



House of Commons
International Trade Committee

UK-US Trade Relations

Second Report of Session 2017–19

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to the report*

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International Trade Committee

The International Trade Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for International Trade and its associated public bodies.

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Summary

The US is the UK's largest single-country trade partner, with the US-UK trade relationship being valued at over £160 billion. The UK and US are also each other's largest contributors of foreign direct investment, having around \$1 trillion invested in each other's economies. The Department for International Trade (DIT) has identified a trade deal with the US as its first priority for new trade agreements after Brexit. DIT has also established a UK-US Trade and Investment Working Group responsible for providing commercial continuity after Brexit, and for laying the groundwork for a potential future trade agreement.

Pursuing a trade agreement with the US after Brexit could have a transformative effect on the UK economy, for better or worse. Economic modelling of the effects of the Transatlantic Trade and Investment Partnership (TTIP) suggested that an ambitious agreement could raise UK GDP by 0.14–0.35%, and increase the size of the EU economy around €120 billion (or 0.48% of GDP). However, recent modelling by the Treasury found that a US deal could provide a benefit to UK GDP of 0.2% in the long-term, within a range of 0.1 to 0.3%, although we heard that the economic benefits of trade agreements can exceed government estimates. Trade agreements, by their nature, also involve trade-offs. The Government should be clear, before entering into any trade negotiations, about the relative weight it intends to give the interests of different sectors within the UK economy. The negotiations of trade agreements must be approached in a considered, purposeful sequence. The benefits of an agreement must also be carefully understood through detailed modelling, having regard to the likely removal of non-tariff barriers achievable in the agreement. Before commencing trade negotiations with the US, the Government should publish a clear, evidence-based and comprehensive trade strategy which sets out its key objectives, interests and priorities for future trade agreements. The Government must not make agreements for agreements' sake. It should also undertake detailed modelling work and conduct a comprehensive economic impact assessment of a potential UK-US trade deal, outlining the sectoral and regional impacts.

Foremost among the issues the Government should consider before approaching the negotiating table with the US is how it will approach regulatory cooperation in a UK-US agreement. The big 'win' in modern trade agreements is the reduction of non-tariff barriers, primarily attributable to differences in regulatory regimes. The UK, as an EU member state, and the US have very different approaches to regulation, standardisation and conformity assessment. The EU's regulatory model is highly centralised, and uses a precautionary approach whereas the US tends to adopt a more de-centralised, risk-based (otherwise known as science-based) approach to regulation.

The UK's future approach to regulatory matters in a UK-US agreement will require careful evaluation and is not a decision which can be taken in isolation. The Government has a variety of options available to it, ranging from full alignment with the US's regulatory model to remaining aligned with the EU. Any increase in regulatory co-operation is likely to have economic benefits. However, pursuing a comprehensive FTA with the US, including on regulatory matters, could also give rise to regulatory barriers with the UK's other major trading partners, depending on the approach taken. We heard that this risk existed for the automotive, agriculture and chemicals sectors, although all also

saw opportunities in the US. The Government should be clear, before entering into any trade negotiations, about the relative weight it intends to give the interests of different sectors within the UK economy. Policies on the level of regulatory alignment the UK has with the EU and the US must not be considered in siloes, but with full consideration of the impacts of any decision on the trading relationship and trade levels with each respective jurisdiction or bloc. The Government should also consider establishing a cross-departmental working group on trade and regulation which informs all the UK's trade negotiations, including with the EU. Irrespective of the Government's future approach to regulatory cooperation, we welcome its assurances that it will not lower existing product safety, environmental and animal welfare standards in a UK-US agreement.

The Government has further indicated that it will seek to be a champion of trade in services in the future. With services contributing approximately 80% of UK GDP and 44% of UK exports, it is evident that increased market access for UK service providers could be a key win from a UK-US agreement. However, as with trade in goods, UK-US trade in services encounters a number of regulatory barriers. Particularly in respect of financial services, the US has been reticent to roll back its legislative response to the global financial crisis to permit greater access for EU service providers. Sub-federal US services regulation also presents a unique hurdle to a UK-US trade agreement. These difficulties give rise to concerns that the Government will not seek reciprocal market access for UK service providers relative to US providers, with the Minister committing only to seeking maximum market access. The UK may also encounter challenges, particularly with respect to state-level regulation, to including government procurement in a UK-US agreement. However, procurement is likely to be a key offensive interest for the UK and the Government should consider its inclusion in any agreement. Before negotiating any UK-US agreement, the Government should explore options for addressing the complexities of federal, state and local restrictions on the provision of services and awarding of procurement contracts. Such options must include state-level campaigns on market access issues; a Washington-only approach will not suffice. The Government should also ensure that state-level representatives are included on the UK-US Trade and Investment Working Group, or, if necessary, create separate, state-level working groups. While there may be some practical difficulties in doing so, securing sub-federal US participation should be a key objective for any FTA negotiation framework.

As a sub-issue relating to trade in services, the movement and protection of data will become increasingly important in future UK trade deals, including with the US. Once the UK leaves the EU, it will no longer be covered by either the EU's existing General Data Protection Regulation (GDPR) or the EU-US Privacy Shield Arrangement. The Government should consider mirroring the GDPR and seeking an adequacy agreement with the EU. Prior to negotiating an agreement with the US, the Government should also consider replicating the EU-US Privacy Shield Arrangement in a new bilateral UK-US arrangement.

There are lessons to be learnt from the stalled TTIP negotiations before pursuing a UK-US agreement. One of the primary concerns regarding TTIP was the perceived lack of transparency in the scoping, negotiation and eventual ratification processes. The Government's future approach to transparency in trade negotiations requires elaboration. It would be a retrograde step if the trade negotiations undertaken by

the UK independently were less transparent than those undertaken by the EU. The Government should also reflect on the other core concerns which emerged during the TTIP negotiations; namely, investor-state dispute settlement (ISDS) and the potential impact of the agreement on public services, specifically the NHS. The Government should identify the purpose of an ISDS mechanism in a UK-US agreement in circumstances where both the US and UK have sophisticated, independent domestic judicial systems. The US is also likely to pursue services liberalisation and enhanced intellectual property rights protection in any agreement which could, in some forms, permit US firms to tender to provide UK public services. The universal access to healthcare guaranteed by the NHS must not be compromised as part of any UK-US deal. The Government should also ensure that the NHS's pharmaceutical purchasing model is not adversely affected.

1 Introduction

1. The United States of America (US) is the UK's largest single-country trading partner and largest contributor of foreign direct investment (FDI).¹ In 2015, the US accounted for 19.7% and 11.1% of UK's total exports and total imports, respectively.² The Government has identified the US as one of several countries with whom it wants to pursue a free trade agreement (FTA) after Brexit. The purpose of this inquiry has been to examine UK-US trade relations, the Government's proposal to pursue a UK-US FTA in the future, and the benefits and challenges of such an agreement. This Report considers the implications of pursuing an FTA for the UK's wider trade policy, and seeks to explore the issues which could arise in the course of negotiating the agreement.

2. The Report is structured as follows. Chapter 2 considers where an FTA with the US sits within the Government's overarching trade policy strategy. Chapter 3 examines the potential macro-economic benefits of a UK-US FTA. Chapter 4 explores regulatory issues which may arise in the context of a UK-US FTA, and examines how issues of alignment and divergence can be managed in the UK's trade policy. Chapter 5 considers case studies of certain sectors, and the potential benefits and detriments of a UK-US FTA for trade in goods in those sectors. Chapter 6 addresses the role of trade in services for a UK-US trade agreement, and the various benefits and barriers which the UK may encounter. Chapter 7 considers the lessons that can be learned from the experience of the European Union (EU) and US negotiating the Transatlantic Trade and Investment Partnership (TTIP) (an FTA that was being negotiated, but was not concluded, between the EU and US).

3. In the course of our inquiry we took oral evidence from 17 witnesses, including the Minister of State for Trade Policy, Rt Hon Greg Hands MP, at six evidence sessions. In addition, we received 37 written submissions. Our predecessor committee commenced an inquiry into the same topic in February 2017. Before the inquiry was closed due to the General Election, the previous committee took oral evidence from three witnesses at two evidence sessions. In addition, it received 73 written submissions. We would like to thank all of those who took the time to provide us with evidence across both inquiries.

1 Confederation of British Industry ([TER0028](#))

2 Office for National Statistics, [The UK trade and investment relationship with the United States of America: 2015](#), 5 September 2016

2 Sequencing and Priorities

Background

4. Pursuit of new trade agreements with the UK’s trading partners around the world is a major plank of the Government’s Brexit strategy.³ The Government has begun identifying potential future FTA partners, but has said it will not negotiate new FTAs before leaving the EU,⁴ although the draft text of the EU-UK Withdrawal Agreement provides the UK can “negotiate, sign and ratify international agreements” during the transition period “provided those agreements do not enter into force or apply during the transition period, unless so authorised by the [EU].”⁵

5. Reaching new agreements will depend on, among other things, the political will of the parties involved. Shanker Singham told us that, “[f]or any trade deal you need political will”.⁶ He added that “for a trade deal to be quick ... the heads of state on both sides [have] to really want to do the deal and to drive their negotiators to get a deal.”⁷ The Australian Ambassador to the UK, His Excellency Alexander Downer, reiterated this position when discussing the Australia-US FTA. He said that:

... all free trade negotiations depend on one thing. They don’t really depend on resolving difficult technical questions as much as they do on political will. If the political leadership really wants a free trade agreement, it will happen quite easily.⁸

6. The Department for International Trade has been clear that the US is a priority for a new FTA. In June 2017, the Secretary of State for International Trade, Rt Hon Dr Liam Fox MP, told reporters in the US that leaving the EU “offers an unprecedented opportunity to reshape our independent trading ambitions and build on the already strong trading relationship with ... the US.”⁹ In July 2017, the US Trade Representative and Dr Fox established a UK-US Trade and Investment Working Group—one of 14 such groups¹⁰—which is responsible for providing commercial continuity after Brexit, and for “laying the groundwork for a potential future [FTA]”.¹¹

7. We were further told that the US Administration possesses the same will as the Government with respect to a UK-US FTA. TheCityUK said “[t]here is currently political will on both sides to achieve a wide-ranging UK-US trade deal.”¹² Mr Singham said that there was “an identity of interest between the US and the UK” and “a great appetite in the Trump Administration ... to have an agreement that enables us to deal with distortions in

3 Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017, p 10

4 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 141 [Dr Liam Fox]

5 [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), Article 124

6 Q 18

7 Q 43

8 Q 336

9 “[Brexit: Liam Fox arrives in Washington for US-UK trade talks](#)”, *Verdict*, 24 July 2017

10 The other working groups are with Canada, Mexico, the Andean Community, Israel, Turkey, Norway, India, China, Korea, Japan, Vietnam, Singapore, Australia and New Zealand (see Q 383).

11 Department for International Trade, “[U.S.-UK Trade and Investment Working Group Statement](#)”, 15 November 2017

12 TheCityUK ([TER0023](#))

other markets.”¹³ In March 2018, the Minister further told us that the UK and US share, “right the way across the board, a desire ...to seek such an agreement”¹⁴ and that both President Trump and Prime Minister May had “expressed a clear political will to see a UK-US trade agreement” in January 2017.¹⁵

8. However, despite the “positive mood music from President Trump”, some witnesses told us that reaching a UK-US agreement “will be complex, tough and probably take much longer than expected”.¹⁶ TechUK told us that “the current approach of the US to free trade does not appear to be the best environment for concluding a mutually beneficial comprehensive trade deal”.¹⁷ We heard that President Trump’s approach to trade was imbued with “a more protectionist sentiment” which has “caught fire in the United States”.¹⁸ This sentiment was said to be evidenced by “[President] Trump’s personal obsession with bilateral trade balances”,¹⁹ the US’s “populist ... ‘America first’ doctrine”²⁰ which “manifests itself in the Buy America rules”,²¹ the US’s proposal for automotive rules of origin in North American Free Trade Agreement (NAFTA),²² and the US’s proposed sanctions on steel and aluminium for national security reasons. While saying that the US trade policy in this respect was “quite a nuanced thing”, Shanker Singham told us that the UK was “not going to get a change in Buy America”²³ which has a longstanding legislative basis used at federal, state and city levels and which the “US administration has repeatedly affirmed support for”.²⁴ The City of London added that “[t]here is no indication that ‘America First’ will usher in a US retreat from the global rule-making process.”²⁵ In respect of the steel sanctions, the Minister also told us that the Government was being “extremely active in making clear our extreme disappointment with what the President appears to be proposing” with respect to steel and aluminium tariffs.²⁶ As of March 2018, it was reported that EU states would be temporarily exempt from the tariffs until 1 May 2018.²⁷

Trade Policy Strategy

9. At present, UK trade policy is governed by the EU’s ‘Trade for All 2015’ strategy. The EU’s strategy identifies several strategic priorities, including:

- furthering the liberalisation of trade in services, with a particular focus on digital trade, e-commerce, and regulatory fragmentation;

13 Q 14

14 Q 358. See also TheCityUK ([TER0023](#)) (“There is currently political will on both sides to achieve a wide-ranging UK-US trade deal.”)

15 Q 355

16 Professor Philip Lawrence ([TER0029](#))

17 techUK ([TER0034](#))

18 Q 348 [His Excellency Alexander Downer]

19 Q 186 [Dr Peter Holmes]

20 Professor Philip Lawrence ([TER0029](#))

21 Q 14 [Shanker Singham]

22 Q 228 [Mike Hawes] (“For the US, for NAFTA, they require about 65% North American content. Donald Trump has made noises that he would like to see the originating content rise to over 80%, with the US originating content at over 50%. In other words, he is trying to solidify that.”)

23 Q 15

24 Global Justice Now ([TER0016](#))

25 The City of London Corporation ([TER0030](#))

26 Q 369

27 “[Trump temporarily excludes EU, six other allies from steel tariffs](#)”, *Reuters*, 23 March 2018

- increasing transparency in the EU’s trade and investment policies and agreement making processes;
- pursuing trade and investment policy based on values; and
- strengthening the EU’s presence in Asia and the Pacific, including by setting ambitious objectives with China, and requesting a mandate for FTA negotiations with Australia and New Zealand.²⁸

The EU is one of many trading blocs or countries which have an overarching trade policy strategy, such as Canada,²⁹ India,³⁰ New Zealand,³¹ Norway (as regards the EU),³² and the US.³³

10. The purpose of a trade strategy is for the Government to set out “what [its] priorities are in terms of offensive interest by sector, but also market priorities”.³⁴ In the absence of an overarching trade policy, it has been argued that governments can fall into the habit of pursuing “agreements for agreements’ sake” following trends in other countries.³⁵ Dr Maria García, Bath University, told us that “[e]ntering into FTA negotiations with no clear sense of domestic policies and preferences is a major mistake, especially when dealing with US negotiators.”³⁶ Nick von Westenholz, National Farmers Union, also expressed some concern that “in its enthusiasm to demonstrate its ability to do trade deals ... the UK may rush into a trade deal with the US”. For him, this could “carry with it a very large risk that we do not carry out due diligence and ensure that our interests are properly represented in those negotiations as well.”³⁷

11. The Department is yet to publish an overarching trade policy strategy. In October 2017, it released a Trade White Paper which outlined some basic principles that will shape the UK’s future trading framework, and the Department’s approach to developing its trade policy.³⁸ In November 2017, the Secretary of State told us that “across the whole of Government, clearly our priority is the European Union agreement”.³⁹ However, the Department’s priorities are “getting our schedules under technical rectification at Geneva and the EU FTAs, and only then will we look at new FTAs”.⁴⁰

28 EU Trade for All [website](#); European Commission, [Trade for all: Towards a more responsible trade and investment policy](#), October 2015.

29 Global Affairs Canada, [Global Markets Action Plan: The Blueprint for Creating Jobs and Opportunities for Canadians Through Trade](#)

30 Government of India, [Foreign Trade Policy: 1 April 2015—31 March 2020](#)

31 New Zealand Foreign Affairs and Trade, [Trade Agenda 2030: Securing our place in the world](#)

32 Government of Norway, [Norway in Europe - the Government’s work programme for cooperation with the EU 2017](#), February 2017

33 Office of the United States Trade Representative, [2017 Trade Policy Agenda and 2016 Annual Report of the President of the United States on the Trade Agreements Program](#), March 2017

34 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 53 [Allie Renison]. See also Confederation of British Industry (TER0028).

35 Australian Productivity Commission, [Bilateral and Regional Trade Agreements](#), *Productivity Commission Research Report*, November 2010, p 303; Institute for Government, [Taking back control of trade policy](#), May 2017, p 30.

36 Dr Maria García (TER0011)

37 Q 89

38 Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017

39 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 148 [Dr Liam Fox]

40 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 148 [Dr Liam Fox]

A UK-US FTA as part of a wider trade strategy

12. For the remainder of this chapter, we consider two strategic issues the Government needs to address when approaching a UK-US FTA. These are the sequencing of FTAs and the trade-offs the UK is willing to make in negotiating FTAs.

