

ABI response to International Trade Committee inquiry on UK trade negotiations

1. Introduction

- 1.1. The Association of British Insurers (ABI) welcomes the opportunity to respond to this consultation given the importance of the UK as a key global financial centre for (re)insurance and our desire to maintain this status. Following its departure from the EU, the UK must look at the new opportunities it has to make itself globally competitive.
- 1.2. In 2018, the UK's sixth largest trade in services exported was the insurance and pensions sector, which had the second largest trade in service surplus of £17.4 billion,¹ demonstrating the scale of the contribution the sector makes to the UK economy. Insurance and pensions made up 6.6% of all UK service exports, and we believe that the UK is now presented with an opportunity to further support this valuable UK export going forward.
- 1.3. Insurance is an important export for the UK economy, and the expertise of the UK's (re)insurance sector and access to it is valuable. ABI members operate in many markets, and while market access is important, it is equally important to seek improvements to the terms of business in the markets that they have already entered.
- 1.4. Against a backdrop of rising protectionism globally and as the UK Government further develops its trade strategy, it is vital that the UK continues to promote the values of liberalism and internationalism, particularly in emerging markets, in order to open up markets for trade and investment. The Government has an opportunity to advocate this not only when approaching its bilateral trade agenda, but also at multilateral bodies such as the World Trade Organisation (WTO).
- 1.5. Key to successful negotiations is the recognition that each nation is unique and identifying that the approach and priorities to be taken forward must be considered within their broader historical, social and economic development context. Building trust and nurturing bilateral relationships with governments and regulators in overseas markets through regular dialogue (at all levels) is valuable in ensuring mutual understanding, and also helps address market access issues.
- 1.6. To date, the UK Government has launched trade negotiations with the US, Australia and New Zealand, along with an indication of interest in acceding to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Trade negotiations with Japan have concluded and we welcome the Free Trade Agreement (FTA) that has been agreed. However, we would also encourage the UK Government to look to expand partnerships with markets where addressing market access barriers would offer growth opportunities.
- 1.7. While FTAs are important, we must also be very mindful of the considerable value in using other tools, such as the Economic and Financial Dialogues (EFDs), and we maintain that efforts in ensuring good regulatory dialogue can be very helpful in building strong bilateral relationships and understanding between regulators.

¹ Office for National Statistics; Pink Book 2019, chapter 9.13

- 1.8. India and China continue to be two key markets for our sector, where we ask the UK Government to work towards reducing market access barriers for foreign (re)insurers. The annual EFDs are particularly valued by our members in securing incremental progress towards reducing some barriers and creating new opportunities.
- 1.9. The UK-China EFD has been fruitful in helping to secure agreement from the Chinese insurance regulator (CBIRC) in considering granting pension insurance licences, and additionally in formally asking the ABI and our Chinese counterpart to cooperate.
- 1.10. While there has been a several year gap since the last EFD in 2017, we welcome the UK-India EFD that took place in October. There were several positive commitments agreed for the (re)insurance sector, which the ABI had raised ahead of the EFD, including on looking at relaxing the foreign ownership cap for insurers.
- 1.11. The outcomes from these EFDs demonstrates why the (re)insurance sector values the UK Government continuing to put resource into the annual EFDs with India and China. These are two markets which have not been identified as part of the UK Government's priority markets for trade agreements but present a higher benefit for the (re)insurance sector in terms of trade and growth opportunities.
- 1.12. We also welcome the UK Government's announcement after the conclusion of the 14th UK-India Joint Economic and Trade Committee (JETCO), of the intention to secure an Enhanced Trade Partnership (ETP), and with the view to securing an FTA in the long-term. We are very supportive of this approach, particularly if there is scope to include provisions on services (and so (re)insurance) in the ETP.
- 1.13. The US is an important market for our members given the volume of cross-border (re)insurance business between our nations, however our members have not identified any major market access issues that need to be resolved. For the (re)insurance sector, we consider the full implementation of the UK-US Covered Agreement to be of utmost importance.
- 1.14. Japan is an important market, particularly for our Japanese headquartered members. At present, there is limited appetite for UK firms to enter Japan as local players dominate the market. However, we welcome the UK Government's efforts to agree a trade agreement with Japan, which includes helpful commitments which help to set a precedent on supporting the flow of data as well as an annex on regulatory cooperation for financial services; and may offer opportunities for British (re)insurers in the future.
- 1.15. While we recognise the importance of Australia and New Zealand to the UK, as we currently do not have any major market access concerns when it comes to (re)insurance, we do not have any particular comments to make on these negotiations.
- 1.16. Regarding the discussions that the UK Government are engaging in to accede to the CPTPP, we are broadly supportive of this approach as many of our members have interests in many of the CPTPP markets. While these markets make up a small part of the UK insurance and pension service exports, given that the CPTPP has a chapter on financial services, and in particular on insurance, we see this could be a valuable partnership. By the UK showing interest in joining this trade agreement, it could also send a positive signal on the value of trade agreements, given the recent trend against globalisation.

