

Our position

Response to House of Lords EU Select Committee Inquiry: 'Post-Brexit UK-EU Relations'



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.

This response is based on the House of Lords EU Select Committee's inquiry into the future UK-EU relationship, available [here](#).

1. US business interest in Brexit

- 1.1. Since the creation of the Single Market 25 years ago, US companies have benefited from the ability to seamlessly move goods, services, capital and people across EU borders and under a common set of regulations. Progress towards a borderless market has indeed been a key driver of US investment. In 2017, 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.
- 1.2. 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 companies have traditionally invested in the UK with a view to exporting to the rest of the continent. Their supply chains, innovation models and strategic deployments are highly integrated across the Channel. Many US companies also rely on the EU's international agreements in areas including trade, mutual recognition, aviation etc. for their global operational set-up and supply chain management.
- 1.3. In sum, American businesses have established deep links across the Channel and stand to be significantly impacted by the outcome of the Brexit negotiations. Significant disruption or changes to the current UK-EU economic and political relationship could have profound effects on the ability of US companies to serve customers in these markets.
- 1.4. The American business community in Europe has been following the negotiations closely from the beginning, and remains ready to provide constructive input to both parties throughout the process.

2. Status of the negotiations

- 2.1. 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 UK and the EU – require certainty about the path forward for the new relationship.
- 2.2. To this end, AmCham EU welcomes the ongoing negotiations for a transition period to allow businesses the appropriate time to adapt to the requirements of this new partnership. The US business community underscores the importance of negotiations for the Withdrawal Agreement being concluded and ratified in good time in order to cement the transition period and provide more predictability and clarity to what remains an uncertain process. This process should incorporate as detailed an outline as possible on the nature of the future UK-EU trade and investment relationship.
- 2.3. However, a transition agreement and an agreed framework for the future relationship remain contingent upon the existence of a final UK-EU Withdrawal Agreement under Article 50 – underscoring the already vital significance of an agreed and ratified exit deal by March 2019.
- 2.4. In light of the continued threat of a 'no-deal' scenario, the recent establishment of a UK-EU working group on risk management is a welcome move designed to mitigate the potential fall-out from a hard Brexit in the area of financial services.¹ It is important that concrete statements emerge from these discussions to provide businesses with additional reassurances. The UK and the EU should also consider establishing similar working parties on other issues to provide guarantees in other areas.

3. What areas should be covered in the framework for future relations, to be agreed in October 2018?

- 3.1. In an ideal scenario, the agreed political declaration on the framework for the future UK-EU relationship would be as detailed as possible to provide companies with the greatest information

¹ 'EU Commission and HM Treasury ask the European Central Bank and the Bank of England to convene a technical working group,' HM Treasury, https://www.gov.uk/government/news/eu-commission-and-hm-treasury-ask-the-european-central-bank-and-the-bank-of-england-to-convene-a-technical-working-group?utm_source=75ee3645-c65d-43da-8a05-c48680a274d7&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate, 27 April 2018.

available to prepare for new arrangements. Businesses typically require at least 12 months' notice to prepare for any changes; however, many decisions such as largescale investments require longer, making it essential that businesses are aware of and have had to time to put in place plans to adjust to the broader long-term implications of Brexit at least at the beginning of the transition period, which begins on the day of the UK's exit.

- 3.2. The UK and the EU have only a very short period of time with which to agree on such a political declaration. This declaration should in any case already define the basic principles of market access and regulatory approaches, and should aim to be long-term, stable, reciprocal and cooperative in nature. Any arrangements which are one-sided or subject to arbitrary interpretation are likely to be politically unsustainable as the negotiations progress and disruptive to long term EU-UK operations.
- 3.3. To this end, both the EU and the UK have recently declared their intention to negotiate their new trading 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. 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/the customs union with the EU and ideally within the Single Market post-Brexit.
- 3.4. 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 UK-EU ties. A future FTA should notably provide for some freedom to find creative solutions to some of the two sides' most complex issues. For example, there is and should be nothing preventing UK and EU policymakers from thinking about services provisions in an ambitious manner and allowing a high degree of market access in services, based on mutual recognition of regulatory approaches.² An ambitious FTA will also have to be complemented by bilateral agreements tackling issues outside of the scope of an FTA, such as bilateral aviation and road transport agreements.

