

Our position

Response to House of Lords EU Select Committee Inquiry “Brexit: deal or no deal?”

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 2016, directly supports more than 4.5 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

1. Introduction

- 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 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.
- 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. They have established deep economic links across the Channel and stand to be significantly impacted by the outcome of the Brexit negotiations.
- 1.3. The UK's exit from the EU is therefore raising important questions for US companies and their investments and operations. US businesses' supply chains, innovation models and strategic deployments are highly integrated across the Channel. 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 operate effectively in these markets.
- 1.4. The UK, meanwhile, is leaving the deepest and most integrated free trade area in the world. It can be expected that any new relationship with the EU will be economically less advantageous than the current terms.
- 1.5. AmCham EU is following the negotiations closely, and providing constructive input to the EU and UK throughout the process.

2. Is the Prime Minister's Florence speech a good basis for the UK and EU to reach agreement in the Article 50 negotiations?

- 2.1. UK Prime Minister Theresa May's speech in Florence on September 22, 2017, was an important milestone in the negotiations, which up to that point had yielded few tangible results. The speech featured a number of constructive proposals, including a pledge to honour UK budgetary commitments and to facilitate direct application of the withdrawal agreement into UK law. Of particular significance was the Prime Minister's proposal for a transitional period from the date of the UK's exit for a period of around two years – or as long as is necessary – based on the UK's current arrangements with the EU. The purpose of this transition period would be to provide the two parties with the necessary time to agree on the terms of an ambitious new relationship.
- 2.2. To build on the outcomes of this speech, it is essential that the two parties now make rapid progress on the first phase of the negotiations – in order to move on to discussions on the future partnership as early as possible and ideally by the end of the year.
- 2.3. At the same time, fleshing out the elements of a transitional deal in parallel should be the highest priority, acknowledging the challenges businesses would face in having to adapt to two new diverging systems within a relatively short time span. The earlier the terms of a transitional deal are agreed and communicated, the more valuable they will be for businesses who are reviewing their commitments and planning for the worst-case scenario. Decisions to adapt to such a scenario need to be taken well in advance, often with more than 12 months' notice, making long-term business planning increasingly challenging. Without clarity in the near future, the possibility of a 'no deal' scenario could significantly increase, with all its negative consequences for citizens and businesses.
- 2.4. While AmCham EU welcomes reassurances surrounding a transition arrangement, companies also require greater clarity on the nature of the future UK-EU relationship. For contingency planning, an understanding of the contours of the future partnership will be critical to allow businesses to focus their attentions where they are needed most.

3. What potential stumbling-blocks remain? Under what scenarios might the outcome of the negotiations be 'no deal'?

- 3.1. Brexit is already proving to be a highly political and extraordinarily complicated process; one only likely to become more complex as the talks continue. A further deterioration in relations between the two negotiating parties at the political level could lead to a breakdown in talks and precipitate a “no-deal” scenario.
- 3.2. Meanwhile, the UK has set out a series of priorities in exiting the EU that will condition any future UK-EU relationship. These include leaving the EU Single Market and the Customs Union, an end to the jurisdiction over the UK of the European Court of Justice (ECJ), and restrictions on the free movement of people. The EU, for its part, has stated clearly that talks on the future relationship cannot begin until “sufficient progress” has been made on the UK’s exit budgetary bill, on the Irish border question and on the rights of citizens living in the UK and the EU after Brexit.
- 3.3. The two parties will need to reach an agreement in light of these respective preconditions; a failure to find compromise could lead swiftly to a scenario in which one or both sides conclude that a deal cannot or should not be reached.
- 3.4. The situation is further complicated by the two-year timeframe mandated by EU law – which remains too short to agree on all facets of the future relationship – and the fact that the withdrawal agreement will likely need to be approved by European and national institutions within this time period. This makes a transitional deal essential and means that there is little time to waste for either party if a satisfactory arrangement is to be agreed in time.

4. What would be the implications, good and bad, of ‘no deal’?

- 4.1. Failure to agree and ratify a withdrawal agreement along with commitments for comprehensive transitional arrangements would lead to a disorderly UK exit with potentially devastating consequences. The UK would likely revert to international trading arrangements under World Trade Organization (WTO) rules, and companies would subsequently be forced to make difficult decisions regarding their investments and trading arrangements.¹ The UK would also have to hastily redefine its arrangements in those areas not covered by the WTO; one example being its transatlantic air transport operations that are currently safeguarded by the EU-US Open Skies Agreement.
- 4.2. Local, regional and global economies would likely suffer, as markets grappled with increased uncertainty and businesses of all sizes faced new and burdensome barriers to trade. Consumers would likely face decreased choice and increased prices for their goods and services. The legal and political fall-out would also be significant, particularly with respect to citizens’ rights in both the UK and the EU, and the Irish border.
- 4.3. Neither the EU nor the UK should contemplate a ‘no deal’ scenario even as a last resort, as it would be highly likely to harm the interests of all parties concerned for years to come.

5. Is a transition arrangement a necessary component of any lasting agreement, and if so, why?

- 5.1. A transition arrangement is an essential component of any lasting and effective agreement between the UK and the EU. The two-year timeframe for the UK’s exit is wholly insufficient to negotiate and organise the terms of the future relationship. Without a transitional arrangement, the UK and the EU run the significant risk of a potentially devastating “no deal” scenario.
- 5.2. As part of a transition arrangement, or in parallel, the UK and the EU should include as many details as possible on the nature of the future UK-EU 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 simply delaying the “cliff edge” that companies will face on the date of Brexit.

¹ It should be noted that the UK would revert to international trading arrangements set by the WTO only on the consent of the organisation’s membership. Without the approval of the other members of the WTO, the UK would operate in a void outside of both EU and WTO rules. In any case, the UK as an independent country will also have to agree with other WTO members on its new commitments in order to set the parameters for its trading relations with the rest of the world in the future.

6. What will be the key components of a transition arrangement? How will the UK-EU relationship be conducted during the transition period? How long should the transition period last?

- 6.1. AmCham EU recommends that the UK and EU agree to retain the current economic, political and legal arrangements for an unspecified “bridging period” from the point that the UK exits the EU until such a time as the terms of the future relationship have been agreed. The length of this period should not be an arbitrary number, and should reflect the time needed for companies to preliminarily adjust to new requirements, based on discussions with the business community.
- 6.2. Such an arrangement will negate the possibility of a “cliff edge” effect, providing companies with the knowledge that they can continue to operate as normal after the UK exits, and equip the UK and the EU with the time necessary to agree on the contours of a deep and comprehensive future trade and investment relationship.
- 6.3. Once there is certainty with regards to the substantive content and implications of the agreement on the new relationship, businesses should be given time to adapt to the arrangements during an “adaptation period” that provides for the phasing in of new requirements over a period of time. This will allow companies to implement any necessary changes in the most efficient and considered way possible, avoiding any sanctions for being in breach of a new legal frameworks as they establish business changes.

7. What would be the legal basis of any transition agreement, both from the UK and EU sides?

- 7.1. As outlined above, AmCham EU recommends that the UK and EU agree to retain the current economic, political and legal arrangements for the duration of any “bridging period”. If an agreement reflecting the status quo is not politically feasible, then the two parties should agree, as early as possible, a comprehensive transitional regime that covers:
 - Market access, including the free movement of goods, services, people and capital;
 - Regulatory cooperation and non-tariff barriers and;
 - Rules.
- 7.2. A transition period, in particular one which maintains the UK’s current relationship with the EU and effectively extends the UK’s Article 50 deadline, would require the unanimous consent of the other 27 EU Member States.

8. Is enough being done by the UK Government to prepare for the possibility of 'no deal'? What action should the Government be taking to prepare for 'no deal'?

- 8.1. AmCham EU reiterates its conviction that neither the UK nor the EU should consider a “no-deal” scenario even as a last resort. Such an outcome would likely have significant short- and potentially long-term consequences on their economies, cause significant damage to UK-EU relations that remain crucial to regional and global stability, and harm the potential for an ambitious long-term UK-EU relationship that meets the needs of businesses and citizens.

For further information on AmCham EU’s position on Brexit, please see our comprehensive position paper – published in April 2017 – which is included in the Annex.

Annex 1: Brexit and the future EU-UK relationship

Cross-sectoral analysis and recommendations from the US
business community in Europe

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Executive summary

The UK's impending withdrawal from the EU is raising important questions for the US business community in Europe. US companies – who are heavily invested in both the EU and the UK – require certainty about the path forward for the new EU-UK relationship. Significant disruption or changes to this relationship, or to the EU Single Market, could have profound effects on the ability of US companies to operate in these markets.

It is essential that the two sides deliver a new relationship that builds on the deep and comprehensive links that underpin EU-UK ties, while limiting disruption and uncertainty in the interim. Any agreement should preserve the integrity of the Single Market – the key driver for US investment. The American business community will be closely following the negotiations, and stands ready to provide constructive input to the EU and the UK throughout the process.

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1. Purpose of the paper

This comprehensive paper aims to demonstrate the cross-sectoral perspectives of AmCham EU's member companies on the Brexit negotiations, to provide constructive input to negotiators on both sides of the Channel, and to promote a positive outcome to the withdrawal negotiations and a prosperous future EU-UK relationship that best meets the needs of US businesses in Europe.

This paper is intended as a living document and will be updated periodically throughout the negotiations to reflect the status of talks. It is a follow-up to a [high-level principles paper](#) on the EU-UK negotiations by AmCham EU, issued in October 2016.

2. US business interest in the negotiations

Since the creation of the Single Market 25 years ago, US businesses 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 been a crucial element in the region's growth and development, and a key driver of US investment. In 2016, Europe received approximately 60 percent of US foreign direct investment (FDI). By way of comparison, the Asia-Pacific region received just over 20 percent of US FDI in that year. Meanwhile, 45 out of 50 US states export more to Europe than they do to China.²

Within the EU, the UK continues to be a particularly important destination for US companies, as the recipient of around one quarter of all US FDI flows to Europe. American companies have frequently used the UK as a launchpad to export to the rest of the EU – US companies based in the UK, for example, export more to the rest of Europe than US affiliates based in China export to the rest of the world.³ Meanwhile, research and development investment in Europe represents 60% of total global R&D expenditures by US foreign affiliates. The EU and the UK have been, and will continue to be, indispensable partners for US businesses. Simply put, Europe's prosperity, stability, certainty and ease-of-doing business has made it the most historically attractive destination for US investment.

The UK's decision to leave the EU and its potential fall-out, however, is raising important questions for the US business community. American companies respect the democratic will of the British people. Nevertheless, the uncertainty over the withdrawal negotiations and the future of the EU-UK relationship threatens to disrupt business operations and could stifle investment, innovation and growth. In particular, significant disruption or changes to the current economic and political relationship between the EU and the UK, or to the EU's free trade area, could have profound effects on the ability of US companies to operate effectively in these markets.

It is therefore essential that both sides agree to an orderly withdrawal, avoid regulatory divergence and maintain as far as possible the deep and comprehensive trade ties that underpin the EU-UK relationship. Moreover, any agreement should preserve the integrity of the Single Market – the key driver for foreign direct investment, prosperity and security. The American business community will be closely following the negotiations, and providing constructive input to the EU and the UK throughout the process.

