



Edward Gresser
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St NW
Washington, DC 20508

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U.S.-UK Trade Agreement

BritishAmerican Business (BAB) submission to the Office of the United States Trade Representative on Negotiating Objectives for a Trade Agreement with the United Kingdom (USTR-2018-0036)

SME Note: BritishAmerican Business (BAB) has within its membership, and works with, a sizeable number of UK and US small and medium-sized enterprises (SMEs) and our submission contains multiple examples raised to us on barriers SMEs have faced in the US to UK export market.

Introduction

We are delighted to make comments to the United States Trade Representative on negotiating objectives for a U.S. – United Kingdom Trade Agreement in behalf of BritishAmerican Business (BAB)(Docket Number: USTR-2018-0036).

BritishAmerican Business is an exclusive members' organizations and a policy and advocacy organization. We are the voice of transatlantic business. We support policies and actions that will protect and enhance the environment for trade and investment between the US and the UK. We do so by working with our members to conduct research, publish reports and lead the transatlantic trade and investment sector input to policy discussions taking place within and between both governments.

Our membership includes leading US investors in the UK and major British companies in the US; all who contribute significantly to jobs, growth and innovation on both sides of the Atlantic. We sit at the heart of a vibrant community of businesses - small and large - and stakeholders, all who form and contribute one of the most successful economic relationships in the world.

Our members and stakeholders are ambitious when it comes to their activities in the transatlantic corridor. We see this relationship as a source of opportunity, strength and stability in all times. We believe that increased trade and investment between the U.S. and the UK will help our economies grow, and benefit businesses, workers and citizens alike.

There is no question that the transatlantic economic relationship is already strong. The mutual flows of investment and the relevance of the UK market in every single U.S. state speak for themselves. But we also know there is much untapped potential. Too often opportunities remain unused or unnecessary resources are tied up because companies keen to expand across the Atlantic meet barriers to trade and investment that hold them back. There have also been unnecessary barriers to trade put in place, most notably U.S. Section 232 tariffs on imports of steel and aluminium from the UK and the subsequent reciprocal retaliatory measures by the UK. We hope the goodwill



demonstrated by both sides in preparation to negotiate prompts the removal of these tariffs and the agreement precludes such action taking place again.

Over many years, BAB has been a strong advocate for closer economic integration and collaboration between the US and the UK. We supported the negotiations for a Transatlantic Trade and Investment (TTIP) agreement, with the ambition to make the UK a key European driver for the negotiations; we set out early areas of future U.S.-UK economic collaboration; we welcomed bilateral initiatives, such as the U.S.-UK Sciences and Technology Agreement or the U.S.-UK Agreement on Insurance and Re-Insurance, tangible examples of how this relationship can be advanced in a fruitful way; and we are delighted to support USTR and its UK counterparts on local initiatives to create excitement but also to learn from companies and stakeholders how this unique economic relationship can be advanced.

We welcome the decision of the USTR in October 2018 to notify Congress that the current Administration intends to negotiate a trade agreement with the UK. We further welcome the opportunity to submit our comments to this USTR consultation on the US priorities and negotiating objectives as the USTR, alongside other agencies, prepares to negotiate a trade agreement with the UK when it is able to do so.

Our comments build upon the work that BAB had produced over the past few years, and most recently in context of the UK-US FTA Consultation by the UK Department for International Trade (DIT). The submission refers to anecdotal evidence from firms, where available. Context for BAB's submission are its principles published in the document '*Principles for a New Chapter in the UK-US Economic Relationship*' in October 2018.

Negotiation Objectives for a Proposed US-UK Trade Agreement

General and product-specific negotiating objectives for the proposed agreement

- In general terms, the starting place for negotiating objectives should follow the standard areas addressed in TTIP:
 - Market Access
 - Rules, and
 - Regulatory Cooperation

For more details on the above, please see BAB's 'Consolidated Submission on Transatlantic Trade & Investment Partnership (TTIP)'

- We do believe that a U.S.-UK Trade Agreement should aim to reach a new level of economic cooperation, particularly in areas that have traditionally been under-represented in trade agreements, for example in services. This will serve to deepen the close relationship between both countries whilst setting an advanced template for other countries to follow, thus continuing to lead in raising global standards.
- We welcome the ambition expressed by the US Government that a U.S.-UK Trade Agreement should identify ways to reduce costs associated with regulatory differences by promoting greater compatibility between both systems, while maintaining high levels of health, safety, and environmental protection.



