AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Our position

Delivering an ambitious new EU-UK trade and investment relationship

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2017, directly supports more than 4.7 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

American Chamber of Commerce to the European Union
Speaking for American business in Europe

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Purpose of the paper

This paper sets out the US business community's recommendations specifically on the future relationship of the EU and the UK post-Brexit. Like European companies, US businesses are heavily integrated into the EU and UK economies and rely on the free flow of goods, services, people and capital throughout the region to succeed. Using the preferred model of the EU and UK which is to negotiate their new relationship on the basis of a free trade agreement (FTA), the paper sets out American companies' preferred provisions chapter-by-chapter in pursuit of an ambitious new relationship that delivers for businesses of all sizes and from all jurisdictions.

This paper is intended to be a living document and will be updated periodically throughout the negotiations to reflect the status of the talks. This paper is a follow-up to a comprehensive paper issued by AmCham EU in April 2017, which mapped out the issues foreseen by US businesses as the UK left the EU.

US business interest in Brexit

US companies have for decades benefited from the ability to seamlessly move goods, services, capital and people across EU borders and under a common set of regulations. In 2016, Europe received approximately 60 percent of US foreign direct investment (FDI), directly supporting some 4.5 million jobs and generating billions of euros in trade and investment. The UK is a particularly important destination for US companies within the EU, as the recipient of around one quarter of all US FDI flows to Europe.

US businesses' supply chains, innovation models and strategic deployments are highly integrated with those of the EU Member States. Significant disruption or changes to the current economic and political relationship between the UK and the EU could have profound effects on the ability of US companies to serve customers in these markets. That is why it is essential that policymakers and stakeholders in both in the EU and the UK work to mitigate this disruption as far as possible and deliver an ambitious and forward-looking new EU-UK trade and investment relationship.

As significant investors and job-creators in the EU and the UK, the American business community is closely following the negotiations and providing constructive input to both parties throughout this important process.

The Withdrawal Agreement and transition period

The UK's impending withdrawal from the EU continues to raise fundamental questions for US companies and their investments in Europe. American businesses – who are heavily integrated in both the EU and the UK – require certainty about the path forward for the new EU-UK relationship.

At the time of writing, US companies are becoming increasingly concerned by the lack of progress in the EU-UK withdrawal negotiations. Failure to agree and ratify in time an EU-UK Withdrawal Agreement would precipitate a "cliff-edge" scenario for businesses on March 30, 2019; an outcome which would be hugely damaging for all businesses and also the EU and UK economies. It is essential that rapid progress is made in the coming months on the key outstanding issues, both to ensure an orderly UK exit and also to trigger the agreed transition period, which remains crucial to allow businesses time to adapt to new requirements.

The EU-UK Withdrawal Agreement process should also incorporate as detailed an outline as possible at this stage on the nature of the future EU-UK trade and investment relationship. This will provide companies with further certainty and enable them to focus their resources in the areas most relevant to them. Absent this information, a transition arrangement runs the risk of delaying the "cliff edge" that companies will face on the date of Brexit. A transition period should ultimately be about building a bridge to a new relationship – not simply placing a plank at the edge of the cliff. Therefore, considering the complexity of the task ahead, the EU and the UK ought to consider using the transition period for further negotiations, whereby the new relationship will be phased in during a prolonged period commencing after the end of December 2020.

In the meantime, we are also hopeful that supervisors and regulators will provide businesses greater certainty by committing to exercise regulatory forbearance where appropriate, especially in the instance where contingency plans are made and/or altered on the basis of an agreed transition period which later fails to be formalised in law. Cooperation between supervisors will be all the more critical in the event of a "no-deal" scenario; we therefore urge supervisors to start work urgently on supervisory cooperation agreements.

Provisions for an ambitious and comprehensive new EU-UK trade and investment relationship

In parallel to the Withdrawal Agreement and transition period currently being negotiated by the EU and the UK, the two parties are beginning in earnest the framework for the new relationship.

Both the EU and the UK have recently declared their intention to negotiate the new relationship on the basis of a Free Trade Agreement (FTA). While AmCham EU members welcome the relative clarity that this brings, US companies remain highly concerned that such an approach will not sufficiently address the needs of businesses of all sizes operating between these markets. Moreover, a conventional free trade agreement will not solve the challenges related to the Ireland-Northern Ireland border, as a conventional free trade agreement, no matter how advanced, will ultimately result in the re-introduction of certain border formalities. To this end, AmCham EU reiterates its longstanding position – first outlined in its comprehensive position paper issued in April 2017 – that its preferred outcome is that the UK remain a member of a customs union with the EU and/or within the Single Market post-Brexit.

Notwithstanding our preference for continued UK Customs Union and Single Market membership, it is essential that the two sides deliver a new relationship that builds on the deep and comprehensive links that underpin EU-UK ties. To this end, any new arrangements should preserve the integrity of the Single Market, which remains the key driver for US investment in the EU. The new relationship should also be long-term, stable, reciprocal and cooperative in nature. Any agreement which is one-sided or subject to arbitrary interpretation is likely to be politically unsustainable and disruptive to long term EU-UK relations and business operations.

While historically arrangements to liberalise trade in services in EU FTAs have been limited, there is and should be nothing preventing EU and UK policymakers from thinking about these provisions ambitiously and allowing a high degree of market access in this area, based on mutual recognition of regulatory approaches. The European Commission already included language to this effect in its 2015 Trade for All Strategy, stating that it wishes to "prioritise trade in services, seeking ambitious outcomes in all trade negotiations."

Finally, a high degree of regulatory and supervisory cooperation and transparency will be crucial to underpin a mutual recognition framework.

National Treatment and Market Access for goods

US companies and businesses of all sizes rely on the free flow of goods, services, people and capital across European borders to succeed. In order to maintain and enhance economic ties between the EU and the UK, and to ensure the continued success of businesses operating in these markets, it is critical that companies retain full access to the EU and UK markets.

Currently, the UK is a member of the Customs Union, which enables tariff-free trade between all Member States and a common external tariff on goods entering the Union. As the UK already trades with the EU27 on a tariff- and quota-free basis, an FTA should **ensure the same market access and not introduce any new tariffs and quotas** on any of the products that are traded between the EU and the UK.