Sequencing of Trade Agreements

13. As part of an overarching trade policy strategy, countries usually consider the order in which agreements will be negotiated. For Hosuk Lee-Makiyama, Centre for International Political Economy, “sequencing is basically the main component of a trade strategy ... [the] order you move the pieces and which pieces you sacrifice determines whether you are a good chess-player or not”.⁴¹ The issue of sequencing may be relevant for a UK-US FTA in two respects: (i) how a US FTA should be sequenced with the UK’s new FTA with the EU, and (ii) where it should fall in the order of non-EU countries with which the UK negotiates FTAs. As noted above, the Government has said its priority is an agreement with the EU and, with respect to new FTAs, Dr Fox told us that “it looks like Australia and New Zealand would be our priorities after the United States.”⁴²

14. Witnesses differed as to whether a UK-US FTA should be negotiated before, concurrently with, or after an agreement with the EU. For Mr Lee-Makiyama, an EU and a WTO commitment “would have at least to be crystallised first”, or the “modality of negotiation with Europe” agreed, before the UK could consider negotiating other FTAs.⁴³ Samuel Lowe, then of Friends of the Earth, told us that the US could “drive a wedge between [the UK] and the EU from a regulatory perspective” unless the EU and US agreements were sequenced correctly. Mr Lowe contended that he would “certainly not have [a UK-US FTA] anywhere near the front of [the UK’s] queue”, and that the better approach was to “focus on the EU; focus on replicating the existing agreements we already have”.⁴⁴

15. By contrast, Shanker Singham, then of the Legatum Institute, told us that sequencing the EU agreement first risked “saying to the rest of the world that ... [we] are going to be regulatorily locked into the EU arrangements” and may cause other countries to “lose interest” and “pull back from the UK”. In his view, the better approach was to “move all of this forward at the same time. The EU has a track record of being more responsive on agreements when it sees that there are other options out there.”⁴⁵

16. The question also arose of the priority the US should be given when deciding the order in which to approach FTAs with non-EU countries. In considering the UK’s priorities for new FTAs, Mr Lee-Makiyama told the Treasury Committee that one option was to

41 Oral evidence taken before the Treasury Committee on 13 July 2016, HC (2015–17) 483, Q230 [Hosuk Lee-Makiyama]

42 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 105 [Dr Liam Fox]. For a discussion of the options for the UK to ‘rollover’ existing EU FTAs with third countries, see our first report: International Trade Committee, First Report of Session 2017–19, *Continuing application of EU trade agreements after Brexit*, HC 520.

43 Oral evidence taken before the Treasury Committee on 13 July 2016, HC (2015–17) 483, Q 230 [Hosuk Lee-Makiyama]

44 Qq 9, 26. See also Q 64 [Samuel Lowe] (“In the case of the US right now no deal would be better than a bad deal.”)

45 Q 22

“negotiate with a weaker part, a smaller [country], almost like a practice round, because it has a similar industrial structure, and you are more likely to get a better bid out of the smaller country”.⁴⁶ Citing the EU as an example, he added:

This is the reason why Europe negotiated first with Korea, then with Japan, and will negotiate eventually with China. You go to the guy who will give you the best offer, and then you take the same bid to the bigger guy and say, “I want the same from you.”⁴⁷

However, Dr Fox told us in November 2017 that there are a number of reasons why the “UK [is] a prime choice for the US in a future FTA”, including the similarity of the “types of economies in terms of relation of goods to services” and the fact that the UK “do[es] not threaten US manufacturing jobs, which is therefore not a political impediment to the President”.⁴⁸

17. Finally, in the context of sequencing we were told about the various ‘levels’ of trade policy. Mr Singham said that, in considering the UK’s independent trade policy, the Government should consider “what you can do unilaterally [...] then there are the bilateral deals [...] [and the] range of things you can do plurilaterally”.⁴⁹ In respect of the bilateral and plurilateral levels of trade policy, it was suggested that the UK could investigate joining the Trans-Pacific Partnership (TPP) or the NAFTA. However, we were told that joining NAFTA was “a bit of a pipe dream” and that it would be better for the UK to “revisit the issue of NAFTA accession” once it had greater clarity around the future of TPP.⁵⁰ Dr García further called for “[i]deas about joining NAFTA [to] be abandoned” owing to issues relating to timing, the approach of the current US Administration to the negotiations and the limited provisions in NAFTA on digital trade.⁵¹

Trade-offs

18. A number of witnesses to our inquiry argued that the Government, as part of its trade strategy, would need to decide what trade-offs it was and was not willing to make when agreeing FTAs. Gary Campkin of the TheCityUK told us that “[t]rade agreements are by their very nature a series of compromises and trade-offs”.⁵² The purpose of trade negotiations is to “come to a point where there is mutual advantage for both sides”.⁵³ In considering the mutual advantage from trade agreements, we were told that “negotiating an agreement that is good for the UK as a whole has to be a key goal”.⁵⁴ However, we heard that “[t]he impact of free trade is asymmetric”,⁵⁵ and “the negative impacts [can be] felt quite hard by a small number of people”.⁵⁶ Trade can also involve “structural change”

46 Oral evidence taken before the Treasury Committee on 13 July 2016, HC (2015–17) 483, Q 230 [Hosuk Lee-Makiyama]

47 Q 230

48 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 116 [Dr Liam Fox]

49 Q 22 [Shanker Singham]

50 Q 71 [Samuel Lowe, Shanker Singham]

51 Dr Maria García ([TER0011](#))

52 Q 129

53 Q 129 [Gary Campkin]

54 Q 134 [Gary Campkin]

55 Q 169 [Julian Jessop]

56 Q 169 [Julian Jessop]. See also Q 131 [Gary Campkin] (“There will be circumstances where some sectors may not get everything that they want, but that is ... the basis of a negotiation.”)

which can have “disruptive impacts for some regions and workers, if new competition proves too intense”.⁵⁷ In such circumstances, we were told the Government should “make sure that there are flanking measures to assist those industries that may have to go through some sort of transition period or some adjustment.”⁵⁸

19. Similarly, Shanker Singham said that achieving a comprehensive UK-US agreement “will involve a lot of compromises across a lot of different areas”.⁵⁹ One of the potential trade-offs identified was an ‘agriculture for services’ trade-off. In a paper on a potential UK-US FTA, the Legatum Institute argued that the “potential payments are large” for an agreement “providing access on agricultural products to the US allows for agreement in other areas that are more important for UK trade, such as financial services”.⁶⁰ However, witnesses from the agriculture sector expressed concerns about the potential impact of such a trade-off (see below at Agriculture).

20. In less than a year the UK will begin negotiating free trade agreements. The basis of these negotiations must be a clear, evidence-based and comprehensive trade strategy, which is open to scrutiny. There will be intense political pressure on the Government to strike free trade agreements before the next election to prove the success of its Brexit strategy, and an agreement with the US will be a tempting prize. The Government must not make agreements for agreements’ sake, and should ensure that it is selecting negotiating partners as a result of an overarching trade strategy that is formulated in consultation with Parliament, business and civil society. This does not mean that the US is not the right place to start.

21. A trade agreement with the US has the potential to have a transformative effect, for better or worse, on the UK economy. If it is the first nation with which the UK pursues a free trade agreement, we would expect the Government to be clear on how this fits in with its overarching strategy, and that it has considered and rejected for sound reasons possible alternatives.

22. Before embarking on a formal trade negotiation with the US, the Government should publish a trade policy strategy which articulates its vision for the UK as an independent trading nation and outlines the UK’s immediate and future trade priorities at the bilateral, plurilateral and multilateral levels, and in order to ensure clarity on the UK’s trading environment it would be preferable for Parliament to resolve the 2018 EU (Withdrawal) Bill and Trade Bill as soon as possible.

23. The Government should set out in its trade strategy what key objectives, interests and priorities it has before entering into trade negotiations, including on a UK-US FTA. It must also be clear about the sectoral and regional implications of pursuing particular trade policy objectives. Given that trade agreements can take years to negotiate, it is vital that the UK political parties attempt to form some level of political consensus on the direction of travel of trade policy to ensure that changes of government do not result in years of wasted effort at the negotiating table. The extent to which the Government should detail its negotiating mandate in advance and the effect that may

57 European Commission, [Trade for all: Towards a more responsible trade and investment policy](#), October 2015, p 17

58 Q 132 [Gary Campkin]

59 Q 63

60 Legatum Institute, [Developing a True Transatlantic Partnership—a High Standard Trade Agreement to Propel the Global Economy](#), June 2017, para 19.6

have on that negotiation should be the subject of further inquiry including, but not limited to, taking evidence from successful examples of the communication of the political economy of trade, such as New Zealand.

3 Potential Economic Benefits of UK-US Trade Agreement

Current State of UK-US Trade and Investment

24. The US is the UK's largest single-country trade partner. The CBI told us that the US-UK trade relationship is valued at over £160 billion,⁶¹ with the US accounting for 19.7% and 11.1% the UK's total exports and total imports, respectively.⁶² In 2017, the US exported \$123 billion of goods and services to the UK, making it the UK's 2nd largest source of imports, and imported US \$111 billion in goods and services from the UK.⁶³

25. The UK is also the single largest investor in the US. British companies annually invest over \$570 billion in the US, "contributing nearly 20% of all foreign-direct investment into the US".⁶⁴ The US is also the single biggest source of inward investment to the UK, accounting for 25% of all FDI projects in Europe and more than 12% of US FDI worldwide.⁶⁵ Gary Campkin told us that "something like 60% of US foreign direct investment in financial services comes to the UK."⁶⁶ Together, the US and UK have around \$1 trillion invested in each other's economies⁶⁷ and "every day, 1 million people in Britain go to work for a US company and 1 million Americans go to work for a British company".⁶⁸

26. We heard from a number of sectors in the course of the inquiry who provided a sector-specific assessment of current UK-US trade:

- Chemicals—Bilateral trade with the US in chemicals and pharmaceuticals in 2016 was £14.3 billion. The US was the UK's top export destination for chemicals (14%) followed by Germany (13%), Belgium (8%), the Netherlands (7%) and France (7%).⁶⁹
- Financial services—The UK exported £16 billion worth of financial services (including insurance) to the US in 2015, generating a financial services trade surplus with the US of £13 billion.⁷⁰
- Food and Drink—In 2016, the US was the UK's principal non-EU destination for food, feed and drink: 10% of UK exports went to the US (£2.1 billion, of which £1.5 billion was alcohol); 3% of imports came from the US (£1.25 billion). The UK had a surplus with the US of £895 million including alcohol, but a deficit of £634m excluding alcohol.⁷¹ UK food and drink exports to the US are dominated

61 Confederation of British Industry ([TER0028](#))

62 Office for National Statistics, [The UK trade and investment relationship with the United States of America: 2015](#), 5 September 2016

63 Bureau of Economic Analysis, [United Kingdom - International Trade and Investment Country Facts](#), December 2017

64 Confederation of British Industry ([TER0028](#))

65 Confederation of British Industry, [Sterling Assets: British Investment Creating U.S. Jobs](#), August 2016; Organization for International Investment, [Foreign Direct Investment in the United States - 2016 Report](#) Q 126

66 [Joint Release by the UK International Trade Secretary, Dr. Liam Fox and U.S. Trade Representative Robert Lighthizer](#), June 2017

67 Q 355 [Greg Hands]

68 Q 189 [Ian Cranshaw]; Chemical Industries Association ([TER0003](#)).

69 TheCityUK, ["The UK leads European finance"](#), 13 September 2016

70 National Farmers' Union ([TER0271](#))

by value added consumer products, including whisky (£873.9 million), gin (£172.6 million), salmon (£169.2 million), beer (£146.9 million) and vodka (£89.7 million).⁷²

- Insurance and Pensions—In 2015, the UK exported \$4 billion of insurance and pensions services to the US, while importing £146 million from the US.⁷³
- Tech—The UK exported £4.06 billion in telecoms, computers and information services and imported £2 billion.⁷⁴

Current UK-US Trade Agreements

27. Trade between the EU and US is primarily conducted under WTO rules, which includes the imposition of tariffs. Tariffs between the UK and US are, on average, quite low—around 3%⁷⁵—although “[s]ome tariffs are still particularly high in sectors that are relevant for trade”, such as chemicals and agriculture.⁷⁶ While the US and EU (and thereby the UK) do not have an FTA, both are parties to WTO agreements which further their trade relationship (e.g. Government Procurement Agreement). The EU and US are also parties to several bilateral trade-related agreements. In 1997 the US and EU signed a mutual recognition agreement (MRA) covering six sectors: telecoms equipment, electromagnetic compatibility, electrical safety, recreational craft, medical devices and pharmaceuticals.⁷⁷ However, to date, only three of the six sectoral annexes of the 1997 MRA have been implemented. The MRA also has a transatlantic structure for overseeing implementation.⁷⁸

28. Other notable agreements include the EU-US Open Skies Agreement (aviation), the Privacy Shield Agreement (discussed below) and the EU-US insurance coverage agreement.⁷⁹ The Open Skies Agreement allows EU airlines to fly to the US from any EU airport, regardless of their place of establishment, and operate international routes between the EU and the US, and routes beyond the EU and the US, without restrictions on the number of flights or type of aircraft. It also governs ownership requirements for EU and US airlines.⁸⁰ The EU-US insurance coverage agreement addresses three areas of insurance oversight: reinsurance; group supervision; and the exchange of insurance information between supervisors.⁸¹ According to the Commission, the agreement eliminates opportunity costs to EU business of \$400 million a year.⁸²

72 Food and Drink Federation ([TER0015](#))

73 Association of British Insurers ([TER0019](#))

74 techUK ([TER0034](#))

75 Q 8 [Samuel Lowe]; Chemical Industries Association ([TER0003](#)).

76 Q 163 [Dr Peter Holmes]

77 [Agreement on Mutual Recognition between the European Community and the United States of America](#)

78 Legatum Institute, [Developing a True Transatlantic Partnership—a High Standard Trade Agreement to Propel the Global Economy](#), June 2017, para 18.47

79 [Bilateral Agreement between the EU and US on Prudential Measures Regarding Insurance and Reinsurance](#)

80 [Summary of Decision 2007/339/EC on the Air Transport Agreement between the EU and its Member States and the United States of America](#)

81 Lloyd's ([TER0254](#))

82 Ibid; European Commission, [Factsheet: EU - US Agreement on insurance and reinsurance](#), 22 September 2017

Potential Economic Benefits of UK-US FTA

Economic Modelling and Trade Agreements

29. In this section we consider the potential effects of a UK-US FTA on the economy. First, we note some limitations of economic modelling in assessing future benefits of FTAs, and then we discuss the evidence we received on the potential overall effects of a UK-US FTA.

