



Treaty-making processes and trade impact assessments

July 2023

Proposals that affect Australia's trade with other countries can have significant impacts on the Australian community. This guidance note explains factors specific to the treaty making process that need to be taken into account in addressing the seven Impact Analysis (IA) questions listed in the [Australian Government Guide to Policy Impact Analysis](#).

This note also explains how trade impact assessments (TIA) should be incorporated into IAs. It describes the trigger for the preparation of a TIA, sets out what should be examined in a TIA, and provides a hypothetical example.

Treaty-making processes

A treaty is an international agreement concluded in written form between two or more States (or international organisations) and is governed by international law. A treaty gives rise to international legal rights and obligations.

The Government's IA framework applies to the development of treaties. An IA is required where a treaty is likely to result in domestic impacts on businesses, individuals or community organisations, unless those impacts are minor or machinery in nature.

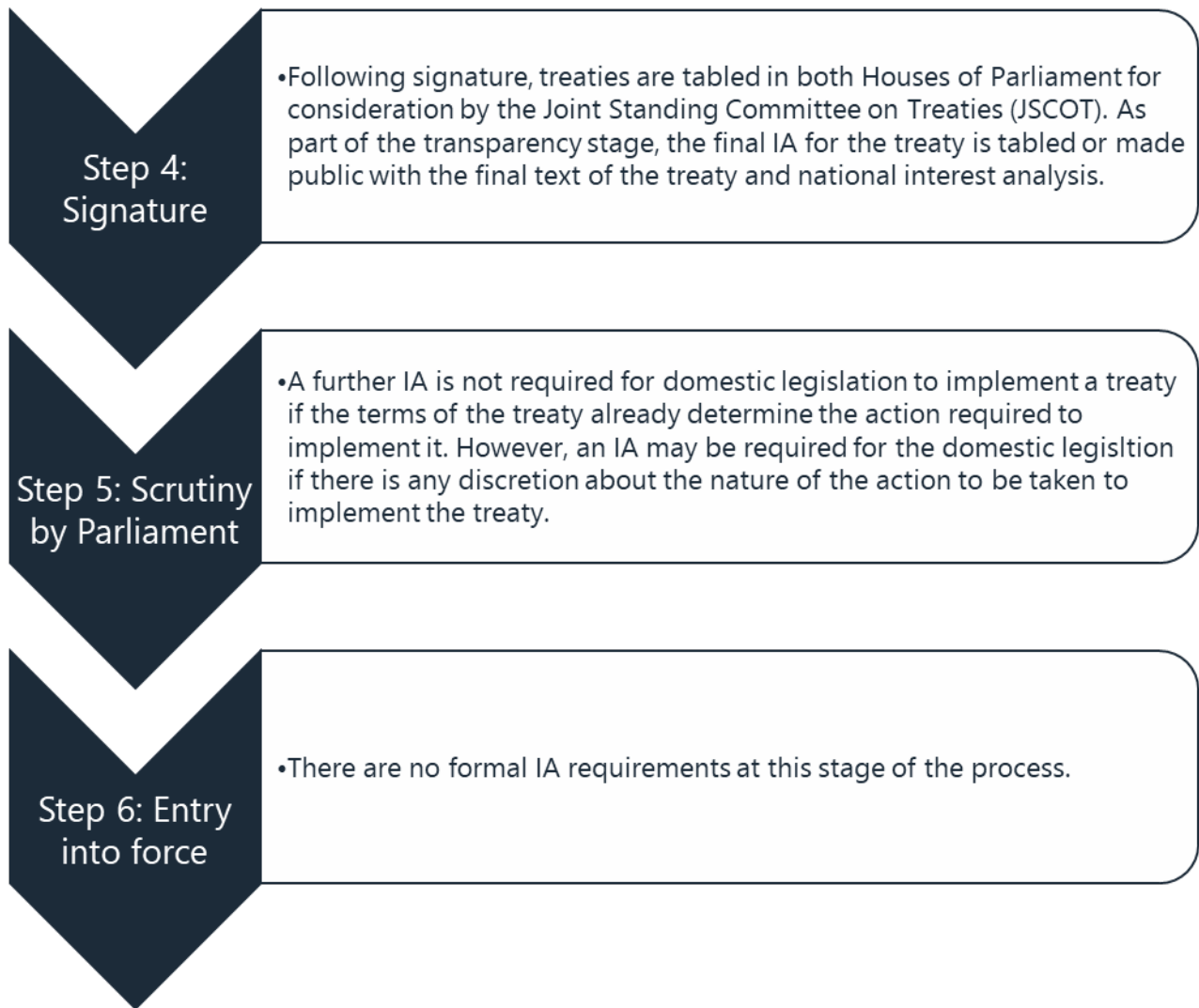
There are [six steps](#) in Australia's treaty-making process:

- Step 1: Mandate to negotiate
- Step 2: Negotiations and finalisation of text
- Step 3: Ministerial and Executive Council approval
- Step 4: Signature
- Step 5: Scrutiny by Parliament
- Step 6: Entry into force

Impact Analysis requirements for steps in the treaty-making process

The Guide to Policy Impact Analysis describes the analysis that needs to be contained in an IA for treaties. Given the multiple decision-making stages involved in a treaty-making process, a modified IA process is applicable.





