



Statement of the U.S. Chamber of Commerce

**ON: “Comments on Negotiating Objectives for a
U.S.-United Kingdom Trade Agreement,”
docket number USTR 2018-0036**

TO: Office of the U.S. Trade Representative

BY: U.S. Chamber of Commerce

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The Chamber’s mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. In addition to 117 American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.



U.S. CHAMBER OF COMMERCE



U.S.-United Kingdom Trade Negotiations: Private Sector Priorities

The U.S. Chamber of Commerce’s U.S.-UK Business Council appreciates the opportunity to present the following comments to the Office of the U.S. Trade Representative on its “request for comments on Negotiating Objectives for a U.S. United Kingdom Trade Agreement” pursuant to 83 FR 57790, docket number USTR-2018-0036 (November 16, 2018). The Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and it is dedicated to promoting, protecting, and defending America’s free enterprise system.

Introduction

The U.S. business community is encouraged that the United States and United Kingdom (UK) are committed to securing tangible improvements in our bilateral trade and investment relationship. We stand ready to work closely with both governments to strengthen ties between our two nations—the world’s largest and 5th largest economies, respectively.

As the two sides prepare to launch negotiations following the UK’s departure from the European Union, it is important to underline the considerable uncertainty surrounding the UK’s future trade policy. The U.S. business community is eager to see the UK’s negotiations with the EU advance to ensure that an orderly Brexit, including a transition period, can be achieved before the end of March 2019.

U.S. firms have invested more than \$600 billion in the UK, and the American business community has a significant interest in ensuring the future stability and growth opportunities of the UK economy. Many of these investments were made in order to access the larger EU Single Market. With that in mind, it is vital that the UK secure a favorable trade agreement with the EU as quickly as possible. A continued lack of certainty about the way forward will continue to constrain inbound investment and risks limiting prospects for bilateral trade negotiations between the U.S. and UK.

Once the contours of the new UK-EU trade relationship are established, negotiators should turn their attention swiftly to expand the commercial ties between the U.S. and the UK. We see considerable opportunities for a U.S.-UK agreement to advance global standards, particularly in the digital economy, financial services, and emerging technologies. The two sides should also endeavor to remove all tariffs and establish wide-ranging regulatory cooperation mechanisms with meaningful opportunities for stakeholder engagement.

Reducing or eliminating barriers to two-way trade and investment would significantly boost the long-term economic outlook for both the U.S. and the UK, with particular benefits to

small and medium-sized companies. Greater cooperation between our countries would also provide a pathway for joint leadership in response to shared challenges in a rapidly changing global economy. For example, the U.S. and UK should work together to strengthen global trade rules and institutions to adapt to the challenges posed by non-market economies

In keeping with the Chamber’s mission to advocate for free enterprise, competitive markets, and rules-based trade and investment, the Chamber regards these negotiations as an opportunity to remove—not raise—barriers to trade. We recommend hewing closely to the negotiating objectives established in the U.S. Bipartisan Congressional Trade Priorities and Accountability Act of 2015, known as Trade Promotion Authority (TPA), as the U.S. administration has indicated it intends to do.

Tariffs and Market Access

Trade in goods between the United States and United Kingdom was valued at \$109.4 billion in 2017, with the two sides roughly in balance.

The average U.S. tariff is 3.5%, while the average UK tariff is 5.7%. The trade-weighted average on two-way bilateral trade is 1.6%. While these numbers are relatively low, the impact on the huge volume of bilateral trade remains substantial. Moreover, there are a significant number of tariff peaks, with disproportionate impacts on trade. As such, any agreement should eliminate all tariffs on goods traded between the U.S. and UK.

Moreover, any agreement should refrain from including “grey area” measures such as tariff-rate or snapback quotas, voluntary export restraints, and orderly marketing agreements that limit trade and violate the World Trade Organization (WTO) Agreement on Safeguards.

Finally, the agreement should expeditiously remove the U.S. Section 232 tariffs on imports of steel and aluminum from the UK, and remove corresponding UK retaliatory measures on U.S. imports. The agreement should also prohibit the imposition of any prospective U.S. Section 232 tariffs on imports of UK autos or auto parts.

Rules of Origin

The agreement should focus on encouraging and enabling cross-border trade between the U.S. and the UK. Given that supply chains between the U.S. and UK are less developed than they are within Europe or within North America, the agreement should avoid stringently defined rules of origin that would make it overly burdensome for companies to comply with the terms of this agreement. If the eventual agreement’s rules of origin are excessively stringent, many companies would likely choose to simply pay the relevant tariffs, making the agreement irrelevant.