30. In the process of scoping potential FTAs, countries regularly prepare economic modelling of the potential effects of an agreement. Many studies of trade agreements use an approach called computable general equilibrium (CGE) modelling, which relies on estimates produced by the modellers of the impacts of removing tariff and non-tariff barriers (NTBs) to trade. Some have argued that the CGE-modelled effects of trade agreements depend largely on the assumptions made by the modellers, particularly with respect to the impact of NTBs on trade, and the data used.⁸³ With respect to the assumptions which underpin CGE models, we were told that “[o]ne of the weaknesses of any of the assumptions ... is that they are static models [which] do not take into consideration what changes of policy the Government might make as a result of the free trade agreement coming into force”.⁸⁴ His Excellency Mr Downer said that assuming that “behaviour is static ... [means] then the economic model is not going to turn out to be particularly valuable.”⁸⁵

Projected Benefits of UK-US FTA

31. We have heard several different projections as to the potential economic effects of a UK-US FTA. First, the Government offered some assessment of the potential effects of an agreement. In July 2017, Dr Fox reportedly said that the Department’s internal analysis showed that “bilateral US-UK trade could rise from £167bn a year to about £207bn by 2030 ‘if we’re able to remove the barriers to trade that we have’”.⁸⁶ Greg Hands further told us that the Department has “done some fairly standard use of Government models in this space”.⁸⁷ Subsequently, in March 2018, the Exiting the EU Committee published the Government’s internal analysis which found that the “modelled US deal ... [could] provid[e] a benefit to UK GDP of 0.2% in the long-term, within a range of 0.1 to 0.3%”.⁸⁸ However, on the subject of benefits to the Australian economy of an agreement with the US against their own Government forecasts, His Excellency Mr Downer told us, “it has exceeded our expectations [...] It has worked incredibly well.”⁸⁹ The Government’s analysis of the effect of Brexit on the economy, which took into account the possible effect of an agreement with the US, found that the effects could be dramatically different across regions and nations of the UK.⁹⁰ When we asked the Minister about this assessment, he told us that it was “impossible to really effect a proper estimate, because we have

83 Ferdi De Ville and Gabriel Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2016), pp 17–37

84 Q 322 [His Excellency Alexander Downer]

85 Q 330

86 “Liam Fox launches fresh drive on US-UK trade deal”, *Financial Times*, 24 July 2017

87 Q 359

88 Exiting the European Union Committee, [EU Exit Analysis Cross Whitehall Briefing: January 2018](#), 8 March 2018, p 14

89 Q 337

90 As above

no idea what is in the agreement”.⁹¹ The Minister told us that FTAs “add a significant amount to GDP on both sides”,⁹² and that a UK-US FTA could “[p]rovide a boost to the UK economy, potentially worth tens of billions of pounds”, based on “using computable general equilibrium trade models”.⁹³ Mr Hands had earlier also told us that not all UK trade with existing EU partners is determined by the EU FTAs in place, noting that FTAs “on average” “will add more than 32% to trade volumes”.⁹⁴

32. Other witnesses provided some percentage estimates of the potential GDP effects of a UK-US FTA. Samuel Lowe told us that “the guilty secret” of trade is that FTAs “do not deliver much aggregate growth”. According to Mr Lowe, “[a]nything over 1% is massive in terms of long-run growth, and most trade agreements are little more than rounding errors in terms of your long-run impact”⁹⁵ By contrast, Shanker Singham said that the “biggest gain you could have” from a UK-US FTA was 2–3% of GDP, which he said was the result of the impact of “[b]order barriers ... at the outset”.⁹⁶ Even where potentials gains are hard to model, the Australian High Commissioner told us that FTAs can “psychologically affect[] the attitude of businesses to that country” by creating “a sort of notion—albeit an exaggerated notion—of a single economy”. He told us that, following the Australia-US FTA, “Australian investors have proved to be more willing to go and invest in the [US]” and vice-versa.⁹⁷

33. We were told that, ultimately, the economic gains from a UK-US FTA depended on the reduction of regulatory barriers (discussed further below). For Mr Lowe, if the UK remained “broadly aligned with the EU regulatory system and [did] a tariff deal with the US”, the impact “would not necessarily be that great on a grand scale.”⁹⁸ Dr Holmes, University of Sussex, agreed that a shallow, tariff-only agreement “would have relatively little effect”, and the impact of a UK-US agreement “would really depend on how those regulations were adjusted”.⁹⁹ Accepting that economic forecasting is “very difficult to do”, Mr Singham also told us that “[a] comprehensive agreement that deals with regulatory barriers and behind-the-border barriers would do an awful lot”.¹⁰⁰

Projections of effects of TTIP

34. Others referred us to evidence about the projected impacts of TTIP as a guide to the possible effects of a UK-US FTA. We were referred to an economic impact assessment of TTIP by the Centre for Economic Policy Research (CEPR), which was based on assumptions of “25% removal of non-tariff barriers between the two partners, and 32.5% in some areas, such as chemicals, cars and ICT.”¹⁰¹ That study found that TTIP could

91 Q 360. See also Q 2 [Shanker Singham] (“The issue of the economic gain from a UK-US deal is difficult to answer without knowing what the agreement will be.”)

92 Q 371

93 Qq 355, 372

94 Oral evidence taken before the International Trade Committee on 24 January 2018, HC (2015–17) 520 iv, Qq 268–9 [Greg Hands]

95 Q 8

96 Q 10

97 Q325 [His Excellency Alexander Downer]

98 Q 8

99 Q 163

100 Q 10

101 Q 6 [Samuel Lowe]

raise UK GDP by 0.14%-0.35%,¹⁰² and that an ambitious TTIP deal would increase the size of the EU economy around €120 billion (or 0.48% of GDP) and the US by €95 billion (or 0.39% of GDP).¹⁰³ According to the study, the sectors most likely to benefit from TTIP included “processed foods (+9%), chemicals (+9%), other manufactured goods (+6%) ... and especially motor vehicles (40%)”. Other studies of TTIP which used different modelling and / or assumptions produced varying projections, from a negative effect on EU GDP of -0.5% and positive increase to US GDP of 0.36%,¹⁰⁴ to increases of 3.94% and 4.89% to EU and US GDP, respectively.¹⁰⁵

35. A UK-US FTA has the potential to have a positive effect on economic growth. However, given how central new free trade agreements are to the UK's Brexit strategy, and that an agreement with the US is top of the list, the Government should undertake detailed work modelling the potential effects of a UK-US agreement on the economy. The Government's explanation that the content of an agreement is unknown is not fully satisfactory; there is no reason why it should not model a range of scenarios. The Government has indicated undertaking only a limited exercise in modelling and should increase this work to look at the range of potential variations to best assess potential impacts.

36. The Government should be clear and well-informed about the potential economic effects (positive or negative) of a UK-US FTA. Before pursuing a US trade agreement, the Department should conduct a comprehensive economic impact assessment. The assessment should go beyond an econometric study of the potential impacts, and consider in detail the effects of an agreement, broken down by sector as well as by each of the regions and devolved administrations of the UK. The Government should also be clear about the assumptions regarding reductions in non-tariff barriers which underpin the impact assessment. It should also take account of any effect of a trade agreement between the UK and the US on trade between the UK and its other trading partners.

37. We accept that there will be some occasions when the Government should not publish certain information to protect the UK's negotiating position, but the Government should set out its position in its negotiating mandate, including identifying who is most and least likely to benefit from the proposed agreement.

102 Centre for Economic Policy Research, [Estimating the Economic Impact on the UK of a Transatlantic Trade and Investment Partnership \(TTIP\) Agreement between the European Union and the United States: Final Project Report](#), March 2013

103 European Commission, [Transatlantic Trade and Investment Partnership: The Economic Analysis Explained](#), September 2013, p 2

104 Federica Mustilli, “TTIP: Political and Economic Rationale and Implications” *Intereconomics*, vol 50 (2015), p 324; Jeronim Capaldo, “The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability”, [Global Development and Environment Institute Working Paper No. 14–03](#), October 2015, p 2.

105 Federica Mustilli, “TTIP: Political and Economic Rationale and Implications” *Intereconomics*, vol 50 (2015), p 324

4 Regulatory Cooperation

Role of Regulation in Trade Agreements

Overview

38. The traditional barriers to trade are “tariff barriers, non-tariff barriers and regulatory barriers”.¹⁰⁶ Historically, the primary gains from FTAs were realised through reductions in tariffs. However, Dr Holmes told us that:

... as tariffs have been reduced to very low levels ... the effects of trade agreements on price and thence directly on consumers, are much lower. We have to look really at the regulations—trade agreements are about regulations.¹⁰⁷

Regulatory and other NTBs can arise from differences in regulations and standards for goods and services. Different standards and regulations usually means that companies must demonstrate (i.e. through additional tests) that their products meet the requirements of both the country of origin and the export country.

39. Multiple witnesses told us that reducing regulatory barriers was a key win in modern trade agreements. BritishAmerican Business said in written evidence, “[m]ost of the economic value in trade agreements is delivered through the elimination of regulatory barriers.”¹⁰⁸ The CBI even estimated that “as much as 80% of the total economic benefit” from trade agreements could derive from removing NTBs.¹⁰⁹ The British Standards Institution (BSI) said that adopting a single standard, for example, “simplifies the market structure for trade, for innovation and for growth and is pro-competitive as it minimizes barriers to trade whilst maximizing the opportunities for business internationally.”¹¹⁰ The Society of Motor Manufacturers and Traders (SMMT) referred us to a study of TTIP which found that:

[The] total per cent trade costs for motor vehicles when non-tariff barriers (NTBs) are taken into account are 17.2% in the EU and 21.3% in the US. The same report estimated that motor vehicle output could increase by as much as 7.3% should the parties agree to reduce NTBs by 75% in the sector.¹¹¹

The Food and Drink Federation also noted the same study which found that “EU food and drink exports to the US are subject to an additional 73.3 per cent cost as a result of NTBs”.¹¹²

Regulatory Cooperation Mechanisms

40. Countries have developed different mechanisms for deepening regulatory cooperation and minimising NTBs. The CBI told us that regulatory cooperation mechanisms include

106 Q 41 [Shanker Singham]

107 Q 161

108 BritishAmerican Business ([TER0032](#))

109 Confederation of British Industry ([TER0028](#)); Dr Dennis Novy ([TER0002](#)).

110 British Standards Institution ([TER0033](#))

111 Society of Motor Manufacturers and Traders ([TER0035](#))

112 Food and Drink Federation ([TER0015](#))

“mutual recognition, harmonisation, equivalence ... or substitutional compliance”, as well as “bodies to continue regulatory dialogue and coordination”.¹¹³ These mechanisms operate in a hierarchy from regulatory dialogue and exchange of information, to mutual recognition and equivalence, to harmonisation.¹¹⁴

41. Harmonisation is the most integrated form of regulatory cooperation. It involves the adoption of the same regulations or standards by two or more parties to an agreement (either by adopting one of the parties’ standards or an international one).¹¹⁵ An alternative form of regulatory cooperation is mutual recognition, which is used to refer to at least three different kinds of regulatory cooperation:

- **Cassis de Dijon principle**—This principle is an exceptional form of mutual recognition and applies within the Single Market in respect of all rules in the EU/EEA which have not been harmonised. It means that any product lawfully sold in one country can automatically be sold in another even if the product does not fully comply with the technical rules of the other.
- **Equivalence**—In cases of equivalence, one country recognises that the regulations of a third country in a specific area achieve the same regulatory outcomes even if they do not follow the exact same specifications as the recognising country’s laws. As a result, if a product is compliant there, it need not go through extra checks and certification for compliance. This is the kind of regulatory cooperation suggested by the UK in its paper on the Northern Ireland border.
- **Mutual recognition agreements**—Mutual recognition of conformity assessments, either done through specific mutual recognition agreements (MRAs) or embedded in trade agreements, acknowledge the differences in two different regulatory regimes but permits one party to test and certify that a product complies with the other parties’ regulations. Such conformity assessment only agreements with one aspect of regulatory barriers—those created by duplication of testing and certification at the border.¹¹⁶

US and EU Regulatory Philosophies

Regulation

42. As trade agreements have become increasingly concerned with regulations, we were told that FTAs are only one way in which countries export their regulatory models. FTAs can require one party to adopt aspects of the other party’s regulatory model. But we were also told about the indirect ‘Brussels effect’—the idea that the “buying power [of some countries] allows them to essentially set rules beyond their own borders because companies have to align to sell in.”¹¹⁷ In addition, countries may also seek to influence the

113 Confederation of British Industry ([TER0028](#))

114 Michael Faubert and Amy Wood, [“Regulatory Harmonization in International Trade: A Categorical or Conditional Imperative?”](#), 26 July 2016

115 Ferdi De Ville and Gabriel Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2016), pp 53–5

116 Alex Stojanovic, [“Mutual recognition: can the UK have its Brexit cake and eat it?”](#), 1 September 2017

117 Q 6 [Samuel Lowe]. See also [“Why the ‘Brussels effect’ will undermine Brexit regulatory push”](#), *Financial Times*, 12 July 2017

ISO [International Organisation for Standardisation] and other standards bodies.¹¹⁸ We heard that “there are two regulatory superpowers in the world at the moment ... the EU and US”. We were also told that China is “on the rise”,¹¹⁹ and may even be “already there in terms of being a regulatory ‘superpower’.”¹²⁰

43. As an EU member state, the UK currently has EU standards, and the effect of the Withdrawal Bill is such that the UK will be aligned with EU regulations and standards as of March 2019. However, as part of its independent trade policy, the UK will have a choice as to whether, how, and with whom, it aligns its regulations in the future. In the context of a potential UK-US FTA, we heard repeatedly that the EU and US “regulatory regimes do not align”.¹²¹ Witnesses told us that the divergences between the EU and US are the result of “different approaches to regulation and that can act as a barrier”.¹²²

44. While the EU and US sometimes share the same broad objectives in terms of environment, conservation, food, human, animal and plant health regulations, witnesses described differences in “approach in terms of risk management”¹²³ as between the EU and the US, often referred to as the precautionary approach (EU)¹²⁴ and the sound-science approach (US).¹²⁵ In essence, the EU’s precautionary approach allows regulators to take a wide range of evidence (e.g. economic, social and environmental impacts) into account, allowing them to act even in the absence of incontrovertible scientific evidence that a substance or process is harmful.¹²⁶ This ‘hazard-based’ approach effectively shifts the “onus [to] the producer to demonstrate that the product does not cause harm, for it to be approved”.¹²⁷ By contrast, we were told that “US best practice ... involves the use of science-based approaches by regulatory agencies when regulating, explaining decisions, considering if regulation is actually needed.”¹²⁸ Contrary to the EU’s approach which places the onus on the producer, “[u]nder the US system, regulators need to prove a product is harmful in order [sic] to ban its sale”.¹²⁹

Standardisation and Conformity Assessment

45. The EU and US’s approaches to standardisation and conformity assessment differ in similar respects. Standardisation is the process by which technical standards for goods and services are defined. The EU’s standardisation process tends to be centralised, whereas the US system is decentralised, with the private sector playing a more significant role in standards-setting.¹³⁰ The BSI, for example, told us that the “US system does not

118 Q 49 [Samuel Lowe]

119 Q 6 [Samuel Lowe]. See also Q 49 [Samuel Lowe].

120 Q 63 [Shanker Singham] (“[China] are already exporting their version of standards, which is essentially a global standard with Chinese characteristics. That is not a good thing for the world, I would contend. It is very much a regulatory black box.”)

121 Q 6 [Samuel Lowe]

122 Q 218 [Mike Hawes]

123 National Farmers’ Union ([TER0271](#))

124 Ferdi De Ville and Gabriel Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2016), pp 69–71; Dr Maria García ([TER0011](#)).

125 Q 165 [Warwick Lightfoot]

126 Ferdi De Ville and Gabriel Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2016), pp 69–71

127 Dr Maria García ([TER0011](#)). See also Q 196 [Howard Chase].

128 Dr Maria García ([TER0011](#))

129 Dr Maria García ([TER0011](#))

130 CENELEC, [Position Paper on EU-US Transatlantic Trade and Investment Partnership \(TTIP\) – Technical Barriers to Trade – Initial EU Position Paper](#), September 2013

rely on a single national standards developing organization ... unlike the model in the UK, Europe and across the world.”¹³¹ The prevalence of the use of international standards also varies between the two countries. Dr García told us that “EU standards ... often coincide with internationally recognised standards” and that the EU “encourages trade partners to also adopt these international standards” in its FTAs.¹³² BSI likewise said that “over 80% of CENELEC¹³³ standards are identical to or based on [international] standards”.¹³⁴ By contrast, Dr García said that the “US considers that its regulations are of international standing”¹³⁵ and BSI noted that the “US system also defines what constitutes an international standard in a different way.”¹³⁶

46. The same differences appear to apply to conformity assessment. In the context of TTIP, a European Commission Paper on TTIP and Technical Barriers to Trade noted that EU and US regulators have different approaches to the conformity assessment of specific products and risks. The paper added:

... the US requires third party testing or certification for a number of products for which the EU requires only a suppliers’ declaration of conformity ... In other sectors, different conformity assessment requirements apply owing to the differences in the classification of the product; for example, in the EU there is a specific regulation for cosmetic products, while the US either does not specifically regulate them or classifies them as Over the Counter Drugs (OTCs), which sometimes implies a stricter regulatory regime.¹³⁷

For example, Mike Hawes, Chief Executive of SMMT, told us that for vehicles, the EU uses type-approval, under which “the vehicle is developed, it is tested and it is certified by an approved EU agency, which is a Government agency”. By contrast, the US uses self-certification. Under this model, regulators “have a rulebook and vehicle manufacturers will self-certify and then the regulators will basically intervene in the market occasionally to test vehicle”.¹³⁸

Options for Regulatory Cooperation in a UK-US FTA

Introduction

47. There are a variety of options for how the UK and US might approach regulatory cooperation in an FTA. In this section we consider a number of these options and the implications of each.

131 British Standards Institution ([TER0033](#))

132 Dr Maria García ([TER0011](#)). For the sake of clarity, BSI told us that, “[i]t is important to note that ‘EU standards’, as such, do not exist; they are European standards. CEN and CENELEC are not owned by, nor are they agencies of, the EU; they are independent as described above and their national membership extends to 34 countries, including the EU and EFTA countries and accession states.” (British Standards Institution ([TER0033](#))).

133 European Committee for Electrotechnical Standardization

134 British Standards Institution ([TER0033](#))

135 Dr Maria García ([TER0011](#))

136 British Standards Institution ([TER0033](#)). See also Q 229 [Mike Hawes] (“There is also the UNECE, which is the framework that both Europe and America have signed up to since 1998, as we try to develop global regulations, but the enforcement of that and the way it operates fundamentally differs between the two major markets.”)

137 European Commission, [EU-US Transatlantic Trade and Investment Partnership – Technical Barriers to Trade – Initial EU Position Paper](#), July 2013, p 5

138 Q 229 [Mike Hawes]. There are some industries in respect of which the US and EU’s approaches are somewhat inverted, such as toys (see British Toy and Hobby Association ([TER0037](#))).

