (the African Growth and Opportunity Act of 2000).⁵⁷ This arrangement would mean that the UK would give up its own preferential access to these markets until deals could be agreed.

4. 2019 and beyond

Introduction

Once the UK has assembled the tools that it needs for trade policy, left the EU, established itself at the WTO and carried over the existing EU FTAs, then it can begin to look at new trade partners. This chapter sets out the priorities for the UK's medium-term trade strategy.

Build experience by negotiating with smaller, like-minded countries

There is a clear political pressure for the Government to start announcing new trade deals that take the UK beyond the market liberalisation that has been achieved by the EU. When asked by the International Trade Select Committee about deals that were being explored by the UK, the Secretary of State mentioned Australia, China, the Gulf States, India, New Zealand, the USA and 'some ASEAN [Association of Southeast Asian Nations] countries'.⁵⁸

Of these, it is Australia and New Zealand that should be the UK's initial focus. Many of our interviewees felt that it was important for the UK to build experience by engaging smaller economies with a strong track record of striking deep and meaningful trade deals. At an Institute for Government roundtable, held under the Chatham House Rule** in March 2017, one trade expert suggested that an additional advantage was that as these countries were so far away, and the volumes of trade involved were relatively small, early mistakes by the UK would incur only minor repercussions. This is not to overstate the ease with which a deal can be reached in Australia and New Zealand. The EU does not have a deal with either country, in part because one of the EU's key defensive interests – agriculture – is a key offensive interest of both. In the medium term at least, it appears that the UK intends to replicate the EU's agricultural protectionism, raising the stakes in any deal with Australia or New Zealand. Nevertheless, these countries are likely to be an easier prospect than other potential partners.

Don't prioritise a quick deal with the USA

There will be political pressure for the UK to leapfrog this learning period and embark immediately on larger deals with major economies – the USA and BRIC countries in particular. This pressure is misplaced.

As the Institute has stated previously,⁵⁹ a quick US deal would be politically challenging for the UK. The largest potential gains are in politically contested sectors (all of the USA's 22 import duty rates above 100% are on agricultural products). Going by the example of the Transatlantic Trade and Investment Partnership, meaningful progress on removing non-tariff barriers would involve a level of regulatory integration with the USA that could raise public concerns,

** When a meeting is held under the Chatham House Rule, participants are free to use the information received, but not to identify the source.

and permanently taint the public's attitude towards the work of DIT. Future trade deals will suffer if they are conducted in the shadow of an unpopular deal with the USA.

Moreover, liberalising services would require a degree of prudential cooperation that will not be possible until the UK's relationship with the EU is resolved. The USA agrees trade deals most quickly when its partners adopt a tactic of capitulation masquerading as negotiation.⁶⁰ The USA's propensity to compromise – already small – will diminish further under the auspices of a president who said, in his inauguration address, that 'protection will lead to great prosperity and strength'.⁶¹ All of these issues bode ill for a UK attempt to wrap up a quick deal with the USA.

Australia's hasty FTA with the USA (negotiated in just 10 months) meant that it missed out on access to parts of the US market, particularly in the strategically significant agriculture sector, which constitutes around one-third of Australia's exports to the USA. The agreement wholly excluded the protection of American sugar, where Australia is highly competitive. US tariffs were phased out over 18 years, while Australia's were eliminated immediately. A hasty US trade deal might well prove to be a wasted opportunity.

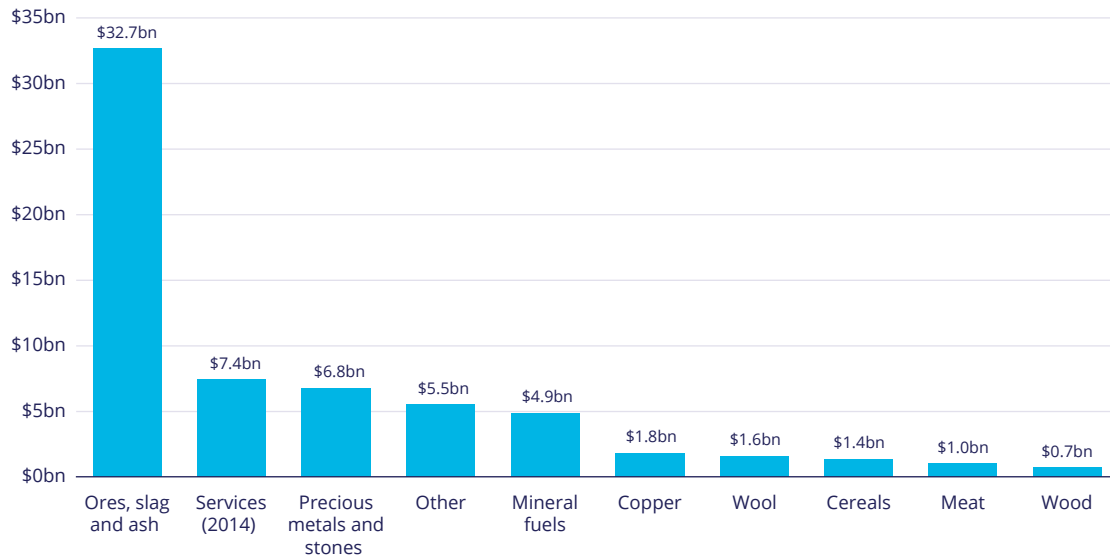
Don't rush to sink resources into negotiations with BRIC countries