² Hamilton, D. S., & Quinlan, J. P. (2017). *The Transatlantic Economy 2017*. AmCham EU and Center for Transatlantic Relations.

³ Hamilton, D. S., & Quinlan, J. P. (2017). *The Transatlantic Economy 2017*. AmCham EU and Center for Transatlantic Relations.

3. Process and guidelines for the negotiations

A. Approach: The consequences of the negotiations are far-reaching for the EU and the UK, for interested parties including US businesses operating in these markets, and for European and global stability and prosperity as a whole. As such, the negotiations should not be viewed as a ‘zero-sum’ game. Narrow, short-term, or punitive stances, or political point-scoring by any party at any level, could lead to a deterioration in the talks and could have significant negative long-term ramifications.

By the same token, a pragmatic, sensible and constructive approach, which puts long-term economic interests at the heart of the negotiations, could generate the momentum necessary to deliver a mutually beneficial agreement. To facilitate this, building trust at all levels will be key. The US business community stands ready and willing to assist, including by providing non-partisan, expert input throughout.

B. Tone: The UK referendum campaign was characterised by a high degree of emotion. This highly-charged atmosphere continued to be present in the aftermath of the vote, polarising discussion and arousing suspicion and disquiet between both the negotiating parties and the broader public. Should this continue, it could significantly influence how the talks are conducted and ultimately their success.

It is therefore crucial that the negotiations are conducted against the backdrop of a constructive public discourse by the two parties as well as the media, political representatives, the business community and other relevant stakeholders.

C. Transparency: Uncertainty regarding the future of the EU and the UK’s relationship could have real implications for businesses, impacting on their ability and willingness to invest, innovate and operate in the EU, the UK and elsewhere. It is essential that both parties communicate as clearly and effectively as possible, and consistently throughout the process, the aims, expectations and progress made at each stage and at both the high- and technical levels. In order to reduce immediate uncertainty and to allow businesses time to adapt to the new requirements, an early commitment to transitional arrangements (see Chapter 5) will be crucial.

D. Stakeholder input: The level of interconnectedness across the EU is unlike any other region. This means that the UK’s withdrawal and subsequent negotiations for a future EU-UK trading relationship will be extraordinarily complex. It is critical that forums for dialogue and lines of communication are established and remain open on both sides of the Channel, enabling companies from the EU, UK and third countries to illustrate the potential impacts on their business and provide constructive policy recommendations to negotiators. Given the vast resources required for this undertaking, the limited timeline for the UK’s withdrawal, and the urgency to forge a new relationship between the EU and the UK, continued and open dialogue will be fundamental to achieving the best outcome for all concerned.

E. Timing, order and composition of the negotiations: The EU and the UK have a significant and highly complex task ahead of them to successfully manage the latter’s withdrawal from the EU and negotiate a successful future relationship. This is further complicated by the two-year timeframe mandated by EU law, and the fact that the withdrawal agreement will need to be approved by European and national institutions within this time period.

To give the negotiations the greatest possible chance of success, and to provide governments and legislators on both sides of the Channel adequate time to thoroughly analyse and ultimately approve the deal, it is our concrete recommendation that the EU and the UK approach the negotiations as follows:

- **Withdrawal agreement:** The two parties should focus first and foremost on the legal terms of the UK's exit. Broader negotiations for the future relationship could take place as soon as sufficient progress has been achieved on the withdrawal agreement. This will ensure that complex and lengthy discussions on future trading relations do not distract from the exit agreement, which is crucial for legal certainty.
- **Transitional arrangements:** Putting aside the difficulties of the exit arrangements, the two-year timeframe is not sufficient to adequately negotiate and organise the terms of the future EU-UK economic, political and legal relationship. The two parties must therefore agree on and commit to as early as possible a comprehensive transitional regime that covers the full breadth of the relationship. These arrangements should include a 'bridging period' which would remain in place until such time as the new terms of the EU-UK relationship have been agreed. Once the new terms of the relationship have been decided, an 'adaptation period' should be agreed and provide for the phasing in of new requirements over a period of time, enabling companies to adapt and adjust to the new arrangements.
- **Future EU-UK relationship:** As referenced above, the two parties should formally begin negotiations for a future EU-UK relationship as soon as sufficient progress on the legal terms of the UK's exit has been made. These negotiations should be dealt with in a comprehensive manner, be ambitious in scope, and address all facets of the two parties' political, economic, legal and security ties.

4. Withdrawal agreement

Timely conclusion and ratification of an exit agreement that facilitates an orderly UK withdrawal from the EU is critical for all parties concerned. The agreement should be concluded in good faith, to the best possible mutual interest and well within the two-year timeframe. This would provide legal certainty, clarity on the way forward and set the stage for constructive and ambitious talks on the future EU-UK relationship.

By the same measure, it must also be understood that failure to agree and ultimately ratify a withdrawal agreement – one that includes commitments for comprehensive transitional arrangements – would precipitate a disorderly UK exit which could have potentially devastating consequences. The UK would revert to international trading arrangements agreed under rules set by the World Trade Organisation (WTO). Companies would be forced to make difficult decisions with respect to their investments and trading arrangements. The local, regional and global economies would likely suffer, consumers could expect to face decreased choice and increased prices for their goods and services, and the wellbeing of citizens could be put at risk. The legal and political fall-out would also be highly significant, particularly with respect to citizens' rights in the UK and the EU and border issues. Neither the EU nor the UK should contemplate such a scenario even as a last resort, as it would be certain to harm the interests of all parties concerned for many years to come.

5. Transitional arrangements

The US business community recommends that the EU and the UK agree to retain the current economic, political, legal and other arrangements for an unspecified 'bridging' period, from the point the UK exits the EU until such time as the new arrangements for the future UK-EU relationship have been agreed. These arrangements should be agreed as early as possible, in full transparency, and with private sector input. Once the new terms of the relationship have been agreed, businesses should then be given time to adapt to the arrangements through an 'adaptation period' that provides for the phasing in of new requirements over a period of time.

A. Bridging period: A bridging period will negate the possibility of a ‘cliff edge’ effect, providing companies with the knowledge that they can continue to operate as normal immediately after the UK exits the EU, while the terms of the new relationship are agreed.

If acceptance of the status-quo – until such time as the new terms of the relationship are agreed – is not feasible, for political reasons or otherwise, then the two parties must agree as early as possible a comprehensive transitional regime that covers:

- Market access, including the free movement of goods, services, people and capital;
- Regulatory and non-tariff barriers; and
- Rules.

A comprehensive transitional regime, agreed upon and communicated to stakeholders as quickly and efficiently as possible, will be essential to provide US companies the necessary certainty and predictability they require until such time as new arrangements have been agreed. Without such guarantees, US businesses will be forced – and indeed they are already doing so – to review their current commitments, plan for the worst-case scenario and make calculated business decisions according to their needs.

B. Adaptation period: Once agreement on the terms of the new EU-UK relationship has been reached, the US business community recommends an ‘adaptation period’, which would be a period of change allowing businesses to take steps to alter their operating model in light of the new arrangements. It would begin at the point at which there is certainty about the substantive content and implications of the new agreement, such that the industry could begin implementing any required changes. An adaptation period will allow firms to implement necessary changes in the most efficient and considered way possible, avoiding any sanctions for being in breach of a new legal frameworks as they establish business changes.

6. The future EU-UK relationship

The EU and the UK have a deeply integrated and extremely extensive economic, political and institutional relationship. The nature of this relationship has helped to facilitate largely unrestricted trade and investment ties across the Channel that have been a key factor in helping to attract extensive US investment and operations to both the EU and the UK.

In order to maintain this investment and to ensure the continued economic prosperity of both parties, the US business community recommends that the new EU-UK relationship covers the following:

A. Market access: 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. To assure the continued competitiveness of the EU and the UK in the global marketplace, the two parties should in addition seek to retain as far as possible the current level of market access with third countries.

B. Customs and trade: A comprehensive trade agreement between the EU and the UK must be negotiated within a reasonable timeframe to avoid disruption of trade flows and related business processes. The agreement should cover all aspects of a full and exhaustive trade and economic relationship, including tariff-free access, minimal non-tariff barriers, regulatory coherence and rules. It should also include alignment of customs codes and ensure

an efficient customs clearance process that allows for the safe and seamless movement of goods. Various provisions will need to be 'grandfathered' in the UK in order to help businesses using complex supply chains.

C. Regulatory cooperation/convergence: 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.

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.

D. Skills and talent: In today's highly competitive and globalised marketplace, the ability for companies to employ and utilise the right skills is critical to their success. Barriers to the attraction and retention of talent between the EU and the UK would pose enormous problems for US companies and could compromise their current and future investment decisions. The EU and the UK must therefore ensure the continued availability for companies of skills and talent across the Channel to guarantee their global competitiveness. The EU and the UK must also, as a matter of priority, and as early as possible, secure the rights of non-UK nationals currently working in the UK and UK nationals in the EU.

E. Dispute resolution: The UK's status as a Member State of the EU means it has been included within a framework for deciding jurisdiction in disputes, recognising judgments of other Member States, and having the judgments of its own courts recognised and enforced throughout the EU. Without a transitional period in which EU regulations and dispute resolution mechanisms are still in place, the certainty related to contractual and other obligations will be undermined. Business is seeking a stable regime in terms of a post-Brexit trade arrangement, with clear dispute resolution processes and institutions. Certainty as to the role of previous judgements of the European Court of Justice must be ensured after Article 50 is triggered and in the future. The business community needs to be able to predict whether the UK courts will follow or depart from existing precedents.

F. Data flows: 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 exit discussions to maintain the continued flow of data. As part of this accord, 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.

G. EU targets: Great care should be given to ensure a smooth transition in the legislative areas that already identify the individual contribution of Member States, either through binding targets or through the coordination of national efforts. Each Member State currently contributes to reach the targets commonly negotiated and agreed by the EU, and the UK's share of these targets cannot be ignored. As targets are revised and updated to take account of the UK's departure, both parties should make sure they send the right investment signals to both EU, UK and foreign private sector actors.

H. Financial services: Businesses, savers and investors across Europe rely on access to capital markets and financial services in order to thrive, create jobs and promote growth. In particular, financial services firms need to be able to provide the services that their clients across the European continent currently enjoy, with the least possible disruption and in the most safe and efficient way possible. Any break-up of the capital markets in Europe could add costs for businesses and consumers and would be a wholly inefficient allocation of capital and resources.

I. Research, innovation and investment: As part of its membership of the EU, the UK is able to participate in a number of EU research and development programs, including Horizon 2020 and the forthcoming Framework Programme 9 (FP9). These programs stimulate innovation and significantly contribute to economic growth on both sides of the Channel. It is therefore important that UK scientific excellence continues to contribute to European research consortia. Whether via Associated Country status or another means, this should include the ability to fully participate in the EU's research programmes. Similarly, the ability for US companies based in the UK to participate in European R&D programs will be critical to retaining the EU and the UK's position as a hub and world leader for innovation, and to maintaining or enhancing the current level of US business investment.

A pragmatic approach should further be taken when negotiating the UK's potential access to existing and upcoming European investment programs and initiatives, such as the European Investment Bank, the European Fund for Strategic Investments (EFSI), or Trans-European Networks. Contributions are to be expected to be eligible to the benefits of such programs, but it is also clear that many European investment programmes would become less effective or attractive without UK involvement.