Full alignment with US

48. Some witnesses told us that the UK faces a binary choice—“stay broadly aligned with the EU regulatory system and do a tariff deal with the US” or “negotiate [a] new deep trade agreement with the US”.¹³⁹ In order “to give ourselves the flexibility to negotiate [a] deep [US] trade agreement”, we were told that the UK would need to remove itself “from the regulatory sphere of the EU” and align with the US’s regulatory model.¹⁴⁰

49. Witnesses identified benefits of, and detriments with, this approach. Aligning with the US would, for example, remove the costs of the NTBs discussed above (e.g. 73.3% additional costs for food and drink exports to the US).¹⁴¹ Doing so was said to potentially result in a 2–3% increase to UK GDP¹⁴² and lead to an overall reduction in prices for consumers.¹⁴³ Other witnesses told us that “a deep agreement with the US would have a negative impact on the UK insofar as it instigated an extrication from the EU’s regulatory regime”.¹⁴⁴ Samuel Lowe, for example, told us that due to the “difference in the regulatory regimes of the EU and the US, when we remove barriers with the US, in some areas we will by necessity have to put them up with the EU” [or these could be put up by the EU]. He indicated these barriers could be “quite hefty barriers for UK exporters to the EU”.¹⁴⁵ Dr García similarly said that, as many EU standards “are widely accepted”, “a sharp deviation from these could result in additional costs to business, and potentially facing regulatory barriers elsewhere.”¹⁴⁶

50. We were also told that aligning with the US could result in the UK lowering its standards in some areas. Dr Holmes explained to us, on the one hand, “form[ing] an agreement with countries that have very good regulatory standards, [means] you can use those as a way of leveraging up your standard”. By contrast, “[i]f you sign an agreement that involves you being obliged to import stuff made to lower standards than your own, it can go that way”.¹⁴⁷ The adoption of one country’s standards may even preclude the execution of a trade agreement with another party. According to Peter Stevenson, Compassion in World Farming, “it would be almost impossible for the EU and the UK to reach a free trade agreement if [UK] regulatory standards ... on agriculture and other areas were significantly lower than those of the EU”.¹⁴⁸

Middle ground: global standards and mutual recognition

51. Other witnesses suggested that the choice between aligning with either the EU or US was non-binary. Shanker Singham told us that “[i]t is not a question of choosing one or the other”.¹⁴⁹ The issue was “find[ing] a way of having regulatory recognition interoperationally with the European system while they are also able to interoperate with the rest of the world”.¹⁵⁰

139 Qq 6, 8 [Samuel Lowe]

140 Q 6 [Samuel Lowe]

141 Food and Drink Federation ([TER0015](#))

142 Q 10 [Shanker Singham]

143 Q 166 [Warwick Lightfoot]

144 Q 6 [Samuel Lowe]

145 Qq 6, 7

146 Dr Maria García ([TER0011](#))

147 Q 161

148 Q 95 [Peter Stevenson]

149 Q 58

150 Q 27 [Shanker Singham]

52. We heard two options as to how this ‘interoperationality’ could be achieved. First, Mike Hawes of SMMT told us that, “[i]f you could get that harmonisation and mutual recognition of American and European regulation and put those two together, effectively that could become the basis for a global standard”.¹⁵¹ In other words, he suggested a UK-US FTA could work towards harmonisation of regulations and standards as against a global standard, with mutual recognition in respect of conformity assessment. The second option was advocated by Mr Singham, who suggested that the way to achieve ‘interoperationality’ was equivalence—aligning more closely with the US regulatory model and seeking recognition from the EU that the UK’s system achieves the same regulatory objectives, albeit in different way. For Mr Singham, the benefit of this approach was that it aligned the UK with a more ‘pro-competitive’ regulatory framework which was said to be a “game changer” in the context of a services agreement.¹⁵²

53. In the context of the debate around alternate options to full alignment, we also heard evidence about the possibility of UK producers producing goods to two different standards rather than seeking to align with either the EU or US. Dr Lorand Bartels told us that it was “technically possible” to do so, but it “would mean keeping the two product lines completely separate from each other”:

If you have a line of products that are just made for export according to EU standards that can happily continue and, at the same time, UK consumers can eat products that do not meet those standards. The difficulty there is a practical one. Again, it boils down to trust. Will the EU trust that there is not any—let’s say, to be neutral—cross-fertilisation or cross-pollination of the product lines?¹⁵³

Other witnesses questioned whether this approach was practical. Nick von Westenholz told us that, “for a UK farmer and maybe the sector in its entirety it would make economic sense to plump for one set of standards and regulations or the other, whether that would be the EU or the US.”¹⁵⁴ Mike Hawes likewise told us that “[t]o have a dedicated US [vehicle] line, you would need significant volumes.”¹⁵⁵

No alignment with the US

54. The final option we heard about was for the UK to “do a tariff deal with the US”,¹⁵⁶ and otherwise remain aligned with the EU’s regulatory model. As noted above, witnesses said that a tariff-only agreement “would have relatively little effect”.¹⁵⁷ In the context of the Northern Ireland–Ireland border—and specifically the UK’s agreement to “maintain full alignment” with relevant aspects of EU law—Dr Bartels told us about the potential impacts of maintaining alignment with EU law on the UK’s ability to make trade agreements elsewhere. He said:

151 Q 279

152 Q 2

153 Oral evidence taken before the International Trade Committee on 13 December 2017, HC (2017–19) 665i, Q 62 [Dr Lorand Bartels]

154 Q 93

155 Q 258

156 Qq 6, 8 [Samuel Lowe]

157 Q 163 [Dr Peter Holmes]

If what we are talking about is, in both cases, harmonisation, then definitely. If the UK has to make headlights in a particular way to sell them in Ireland, or in the rest of the EU, and then a different way to sell them in the US, you just have a clash, you have to choose. If you are talking about mutual recognition on either front—and, in particular, on both fronts—then you have many more possibilities [...]. In terms of the strict logic, the way out of harmonisation and the way to greater flexibility is mutual recognition of standards.¹⁵⁸

55. The reduction of non-tariff barriers is a key ‘win’ in modern trade agreements, and little of the potential economic benefit of a free trade agreement with the US will be realised if this objective is not achieved. As a recent EU member state, the UK will be starting from a significantly different regulatory position, and significant changes to regulation may be required to achieve a comprehensive FTA with the US.

56. While pursuing a comprehensive FTA with the US, including on regulatory matters, may have benefits for the UK, it could also give rise to regulatory barriers with the UK’s other major trading partners, including the EU. The decision about whether some increase in regulatory barriers with the EU in exchange for some removal of such barriers with the US is beneficial overall is a matter that will require careful evaluation. However, it is clear that the two cannot be considered in isolation. Policies on the level of regulatory alignment the UK has with the EU and the US must not be considered in siloes, but with full consideration of the impacts of any decision on the trading relationship and trade levels with each respective jurisdiction or bloc.

57. *The Government should consider establishing a cross-departmental working group on trade and regulation which informs all of its trade negotiations, including with the EU. The Committee will consider this issue further in its future work.*

Future Regulatory Cooperation

58. Evolutions in technology and other areas are out-pacing the ability of countries to regulate such developments. Data transfer and cyber security, for example, raise issues which “cross the traditional boundaries of regulatory disciplines and modes of international coordination”.¹⁵⁹ TheCityUK further told us that “[f]intech raises wholly new questions”, including “how and how far it should be regulated [and] its regulatory environment”.¹⁶⁰ To address these and other issues, the EU proposed establishing a ‘horizontal’ (cross-cutting) regulatory cooperation chapter in TTIP to promote more structured dialogue between regulators in all sectors covered by the agreement. The goal of this system was to “allow the EU and US regulators to interact with their counterparts as they develop new rules and review existing ones”. The mechanism did not require either side to “adopt the other’s approach to regulating”, but instead sought to “build bridges between the two systems” and work together early on in the process to make regulations which are “more compatible but which can also be more effective and efficient”.¹⁶¹

158 Oral evidence taken before the International Trade Committee on 13 December 2017, HC (2017–19) 665i, Q 50 [Dr Lorand Bartels]

159 TheCityUK ([TER0023](#))

160 TheCityUK ([TER0023](#))

161 European Commission, [TTIP and Regulation: An Overview](#), February 2015, p 8

59. Several witnesses supported the inclusion of a chapter on future regulatory cooperation in a UK-US FTA. Gary Campkin said that “there is clear potential for greater regulatory co-operation and coherence”, and that “it is really important to include this in the deal.”¹⁶² Giles Derrington, techUK, similarly told us that “[h]aving a living, breathing document is really, really important”. As for the form of the regulatory cooperation mechanism, Mr Derrington told us that TTIP negotiations did “quite a useful amount of work ... on early warning systems about the types of changes you might have in regulation”.¹⁶³ He further said that:

... if you do not have something that allows for development, then the risk for us—and this goes both for the EU trade deal and for the US—is that we end up in a situation where you would not want to develop new technologies here because you risk access to markets where you might see discrimination barriers put up as a first gap.¹⁶⁴

60. By contrast, in the context of TTIP some NGOs argued that the proposed regulatory cooperation could have a “chilling effect” on regulation by privileging the reduction of the regulatory burden impinging EU-US trade over other public interest objectives.¹⁶⁵ Witnesses to the Lords EU Committee inquiry on TTIP also expressed concern that US stakeholders and the US administration “would be able to input at a very early stage and ‘long before any Parliament in Europe’.” It was argued that this could shift “policy-making into ‘the pre-democratic sphere, the pre-public sphere, to bureaucracies’”, thereby giving stakeholders the opportunity to “delay or even kill legislation ... they dislike”.¹⁶⁶

61. The rate at which technology and tech businesses are developing far surpasses the capacity to predict future regulatory issues. It is critical therefore that any UK-US FTA is a living agreement. We support the inclusion of a structured arrangement for future dialogue between UK and US regulators, while recognising that such a dialogue should not have a chilling effect on future public interest regulation. In considering the form of the cooperation mechanism, the Government should have regard to the proposed future cooperation mechanism in TTIP and its potential benefits and risks.

162 Q 143

163 Q 270

164 Q 270

165 See, for example, Monique Goyens, “[Will regulatory cooperation in TTIP become a straight-jacket for EU law making?](#)”, March 2016; Gabriel Siles-Brügge, “[The Neglected Side to TTIP – Horizontal Regulatory Provisions](#)”, April 2016; Ferdi De Ville, “[Regulatory Cooperation in TTIP: A risk for democratic policy making?](#)”, FEPS Policy Brief, February 2016.

166 House of Lords European Union Committee, Fourteenth Report of Session 2013–14, *The Transatlantic Trade and Investment*, [HL Paper 179](#), para 191

5 Trade in Goods Case Studies

Background

62. In this chapter we consider the potential benefits and challenges for some key sectors in a UK-US FTA. For each sector, we consider the likely tariff reductions, and consequent economic benefits, which could be achieved in an FTA, and the other NTBs to doing so.

Reduction in Tariff Barriers

63. While trade agreements are increasingly concerned with removing NTBs, tariff reductions still deliver tangible economic benefits. As noted above, tariffs between the UK and US are, on average, around 3%¹⁶⁷ but can still be “particularly high” in sectors such as chemicals and agriculture.¹⁶⁸ The full extent of the tariff reductions achievable in a UK-US FTA is a matter for negotiation, but the previous Committee was told that the UK and US will probably commit “to eliminate immediately something up to around 99% of tariffs.”¹⁶⁹ We also heard in the context of the Australia-US FTA that “94% of [Australia’s] exports to the United States are completely duty-free and 100% of their exports go into Australia completely duty-free.”¹⁷⁰ Allie Renison, Institute of Directors, suggested that there may be exceptions for sensitive products, like agriculture. In the Australia-US FTA, these sensitives were managed through phase-out periods for tariffs and TRQs across the life of the agreement. If the Government proposes to use this approach in a UK-US FTA, we were told that there is a risk the US will agree to “reducing those tariffs in the phase-out periods run up to 30 years”, but will require the UK to lift its tariffs “quite quickly”.¹⁷¹ Accordingly, the Government must ensure that any lifting of agricultural or other tariffs is done in a way that is “balanced to both sides”.¹⁷²

Agriculture

Tariff barriers

64. Agriculture is traditionally one of the most contentious issues in trade negotiations, and is a primary offensive interest for the US. Nick von Westenholz told us that, in trade agreements, the US always “has offensive interests in terms of their agriculture sector ... and it will want to open up markets in the UK”.¹⁷³ The Secretary of State likewise accepted that “there are going to be asks that [the US] will want, probably in agricultural sectors”.¹⁷⁴

65. Agriculture is an industry in which average tariffs are ordinarily higher, and thus an area in respect of which tariff reductions may deliver considerable economic benefits. A

167 Q 8 [Samuel Lowe]; Chemical Industries Association ([TER0003](#)).

168 Q 163 [Dr Peter Holmes]

169 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 51 [Allie Renison]

170 Q 318 [His Excellency Alexander Downer]

171 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 51 [Allie Renison]

172 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 51 [Allie Renison]

173 Q 89

174 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 118 [Dr Liam Fox]

US Department of Agriculture study of TTIP noted that “the EU’s average agricultural tariff is 30%, well above the average U.S. agricultural tariff of 12%.” Some product tariffs were reported to be even higher, “averaging more than 80% for imported dairy products, more than 50% for sugar cane and sweeteners, and nearly 350% for sugar beets.”¹⁷⁵ The US Department of Agriculture study concluded that removing tariffs and TRQs in TTIP could have “increased U.S. agricultural exports to the EU by an estimated \$5.5 billion, measured against a 2011 base year”. It also estimated that EU exports to the US would be higher by \$0.8 billion. The report concluded that, “U.S. agricultural exports would have been 2% higher, while U.S. imports would have risen by 1%. By comparison, changes in both EU agricultural exports and imports are estimated to be lower.”¹⁷⁶

66. The Food and Drink Federation told us that a UK-US FTA could represent “a potential win-win opportunity for both consumers and the food and drink industry”.¹⁷⁷ According to the Food and Drink Federation, an ambitious TTIP agreement could have increased food exports by 26–45%. Warwick Lightfoot likewise told us that agriculture was an area in which “you would expect prices in a more open and liberal trade environment to actually fall.”¹⁷⁸ However, with respect to processed food products, the Food and Drink Federation noted that there was a disparity between average US tariffs (3.3%) and EU tariffs (14.6%). Due to the US’s comparatively low tariffs, the Food and Drink Federation concluded that the “overall gains from tariff dismantlement would be relatively limited, however it would provide a significant boost for the export competitiveness of certain sectors”. They also noted that “UK manufacturers would also benefit from a reduction to tariffs on certain imports of ingredients and raw materials.”¹⁷⁹

Sanitary and Phytosanitary, Animal Welfare and Environmental Regulations

67. Witnesses identified several possible NTBs to a UK-US FTA. First, we were told that the EU and US have vastly different sanitary and phytosanitary (SPS), animal welfare and environmental regulations and standards. According to Global Justice Now and Compassion in World Farming, some key differences include: (i) the US uses chemical washes, such as chlorine, in its production process;¹⁸⁰ (ii) the US uses growth hormones in animal feed (e.g. ractopamine in pork);¹⁸¹ (iii) GM foods are sold without labelling in the US; and (iv) 82 pesticides banned in the EU can be used in the US.¹⁸² In light of these differences, several witnesses said the UK should remain aligned with EU SPS, animal welfare and environmental regulations in a UK-US FTA. Peter Stevenson, Compassion in World Farming, said there was “utter absurdity” in having “regulatory coherence with a country that has almost no regulations” and that US agreement would make it “almost

175 US Congressional Research Service, [Agriculture and the Transatlantic Trade and Investment Partnership \(T-TIP\) Negotiations](#), 14 July 2016, p 6

176 US Congressional Research Service, [Agriculture and the Transatlantic Trade and Investment Partnership \(T-TIP\) Negotiations](#), 14 July 2016, p 3

177 Food and Drink Federation ([TER0015](#))

178 Q 166

179 Food and Drink Federation ([TER0015](#))

180 Global Justice Now ([TER0016](#))

181 Q 86 [Peter Stevenson] (“Ractopamine is a beta-agonist feed additive given to pigs to make them grow faster and produce leaner meat”); Compassion in World Farming ([TER0005](#) and [TER0229](#)).