Customs Procedures

The U.S. and UK should work together to harmonize and simplify customs clearances processes, including improving the efficiency of customs clearance for shipments. The two governments should rely more on advanced data, risk-based mechanisms, and technology to pre-clear goods and reduce costs, and facilitate submission and processing of documentation via an international single window.

The two countries should work to improve, simplify, expand, and—where possible—encourage greater convergence of U.S. and UK “trusted trader” programs and create additional sector-specific “fast lane” processing pilot projects to improve efficiency.

In 2016, the U.S. raised the value of merchandise that may be imported free of duties and taxes to \$800 per shipment. By contrast, the EU (and therefore the UK) is proposing to eliminate its own *de minimis* for VAT, meaning that VAT is owed on all imports into the UK regardless of value. For duties there is a low UK *de minimis* of approximately \$150. These marginal *de minimis* values will cause significant delays for shipments, hinder cross-border competitiveness, and add costs for UK customs authorities handling large volumes of low-value packages, especially in light of an expanded workload after Brexit.

A U.S.-UK agreement should raise the UK *de minimis* levels on duties and VAT to a commercially meaningful level to facilitate SME trade and e-commerce. It should also adopt technology and account-based solutions to facilitate the collection and payment of duties and VAT away from the border.

Product Standards, Regulatory Cooperation, and Certification

The agreement should identify and promote new sectoral agreements that minimize duplicative testing and certification requirements, and create new regulatory cooperation mechanisms with meaningful opportunities for stakeholder engagement. In particular, the agreement should promote pathways to jointly address emerging technologies and prevent unnecessary regulatory divergence.

The U.S. and UK should implement APEC/OECD-endorsed Good Regulatory Practices, including the use of stakeholder notice and comment, regulatory impact assessments, retroactive regulatory review, and a commitment to the use of sound science in regulatory decision-making. The agreement should promote the use of Central Coordinating Bodies to drive the implementation of Good Regulatory Practices across both governments. The agreement should establish a bilateral Committee on Good Regulatory Practices, which would identify opportunities for additional formal regulatory cooperation initiatives between the U.S. and UK.

On technical barriers to trade (TBT), the U.S. and UK should, at a minimum, seek to achieve the levels of the recently concluded United States-Mexico-Canada Agreement (USMCA). This includes the use of Good Regulatory Practices in technical regulations and the use of international standards and transparency around the use of conformity assessment.

Where possible, both governments should seek opportunities for cooperation on conformity assessments, such as via mutual recognition agreements. The agreement should encourage and enable the use of a range of international standards, where they meet established regulatory objectives, as well as the use of internationally recognized conformity assessment bodies.

Sector-specific Regulatory Priorities

➤ Automobiles

- Establish mutual recognition of existing standards, in close coordination with industry.
- Develop a common framework for joint U.S.-UK development of future standards.

➤ Energy

- Remove restrictions on U.S. exports of LNG to the UK.
- Do not regulate LNG pricing or institute UK quotas for imports of U.S. LNG.
- Remove UK duties on base oils.
- Encourage the UK to negotiate an Energy Star Agreement with the U.S. and recognize any subsequent revisions to the Energy Star program.

➤ Medical Devices

- Promote greater cooperation between relevant U.S. and UK regulators to reduce unnecessary duplication of testing, spur innovation, and provide greater access to the best available medical devices.
- Ensure transparency and procedural fairness in the process by which national health care authorities establish reimbursement pricing for medical devices. This would require a reasonable amount of time for making reimbursement decisions, clear and transparent rules to make these decisions, consultations with providers during the decision-making process, clear explanations of decisions made, and an appeals process.

➤ Chemicals

- Eliminate U.S. and UK chemical tariffs immediately, and collaborate to make eliminating tariffs on chemicals a multilateral objective.
- Regulatory cooperation:
 - Promote more efficient and effective cooperation between UK and U.S. regulatory chemicals management systems, focusing on common principles for information sharing, prioritizing chemicals for review and evaluation, and coherence in hazard and risk assessment (based on the weight of scientific evidence).
 - Institute a harmonized approach to data assessment to simplify the registration process and improve transparency and efficiency, while providing effective human health and environmental protections.
- Focus on establishing common principles for data quality, including utility, objectivity (which includes reproducibility), and integrity.