J. The EU and the Single Market: The prosperity and unity of the EU and the Single Market is of paramount importance to US companies in Europe. A strong Europe enables US businesses to invest with confidence, creating jobs and delivering growth. By contrast, a deterioration in the unity and effectiveness of the EU and the Single Market could have negative ramifications for US investment. It is crucial that Europe focuses on delivering a more effective Union for its citizens, including by accelerating much-needed reforms to the economy and retaining an outward-looking trade and investment strategy.

7. Sector-specific priorities

A. Agriculture and food

Priority 1: Trade flows: raw and processed materials, finished products

Issue: Trade flows of the food and drink sector between the EU27 and the UK are heavily integrated. The EU takes more than two-thirds of UK food and drink exports. 70% of UK food and drink imports come from the EU. The food and drink sector contributes £26.9bn to the UK economy.

The EU28 has established a range of import quota for agriculture and food products at WTO level and within Free Trade Agreements. How these will be handled once EU27 and UK split? A logical first step would be to divide the import quota based on historic trade flow or usage of the quota between EU27 and UK. Other 3rd countries would like to maintain the market access within these import quotas after EU27 and UK have split.

Implications: When one considers that 17.8% of the EU share of global exports are in the food and drink sector, and that 14% of an average EU household's expenditure goes on food and drink products,⁴ the impact of amending quotas and tariffs will be significant for both UK and EU27 economies and consumers.

Under the WTO system, food imports and exports are generally hit by high tariffs. A disruption in the free flow of food goods due to tariff and non-tariff barriers (e.g. customs, veterinary and phytosanitary, checks, regulatory divergence) will lead to higher prices for raw materials, processed materials, and finished products – which will harm industry and consumer choice.

Recommendation:

- The EU and the UK ensure that as from the date of Brexit, an arrangement is in place between the two parties that allows for continued and uninterrupted duty-free bilateral trade.

Priority 2: Avoid regulatory divergence

Issue: In agriculture and food, AmCham EU members companies' business practices are built on EU-UK regulatory convergence in fields such as food contact materials, additives, and pesticides.

Brexit poses questions around whether the UK will maintain these legislations.

Implication: Changing existing, converged regulation will disrupt current business practice. This could lead to higher costs for companies, and potentially more cost and less choice for consumers.

Recommendations:

- The UK should continue to uphold existing EU laws on these topics.
- In the future, both parties should prioritise avoiding regulatory divergence where possible, granting legal certainty and predictability, and encouraging US investment in both the UK and the EU.

⁴ Food Drink Europe. (2016). *Data and Trends - EU food and drink industry* (Rep.).

- Both parties should consider harmonising standards and mutual recognition as part of future trade arrangements.

Priority 3: Maintaining existing measures on rules of origin and broader customs formalities

Issue: Rules of origin, as a concept and as a framework, are crucial in guaranteeing the integrity of the supply chain system, and for ensuring customers know what they are purchasing, as well as for businesses to deliver the highest possible standards of goods and services.

Implications: Change to the system, or lack of clarity in future negotiations on ‘rules of origin’, could open the system to abuse – which would have negative effects on both business and consumers.

Should tariffs between both parties diverge, a surge in customs formalities will emerge.

Recommendations:

- As part of a transitional arrangement, the rules of origin that support market access and maintain the level playing field should be considered until both parties have found an arrangement that allows for a robust rules of origin framework.
- Both parties should aim for a modern customs agreement making use of ‘registered exporter status’ and equivalence to facilitate trade and prevent (costly) disruption.

Priority 4: Guarantee a healthy economy and supply chain

Issue: Clarity is needed on how Brexit will affect EU sector-specific budget contributions. For instance, a change in allocations will have a direct effect on those employed in the agriculture and food sectors. One example of this would be the Common Agricultural Policy (CAP) contributions.

Implication: Negotiators need to avoid changes that would result in higher costs for consumers, and/or farmers going out of businesses.

Recommendation:

- Take measures to ensure healthy supply chains, with more focus on consumers, who may be negatively impacted after Brexit.

B. Competition policy

Priority 1: Loss of a one-stop shop for merger filings

Issue: 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). This means that the European Commission has exclusive competence to review a transaction and assess its effects throughout the EU, if it meets certain revenue thresholds. This reduces burden for businesses operating internationally, who could otherwise face multiple notification procedures.

Implications: Once the UK exits the EU, there may be a need to file separately with the UK’s Competition and Markets Authority (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 is expected to 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.

Recommendations:

- The European Commission and CMA should create a framework for cooperation on merger cases notified to both jurisdictions, to align outcomes to the extent possible, ensuring certainty for business.
- Concretely, this could involve formal cooperation in collecting and exchanging evidence and coordinating procedures and decision-making processes. The CMA could also agree to accept EU notifications, supplemented by additional information specific to UK requirements, or proceed on a case-by-case basis.

Priority 2: Risk of dual antitrust proceedings

Issue: Currently, businesses that are suspected of a breach of competition with effects in the UK are investigated either by the European Commission or the CMA, who can each claim exclusive jurisdiction depending on whether a potential anti-competitive effect is restricted to the UK or extends to trade between Member States.

If the Commission opens an investigation under Articles 101 and 102, national authorities will not initiate their own investigations regarding the same case.

Implications: After Brexit, any potential cartel or other antitrust investigations in the EU that have an impact on US businesses may 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.

Recommendation:

- AmCham EU will monitor the developments and negotiations and conduct regular surveys with its members as to identify investigation-related issues of relevance to them. We look forward to continuing with constructive dialogue on this issue.

Priority 3: Continuing close cooperation with other competition authorities

Issue: The CMA is currently an active member of the European Competition Network (ECN), comprising the European Commission and national Member State competition authorities. The ECN framework has established close coordination amongst authorities as well as a flexible, informal case allocation system.

Implications: After Brexit, the UK will no longer be part of the ECN, and stands to lose the benefits of this close cooperation, as well as indirect influence through the ICN as part of the EU.

The ECN stands to lose an influential voice that has long advocated for more streamlined procedures for businesses (e.g. arguing against the expansion of the EUMR to include non-controlling minority shareholdings).

Recommendation:

- We recommend that a cooperation agreement is concluded between the EU and the UK, post-Brexit.

Priority 4: State aid

Issue: The State aid provisions in the EU Treaty (Art. 107-109 TFEU) were initially designed to prevent a subsidy race between 'domestic champions' of different Member States, by imposing restrictions on their ability to grant aid that could be seen as conferring a market-distorting advantage to certain businesses, at the expense of other Member States.

Over the years, EU State aid rules have evolved significantly into an instrument to foster industrial policy goals, more recently in the context of the Europe 2020 agenda.

The State Aid Modernisation package, implemented between 2012 and 2016, streamlined the efficiency of State aid control by providing for generous exemptions from the notification requirement, allowing Member States to implement vast subsidy programs for regional development, innovation, energy efficiency, urban development, broadband and culture.

Large investment projects can receive up to € 50 million and aid schemes may allocate € 150 million or more to pursue the goal of ensuring the competitiveness of the EU in the global economy. In 2014, the Member States spent € 101 billion or 0.72 percent of GNP on State aid.

Most of those subsidies escape media attention. The cases that catch public attention are the very large projects receiving individual scrutiny from the EC or, in recent years, the highly publicized investigations into certain tax rulings (sweet deals) offered by Member States to investors, incidentally mostly US based companies thus far. These cases are currently under appeal, and the outcome is uncertain.

Implications: In the transition period between the triggering of Article 50 and the completion of the exit process, State aid rules continue to be in place, but the question over discipline may arise. As of the official withdrawal, the UK will be free from the substantive and procedural obligations of the EU State aid regime.

Once Brexit is completed, the UK will no longer be restrained by the EU State aid rules and can implement subsidies more freely, within the boundaries of international law (WTO rules) in a view of attracting investment from the continent and abroad. While the EU may dislike those schemes, it could only act upon them legally at WTO level, assuming no other bilateral treaty provides otherwise.

In practice, there will be at least two important issues: the importation of subsidized products from the UK and the distortions of competition within the EU through UK subsidies granted to companies or groups operating in the EU. While none of these qualifies for 'State aid' (which requires the grant of measures by EU Member States or their subdivisions), they may eventually trigger the need for pre-emptive or retaliatory action directed at restricting the importation of products and the provision of services by companies. Whether the UK will be treated like any other third country or be targeted by specific measures, remains to be seen.

Tensions between UK subsidies and EU policies may impact US-based companies, which typically have an important share of the European activities in the UK.

Recommendation:

- AmCham EU will monitor the developments and negotiations and conduct regular surveys with its members as to identify UK/EU State aid problems of relevance to them. We look forward to continuing with constructive dialogue on this issue.

Priority 5: Impact on the legal profession

Issue: US companies subject to EU proceedings or being given advice with respect to EU competition law work with lawyers qualified to practice in the EU. Many of these lawyers come from and are qualified in the UK, which is a leading global centre for legal services. Currently, privileges for lawyers in the EU – notably Legal Professional Privilege and the ability to plead in the EU's courts - only extend to external lawyers who are qualified to practice law in the EU.

Implications: After the UK leaves the EU, UK-only qualified lawyers will likely lose certain privileges such as the ability to appear before EU courts, or the legal privilege under EU (competition) law.

Individual UK-qualified lawyers qualified in Ireland keep their EU-lawyer status post-Brexit. Handling complex and sensitive matters before the European Commission (mergers, cartels) out of London will be increasingly difficult.

The issue is further complicated by the fact that many UK law firms have a presence in EU Member States, and those arrangements may be subject to national bar association rules. It is possible that UK law firms that are members of the Law Society or Scottish Bar may in future seek to qualify with another EU Bar association to have full standing before EU courts.

Recommendation:

- AmCham EU will monitor the developments and negotiations and conduct regular surveys with its members as to identify bar/legal privilege issues of relevance to them. We look forward to continuing with constructive dialogue on this issue.

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C. Consumer affairs

Priority 1: Clarity for business on the applicability of consumer protection legislation after Brexit.

Issue: Business practice is built on compliance with EU consumer protection legislation. Exiting the Internal Market raises questions around whether the UK will continue to apply this legislation. This lack of clarity and legal certainty is concerning for businesses, who have shaped their supply chain, marketing and sales policies and strategies according to the existing EU framework.

Amending the consumer protection framework would potentially disrupt the deep foundation of most businesses.

Implications: The applicable EU legislative framework in the field of consumer protection allows for legal certainty and helps businesses operate across the region. It entails a number of key legislative pieces upon which business have built their strategies and gained consumer confidence. If the UK exits the Internal Market, the question of whether they will maintain and apply EU consumer protection legislation will arise.

This is the case for the following Directives, which are the core of consumer protection law:

- Directive on consumer rights
- Directive concerning unfair business-to-consumer commercial practices in the internal market
- Directive on certain aspects of the sale of consumer goods and associated guarantees
- Directive on unfair terms in consumer contracts
- Directive concerning misleading and comparative advertising and
- Directive on injunctions for the protection of consumers' interests.

Recommendation:

- The UK should uphold the existing consumer legislation, offering EU and UK consumers a high level of protection, allowing for legal certainty for business, and encouraging US and EU businesses to invest in the UK.