182 Global Justice Now ([TER0016](#))

impossible for the UK to ever have good new welfare laws”.¹⁸³ The NFU likewise said that “UK producers are happy producing to the high standards they currently produce to and would like to continue to do that”.¹⁸⁴

68. Second, some witnesses noted that regulatory cooperation in a UK-US FTA could result in “a [regulatory] race to the bottom”.¹⁸⁵ Mr Stevenson told us that “we might see the US pressing us to dilute our existing laws in the name of regulatory coherence”.¹⁸⁶ The Food and Drink Federation further stressed that “negotiations should [not] result in any weakening of any protection for health, safety or the environment. Maintaining consumer confidence in the safety and authenticity of UK food and drink is paramount”.¹⁸⁷ It appears that the Government has ruled out this possibility in a UK-US FTA. Dr Fox said in November 2017 that “we are not going to see reductions in our standards”.¹⁸⁸ The Rt Hon Michael Gove MP, Secretary of State for Environment, Food and Rural Affairs, later told the Environment, Food and Rural Affairs Committee that “the Cabinet has agreed that there should be no compromise on high animal welfare and environmental standards.”¹⁸⁹

69. Third, we heard about the price pressures a UK-US agreement could place on UK agricultural producers. Mr von Westenholz told us that opening up trade between the UK and US could put “trade on an unfair basis” “if the standards that UK producers are required to observe in their production add cost, and ... the US [is] subject to standards that impose less cost”.¹⁹⁰ On a recent visit we heard evidence that suggested we should explore whether relatively minor changes in certain quotas could be sufficient incentive in some areas.

70. By contrast, other witnesses argued that the UK should diverge from the EU’s agricultural regulatory model and pursue a more ‘science-based’ approach. The Agricultural Biotechnology Council wrote that “EU regulation, particularly for agricultural biotechnology, has been a barrier to innovation”.¹⁹¹ The Crop Protection Association likewise argued that the EU’s “regulatory approvals process and misuse of the precautionary principle” had caused Europe to “become the museum of world agriculture”.¹⁹² Dr Little, Bayer CropScience, even suggested that there had been “so much politicisation of the [EU] regulatory system”, and that the EU system “has been diverging from the rest of the world in terms of a real desire to cut all hazard out of agriculture.”¹⁹³ Accordingly, these witnesses advocated for the UK to pursue a new regulatory environment that is “[p]roportionate and science-based”, “[a]ttractive to businesses that may wish to invest”, and “[e]nabling and based on risk rather than hazard”.¹⁹⁴ Mark Buckingham of the Agricultural Biotechnology Council told us that he saw “much more opportunity for a

183 Q 87

184 Q 88 [Nick von Westenholz]. See also Wine and Spirit Trade Association ([TER0009](#)) (The UK should “avoid[] progressing down a path of regulatory harmonisation with the US, and instead pursues an agenda of mutual regulatory recognition”).

185 Q 161 [Dr Peter Holmes]

186 Q 87

187 Food and Drink Federation ([TER0015](#))

188 “Fox says public won’t accept lower food standards in chlorinated chicken row”, *The Guardian*, 7 November 2017

189 Oral evidence taken before the Environment, Food and Rural Affairs Committee on 20 December 2017, HC (2017–19) 348, Q 564 [Michael Gove]

190 Q 84

191 Agricultural Biotechnology Council ([TER 0027](#))

192 Crop Protection Association ([TER0020](#))

193 Qq 286, 291

194 Agricultural Biotechnology Council ([TER 0027](#)); Crop Protection Association ([TER0020](#)).

science and evidence-based system that would align with the US approach”.¹⁹⁵ By aligning with the US, these witnesses argued that the UK could “foster innovation, and incentivise research and development into new technologies”.¹⁹⁶

Geographical Indications

71. The other key agricultural issue in respect of which the EU and US differ is geographical indications (GIs). GIs are intellectual property rights protections for food and drink, and identify that good as possessing a particular quality, reputation or some other characteristic due to its geographical origin, such as Cornish pasties and Scotch Whiskey.¹⁹⁷ The EU has the most highly developed system of regulation for GIs and typically seeks to extend the protected of its GIs to third country markets via its FTAs.¹⁹⁸ By contrast, the US uses a fundamentally different approach—the trademark system. Unlike GIs, trademarks “do not grant rights on a geographical basis”. The US also uses “certification marks that relate to other attributes as much as geography”,¹⁹⁹ and US intellectual property law protects GIs through certification marks.²⁰⁰ The effect of the US’s approach is that it offers protection to particular firms. Nick von Westenholz told us that he “hope[d] that any future trade deals recognised as many as possible of our GIs.”²⁰¹ This was particularly the case if the UK considered one of the potential advantages of opening up US market was for “high-end, high-value British products” as, in his view, “[t]he GI system obviously contributes to that.”²⁰²

Automotive

Tariff Barriers

72. Automotive is an area in respect of which tariff rates between the EU and US vary considerably. According to Mike Hawes, SMMT, “[i]f you are importing a vehicle into the EU ... a car attracts a 10% tariff. If you are exporting into the US, a car will attract 2.5%.” By contrast, the tariff for exports of commercial vehicles (e.g. pickup trucks) “from the UK/Europe into the US ... would be 25%, so there is an imbalance again in the tariff”.²⁰³ Mike Hawes told us that, while it was hard to estimate the effects of removing US tariffs on automotive imports, even removing only a 2.5% tariff “does have an impact on the market, which could be up to 5% to 10%”.²⁰⁴ SMMT further noted in their written evidence that removing the US’s 2.5% tariff “could greatly increase market access for some vehicle manufacturers in the UK, in particular small volume manufacturers”.²⁰⁵

195 Q 288

196 Crop Protection Association ([TER0020](#))

197 Alan Mathews, “[What outcome to expect on Geographical Indications in the TTIP free trade agreement negotiations with the United States?](#)”, Paper prepared for the 145th EAAE Seminar, 15 April 2015, p 2. There are currently 84 GIs in the UK, including Scotch Whiskey, Conwy mussels and Melton Mowbray pork pie (see HM Government, [Protected food name scheme: UK registered products](#), 7 February 2018).

198 Tim Josling, “The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict”, *Journal of Agricultural Economics*, Vol. 57(3) (2006), pp 337–63

199 *Ibid*, p 339

200 *Ibid*, p 347

201 Q 115. See also NFU, “[Brexit: The Future of Protected Food Names](#)”, 19 December 2016.

202 Q 116 [Nick von Westenholz]

203 Q 214

204 Q 234

205 Society of Motor Manufacturers and Traders ([TER0035](#))

73. However, the SMMT cautioned against reducing tariffs without giving due consideration to the impacts on industry. The SMMT told us that removing the EU’s 10% tariff could “increase imports of US passenger cars”, and potentially “result in a number of US manufacturers shifting to export-led sales from their industrial bases in North America.” Accordingly, it suggested that the Government “consider appropriate tariff phase-out periods to allow the UK market to adjust.”²⁰⁶

NTBs

74. Despite the potential increase in market access, we heard that there were regulatory barriers to deepening UK-US automotive trade. Automotive was an area of intensive discussion in TTIP, with the industry viewing “the real prize ... as regulatory harmonisation—at least mutual recognition, if not harmonisation of regulation”.²⁰⁷ Mike Hawes, SMMT, even noted the potential for the UK, EU and US to use harmonisation and mutual recognition to arrive at a “global standard” on automotive regulation.²⁰⁸ For SMMT, the challenge with regulatory cooperation in the context of a UK-US FTA is that the EU and US’s approach to vehicle regulation and conformity assessment “start from a different perspective”.²⁰⁹ Likewise, “the enforcement of [the global framework for developing international automotive standards] and the way it operates fundamentally differs between the two major markets”.²¹⁰ We were told that, owing to this “fundamental difference in approach”,²¹¹ aligning with the US’s regulatory and standardisation approach could severely inhibit the UK’s ability to sell cars to the US. Dr Holmes said, “[i]f the UK [automotive sector] were to adopt the US system ... we would not then be able to sell UK cars into the rest of Europe.”²¹²

Chemicals / Pharmaceuticals

Tariff barriers

75. In 2016, 39.1% of chemical and pharmaceutical products exported from the UK to non-EU markets were destined for the US. Accordingly, the Chemical Industries Association argues that eliminating the “remaining tariffs will ensure that the UK retains a competitive advantage when trading directly with the US or via 3rd country markets”. The Chemical Industries Association further estimated that “100% tariff liberalisation on chemicals would deliver an immediate £200 million annual boost to the manufacturing economies of the US and the UK.”²¹³ Benefits delivered to one sector can also flow into others. In the context of life sciences, we were told that removing chemical import duties under TTIP “would have brought about an estimated £168 million per year boost to other associated sectors in the US and UK, such as aerospace, automotive, construction, pharmaceuticals and household products.”²¹⁴

206 Society of Motor Manufacturers and Traders ([TER0035](#))

207 Q 218 [Mike Hawes]

208 Q 279

209 Q 229 [Mike Hawes]

210 Q 229 [Mike Hawes]

211 Q 170 [Dr Peter Holmes]

212 Q 170

213 Chemical Industries Association ([TER0003](#))

214 Confederation of British Industry ([TER0028](#))

NTBs

76. As with automotive, the US and EU's approach to chemical and pharmaceutical regulation varies "even more so than is apparent on the surface".²¹⁵ The EU regulates chemicals under the REACH (Registration, Evaluation and Authorisation of Chemicals) regulation which is underpinned by the precautionary principle. Howard Chase, Dow Chemical Company, told us that, under REACH, "the obligation is on the producer to provide the information that allows the project to be approved." By contrast, in the US, the obligation is on regulators to conduct a risk assessment, and "you have the full power of the courts in particular, which can make life very tough for you afterwards if you get something wrong".²¹⁶

77. While stressing that the UK needed "competitive trade arrangements with both the [EU] and the [US]",²¹⁷ Mr Chase argued that managing the EU-US-UK "interface so that you do not damage competitiveness in Europe remains absolutely critical."²¹⁸ The witnesses we heard from the chemicals industry said that one of difficulties in doing so may be the incompatibility of EU and US chemical regulations. While agreeing that "REACH is not perfect",²¹⁹ witnesses told us REACH was "a bit of a gold standard on regulation".²²⁰ According to Ian Cranshaw, Chemical Industries Association, in a survey of its members, "no company has suggested diverging from REACH in any way that helps their business".²²¹ Howard Chase further added that "the idea of harmonising regulation between the EU and the US [so as to reduce NTBs] in the chemicals area is very far-fetched. We are looking for something much more like co-operation than we are at harmonisation."²²² The American Pharmaceutical Group agreed in written evidence that any US-UK agreement "should not aim to align the UK regulatory environment for pharmaceutical products to that of the Federal Drug Administration".²²³ Rather, it advocated for the UK to remain aligned with the EU and seek a mutual recognition arrangement with the US. To the extent that harmonisation is considered, Saoirse Fitzpatrick, StopAIDS, argued that the UK should "ensure that there is upward regulatory harmonisation if it does occur", particularly with respect to patent protections for generic pharmaceuticals.²²⁴

Effect on Consumers

78. In this chapter we have considered the effect of a UK-US FTA on different sectors. While the interests of businesses and their consumers are not unrelated, witnesses also made general comments about the effects of an FTA on the interests of consumers. Several witnesses suggested that an FTA could have the effect of reducing prices for consumers. Policy Exchange told us that "the principal benefit of trade is to expose domestic markets to greater competition and to provide consumers and businesses with a wider range of choices in terms price, quality and range of products."²²⁵ The CBI noted that the

215 Q 196 [Howard Chase]

216 Q 196 [Howard Chase]

217 Q 194 [Howard Chase]

218 Q 194 [Howard Chase]

219 Q 197 [Howard Chase]

220 Q 200 [Ian Cranshaw]

221 Q 198 [Ian Cranshaw]

222 Q 196

223 American Pharmaceutical Group ([TER0024](#))

224 Q 200 [Saoirse Fitzpatrick]

225 Policy Exchange ([TER0270](#))

elimination of tariffs between the UK and the US would have the effect of “giving a major cost saving to business, increasing competition in the market, and putting downward pressure on prices that consumers pay in the UK.” Similarly, Which? noted that a UK-US agreement could create opportunities for “consumers to have access to a choice of a wider range of products and services at more competitive prices in some sectors”. Alexander Downer suggested that the interests of consumers, particularly lower-income consumers, were sometimes under-represented. He said that:

For example, if we can buy motor vehicles from the United States more cheaply, it means that motor vehicles are more available to lower-income people. If we can buy textiles, clothing and footwear more cheaply, the people who benefit the most from that are lower-income people. It is actually highly regressive to have tariffs and protection. Call this controversial, but we like to put the interests of the consumer before the narrow and selfish interests of producers who have access to the media.

79. Warwick Lightfoot made a similar point, saying that “[y]ou will have producer interests that call upon you, but rarely will you get the person in Aldi, in Lidl, in Iceland calling in to ask about the vacuum-packed corned beef that they have just bought.”²²⁶

80. However, others warned that any compromise in standards of consumer protection as a result of a trade agreement with the US would be harmful (see also Chapter 4). Which? argued that “[m]aintaining consumer protection must be a priority. We should be able to open up markets while also guaranteeing high standards of consumer protection. Failure to recognise the importance of consumer protection could also have long-term, damaging implications for wider consumer confidence and consumer demand that a flourishing economy depends upon.” Peter Holmes told us that the UK acceding to US requests to “relax EU standards on food products” was “probably not very good for consumers”, despite the likelihood of a resulting reduction in prices. Another witness argued that the interests of consumers went beyond the products they bought. Nick von Westenholz, NFU, told us that:

If you get into a position where we are forever driving food to be cheaper, then you might please some consumers but you will lose your domestic farming industry and that comes with a loss of a lot of things that UK consumers value: the countryside that farmers protect, trusted short supply chains and the wider food chain, our biggest manufacturing sector, which employs millions of people.

81. **A number of industries, including chemicals and automotive, have told us that they want the UK to remain aligned to the EU’s regulatory model in the future. Others have argued in favour of diverging from the EU’s regulatory model. The Government should be clear, before entering into any FTA negotiations, about the relative weight it intends to give the interests of different sectors within the UK economy. These considerations should be addressed in an impact assessment.**

82. In conducting an impact assessment of an FTA, the Government must not consider the needs of business sectors to the exclusion of the needs of consumers. *The Government should ensure that the effect of a UK-US trade agreement on consumers is considered separately to a sectoral impact assessment. The Government needs to ensure that consumers are represented in consultations on a future UK-US trade agreement, and in particular, put mechanisms in place to ensure that the voices of lower-income consumers are heard.*

83. The Government has said that it will not lower existing product safety, environmental and animal welfare standards in a UK-US FTA. We welcome these assurances.

6 Trade in Services

Government's Position on Trade in Services in UK-US FTA

84. The Government has indicated that liberalisation of the US services market is a key offensive interest in a UK-US FTA. Speaking in July 2017, the Secretary of State told the House that the “real cause” to champion was “liberalisation of the service sector.”²²⁷ In November 2017 he told us that, “[t]he UK is primarily a service economy, so clearly there is disproportionate benefit for us to see a more liberal environment in services”.²²⁸ The Minister further told us in March that the UK “obviously [has] a very strong interest in breaking down barriers to US financial services”.²²⁹

Economic Significance of Trade in Services

85. The UK is a services-dominated economy, with services contributing approximately 80% of UK GDP and 44% of UK exports.²³⁰ Taken together, the UK had a trade surplus in services exports of £73.9 billion in 2016.²³¹ The UK and US also have a deep, well-established relationship regarding trade in services and investment. The US accounts for 25% of UK professional services exports (legal, management consultancy and accountancy services)²³² and “[a] quarter of UK financial services exports, 24% of FS exports globally”.²³³ In 2015, the UK exported £16 billion of financial services (including insurance) to the US. According to TheCityUK this generated a financial services trade surplus with the US of £13 billion, 24% of the UK’s overall financial services trade surplus and the biggest surplus with any individual country.²³⁴ The UK and US are also the single largest foreign investors in each other’s economies.²³⁵

86. Several witnesses told us that increased market access for UK service providers was a key win for a UK-US FTA. The Institute of Directors has said one area where it was particularly hopeful about making inroads through a UK-US bilateral agreement was e-commerce, saying that there was “ample opportunity for agreement on mutual recognition of standards and principles in this area, as well on the delivery of goods which is an integral part of e-commerce.”²³⁶ Other witnesses called for the UK to make a “special commitment ... towards the UK-US financial services relationship”.²³⁷ Gary Campkin said that “services trade rules have lagged behind” and that a UK-US FTA was a “really important opportunity to begin to push that forward”.²³⁸ The CBI likewise noted that the financial services sector “remains an area where significant gains still exist—particularly

227 HC Deb, 6 July 2017, col 1365

228 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 136 [Dr Liam Fox]

229 Q 383

230 Confederation of British Industry ([TER0028](#))

231 Office for National Statistics, “[Statistical bulletin: International trade in services, UK: 2016](#)”, 31 January 2018; House of Commons Library, Financial services: contribution to the UK economy, Briefing Paper, [No. 6193](#), March 2017

232 TheCityUK ([TER0265](#))

233 Q 126 [Gary Campkin]

234 TheCityUK, “[The UK leads European finance](#)”, 13 September 2016

235 Confederation of British Industry ([TER0028](#))

236 Institute of Directors ([TER0272](#))

237 BritishAmerican Business ([TER0032](#))

238 Q 146

for smaller players”.²³⁹ Shanker Singham also told us that services liberalisation “is a huge interest to the UK economy”, and that a services agreement with “regulatory alignment between the US and the UK around a pro-competitive regulatory system” could be “a game changer.”²⁴⁰

Potential Barriers to Liberalisation of Trade in Services

Limitation of FTAs

87. Trade agreements have historically been poor at liberalising trade in services. One review of trade data for 42 countries, for example, found that FTAs were “not associated with any significant increase in bilateral services trade.”²⁴¹ TechUK similarly told us that even the EU’s most advanced FTA, CETA, “still struggles to provide the kind of overarching agreement on services that would present significant economic value.”²⁴² Given these challenges, techUK suggested that the UK could instead pursue, at least initially, plurilateral arrangements regarding services, such as the Trade in Services Agreement (TiSA).