2. Does the Department for International Trade (DIT) have the right objectives in respect of each Free Trade Agreement (FTA) negotiation?

- 2.1. While the objectives for all four trade negotiations are high level, when it comes to financial services, and (re)insurance, it is understandable that there is less detail on the UK Government's objectives given that there are few precedents for FTAs to have secured meaningful liberalisation for trade in services.
- 2.2. As a minimum we would expect the UK Government to secure agreements that cover the typical chapters of an FTA, including on (re)insurance. Indeed, it would be almost unprecedented not to.
- 2.3. The majority of FTAs to date do not secure provisions which go beyond the WTO's General Agreement on Trade in Services (GATS) agreement.² The GATS agreement came into force in 1995 and since then, there has been little progress made on liberalisation trade in services, particularly for financial services.
- 2.4. An example of where the UK Government could look to secure an ambitious future agreement for the (re)insurance sector would be to extend the GATS cross-border reinsurance provisions beyond marine, aviation and transport (MAT) and to include all commercial reinsurance.
- 2.5. Another example of going beyond the provisions in GATS would be to secure legally binding commitments in an FTA on data, such as those in the recently agreed UK-Japan Comprehensive Partnership Agreement (CEPA).³ Article 8.63 prohibits measures that restrict the free flow of cross-border data by financial services firms, while respecting the need to protect personal data, and prevent the need for data to be stored on local IT facilities. The provisions also apply to services provided by third party suppliers. These are highly restrictive measures that limits the ability of (re)insurers to conduct business and so securing legally binding commitments to prevent this would be valuable for the sector.
- 2.6. Many markets, predominantly in Asia, have rules in place which restrict the flow of data. While the reason for this is often attributed to cyber security or protection of personal information, these measures have an adverse impact on the ability of (re)insurers to conduct business. The CEPA provisions set a precedent and should be used as a basis for future FTAs negotiated by the UK.
- 2.7. This is extremely valuable for the (re)insurance sector as they need to move personal data across borders in order to price risk. (Re)insurers need to move data cross-border for a variety of reasons, and preventing this can result in: difficulties obtaining information so that policyholders can be checked against international sanction lists; difficulties in checking aggregations of cover on the same policyholder; and limitations on the ability to use intra-group service hub offices that are outside of that particular jurisdiction to help with the management of that business (e.g. underwriting or claims support).
- 2.8. In our experience, bilateral agreements, regulatory cooperation agreements, Memoranda of Understandings (MoUs) and EFDs are often more fruitful tools in securing further

² GATS agreement: https://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm

³ [UK-Japan Comprehensive Partnership Agreement \(CEPA\)](#)

liberalisation / market access for financial services (which may set a precedent), and in particular for (re)insurance. We would therefore encourage the UK Government to continue to consider the full range of tools at its disposal when looking to approach a particular market.