Priority 2: Clarity on consumer-related aspects of the digital legislation.

Issue: In the current digital age, e-commerce is becoming a key channel of distribution for US business in the UK and in the EU. The EU is currently elaborating a package of legislative acts to protect consumers online. These rules will align with existing obligations, while elaborating on the specificities related to online transactions. Adopting this legislation will help countries remain competitive.

Implications: It is unclear whether the UK will adopt EU legislative acts covering consumer protection in the digital age. This lack of clarity will affect emerging business practices.

Recommendation:

- The UK will benefit from the adoption of these upcoming rules to remain competitive next to its EU neighbours and should therefore adopt them once in force.

Priority 3: Clarity on data privacy rules in consumer transactions.

Issue: Following the entry into force of the EU General Data Protection Regulation (GDPR), US businesses operating in the EU are amending their privacy policies accordingly. The regulation provides for a secure collection and processing of personal data, benefiting both consumers and businesses.

Implications: The GDPR created a level-playing field on data privacy in the EU. The UK is in the process of implementing the regulation ahead of the 2018 deadline.

Repealing the regulation would undermine the safety of personal data within commercial transactions. It could result in a lack of consumer confidence and a subsequent reduction of activity for UK and US businesses based in the UK.

Uncertainty around the application of the GDPR would undermine consumer confidence in business.

Recommendation:

- Independent of the final exit arrangement, the UK should apply the GDPR and continue to work towards its implementation to remain on the privacy level playing field.

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D. Customs and trade facilitation

Priority 1: Tariff-free access

Issue: 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.

Implications: If the UK were to no longer be part of the Customs Union, shipments imported in the EU from the UK and vice versa will be subject to import tariffs and import quotas on the basis of the parties' agreed tariff schedules notified to the WTO, unless a bilateral trade arrangement is put in place. Bilateral trade on a pure WTO basis will significantly increase the cost of goods for consumers both in the UK and in the EU.

Recommendations:

- The EU and the UK ensure that as from the date of Brexit, an arrangement is in place between the two parties that allows for continued and uninterrupted duty-free bilateral trade.
- The accompanying preferential origin rules allowing such 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. The aim of such rules would be 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 outside the region where that is also the case today.
- In order 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.

Priority 2: Aligning customs codes

Issue: If the UK decides to leave the Customs Union, the UK will no longer apply the newly adopted Union Customs Code (UCC), and would need to adopt its own customs code.

Implications: Adopting a new customs code is a complex and time-consuming exercise, and the existence of diverging customs codes could cause significant confusion and burden.

Recommendation:

- The UK played a key role in developing the UCC framework we have today, itself a process that spanned many years. To ensure streamlined customs procedures and certainty for traders, the UK should replicate the UCC, or base its new Customs Code on its own guidelines and interpretation of the UCC, respecting the guiding principles of the Union Customs Code.

Priority 3: Trans-shipment rules

Issue: Many companies' distribution models for Europe and beyond are based on having one or a few logistics centres in the EU. It is paramount that these companies continue to be able to use the investments made in the

EU to serve the UK market, including the Northern Irish market as well as the Irish market served through the UK shipments.

Implications: The EU and many other countries allow trans-shipment (shipment of goods or containers to an intermediate destination) under the non-manipulation rule, which states that if the product is not altered or manipulated, the shipment can go through another territory before entering into free circulation in the final destination.

However, some economies have adopted either direct shipment requirements, or very cumbersome trans-shipment requirements, citing a perceived need for simplicity or to promote domestic logistics jobs. In reality, this puts consumer choice and companies' flexibility at risk.

Recommendation:

- The UK should adopt a simple, clear-cut non-manipulation rule for its future trade relations with the EU, and beyond.

Priority 4: Customs Clearance

Reciprocal waiver for submission of safety and security data

- **Issue:** Currently, advance information by way of an Entry Summary Declaration (ENS), is mandatory for goods being brought into the customs territory of the EU. The Import Control System (ICS) is designed to receive, handle and process the ENS and enable safety and security risk analysis.
- **Implications:** Both the UK and the EU are adequately monitoring and controlling safety and security. If the UK and the EU were to require safety and security data for goods traded between the two areas, traders would be forced to submit data to customs prior to departure for every shipment. This will significantly increase the workload for both customs and trade and require both sides' systems to be upgraded or replaced. The submission of safety and security data will lead to unnecessary delays.
- **Recommendation:** We recommend that an Entry Summary Declaration should not be required for shipments arriving from an EU Member state to the UK or vice versa, as both the EU and the UK have adequate measures in place to control the safety and security of the supply chain.

Self-assessment and periodic returns

- **Issue:** If the UK leaves the Single Market and the Customs Union, regardless of how 'soft' the EU-UK border will be, there will be an operational impact that cannot be ignored. Exporting and importing across that border will require extra resources, in terms of both time and cost. If the movement of all goods (both into and out of the EU) requires formal customs clearance, this will have a further significant impact upon trade and the wider trading community e.g. agents, freight forwarders, transit shed operators, customs brokers, airlines, importers, exporters etc., as well as on customs authorities. The EU and the UK need to engage in a deepened customs cooperation to enhance trade facilitation, both as part of the transitional arrangements and as part of the final EU-UK.
- **Implications:** There is a risk that the UK will adopt customs procedures and processes that are not aligned with the EU practices. This could include diverging origin certificates and ways of processing them. Aligning these documents and processes is key to avoiding unnecessary duplication, and to bringing down the inevitable transaction costs.

Recommendations:

- The UK should maintain and recognise the EU's use of the Authorized Economic Operator (AEO) accreditation scheme, securing 'fast-track' handling of shipments, preferably by creating a 'green lane' for AEOs. However, we also recommend to implement self-assessment of goods for all compliant traders, not only AEOs as is currently the case (in line with UCC legislation). This flexible interpretation would enable approved agents, importers and exporters to replace individual customs declarations with a system of periodic returns.
- The UK should adopt the EU's Registered Exporter System (REX) for all its origin certificates, going beyond the EU's current approach of only applying the system for GSP countries.
- The UK should allow for a generous *de minimis* threshold, allowing UK consumers to order products to be delivered swiftly.
- The UK and the EU should facilitate consumers' returns to warehouses in both the EU and the UK, where the return is not subject to additional payment of duty.

Shipments to Ireland

- **Issue:** Most Ireland-destined shipment volumes are co-loaded and shipped with UK volumes, since Irish volumes alone do not constitute a separate logistics solution. However, moving forward this could potentially become cumbersome, time-consuming and costly, as it would involve shipping goods to an EU destination through a hub in a non-EU member state. Additionally, serving Northern Ireland, legally part of the UK but located on the Irish peninsula, is another piece of the logistical puzzle that must be addressed.
- **Recommendation:** The UK's accession to the Transit Convention would mitigate some of these challenges, although it would not eliminate all additional red tape.

E. Digital economy

Priority 1: Maintaining the free flow of personal data

Issue: The importance of data flows to the digital economy is increasingly recognized as fundamental to its success and future growth. Companies of all types and sizes in all sectors are sharing the benefits of cross border data flows. It is estimated that about half of all trade in services is enabled by digital technologies and the related data flows.

Data flows between the UK and the EU, and to the US, are key for the overall success of the digital economy.

The continued 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 continuing growth of the EU27 digital economy. At the same time, it will also be critical for a large number of organisations across the EU27 to retain their access to the many data-based digital services they are currently sourcing from UK-based providers

Implications: Given the benefits of cross border data flows for the digital economy, and how intertwined our economies are, disruption of data flows between the EU27 and the UK, will be hugely detrimental for the digital economy and equally hurt digital services in both the UK and the EU27. The inability of accessing or processing EU wide data in the UK will also make the UK a much less attractive place to invest.

Recommendations:

- Both the UK and the EU27 should prioritize during the exit discussions the need to maintain the continued flow of data between the EU and the UK through an effective data protection framework.
- The UK should ensure an environment which permits the free flow of data between the UK and the EU, as well as the US.
 - UK data privacy law will have to provide a demonstrably adequate level of protection when viewed from the EU – otherwise the EU may inhibit data flows;
 - The UK should adopt and implement the General Data Protection Regulation (GDPR) in its own statutes. While there are some concerns on the GDPR, from a practical point of view, this would be a strong building block towards demonstrating the UK's legal system is 'adequate' to protect the personal data of EU residents. We are pleased Prime Minister Theresa May clarified existing EU laws in force in the U.K. would be converted into full UK laws, and specifically confirmed that the GDPR will be law in the UK.
 - If the UK adopts the GDPR, given they are unlikely to be able to participate in the European Data Protection Board, it is likely they will need to adopt mechanisms to reflect onward transfer provisions in the law.
 - The UK should have a plan to deal with other significant issues which would impact the adequacy decision including the scope of surveillance activities such as those contained in the Investigatory Powers Act.
 - It is also advisable that the Information Commissioner's Office (ICO) adopts model contract clauses that mirror the EU versions. Similarly, the UK should seek assurances of full equivalency

and mutual recognition between the Binding Corporate Rules (BCRs) that will be approved by the EDPB and any comparable tools that UK legislation would afford.

- The UK should look to create a separate agreement to facilitate data transfers between the UK and US.

Priority 2: Adherence and participation of the UK to regulatory convergence

Issue: If the UK leaves the Single Market, EU-compliant products risk to no longer be marketable in the UK and UK-designed or UK-based products and services will face market access barriers when entering the EU Digital Single Market if mutual recognition and interoperability is not ensured.

Implications: Lack of regulatory convergence will give rise to new non-tariff barriers and increase the cost of doing business and impair trade.

Recommendations:

- **Ensure mutual recognition and interoperability on technical matters impacting the EU Digital Single Market** (e.g. technical standards and specifications in areas like telecoms, electronic identities, digital trust services, Internet of Things, cybersecurity etc.).
- The UK will need to put in place **clear mechanisms to avoid divergence** in the future once the Great Repeal Bill comes into force.
- The UK should encourage industry-led standards setting activities on a global level and **stay engaged as much as possible in European standard setting organisations such as CEN, CENELEC and ETSI**.
- Provisions relating to the export of goods and services from the UK as well as from the EU to the rest of the world should stay in alignment as much as possible, in particular in regulated areas such as the export of dual use items, where international commitments such as those of the Wassenaar Arrangement should be upheld harmoniously both by the UK and by all EU27 Member States.

Priority 3: Sustained participation of the UK in European cybersecurity and cybercrime initiatives

Issue: The UK and the EU27 share a strong mutual interest in ensuring that there is no reduction in the level of safety and security afforded to their citizens after the UK leaves the EU.

Regarding the Network and Information Security Directive (NIS Directive), the UK is likely to have already implemented the NIS Directive before it leaves the EU. In any case, however, there will be elements that it cannot directly apply – such as its involvement in the Cooperation Group of EU Member States – where presumably it will no longer automatically be able to play a role.

Recommendations:

- The UK should seek to build trusted communication, information sharing and communication channels with the relevant EU entities.
- Sustained participation of the UK in (or at least operational partnership of the UK with) European cybersecurity and cybercrime related information sharing schemes (e.g. EUROPOL European

Cybercrime Centre, EUROJUST, cooperation networks to be created under the NIS Directive, contractual public private partnership on cybersecurity, ENISA).