Regulation and Market Access

Federal

88. As with trade in goods, UK trade in services faces regulatory and market access barriers. These barriers can be explicit, such as restrictions on foreign ownership, scope of business of foreign services providers or corporate form, or discrete, and mainly stem from different approaches to regulation.²⁴³ Other market access barriers include quantitative restrictions, regulations such as qualification and licensing requirements, and even the absence of regulations.²⁴⁴

89. Addressing different regulatory requirements for services was a key issue in TTIP negotiations. We were told that both the UK and US financial services industries wanted a financial services chapter included in the agreement.²⁴⁵ However, the CBI indicated that “financial services slowly came off the negotiation table due to the intricacies and sensitivities inherent in financial markets”.²⁴⁶ These sensitivities pertained, in part, to the differences in the EU and US regimes governing prudential capitalisation for market stability. The CBI told us that “the Dodd-Frank Act in the US created a certain level of intractability in regulatory dialogue because there could be no agreement that the respective regimes governing prudential capitalisation for market stability were equivalent to each other”.²⁴⁷ Edward Baker, Director of Strategy at the Department, also told the previous

239 Confederation of British Industry ([TER0028](#))

240 Q 2

241 Monique Ebell, “[Assessing the Impact of Trade Agreements on Trade](#)”, *National Institute Economic Review*, vol. 238 (November 2016), pp 31–42

242 techUK ([TER0034](#))

243 Hildegunn Kyvik Nordås and Henk Kox, “[Quantifying Regulatory Barriers to Services Trade](#)”, *OECD Trade Policy Papers No. 85* (2009), para 2

244 Ingo Borchert, Batshur Gootiiz and Aaditya Mattoo, “[Policy barriers to international trade in services: evidence from a new database](#)”, *World Bank Economic Review*, vol 28(1) (2014), pp 162–88

245 Investment Association ([TER0031](#))

246 Confederation of British Industry ([TER0028](#))

247 Confederation of British Industry ([TER0028](#))

Committee that TTIP was perceived in the US as “the EU trying to weaken financial services regulation in the US”. Mr Barker further noted “an institutional concern from the Treasury in the US that this was not something trade negotiators should be talking about; this was a Treasury issue”.²⁴⁸ Accordingly, as an alternative to mutual recognition of regulatory equivalence, the parties agreed to establish a US-EU Financial Markets Regulatory Dialogue (FMRD).

90. Some witnesses suggested that the UK may encounter similar challenges in a UK-US FTA. Dr Holmes told us that he “[did] not think that the UK independently would find it much easier” than the EU did in attempting to include financial services in TTIP.²⁴⁹ The City of London likewise said that the US has “no desire to roll back the Pittsburgh agreements of 2009 or the Dodd-Frank legislative response to the [global financial] crisis”.²⁵⁰ As such, the UK may also struggle to reach an agreement on regulatory equivalence in an FTA. However, the City of London suggested that the US recognises that “post-crisis reforms were made at speed” and that regulators will, in the future, “shift their focus onto designing ‘smarter regulation’”, which would extend to “[f]uture regulatory changes ... based on outcomes rather than any attempt to synchronise rules [including] [...] cross-border regulation”.²⁵¹

91. The City of London further said that there was no indication that the US will “retreat from the global rule-making process”. Accordingly, it said “the UK should be ready to take advantage of this aspiration to continue and deepen international regulatory dialogue.”²⁵² At a minimum, the CBI said that a UK-US FTA “should seek to replicate the [FMRD] to bolster regulatory coordination”.²⁵³ Other witnesses said that the UK should make sure an agreement has “effective regulatory co-operation and mutual recognition”,²⁵⁴ and include “elements that help UK and US markets integrate under one regulatory umbrella.”²⁵⁵

State-level

92. The US has a federal system which confers legislative powers on both federal and state levels of government. This means that service providers trading in the US may confront regulatory barriers at both levels. We were told that this could create several challenges for UK service providers in the US. First, some witnesses highlighted the non-reciprocal nature of this difficulty. TechUK, for example, said that “the ability of a US business to set up and compete in the UK is already significantly easier than a UK businesses [sic] setting up in the USA, not least due to the complexities of state and local law within the USA.”²⁵⁶

248 Oral evidence taken before the International Trade Committee on 15 March 2017, HC (2015–17) 978-i, Q 18 [Edward Barker]

249 Q 185

250 The City of London Corporation ([TER0030](#))

251 The City of London Corporation ([TER0030](#))

252 The City of London Corporation ([TER0030](#))

253 Confederation of British Industry ([TER0028](#)). See also the Investment Association ([TER0031](#)) (“FTAs, including one with the US, should include measures to pursue the regulatory dialogues through a dedicated financial services committee: ensuring regular reporting, a focus on implementation, and the commitment to anticipate and tackle issues likely to cause future divergences.”)

254 Q 139 [Gary Campkin]

255 BritishAmerican Business ([TER0032](#))

256 techUK ([TER0034](#))

Likewise, the CBI noted that “different collateral requirements in each state mean UK providers stand a much worse chance of winning business in the US”.²⁵⁷ TechUK said that this issue “is unlikely to be rectified within an FTA”.²⁵⁸

93. Second, we heard about the challenges which state-level regulations can pose for enshrining liberalisation of services in the US’s (federal) market access schedules. Allie Renison told the previous Committee that it was a “slight myth” that the “US has a light touch when it comes to its regulatory remit”.²⁵⁹ While this may be true at the federal level, she said that “there are states like Texas and others who extol themselves on being able to be different at a state level.”²⁶⁰ The attitude of such states has been argued to have made it impossible for the EU and US to extend its discussions on mutual recognition “to services in which individual US states wield most regulatory power”.²⁶¹ In the context of TTIP, it was argued that the US’s unwillingness to pre-empt state level competences meant that the EU was unable to secure sub-federal (state-level) levels of liberalisation in the US’s services market access schedules to the agreement.²⁶² Ms Renison said that the UK needs to “learn from the experience of what has happened in the US and how that sometimes hinders comprehensive really relevant trade agreements.”²⁶³ Dr Holmes likewise told us that for the “provision of services at state level, the US is not the easiest customer to get a services deal with”.²⁶⁴

94. In considering this issue, witnesses suggested that the UK needed to find a way of discussing state-level regulation in negotiations. Gary Campkin told us that the US-EU insurance coverage agreement (see above) may provide a template for UK-US negotiations “because a lot of the issues, whether they be insurance ... related professional services, legal services, or accountancy, are regulated at sub-federal level, and we need to find a way of bringing that into the discussion.”²⁶⁵ Allie Renison also said that “a big area of interest is going to be making sure that at the state level, governors are there discussing it as well”.²⁶⁶

95. Other witnesses played down the importance of state-level regulation during the TTIP negotiations and noted that discussions were focused on addressing inconsistencies between jurisdictions over the implementation of a G20-agreed “path” for financial services regulation. The Department’s Director of Strategy, Edward Barker, told the previous Committee that “it was not really a state issue; at least we had not reached the state issue”.²⁶⁷

257 Confederation of British Industry ([TER0028](#))

258 techUK ([TER0034](#))

259 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 73 [Allie Renison]

260 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 73 [Allie Renison]

261 Kalypso Nicolaidis and Gregory Shaffer, “Transnational Mutual Recognition Regimes: Governance Without Global Government”, *Law and Contemporary Problems*, vol 68 (2015), pp 263–317

262 European Parliament, [The Transatlantic Trade and Investment Partnership \(TTIP\): Challenges and Opportunities for the Internal Market and Consumer Protection in the Area of Services](#), August 2015, pp 16–9, 26, 28

263 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 73 [Allie Renison]

264 Q 185

265 Q 149

266 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 51 [Allie Renison]

267 Oral evidence taken before the International Trade Committee on 15 March 2017, HC (2015–17) 978-i, Q 18 [Edward Barker]

96. When Greg Hands appeared before us in March 2018, the Minister acknowledged that “there are challenges to financial services on a federal and state-by-state basis and that will vary according to your particular type of financial service”. However, he emphasised that the “UK has probably got the best relationship between the financial regulators”.²⁶⁸ He further told us the Government wanted “the provisions of any market access for the UK in the United States to permeate down as far as possible.”²⁶⁹ Yet, when asked whether market access for services should be reciprocal, the Minister only said that the UK was seeking “maximum market access”, and that “there will be different ways we can achieve that” which will be “a judgment on the totality of the deal”.²⁷⁰

97. In order to begin these discussions as early as possible outside the confines of FTA negotiations, the UK could consider seeking to ‘rollover’ the EU-US insurance coverage agreement (see above).²⁷¹ Lloyd’s told us such an approach was “sensible”²⁷² and the London Market Group said that “it will be important to ensure than any new trading relationship between the UK and US post-Brexit replicates the benefits of the existing Bilateral Agreement”.²⁷³ Shanker Singham further told us that the coverage agreement is “very interesting ... because it allows us to say the US is capable of doing an insurance coverage agreement where it is the states that are primarily the regulators, and the EU is able to do a recognition agreement where things are not identical.”²⁷⁴

Government Procurement

98. Government procurement is likely to be an offensive interest for the UK in a UK-US FTA.²⁷⁵ An assessment by the European Commission of the potential economic gains from TTIP suggested that around 10% of the EU’s potential gains could come from liberalising the US’s procurement market.²⁷⁶ Multiple witnesses supported the liberalisation of procurement in a UK-US FTA. Dr Dennis Novy, Associate Professor of Economics, University of Warwick, described public procurement as a “potentially large prize from the UK perspective.”²⁷⁷ The CBI told us that “[f]urther opening of US government procurement contracts is key for many of our world leading services providers and infrastructure developers.”²⁷⁸ Shanker Singham also noted that procurement could be a “huge issue” for a UK-US FTA, and that there would be “be a big fight, but it is something that we, uniquely ... have the ability to get from the US.”²⁷⁹

99. The most commonly identified obstacle to the liberalisation of the US procurement market was sub-federal procurement regulation. Allie Renison told our predecessor Committee that seeking access to the US public procurement market beyond the federal level is “where the difficulties lie, because you have so many differences between the US

268 Q 386

269 Q 387

270 Qq 391, 398, 399

271 [Bilateral Agreement between the EU and US on Prudential Measures Regarding Insurance and Reinsurance](#)

272 Lloyd’s ([TER0254](#))

273 London Market Group ([TER0251](#))

274 Q 10

275 See House of Lords European Union Committee, Fourteenth Report of Session 2013–14, *The Transatlantic Trade and Investment*, [HL Paper 179](#), para 128

276 House of Lords European Union Committee, Fourteenth Report of Session 2013–14, *The Transatlantic Trade and Investment*, [HL Paper 179](#), para 128

277 Dr Dennis Novy ([TER0002](#))

278 Confederation of British Industry ([TER0028](#))

279 Q 18

states; and services liberalisation”.²⁸⁰ Samuel Lowe told us “[m]ost of the issues when it comes to procurement are to do with the states. [The US] are not going to take that on for us.”²⁸¹ Jeffries Briginshaw, CEO, BritishAmerican Business, further noted that while the UK has extensive expertise which “would help spend taxpayers’ money at a state level more effectively”, it was “going to be really tough” to get this into a trade agreement. He said that “[t]urn[ing] up at a state level with a bag of expertise that produces taxpayer benefits and British engineers behind it is more likely to win through than trying to get the federal government to force a state to put something in a trade deal.”²⁸²

100. The second issue which witnesses identified was that the UK’s procurement market is already open, meaning that the US may be unwilling to negotiate reciprocal market access without further concessions. The Institute of Directors told the previous Committee “[t]he US may ... deem the UK’s own market in this respect to be comparatively quite open.”²⁸³ Accordingly, “[a]part from UK commitments to lock this liberalisation to date in, improved access to tendering for public contracts in the US may come at the expense of concessions on our side to a completely unrelated chapter.”²⁸⁴ Global Justice Now made a similar point, noting that in the TTIP negotiations “the EU hoped to lever open US procurement markets in exchange for other concessions. As a much smaller market with less to offer, the UK is unlikely to win any concessions.”²⁸⁵

Data

101. Traditionally, data flows and data protection were not addressed in FTAs.²⁸⁶ However, it is increasingly imperative that businesses “are able to transfer personal and corporate data between the UK and non-EU jurisdictions”.²⁸⁷ According to techUK, data flows are increasingly “necessary for seamless trade given the amount of data involved in delivering goods and, particularly, services around the globe”. A recent study by McKinsey suggested that data flows make up approximately 3% of global GDP.²⁸⁸ As such, data flows are likely to be “absolutely vital in any new [trade] agreement” as they will be critical to realising the benefits of that agreement.²⁸⁹

102. Data flows in the UK are presently regulated by the EU’s 2016 General Data Protection Regulation (GDPR). The GDPR harmonises EU data protection from its entry into force in May 2018. GDPR offers a comprehensive framework for the regulation of data protection, covering all personal data held by companies and other entities. Compared to the 1995 Directive, it provides for a more stringent protection of personal data.²⁹⁰ By contrast, the US framework is more fragmented and “has focused on providing protections tailored to

280 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 51 [Allie Renison]

281 Q 22 [Samuel Lowe]

282 Oral evidence taken before the International Trade Committee on 3 April 2017, HC (2015–17) 978-ii, Q 73 [Jeffries Briginshaw]

283 Institute of Directors ([TER0272](#))

284 Institute of Directors ([TER0272](#))

285 Global Justice Now ([TER0016](#))

286 Q 218 [Giles Derrington]

287 Association of British Insurers ([TER0019](#))

288 techUK, “[Apparent Breakthrough in Commission Talks to Include Data Flows in Trade Deals](#)”, 19 January 2018

289 Q 128 [Gary Campkin]

290 EUGDPR.org, “[GDPR Key Changes: An overview of the main changes under GDPR and how they differ from the previous directive](#)”

specific areas of concern, such as health records and children’s personal information.” In these areas, the Congressional legislation set broad guidelines, with the detail fleshed out by the relevant federal agencies.²⁹¹

103. Under the GDPR, data may only be transferred outside of the European Economic Area if a country has been granted data adequacy status by the European Commission. There are 12 such countries, including the US.²⁹² Data transfers from the EU to the US are governed by the EU-US Privacy Shield framework. The framework contains “written commitments and assurance by the U.S. that any access by public authorities to personal data transferred under the new arrangement on national security grounds will be subject to clear conditions, limitations and oversight, preventing generalised access.”²⁹³

104. Once the UK leaves the EU, it will no longer be covered by either the GDPR or the Privacy Shield. Some have argued that the UK should take this opportunity to align its data protection regulations with “a more American-focused ‘light touch’ approach to protection of data as part of a UK-US trade deal”.²⁹⁴ The Legatum Institute has argued that the US model is more conducive to the data flows necessary to sustain innovation in a digital economy:

There is a philosophical difference in the approach of the US and the EU to data. The US’s businesses have loudly advocated for data flow [...] In order for this “Fourth Industrial Revolution” to deliver its potential, data will have to easily flow across businesses and geographies. In Europe, by contrast citizens, concerned about the use of their private data appear to have won the battle with business and the EU is much more protective of privacy with the resulting restrictions on data flow.²⁹⁵

105. In response, Mr Derrington of techUK agreed that a UK-US trade agreement “is not a zero-sum game” and that “there is a balance to be struck between protection of consumers and the ability to move data freely.”²⁹⁶ However, he told us that “GDPR has global reach” and that international companies were increasingly treating GDPR “effectively as an international standard”.²⁹⁷ As such, for the UK to maintain its position as a conduit between US and EU businesses, such as large US banks, it was crucial that it remain aligned with the GDPR or risk “effectively break[ing] our value there to the US banks.”²⁹⁸ TechUK further told us that the UK “will not be able to get an adequacy agreement” with the EU without “close alignment with the EU”.²⁹⁹ According to Mr Derrington, “[i]f we do not have an adequacy agreement, then we will not be able to transfer personal data across the EU/UK border.”³⁰⁰ The Treasury Committee similarly heard from the US-UK

291 Christopher Wolf, “Delusions of Adequacy? Examining the Case for Finding the United States Adequate for Cross Border EU-U.S. Data Transfers”, *Washington University Journal of Law & Policy*, vol 43 (2014), p 243

292 The countries are Andorra, Argentina, Canada, Faroe Islands, Guernsey, Israel, Isle of Man, Jersey, New Zealand, Switzerland, Uruguay and the US.

