AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Our position

Negotiating the path to the future EU-UK partnership: a cross-sectoral view from American companies

April 2020

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 U.S. positions on business matters. Aggregate U.S. investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

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

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Executive summary

This paper sets out the US business community's recommendations on the future relationship of the EU and the UK post-Brexit. Like European companies, US businesses are heavily integrated in the EU and UK economies and rely on the free flow of goods, services, people and capital throughout the region to succeed. Building on the comprehensive position published in 2018, this paper seeks to offer constructive and practical input to negotiators, taking into account the ambitions and priorities of both EU and UK mandates.

The paper is divided into two parts. The first part sets out AmCham EU's horizontal priorities for a future partnership that is comprehensive and sustainable in the long-term. The second part delves into sector-specific issues and provides concrete recommendations for a range of issues to be tackled throughout the negotiations.

In view of facilitating the reader's work, the structure of this document reflects the configuration of the working groups carrying out the negotiations.

Introduction

As the European Union (EU) and the United Kingdom (UK) are entering negotiations, the American Chamber of Commerce to the EU (AmCham EU) sets out its recommendations on the future EU-UK relationship. This paper outlines provisions across policy areas following the structure of a free-trade agreement (FTA), the preferred model of the EU and the UK.

American companies are heavily integrated into the EU and UK economies. Over the last decades, they have benefitted from the free flow of goods, services, people and capital throughout the region to serve their customers. They have also built complex and integrated supply chains running across Member States from R&D hubs to marketplaces. Significant disruption or changes to the current economic and political relationship between the UK and the EU could have profound effects on citizens and businesses. It is therefore essential that policymakers and stakeholders in both the EU and the UK work to mitigate disruption as much as possible and deliver an ambitious and forward-looking new EU-UK trade and economic relationship.

In 2018, Europe received approximately 60 percent of US foreign direct investment (FDI), directly supporting more than 4.8 million jobs and generating billions of euros in income, trade and research and development. A quarter of all US FDI in Europe goes to the UK.

This paper is intended to be a living document and will be updated periodically throughout the negotiations to reflect the status of the talks. This document builds on a previous comprehensive paper issued in July 2018, which mapped out critical issues for the future partnership.

The transition period

With a one-year long transition period, time pressure will inevitably affect negotiations. With less than ten months to negotiate and ratify the agreement, it is critical that the EU and UK move forward quickly and constructively to deliver the best possible outcomes for their citizens.

While negotiating the future relationship is critical to business, attention should also be devoted to the swift implementation of the Withdrawal Agreement. The agreement is now enshrined in international law and contains critical provisions related to the Irish border question, setting out a system of checks and controls which should be thoroughly implemented to protect the EU Single Market. Gaps in the implementation could undermine trust between negotiators and negatively affect talks on the future relationship. Full implementation will also be critical to ensure that goods entering the Single Market undergo necessary controls.

US business remains concerned over the continued risk of a cliff-edge scenario at the end of 2020. Over the last three years, businesses of all sizes have incurred huge costs in the face of mounting uncertainty over the future of the EU-UK relationship. Significant costs have resulted from the preparation for the two postponed exit dates in March and October 2019. Billions were spent on contingency planning throughout the Withdrawal negotiations.

External factors like the coronavirus crisis also lead to economic uncertainty. In this context, the risk of a third cliff-edge scenario at the end of 2020 must be taken off the table to avoid further adverse consequences. Following the global outbreak of the COVID-19, many companies are facing the great disruption across their production and supply chains. At the same time many companies have committed to dedicating their full capacity to help governments tackle the ongoing healthcare and economic crisis. Additional uncertainty regarding the EU-UK negotiations would result in further pressure on industry and will take up more resources. Therefore, it is essential that negotiators consider all options moving forward, in view of relieving pressure from business in these times of global uncertainty.

Horizontal priorities

'The UK exported £291bn of goods and services to other EU countries in 2018, which was 45% of all UK exports. It imported £357bn of goods and services from the EU, which was 53% of all UK imports.'[1]

After three years of negotiations around the Withdrawal Agreement, the UK and the EU have now entered the critical phase of negotiation around their future partnership. With less than one year to negotiate a comprehensive trade agreement covering critical economic sectors before the transition period runs out, it is now urgent for negotiators to focus on delivering a strong deal for citizens and businesses, leaving political differences aside in negotiations around their future partnership.

[1] Statistics on UK-EU trade, House of Lords Library, https://commonslibrary.parliament.uk/research-briefings/cbp-7851/

While AmCham EU's initial preference would have been the UK's continued membership of the Single Market and the Customs Union, it is clear that political preferences and ambitions have now changed significantly. In this context, AmCham EU stands ready to support a new relationship based on the model of a Free Trade Agreement (FTA). Whereas the breadth of the agreement is not yet clear, its scope should be as comprehensive and ambitious as possible, reflecting the strong ties which currently underpin the EU-UK relationship. In this spirit, negotiators should bear in mind that a narrow deal would come with significant consequences for business and citizens who have been working, studying and doing business across the channel for the past decades. As the EU and UK are starting a process of legal separation, it is fundamental to re-state that any step away from the current trading terms will result in friction. While this is inevitable and reflects the political priorities of the UK government, it is important to keep a strong focus on how the provisions of the agreement will impact business and its capacity to operate. The further away the EU and the UK will be after these negotiations, the higher the costs and red tape for companies and consumers.