With the BRIC countries, the risk is that the UK sinks its resources into long-running negotiations from which no deal is forthcoming. None of the EU, Canada or the USA has been able to secure trade deals with Brazil, India or China. Nevertheless, one negotiator explained that officials drawing up a trade strategy often

start where everybody on the planet starts, which is the explosive growth emerging markets. So the problem with that category ... is that everybody on the planet is your competitor, number one – and, number two ... securing satisfactory trade arrangements with them is a challenge.

While Australia and New Zealand have secured deals with China, their position is not comparable to the UK, as the vast majority of their exports to China relates to raw materials. More than half of Australia's exports to China come from ores, slag and ash (Figure 5). In New Zealand, two-thirds of goods exports to China consist of dairy, wood, meat and fish. Neither of these examples would provide the basis for a UK–China negotiation.

Figure 5: Australian export of goods and services to China as a percentage of total export, 2015 (in US\$)



Source: IfG analysis of UN Comtrade data.

China does have some trade deals that are not focused on access to commodities, such as with Switzerland. The similarity of the UK and Swiss economies suggests that this might serve as a model for the UK and, as some have suggested, a way of creating a bridgehead for the UK services sector into the lucrative Chinese market.

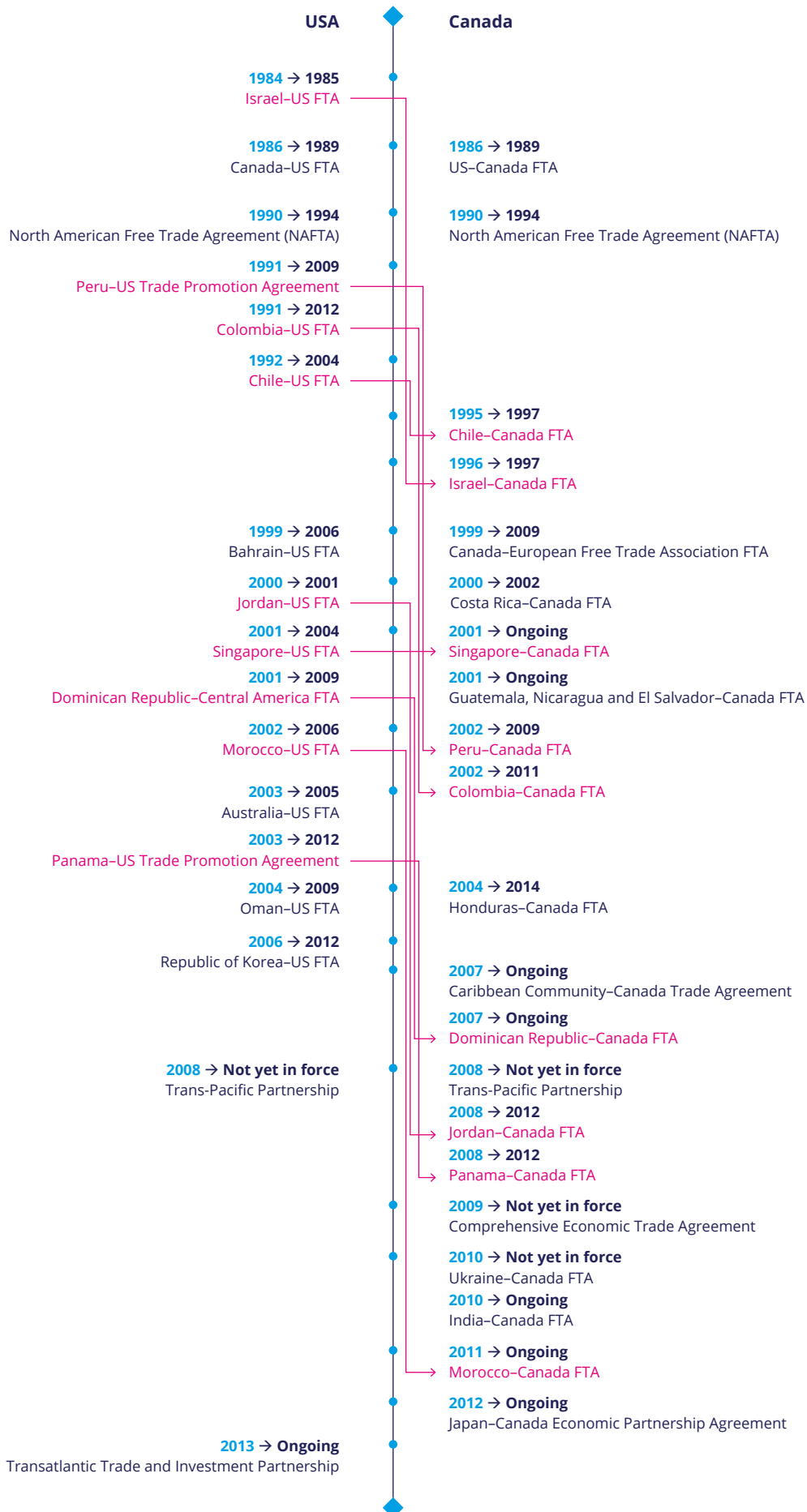
The opposite is the case. The deal is one sided: Switzerland has agreed to grant tariff-free access to 99.7% of Chinese exports, while the Chinese authorities have exempted only 84.2% of Swiss exports from customs duties.⁶² Even these Chinese concessions come with caveats: China reserves the right to impose duties for a transition period of up to 15 years in some sectors.⁶³