Priority 4: Access to Skills

Issue: It would be crucial for our digital services that we remain able to employ and move talented and qualified staff freely between the UK and the EU.

As an example, many AmCham EU companies, operate international service centres or support centres federating all necessary technical and language skills in the UK

Implications: The success of the tech sector relies on global talent and attracting and retaining best talent.

Recommendations:

- Would be key to have the flexibility to retain or employ post-Brexit UK-based experts on a wide range of issues (e.g. cybersecurity, threat analysts etc.) from anywhere else in the EU as and when needed.
- Companies also need to be able to deploy UK staff into EU projects in order to maintain services export performance.

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F. Employment and social affairs

Priority 1: Access to skills

Issue: Businesses rely on free movement of skilled workers to compete in an increasingly global marketplace. Immigration, of both white and blue collar workers, does not take jobs away from people. In fact, it creates more jobs by strengthening an overall economy. One in five companies in a recent survey highlighted labour shortages as the key reason the company could not expand.⁵ Restrictions on free movement therefore hampers economic growth and investment.

A recent report by Mercer models the impact of differing levels of inward migration on UK GDP. It writes, in a message that is just as applicable to EU27 countries deprived of UK workers, that ‘People are the real engine of any economy; a workforce shortage is likely to have a significant negative impact on productivity and GDP growth. If the UK cannot fill jobs, UK businesses will be less competitive in the short term, ultimately impacting output, especially in labour-intensive industries.’⁶

Implication: Without access to the right talent, businesses will lose out, especially in light of the upcoming changes in the labour market (amongst others due to the 4th Industrial Revolution) and skills shortage.

Recommendations:

- In today’s highly competitive and globalised marketplace, the ability for companies to employ and utilise the right skills is critical to their success. Barriers to the attraction and retention of talent between the EU and the UK would pose enormous problems for US companies and could compromise their current and future investment decisions. The EU and the UK must ensure the continued availability for companies of skills and talent across the Channel to guarantee their global competitiveness.
- The EU and the UK must, as a matter of priority, and as early as possible, secure the rights of non-UK nationals currently working in the UK and UK nationals working in the EU.

Priority 2: Certainty and clarity on employment and social law implications of Brexit

Issue: Businesses need to be able to reassure their workforce and plan for the future.

Under a ‘Hard Brexit’, EU employment laws would no longer apply in the UK. The existing corpus of European laws would be incorporated into domestic UK law but they will then be UK rather than EU law.

Implication: This may have an immediate impact on European Works Councils (EWC) and data transfers between the EU and the UK. After the UK exits the EU, it will no longer be legally possible to base EWCs in the UK and alternative jurisdictions will need to be found for the 200 or so EWCs based on the UK law.

Free movement of customer data may also be a problem. The difficulties experienced regarding the movement of data between the US and EU countries will apply equally to the UK.

⁵ 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

⁶ *Mercer’s Workforce Monitor Report (Rep.)*. (n.d.). Retrieved April 19, 2017, from Mercer website: <https://www.uk.mercer.com/our-thinking/brexit-emerging-british-workforce-crisis.html>

Recommendation:

- The UK Government must come forward with a clear plan and statement on next steps for employment and social law, post-Brexit, to allow businesses to prepare and transition smoothly, with minimal impact on business practices.

Priority 3: Limited impact on employee cost

Issue: Businesses both in the UK and the rest of the EU need to remain competitive. Brexit should not lead to increased personnel cost for employers.

Implications: As regard compensation and benefits such as pensions, increased investment volatility affects the funds of pension schemes and their members, especially those in defined contribution schemes and close to retirement. Exposure to currency risk might affect future investment strategies and current funding levels, with potentially damaging consequences for trustees' risk management plans.

Financial markets do not like uncertainty and that creates volatility. Where many pension funds already hedge to a large extent currency and interest volatility, funds still remain vulnerable to asset price volatility.

Brexit might further affect funds of pension schemes in that if there are no proper rules on transferring vested rights from the UK to EU and vice versa, or (fiscal) implications when paying benefits from UK to EU or vice versa, this could limit employee mobility.

Recommendations:

- Both the UK and EU 27 should take measures in regards to employee costs to keep remain competitive. This is particularly relevant for compensation and benefits. Measures should be taken to shield employers against currency risk and fluctuations.
- Measures should be taken to ensure proper rules on transferring vested rights from the UK to EU and vice versa and to resolve (fiscal) implications when paying benefits from UK to EU or vice versa.

G. Environment

Priority 1: Cross-border cooperation is key to effective environmental policy

Issue: The reason environmental policy has been dealt with at EU level for decades is because pollution knows no national borders.

Implication: Absence of collaboration or even divergence between UK and EU environmental policies could prevent environmental objective from being achieved.

Recommendations:

- If the UK wishes to continue to have effective environmental protection for its citizens, it should plan to continue to collaborate with its EU neighbours, and to fully engage in international fora such as the UNFCCC, ICAO, Stockholm, Montreal and Basel Conventions.
- The EU has been driving many environmental issues at the international level and should continue to be a key player.

Priority 2: Preserve market access

Issue: The UK should be aware that if it designs its own independent environmental standards, which are different from those which mandate access to the EU single market, it will likely not have access to the newest generation of products & goods. International companies try to streamline their product design so it is adapted to as many markets as possible. The UK market is simply too small for international companies to produce specifically to meet its future environmental norms.

Recommendations:

- The UK should maintain the EU environmental acquis to avoid market access disruption.
- The EU and the UK should negotiate a trade agreement that ensures the seamless movement of goods.

Priority 3: Impact on EU targets

Issue: EU policies in the field of environment often rely on targets begin set at EU level, with each Member State contributing to reach them. The UK being an important country in terms of size, its contributing share to these targets cannot be ignored. Therefore, once the UK leaves the EU, EU targets in fields as varied as waste and air quality will have to be redefined and updated for the EU27 to meet its commitments. As targets are revised and updated to take account of the UK's departure, both parties should make sure they send the right investment signal to both UK, EU and foreign private sector actors.

Recommendation:

- As EU environmental laws become due for a review or recast, these targets should be revised and updated. The UK should be included in the preparatory work as such collaboration would provide the UK and the EU the benefits that burden-sharing offers.

Priority 4: Impact on EU environmental framework legislation

Issue: EU environmental policy relies on several framework laws, such as REACH, which make use of national resources to regulate at EU level. Work plans associated with these laws must be reviewed, so the work among member states is reallocated.

Recommendations:

- The UK's work on ongoing files should continue, but other member states should start shadowing them as soon as possible. The UK should not take on additional work of this now that article 50 has been triggered.
- The UK should continue to look to REACH and other EU chemical legislation for substance bans and limits. This is the approach currently taken by a number of non-EU countries.
- Implementing and adapting environmental legislation relies on EU Agencies, e.g. EASA, ECHA and EMA. The EU should consider how it can develop cooperation and direct involvement with third countries within the Agencies. This could be an important way to encourage regulatory convergence in Europe, to the benefit of policy effectiveness and trade across the continent.

Priority 5: The Chemicals industry as an enabler: the need to get REACH right

Issue: The chemical sector is essential to downstream industries and is a key enabler to virtually all sectors in the economy. A successful chemicals sector is indispensable to a healthy economy. AmCham EU is disappointed that the UK Government has apparently ranked the chemicals industry a 'medium priority' during the Brexit negotiations, despite the fact that the UK Government's own White Paper on Brexit highlights the Chemical Sector as the second largest source of UK exports of products to the EU and the existence of significant uncertainty over compliance with REACH by UK based companies post-Brexit..

The ownership of data and dossiers under REACH have been questioned. Existing registrations may become invalid for UK based businesses. Likewise, existing agreements may not allow use of data for regulatory purposes under any future UK chemical legislation. REACH compliance will remain essential for access to the EU market. However, many aspects of REACH may prove inoperable once the UK is outside the EU. A simple transposition of REACH into UK law will not resolve the issue. The UK parliament Environmental Audit Committee (EAC) has launched a second inquiry into the future of REACH following exit from the EU.

This uncertainty over chemical regulations is clearly incompatible with the 'medium priority' ranking given to this sector (especially given the relative economic importance). The regulatory complexity and central economic importance of the chemical and chemical products sector necessitates designation as 'high priority' sector.

Recommendations:

- The regulatory complexity and central economic importance of the chemical and chemical products sector necessitates designation as 'high priority' sector by the UK Government.

- Clarify outstanding questions over compliance with REACH, as they are essential for continued access to the Single Market.

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H. Financial services

Priority 1: Transitional arrangements

Issue: Transitional arrangements for the financial services sector are necessary to ensure an orderly exit, give certainty to companies and avoid ‘cliff-effects’. Firms and market infrastructures will need time to plan and execute their location strategies. Legislators and regulators will need time to adjust and amend the existing regime to suit the new UK/EU relationship. An early commitment to transitional arrangements will help ensure financial stability, smooth functioning of markets, and continuity of service for EU customers.

These arrangements should be agreed upon and communicated to stakeholders as early as possible in the negotiations, to allow clients, firms, market infrastructure, legislators, and regulators to focus their resources on the necessary steps to lessen the risk of disruption.

Implications: Without clarity on transitional arrangements, firms will continue to plan for the worst case scenario i.e. no agreement on UK-EU market access at the end of the Article 50 2-year exit period. This will lead to inefficient allocation of resources. To continue to serve EU clients and avoid disruption to services, firms will need to plan to have the necessary operations in place at the point of Brexit. The complexity of these plans will depend on an individual firm’s structure and footprint.

Companies have taken advantage of the EU passporting regime to provide services into the EU from the UK and will therefore have to consider relocating activities and expanding certain entities in the EU27.

- These restructuring plans are likely to be sub-optimal for EU clients and may take longer than the two-year negotiation period. The timetable is made even more challenging as plans will depend on the approval of EU27 regulators, who will be receiving requests from other companies working to the same deadline.
- These plans may involve significantly higher costs for firms through duplication of capital, liquidity and governance requirements in the European region. Firms will need to think strategically about whether this is an efficient use of capital.

An orderly transition is in everyone’s interest. If the UK’s exit from the EU creates temporary barriers that restrict financial firms from operating across Europe (i.e., due to a lack of time to adjust), real economic impact could result. The amount of capital and debt firms can raise for their clients could decline. The ensuing market volatility could also make it more expensive for companies across industries to raise the funding they need from markets and to cope with market movements. All of these unknown variables make firms relatively less competitive.

We believe there is a role for financial regulators and central banks to work with governments across Europe and with the EU institutions, to set out what is required over the transitional period to protect the financial markets, economic activity and to avoid credit and transaction flows being disrupted, to secure the UK and Europe’s future.

Recommendations:

- Commit to transitional arrangements at the start of the Article 50 negotiations and provide further detail as soon as possible.
- Transitional arrangements will need to:

- Cover the period between the UK's exit from the EU and the date the future UK-EU trading relationship comes into force (if that takes longer to negotiate).
- Build in implementation time for firms, clients and regulators to adapt to the new trading relationship.

Priority 2: Market access

Issue: The terms of future EU-UK market access are important given the cross-border nature of the European financial services sector. AmCham EU has been a longstanding supporter of the development of the EU Single Market in financial services. This has led to significant growth in intra-EU trade, including through the use of the passporting regime, which enables firms authorised in one EU member state to provide services throughout the EU.