Recommendations
• The EU and the UK should ensure that as from the date of the UK's withdrawal from the EU, an arrangement is in place between the two parties that allows for continued and uninterrupted duty-free and quota-free bilateral trade; • Both parties should refrain from using certain sensitive products as bargaining chips, either for offensive and defensive purposes, which is otherwise a natural part of negotiations between parties.

Rules of Origin

AmCham EU members call on the parties to adopt **clear, simple, transparent and flexible rules of origin** (RoO). Many of our members operate in highly proliferated global value chains, where complex and diverging rules can be cumbersome and severely limit the market access benefits of FTAs. For the agreement to reach its full potential, it is of the utmost importance to secure RoO that allow the current supply chains across the EU and the UK to continue uninterrupted.

The accompanying preferential origin rules allowing duty-free treatment should be modelled on current origin rules under EU trade agreements and **allow extensive diagonal cumulation** of origin for materials sourced from certain third countries with which the EU currently has preferential arrangements in place. However, the specificity of the current EU-UK relationship ought to supersede any traditional rules of origin, to allow companies both in the UK and in the EU to maintain their current sourcing arrangements and still obtain 'preferential origin' status under EU-UK rules if they use materials sourced inside or outside the region where that is also the case today.

Moreover, to minimise new administrative burdens, we recommend that companies should be able to **self-certify** originating status of their products, rather than having to rely on certificates of origin issued by the customs authorities. This includes agricultural tariffs and quotas, which would have the potential to significantly disrupt cross-border supply chains, and increase food prices for consumers.

Recommendations
• The RoO should be modelled on current rules in EU trade agreements and allow extensive diagonal cumulation of origin for materials sourced from certain third countries with which the EU currently has preferential arrangements in place;

- Special arrangements should be considered in case traditional rules do not correspond to current supply chains;
- Companies should be able to self-certify the originating status of their products, rather than having to rely on certificates of origin issued by the customs authorities.

Cross-border trade in services

After its withdrawal from the EU, the UK will no longer be part of the EU's Single Market, which guarantees the free movement of services. The framework for the future EU-UK relationship will have to include an ambitious chapter on cross-border trade in services which would allow service providers from the EU in the UK and vice versa to operate in a non-discriminatory manner and compete with national providers on a level-playing field.

A separate chapter on **postal and courier services** should be included, including provisions to ensure:

- A level-playing field with the universal service provider;
- Equal treatment of international courier services and international postal services regarding customs and other laws and procedures related to import and export, including those related to border procedures, customs clearance and security procedures;
- That the universal service provider does not engage in cross-subsidising from the supply of the universal service the supply of express mail services or any non-universal service;
- Transparent and non-discriminatory license application procedures, if required; and
- Independence of the regulatory body.

In the framework for the future relationship, the EU and the UK should negotiate a bilateral **road transport** agreement to ensure continued ground transportation. This agreement should:

- Liberalize access to each other's transport markets based on the principles of reciprocity and free choice of mode of transport;
- Bar the EU and the UK from taking discriminatory measures;
- Allow the carriage of goods between the EU and the UK (international carriage) to take place under the EU authorization for EU carriers and under a similar UK authorization for UK carriers;
- Ensure that the procedures for issuing and renewal of the authorizations are transparent and based on well-defined criteria, such as establishment, good repute, professional competence, and financial standing;
- Allow for cross-trade, goods in transit, and cabotage;
- Allow the carriage of goods or empty vehicles in transit through the EU and the UK, without any additional data or clearance requirements;
- Be complemented by strong provisions in the framework for the future relationship on mutual recognition of professional qualifications for drivers and auxiliary road transportation services;
- Include provisions on the facilitations of border controls, avoiding the introduction or maintenance of any measures or formalities which would restrict or impede the international carriage of goods.

Similarly for aviation, to ensure **air transport** connectivity between the UK and the EU, it is important that the EU and the UK:

- Negotiate a bilateral air transport agreement by providing unrestricted access to each other's aviation market and relevant aviation services;
- Agree on including up to the 7th freedom of air for all-cargo flights;

- Align its air safety regulations, through an aviation safety agreement ensuring close cooperation between EASA and the UK Air Safety Agency;
- Work together to ensure a continued application of the EU-US Open Skies Agreement during the transition agreement, and already start working on solutions with the United States to ensure continued transatlantic connectivity between the EU, UK, and the US.

Moreover, a chapter that incorporates **Mode 5 for services** ought to be included. Every year, AmCham EU members introduce a significant number of new and innovative products on the market. With fast-paced developments, innovation is the driver of our industries, and is a major source of employment and revenue generation in the EU, UK and around the globe. The costs related to developing the innovations and other pre-production activities are in fact services, but are included in the customs value of products and, as a result, the companies pay import duties on these activities. In the WTO, such cases of services incorporated in goods are discussed under the name 'Mode 5'.

Under current US rules on customs valuation, pre-production costs incurred in the US can be deduced from the customs value of imported goods. As a consequence, import duties for goods for which e.g. design and product development have taken place in the US benefit from lower duties than the same products developed in the EU or the UK. The EU has a similar system in place for these costs incurred in the EU.

In a future relationship between the EU and the UK, incorporating Mode 5 for services in the future FTA would provide great benefit to AmCham EU members' activities in the field of research and development. Allowing research, development and design costs incurred in the EU or the UK to be deduced from the customs value for products imported into the EU or the UK (from third countries) would represent a better appreciation of the value of services included in physical products.

Recommendations

- An ambitious chapter on cross-border trade in services which would allow service providers from the EU in the UK and vice versa to operate on a non-discriminatory manner and compete with national providers on a level-playing field;
- FTA+: A road transport agreement to ensure continued ground transportation, allowing for cross-trade, goods in transit, and cabotage;
- FTA+: An air transport agreement including the 5th and 7th freedom of the air for all-cargo flights, complemented with an aviation safety agreement;
- FTA+: A chapter on Mode 5 to allow for a better appreciation of the value of services in physical goods.

Technical Barriers to Trade (TBTs) – regulatory cooperation

The EU and the UK currently share a common system of rules and regulations that allows businesses to operate in both markets seamlessly. Changing existing, converged regulation will disrupt current business practice, potentially leading to higher costs for companies, and increased prices for consumers with reduced choice. In effect, **regulatory divergence** will give rise to new non-tariff barriers, increase the cost of doing business and impair trade. AmCham EU members companies' business practices are built on EU-UK regulatory alignment, often under the aegis of the appropriate EU agencies (such as EFSA, ECHA, EMA etc.).