In this context, for instance, a Canada-style trade agreement cannot be seen as an ambitious outcome as it would not go far enough on services and would not fully remove tariffs and has shallow regulatory provisions. At the same time, the future partnership will have to look beyond the FTA negotiations. An integrated approach is necessary to fully cover the breadth and depth of the economic relationship between the EU and the UK.

In order to contain excessive disruption, the business community recommends that the new EU-UK relationship covers the following:

Free trade area

Although frictions will be inevitable moving forward, US business maintains that the agreement should be comprehensive in nature and set out provisions for a free trade area allowing for full market access for goods traded between the EU and the UK. In view of removing unnecessary costs and border formalities for companies, citizens and consumers, tariffs and quotas should be avoided. Finally, the agreement should also foresee alignment of customs codes and ensure an efficient customs clearance process allowing for the seamless movement of goods.

Regulatory alignment/cooperation

The EU and the UK currently share a common set of rules and standards which apply to a range of different sectors. Whereas we can expect some level of friction to arise, divergence should be limited to the greatest extent possible. Significant divergence would result in substantial additional compliance costs and red tape strongly affecting businesses, especially small and medium-sized ones (SMEs). In addition to this, current EU rules are often de facto global standards that we have adapted to and understand. EU rules also reflect international efforts to align rules and standards to reduce regulatory burden and red tape for businesses across the globe. Such efforts towards convergence at global level should therefore be maintained and strengthened moving forward.

As the EU and the UK are starting the negotiations of a future relationship from a common set of regulations and standards, AmCham EU members believe the aim should be to continue as high a degree as possible of continued regulatory convergence across industrial sectors. Regulatory convergence, and implied mutual

recognition of standards and conformity assessment, is essential to the consistency and efficiency created by the Single Market.

The example of CE marking

Manufactured products must obtain various national certifications to trade across Europe. These certificates are required for products whether they have a CE mark or not. National notified bodies do not equally apply harmonised standard testing procedures for CE labelled products. This leads to inconsistencies in the quality of test results. Therefore, the CE mark is not yet accepted as a uniform European quality mark and privately run national voluntary marks remain a de facto market requirement. As a result, industry is still obliged to adhere to multiple tests to obtain national certification for CE and non-CE marked products. This could be an issue for existing and new products on both the UK and EU market. This may therefore present a good opportunity for exchange and cooperation to avoid unnecessary divergence of standards, and duplication of paper work where similar systems are anticipated to exist.

More specifically, sectors that are acutely dependent on regulatory alignment and cooperation on future regulations and standards include, but are not limited to, the industries of financial services, food and drink manufacturing (including food labelling), medical devices, energy technology, pharmaceuticals, capital goods, transportation, chemicals (and numerous related down-stream sectors such as detergents, cosmetics), ICT, and telecommunication equipment. Maintaining a common approach would avoid unnecessary duplications, increased costs and uncertainty for consumers, customers and patients. Where full regulatory alignment will not be achieved, mutual recognition agreements, including of conformity assessments, equivalence determinations and other mechanisms should be put in place to minimise unnecessary duplications of certifications for companies and for certain goods sectors, to mitigate further disruption to supply chains.

In parallel, parties should set out a framework for regulatory cooperation which is dynamic and sustainable in the long-term. To this end, the future partnership should envision reliable mechanisms to deal with the interface between the EU and UK regulatory environment and handle frictions where necessary. This framework should be based on deep mutual trust and should be stable, flexible and cooperative in nature to avoid long-term disruptions and preserve investment.

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 our 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. Finally, an agreement on mutual recognition of professional qualifications should be a priority.

Other provisions

An open Single Market

The EU is a consumer market of 450 million people characterised by a highly skilled workforce and a word class R&D infrastructure driving foreign investment. This has made the EU Single Market the first FDI destination for US companies and the largest trading bloc in the world.

The integrity of the Single Market should be preserved throughout negotiations, ensuring certainty for foreign investors and protecting European consumers. AmCham EU has always maintained that the EU Single Market should remain open to foreign investors and EU leaders should resist the temptation to resort to inward-looking solutions which may harm competitiveness and attractiveness in the long term.