London is currently the only global financial centre based in Europe, and acts as a critical hub providing services to the EU economy. Approximately 75% of EU capital markets activity, 35% of EU wholesale financial services activity and, and nearly 80% of European FX trading takes place in London. In 2015, UK-based banks provided more than €1.4 trillion of cross-border lending to the EU.

Access arrangements that enable firms to continue to provide cross-border financial services without additional barriers and costs will benefit both UK and EU27 customers.

Implications: As a global financial centre, London is made up of a well-developed ecosystem with a deep talent pool and accompanying infrastructure. This would take many years to replicate in another location. It is more likely that multiple smaller hubs would be created on the continent. This will mean a loss of agglomeration benefits associated with a single large hub.

The loss of capital markets activity is not a zero sum game between the UK and EU27. Additional operational and relocation costs due to Brexit restructuring, combined with a more fragmented European market, may cause firms to scale back or exit certain businesses they currently do with EU27 clients.

Over the longer term, some firms (particularly those headquartered outside the EU) may reconsider their strategy towards Europe and divert resources to Asia or the US. This would mean shallower and more fragmented European capital markets, which would make it harder and more expensive for European businesses to access the capital they need to grow.

Recommendations:

- EU and UK policymakers should agree a binding deal on market access for financial services based on mutual recognition of regulatory regimes. This will need close cooperation between UK and EU27 regulators.

Priority 3: Free movement of workers

Issue: The cross-border nature of the European financial services industry relies on the free movement of workers. AmCham EU members are established and provide financial services throughout the EU, employing tens of thousands of employees.

Implications: Without access to the right talent from the UK, EU and rest of the world, the European financial services industry will be less able to service the European economy and less equipped to compete with other global financial centres.

Recommendations:

- The EU and UK should provide early reassurance regarding the status of EU citizens in the UK and UK citizens in the EU.
- The two should agree arrangements that would allow for the European financial services industry to continue to access talent from the UK and internationally.

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I. Healthcare

Both the EU and UK must recognise the particular importance of the healthcare industry to public health and to the economy, and prioritise certainty in this area during their negotiations. AmCham EU recognises that change is coming to the EU-UK relationship. However, it is critical that these changes provide appropriate continuity for business – and in the health sector, that these changes do not negatively impact patients, carers and citizens at large.

In a future agreement, it is in the interests of both the UK and EU to continue with a high degree of regulatory integration and cooperation across the healthcare industry, as outlined below. This must be reached in a transparent way that allows stakeholders to provide feedback and to plan accordingly, and any subsequent divergence should be evaluated for its impact and conducted in a transparent manner with appropriate lead times.

Priority 1: Maintain a high level of regulatory alignment between the UK and EU

Issue: For the sake of public health, it is essential that all providers of health products and services have legal certainty from ‘day one’ of Brexit to ensure continuity of supply to avoid detrimental impact for patients, both in the EU and UK. This may be at risk where product licenses, issued with validity across the whole in the EU, are held in the UK (meaning potential disruption in the EU) or the EU (meaning potential disruption in the UK).

Health products are regulated to a significant extent by EU regulation. Medicines are overseen by the European Medicines Agency (EMA) and its network of member state agencies. Many activities benefit from being conducted in a larger population, such as clinical trials and pharmacovigilance (ongoing assessment of the safety of medicines), where the UK is integrated in EU databases.

The UK’s regulatory agency, the Medicines and Healthcare products Regulatory Agency (MHRA), currently plays a significant role in the EMA. Ideally, the UK and MHRA would remain fully integrated in this system, which effectively manages the availability of medicines in the EU. However, if the UK government seeks to avoid all jurisdiction of the European Court of Justice, this outcome seems impossible.

Medical devices and in vitro diagnostics are fully regulated through European regulations, with MHRA playing a prominent role amongst the other regulatory authorities, also hosting expertise and EU wide resources. BSI, one of the major European Notified Bodies, is located in the UK and operates under the supervision of MHRA.

The European Medicines Agency (EMA) is currently based in London, and will need to move to a continued Member State.

Implications: Legal certainty is required to ensure that patients can continue to have proper access to their therapies.

Divergence from EU medicines regulatory system may result in the UK becoming a second-tier market after the US, EU and Japan, meaning that medicines become available later to UK patients.

The future EU regulations for medical devices and in vitro diagnostics are expected to introduce new substantive requirements for many devices and economic operators. The unavailability of UK based expertise through MHRA and BSI should be carefully considered with regards to the implementation of those new regulations.

Recommendations:

- The UK should seek maximum alignment with the processes of the EMA, such as relying on the same dossiers for marketing authorisation of medicines. The EU and UK should also seek pragmatic solutions to allow the UK to continue to participate in systems such as pharmacovigilance and clinical trials databases. A regulatory cooperation council drawing together MHRA and EMA members could provide a practical forum for MHRA to deliver its expertise on developing regulation.
- The UK should continue to recognise and implement the same or equivalent intellectual property incentives for innovative health products as the rest of the EU.
- The transition of the European Medicines Agency from London to a new base in the EU should ensure minimum disruption in the agency's regulatory capacity. Most significantly, the new location needs to have a very strong national regulatory expertise (i.e. equivalent to the MHRA in standing and reputation) and science-base as this fosters the eco-system in which the EMA operates. Infrastructure, logistics and hotel accommodation are also important practical considerations. Any delays to regulatory procedures during the transition will be detrimental to both patients and the life sciences sector.

Priority 2: Ensure continuity of operations and trade facilitation

Issue: The UK market is both an importer and exporter of healthcare technologies, home to manufacturing activities that involve the trading of raw materials and finished or unfinished products. These are currently exempt from customs duties, as they are classed as essential items.

Implications: Any introduction of tariff duties and divergence from the Union Customs Code (UCC) and single market legislation will have significant implications, disproportionately affecting businesses carrying out manufacturing activities in the UK. Higher tariffs or custom delays will also add cost the medical supplier supply chain, which in turn will be passed onto both the UK and EU Health systems. A vital point is that any delays at custom check-points will mean that medical technology products will be slower in reaching the patient, which has negative consequences in regard to patient safety.

Recommendation:

- The continuation of tariff free trade between the EU and UK is a critical step in protecting the manufacturing and distribution on both sides.

Priority 3: Retaining skills and talent to ensure sustainability of UK health system and life sciences sector

Issue: A significant proportion of the UK health workforce are from other EU Member States.

Meanwhile, mobility of talent between the UK and EU contributes to the excellence and competitiveness of life sciences research and business.

Implications: Rapid changes to migration rules will limit the ability of the UK health system to care for the UK population. First and foremost, this is an issue of public health. It is also worth noting that a struggling health system will also struggle to deploy medical technologies efficiently, thus impacting the wider life sciences sector.

Changes to migration rules – both on the EU and UK sides – could harm the ability to attract the right skills and people would also harm life sciences and business.

Recommendations:

- The UK should ensure that sustainable staffing of its health system is guaranteed when implementing any changes to migration policy.
- The EU and the UK should ensure the continued access to and ability to recruit qualified people throughout the life sciences industries. This will ensure that the UK and EU continue to attract life sciences experts in academia and the public and private sectors and remain globally competitive.

Priority 4: Support maximum levels of research collaboration for the benefit of EU and UK patients

Issue: The UK has a world-leading life sciences 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.

Implications: For Horizon 2020 and the forthcoming 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.

Recommendations:

- 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 such as Horizon 2020 and the forthcoming FP9, and key Public-Private Partnerships (PPP) including the Innovative Medicines Initiative (IMI). The withdrawal agreement and future relationship should ensure that UK scientific excellence can continue to contribute to European consortia. The UK's particular strength in life sciences is significant in this regard.
- In terms of specific areas of health research, rare diseases particularly benefit from international collaboration to ensure larger pools of patients. Continued participation of the UK in the recently launched European Reference Networks will be critical.
- Continued harmonisation of data privacy regulation is also important for health research.

Priority 5: Renew support for innovation and life sciences in the EU

Issue: The UK has traditionally been a supporter of pro-innovation policies, and long played a key role in promoting a strategic approach to life sciences as a driver for health and growth.

Europe's life sciences industry holds many of the prerequisites for sustainable growth, namely a thriving industrial, academic and scientific infrastructure.

Implications: The loss of UK influence could result in a reduction of support for life sciences. To maintain – or better, improve – the environment for the life sciences, Member states, MEPs and the Commission must refocus their attentions.

Recommendations:

- The EU must act to ensure it has the dynamic life sciences sector it urgently needs, both for its economy and the health of its citizens. This includes a dynamic market for investment capital in the EU, for the benefit of the life sciences sector.
- The EU should issue a strategic agenda for the life sciences industry, with a focus on pharmaceuticals, medical devices and e-health. This is needed to move towards the goals of European competitiveness, increased healthy life years and long-term fiscal sustainability. This is essential to improving and maintaining the attractiveness of Europe for research and development in life sciences.

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J. Intellectual property

The UK Government's White Paper on Brexit explicitly acknowledges the importance of IPR in terms of the magnitude of the contribution to exports to the EU or globally and the role of EU wide regulation in facilitating the protection of intellectual property. Unfortunately, it does not address the application of IPR rules per se once the UK has left the EU, even though the potential problems are evident and numerous. IPR needs to be considered as a separate nexus by the UK Government within the context of the impact of Brexit.

While the Great Repeal 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.

Similar to other sectors, IP intensive industries employ highly skilled labour, thus the mobility of labour and talent, and of EU workers, in the UK is particularly vital. In order to avoid any disruptive effects on production and business activities, it is of paramount importance to ensure continuous access to labour and talent to UK/EU markets.

Priority 1: Community Acquis in the field of Intellectual Property Rights (IPRs)

Issue: According to the UK's Department for Exiting the EU, the Great Repeal 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.

Implication: Over time, the (case) law in the UK may start to diverge from EU law, which would have a disruptive effect on the businesses.

Recommendations:

- In order to minimize the disruptive effect and ensure a consistent interpretation in the future, policy-makers should ensure that the Community Acquis in the field of IPRs is converted into domestic law to ensure a high level of protection of IPRs.
- The Great Repeal Bill should also provide that historic European Union Court of Justice case law to be given the same legally binding nature or precedent in UK courts.

Priority 2: Patents and Standards

Issue: The Unified Patent Court (UPC) will be implemented before the UK leaves the EU. As a consequence, the UK-based divisions (both central division and local division) of the UPC may need to cease operation when the UK leaves the EU, causing 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.

Implication: 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.

Recommendations:

- A way needs to be found for the UK to continue to participate in the UPC (Unified Patent Court) and the UP (Unitary Patent), after the UK leaves the EU. Uniform protection of IPRs needs to be ensured.
- The UK should consider to adhere to European standards developed by the EU Standards Organisations (e.g. CEN, CENELEC and ETSI) and apply the same underlying mandatory legal requirements.

Priority 3: Enforcement of IPRs

Issue: 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 Great Repeal 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.

Impact: Inconsistency on enforcement of IPRs, including with respect to customs-related aspects (anti-counterfeiting activities).

Recommendation:

- Ensure a high level of protection and robust enforcement of IPRs.

Priority 4: Trade Marks and Designs

Issue: 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.