The EU and UK will **need to maintain a system of cooperation** in matters of regulations, including a process for aligning laws and creating equivalence rules. In the future, both parties should prioritise further regulatory convergence where possible, granting legal certainty and predictability, and encouraging US investment in both

the EU and the UK. Both parties should also consider harmonising standards and mutual recognition as part of future trade arrangements.

As the EU and the UK are starting the negotiations of a future relationship from a common set of regulations and standards, AmCham EU members believe the aim should be to continue as high degree as possible of continued regulatory convergence across industrial sectors. Regulatory convergence, and implied mutual recognition of standards and conformity assessment, is essential to the consistency and efficiency created by the Single Market. At the same time, we recognise full continued regulatory convergence is not likely to be feasible. The primary aim of **regulatory cooperation** would first and foremost focus on identifying and reaching an agreement on differences in UK-EU regulatory regimes. Subsequently, fora and mechanisms would need to be established to manage and assess the materiality of potential future regulatory divergences. US companies want to continue to rely on dispute resolution mechanisms that offer legal certainty across both the UK and EU markets. That being said, AmCham EU members value the consistency and efficiency created by the Single Market and the regulatory alignment, and thus ask for regulatory cooperation to apply to all industrial sectors. More specifically, however, sectors that are acutely dependent on regulatory alignment and cooperation on future regulations and standards include, but are not limited to, the industries of financial services, food and drink manufacturing (including food labelling), medical devices, energy technology, pharmaceuticals, capital goods, transportation and chemicals, ICT, and telecommunication equipment. Maintaining a common approach would avoid unnecessary duplications, increased costs and uncertainty for consumers, customers and patients.

Regulatory cooperation ought to be conducted through structured dialogues based on mutual trust, transparency, early and enhanced consultation processes, where a common approach to common challenges should be the main goal, but where mutual recognition should be accepted as a viable option in those cases where a divergence is necessary. In this case, AmCham EU calls for a framework for close cooperation between the respective EU agencies and the UK's equivalent bodies.

Within the nature of highly complex and mutually entwined chemical supply chains, regulatory cooperation and continuity is essential to avoid disruption to trade between the UK and the EU. This applies both to horizontal regulations such as REACH and CLP Regulations, as well as to sector specific legislation relating to Cosmetics, Detergents, Biocides etc.

Recommendations

- The EU and the UK should consider setting up a regulatory cooperation council to allow parties to exchange views and to cooperate on future regulations;
- FTA+: The regulatory cooperation council should establish the remits of regulatory divergence, as well as facilitate future regulatory convergence or mutual recognition.

Sanitary and Phytosanitary Measures

In agriculture and food, regulatory divergence poses a particular risk. AmCham EU members companies' business practices are built on EU-UK regulatory alignment. This includes food manufacturing and processing food contact materials, additives, and pesticides. The agri-food sector is often characterized by just-in-time delivery of products with short shelf lives, and integrated cross-border supply chains (encompassing the UK and EU27) for sourcing raw materials, processing goods and access to market.

The UK's departure from the EU poses questions around whether the UK will maintain these legislations. Changes to existing, aligned regulation will disrupt current business practice. Divergence of food safety rules in

particular could quickly become a barrier to trade, resulting in higher costs for companies, costs that need to be absorbed by both companies and consumers. Ultimately, regulatory divergence may result in food producers having to make two versions of the same product - one for the EU market and another for the EU. Ensuring the continued alignment of food and agriculture legislation post-Brexit is therefore vital to maintaining current trade flows, as well as consumer benefits.

Recommendations

- The FTA should bind parties to uphold existing laws in the area of food safety, sanitary and phytosanitary standards, and enable parties to avoid regulatory divergence wherever possible;
- In the event of regulatory divergence, and provided that a high level of consumer and health protection is maintained, opportunities for mutual recognition should be considered.

Customs and Trade Facilitation

After the UK's withdrawal from the EU, it will become a third country from the EU's perspective. Complete free movement of goods between the EU and the UK will no longer be possible and customs procedures would lead to more detailed and lengthy customs declarations.

To mitigate the impact of the customs procedures between the EU and UK, the framework for the future EU-UK relationship should **facilitate the efficient movement of goods between the EU and UK**. This would require self-assessment and simplified customs procedures, such as:

- Self-assessment of goods, enabling importers to replace individual declarations with a system of periodic returns;
- Advance electronic submission and processing of import documentation and other information, including manifests, before physical arrival of goods;
- Simplified import declarations and procedures and automatic release, based on AEO status;
- Mutual recognition of Authorized Economic Operator (AEO) status;
- Authorization for the operation of temporary storage facilities (confer art 148 UCC);
- Inclusion of the UK in the EU Common Transit Convention;
- Transparent and non-discriminatory fees, charges, and customs procedures;
- Advance rulings relating to binding tariff information, or decisions relating to binding origin information;
- The establishment of a single window in the EU and the UK, enabling traders to submit documentation and data required for import, export, or transit to a single-entry point;
- Expedited customs procedures for express delivery shipments;
- Deferred tax and duties payments, with payment at quarterly intervals or longer;
- De minimis provisions:
  - De minimis threshold at 800 GBP/EUR;
  - Shipments with an intrinsic value below the de minimis threshold should be released based on a limited data set;
- Identical data set requirements for customs declarations in UK and EU;
- Acceptance of the export declaration in the EU as the import declaration in the UK, and vice-versa;
- Acceptance and validation by EU customs authorities of UK customs declarations, releasing the goods and informing UK customs, and vice versa;
- Simplified rules of origin and cumulation;

- Complete waiver of safety and security information, similar to current EU-Switzerland and EU-Norway relationship;
- Remote release: by separating the flow of the physical goods and the data linked to the goods, the goods can be cleared at the point of arrival without physically presenting the goods to the customs office of destination.

The effects of the **Union Customs Code (UCC)**, which both the EU and the UK are currently implementing, should be the basis for the future EU-UK customs relationship. Parties should consider the possibility of divergence only in those cases where implementing the current UCC results in discriminatory treatment of economic operators as a consequence of the UK leaving the Customs Union.