- 2.9. While FTAs are the most legally sound way of reducing barriers to entry and increasing trade, they traditionally involve a lengthy and/or arduous negotiation period. There are limited precedents for substantial or meaningful inclusion of financial services. The (re)insurance industry therefore remains sceptical for any government to negotiate the progressive inclusion of insurance in the short to medium term without a precedent. We recognise that there could be an opportunity to realise this with a willing partner with a strong financial services interest, such as Switzerland.⁴
- 2.10. Bilateral agreements are the strongest examples familiar to the (re)insurance sector. An example is the EU-US Covered Agreement, which the UK and US governments have sought to replicate and onshore into national legislation. This agreement entails strong, legal commitments on both sides.
- 2.11. MoUs are non-binding agreements between two parties but they have the benefit of bringing them closer together. When these agreements are written between regulators they are taken very seriously and can show real value, especially during a crisis period. Many of the existing MoUs which the UK has already secured with foreign jurisdictions set a formal communication framework between regulators and allow for supervisory information to be shared.
- 2.12. As explained, EFDs have a proven track record of both working towards and delivering market access, addressing behind-the-border issues, supporting cross-border capital flows, collaborating on capital market connectivity and development, and regulatory cooperation. These are particularly useful with markets where any formal trade agreement is not on the immediate horizon, such as India or China.
- 2.13. In our experience, regulatory cooperation mechanisms / dialogues can be extremely effective and valuable in bringing regulators to the table to share information on each market, best practice and resolve challenges. It would therefore be of value to have an annex in all future trade agreements on a regulatory cooperation mechanism, such as negotiated in the CEPA.⁵
- 2.14. The CEPA builds on the EU-Japan Economic Partnership Agreement in establishing a detailed agreement for regulatory cooperation on financial regulation (annex 8A). It is very helpful in setting out the areas of cooperation between the UK and Japanese regulators. It requires the regulators to take into account internationally agreed standards for regulation / supervision and to have early communication about planned regulatory initiatives that could impact the other. It also helpfully establishes a Joint UK-Japan Financial Regulatory Forum, which provides a formal setting for UK and Japanese regulators to regularly meet and discuss how to strengthen bilateral cooperation and consider coordinating positions in international fora, such as the G20.

⁴ [UK/Switzerland: Agreement on Direct Insurance other than Life Insurance](#)

⁵ [UK-Japan Comprehensive Partnership Agreement \(CEPA\)](#)

2.15. The appetite of the different markets to include commitments on regulatory cooperation clearly vary, and it should therefore be expected that the details will need to be adapted in each case. However, it is the overarching principle of regulatory cooperation and regular dialogue that is important. Given the importance of regular dialogue between regulators in resolving bilateral matters an inclusion of this would be helpful in the UK-US trade negotiations.

3. What are the potential opportunities and risks of each proposed FTA?

3.1. We remain cautious about the level of resource required to conclude three ambitious trade negotiations concurrently, two of which are with G20 nations who are hugely experienced in negotiating trade agreements. We would be concerned if resources dedicated to investing in partnerships with key markets or other beneficial trade tools, such as EFDs or JETCOs, were adversely affected in the interests of securing FTAs.

3.2. There are very few market access issues when it comes to the US. Both markets are highly integrated, and in our experience, many issues can be solved through regulatory cooperation.

3.3. Ensuring a fully implemented UK-US Covered Agreement remains the biggest priority for the (re)insurance industry in the UK when it comes to the US. The Covered Agreement sets out a framework under which policymakers and regulators have agreed to cooperate in three areas of prudential insurance oversight: reinsurance; group supervision; and exchange of information between supervisors. The replication of the EU-US Covered Agreement will ensure that UK firms are treated at least as favourably as those from other EU countries, and also have the same legal certainty in terms of policing of its implementation by the US' Federal Insurance Office. Any UK-US discussions related to the FTA must not undermine the important progress made in this area.

3.4. In addition, the UK Government needs to be mindful that insurance is regulated at state level in the US, and be aware of the sensitivities in the US about where the dividing line is regarding what can/cannot be done at federal level when it comes to (re)insurance. It is not entirely in the gift of federal level institutions to agree (re)insurance provisions without individual state ratification / approval.