Further details

The OIA recognises there are a large number of different treaty negotiation processes. The OIA will take the particular circumstances of each treaty process into account, while still observing the principles of sound analysis, informed decision-making and transparency.

You should contact the OIA as early as possible to discuss the application of the IA requirements to your treaty proposal.

Free trade agreements typically have substantial or widespread impacts on the Australian economy. As a result, agreements to implement free trade agreements generally trigger a post-implementation review requirement. OIA will confirm this requirement at the final assessment stage of a treaty IA.

Further details about the treaty-making process can be found at [DFAT treaties](#).

Trade impact assessment

Where a policy proposal has a direct bearing on trade performance, a trade impact assessment (TIA) should be incorporated into your Impact Analysis to give the decision maker a summary of the impact of policy options and the overall impact on Australia's international trade.

This guidance note describes the trigger for the preparation of a TIA, sets out what should be examined in a TIA, and provides a hypothetical example.

Trigger for the preparation of a trade impact assessment

A TIA is required when a proposed regulation is likely to have a significant positive or negative impact on trade.

Policies have a direct impact on trade when they stipulate whether, how or on what terms trade in goods or services take place. Such regulations include:

- tariffs or other taxes on traded products
- import or export bans
- permissions to trade (for example licences).

Whether a level of trade is significant should be assessed with reference to the total value of trade that may be affected.

TIA's are required for proposals with substantial impacts on trade performance. You should consult with the OIA on whether a TIA is required for the completion of your Impact Analysis.

Trade impact assessment length

The TIA is a summary section in the Impact Analysis at the end of the impact analysis section of the preferred option (Impact Analysis question 4), and should be around half a page or less in length. See the [Australian Government Guide to Policy Impact Analysis](#) for more information on the impact analysis section.

Suggested structure of the trade impact assessment

You are already required to consider the trade impacts of the policy proposal in the Impact Analysis. The TIA should not contain any additional information: its purpose is to clearly summarise the existing information on trade impacts. The suggested structure of a TIA is as follows.

Consider how would the regulation impact trade

Provide a brief statement on how the policy would affect exporters or importers. Possible sources of impacts include:

- banning certain trading activities
- regulating importers/exporters
- imposing product standards that would effectively prevent or substantially affect the importing of certain products.

Also state whether the proposed policy relates to Australia's international commitments, including under the World Trade Organization (WTO) and other existing treaties or agreements, and, if so, how. This should include consideration of whether there would be an obligation to notify the proposed regulation to the WTO.

Consider how significant is the trade in affected products or services

Present outline data on the current trade in affected goods and services (value and volume), likely future trends in trade, and main trading partners.

Consider how would the value of trade change as a result of the policy

Discuss the likely impacts of the policy on the value and volume of trade, and whether some imports or exports would be more affected than others. If the trade impacts have been modelled, the results should be presented here.

Identify affected stakeholders

Identify the main stakeholders, disaggregated if that is relevant. For example, would the policy be likely to affect particular Australian importers or exporters more than others? Are there any regions where those groups are concentrated?

You should not go into too much detail on stakeholder impacts, including the quantification of regulatory burden, as they should be covered in the main body of the Impact Analysis. The TIA should include only a summary of the main impacts.

Assistance from the Department of Foreign Affairs and Trade

Once you are informed that you need to prepare a TIA, you should contact DFAT, who will be able to provide further advice on analysing the potential trade impacts of the proposal.

Assistance

If you have any questions about this guidance note, email OIA at helpdesk-OIA@pmc.gov.au or call (02) 6271 6270.

Further information on the Impact Analysis process is in the [Australian Government Guide to Policy Impact Analysis](#).

Example trade impact assessment

In this example, standards would be introduced to limit the emission of pollutants by garden power tools sold in Australia.

The proposed regulation would limit the types of garden equipment engines that could be imported into Australia to those meeting a minimum emissions standard. The proposal is consistent with Australia's international commitments, including those under the Agreement on Technical Barriers to Trade.

Approximately 90 per cent of garden equipment engines (or 1 million engines) sold in Australia each year are imported; they were worth around \$350 million in 2010–11. Around 70 per cent of the imports come from China, with the balance from the European Union and the United States. The value of exported garden equipment engines is negligible.

The policy is likely to impact predominantly on low-cost garden equipment imported from China, as most of those products do not currently meet the proposed standards. Approximately \$150 million worth of these products was imported in 2010–11. As it is unlikely that any manufacturers of these products would be likely to meet the proposed standards in the short to medium term, the demand for the products will need to be met through alternative suppliers. Imports from the United States and the European Union are expected to increase by \$180 million a year as a result of the proposed standard.

The main affected stakeholders in Australia will be:

- consumers, who would have bought lower priced garden equipment and will be subject to higher priced equipment
- the broader community, which will benefit from cleaner air
- importers of equipment that will not meet the proposed standards, who will need to find alternative suppliers or be forced out of business (these importers are predominantly independent operators)
- importers of compliant equipment, who will benefit from having less competition (these importers are in many cases subsidiaries of engine manufacturers).

This proposed regulation would need to be notified to the WTO under the WTO Technical Barriers to Trade (TBT) Agreement under Article 2.9.