With regards to the broader EU-UK customs and trade relationship, AmCham EU members welcome the efforts by parties to continue to explore new and creative ways to deliver the most seamless customs and trade facilitation possible after Brexit. The EU and the UK have been in discussions for some time over a variety of possible options. For US and international businesses, it is of utmost importance that the proposals meet the following three criteria:

- They should be fully developed so that business can give input on its practicality;
- They should be negotiable; and
- They should be fully implementable on the day of the final exit.

In sum, we encourage creative and innovative solutions to ensure as seamless as possible customs procedures after Brexit. Further analysis and negotiation between the two parties is necessary to find creative solutions which also respect the principles and integrity of the Single Market. These efforts should be achieved with significant business input.

In addition to custom procedures, another important element of the EU Customs Union is the **EU export control regime**. Companies in the EU currently have the ability to apply for an **EU General Export Authorisation** (EUGEA) which, once approved, allows them to export dual-use goods from any location in the EU. When the UK leaves the EU, companies based in the UK will no longer be able to physically export from EU locations and they will no longer have the ability to rely on the EU General Export Authorisations. On the assumption, as indicated, that the UK will create a dual-use export licensing system aligned to the procedures and rules (including dual use control lists) as the EU, AmCham EU believes the two parties should seek agreement on the mutual recognition of the EU and the UK's export licences. This should also enable the EU to agree to add the UK to the list of countries under the EUGEA EU001 to allow licensing of exports of dual use goods from the EU to the UK.

Recommendations

- The framework for the future EU-UK relationship should facilitate the efficient movement of goods between the EU and UK through self-assessment and simplified customs procedures, taking the Union Customs Code (UCC) as the basis, where possible;
- FTA+: The EU should consider setting up a "customs futures" roundtable to include interested parties ranging from business and logistics to customs clearance, customs and border control authorities and economic policy institutions;
- FTA+: The parties ought to consider new forms of customs partnerships that enable economic operators to operate as frictionless as possible, but that are reciprocal in nature and easily administered by companies;
- FTA+: The parties ought to consider cooperating on export controls for dual use items.

Skills

After the UK's withdrawal from the EU, it will become a third country when dealing with the EU. Complete free movement of people between the EU and the UK will no longer be possible and immigration restrictions would lead to more detailed and lengthy procedures. This could lead to considerable disruptions to market segments in both the UK and the EU that rely on highly-skilled workers and require an ecosystem that allows them to attract the rights people.

One in five companies in a recent survey highlighted labour shortages as the key reason the company could not expand[1]. Restrictions on free movement and the subsequent barriers to the access of highly skilled workers would therefore hamper economic growth and investment.

To mitigate the impact of new immigration rules and potential labour and skills shortages, the framework for the future EU-UK relationship needs to include ambitious provisions on skills and talent.

Recommendations
• An EU-UK Free Trade Agreement should include ambitious provisions on free movement of natural persons.

Investment

AmCham EU members consider that the market access currently enjoyed through the UK being a member of the EU **ought to be safeguarded and preserved**. Moreover, the investments already made in the UK and EU27 ought to be protected by both parties, where disputes should be resolved in a transparent and fair environment.

Recommendations
• An ambitious investment chapter, including investment protection, should be included in the FTA. • A stable regime in terms of a post-Brexit trade arrangement, with clear dispute resolution; processes, institutions and enforcement provisions. Certainty as to the role of previous judgements of the European Court of Justice must be ensured; • A clear decision regarding the future regime for investor-state dispute (ISDS) resolution for UK FTAs post-Brexit – a continuation of the well-established global ISDS model or support for the EU-proposed Investor Court System (ICS).

[1] Martinez, C. M., & Odendahl, C. (n.d.). What free movement means to Europe and why it matters for Britain (Rep.). Retrieved April 19, 2017, from Center for European Reform website: http://www.cer.org.uk/sites/default/files/pb_cmm_co_freemove_19jan17.pdf.

Financial Services

Upcoming negotiations on a future UK-EU trade deal should aim for the **highest degree of market access for financial services possible**.

AmCham EU members' **preferred model for post-Brexit EU-UK market access is based on 'mutual recognition'.** As background, 'mutual recognition' is a broad term used to cover where different jurisdictions recognise or defer to the regulatory frameworks of the other, on the understanding that their regulatory and supervisory regimes are broadly consistent with one another (e.g. achieve the same outcomes). Key components of a mutual recognition regime include:

- Determining the criteria for mutual recognition;
- Deciding how to maintain regulatory alignment (regulatory cooperation is usually core to this); and
- Dispute resolution.

There are multiple bases for mutual recognition, one of which is equivalence, but this is a narrow or constrained form of mutual recognition. AmCham EU members would **prefer a broader based form of mutual recognition as opposed to an equivalence-based regime given the unstable nature of the equivalence regime** (e.g. it doesn't cover all services or pieces of legislation, it can be withdrawn at any time, and it is made by unilateral decision by the European Commission). Furthermore, a broader mutual recognition provides more room for deference to each other's regimes (based on a general acknowledgement of the quality of their respective regulatory and enforcement standards); as opposed to a line-by-line comparison which is often adopted when assessing equivalence.

In addition, US businesses are concerned about the possible direction of travel on equivalence, as indicated by recent proposals from the European Commission to apply a more rigorous equivalence assessment for third countries that provide a larger volume of services to the EU. Recent proposals change the third country equivalence decision criteria for systemic jurisdictions from an outcomes-based assessment to a detailed and granular review of third country regulation. This creates a higher bar for equivalence assessment.

It is in the interests of the EU and the UK to maintain an open market for financial services for the ongoing economic relationship between the EU member states and the UK. We believe the EU and the UK should agree on a **comprehensive FTA** that allows for the **greatest possible access to the Single Market** for financial services to ensure the **continued free flow of capital and liquidity**.

AmCham EU supports **a tailored market access model that offers different access and on different bases depending on the level of sophistication of the counterparty or client** (e.g. from qualified counterparties to retail)**:**

- For '**qualified' or sophisticated counterparties**, that require less (investor) protections, market access could be granted without requiring the EU and UK regulatory regimes to be aligned. Such an access regime would be roughly similar to the **Oversees Persons Exemption** (OPE) currently applied by countries like the UK;
- There should also be a market access arrangement for **non-qualified counterparties** (e.g. professional investors, including high net worth individuals and extending to retail clients). This could be based on maintaining a **significant degree of regulatory alignment**, although we believe this should be a flexible **outcomes-based comparison** and not a line-by-line assessment.