3.5. Each state is represented by insurance commissioners at the National Association of Insurance Commissioners (NAIC), who have a pivotal role in developing model rules and regulations for insurance companies. The NAIC also implements the UK-US and EU-US Covered Agreements in each state. Therefore, in any engagement with the US on (re)insurance matters, we would advise the UK being open-minded about the involvement of the NAIC in some manner, particularly with the UK-US Financial and Regulatory Working Group (FRWG).

3.6. The ratification of a trade agreement can also expose domestic sensitivities and can add to the complexities of securing trade agreements. Again, it is worth the UK always being mindful of this. One example is the EU-Canada Comprehensive Economic and Trade Agreement (CETA), where a provisional agreement had been secured between the EU and Canada, but it was determined that individual EU member states would need to ratify it due to certain competences lying with the member states opposed to the EU. Further, there was

growing opposition to CETA in certain member states, including numerous legal challenges that were brought to the European Court of Justice.⁶

- 3.7. The (re)insurance sector's interests are aligned with a successful global Britain. It is therefore important that the sector's views are adequately considered throughout a negotiation.
- 3.8. While we recognise that negotiations can be sensitive and that the UK Government may be reluctant to share specific details as negotiations progress, we see an important role for industry experts and stakeholders in feeding in and being informed of developments during negotiations. It is important that industry's expertise is fully used and that stakeholders are fully part of the UK Government's approach to trade negotiations. We hope that the recently (August 2020) established Trade Advisory Groups⁷ go some way to achieving this.

4. How robust is DIT's approach to determining the potential impacts of its proposed FTAs?

- 4.1. The ABI is not in a position to respond fully to this question given that there has been no comprehensive report on the impacts for the (re)insurance sector. We are only aware of a high-level scoping assessment being conducted, which was published alongside each set of negotiating objectives.
- 4.2. Having said this, we are aware that the impact of a particular trade agreement cannot always be fully determined at this stage given that, in our view, trade agreements can help to create future opportunities for business and may only be realised later. It is therefore vital that stakeholders – businesses and civil society - across the UK are engaged throughout any negotiation to secure elements that can provide the maximum opportunity and value possible.
- 4.3. As noted above, the potential impacts of an FTA may change as negotiations progress and negotiating texts are exchanged, this is why it is important to ensure stakeholders are involved throughout the process, including during the negotiation itself.

5. What consideration should DIT give to the sequencing of its proposed FTAs, particularly with respect to the simultaneous negotiations being undertaken with the EU by the Cabinet Office?

- 5.1. The ABI is supportive of the UK Government's ambition in both replicating FTAs that the EU had secured on behalf of the UK (in the interest of continuity) and the Government's general ambition to negotiate four trade agreements with markets experienced in negotiating trade agreements.
- 5.2. We are conscious that the EU is the UK's biggest trading partner, and given its proximity to the UK, it would seem logical that negotiations with the EU should be prioritised. Further, we are also aware that many other markets, often reference the EU-UK future relationship

⁶ <https://www.dentons.com/en/insights/articles/2019/may/13/investment-court-clears-key-legal-hurdle>

⁷ <https://www.gov.uk/government/publications/trade-advisory-groups-tags/trade-advisory-groups-membership>

as something that needs to be addressed in order to identify how the UK's relationship with them can be positioned.

5.3. We would also emphasise that trade agreements are complex, and negotiations are resource intensive, and historically take a long time to be agreed. For example, the recent agreement between the EU and Canada, the CETA, took the two highly developed economies, who are well versed in negotiating trade agreements, seven years of official negotiating. Preceding this, the two markets engaged in discussions for several years.

5.4. We would reiterate the need for the Government to put equal resources into furthering relationship with key markets in other ways. For example, through the established EFDs / Financial Dialogues, MoUs or bilateral agreements.

5.5. The Government should also not underestimate the significance of visits from VIPs / Ministers to overseas markets in furthering relationships and often resolving issues. From our experience, this is particularly welcomed and shows the importance the UK places on that market.

6. In respect of each negotiation, how effectively is the Government representing the interests of, and communicating with, devolved nations, local government, businesses, consumers and civil society groups?