The China–Switzerland deal focuses primarily on goods, which account for more than 75% of Switzerland’s exports to China, and in which it has built a trade surplus since the deal was signed. In terms of services, the deal makes no significant advance on China’s commitments at the WTO. This is true for both financial and non-financial services, with several small concessions: the deal ensures that Switzerland’s non-life insurers are permitted to operate in China, but only through companies with no more than 50% foreign ownership.

The China–Switzerland deal is of such a quality that a survey conducted by the Swiss Chamber of Commerce in Shanghai found that almost two-thirds of Swiss companies in China were not making use of the FTA 18 months after it came into force. Of businesses, 89% felt that the FTA had had no effect on their trade, and more than 40% of those that had made use of the FTA had encountered problems.⁶⁴

There are slim prospects for a UK–China deal that plays to the UK’s strengths. Pursuing such a deal would not be a strategic use of resources.

Figure 6: Canada keeping up with the USA



Source: Institute for Government analysis.

Match the EU's deals with third parties

Trade deals give countries an edge: a cheaper form of access to foreign markets than that enjoyed by their competitors. Therefore, competition plays a key role in driving trade deals, known as 'competitive liberalisation'.

This is a key feature of the EU's trade strategy. Since the shift away from multilateralism during Peter Mandelson's tenure as the Head of Directorate-General for Trade, the EU has sought to mirror the USA's bilateral trade deals.⁶⁵ The EU followed the USA in efforts to negotiate new preferential trade agreements with Chile, Israel, Jordan, Mexico and Morocco, despite a much lower share of exports being covered in these agreements by the EU (4%) than the USA (33%).⁶⁶

Canada follows the same strategy. Out of Canada's 19 trade agreements that are in place or under negotiation (and do not directly involve the USA), 11 are with partners that already have deals or have started conversations with the USA (see Figure 6). Even in cases where Canada appears to get there first, often it is still following the USA's lead – such as with Chile, where the Canadian deal responded to exploratory talks between Chile and the USA. This is Canada's 'keeping up with the Joneses' trade strategy.

One interviewee cited the Morocco–Canada negotiations, started in 2012, as an example of this competitive liberalisation approach. The talks were initiated in response to the Morocco–US FTA, which entered into force in 2006 and, as a result, led to Canadian businesses losing out on many of their contracts. Canada decided to level the playing field, as one of our interviewees explained:

Canada launched into FTA negotiations with Morocco, and the reason should not seem obvious – because it isn't. You know, it is a small market: it is nowhere near the top of our list of markets abroad; but as it happened, the Americans did a deal and we sell a lot of durum wheat in Morocco, and we were losing all of our contracts.