293 European Commission, [EU-U.S. Privacy Shield: Frequently Asked Questions](#), 12 July 2016

294 techUK ([TER0034](#)) (summarising counter argument)

295 Legatum Institute, [Developing a True Transatlantic Partnership—a High Standard Trade Agreement to Propel the Global Economy](#), June 2017, p 30

296 Q 275

297 Q 274

298 Q 274 [Giles Derrington]

299 Q 268 [Giles Derrington]

300 Q 268

Business Council that “[c]ontinuing to enforce the GDPR will be essential for the UK to receive a positive adequacy decision from the EU on data flows. If an adequacy decision is not achieved, U.S. companies in the UK may need to shift investments.”³⁰¹

106. To assist with the UK’s transition out of the EU, techUK told us that the UK could seek to replicate the EU-US Privacy Shield Agreement before commencing FTA negotiations. Mr Derrington said that discussion could be started now to get that process in place as it takes time to identify the relevant people and negotiate these arrangements. For example, when Switzerland negotiated its US arrangement alongside the EU privacy shield, it took about six months initially.³⁰² He also told us that “there is a lot of stuff that can be done just in terms of boosting visibility of UK tech within the US market” such as attending trade shows in the US.³⁰³

107. *The Government should explore options for addressing the complexities of federal, state and local restrictions on the provision of services and awarding of procurement contracts. The Government should ensure that it campaigns at the state-level for greater market access which can be enshrined in a UK-US FTA. A Washington-only approach will not suffice. That approach needs to begin immediately by ensuring that state-level representatives are included on the UK-US Trade and Investment Working Group, or, if necessary, that separate, state-level working groups are created. Taking account of the practical difficulties, without senior sub-federal participation in the US negotiating team it is unlikely that UK services exports benefits will be achieved. Securing sub-federal US participation should therefore be a key objective for any FTA negotiation framework. At the working group level, the UK should be exploring what it could do before Brexit to promote trade in services. The Government should invest in support for exporters in bidding for procurement contracts at the federal and state level.*

108. *Data flows and protecting personal data are of paramount importance to trade in services. To maximise the capacity for UK service providers to export in the immediate future, the Government should consider mirroring the EU’s existing General Data Protection Regulation and seeking an adequacy agreement with the EU. Doing so will ensure UK service providers can move data between the UK and EU. Prior to negotiating an FTA, the Government should also consider seeking to replicate the EU-US Privacy Shield Arrangement in a new bilateral UK-US arrangement.*

301 U.S.-UK Business Council ([FCR0004](#))

302 See Q 218 [Giles Derrington]

303 Q 218 [Giles Derrington]

7 Other Lessons from TTIP

Introduction

109. In this chapter we consider the recent TTIP negotiations and the potential lessons for the UK. TTIP negotiations commenced in July 2013, and sought to agree an ambitious, comprehensive EU-US FTA with extensive alignment of EU and US regulatory practices. The 15th and most recent negotiating round was held in October 2016, with negotiations remaining in abeyance since then. According to a US-EU Joint Report published in January 2017, while negotiations made progress on several key issues (e.g. removing duties on 97% of tariff lines; importance of transparency), the parties still had significant work to do on other issues (e.g. unlocking market access in key service sectors; reconciling differences on SPS measures).³⁰⁴

Transparency, Accountability and Scrutiny of Negotiations

110. The TTIP negotiations witnessed unprecedented public interest in trade agreements. Dr García told us that one of the major concerns for civil society was “the secrecy of negotiations.”³⁰⁵ Shortly after TTIP negotiations commenced, over 80 EU and US organisations wrote a letter opposing “the use of behind-closed-door trade negotiations to change and lower public interest measures for the sake of commercial interest”.³⁰⁶ NGOs, in particular, called for transparency through the provision of negotiating rather than just explanatory documents (e.g. negotiating mandate, EU textual proposals, and consolidated versions of the draft text featuring the US’s negotiating position).³⁰⁷ In response to the unprecedented public interest in talks, the Commission undertook to publish more EU negotiating texts, provide access to TTIP texts to all Members of the European Parliament and extend the use of a ‘reading room’ to MEPs, and classify less TTIP negotiating documents as ‘EU restricted’.³⁰⁸ A 2015 report of the European Ombudsman welcomed this initiative, but urged further publication of documents and meeting agendas, and public consultation.³⁰⁹

111. The Government is yet to clarify its future approach to transparency, accountability and scrutiny in trade negotiations. Currently, treaties, including trade treaties, are subject to provisions of the Constitutional Reform and Governance Act 2010, which provides that they should be laid before Parliament and only debated or voted upon if an objection is made and parliamentary time can be found for such a debate or vote.³¹⁰ In October 2016, Dr Fox told the European Scrutiny Committee in relation to CETA that he “very much believe[s] in the democratic process and the importance of transparency”.³¹¹ He further added that he “would like to see the precedent of the TTIP reading room and the

304 USTR and European Commission, [U.S.-EU Joint Report on TTIP Progress to Date](#), 17 January 2017

305 Dr María García ([TER0011](#))

306 Niels Gheyle and Ferdi De Ville, “How Much Is Enough? Explaining the Continuous Transparency Conflict in TTIP”, *Politics and Governance*, vol 5(3) (2017), pp 16–28

307 *Ibid*, p 20

308 [“Opening the windows: Commission commits to enhanced transparency”](#), European Commission press release, 25 November 2014

309 European Ombudsman, [Decision of the European Ombudsman closing her own-initiative inquiry OI/10/2014/RA concerning the European Commission](#), 6 January 2015

310 Constitutional Reform and

311 Oral evidence taken before the European Scrutiny Committee on 26 October 2016, HC (2015–17) 792, Q 1 [Dr Liam Fox]

transparency that that brings adopted” for future trade agreements.³¹² In the Trade White Paper, the Department committed to “develop[ing] a trade agenda that is inclusive and transparent”.³¹³ It undertook to “continue to respect the role of Parliament”, “seek the input of the developed administrations”, and “seek the input of all stakeholders”.³¹⁴ In its response to the submissions on the Trade White Paper, the Department acknowledged the concerns raised regarding transparency in trade negotiations. However, it committed only to “work[ing] to ensure that the process of negotiating and implementing new trade deals is transparent, efficient and effective”.³¹⁵ It further noted it would table legislation to establish a framework which allows trade agreements to “move quickly from agreement to ratification and implementation, whilst supporting the due processes for full Parliamentary scrutiny.”³¹⁶

112. In evidence on the Trade Bill, witnesses told us that they were concerned about the lack of scrutiny mechanisms in the Bill. Nick Dearden, Global Justice Now, summarised the EU’s current transparency measures as follows:

... the Commission has to hold a public consultation and scoping exercise, the Council has to set a mandate and the Parliament has the right to make its views known on that mandate. Various committees will discuss as the negotiations are going on and offer their views. The European Parliament must give consent and Council must give consent. For some agreements, all 40 recognised Parliaments must give consent. There must be formal civil society dialogue. There are less restricted texts than ever in the European Union.³¹⁷

Industry representatives argued that they should be able to input into trade negotiations. Mike Hawes called for a “very structured [consultation] arrangement”.³¹⁸ Giles Derrington also said that the US’s model of business engagement in trade agreements was “very good” and that “the sooner that there is a structure in place for all trade agreements, that we understand how to engage, the sooner and easier it is for trade associations like ours to help our members structure to best facilitate that.”³¹⁹

113. In November 2017, at the second meeting of the UK-US Trade and Investment Working Group, the US and UK agreed to keep confidential certain information exchanged during the Working Group for up to four years after the process concludes. However, this obligation does not apply to each party’s own information.³²⁰ This position somewhat mirrors the EU’s current approach to trade negotiations—namely, it will not release

312 Oral evidence taken before the European Scrutiny Committee on 26 October 2016, HC (2015–17) 792, Q 33 [Dr Liam Fox]

313 Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017, p 21

314 Department for International Trade, *Preparing for our future UK trade policy*, Cm 9470, October 2017, p 22

315 Department for International Trade, *Trade White Paper: Preparing for our future UK trade policy: Government Response*, January 2018, p 9

316 Department for International Trade, *Trade White Paper: Preparing for our future UK trade policy: Government Response*, January 2018, p 9

317 Oral evidence taken before the International Trade Committee on 29 November 2017, HC (2017–19) 603i, Q 58 [Nick Dearden]

318 Q 222 [Mike Hawes]

319 Q 223 [Giles Derrington]

320 [Letter from Department for International Trade to L Daniel Mullaney, Assistant US Trade Representative for Europe and the Middle East](#), 9 November 2017

other parties' documentation but it does publish its own proposals for the negotiation.³²¹ However, some NGOs have criticised the UK's approach, stating that it "will make it much more difficult to find out what is being discussed in early-stage US-UK trade talks".³²²

114. It would be a retrograde step if the trade negotiations undertaken by the UK independently were less transparent than those undertaken at EU level—although we are not implying they will be. Throughout this inquiry, issues have arisen regarding the transparency and scrutiny of trade negotiations, and we will return to these issues shortly.

Investor-State Dispute Settlement

115. Before negotiations were suspended, TTIP was expected to contain provisions on investor protection.³²³ Such protections are often conferred by way of investment treaties or can be embedded within trade agreements.³²⁴ These treaties and agreements "typically set out between those states that are party to them the protections that each will accord to investors from the other state."³²⁵ They also provide a mechanism, investor-state dispute settlement (ISDS), which "allows an investor from one country to bring a case directly against the country in which they have invested before an arbitration tribunal." In order to bring a case, an investor must claim that the party has breached rules set out in the agreement.³²⁶ These claims are arbitrated "under international law, rather than through the domestic legal system of the state that has hosted the investment".³²⁷

116. Investor protections, and particularly ISDS, was said to be one of the 'lightning rods' for the opposition to TTIP.³²⁸ Samuel Lowe told us that the inclusion of ISDS "effectively killed TTIP or at least ensured that it was put on ice forever".³²⁹ Several concerns were raised about the inclusion of ISDS in a UK-US FTA in evidence. Dr García said that the "mere existence of ISDS may have a 'chilling effect' on Government's proposals for regulation in the public interest" and can also "threaten public services".³³⁰ Global Justice Now said that the "system can only be used by companies suing states, not vice versa", highlighting the system's non-reciprocal nature.³³¹ Dr Holmes also noted the potential for a tribunal to adopt an interpretation of the agreement's scope not intended by the parties. He told us:

321 Ferdi De Ville and Gabriel Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2016), p 122

322 "[Brexiteer: Liam Fox's department signs deal to keep trade talks secret](#)", *Unearthed*, 20 December 2017

323 House of Lords European Union Committee, Fourteenth Report of Session 2013–14, *The Transatlantic Trade and Investment*, [HL Paper 179](#), para 156

324 For example, Chapter 11 of the North American Free Trade Agreement.

325 House of Lords European Union Committee, Fourteenth Report of Session 2013–14, *The Transatlantic Trade and Investment*, [HL Paper 179](#), para 156

326 European Commission, [Factsheet on Investor-State Dispute Settlement](#), 3 October 2013

327 House of Lords European Union Committee, Fourteenth Report of Session 2013–14, *The Transatlantic Trade and Investment*, [HL Paper 179](#), para 156

328 Ferdi De Ville and Gabriel Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2016), p 114

329 Q 69 [Samuel Lowe]

330 Dr Maria García ([TER0011](#))

331 Global Justice Now ([TER0016](#))

... when it gets to a tribunal, the tribunal have a mind of their own and can say, ‘Actually, we think that this should not be treated as a public service; it should be treated as something else,’ and then you’re lost.³³²

He recommended keeping ISDS out of a UK-US FTA, a conclusion echoed by StopAIDS.³³³

117. Some witnesses doubted whether it was necessary to include an ISDS mechanism in a UK-US FTA. Howard Chase, Dow Chemicals, suggested to us that ISDS may have been included in TTIP to “set the standards for dispute resolution going forward”, but doubted it was required in the context of a UK-US FTA.³³⁴ Witnesses also noted the sophisticated nature of the UK and US legal systems in questioning the need for ISDS. The CBI told us that the US legal system is widely recognised as “a fair and predictable means of seeking redress in lieu of a formal bilateral resolution mechanism.”³³⁵ Mr Singham also noted that the US’s concerns regarding European domestic legal systems in TTIP did not apply to the UK. He concluded that the UK and US should “be able to achieve a high standard of protection of investment and probably do not need ISDS in that context”.³³⁶

118. However, others argued that an ISDS mechanism was necessary, and should be included in any trade agreement. BritishAmerican Business said that an agreement “should provide for an investor-state dispute mechanism”, but seek to develop “a state-of-the-art dispute mechanism for investments which is efficient and transparent”.³³⁷ Chevron also told us that an FTA “should include ISDS for investment, as well as trade in goods and services” and that “it is critical that the investment rules be based on the 2012 U.S. Model BIT”.³³⁸ Chevron was also sceptical of recent EU initiatives, such as CETA, which establishes a reformed system of investor protection (the ‘Investment Court System’).

119. ISDS is a contentious issue in trade negotiations. Recent EU and mega-regional FTAs have adopted a variety of approaches to the issue, from the Investment Court System proposed in CETA to a more limited ISDS mechanism proposed in TPP. Before entering into negotiations with the US, the Government should clarify its policy on ISDS. In particular, it should identify the purpose of an ISDS mechanism in circumstances where both the US and UK have sophisticated, independent domestic judicial systems.

Public Services and Intellectual Property Rights

120. Concerns regarding states’ right to regulate and public services, particularly the NHS, featured heavily in the TTIP debate. Edward Barker told the previous Committee that there were two lines of argument regarding the potential detrimental impacts of TTIP on the NHS: “[o]ne of them is that [the NHS] will be captured as part of a liberalisation of

332 Q 187. For further discussion of the concerns regarding ISDS in TTIP, see Ferdi De Ville and Gabriel Siles-Brügge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2016), pp 114–15.

333 Q 201 [Saoirse Fitzpatrick] (“There should be no inclusion of ISDS in a trade deal.”); StopAIDS ([TER0022](#)). See also Dr Thomas Henry Adams ([TER0274](#)); War on Want ([TER0275](#)); St Andrews TTIP Action Group ([TER0268](#)); Global Justice Glasgow ([TER0262](#)); Unite the Union ([TER0261](#)); Trades Union Congress ([TER0253](#)).

334 Qq 201–3 [Howard Chase]. Lord Goldsmith made similar comments to the Lords EU Committee, noting that omitting ISDS from TTIP “would likely affect the ability of the UK and EU to negotiate ISDS provisions in future trade deals”. See House of Lords European Union Committee, Fourteenth Report of Session 2013–14, *The Transatlantic Trade and Investment*, [HL Paper 179](#), para 159.

335 Confederation of British Industry ([TER0028](#)). See also Keep our NHS Public ([TER0005](#)).

336 Q 69 [Shanker Singham]

337 BritishAmerican Business ([TER0032](#))

338 Chevron Corp ([TER0008](#))

services ... [t]he other concern people raised was around the operation of [ISDS]”.³³⁹ With regards to ISDS, the Trades Union Congress told the Lords EU Committee that including ISDS “might restrict the ability of a future Government to redraw the boundary over what is provided publicly and what is provided privately in [the NHS]”.³⁴⁰ As regards privatisation, StopAIDS told us that “US companies are particularly keen to gain access to the public health systems of Europe” and that the US government intended to use TTIP to “pry open the service markets of Europe for the benefit of US capital”.³⁴¹ Global Justice Now likewise told us that several mechanisms proposed in TTIP could have adversely affected public services,³⁴² including the ‘negative list approach’³⁴³ and ‘standstill and ratchet clauses’.³⁴⁴

121. Witnesses also told us about the potential impacts of stringent intellectual property rights (IPR) protections on public services. On the one hand, some argued that stronger IPR protections can “encourage knowledge-based industries”.³⁴⁵ BritishAmerican Business told us that “UK-US trade discussions present the opportunity to enshrine high standards for [IPR] protection which could incentivise the development of pharmaceutical innovation.”³⁴⁶ However, Dr Holmes said that it is “not certain that incorporating tougher intellectual property rules into a UK-US agreement would stimulate innovation”.³⁴⁷

122. We were also told that enhanced IPR protections can have negative impacts on public health services. One form of IPR protection we heard about is data exclusivity. We were told that data exclusivity can be a “huge barrier to access to generic medicines” because it effectively prevents medicines’ regulatory authorities from registering generic medicines based on existing clinical data.³⁴⁸ StopAIDS told us that this “acts as a powerful form of monopoly protection that enables originator drug companies to prevent generic competition, whether there is a patent on the medicine or not.”³⁴⁹

123. Witnesses suggested that there were several reasons to think the US may seek enhanced IPR protections in a UK-US FTA. First, the US has historically sought such stringent patenting and data protection (for pharmaceuticals trials data) provisions in its FTAs.³⁵⁰ Second, Dr García told us that the US is seeking to entrench the competitive advantages of some of its sectors in the current NAFTA renegotiations, including proposing measures that “go well beyond the commitments agreed in the WTO TRIPS agreement

339 Oral evidence taken before the International Trade Committee on 15 March 2017, HC (2015–17) 978-i, Q 41 [Edward Barker]

340 Oral evidence taken before the House of Lords European Union Committee on 27 February 2014, HL (2013–14) 179, Q 227 [Owen Tudor]

341 StopAIDS ([TER 0022](#))

342 Global Justice Now ([TER0016](#)). See also Trade Justice Dundee ([TER0001](#)).

343 This is a method for listing services liberalisation commitments in market access schedules. Under this approach, public sectors, such as the NHS, are not protected unless they are ‘specifically and explicitly excluded’.