6.1. Our main engagement on trade issues has been with HM Treasury, who lead on financial services aspects of trade agreements, although we rely on communication from the Department for International Trade (DIT) in terms of updates on current trade negotiations. We hope that Government makes full use of the TAG Groups⁸ throughout the negotiating process, including regular updates and the sharing of negotiating texts with relevant sectors.

7. How effectively is the Government coordinating across Departments and stakeholders, particularly in relation to aspects of the negotiations with the EU that may affect other trade negotiations?

7.1. As HM Treasury leads on matters relating to financial services, they are the department with which we have the most contact on negotiations. HM Treasury are fully aware of the specific issues for the (re)insurance industry in relation to securing trade agreements with the EU and with non-EU markets.

7.2. However, we are conscious that the DIT needs to be kept fully informed of all relevant issues, and it would be helpful to have reassurances that the objectives of both DIT and HM Treasury are in line when it comes to financial services. One of the reasons why it has historically been difficult to secure meaningful liberalisation provisions for financial services in trade agreements is due to the complexities around understanding the nature of financial services, including (re)insurance.

⁸ <https://www.gov.uk/government/publications/trade-advisory-groups-tags/trade-advisory-groups-membership>

8. Is Parliament able to effectively scrutinise ongoing negotiations?

- 8.1. While past FTAs have generally contained little of value for financial services, as previously highlighted, we believe it important for the wider UK economy that the right principles are in place, including principles for effective cooperation between UK financial services regulators and their counterparts in other countries. This means setting a right level of Parliamentary scrutiny and stakeholder engagement that will stand the test of time.
- 8.2. We see the interest of Parliament in international trade agreements to be broadly divided into two parts.

(1) The overarching mandate and progress of negotiations

Setting the overarching mandate/pre-negotiations:

- 8.3. As the Government prepares its objectives for negotiating trade agreements with third countries it is important that an open public consultation is conducted. This is to ensure the experiences, needs and expertise of stakeholders (whether relating to market access or regulatory issues) can be taken into account. This also gives Parliament an opportunity to get these various insights as it formulates its own views and position.
- 8.4. There should be a further (perhaps shorter) period of consultation on the UK Government's broad negotiating objectives once they have been formulated. As a minimum the Government should give a formal response to the main points of the consultation, giving a summary of consultation responses, the extent to which the Government has decided to include them or not and the reasons why. This approach is commonplace amongst trade negotiators, and indeed with UK regulators such as the Prudential Regulatory Authority (PRA).
- 8.5. We also believe the Government should then present its final negotiating objectives to Parliament for debate and final approval.

During negotiations

- 8.6. It is understandable that during trade negotiations the Government will want to maintain a level of confidentiality, and that showing its hand publicly (and therefore to the other negotiating party) may hinder its ability to secure the best deal. However, there does need to be a balance with some means of updating Parliament, as well as seeking expert views from relevant stakeholders, especially at key moments during negotiations. We see this as being key to success.
- 8.7. There is no standard 'international' model of transparency during trade negotiations. In Australia, we understand there is no established system of consultations during negotiations and very little is disclosed, and this has given rise to much criticism⁹ in the past. The US, on the other hand, has a statute-based system of consultation which is far more open and transparent, and through which stakeholder representatives receive full access to proposals and are given regular

⁹ Blind Agreement: reforming Australia's treaty-making process 25 June 2015

https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report/c04

updates.¹⁰ Indeed, stakeholders are invited to on-site negotiating rounds and are updated in the fringes.

- 8.6. We believe the US model is far more inclusive, offering a better model of engagement and scrutiny as negotiations progress. It also ensures that various interest groups, members of the legislature and other stakeholders can be kept informed of the course of negotiations as they progress. Transparency along the way means there is less likelihood of disruption and rejection at the latter implementing stages. In short, it means there is a greater chance of success.
- 8.7. We suggest that as a bare minimum both Houses of Parliament, perhaps through the International Trade Committee and International Agreements Sub-Committee, should be expected to receive regular updates in confidence (if necessary) and be informed of significant developments.
- 8.8. We note the Government's recent (27 July 2020) launch of the Trade and Agriculture Commission¹¹ which implicitly acknowledges the value of an inclusive approach. Assuming this Commission will be involved in all stages of trade negotiations (before, during and after) it could well provide a template of good working practice for other sectors.
- 8.9. It will be equally important for business and other stakeholders to be kept informed of how negotiations are proceeding. In the case of trade in services, the barriers that are the subject of negotiation are likely to be regulatory, and precise wordings will be critical. Stakeholders are likely to need to see actual negotiating text. Concerns about the confidentiality of such documents could perhaps be overcome through the use of Non-Disclosure Agreements (NDAs).