Implications: 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) Community designs or converting the latter rights into corresponding UK rights is still unknown.

Recommendation:

- Ensure that proper transitional measures are in place to obtain a corresponding UK right out of EU trade marks and (registered and unregistered) Community designs or converting the latter rights into corresponding UK rights.
- Also, the UK should separately become a contracting party to the Hague Agreement concerning the international registration of industrial designs.

Priority 5: Copyright

Issue: The UK is a member 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.

Implications: Uncertainty with regard to the continuous application of EU law in the field of copyright.

Recommendation:

- AmCham EU recommends that both the UK and the EU assess the potential impact of Brexit in the field of Copyright in their future relationship.

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K. Security and defence

Continued EU-UK cooperation in the field is clearly vital and mutually beneficial. Whilst it is for the UK government and EU institutions to decide what form it takes, industry invites both parties to ensure there are no unnecessary barriers that prohibit trade, and to continue to cooperate.

Priority 1: Maintain and build EU-US cooperation in an open transatlantic defence market

Issue: The UK's defence budget is the second largest in NATO (the US is first) and fifth largest globally. Only three other Member States (Greece, Estonia & Poland) meet the 2% GDP NATO spending target. After Brexit, the EU will lose the leading advocate of transatlantic defence cooperation.⁷ Certain countries may focus more on an autonomous European Defence Technological and Industrial Base (EDTIB) rather than on Transatlantic Defence Technological and Industrial Cooperation (TADIC).

Implication: TADIC is essential for transatlantic security and defence. A shift toward an autonomous EDTIB could jeopardise security on both sides of the Atlantic.

Recommendations:

Developing a competitive defence industry in Europe needs the EU and global markets to remain open and accessible. Mutual trust, predictability, openness, recognition and standardisation is essential. In a global environment where security and defence challenges are becoming more complex and demanding, transatlantic partnerships and cooperation will remain indispensable. We recommend the following to policymakers:

- Foster TADIC to avoid duplication and fragmentation of capabilities;
- Recognise the potential for a certain degree of mutual interdependence;
- Explore solutions to achieve transatlantic security of supply.

Priority 2: Protect the security of the supply-chain in European defence production through openness and resisting barriers to market access.

Issue: With an annual turnover of £30bn, exports of £11.9bn, and a supply chain sector employing 150,000 the UK's defence industry is a key to providing the EU with goods and services.⁸ After Brexit, the cost for assembling defence products could rise dramatically for the EU-27 and the UK, if barriers to imports of component parts are created.

Implication: Component parts for defence products (e.g. for the wing of an airplane) come from across a number of the EU28 and are assembled in a given Member State. Many components are manufactured in the UK. Without an open access to markets, free of unnecessary barriers, assembling these essential products will

⁷ Black, James, Alexandra Hall, Kate Cox, Marta Kepe and Erik Silfversten. *Defence and security after Brexit: Understanding the possible implications of the UK's decision to leave the EU — Compendium report*. Santa Monica, CA: RAND Corporation, 2017. https://www.rand.org/pubs/research_reports/RR1786.html.

⁸ Black, James, Alexandra Hall, Kate Cox, Marta Kepe and Erik Silfversten. *Defence and security after Brexit: Understanding the possible implications of the UK's decision to leave the EU — Compendium report*. Santa Monica, CA: RAND Corporation, 2017. https://www.rand.org/pubs/research_reports/RR1786.html.

become more costly, or even unfeasible. This could undermine competitiveness and threaten the many high-value, long-term jobs many companies sustain across the EU and in the U.K

Recommendations:

- Take measures to ensure the security of the supply chain between the EU and the UK.
- Encourage mutually-beneficial cross-border movement of parts for defence products, without unnecessary barriers.
- Explore options for how R&D and knowledge can be shared to the mutual benefit of both parties.

Priority 3: Maintain EU-UK communication, intelligence sharing, and heightened cooperation on security and defence matters

Issue: Channels and mechanisms have been established for EU27-UK communication, intelligence sharing, and cooperation on defence and security matters. Brexit puts into question their existence.

Implication: The UK Government plans to invest £2.5bn in security and intelligence – creating posts for 1900 new intelligence officers. Half of the investment will go to boosting counterterrorism capabilities. These terror threats are cross-border by nature. In a global environment in which security and defence challenges are increasingly complex, with new threats emerging constantly, neither side will gain from shutting down channels and mechanisms for communication, intelligence sharing, and cooperation.

Recommendations:

- Keep existing channels and mechanisms for EU-UK communication, intelligence sharing and security & defence cooperation open.
- For example, cooperation between the UK and the European Defence Agency could be maintained through a revamped 'Letter of Intent Cooperation' or an 'Administrative Agreement', allowing privileged forms of cooperation between parties, as is the case with other third countries
- For example, maintain cooperation on the highest level possible in air cargo security
- As mentioned earlier (Digital Economy priorities 2 and 3), the ongoing cooperation between the EU, the UK and other EU Member States in the areas of cybersecurity and cybercrime should not be disrupted. They should even be further reinforced given the eminently cross-border nature and fast growing scale of the threats at play in these fields.
- Moreover, in the spirit of free trade (Trade and External Affairs priority 1 below), tariff free access and customs code alignment (Customs and Trade Facilitation priorities 1 and 2 above), the EU and the UK should stay aligned on their export control lists and procedures, including with respect to dual use items after the currently ongoing revision of the EU dual use export control regulation is completed.

L. Tax

Priority 1: Minimise the incidence and burden of taxes on goods and services

Issue: On the UK leaving the EU, a new border will be created, across which goods and services will flow.

Implications: Such movement of goods and services potentially create new tax points and compliance obligations for business e.g. VAT. The ability to move goods and services will form part of a negotiated trade deal and there will be a need to address such tax points and obligations in a cohesive manner. Additional tax and compliance costs have the capacity to discourage trade and investment decisions to the disadvantage of all.

Recommendations:

- We recommend to policymakers, commensurate with the negotiated trade deal between the UK and the EU, that they minimise the incidence of taxes (including withholding taxes) on the flow of cross border (UK/EU) of goods and services.
- In addition, the burden of taxes should be minimised, especially on the movement of goods and services, including cash flow, cross border.

Priority 2: Avoiding exit taxes and making sure transitional arrangements are adequately put in place

Issue: Businesses are currently structured to respond to the opportunities and comply with the obligations, which arise from the UK being part of the EU. This will be subject to fundamental revision. Business, from all sectors, will need to review their affairs in the light of the new trading relationship between the EU and UK, to ensure they continue to be best established to service all customers and to comply with continuing and new tax obligations.

Implications: Such business reorganisations have the capacity to crystallise tax liabilities. In many cases currently steps are taken to ensure that tax does not introduce inefficiency or unnecessary hurdles e.g. Mergers Directive. The crystallisation of exit taxes as businesses seek to respond to the fundamental changes which Brexit and any negotiated trade deal presents, needs to be addressed to ensure that they do not inappropriately influence decisions.

Further, time will be required to allow businesses and indeed Member States, to respond to the 'new world'. An implementation period will be required to allow new business models and formations to be established, for regulatory approvals to be obtained and for system changes by both businesses and Member States to be made.

Recommendations:

- Provide opportunities for firms to restructure their current operations to accommodate agreed trading arrangements without incurring additional tax liabilities as a consequence.
- Policymakers should make sure that the separation of the UK from the EU does not in itself cause the crystallisation of deferred tax liabilities. For example they should ensure the VAT treatment of Transfers of Going Concerns continues throughout the transition and beyond through reciprocal agreement.
- Businesses responsible for the payment, collection reporting of taxes or movements of goods and services should be given sufficient time to make systems changes to fulfil new obligations. For this

reason, policymakers should consider grandfathering existing arrangements as appropriate. Recognising that business changes and system requirements are likely to be wide ranging, provide clear guidance, sufficient time and transitional arrangements to allow for compliance.

Priority 3: Ensure reciprocal arrangements to facilitate compliance for both EU and UK traders

Issue: The UK leaving the European Union is likely to mean increased burden and level of compliance on the movement of goods between the two regions.

The taxation of import on goods coming from UK to the EU would likely have a cash flow impact for EU traders.

The flow of services between the UK and EU will need to be addressed. On the long-run, having to deal with a UK VAT system that would take its own path could increase the complexity for traders.

Implications: A new trade deal between the UK and the EU will establish the basis on which business is conducted. It is critical that the processes by which compliance with tax obligations is achieved does not create unintended barriers to trade. It would be to the advantage of consumers, businesses and Member States that, as far as possible, reciprocal arrangements are established to ensure that the intended future relationship is delivered.

Recommendation:

- We recommend to policymakers, to carefully monitor implementation to make sure that Brexit does not provide barriers for EU-based traders.

Priority 4: Maintain and enhance tax dispute mechanisms throughout the transitional period

Issue: The framework for business taxation is more greatly coordinated than ever before both within the EU (e.g. EU Anti-Tax Avoidance Directive) and internationally (e.g. OECD's Base Erosion and Profit Shifting work). The objective for many of these efforts is to address aggressive tax planning, but the changes being introduced also bring greater risk of double taxation. Both the OECD and the EU have acknowledged this and taken steps to improve international tax dispute resolution.

Implications: The issues raised in the Priorities above all bring greater risk of international tax disputes, as businesses move from their existing relationships and compliance obligations to address Brexit and to be able to continue to service customers. Without taking all steps to facilitate speedy resolution of disputes, inefficient and inappropriate decisions will be taken to the disadvantage of all.

Recommendations:

- In addition to the transitional arrangements discussed at Priority 2, we would urge that tax dispute mechanisms be as far as possible maintained and enhanced. There are existing dispute resolution procedures e.g. EU Arbitration Convention, which provide taxpayers with valued support in resolving disputes.

- We would urge that there be no reduction throughout the transitional period and that there should be a review of the position that will stand after Brexit to ensure that the collective measures ensure the resolution procedures between the UK and the EU continue to set a leading standard.

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M. Trade and external affairs

Priority 1: Free trade between the EU and UK after Brexit

Issue: The UK's trading relationship with the EU is highly significant. In 2015, the EU accounted for 44 percent of all UK exports and 53% of UK imports, making the EU the UK's largest trading partner.⁹ This is founded upon the success of the EU Single Market, which enables the UK to trade without barriers across EU borders.

This is especially important to US companies, who rely on free trade, and common customs and regulatory systems, in the EU to succeed. Moreover, the UK accounts for around one quarter of all US investment in the EU and remains the fulcrum for much of US business operations in Europe.

Implications: The UK has stated that as part of its exit from the EU it wishes to leave the EU Single Market. However, it also wishes to retain as much access as possible to the free trade area. Such an outcome would require a complex trade-off between the two partners and is also likely to take years to negotiate.

Any changes to the UK's barrier-free trading relationship and customs procedures could add significant costs for companies operating in the UK and across Europe. This may negatively impact on US company investments in the UK and EU in the short-, medium- and long-term.

A deterioration in EU-UK trade relations could also negatively impact upon the regional and global economies, at least in the short term.