Preserving global standards

The EU-UK future relationship will be negotiated in a time of growing pressure for the rules-based trading system. In this context, the agreement should strongly rely on and re-state the importance of global standards as the most effective way to solve transnational issues. As two of the architects of the global trading system, the EU and UK should build a partnership that is devoted to the promotion of common values and international decision-making as opposed to unilateral action. These principles should be reflected in the EU-UK relationship and should also be mirrored in the UK's trade policy moving forward. As a champion of openness and free-trade, the United Kingdom should take advantage of its new role as an independent trading nation to reaffirm and further promote adherence to global standards and multilateral decision-making. Whether on climate issues, privacy regulation or trade, the EU and the UK should continue to work together to set new standards and promote free trade as a key driver of global growth.

Emergencies such as the recent global outbreak of the COVID-19 demonstrate that, now more than ever, strong cooperation and coordination between states is fundamental. Whether this is to provide humanitarian aid or favour the exchange of data for health purposes, the transatlantic alliance between the EU, US and UK must remain strong.

Process and guidelines for the negotiations

A rational 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. A rational approach, based on data and fact-checking is necessary in order for the deal to address pressing issues of concern to business and citizens. In this perspective, negotiators should take enough time to work out a deal which puts long-term economic interests at the heart of the negotiations.

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.

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 stakeholder 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. The US business community stands ready and willing to assist, including by providing timely, non-partisan, informed input throughout.

Sectorial priorities

The structure of the sectorial section of the paper is built around the different working groups that are carrying out ongoing EU-UK negotiations. This is to ensure that the reader is able to find sections of relevance in a fast and straightforward way.

Trade in goods

National treatment and market access for goods

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

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

Recommendations

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

Rules of origin

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

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

Moreover, to minimise new administrative burdens, we recommend that companies (established in the UK and EU) 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, while appropriate mechanisms should ensure that all risks derived from potential origin infringements do not lay only with the importer but also with the authorities of the country of export which supervise the exporters. In particular, we would recommend the parties to include the UK's access to the EU's Registered Exporter System (REX) to facilitate the handling of certificates of origin for companies that have distribution models that service both the EU market as well as the UK market at the same time. This includes agricultural tariffs and quotas, which would have the potential to significantly disrupt cross-border supply chains, and increase food prices for consumers.

Recommendations

- The RoO should be modelled on current rules in EU trade agreements and allow extensive diagonal cumulation of origin for materials sourced from certain third countries with which the EU currently has preferential arrangements in place.
- Special arrangements and other forms of cumulation should be considered in case traditional rules do not correspond to current supply chains.
- Companies should be able to self-certify the originating status of their products, rather than having to rely on certificates of origin issued by the customs authorities, while adopting mechanisms which reduce the risks of incorrect origin declarations for the importers and ensure that responsibility for the origin declaration lays also with the authorities of the country of export, which must supervise the exporters.
- In particular, the UK should have access to the EU's Registered Exporter System (REX).

Chemicals

Differences in classifications and labelling for chemical substances will create additional costs for companies and governments. Reducing or eliminating the need for dual classifications, where appropriate, would facilitate trade and reduce inefficiencies.

The REACH regulation is of critical importance to decide what chemicals and finished articles can be sold on the EU market. We recommend the UK try to stay as close to REACH developments as possible in the future to avoid damaging divergences in standards and in product development. Norway benefits from observer status at the European Chemicals Agency (ECHA). The Canadian and US Environmental Protections agencies (EPA) have memoranda of understanding (MoU) with ECHA, although these are far from comprehensive in their scope and utility in respect of the challenges of Brexit. We recommend the UK try to negotiate such an agreement to ensure efficient and effective regulatory collaboration in the future.

There is a risk that biocidal products approved in the UK will not comply with EU regulations, and vice-versa. If this is to be the case, reformulation will be required, along with additional efficacy testing, different toxicology tests, new supply chains etc. This lack of harmonisation will result in higher costs and longer lead times, therefore to fewer products being available for commercial customers (serving hospitals and restaurants) and consumers. The additional cost for large companies is likely to exceed several million euro, it will heavily impact the activity of SMEs.

New and emerging scientific issues in the area of chemicals could present the EU and the UK with opportunities to align regulations and prevent divergence prior to their enactment. This could be the case for the continued reflection on how to address combined effects of chemicals. An agreement on a common prioritisation methodology for the identification of mixtures of concern and risk assessment methodologies, building on international standards could greatly improve the predictability and efficiency of the measures to the benefit of industry, public health and the environment. Mutual monitoring and acknowledgement of the key role of the respective scientific committees that inform chemical policy and management is also recommended.

Recommendations

- The EU and UK should **agree on objectives and governing principles for chemical regulation.** Such an agreement could cover chemical assessment tools (hazard and exposure models and databases), as well as a common template and equivalent or compatible IT systems for chemical restrictions or ban requests, based for example on the UN Globally Harmonised System for Classification and Labelling (GHS). An extension of the use of EU chemical reporting software tools (such as IUCLID and CHESAR) to the UK would avoid the duplication of work and reduce the administrative burden for companies when submitting registration dossiers.
- The UK should obtain associate membership to ECHA and continue having access to the ECHA database, in order to continue validity of existing and approved registrations and authorisation but also allow that new substances registered with ECHA benefit from registration under UK law.
- Physic-chemistry, health and environment data submitted under one regulatory regime should be acknowledged under the other without re-submitting. This would avoid unnecessary animal testing and save costs for companies and public authorities, while accelerating efforts to protect consumers and the environment.