344 These clauses preclude liberalisation commitments being ‘wound back’. Standstill clauses require that the current levels market openness be maintained, while ratchet clauses require that any increase in the level of market openness be maintained once adopted (i.e. a new standstill position).

345 Dr Peter Holmes, “[Trade and Consumers After Brexit](#)”, *UK Trade Policy Observatory Briefing Paper No. 12*, November 2017, p 8

346 BritishAmerican Business ([TER 0032](#))

347 Q 183

348 Q 200 [Saoirse Fitzpatrick]

349 StopAIDS ([TER 0022](#))

350 See Ruth Lopert and Deborah Gleeson, “The High Price of ‘Free’ Trade: U.S. Trade Agreements and Access to Medicines”, *The Journal of Law, Medicine and Ethics*, vol 41(1) (2013), p 201. See also Deborah Gleeson, Hazel Moir and Ruth Lopert, “Costs to Australian taxpayers of pharmaceutical monopolies and proposals to extend them in the Trans-Pacific Partnership Agreement”, *The Medical Journal of Australia*, vol 202(6) (2015), pp 306–8.

... [and] mirror those the US imposed on partner countries during the negotiations of the [TPP].³⁵¹ Third, Saoirse Fitzpatrick of StopAIDS told us that the Trump Administration “has been talking a lot about wanting to reduce [pharmaceutical] prices”.³⁵² She referred us to a leaked paper from the White House regarding medical products and biomedical innovation which was said to indicate that the US “will push for longer monopolies and high drug prices in other countries as a way of lowering their domestic drug procurement bill.”³⁵³ Ms Fitzpatrick also highlighted further concerns arising from pharmaceutical annexes in other US FTAs, including the US’s approach to competitive disciplines for the pricing of pharmaceuticals and reimbursement policies for pharmaceuticals.³⁵⁴

124. The Government appears to have ruled out liberalisation of the NHS as part of a UK-US agreement. Dr Barker told the previous Committee that “there were a lot of measures within TTIP that prevented the sort of concern that I know people were raising about procurement and the NHS.”³⁵⁵ The Prime Minister further told the House in February 2017 that “the NHS is not for sale and it never will be”, and would not be used as a ‘bargaining chip’ in any US trade agreement.³⁵⁶ However, in February 2018 when asked to give an “absolute guarantee that the NHS will be excluded from the scope of [US trade] negotiations”, the Prime Minister said only that the Government “does not know what the American Administration are going to say about their requirements for that [FTA]. We will go into those negotiations to get the best possible deal for the United Kingdom.”³⁵⁷

125. There should be no ambiguity in the Government’s position in relation to the protection of UK public services in trade agreements, not least because even a perception that they could be under threat could lead to the widespread opposition that was seen to TTIP. The Government should ensure that the universal access to healthcare provided by the NHS is not compromised by a UK-US FTA. The Government should also ensure that the NHS’s pharmaceutical purchasing model is not adversely affected by any intellectual property rights protections and regulatory provisions covering pharmaceuticals.

351 Dr Maria García ([TER0011](#))

352 Q 201 [Saoirse Fitzpatrick]

353 Q 201 [Saoirse Fitzpatrick]; StopAIDS ([TER 0022](#))

354 Qq 200, 201 [Saoirse Fitzpatrick]

355 Oral evidence taken before the International Trade Committee on 15 March 2017, HC (2015–17) 978-i, Q 32 [Edward Barker]

356 HC Deb, 1 February 2017, col 1017

357 HC Deb, 7 February 2018, col 1492

Conclusions and recommendations

Sequencing and Priorities

1. In less than a year the UK will begin negotiating free trade agreements. The basis of these negotiations must be a clear, evidence-based and comprehensive trade strategy, which is open to scrutiny. There will be intense political pressure on the Government to strike free trade agreements before the next election to prove the success of its Brexit strategy, and an agreement with the US will be a tempting prize. The Government must not make agreements for agreements' sake, and should ensure that it is selecting negotiating partners as a result of an overarching trade strategy that is formulated in consultation with Parliament, business and civil society. This does not mean that the US is not the right place to start. (Paragraph 20)
2. A trade agreement with the US has the potential to have a transformative effect, for better or worse, on the UK economy. If it is the first nation with which the UK pursues a free trade agreement, we would expect the Government to be clear on how this fits in with its overarching strategy, and that it has considered and rejected for sound reasons possible alternatives. (Paragraph 21)
3. *Before embarking on a formal trade negotiation with the US, the Government should publish a trade policy strategy which articulates its vision for the UK as an independent trading nation and outlines the UK's immediate and future trade priorities at the bilateral, plurilateral and multilateral levels, and in order to ensure clarity on the UK's trading environment it would be preferable for Parliament to resolve the 2018 EU (Withdrawal) Bill and Trade Bill as soon as possible.* (Paragraph 22)
4. *The Government should set out in its trade strategy what key objectives, interests and priorities it has before entering into trade negotiations, including on a UK-US FTA. It must also be clear about the sectoral and regional implications of pursuing particular trade policy objectives.* Given that trade agreements can take years to negotiate, it is vital that the UK political parties attempt to form some level of political consensus on the direction of travel of trade policy to ensure that changes of government do not result in years of wasted effort at the negotiating table. The extent to which the Government should detail its negotiating mandate in advance and the effect that may have on that negotiation should be the subject of further inquiry including, but not limited to, taking evidence from successful examples of the communication of the political economy of trade, such as New Zealand. (Paragraph 23)

Potential economic benefits of UK-US Trade Agreement

5. A UK-US FTA has the potential to have a positive effect on economic growth. *However, given how central new free trade agreements are to the UK's Brexit strategy, and that an agreement with the US is top of the list, the Government should undertake detailed work modelling the potential effects of a UK-US agreement on the economy.* The Government's explanation that the content of an agreement is unknown is not fully satisfactory; there is no reason why it should not model a range of scenarios.

The Government has indicated undertaking only a limited exercise in modelling and should increase this work to look at the range of potential variations to best assess potential impacts. (Paragraph 35)

6. *The Government should be clear and well-informed about the potential economic effects (positive or negative) of a UK-US FTA. Before pursuing a US trade agreement, the Department should conduct a comprehensive economic impact assessment. The assessment should go beyond an econometric study of the potential impacts, and consider in detail the effects of an agreement, broken down by sector as well as by each of the regions and devolved administrations of the UK. The Government should also be clear about the assumptions regarding reductions in non-tariff barriers which underpin the impact assessment. It should also take account of any effect of a trade agreement between the UK and the US on trade between the UK and its other trading partners. It should also take account of any effect of a trade agreement between the UK and the US on trade between the UK and its other trading partners.* (Paragraph 36)
7. *We accept that there will be some occasions when the Government should not publish certain information to protect the UK's negotiating position, but the Government should set out its position in its negotiating mandate, including identifying who is most and least likely to benefit from the proposed agreement.* (Paragraph 37)

Regulatory Cooperation

8. The reduction of non-tariff barriers is a key 'win' in modern trade agreements, and little of the potential economic benefit of a free trade agreement with the US will be realised if this objective is not achieved. As a recent EU member state, the UK will be starting from a significantly different regulatory position, and significant changes to regulation may be required to achieve a comprehensive FTA with the US. (Paragraph 55)
9. While pursuing a comprehensive FTA with the US, including on regulatory matters, may have benefits for the UK, it could also give rise to regulatory barriers with the UK's other major trading partners, including the EU. The decision about whether some increase in regulatory barriers with the EU in exchange for some removal of such barriers with the US is beneficial overall is a matter that will require careful evaluation. However, it is clear that the two cannot be considered in isolation. Policies on the level of regulatory alignment the UK has with the EU and the US must not be considered in siloes, but with full consideration of the impacts of any decision on the trading relationship and trade levels with each respective jurisdiction or bloc. (Paragraph 56)
10. *The Government should consider establishing a cross-departmental working group on trade and regulation which informs all of its trade negotiations, including with the EU. The Committee will consider this issue further in its future work.* (Paragraph 57)
11. The rate at which technology and tech businesses are developing far surpasses the capacity to predict future regulatory issues. It is critical therefore that any UK-US FTA is a living agreement. We support the inclusion of a structured arrangement for future dialogue between UK and US regulators, while recognising that such a dialogue should not have a chilling effect on future public interest regulation. *In*

considering the form of the cooperation mechanism, the Government should have regard to the proposed future cooperation mechanism in TTIP and its potential benefits and risks. (Paragraph 61)

Trade in Goods Case Studies

12. A number of industries, including chemicals and automotive, have told us that they want the UK to remain aligned to the EU's regulatory model in the future. Others have argued in favour of diverging from the EU's regulatory model. *The Government should be clear, before entering into any FTA negotiations, about the relative weight it intends to give the interests of different sectors within the UK economy. These considerations should be addressed in an impact assessment. (Paragraph 81)*
13. In conducting an impact assessment of an FTA, the Government must not consider the needs of business sectors to the exclusion of the needs of consumers. *The Government should ensure that the effect of a UK-US trade agreement on consumers is considered separately to a sectoral impact assessment. The Government needs to ensure that consumers are represented in consultations on a future UK-US trade agreement, and in particular, put mechanisms in place to ensure that the voices of lower-income consumers are heard. (Paragraph 82)*
14. The Government has said that it will not lower existing product safety, environmental and animal welfare standards in a UK-US FTA. We welcome these assurances. (Paragraph 83)

Trade in Services

15. *The Government should explore options for addressing the complexities of federal, state and local restrictions on the provision of services and awarding of procurement contracts. The Government should ensure that it campaigns at the state-level for greater market access which can be enshrined in a UK-US FTA. A Washington-only approach will not suffice. That approach needs to begin immediately by ensuring that state-level representatives are included on the UK-US Trade and Investment Working Group, or, if necessary, that separate, state-level working groups are created. Taking account of the practical difficulties, without senior sub-federal participation in the US negotiating team it is unlikely that UK services exports benefits will be achieved. Securing sub-federal US participation should therefore be a key objective for any FTA negotiation framework. At the working group level, the UK should be exploring what it could do before Brexit to promote trade in services. The Government should invest in support for exporters in bidding for procurement contracts at the federal and state level. (Paragraph 107)*
16. Data flows and protecting personal data are of paramount importance to trade in services. *To maximise the capacity for UK service providers to export in the immediate future, the Government should consider mirroring the EU's existing General Data Protection Regulation and seeking an adequacy agreement with the EU. Doing so will ensure UK service providers can move data between the UK and EU. Prior to negotiating an FTA, the Government should also consider seeking to replicate the EU-US Privacy Shield Arrangement in a new bilateral UK-US arrangement. (Paragraph 108)*

Other Lessons from TTIP

17. It would be a retrograde step if the trade negotiations undertaken by the UK independently were less transparent than those undertaken at EU level—although we are not implying they will be. Throughout this inquiry, issues have arisen regarding the transparency and scrutiny of trade negotiations, and we will return to these issues shortly. (Paragraph 114)
18. ISDS is a contentious issue in trade negotiations. Recent EU and mega-regional FTAs have adopted a variety of approaches to the issue, from the Investment Court System proposed in CETA to a more limited ISDS mechanism proposed in TPP. *Before entering into negotiations with the US, the Government should clarify its policy on ISDS. In particular, it should identify the purpose of an ISDS mechanism in circumstances where both the US and UK have sophisticated, independent domestic judicial systems* (Paragraph 119)
19. There should be no ambiguity in the Government's position in relation to the protection of UK public services in trade agreements, not least because even a perception that they could be under threat could lead to the widespread opposition that was seen to TTIP. *The Government should ensure that the universal access to healthcare provided by the NHS is not compromised by a UK-US FTA. The Government should also ensure that the NHS's pharmaceutical purchasing model is not adversely affected by any intellectual property rights protections and regulatory provisions covering pharmaceuticals.* (Paragraph 125)

Formal minutes

Wednesday 25 April 2018

Members present:

Angus Brendan MacNeil, in the Chair

Mr Marcus Fysh Stephanie Peacock

Mr Ranil Jayawardena Faisal Rashid

Mr Chris Leslie Catherine West

Emma Little Pengelly Matt Western

Julia Lopez

Draft Report (*UK-US Trade Relations*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 125 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 2 May at 9.30 am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 25 October 2017

Shanker Singham, Director of Economic Policy and Prosperity Studies, Legatum Institute and **Samuel Lowe**, Campaign Lead, Brexit and Trade Policy, Friends of the Earth.

Wednesday 22 November 2017

Nick von Westenholz, Director of EU Exit and International Trade, National Farmers Union, and **Peter Stevenson**, Chief Policy Advisor, Compassion in World Farming.

Gary Campkin, Director of Policy and Strategy, TheCityUK.

Wednesday 17 January 2018

Dr Peter Holmes, Reader in Economics, University of Sussex; **Julian Jessop**, Chief Economist and Head of the Brexit Unit, Institute for Economic Affairs; and **Warwick Lightfoot**, Director of Research, and Head of the Economics and Social Policy, Policy Exchange.

Howard Chase, Director of Government Affairs, Dow Chemical Company; **Ian Cranshaw**, Head of Business Development and International Trade, Chemical Industries Association; and **Saoirse Fitzpatrick**, Senior Advocacy Adviser, StopAIDS.

Wednesday 31 January 2018

Giles Derrington, Head of Policy, techUK and **Mike Hawes**, Chief Executive, The Society of Motor Manufacturers and Traders.

Mark Buckingham, Chair of Agricultural Biotechnology Council and **Dr Julian Little**, Head of Communications and Government Affairs, Bayer.

Wednesday 28 February 2018

His Excellency the Hon Alexander Downer AC, Australian High Commissioner to the UK.

Wednesday 7 March 2018

Rt Hon Greg Hands MP, Minister of State for Trade Policy.

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

TER numbers are generated by the evidence processing system and so may not be complete

- 1 Agricultural Biotechnology Council ([TER0027](#))
- 2 American Pharmaceutical Group ([TER0024](#))
- 3 Association of British Insurers ([TER0019](#))
- 4 Baby Milk Action IBFAN UK ([TER0021](#))
- 5 British Standards Institution (BSI) ([TER0033](#))
- 6 British Toy and Hobby Association ([TER0037](#))
- 7 British Veterinary Association ([TER0018](#))
- 8 BritishAmerican Business ([TER0032](#))
- 9 Chemical Industries Association ([TER0003](#))
- 10 Chevron North Sea Ltd ([TER0008](#))
- 11 City of London Corporation ([TER0030](#))
- 12 Compassion in World Farming ([TER0005](#))
- 13 Confederation of British Industry ([TER0028](#))
- 14 Crop Protection Association ([TER0020](#))
- 15 DAIRY UK ([TER0014](#))
- 16 Dr Dennis Novy ([TER0002](#))
- 17 First Steps Nutrition Trust ([TER0012](#))
- 18 Food and Drink Federation ([TER0015](#))
- 19 Global Justice Now ([TER0016](#))
- 20 Institute of Chartered Accountants of Scotland (ICAS) ([TER0013](#))
- 21 Maria Garcia ([TER0011](#))
- 22 Producers Alliance for Cinema and TV (Pact) ([TER0026](#))
- 23 Professor David Collins ([TER0006](#))
- 24 Professor Philip Lawrence ([TER0029](#))
- 25 SMMT ([TER0035](#))
- 26 StopAids ([TER0036](#))
- 27 STOPAIDS ([TER0022](#))
- 28 techUK ([TER0034](#))
- 29 The Investment Association ([TER0031](#))
- 30 TheCityUK ([TER0023](#))
- 31 Trade Justice Dundee ([TER0001](#))
- 32 Trade Justice Scotland Coalition ([TER0007](#))
- 33 Trades Union Congress ([TER0004](#))
- 34 Wine and Spirit Trade Association ([TER0009](#))
- 35 Wine Institute ([TER0017](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Continuing application of EU trade agreements after Brexit	HC 520
First Special Report	UK trade options beyond 2019: Government Response to the Committee's First Report of Session 2016–17	HC 585