4. How much detail will it be possible to include in this framework?

- 4.1. Despite the extremely short timeframe and the limited resources available, the two parties should aim to work on a comprehensive political declaration on the future UK-EU relationship which, by including clear commitments and end-goals, provides as much certainty to citizens and businesses as possible.
- 4.2. In effect, the political declaration should be a stepping stone towards accelerated negotiations on the future UK-EU framework before the end of the transition period. Both the political declaration on the future relationship and the anticipated transition period should ultimately be about building a bridge to a new relationship – not simply placing a plank at the edge of the cliff.
- 4.3. More broadly, the two parties should use the limited time available to focus on resolving the broad, high-level issues which remain outstanding in the debate, which are contributing to the current climate of uncertainty and which will be critical to businesses' operations in the future. These include basic issues such as the scope of market access and regulatory approaches that should be set out in the political declaration, as well as more complex but interrelated questions such as the future of the Irish border that must be resolved in the Withdrawal Agreement. Finding solutions to these overarching issues will also enable discussions at the technical level to proceed more smoothly later on.

5. How compatible are the visions for a future relationship set out by the UK Government, European Council and European Parliament? What are the main areas of agreement? What are the main areas of disagreement, and how can these be resolved?

- 5.1. The UK and EU's broad positions are compatible insofar as the two parties are clear about the overall ambitions of the UK once it leaves the EU. However, the talks continue to be hamstrung by political

² 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."

and other issues which are constraining the ability of both sides to deliver an ambitious outcome to the negotiations. This is reflected in the slow pace of the talks.

- 5.2. While the UK government has indicated its intention to leave the Customs Union and the Single Market, as well as the jurisdiction of the European Court of Justice (ECJ), there remain divisions within the UK government and the broader policymaking communities on both sides on these important questions governing the future relationship. The UK's aspiration to leave the Customs Union, while also retaining frictionless trade on the Northern Irish border, in particular appears to be legally incompatible with the principles of the EU Single Market.
- 5.3. AmCham EU reiterates its belief that that these issues could be solved if the UK reconsiders membership of the Customs Union and ideally also the Single Market. It should be highlighted that UK membership of the Customs Union alone is not a panacea to resolve the Irish border question. Checks carried out at the border are conducted on the basis of adherence to products rules and standards, not tariffs – meaning that entirely frictionless trade at the border requires at a minimum alignment with Single Market rules.
- 5.4. If Customs Union and Single Market membership is not possible, then both parties will need to redouble efforts to find creative solutions to these issues without delay. Any creative solutions proposed by the two parties in this context should be practical, implementable and politically sustainable. The UK's proposal for a 'customs partnership', for example, has the potential to increase the burden on economic operators to track and trace the movement of goods, restricting the value of such an arrangement. The possibility of a disastrous 'no-deal' scenario remains significant in light of these unresolved issues; an outcome that should not be contemplated by either side.

6. Are elements missing from any or all of these documents?

- 6.1 AmCham EU welcomes the relative clarity that the UK government's recent speeches and various documents have brought to the debate, as well as in the European Council guidelines issued in March 2018. Unfortunately, however, there remains too much focus on rhetoric and too little attention devoted to substance by both sides. It is critical that the two parties use the remaining time to work towards sensible solutions to the most problematic issues. This should be done while continually seeking input from the business community and other relevant stakeholders in the debate.
- 6.2 The ultimate goal must be to ensure an orderly UK withdrawal from the EU in March 2019, precipitating a transition period that should last as long as is necessary in order to ensure both sides have agreed and finalised all elements of the future UK-EU partnership.