- A successful U.S.-UK Trade Agreement should also put a great emphasis on achieving an outcome that results in greater transparency, participation, and accountability in regulatory processes.
- Further, given the relevance of smaller firms to the US and UK economies, we believe that any future U.S.-UK trade agreement needs to be 'user-friendly' for those firms and address their needs. For example, different sections need to be drafted in a way that smaller firms can execute on the improvements that a trade agreement promises to deliver.
- Finally, when consulting with companies over the barriers they face; we often hear that it is not (always) the regulatory barriers that hold companies back; but "simple" things such as the availability of information, visa issues or questions around custom declarations; things that can hopefully be easily resolved at an earlier stage. Particularly in context of the current political environment in the UK in terms of its ability to conclude a comprehensive trade agreement and the challenges that TTIP brought to light (agrifood, public procurement, healthcare etc.), we call for pragmatism that allows to bring our nations closer in areas where there is common ground, without having everything be derailed by the ambition of an only comprehensive trade agreement.

Relevant barriers to trade in goods and services between the United States and the UK that should be addressed in the negotiations

Goods

- Tariffs to the UK are generally low however there is some evidence that tariffs can be high, resulting in added on business costs. This is particularly true for small businesses where the costs of exporting to the UK can be complicated and not clear from the outset the total cost.
- For example, one Michigan SME who create cross trainers (exercise equipment) say the high tariff cost of purchasing US products in containers with a high value of the content of the container can make them uncompetitive.
- For companies dealing in chemicals, existing tariffs has been raised as a cost-intensive issue due to the high volumes of trade in the sector going both ways across the Atlantic. A goal of a US-UK Agreement should be to remove chemical tariffs and increase regulatory cooperation. In particular common principles for information sharing, data recognition, prioritising chemicals for review and evaluation, and coherence in hazard and risk assessment (based on scientific evidence).
- In the automobile sector, increasing mutual recognition of existing standards and eliminating, where possible, duplicate testing in both markets if they satisfy the safety standard. This is another sector where a framework for developing future standards would be a welcome outcome of an agreement.
- Regulatory alignment and barriers from duplicate testing also feature in the pharmaceuticals and medical devices sector. For pharmaceutical products the regulatory regimes in the US and UK are similar across all the main parts; product testing, manufacturing practices and post-market surveillance. Data requirements however differ meaning duplicate inspections



from regulators in both markets (FDA in the United States, MHRA in the UK). Mutual recognition of inspections could help remove the duplicate testing which currently add extra operational costs and delay.

- The tariff elimination goals set out in the Comprehensive Economic and Trade Agreement between the EU and Canada give a good example of the benchmark for tariff elimination. The aim of the negotiation on tariffs should be for an elimination on tariffs on goods, with phase-out period established if and when needed.
- The US should also encourage the UK to sign and implement WTO agreements on the area of tariff elimination. For example, the WTO Pharmaceutical Tariff Elimination Agreement.