- Develop new pilot projects to identify areas of cooperation and promote the mutual recognition of data.¹
 - Promote greater coordination between the newly upgraded Toxic Substances Control Act (U.S.) and REACH (UK) regulations to: achieve our shared goals of high standards of health and human safety; foster more efficient compliance by large and small companies; encourage innovation and access to market; create resource sharing opportunities for regulators; and support greater transparency and credibility with the public.
- **Pharmaceuticals**
- Jointly promote high-level global standards on intellectual property and innovation, particularly in multilateral organizations.
 - Encourage early resolution of patent disputes to ensure market predictability, and prevent infringing products from making it to the market.
 - Promote greater regulatory cooperation efforts between the U.S. Food and Drug Administration (FDA) and the UK Medicines and Healthcare products Regulatory Agency (MHRA) to reduce unnecessary duplication of testing, spur pharmaceutical innovation, and provide greater access to medicines, including:
 - Better alignment of U.S.-UK pediatric scientific approaches to minimize duplication and streamline medicines development for children, thereby reducing the time necessary to get innovative products to the market and lowering costs, while avoiding redundant clinical trials on children.
 - Manufacturing changes: MHRA and FDA should work together to develop a more harmonized approach to post-approval variation submissions for manufacturing changes. This should include aligning classification of changes, type of submission required, and timelines.
 - Work to ensure pricing and reimbursement systems accurately and fairly reflect the value of R&D processes.
 - Develop mutual recognition agreements to recognize testing data and inspections of manufacturing sites for both human and veterinary medicines and vaccines.
 - Create a U.S.-UK medicines and medical devices working group to ensure ongoing coordination and provide transparent opportunities for stakeholder engagement.
- **Agriculture and Biotechnology**
- Encourage timely, transparent, science-based approval systems for biotechnology and chemistry products with reasonable and clear timelines.
 - Establish a working group with stakeholder involvement to identify and address specific regulatory issues, and resolve longstanding concerns.

¹For example, commitments should include the promotion of greater coherence between diverging U.S. and UK Classification and Labelling schemes and the implementation of the UN Globally Harmonized System for Classification and Labeling (GHS) as a common classification inventory (effectively leveraging existing work). Such a common approach would reduce or eliminate the need for dual classifications for chemical substances, reduce costs and inefficiencies for companies and governments, and facilitate trade.

➤ **Financial Services**

- Encourage active stakeholder involvement in the U.S.-UK Financial Regulatory Working Group to identify and address specific regulatory issues and resolve longstanding concerns.
- Promote regulatory equivalence and ongoing regulatory cooperation to encourage continued cross border activity with appropriate levels of oversight.
- Ensure the free flow of data and prohibit data localization requirements, including for financial services.
- Ensure other digital trade elements also apply to the financial sector, i.e. no carve outs for the sector in terms of coordination and collaboration on cyber, protection of source codes and algorithms, forced technology transfer and the purchase of use of particular technologies.
- Collaborate to create and enhance a regulatory sandbox for fintech companies, as well as traditional financial institutions, on an equal basis.
- Promote the use of cloud technologies in the financial sector.
- Engage with stakeholders to discuss broadening cross-border supply commitments for financial services.
- Include broad commitments on procurement of financial services.

➤ **Delivery Services**

- Ensure the U.S. and UK remain world leaders in effective postal regulation.
- Commit to fair, non-discriminatory treatment of non-postal service providers through the inclusion of a delivery services sectoral annex in the agreement to ensure that U.S. and UK consumers and businesses retain access to world-class delivery service options.

Sanitary and Phytosanitary Measures (SPS)

The U.S. and UK should strive to reduce or eliminate all remaining tariffs on agricultural products. Both countries should commit to the use of sound science, as well as other Good Regulatory Practices, in their SPS approvals process. Where possible, the agreement should identify opportunities for regulatory cooperation initiatives around audits of facilities, equivalence determinations, and information exchange. The agreement should establish technical working groups to address specific issues that arise in SPS-related sectors.

Services Trade

Services trade between the United States and United Kingdom topped \$126.5 billion in 2017. Services represent roughly 80% of our respective economies, and it is therefore in our shared interest to ensure that any U.S.-UK trade agreement include the highest possible standards in terms of binding services market access—including for new services. The agreement should also include national treatment commitments for services, including transportation, logistics, information and communication technologies, telecommunications, financial services and professional services.

The agreement also should allow for meaningful stakeholder engagement opportunities, whether via existing fora, such as the U.S.-UK Financial Regulatory Working Group, or other consultative mechanisms established pursuant to the agreement. Negotiators also should establish a framework for cooperation towards elimination of services trade restrictions in third countries.