- **Closer cooperation between standardisation bodies.** We recommend a separate working group between CEN/CENELEC and British Standards Institute. This would avoid duplication of work, certification and allow for mutually recognised working methodologies and standards.

Consumer goods

The free flow of goods will be strongly impacted by the outcome of the negotiations. In this perspective, guaranteeing the safety of consumers should remain an absolute priority for both sides. The insurance of high quality and safe products available to consumers of UK and EU alike at reasonable cost will be best achieved by maintaining aligned safety requirements or having mutual recognition of these. In addition to this, companies facing different consumer regulations between the EU and the UK will need to differentiate production processes, with significant costs involved.

Recommendations

- A Free Trade Agreement (FTA) should include binding commitments to stay aligned on product safety rules and consumer product standards.
- In the event of regulatory divergence, and provided a high level of consumer protection is maintained, opportunities for mutual recognition should be considered.

Sanitary and phytosanitary measures

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

The UK's departure from the EU poses questions around whether the UK will maintain these legislations. Changes to existing, aligned regulation will disrupt current business practice. Divergence of food safety rules in particular could quickly become a barrier to trade, resulting in higher costs for companies, costs that need to be absorbed by both companies and consumers. Ultimately, regulatory divergence may result in food producers having to make two versions of the same product - one for the UK market and another for the EU. Ensuring the continued alignment of food and agriculture legislation post-Brexit is therefore vital to maintaining current trade flows, as well as consumer benefits.

Recommendations

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

Customs and trade facilitation

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

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

- Self-assessment of goods, enabling importers to replace individual declarations with a system of periodic returns;
- Advance electronic submission and processing of import documentation and other information, including manifests, before physical arrival of goods;
- Simplified import declarations and procedures and automatic release, based on AEO status;
- Mutual recognition of Authorised Economic Operator (AEO) status;
- Transparent and non-discriminatory fees, charges, and customs procedures;
- Advance rulings relating to binding tariff information, or decisions relating to binding origin information or valuation information;
- The establishment of a single window in the EU and the UK, enabling traders to submit all necessary documentation and data customs and other government agencies require for import, export, or transit to a single-entry point;
- Expedited customs procedures for express delivery shipments;
- Deferred tax and duties payments, with payment at quarterly intervals or longer;
- De minimis provisions:
    - Duty de minimis threshold at £800/€1000;
    - Shipments with an intrinsic value below the de minimis threshold should be released based on a limited data set, and not require an HTS;
- Adopt a simplified and mandatory vendor collect model for VAT collection, that includes an uncomplicated registration system that doesn't require collection from customs at the borders;
- Identical data set requirements for customs declarations in UK and EU;

- Acceptance of the export declaration in the EU as the import declaration in the UK, and vice-versa;
- Acceptance and validation by EU customs authorities of UK customs declarations, releasing the goods and informing UK customs, and vice versa;
- Simplified rules of origin and cumulation;
- Complete waiver of safety and security information, similar to current EU-Switzerland and EU-Norway relationship;
- Remote release: by separating the flow of the physical goods and the data linked to the goods, the goods can be cleared at the point of arrival without physically presenting the goods to the customs office of destination;
- The UK's access to the EU's Registered Exporter System (REX) to facilitate the handling of certificates of origins for companies that have distribution models that service both the EU market as well as the UK market at the same time.

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

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

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

In sum, we encourage creative and innovative solutions to ensure as seamless as possible customs procedures in the new relationship. Further analysis and negotiation between the two parties is necessary to find creative solutions which also respect the principles and integrity of the Single Market. These efforts should be achieved with significant business input. Lastly, the parties should agree to a regular review process to consider new customs and trade facilitation opportunities in order to continually improve the trading relationship between the parties.

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

Recommendations

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

Healthcare

AmCham EU members belonging to the Life Sciences industry have undertaken significant efforts to prepare for the UK's departure from the EU, notably given the industry's role in supplying medicines to patients in the EU and UK. In the context of the future relationship, it remains critical for the EU and UK to secure as ambitious a deal as possible and take steps to help industry to support public health.

This is based on some core drivers: minimising the disruption in supply of medicines to patients in both jurisdictions, supporting the global competitiveness of the life sciences sector in the EU and UK, and avoiding unnecessary ruptures that could have negative impacts on competitiveness, employment, and economic growth. Moreover, AmCham EU members stress the importance of ensuring timely access to medicines, and continued focus on global regulatory convergence.