Recommendations
• The parties should negotiate a financial services chapter that is based on the principle of mutual recognition, as opposed to an equivalence-based regime.

Pharmaceuticals

AmCham EU members belonging to the Life Sciences industry are undertaking significant efforts to prepare for the UK's departure from the EU, notably given the industry's role in supplying medicines to patients in the EU and UK. In the context of both current withdrawal preparations, and the future relationship, it remains critical for the EU and UK to take steps to help industry to support public health. Such steps should be taken in order to minimise the disruption in supply of medicines to patients in both jurisdictions, to support the global competitiveness of the life sciences sector in the EU and UK, and to avoid unnecessary ruptures in global value chains that could have negative productivity, employment, trade and economic growth effects. Moreover, AmCham EU members stress the importance of ensuring timely access to medicines, avoiding duplicative and divergent regulation, as well as avoiding disruption to existing quality control and supply arrangement – both in the near- and medium-term.

The UK and the EU should seek to conclude a deal that ensures maximum alignment between EU and UK pharmaceutical legislation in the interests of patients and the economy in the EU and the UK. The below regulatory elements could be part of such a comprehensive FTA or be standalone regimes alongside an FTA. Ahead of this, two more near-term approaches should be considered to support mitigating disruption to supply:

- An '**Article 51(2) arrangement**' (under Dir 2001/83): To exempt from re-testing in the EU batches of products already tested by a manufacturer in a third country with which the EU has 'appropriate arrangements;' and
- A **Mutual Recognition Agreement** (MRA): A mechanism to recognise the assessment work for pharmaceutical manufacturing and supply (e.g. GMP/testing) between the EU and UK. The EU already has similar MRAs with the US, Canada, Japan and a number of other markets.

Adoption of such an MRA should be quicker to achieve than that for other EU-third country MRAs, given that the EU and UK are starting from a position of full concordance in respect of requirements. Longer-term, these would also form a core part of the agreement for close cooperation, notably via an FTA and the below-described 'RACA' model.

Either as part of an ambitious and broad-ranging FTA, or as a standalone regime, a 'Regulatory Alignment and Cooperation Agreement' (RACA) for pharmaceuticals would be key to securing a strong regulatory EU-UK relationship in this sphere. This would mean that the UK follows the EU rules on human medicinal products and respects the relevant EU decisions, with concrete modalities on how the rules apply in practice. Some form of oversight body would be necessary to ensure close collaboration between the EU and UK on the operation of the agreement, and to maintain a list of applicable rules and the specific practical modalities for cooperation. A RACA would ensure future cooperation and alignment between the UK and EU27, and address the following regulatory issues for pharmaceuticals:

- Manufacturing and Supply;
- Regulatory Oversight;

- EU Medicines Regulatory Network;
- Marketing Authorisations (MAs);
- Clinical Trials;
- Pharmacovigilance;
- Systems and databases.

Similar to other industries, biopharmaceutical supply chains are extremely complex and highly integrated. Border controls can lead to a disruption to the supply chain of medicines. To mitigate such risks and to ensure patients in both the EU and the UK can continue to receive timely access to the medicines they need, the future EU UK relationship has to ensure efficient movement of medicines between EU and UK, particularly taking into account temperature sensitive medicines which requiring cold-chain.

Recommendations

- An "Article 51(2) arrangement" (under Dir 2001/83): To exempt from re-testing in the EU batches of product already tested by a manufacturer in a 3rd country with which the EU has "appropriate arrangements" and
- Mutual Recognition Agreement (MRA). a mechanism to recognise the assessment work for manufacturing and supply between the UK and EU 27 (the EU already has MRAs with the US, Canada, Japan and a number of other markets).
- FTA+: "Regulatory Alignment and Cooperation Agreement" (RACA): UK follows EU rules on human medicinal and veterinary products and respects relevant EU decisions, with concrete modalities on how the rules apply in practice.

Media and broadcasting

Upcoming negotiations on a future UK-EU trade deal should aim at **ensuring that UK-based media broadcasters should be able to continue to make their services available across the EU** with the less degree of disruption as possible to the benefits of consumers of cultural goods across the continent.

Today, the Audiovisual Media Services Directive (Directive 2010/13/EU) allows UK-based media broadcasters to have access to the entire EU market, thanks to the so-called "Country-of-Origin" principle. According to this principle, media service providers are subject only to the law and the jurisdiction of their EU Member State of origin including when their programs are received and/or re-transmitted in other EU Member States.

From a business perspective, the UK currently provides around 30% of the channels available in the EU and are appreciated by audiences with different cultural tastes and references.

AmCham EU members recognize that while there is no precedent for a third country securing Single Market-equivalent access for broadcasters, several options are possible, including mutual recognition. Such an option in particular should be at the centre of the technical negotiations over the coming months.

Recommendations

- The parties should actively negotiate a broadcasting and media chapter that would allow UK-regulated broadcasting services to keep operating to the benefit of consumers across the EU.
- Mutual recognition rules should be given particular attention.

Telecommunications

The EU irrespective of the single market has an open telecommunication market under its WTO commitments. This should be maintained for the UK as the UK should ensure the continued access to the UK telecommunication market for EU based providers. Due to the strong involvement of the UK in designing the EU regulatory framework for communication, the UK should stay aligned with the EU on the main principles with a mechanism in place for dealing with identified areas of possible future divergence. Such divergence should not be seen as an obstacle to cross-border market access if non-discriminatory.

Recommendations

- Maintain mutually open access to each other's telecommunication markets on the basis of the existing framework and coming Electronic Communications Code.
- Establish a cooperation mechanism to manage elements where the UK future law diverge and to develop shared principles for how to address any potential new issues in the telecommunications sector.
- FTA+: Depending on level of commitment of the UK to maintain alignment with the EU telecoms acquis, retain Ofcom as a member of BEREC, along the status of Nkom, or by granting Ofcom an observer role.
- Barring forced technology transfer: UK and the EU should not make market access contingent on transfer of technology.
- Ensuring technological choice and neutrality: companies should be able to choose the technology that is most suitable to them.
- Ensuring network competitiveness by allowing suppliers to build their network in the UK and in the EU on the basis of their clients' location.
- Ensuring fair competition with State owned enterprises.