For Canada, matching the US's liberalisation is not always straightforward. As one negotiator observed:

The difficulty with 'the keeping up with the Joneses' negotiations as a category is we are not 'the Joneses' ... Our businesses just want us to go and get whatever the US and sometimes the EU got – and sometimes we can get it, and sometimes we can't.

The UK's number one competitor post-Brexit will be the EU. If the EU has an edge through market access that the UK lacks, there is a risk that some production will cross the English Channel. This is another reason why the UK's first priority should be to renegotiate the EU's existing FTAs, but also points to a future trade strategy that involves keeping one eye on the EU 'Joneses'.

Look to surpass the EU

While the EU's trade deals will form a baseline for UK ambitions, the UK also will look to use its greater flexibility to outstrip the EU on levels of market access. Typically, the EU is characterised as a cumbersome negotiator, as it has to contend with a system involving a high number of veto-players. A 'mixed agreement' trade deal has to be agreed by:

- a consensus in the European Council
- a majority in the European Parliament
- all the national parliaments
- those regional assemblies to which relevant powers have been devolved.

It is difficult for EU negotiators to identify potential negotiating outcomes that would satisfy all of these interests. Doing so takes time, meaning that the EU is often a 'convoy moving at the speed of the slowest vessel'.⁶⁷ As well as being slow, the number of veto-players in the European system gives it a conservative bias, with the EU's agenda anchored by its most protectionist member. This means that 'the EU's trade policy institutions largely privilege the status quo over change'.⁶⁸

However, the UK will not face these constraints. In the long term, once its trade negotiating competence has built up its experience, the UK should be able to move more quickly than the EU to secure trade deals. Nonetheless, this speed may come at a trade-off with bargaining power. The EU is not only a larger market than the UK, but the number of constraints on its ability to negotiate also increases its bargaining power by giving it a reduced scope for concession. To some extent, the EU is able to dictate terms in its negotiations with smaller countries. The UK will not face the same level of constraint – the speed with which it does deals may be a reflection in part of its greater willingness to make concessions.

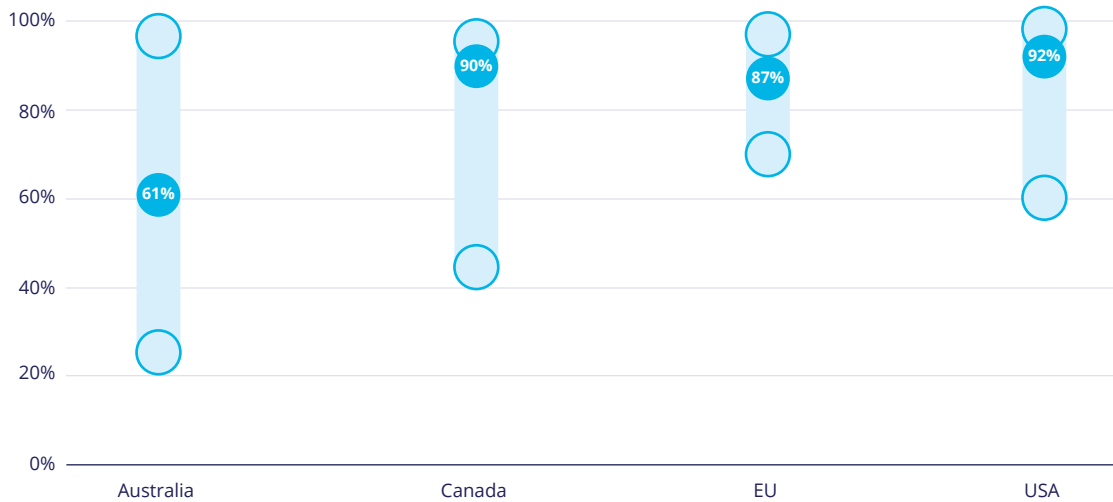
DIT needs to work with other departments to increase the use of its agreements by UK businesses

The benefit of an FTA is that it grants preferential access to another market. This benefit does not accrue naturally: businesses trading with the partner country may have to take certain actions (such as filling out paperwork) in order to benefit from the preferential terms of the agreement. Not all businesses do, meaning that FTAs have a 'utilisation rate', reflecting the percentage of eligible trade that takes advantage of the preferential access to which it is entitled. A low utilisation rate means that many businesses are ignoring the FTA and choosing to trade without taking advantage of the preferential access it might create. That is, a low utilisation rate means that the value of the FTA is not being fully realised.