Given this, to mitigate risk of disruption to supply, our sector is calling for immediate focus on securing a **Mutual Recognition Agreement** (MRA). This would recognise the assessment work for pharmaceutical manufacturing and supply (Good Manufacturing Practice – GMP, and import testing) between the EU and UK. The EU already has similar MRAs with the US, Canada, Japan and a number of other markets. Adoption of such an MRA should be quicker to achieve than that for other EU- MRAs, given that the EU and UK are starting from a position of full alignment of GMP rules, that standards are defined globally[2] and the UK has now also signed MRAs with a number of same countries as the EU.

[2] Via PIC/5, the Pharmaceutical Inspection Co-operation Scheme

Within the confines of what is viable due to the decision to pursue an FTA, the EU and UK should conclude an agreement that secures the **greatest possible regulatory alignment and cooperation on human medicinal products**. Reflecting precedents from previous agreements, an FTA should also include ambitious provisions on **sharing of data**, the **protection of intellectual property** (IP), **customs facilitation,** as well as **rules of origin** (RoO). Given the level of existing trade integration, we also believe the EU and UK should establish a **working group on pharmaceuticals and medical devices**, also building on the experience of the EU-Korea FTA.

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

Recommendations

- A Mutual Recognition Agreement (MRA). to recognise the assessment work of manufacturing standards and avoid re-imposition of import-testing for medicines supplied to EU patients. The EU already has MRAs with the US, Canada, Japan and a number of other markets).
- Within an FTA: zero tariffs, going beyond the WTO zero-for-zero pharmaceutical tariff agreement. Effective customs facilitation measures. Provisions on Regulation, IP, Data and that will support the Life Sciences sector in the EU, as well as UK.

Small and medium-sized companies (SMEs)

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

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

Recommendations

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

Trade in services and investment and other issues

Cross-border trade in services

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

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

- There should be binding market access and national treatment commitment for courier services;
- A level-playing field with the universal service provider(s);
- Equal treatment of international courier services and international postal services regarding customs and other laws and procedures related to import and export, including those related to border procedures, customs clearance and security procedures;
- That the universal service provider does not engage in cross-subsidising of competitive services from the supply of the universal service;
  Transparent and non-discriminatory license application procedures, if required; and
- Prohibit the assessment of fees or other charges on courier service suppliers in order to fund the supply of universal service;
- Eliminate any market distorting laws, regulations, or policies that grant advantages to postal operators providing competitive services;
- Independence of the regulatory body;
- United States to ensure continued transatlantic connectivity between the EU, UK, and the US.

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

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

In a future relationship between the EU and the UK, incorporating Mode 5 for services in the future FTA would provide great benefit to AmCham EU members' activities in the field of research and development. Allowing research, development and design costs incurred in the EU or the UK to be deduced from the customs value for

products imported into the EU or the UK (from third countries) would represent a better appreciation of the value of services included in physical products.

Recommendations

- An ambitious chapter on cross-border trade in services which would allow service providers from the EU in the UK and vice versa to operate on a non-discriminatory manner and compete with national providers on a level-playing field.
- FTA+: A chapter on Mode 5 to allow for a better appreciation of the value of services in physical goods.

Financial services

The negotiating objectives published by the EU and UK envisage a future relationship based on regulatory equivalence, underpinned by close regulatory and supervisory cooperation, in which both sides retain their regulatory autonomy. Within this framework, **we encourage the EU and UK to seek as close a relationship as possible**. It is in the interests of both sides to agree a relationship that allows for the greatest possible market access to enable the continued flow of capital and liquidity.

We welcome the Political Declaration's commitment to a relationship that preserves financial stability, market integrity, investor and consumer protection and fair competition. The relationship should also recognise the benefits of integrated markets in supporting the European economy. We believe that **minimising market fragmentation is the most effective way to deliver financial stability, while serving the needs of European businesses and investors**. As AmCham EU has argued in the context of developing the Capital Markets Union, the EU's openness to global business and investment will continue to be a key factor in driving long-term economic growth and competitiveness.

Equivalence decisions under existing frameworks

Businesses have prepared for the end of passporting and a potential no-deal Brexit. Notwithstanding, given the interconnectedness of the EU and UK, it is important that action is taken to **minimise potential disruption to markets at the end of the transition period.**

We welcome the commitment in the Political Declaration that both sides will endeavour to conclude equivalence assessments under existing frameworks before the end of June 2020. Given the EU and UK will start from a position of regulatory alignment, we **hope these assessments will be concluded by June and the equivalence determinations will be made quickly thereafter.** Equivalence determinations should be taken on the basis of the merits of the financial regulation being assessed; external political factors should not have bearing on these decisions. We note that some of the equivalence determinations will need to be made well in advance of the end of the transition period to provide time for market participants to adapt, for example, recognition of CCPs.