Electronic Commerce

The **free flow of data** between the EU and the UK will be key for maintaining the attractiveness of the UK as a place to invest, as well as ensuring the success and future growth of the EU digital economy. It will also be critical for a large number of organisations across the EU to retain their access to the many data-based digital services they are currently sourcing from UK-based providers.

Both parties should prioritise during the withdrawal discussions, as well as into the new relationship, to maintain the continued flow of data. The FTA should therefore include a clear-cut **prohibition of data localisation requirements and a commitment to maintain data transfer mechanisms**. The UK has said it will adopt and implement the General Data Protection Regulation (**GDPR**) in its own statutes. This should be followed by an '**adequacy finding**' by the EU as soon as a transition period begins (i.e. from the moment that the UK is a third country). The UK should do the same if it transposes a reciprocal clause.

Other key elements that should be included in a digital trade chapter include provisions on cooperation on cybersecurity, protection of source code and promotion of commercial encryption, preserving market-driven standardisation and global interoperability. It is in particular important that close cooperation continues on

cyber security and that the UK continues to align with the general principles of the Directive on Security of Network and Information Systems (NIS).

Recommendations

- A clear-cut prohibition of data localisation requirements should be included in the FTA;
- An 'adequacy' finding should be carried out on the basis that the UK will implement GDPR in full;
- Securing commitments not to impose customs duties on digital products and content transmitted electronically and ensuring non-discriminatory treatment of digital products transmitted electronically, and guaranteeing that these products will not face government sanctioned discrimination based on the nationality or territory in which the product is produced (this is something the EU and UK is aligned on but is important to include to send a strong message to third countries);
- A clear-cut prohibition on mandating access to source code and making market access for ICT products conditional on disclose proprietary encryption technology, production processes or other information to government or a domestic partner, or to partner with a domestic partner, or to use a particular type of encryption;
- Ensuring robust market access commitments on investments and cross-borders digital services;
- Promoting stakeholders participation in the development of regulations and standards;
- Cooperation mechanisms for regulatory developments on cyber security;
- Cooperation in preserving market driven standardization and global interoperability.

Government Procurement

Reciprocal access to the public procurement markets will be significantly disrupted as the EU regime offers a liberalised and non-discriminatory market access across the EU, even if the WTO Government Procurement Agreement (GPA) offers an important baseline access. This is because the risks associated with public procurement are not only linked to the level of commitments/market access but equally to the practical implementation and application of rules and procedure.

As such, the EU public procurement directives do not only provide the market opening rule but a full set of procedures and processes, incl. rules on tender notices and advertisements, selection and contract award criteria and procedures, incl. e-procurement and, not least, legal recourse.

Recommendations

- We welcome the UK's commitment to join the WTO's GPA, with its commitments aligned to those of the EU schedules in order that the parties can seek to include provisions on continued reciprocal access to public procurement markets;
- The UK should maintain its current public procurement laws as transposed from the EU Directives, including for Scotland, Wales and Northern Ireland as public procurement falls under their devolved powers. The EU and UK should seek to reach an agreement on a mechanism to ensure the future convergence of public procurement laws and procedures.

Intellectual Property Rights

AmCham EU members' activities in the EU and in the UK are founded on a solid protection of intellectual property rights, and is paramount to the significant contribution to exports to the EU or globally. Therefore, IPR needs to be considered as a separate nexus by the UK Government within the context of the impact of Brexit, but should also be addressed in the FTA.

While the EU Withdrawal Bill should convert EU law as it applies in the UK into domestic law on the day the UK leaves, members of AmCham EU require certainty about existing and pending rights, and a continued high level protection of intellectual property rights both in the EU and the UK in their future relationship.

Community Acquis in the field of Intellectual Property Rights
According to the UK's Department for Exiting the EU, the EU Withdrawal Bill will convert EU law as it applies in the UK into domestic law on the day the UK leaves. This should apply in the field of IPRs (EU Acquis). In the long term, a particular concern is that the case law of the European Court of Justice would no longer have a binding effect in the UK. Over time, the (case) law in the UK may start to diverge from EU law, which would have a disruptive effect on the businesses. Therefore, in order to reduce this risk, the principles should also be enshrined into the FTA, where the role of the Court of Justice of the European Union is recognized.

Patents and Standards
The Unified Patent Court (UPC) will be implemented before the UK leaves the EU, but the UK has already ratified the United Patent Court Agreement. Nonetheless, parties should aim to avoid disruption to pending proceedings. Additionally, there could be disruption for companies which are already holders of Unitary Patents when the UK leaves the EU, as the mechanisms for obtaining corresponding UK patent rights out of Unitary Patents or converting Unitary Patents into UK patent rights are still unknown. In the same way, when the UK leaves the EU, the UK might no longer need to apply European standardisation policy and related practice and there might be an additional issue with National Body (BSI) membership of CEN and CENELEC, as the current membership rules require the members to be in the EU. Multiple patent applications, as well as the potential use of standards in the UK, deviating from the EU standardisation policy and related practice, would be burdensome and costly for companies operating in the EU and the UK. The FTA must therefore address the UK's continued participation in the Unified Patent Court and the Unitary Patent, and include a respect for the standards development by the EU Standards Organisations (e.g. CEN, CENELEC and ETSI), where the same underlying mandatory legal requirements are applied.

Pharmaceutical incentives and rewards for innovation are the foundations on which innovation is built. A well-functioning incentive system for the pharmaceutical industry should be in place in the UK immediately upon Brexit, whether within or independent from the EU framework, maintaining he current level of protection. Companies need this to invest in development and delivery of new medicines to patients. For EU Trademarks and Community Designs, we ask that EU Trademarks and Registered Community Designs continue to have effect in the UK and recommend that the UK continues to participate in the Community Trademark and Design systems. We ask that the current exhaustion regime continues for all IP rights in the EU and the UK post-Brexit. Where the UK has retained EU laws, we support the position that these should be interpreted in accordance with existing CJEU case law, as per the EU (Withdrawal) Bill.