Recommendations:

- The EU and the UK should act quickly and decisively to mitigate disruption and uncertainty which could disrupt trade flows and their supply chains, and depress the EU and UK economies.
- A comprehensive transitional regime – covering movement of goods, people, capital and services, non-tariff barriers and rules including investment protection – needs to be put in place once the UK has exited the EU to avoid disruption of trade flows and related business processes. This will provide the necessary certainty and predictability for companies who may need to adjust their business models.
- The EU should engage in negotiations for a comprehensive agreement with the UK that covers all aspects of a full and exhaustive trade and economic relationship, including tariff-free trade, minimal non-tariff barriers and regulatory coherence. Both sides should retain an open and flexible approach in the talks, and negotiations should be concluded within a reasonable timeframe to avoid further disruption of trade between the two entities.

Priority 2: A robust and effective EU trade policy

Issue: The EU is the world's largest trading bloc, and the top trading partner for 80 countries around the world.¹⁰ This is founded upon a historic commitment to free trade as a tool for economic growth and development. At a

⁹ Webb, Dominic . *Statistics on UK-EU trade*. Issue brief. January 06, 2017. Accessed April 19, 2017. <http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

¹⁰ "European Commission Directorate-General for Trade." EU position in world trade - Trade - European Commission. Accessed April 19, 2017. <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>.

complicated time for EU trade policy, any further destabilisation or weakening of EU trade policy as a result of Brexit could have far-reaching implications, where the balance of power in the Council will be impacted.

Meanwhile, as a member of the EU, the UK is a part of some 38 bilateral and regional trade agreements covering 60 countries, as well as multiple ongoing negotiations that are currently under discussion.

Implications: Existing EU bilateral, plurilateral and multilateral trade agreements are likely to remain in force unchanged, although third countries could seek to reopen existing agreements to try to negotiate a better deal if they see fit. The EU's negotiating power may also be diminished for existing and prospective negotiations with third countries.

The UK has been a leading proponent for free and fair trade throughout its membership of the EU, as well as being a powerful player in the world economy. The UK's departure could affect the EU's ability or even willingness to promote free trade and conclude trade deals with third countries. It could also act as a brake on EU efforts to carry out important trade-related economic reforms.

Clarity on the UK's position within the current EU free trade agreements will be essential, including whether EU and third countries would accept the UK being part of these agreements or if they would prefer separate agreements altogether. The UK as a member of the EU was part of the negotiating equation vis-à-vis third countries, with concessions and quotas given on the basis of the UK being part of these agreements. Moreover, given integrated supply chains, an inability to count UK content as originating could mean that EU exports no longer qualify for preferential treatment under EU FTAs. This could impact the global competitiveness of production locations in the EU.

Recommendations:

- The EU should continue to pursue its current ambitious objectives in ongoing and future trade negotiations with third parties. It also should continue to reaffirm its commitment to free and fair trade in the future. Indeed, with protectionism on the rise, the EU must grasp the opportunity to act as a standard-bearer for free trade principles around the world.
- The UK has been vocal in its commitment since the referendum to act as a powerful voice for free trade and open markets. As part of this commitment, the UK should continue while it remains a member of the EU to actively encourage the conclusion and implementation of EU trade policies that boost growth and development at home and abroad. The UK must also respect its obligation not to enter into any formal negotiations with any third countries without the permission of the EU, so long as it is a full member of the EU.
- Upon exiting the EU, the UK should look either to adopt the EU's existing free trade agreements, or together with third countries, agree that the concessions and commitments agreed into in the EU's free trade agreements should be replicated in an agreement between the UK and the third country. The UK and the third country can at a later stage renegotiate the terms of the agreement as appropriate. Alternatively, the UK could become a third party member of existing EU FTAs.
- It is possible for three or more FTA partners who have all agreed FTAs with each other to agree on diagonal cumulation between them for the purposes of determining origin. The UK should seek the inclusion of diagonal cumulation provisions in its future agreements with the EU and with EU FTA partners.

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N. Transport, energy and climate

Priority 1 - Single Market: negotiating a new relationship with as little disruptions as possible

Issue: As the United Kingdom and the European Union negotiate a new relationship, AmCham EU members believe that it is in the best interest of both the European Union, the 27 Member States and the United Kingdom to retain full and unlimited access to the Single Market, in particular when it comes to policies and legislation in the areas of Transport, Energy or Climate action. The United Kingdom should notably aim at retaining as much as possible of the European Acquis in these areas when preparing its 'Great Repeal Bill', particularly to provide certainty to investors.

Implication: AmCham EU members believe that a departure from European rules would prove detrimental to both parties.

Recommendations:

- Great care should be given to ensure a smooth transition in the legislative areas that already identify the individual contribution of Member States, either through binding targets or through the coordination of national efforts.
- The UK should aim to retain the ability to participate in the various European agencies, or joint efforts, such as the European Single Sky, the European railways agency and ACER.
- The UK should also seek as much as possible continuity of existing legislation in areas such as road safety and fuel efficiency, as well as congruity with future EU technical rules for placing on the market of vehicles and components.
- Flexibility should be built in to allow the continuation of the UK's participation to the regional efforts. When it comes to relations with other parts of the world, or international cooperation, the UK voice should remain coordinated - if not integrated - with European action or those of the EU27 Member States. This is especially relevant for the region's participation to the work of the UNFCCC, ICAO or IMO, to name a few.

Priority 2: Coordinate with the Energy Union

Issue: As the United Kingdom and the European Union negotiate a new relationship, significant coordination will be required regarding the different dimensions of the European Energy Union.

Implication: Even in the areas where Member States have traditionally retained national competence - such as the choice of energy sources in their national mix - a lack of coordination would be detrimental to the overall interest of citizens and businesses in the region and to the national interest of individual countries.

Recommendations:

- A collaborative approach should prevail when addressing the UK's future relationship with the EU when it comes to energy legislation on energy efficiency, energy labelling & eco-design, energy from renewable sources, security stocks, security of supply, relationship with third countries, energy technologies, interconnection, state aid, etc.

- AmCham welcomes the UK Government's White Paper commitment to consider 'all options for the UK's future relationship with the EU on energy, in particular, to avoid disruption to the all-Ireland single electricity market'. AmCham members believe that UK continuation as a member of the Internal Energy Market (IEM) would cause the least disruption and create the most attractive investment environment for low carbon energy. This is especially relevant for the all-Ireland single electricity market as it transitions under the European target model to the Integrated Single Electricity Market.

Priority 3 - Climate: coordinated collective action should prevail

Issue: Climate policy is one of the regulatory areas where collective action is crucial.

Implication: Within the EU, the existing tools to address climate change were built for 28 member states and could be negatively impacted by Brexit.

Recommendations: By speaking with one voice the EU showed leadership during the COP21 negotiations and the signature of the Paris Agreement. The implementation of the Agreement should be led with the same collective spirit. AmCham EU members therefore call for a pragmatic and collective approach to ensure as little disruption as possible when it comes to:

- The Effort Sharing Regulation: flexibility should be built to ensure that the UK could still contribute to the collective ambition. If the UK were to leave the scheme, the burden should be shared evenly among countries and sectors without generating unbalances.
- The Emission Trading Scheme (ETS): considering that ETS is the EU's main tool to reduce industry's emissions, and that the system is currently under revision, AmCham EU members are concerned that the Brexit discussions could interfere with the ongoing regulatory process. The current low carbon price illustrates the uncertainties around the system and a British withdrawal would only amplify this trend. AmCham members believe that investors should be provided with a clear and predictable framework post 2020, without further delay.

Priority 4: Access to European programs and initiatives with as little disruptions as possible

Issue: AmCham EU members believe a pragmatic approach should be taken when negotiating the UK's potential access to existing and upcoming European programs and initiatives.

Implication: Contributions are indeed to be expected to be eligible to the benefits of such programs, but it is also clear that a number of European actions would become less effective or attractive by losing the participation of the 5th world economy.

Recommendations:

- The UK should retain the ability to participate in European Research & Development initiatives, such as Horizon 2020 and the forthcoming FP9, are key contributors to the success of Energy, Transport and Climate common policies and objectives. The cooperation with and between academia should continue to be encouraged.

- The UK should retain the opportunity to participate in the European Investment Bank and initiatives like the European Fund for Strategic Investments (EFSI), benefitting from potential funding loans for infrastructure and innovation in transport, energy and climate related initiatives but also bringing the stabilising dimension of a fully developed economy to the overall funding capacity of these initiatives.
- When it comes to programs such as the Connecting Europe Facility, Trans-European Networks, structural and cohesion funds, a pragmatic approach should again be taken to negotiate a way for the UK to contribute and participate. The same should apply to third country programs, such as the EU-US energy council or the Transatlantic Economic Council.

Priority 5 - Aviation: The importance of the UK remaining part of the EU-U.S. Open Skies Agreement

Issue: The EU-U.S. Open Skies Agreement permits U.S. (cargo) airlines to operate flights from the U.S. to any two international (but not domestic) EU points. (The same applies for EU airlines flying into U.S.) It is imperative for business continuity, and for the flow of cargo air traffic in general, that this existing arrangement is maintained when the UK leaves the EU.

Implication: Even if the UK elected to maintain the EU-U.S. Open Skies Agreement, this would not automatically extend the right of U.S. (cargo) carriers to fly between an airport in the UK and one in the EU. Since these flights would no longer be intra-EU, continuing the current regime would require EU approval.

Recommendation:

- AmCham EU calls for a smooth transition regime rather than an abrupt change and also proposes for the EU and the UK to come to an agreement along the lines of the current practice, also after Brexit.

Priority 6 - Aviation: The importance of the UK having access to the EASA regulatory regime

Issue: The European Aviation Safety agency (EASA) certifies the safety of aircraft products for use and sale. It also sets standards for R&D projects, environmental regulations and new markets (e.g. unmanned aircraft systems). As a member of EASA, the UK benefits from working to one set of regulations when exporting across Europe, and from the ability to use EASA to conduct bi-lateral agreements with key markets including the US and Canada.

Implication: Significant time and cost would be required to re-build the certification capabilities of the UK CAA. Remaining a member of EASA is a more cost effective and practical solution to maintain safety and competitiveness.

Recommendation:

- The UK should remain a member of EASA and its regulatory framework, retaining influence and access to safety rulemaking.

Priority 7 - Road Transport: The importance of UK-EU and EU-UK trade

Issue: Brexit could imply that trucks travelling between the EU and the UK would need an International Road Transport License. These licenses are operated by UNECE (United Nations Economic Commission for Europe); there are currently only 130 in circulation.

Implication: Some 80,000 licences would be required to cover all UK-registered Heavy Goods Vehicles (HGV) in the EU and EU-registered HGVs in the UK. This would entail a massive administrative burden for road transport operators to apply for these licenses.

In addition, there could be major parking issues following queues at borders and ports. This slows down commerce and can also have serious 'real world' effects. This is particularly the case for anything involving regulated temperatures, from agricultural produce through to high value products such as biological medicines and vaccines. This will have a major impact on both producers and citizens who need these products.

Recommendations:

- Particular attention should be paid to retaining common requirements when it comes to the smooth operation of logistical activities - be it for the mutual recognition of employee certifications, or for the technical requirements applicable to vehicles. AmCham EU members have complex and integrated supply chains between the UK and the rest of the EU. Flexibility on both side of the Channel will be needed if a smooth logistical process cannot be negotiated as a top priority.
- AmCham EU also here calls for a smooth transition regime and ultimately a solution that counters the potential adverse consequences linked to transport licenses and border issues.

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