A stable long-term relationship

Equivalence-based market access

- Both sides have affirmed their ability to take unilateral equivalence decisions and to keep their respective equivalence regimes under review.
- The future framework should **provide as much transparency and certainty as possible around the processes for assessing, granting and withdrawing equivalence.**
- AmCham EU has long supported a system of outcomes-based equivalence, which promotes transparency, predictability and deferential treatment between regulatory authorities. As a general principle, we **caution against moves towards extraterritoriality, relocation, or taking an overly granular approach to assessing the equivalence of another jurisdiction's rules**. These approaches would have negative outcomes for consumers and the broader economy.

Structured regulatory and supervisory cooperation

- The structured regulatory and supervisory cooperation will be fundamental to building a stable and sustainable future relationship. The objective should be to formalise this cooperation as soon as possible;
- The framework for regulatory cooperation should be embedded in the economic partnership agreement. This would increase the stability of the framework and provide additional certainty to market participants and regulators. The EU-UK framework could build on previous agreements with financial services chapters, including the EU-Canada Comprehensive Economic and Trade Agreement and the EU-Japan Agreement. There is also the precedent of the EU-US Forum. However, given the high degree of integration between the EU and UK, we would expect these cooperation arrangements to be much deeper.
- We note this cooperation will be built on long-standing relationships and it will be important to have close dialogue at all levels, both formal and informal.
- There should also be an opportunity for appropriate consultation and dialogue with market participants.
- We support the Political Declaration's commitment that this cooperation *"should include transparency and* appropriate *consultation in the process of adoption, suspension and withdrawal of equivalence decisions, information exchange and consultation on regulatory initiatives and other issues of mutual interest, at both political and technical levels."*
- This cooperation should include notification and discussion of potential regulatory changes as early as possible in the policy-making progress so there is an opportunity to discuss and where possible resolve issues that could lead to the withdrawal of equivalence.
- We welcome the commitment to cooperate in international bodies. The members of AmCham EU have been strong supporters of strengthening the international regulatory framework, which has led to increased resilience in the global financial system. In this context, we have encouraged the EU and the US to engage in international fora and implement international standards consistently. We encourage continued coordination between the UK, US and EU.

Recommendations

- In line with the Political Declaration, the EU and UK should conclude equivalence assessments by June 2020. Equivalence decisions should be made quickly and publicised thereafter.
- Establish structured regulatory and supervisory cooperation as soon as possible.
- Provide as much transparency and predictability around equivalence processes.
- Policymakers should avoid the politicisation of equivalence determinations which leads to market uncertainty and is a deterrent to the attractiveness of Europe as a region.

Investment

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

Recommendations

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

Tax

Minimise the incidence and burden of taxes on goods and services

On the UK leaving the EU, a new border will be created, across which goods and services will flow. Such movement of goods and services potentially creates 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.

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

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. 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.

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

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. In the long-run, having to deal with a UK VAT system that would take its own path could increase the complexity for traders. 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.

Maintain and enhance tax dispute mechanisms throughout the transitional period

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. 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

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

Telecommunications

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

Recommendations

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

Electronic commerce

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

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

Other key elements that should be included in a digital trade chapter include provisions on cooperation on cybersecurity, protection of source code and promotion of commercial encryption, preserving market-driven standardisation and global interoperability. It is in particular important that close cooperation continues on cyber security and that the UK continues to align with the general principles of the Directive on Security of Network and Information Systems (NIS).

Recommendations

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

Government procurement

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

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

Recommendations

- We welcome the UK's commitment to join the WTO's GPA, with its commitments aligned to those of the EU schedules in order that the parties can seek to include provisions on continued reciprocal access to public procurement markets.

- The UK should maintain its current public procurement laws as transposed from the EU Directives, including for Scotland, Wales and Northern Ireland as public procurement falls under their devolved powers. The EU and UK should seek to reach an agreement on a mechanism to ensure the future convergence of public procurement laws and procedures.

Media and broadcasting

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

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

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

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

Recommendations

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

Intellectual property rights

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

While the EU Withdrawal Bill should convert EU law as it applies in the UK into domestic law on the day the UK leaves, members of AmCham EU require certainty regarding the legal framework on intellectual property rights,

and a continued high-level protection of intellectual property rights both in the EU and the UK in their future relationship.

Community acquis in the field of intellectual property rights

The EU Withdrawal Bill will convert EU law as it applies in the UK into domestic law on the day the UK leaves. This applies in the field of IPRs (EU acquis). In the long term, a particular concern is that the case law of the European Court of Justice would no longer have a binding effect in the UK. Over time, the (case) law in the UK may start to diverge from EU law, which would have a disruptive effect on the businesses. Therefore, we would like both the UK and the EU to ensure that a future FTA commit to maintaining strong standards of IP and cooperation on enforcement.

Patents and standards

Implementation of the Unified Patent Court (UPC) is now uncertain. We understand that Germany intends to take the correct path towards ratification as quickly as possible; the UK has recently stated that it no longer wishes to participate, but its legal position is unclear. AmCham EU encourages the other participating member states to pursue the implementation of the UPC and to seek to include the UK if at all possible. To that end, the proposed FTA should include provisions addressing the implementation of the UPC and the UK's participation in it.