Signature

- 8.10. Internationally it is commonplace for the decision to sign a trade agreement to be in the hands of the Cabinet. However, following the signing of a treaty there is often a minimum period given for scrutiny in Parliament, and 'implementation' processes that needs to happen before ratification.
- 8.11. Of course, at this stage the formal trade negotiations will be complete, and it would be difficult (procedurally and diplomatically) to reopen talks to make any adjustments. However, it does mean Parliament has an emergency brake, should it ever be needed, and would give Government an incentive to ensure Parliament is informed as negotiations progress.

(2) The implementation of international trade agreements in practice

- 8.12. There are two key roles that Parliament could play in the implementation of a trade agreement:
- 8.13. Firstly, ensuring that a trade agreement can take effect which should be conducted in advance of formal ratification. It should be the responsibility of Government to ensure that the international agreements are compatible with UK domestic law, or that domestic law conforms with the obligations within the agreement through changes to domestic legislation, such as amending a tariff schedule or making adjustments to environmental standards.

¹⁰ Trade Promotion Authority (TPA) FAQs <https://fas.org/sgp/crs/misc/R43491.pdf>

¹¹ <https://www.gov.uk/government/news/truss-formally-launches-trade-and-agriculture-commission>

- 8.14. It is for the UK Parliament to make changes to domestic legislation, and this fundamental role must be upheld in this process. Any default use of Statutory Instruments (SIs) therefore seems insufficient as it would fail to give an appropriate level of scrutiny. As this becomes, to a large extent, a matter of domestic legislation it seems appropriate for it to be treated as such and that the usual domestic legislative process should apply, with the relevant departmental committees involved.
- 8.15. If this is to be done by secondary legislation, such as orders exercisable by SIs, Parliament will need to consider what level of scrutiny should be applied to SIs, such as the use of positive or negative resolutions, or even a Parliamentary Committee procedure.
- 8.16. Secondly, holding the Government to account as regards the ongoing implementation of an agreement. In other words, looking at whether the agreement is producing the benefits in practice that negotiators envisaged; whether the Government is administering its obligations in a satisfactory and transparent way; and whether those expected to benefit from the agreement are adequately informed of its advantages and able to benefit from them. If an agreement includes provisions for cooperation between financial services regulators, the Government and financial services regulators should be held to account regarding the successful operation of these provisions.
- 8.17. At present Parliament has limited opportunity to scrutinise ongoing negotiations. As the Trade Bill is still going through the legislative process (currently in the House of Lords), it is unclear whether Parliament will have further powers to scrutinise negotiations going forward. The Trade Bill, while technical in nature, does not provide sufficient detail on Parliament's role while negotiations are ongoing.

About the ABI

The Association of British Insurers is the voice of the UK's world-leading insurance and long-term savings industry. A productive and inclusive sector, our industry supports towns and cities across Britain in building back a balanced and innovative economy, employing over 300,000 individuals in high-skilled, lifelong careers, two-thirds of which are outside of London.

The UK insurance industry manages investments of over £1.7 trillion, pays nearly £12bn in taxes to the Government and supports communities across the UK by enabling trade, risk-taking, investment and innovation. We are also a global success story, the largest in Europe and the fourth largest in the world.

The ABI represents over 200 member companies, including most household names and specialist providers, giving peace of mind to customers across the UK, including most household names and specialist providers offering commercial insurance in the London Market. With its internationally recognised insurance expertise, the London Market plays an important role in the UK economy by insurance large-scale, complex, international risks.