Enforcement of IPRs
UK brand owners currently rely on the EU IP Enforcement Directive to make a single EU customs recordal. It is welcome that as part of the EU Withdrawal Bill, the UK will continue to apply the IPR enforcement directive (IPRED), which sets out a minimum level of protection in the civil courts of the EU Member States and made some remedies available in the UK (e.g. publicity orders), which were not available before. However, pan-EU remedies would no longer apply to the UK or be available in the UK courts. In respect of infringement proceedings, the UK Courts will lose the power to grant pan-European injunctions. The UK will also diminish as

a venue of choice for litigating European IP infringements. It will be necessary for parties to run concurrent infringement proceedings in both the UK and the EU.

Furthermore, the UK would no longer be subject to the jurisdiction of the Court of Justice of the European Union (CJEU) or the European Union Intellectual Property Office (EUIPO). Finally, the UK would no longer be able to participate in the EUIPOs Observatory, Europol and various other bodies of the EU. This may have an effect on the process for intercepting counterfeits and other infringing goods at the border. This ought to be addressed in the future FTA between the EU and the UK, to ensure a high level of protection and robust enforcement of IPRs.

Trade Marks and Designs

AmCham EU members are holders of EU trademarks and (registered and unregistered) Community designs. Those rights will no longer apply in the UK following Brexit and parallel national rights may be required. This could result in a possible disruption of trade mark/design protection for the UK territory with respect to EU trade marks and (registered and unregistered) Community designs, as the mechanism for obtaining corresponding UK rights out of EU trade marks and (registered and unregistered). This ought to be addressed in the FTA.

Copyright

The UK and the EU are both members of numerous international treaties and agreements, which should ensure a high level of protection of copyright. However, the continued effect of EU Directives and Regulations (copyright Acquis and pending legislative initiatives), once the UK leaves, will ultimately depend on the terms of the future relationship with the EU. AmCham EU therefore recommends that both the UK and the EU assess the potential impact of Brexit in the field of Copyright in their future relationship.

Recommendations
• The principles of the acquis should be enshrined into the FTA, where the role of the Court of Justice of the European Union is recognised; • FTA+: The FTA must address the UK's continued participation in the Unified Patent Court and the Unitary Patent, and include a respect for the standards development by the EU Standards Organisations (e.g. CEN, CENELEC and ETSI), where the same underlying mandatory legal requirements are applied.

Small and Medium-Sized Companies (SMEs)

Small businesses in both the EU and the UK who export to each other's markets rely heavily on the ability to move goods, services and capital seamlessly across the EU-UK border and to attract and employ talent from around Europe. Unlike larger companies, small companies lack the resources to overcome the costly and burdensome barriers to trading globally. These obstacles can take the form of tariffs and duties, regulatory and compliance costs and impediments, barriers to public procurement or even lack of information.

New customs and regulatory arrangements between the EU and the UK risk harming the prospects and opportunities of many small businesses, particularly in the event of less-than-ambitious market access terms after Brexit, or in the worst-case scenario of a "no deal". It is imperative that the EU and the UK place the needs of small businesses at the heart of negotiations for the future relationship, including by dedicating a comprehensive SME chapter in the final agreement. This chapter should look to provide new opportunities for small businesses, limit to a minimum any new or additional costs or burdens, and increase access to information and resources for small businesses on both sides.

Recommendations
• The EU and the UK should place SMEs at the heart of negotiations on the future relationship, including by dedicating a specific chapter to SMEs in the negotiations; • The SME chapter provide new opportunities for small businesses, limit to a minimum any new or additional costs or burdens, and increase access to information and resources for small businesses on both sides.

Competition Policy – Level Playing Field

Balanced competition policy provides a level playing field for businesses and consumers alike and protects against unfair market distortion. The UK and EU's markets are deeply intertwined, with the UK's competition policy regime modelled on and complementing the EU's. The future ambitious trading relationship between the EU and UK requires consistency in the EU and UK's approach to competition matters including antitrust, mergers and state aid. This includes robust cooperation mechanisms between the Commission, UK Competition and Markets Authority (CMA) and national authorities in order to maintain a deep and comprehensive economic relationship and minimise burden on businesses.

One-stop shop for merger filings

Currently, companies operating in Europe are able to benefit from a 'one stop shop' for merger filings as defined under the EU Merger Regulation (EUMR). Once the UK exits the EU, there may be a need to file separately with the UK's CMA leading in turn to parallel reviews and a significant increase in the number of UK filings, as many transactions which meet EU thresholds are also likely to meet UK thresholds. This could create significant burden for companies, who will need to invest resources into managing and obtaining the additional UK approval. The UK merger control system operates quite distinctively.

In addition, the possibility of parallel reviews by the Commission and CMA raises the potential question of divergent outcomes (i.e. one authority clearing a merger and the other blocking it), especially if the 'convergence clause' in the UK's Competition Act is removed.

The future EU-UK relationship should include a framework for cooperation on merger cases not notified to both jurisdictions, to align outcomes to the extent possible, ensuring certainty for business. Concretely, this should involve formal cooperation in collecting and exchanging evidence and coordinating procedures and decision-making processes. The CMA should also agree to accept EU notifications, supplemented by additional information specific to UK requirements, or proceed on a case-by-case basis.

Alignment of antitrust proceedings

After Brexit, any potential cartel or other antitrust investigations in the EU that have an impact on US businesses could be carried out in parallel by both the UK's CMA and the European Commission. The CMA will no longer be prevented from taking action if the Commission has opened a formal investigation. The Commission's investigation will however be limited to effects in the EU-27. It is possible that two different fines could be imposed regarding the same cartel, if its effects extend to both the UK and EU markets. In addition, the Commission will no longer be able to carry out on-site investigations in the UK or request that the CMA does so on its behalf. The future EU-UK investment and trading relationship should include a formal cooperation

agreement between the CMA and the Commission concerning investigations and enforcement of competition rules.

State aid

Once Brexit is completed, the UK will no longer be restrained by the EU's State aid rules and can implement subsidies more freely, within the boundaries of international law (WTO rules) with a view to potentially attracting investment from the continent and abroad. However evidence shows that the UK has traditionally provided levels of aid per capita that are lower than those seen in other European countries, which suggests that absence of the EU state aid framework might not necessarily translate into significantly higher levels of public investment. The future EU-UK agreement should include clear state aid provisions to ensure a level playing field with Member States.