Additionally, post-Brexit 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. The proposed FTA should therefore include a respect for standards development by the EU Standards Organisations (e.g. CEN, CENELEC and ETSI), to the extent that the same underlying mandatory legal requirements are applied.

Enforcement of IPRs

UK brand owners currently rely on the EU IP Enforcement Directive to make a single EU customs recordal. It is welcome that as part of the EU Withdrawal Bill, the UK will continue to apply the IPR enforcement directive (IPRED), which sets out a minimum level of protection in the civil courts of the EU Member States and made some remedies available in the UK (e.g. publicity orders), which were not available before. However, pan-EU remedies would no longer apply to the UK or be available in the UK courts. In respect of infringement proceedings, the UK Courts will lose the power to grant pan-European injunctions. The UK will also diminish as a venue of choice for litigating European IP infringements. It will be necessary for parties to run concurrent infringement proceedings in both the UK and the EU. There must be provision in the UK-EU FTA for effective enforcement of IP rights, through concepts of civil liability for infringement, injunctive relief and maintaining liability for online services that play an active role in the dissemination of content.

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). 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. Fighting piracy requires significant

international law enforcement co-operation. Cooperation between the UK and European policing organisations (such as EUROPOL) is vital and should be a priority in discussions regarding the future relationship with the UK.

These issues need to be addressed in the future FTA between the EU and the UK, to ensure a high level of protection and robust enforcement of IPRs.

Trademarks and designs

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

Copyright

The UK and the EU are both members of numerous international treaties and agreements, which should ensure a high level of protection of copyright. However, the continued effect of EU Directives and Regulations (copyright Acquis and pending legislative initiatives), once the UK leaves, will ultimately depend on the terms of the future relationship with the EU. Core international copyright standards – such as the Three Step Test for defining the scope of exceptions and limitations to copyright – must be maintained. AmCham EU therefore recommends that both the UK and the EU assess the potential impact of Brexit in the field of Copyright in their future relationship.

Recommendations

- Both the UK and the EU should ensure that a future FTA commit to maintaining strong standards of IP and cooperation on enforcement.
- FTA+: The FTA must address the UK's continued participation in the Unified Patent Court and the Unitary Patent, and include a respect for the standards development by the EU Standards Organisations (e.g. CEN, CENELEC and ETSI), where the same underlying mandatory legal requirements are applied.
- The FTA should address the possibility of the UK continuing to participate in the Unified Patent Court and the Unitary Patent, and the question of standards parity or harmonisation.

Transport

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

- Maintain status quo in terms of access to each other's transport market based on the principles of reciprocity and free choice of mode of transport;
- Bar the EU and the UK from taking discriminatory measures;
- Allow the carriage of goods between the EU and the UK (international carriage) to take place under the EU authorisation for EU carriers and under a similar UK authorisation for UK carriers;
- Ensure that the procedures for issuing and renewal of authorisations are transparent and based on well-defined criteria;
- Allow for status quo for cross-trade, goods in transit, and cabotage;
- Be complemented with strong provisions in the framework for the future relationship on mutual recognition of professional qualifications for drivers and auxiliary road transportation services;
- Include provisions on the facilitation of border controls, ensuring the availability of the necessary infrastructure (including priority lanes for trucks) and avoiding the introduction of any measures or formalities which would restrict or impede international transport.

Similarly, for aviation it is important that the EU and the UK avoid disruption to the flow of goods and trade relationship between the EU27 and the UK, and ensure **air transport** connectivity between the UK and the EU. Since air transport is not covered by the WTO, there is no fall-back option to an existing international agreement. AmCham EU calls on negotiators to:

- Ensure in time continued connectivity through an EU-UK air transport agreement, coming as close as possible to the status quo. This should include preservation of current ownership and control provisions between the EU and the UK and the exchange of 3rd, 4th, 5th, 7th and 8th freedoms for all-cargo aircraft combined with an article providing for operational flexibility;
- In addition, wet leasing should be allowed without restrictions. An open and liberal EU-UK air transport agreement will provide assurance to the air transport sector and its users – whether citizens or businesses – that EU27-UK air connectivity will be preserved;
- Align their air safety regulations to the greatest extent possible, through an aviation safety agreement and regulatory cooperation framework to ensure close cooperation between the European Union Aviation Safety Agency (EASA) and the UK Civil Aviation Authority (CAA). Any agreement should address areas including design, production, maintenance, licensing, training and simulator qualifications, and promote the exchange of safety information and data;
- Work together to ensure a continued application of the EU-US Open Skies Agreement during the transition agreement, and already start working on solutions with the United States to ensure continued transatlantic connectivity between the EU, UK, and the US.

Recommendations

- FTA+: A road transport agreement to ensure continued ground transportation, allowing for cross-trade, goods in transit, and cabotage.
- FTA+: An air transport agreement including the 5th and 7th freedom of the air for all-cargo flights, complemented with a comprehensive aviation safety agreement.