The U.S. and the UK are among the most important financial centers globally. A future U.S.-UK agreement should promote regulatory equivalence and ongoing regulatory cooperation to encourage continued cross border activity with appropriate levels of oversight. Existing regulatory cooperation channels, including the U.S.-UK Financial Regulatory Working Group, should continue, with enhanced opportunities for stakeholder engagement to ensure they are addressing the most commercially significant regulatory issues.

Digital Economy

A U.S.-UK agreement would have considerable potential to set global standards for cooperation in support of the digital economy.

The digital trade chapter of a future U.S.-UK agreement should secure commitments that ensure the ability for businesses in all sectors to move data across borders. This includes a prohibition on the forced localization of data across all sectors.

As a first priority, the two governments should work to ensure commercial data continues to flow freely after the UK leaves the EU.

The agreement should explicitly prohibit measures that require the use of local technology infrastructure for market access and other commercial benefits. The U.S. and UK should encourage consumer choice and use the agreement to promote Internet access.

The agreement should forbid discrimination against U.S. or UK technology companies, products, and/or services. The transfer or access to software source code or algorithms should not be required as a condition for market access. Both countries should work to facilitate a regulatory environment that allows companies to utilize data collection and analysis.

The agreement should encourage the use of electronic customs forms, electronic signatures and authentication, and secure on-line payments. The agreement should also prohibit customs duties on electronic transmissions, including information transmitted electronically.

The agreement should champion smart and effective approaches to encryption that do not require companies to undermine product security.

The digital trade chapter should include protections for online platforms and marketplaces to host lawful speech and commerce without being treated as the originators of content.

The countries should commit to work towards developing common mechanisms that protect personal data while promoting further compatibility and ease of doing business across borders.

Finally, it bears noting that the same basic trade principles of national treatment and non-discrimination apply when crafting tax policy. Such measures should not discriminate against digital services or single out companies or sectors for disparate treatment, either on a de jure or de facto basis. As envisioned, the proposed UK digital services tax fails to meet these important obligations.

Cybersecurity

The U.S. and UK should endeavor to cooperate closely to address shared international cyber issues.

Given the evolving nature of cybersecurity threats, risk-based approaches may be more effective than prescriptive regulation. Accordingly, the U.S. and UK should endeavor to employ and encourage enterprises to use risk-based approaches that rely on consensus-based standards and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events.

The agreement should include a commitment to utilize relevant international standards; not to apply measures in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and to eliminate any unnecessary differences in their respective cybersecurity risk management frameworks.

Competition

A prospective U.S.-UK agreement should establish strong rules and disciplines to ensure the private sector is not disadvantaged by state-owned enterprises (SOEs). Today's trading rules never envisioned the state as an active cross-border commercial actor in export and investment. Further, it is important that an agreement also address competition enforcement to ensure it is conducted in a manner that assures due process, is based in sound economic analysis, and is not used as a tool for industrial policy.

Neither disciplines on SOEs nor the administration of competition law are issues of direct concern in the bilateral U.S.-UK trade relationship. Nevertheless, it is important that the United States and United Kingdom stand shoulder-to-shoulder in establishing these and other much needed trading principles that we can each carry forward with other trading partners in future negotiations.

Public Procurement

The UK should join the WTO Agreement on Global Procurement (GPA). In addition, bilateral negotiations should provide for open, transparent, and reciprocal access to U.S. and UK procurement markets, expanding access beyond the level established in the GPA.

Intellectual Property

The U.S. business community recognizes the importance of U.S.-UK trade, and, considering the very strong intellectual property rights regimes in both countries, we see these negotiations as a real opportunity to set the highest global standard for IP-led creativity and innovation.

IP-intensive industries employ 45.5 million Americans, accounting for \$6.6 trillion in U.S. GDP and 52% of all U.S. exports. This success is underpinned by IP rights—patents, copyrights, trademarks, and trade secrets—that provide innovators, creators, and importantly investors, with the legal certainty to make long-term, high-risk, capital intensive investments in innovative and creative activity. The resulting output improves lives around the world.

Creative works, inventions, and brands are a significant comparative advantage for both the U.S. and the UK in the global economy. This is clearly illustrated by the fact that the U.S. and UK economies sit atop the U.S. Chamber of Commerce’s International IP Index, demonstrating these two countries stand side-by-side as global leaders in IP protection and enforcement.