Recommendations
• Framework for cooperation on merger cases not notified to both jurisdictions:, including formal cooperation in collecting and exchanging evidence and coordinating procedures and decision-making processes; • The CMA should also agree to accept EU notifications, supplemented by additional information specific to UK requirements, or proceed on a case-by-case basis; • Formal cooperation agreement between the CMA and the Commission concerning investigations and enforcement of competition rules; • Clear state aid provisions to ensure a level playing field with Member States.

Energy and Raw Materials

The Single Energy Market has greatly improved security of supply, diversified the energy mix, and allowed EU citizens to have greater choice over their energy supplies. The physical infrastructure between the UK and continental Europe is an important element of the UK's energy security. The benefits of the internal energy market should be safeguarded for UK citizens and businesses as much as possible post-Brexit.

Recommendations
• Security of energy supply and access to affordable energy for citizens in the UK and EU should be the guiding principles for post-Brexit energy trade; • Efficient movement of energy related equipment and maritime vessels between the EU and UK through simplified customs procedures (see Customs and Trade Facilitation chapter of this document for more information); • Non-discriminatory access to energy pipelines, cables to and from the UK as well as access to trading hubs and storage, in line with conditions for other third-party countries; • Continued best practice sharing from offshore operations in the North Sea via continued participation at the EU Offshore Authorities Group.

Socio-economic cooperation

The UK has a world-leading research sector, which, being integrated in the wider EU research ecosystem through structured collaboration, benefits the EU as a whole. Meanwhile, EU research funding has played an increasingly important role in supporting UK academic science. For Horizon 2020 and the recently proposed Horizon Europe (FP9), the loss of UK partners in EU-backed research projects would impact the expertise available to the projects, and thus the outcomes from them. Meanwhile, even if the UK matches existing EU science funding from national sources, UK science will lose out by having many collaborations made more complex.

The future EU-UK relationship should ensure that UK scientific excellence can continue to contribute to European consortia. The EU and UK will both benefit from finding a solution that allows the UK to continue to fully participate in the EU's research programmes including FP9, and key Public-Private Partnerships (PPP). This is particularly key for the UK's leading life sciences sector, where access to medical innovation risks being undermined should the UK be excluded.

Recommendations

- The EU and UK should explore solutions that ensure the continued participation of the UK in the EU's research programmes, including Horizon Europe (FP9) and key Public Private Partnerships (PPPs).
- AmCham EU welcomes the provisions in the Horizon Europe proposals which recognise the value of their county participation in EU research programmes. It is essential that UK participation in future EU research programmes take into account the advanced levels of existing collaboration and integration of current EU-UK research.

Security, defence and foreign policy cooperation

With the largest security and defence industry in Europe and a highly developed military force, the loss of the UK as a member to the Union will be hugely detrimental. Continued cooperation in matters relating to security and defence, will not only ensure that EU member states can rely on the advanced infrastructure and capabilities of the UK, but also that the European defence industry market remains inclusive and recognizes the trans-national nature of the sector's value-chains. Without the right mechanism for cooperation, there is a risk of further fragmentation of the European defence industry and a decline in investment, as well as economic growth.

Even with the UK's withdrawal of the EU, it will remain an ally in security and defence cooperation to the EU through its NATO membership. In order to ensure the most effective partnership and reduce the risk of overlaps or duplications the future EU-UK relationship should ensure a harmonized and aligned framework for cooperation that recognizes its status as a NATO ally.

The UK should remain closely involved in the development of EU defence and security policy, as a third country partner, by virtue of geography and common geopolitical challenges. While this could be seen to set precedent to other nations that would be less desirable policy partners, the successes of existing deep cooperation should be reason enough to forge a mechanism to allow it to continue.

On joint capability, and the research and development of capability, the UK has stated its willingness to pay its own way post-Brexit, to remain part of on Defense and Security initiatives. This would be mutually beneficial to

both the EU and UK, bringing economies of scale as well as a number of otherwise unique benefits (in terms of IP) to the table.

To preclude the UK from either of these areas would be to the detriment of the defence and security of both EU and UK citizens alike. The UK must continue to be a trusted partner to the EU and its member states on a national level, working towards continued mutually beneficial defense and security, with an agreement beyond third party precedent, reflecting the UK's unique position and relationship with the EU.

Recommendations

- Special recognition of the UK as a NATO ally and advocate for close EU-NATO cooperation;
- An ambitious EU-UK consultation process on capability development priorities;
- A comprehensive cooperation mechanism, such as an administrative agreement between the UK and the European Defence Agency (EDA), similar to Norway's;
- UK access to EU Security and Defence-related R&D programmes and to 'selected' Permanent Structured Cooperation in Defence (PESCO) projects;
- UK-headquartered companies and undertakings, whether legally based in the UK or the EU, should be granted access to the EU's defence market as long as their involvement does not put at risk the EU's essential security interests;
- The UK and the EU should not disrupt complex supply chains but rather facilitate collaboration across companies on both sides of the Channel.

Conclusion

The UK's impending withdrawal from the EU is raising important questions for the US business community in Europe. Indeed, it is important to acknowledge the immense impact the UK's departure will have on the operability in Europe companies' of all sizes and from all jurisdictions. Businesses require certainty and predictability – the UK's and the EU's intention to intention to negotiate the new relationship on the basis of a Free Trade Agreement is a constructive way forward, but US companies invested in the EU remain highly concerned that the new relationship will not sufficiently address the challenges ahead.

AmCham EU members have outlined above the essential chapters and provisions that ought to be the backbone of the future EU-UK relationship. However, as previously stated, an FTA, regardless of how advanced, will not encompass all the provisions and instruments necessary for US investors to continue cross-border activities and operations seamlessly in both the UK and the EU. Thus, AmCham EU remains hopeful that the parties can consider other models, such as a Customs Union and ideally also the EU Single Market.

Ultimately, the two sides should be looking to deliver a new long-term relationship that puts economic interests at the heart of the negotiations. This means building on the deep and comprehensive links that underpin EU-UK ties, limiting disruption and uncertainty in the interim, and preserving the integrity of the Single Market – which remains the key driver for US investment.