The EU signed an FTA with Korea in 2011. In 2013–14, only 66% of eligible EU exports to Korea made use of the provisions within it to get preferential access to Korea's market. In the other direction, 81% of South Korean exports made use of the deal. In that sense, the EU was getting less out of the deal.

A 2012 study by the World Bank found that the EU has a relatively high utilisation rate of 87%,⁶⁹ which compares favourably to Australia's average of 61% (Figure 7).

Figure 7: Average FTA utilisation rates for exported goods, with highest and lowest rates, for Australia, Canada, the EU and the USA



Source: Keck, A., Lendle, A., *New Evidence on Preference Utilization*, World Trade Organization.

A different study, conducted in 2015, found that the EU had an average utilisation rate of 84%, with the UK slightly below the average at 81%.⁷⁰ If the UK Government is to make the most of its future trade deals, it needs to increase the extent to which businesses make use of the market access that it negotiates. In part this can be achieved by engaging businesses in the negotiating process (see Chapter 2, page 20), to ensure that the negotiated text reflects businesses' interests and involves a minimal cost of compliance.

The experience of South Korea shows that boosting utilisation can be achieved once agreements have been signed. Before 2010, Korea's utilisation rate in some of its FTAs was as low as 20%.⁷¹ The Government responded by launching a cross-agency initiative to educate and engage businesses, with the result that more recent deals have seen increases in their utilisation up to more than 70%.

In the UK, a similar programme will require DIT to work closely with departments such as Business, Energy & Industrial Strategy, Defra and Culture, Media & Sport to design policies that engage industries and promote the preferential access opportunities that have been negotiated.

DIT needs to work with other departments to see that trade deals are enforced

On the other side of the agreement, governments monitor the use of their existing deals so that they can ensure trade partners are complying with the terms of the agreement.⁷² As with the negotiations themselves, enforcement tends to require a number of different government departments to pool their expertise and resources.

In the USA, this process has been recently formalised via the creation of an interagency body, the Interagency Trade Enforcement Center (Box 4).

In the UK, this will require DIT (and in particular International Trade and Investment) to set aside staff and resources for a deal, even once it is completed.

There is a risk that the agreement of trade deals could be seen as a 'job done', when in truth both utilisation and enforcement will require DIT and other departments to maintain an ongoing interest in the performance of the UK's agreements. Government will also need to create a feedback loop, whereby officials involved in boosting the utilisation of existing deals can share their learning with negotiating teams, thereby improving the design of future agreements.

BOX 4: TRADE ENFORCEMENT IN THE USA – THE INTERAGENCY TRADE ENFORCEMENT CENTER

In the USA, trade enforcement activities – i.e. informal engagement, formal dispute settlement and dispute defence – are undertaken largely by the Office of the US Trade Representative. However, the USTR works in close collaboration with other government bodies, and in close consultation with Congress and the private sector.

In total, 12 different government agencies and bodies participate to some degree in the trade enforcement process, either directly or indirectly, with the Departments of Commerce, Labor, Agriculture, State, Justice and Treasury most closely involved.

Under the Obama administration, the USA expanded its trade enforcement efforts and capacity, among other things, by the creation of the Interagency Trade Enforcement Center (ITEC) within the USTR, an interagency body tasked with establishing 'a "whole-of-government" approach to monitoring and enforcing Americans' trade rights around the world'.⁷³

ITEC sits within the USTR, but seconds staff from a range of agencies, including the Departments of State, Labor, Treasury, Justice, Agriculture, Commerce and the Office of the Director of National Intelligence, as well as the International Trade Commission and the Small Business Administration.

As an interagency body, ITEC is intended to be able to combine expertise from across government under one roof, in order to be able to provide more focused support and analysis than the USTR otherwise could undertake, and a sustained focus on monitoring and enforcement.

5. Next steps

The return of trade policy powers from Brussels represents a significant opportunity for the UK. Many of the challenges involved in policymaking in this area are common across Whitehall: those of retaining expertise, working across departmental silos and prioritising between competing demands. Just as many of the challenges are the same, so we should apply the same standards of robustness for policymaking and implementation in this area: putting forward business cases before committing resources, high-quality stakeholder engagement and an appropriate degree of parliamentary scrutiny.

If the Government is to make the most of the new opportunities presented by taking back control of trade policy, it needs to address many of the long-standing issues of collaboration, expertise, consistency and focus – and effective partnership between ministers and civil servants – that have undermined the effectiveness of policymaking in other areas. A new department and new responsibilities are a chance to show that the UK is using Brexit as a catalyst to do things differently.

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