Mobility and social security coordination

Skills

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

One in five companies in a recent survey highlighted labour shortages as the key reason the company could not expand[3]. Restrictions on free movement and the subsequent barriers to the access of highly skilled workers would therefore hamper economic growth and investment.

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

Recommendations

- An EU-UK Free Trade Agreement should include ambitious provisions on free movement of natural persons.
- The agreement should also include a provision for mutual recognition of professional qualifications, allowing skilled workers to access the UK job market without unnecessary barriers.

Socio-economic cooperation

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

The future EU-UK relationship should ensure that UK scientific excellence can continue to contribute to European consortia. The EU and UK will both benefit from finding a solution that allows the UK to continue to

[3] 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.

collaborate in the EU's research programmes including FP9, and key Public-Private Partnerships (PPP). This is particularly key for the UK's leading life sciences sector, where access to medical innovation risks being undermined should the UK be excluded.

Recommendations

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

Level playing field for open and fair competition

Level playing field – competition policy

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

One-stop shop for merger filings

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

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

The administrative burden and risk of divergent outcomes is of course not different from the situation with any other third country. Nevertheless, for both practical, historical and forward-looking reasons, the future EU-UK relationship should include a framework for cooperation on merger cases notified to both jurisdictions, to align outcomes to the extent possible, ensuring certainty for business. Concretely, this should involve formal cooperation in collecting and exchanging evidence and coordinating procedures and decision-making processes. The CMA should also agree to accept EU notifications, supplemented by additional information specific to UK requirements, or proceed on a case-by-case basis.

Alignment of antitrust proceedings

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

on its behalf. The future EU-UK investment and trading relationship should include a formal cooperation agreement between the CMA and the Commission concerning investigations and enforcement of competition rules.

State aid

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

Recommendations

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

Energy and civil nuclear cooperation

Energy and raw materials

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

Recommendations

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

Participation in Union programmes

Security, defence, space and foreign policy cooperation

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

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

The UK should remain closely involved in the development of EU security, defence and space policies, as a third country partner, by virtue of geography and common geopolitical challenges. While this could be seen to set precedent to other nations that would be less desirable policy partners, the successes of existing deep cooperation should be reason enough to forge a mechanism to allow it to continue. Continued alignment on aviation security will also be important and should be implemented through mutual recognition of the application of regulators.

On joint capability, and the research and development of capability, the UK has stated its willingness to pay its own way post-Brexit, to remain part of the EU's security, defence and space initiatives. This would be mutually beneficial to both the EU and UK, bringing economies of scale as well as a number of otherwise unique benefits (in terms of IP) to the table.

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

Recommendations

- Special recognition of the UK as a NATO ally and advocate for close EU-NATO cooperation.
- An ambitious EU-UK consultation process on capability development priorities and mutual access to the best technologies.

- A comprehensive cooperation mechanism, such as an administrative agreement between the UK and the European Defence Agency (EDA), similar to Norway's.
- UK access to EU Security, Defence and Space--related R&D programmes and to 'selected' Permanent Structured Cooperation in Defence (PESCO) projects.
- UK-headquartered companies and undertakings, whether legally based in the UK or the EU, should be granted access to the EU's security, defence and space market as long as their involvement does not put at risk the EU's essential security interests.
- The UK and the EU should not disrupt complex supply chains but rather facilitate collaboration across companies on both sides of the Channel.
- A final agreement should ensure the UK continues to participate in existing skills research and other related EU programmes (e.g. Horizon Europe, Clean Sky 3, European Defence Fund, PESCO, Military Mobility etc.) and agencies (e.g. European Aviation Safety Agency).

Conclusions

The UK's Departure from the EU will likely require significant adaptation and adjustment for companies, as the UK prepares to leave the EU Single Market and become an independent trading nation. Regardless of political motives, it is important to acknowledge the impact the UK's departure will have on the operability in Europe companies of all sizes and from all jurisdictions. The perpetuated uncertainty concerning the future relationship remains a key concern for companies, alongside the risk of another cliff-edge scenario at the end of 2020. This context is further exacerbated by the significant consequences of the Covid-19 crisis, which will almost certainly lead to a period of economic downturn in Europe and beyond.

Businesses require certainty and predictability – the UK and the EU should therefore negotiate an ambitious and forward-looking future relationship in the scope of what is politically achievable. A zero quota and zero-tariff agreement on goods should constitute the basis of the agreement alongside the greatest possible level of regulatory alignment. Excessive divergence would result in great costs associated with red tape. Ultimately, the two sides should be looking to deliver a new long-term relationship that puts the interests of consumers and companies at the heart of the negotiations. This means building on the deep and comprehensive links that underpin EU-UK ties, limiting disruption and uncertainty in the interim, and preserving the integrity of the Single Market – which remains the key driver for US investment.