Services

- The US and the UK economies are characterized by large and growing services sectors. A U.S.-UK trade agreement should put an emphasis on trade in services, particularly in business services.
- Further, the U.S. and the UK should build on existing liberalisation agreements or use them as appropriate templates.
- Financial Services are vital to both economies. Increased financial services regulatory cooperation offers opportunities for growth to both economies through regulatory coherence. This includes in the burgeoning Fintech industry.
- We encourage both sides to build up the capacity of the U.S.-UK Financial Services Regulatory Dialogue, offering opportunities for stakeholder engagement, and being ambitious in its aims.
- One emphasis continuously made by transatlantic firms is that a future U.S.-UK arrangement should deepen collaboration on digital services.
- Digital services are the defining features of the modern economy. Data is the lifeblood of that economy with the free flow of data essential to almost every businesses operation.
- Securing a U.S.-UK economic relationship that will thrive for the remainder of the twenty-first century relies on even greater flows of digital information and digital services.
- In addition to an arrangement that either integrates or replicates the U.S. - EU Privacy Shield currently in place, both sides should seek to implement a binding agreement that ensures cross-border data flows, prohibits customs duties on digital products, avoid data localization, and ensures competition in telecommunications services (including in business to business services) while promoting investment in access networks.
- The recently agreed United States-Mexico-Canada Agreement contains a chapter on digital which should serve as the baseline for the trade agreement negotiation.



The economic costs and benefits for U.S. producers and consumers of the removal or reduction of tariffs and removal or reduction of non-tariff barriers on articles traded with the UK

- During the TTIP negotiation process from 2012-2016, numerous studies demonstrated the benefits from a trade agreement between the US and the UK. For example, a report produced for the then Department for Business, Innovation and Skills, by the Center for Economic Policy Research concluded that a UK-US FTA could potentially add £1 billion to the UK economy by eliminating tariffs and up to £10 billion by eliminating Non-Tariff Barriers. The gains are curtailed though if an agreement did not include a reduction in non-tariff barriers.
- A US-UK agreement negotiation process should identify ways to reduce costs associated with regulatory differences by promoting greater compatibility between our systems, while maintaining high levels of health, safety, and environmental protection. Achieving an outcome that results in greater transparency, participation, and accountability in regulatory processes is also critical to addressing and preventing NTBs.

Treatment of specific goods (described by U.S. Harmonized Tariff Schedule numbers) under the proposed agreement, including comments on: (i) product-specific import or export interests or barriers; (ii) experience with particular measures that should be addressed in the negotiations; and (iii) ways to address export priorities and import sensitivities in the context of the proposed agreement

- The US and UK both have multi-faceted market access frameworks. The aim of the trade agreement with the UK should be to make both markets more competitive, allowing the best products to be brought to the markets of both countries.
- Eliminating discriminatory market access regulations, where they occur, will allow U.S. and UK firms to bid for tenders and have the same opportunity as their counter-parts to secure contracts.
- A lack of transparency and accountability in regulatory and standards processes can lead to unnecessary, costly, or duplicative rules that reduce US competitiveness and act as discriminatory barriers to U.S. exporters.
- We have heard from members, for example in the life-sciences sector, that non-discriminatory pricing and access solutions for medicines in the UK should be addressed.
- We also noted an emphasis to include provisions into a future agreement that avoids parties to establish localisation requirements. For example; data storage, server location(s), over-the-top domestic employment quotes, requirements for management or measures that limit the judicial form companies can choose to set up their business operations.



- This also applies internally within the US where state level requirements can have uncompetitive domestic and local requirements. We have heard from large US firms who are affected by these requirements when importing their products back into the US.

Customs and trade facilitation issues that should be addressed in the negotiations