- By ensuring that patents, copyrights, trademarks, and trade secrets are uniformly well protected between the two biggest Atlantic economies, U.S.-UK negotiations have the potential to:
 - Increase U.S.-UK trade flows.
 - Provide even greater incentives for businesses to make long-term, high-risk, capital-intensive investments in innovative and creative industries.
 - Enhance the global standing of both states as leading innovative and creative economies.
 - Provide a model to the rest of the world on what a high ambition pro-IP FTA looks like.

While we do not expect that the UK’s exit from the EU will affect the level of protection granted under its current IP system, we would like greater clarity on this account. For instance, it would be helpful if the UK could provide additional guidance confirming its intention to retain its membership in the European Patent Office (EPO) and to continue participating in the Unified Patent Court (UPC).

The agreement should include provisions that recognize and seek alignment to the high standards available in the U.S. and UK, including: an adequate patent term extension mechanism to compensate for patent term lost to marketing approval delays; a mechanism to permit innovators to prevent generic launch during the patent term; and adequate levels of regulatory data protection (including 12 years of regulatory data protection for biologics) to enhance investment incentives in clinical trials.

Both countries should avail themselves of the opportunity to advance a model approach to sustainable access to innovation and creativity through respect for property rights and a return of fair value for innovation.

Finally, regular exchanges of best practices between the U.S. Patent and Trademark Office and the UK Intellectual Property Office, and associated government agencies, should be encouraged, to ensure ongoing coordination and to provide transparent opportunities for stakeholder engagement.

Investment

The U.S.-UK commercial relationship is built on investment even more than trade, and much of our trade is a product of strong cross-border investment ties. In fact, the U.S. is the largest investor in the UK: U.S. investments account for more than one quarter of all investment in the UK. In fact, American firms have invested more than \$600 billion in the British market. Meanwhile, the UK is the single largest investor in the U.S.: The U.S. receives 20% of all outbound UK investment, totaling more than \$480 billion to date.

The UK already has an extensive network of more than 100 bilateral investment treaties that contain strong, enforceable investment obligations. The obligations found in those agreements, along with the U.S. 2012 model Bilateral Investment Treaty text, should serve as the basis for an investment chapter in a prospective U.S.-UK agreement.

Social, Labor, and Environment Issues

The agreement should establish a private sector-led working group to review risks and opportunities that can be mitigated and achieved, respectively, through sustainable environmental business practices and products to develop favorable market access mechanisms for U.S. and UK businesses (e.g. for technologies, products, processes or supply chains that meet agreed science-based and other robust management criteria), reduce significant trade barriers, and ensure flexible regulatory approaches.

Trade Remedies and Dispute Settlement

The future U.S.-UK agreement should be enforceable and include robust provisions to settle disputes. With regard to state-to-state dispute settlement procedures, recent U.S. trade agreements such as those negotiated in the 2000s provide good models on which these provisions can be based.

The agreement should also reaffirm the right of both the U.S. and the UK to address competition from unfairly priced or subsidized imports via clear and transparent trade remedy processes. The Chamber supports U.S. trade remedy law and has argued that it should be administered in a way that avoids any “unduly protectionist interpretation or implementation which would impair the healthy expansion of trade or invite damaging retaliation by other countries,” according to policy declarations endorsed by the Chamber board of directors. This agreement should provide transparency in how both the U.S. and UK governments use trade remedies against firms from the other country.

Small and Medium-sized Enterprises (SME) Policy

We welcome the formation of the U.S.-UK Small and Medium Enterprise Dialogue, bringing SME representatives and government officials together to develop policy proposals to facilitate trade and investment for small and medium-sized enterprises. This is an important first step and basis for ongoing efforts to facilitate SME trade and investment.

The U.S.-UK agreement should also set up a dedicated website to ensure SMEs have ready access to tailored information on such issues as protecting intellectual property; foreign investment restrictions; business registration procedures; employment regulations; and taxation procedures.

The agreement should also support the development of SME trade in services and SME-enabling business models, such as direct selling services² including through measures that facilitate SME access to resources or protect individuals from fraudulent practices.

Conclusion

The U.S. Chamber's U.S.-UK Business Council appreciates the opportunity to provide these comments on priorities for a prospective U.S.-UK Free Trade Agreement. This represents an essential opportunity to deepen and broaden trade and investment ties between the U.S. and one of our most important partners. We look forward to providing additional input as the negotiating process takes shape.

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² Direct selling is the retail distribution of goods by an independent sales representative, and for which the representative is compensated based exclusively on the value of goods sold either by the representative or additional representatives recruited, trained, or otherwise supported by the representative.