- A significant proportion of US exports to the UK are goods, with the increase of e-commerce driving this further. There is a need to improve and simplify the procedures and processes which apply at the UK border to lower US companies', particularly smaller firms' costs and reliability of trade.
- Examples include:
 - Simplifying UK customs and import procedures, making them more intuitive and easier to understand. One California SME who make music goods and services identified problems in identifying Rosewood – commonly used for guitar necks- into the UK unless specifically stated what type of Rosewood it is (ie Brazilian or legal Rosewood from a sustainable farm/forest).
 - One Ohio whiskey producer said customs and shipping paperwork were “time consuming and confusing” resulting in their first shipment being sat in a New York pier due to a paperwork error that couldn't be explained.
 - Similarly, an Illinois alcoholic spirits producer said that in contrast to selling in the US, the UK involved much more complicated paperwork. The biggest burden they highlighted were 'record-keeping' and the need to have this simplified between the US and the UK.
 - “Unpredictable” customs and duties. This includes a California SME who make greetings cards described UK having 43 per cent of the original order cost added in duties to an order of greetings cards into the UK by UK customs.
 - Another California SME said this inability to provide customers with exact costs causes difficulties due to the need to assess customs and taxes before exporting.
 - Similarly, one Michigan SME who create tiles said the lack of information and resources regarding the actual costs and paperwork required to get products through UK customs was a big burden in the way of them increasing exports to the UK.
 - Once in the UK, one Georgia SME with an established presence in country said managing taxation on imports into the UK and imports exported from the UK to the EU adds a substantial burden to their operations.
- Based on available evidence, issues to be addressed in a U.S.-UK trade agreement should include:
 - Identical data set requirements for customs declarations
 - Acceptance of export declarations in the US as the import declarations in the UK, and vice versa
 - Acceptance by UK customs authorities of US customs declarations, releasing the goods and informing US customs, and vice versa
 - Advancements of electronic submission of import and other documentation including manifests before physical arrival of goods
 - Agreement on expedited customs procedures for express delivery and for companies who are trusted traders
 - Increase of the customs “de minimis” level for customs filings to at least \$800.



- Information on customs and trade facilitation should also be part of any future SME portal that Governments may jointly create.

Sanitary and phytosanitary measures and technical barriers to trade that should be addressed in the negotiations

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Other measures or practices that undermine fair market opportunities for U.S. businesses, workers, farmers and ranchers that should be addressed in the negotiations

IP

- A US-UK trade agreement can create new benchmarks in IP protection capable of being replicated in subsequent trade agreements with third countries by both the US and the UK.
- Any agreement between the US and the UK should resist indigenous innovation protectionism and recognise the importance of promoting effective and robust IP frameworks and IP protection globally.
- This includes mutual recognition of IP-related standards and regulation, such as design protection certificates. It also includes recognising the increasingly important role that online platforms play in the ecosystem of digital distribution and ensuring that both sides commit to making sure those platforms act in a responsible way. This does not mean holding the platforms legally liable for all of the content on their services or all of the actions of their users, but it does mean recognising, through distinct legislative or voluntary mechanisms on each side, that online platforms have a critical role to play in making the internet a safe and lawful place for consumers and businesses to operate.
- Further, future IP protection standards should be consistent, at least at sector level, to avoid differences in timelines or scope of protection.

Rules of Origin

- Rules of Origin (RoO) will be a joint area of challenge for the both sides in the negotiation. However, the challenge should not deter from finding a common, mutually-accepted way to determine where a product has been produced. This will allow for companies in the US, who rightfully are proud of geographic origin of their produce, to comply with RoO criteria and bring their products to the UK market.
- This already exists and has benefited Bourbon Whiskey and Tennessee Whiskey in the EU market.
- Requirement for proof that RoO are being met should be established in a way that does not create unnecessary burdens to companies.



- The recently agreed EU-Canada and EU-Japan agreements provide examples of workable RoO management.

Other evidence received:

UK Company Incorporation

- The length of time it takes to incorporate in the UK was also identified as a significant non-tariff barrier by both large and small US companies.

Procurement

- There are also informal but impactful factors affecting the ability of US firms securing business in the UK. One Maryland SME said the difficulty in overcoming local influences and inside connections when bidding on a project against resident companies was an unexpected barrier to exporting into the UK.

Mobility of talent

- While we acknowledge that that immigration-related issues are traditionally not within the scope of a trade agreement and within the responsibility of participating Departments, we want to point out that barriers experienced by companies to bring talent across the Atlantic is regularly being addressed in the context of how U.S.-UK economic relations can be improved.
- BAB would welcome the exploration on whether a mechanism can be introduced that increases and facilitates mobility of talent between the US and UK further. This could include new visa arrangements, expedited processing or mobility incentive schemes.

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Contact: BritishAmerican Business Inc New York and London
Contact: Emanuel Adam, Director of Policy and Trade: eadam@babinc.org
Theo Bachrach, Policy and Public Affairs Manager: tbachrach@babinc.org