

The logo for the Chartered Institute of International Business (CBI) is displayed in the top left corner. It consists of the letters 'CBI' in a bold, white, sans-serif font, with vertical bars separating the letters. The background of the top half of the page is a photograph of a modern office building with large glass windows. Inside, four business professionals are walking: a woman in a dark suit pulling a silver suitcase, a woman in a light-colored top and dark trousers, a man in a dark suit holding a tablet, and a woman in a dark dress. The scene is brightly lit by natural light from the windows. A thick orange diagonal line runs across the bottom of the image, separating it from the white text area below.

CBI

# A roaring trade

Capitalising on the opportunities of a UK-US Free Trade Agreement

March 2020

International Trade



### **About the CBI International Team**

Trade between the United Kingdom and its international partners is the cornerstone of our economy. It creates new jobs, raises productivity and increases prosperity across the country, and indeed, the world. The CBI is working to deepen the vital partnership between business and government to ensure the UK's export and global trade strategy supports investment and growth across the economy. To ensure the voice of business is heard around the world, the CBI remains close to and responsive to its members through its offices across the UK as well as in Brussels, Beijing, New Delhi, and Washington, D.C.

### **About CBI Washington**

The CBI Washington office opened in 2002 as the CBI's first office outside Europe, reflecting the importance of the UK's bilateral economic relationship with the United States. The Washington office provides a base from which the CBI can promote member interests to a US audience. They provide a range of services to member companies, whether in the UK, the US or elsewhere, including:

- Information on the latest legislative, regulatory and economic developments in the US
- Lobbying on issues of particular importance to our member companies
- Networking opportunities, to help those on both sides of the Atlantic understand how to increase the flow of transatlantic business

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# Executive summary

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There is an opportunity for the government to agree a trade deal with the US which allows for increased prosperity in every corner of the UK. Business can help by providing the evidence required by negotiators and by delivering the message that trade deals, done right, can deliver economic growth at every level.

The CBI has consulted extensively with hundreds of members of all sizes, on both sides of the Atlantic, and operating in all sectors, ahead of UK-US negotiations. As a result, 26 recommendations have been developed for a future UK-US trade deal in four major areas:

- How a trade deal can boost prosperity.
- Go beyond a trade deal to build bridges at the state and local level.
- Work with business to build support for a deal.
- Navigate the political realities.

## How a trade deal can boost prosperity

### **Expand access for services**

- Allow for greater flow of talent across the Atlantic.
- Engage with Congress to draft and approve new legislation that improves the ease of access to US residency for skilled British workers.
- Build a formal architecture in financial services for regulatory dialogue and world-leading collaboration.
- Adjust Title IV of the Federal Aviation Act of 1958 (FAVA) which provides guidelines and restrictions for foreign investment in the US aviation industry.
- Look to secure a handful of UK-specific carveouts for maritime transport barriers caused by the Jones Act.
- Tackle obstacles for foreign investment in the “last mile” of telecoms infrastructure to help create a more competitive transatlantic market for business data services.



### **Drive innovation**

- Restate a joint commitment to the moratorium on tariffs being applied to electronically delivered products and data transfers. Provisions on the cross-border flow of data should be as broad as possible while not impacting each parties' domestic data protection regimes.
- Establish a UK-US Working Group on Artificial Intelligence regulation and standards development.
- Maintain all aspects of the UK's domestic copyright regime, including existing exceptions, enforcement rules and relevant intermediary liability regime. Harmonise approaches to intellectual property protection in regulatory data protection (RDP) to encourage innovation in pharmaceuticals.
- Include a bilateral Mutual Recognition Agreement in Life Sciences to provide mutual recognition of Good Manufacturing Practice Inspections and some batch test waivers. Accelerate access to new treatments in the UK through deeper regulatory co-operation regarding investigational medicinal products and clinical trials governance.
- Conduct Sustainability Impact Assessments (SIAs) before and after ratification and promote the enforcement of international sustainability standards.
- Ensure that changes to the Committee on Foreign Investment in the US (CFIUS) regime do not disrupt co-operation in areas like artificial intelligence and cloud computing.
- The UK should keep the implementation of the UK Digital Services Tax under review and focus all efforts to on finding a solution at the OECD.

### **Ease the trade in goods**

- Address longstanding tariff issues affecting specialty industries in the UK.
- Work with the US government to shift its "Buy American-Hire American" strategy towards a more unified "Buy-Hire Transatlantic" approach that recognises the ability for British firms to meet American needs.
- Fully reflect the attachment of both parties to use international standards, primarily through the recognised international standards organisations of ISO and IEC, as a basis for technical regulation.
- Include a Cosmetics Annex to reaffirm a commitment to strong principles and practices that promote regulatory convergence and facilitate trade.

### **Make it easier for SMEs to export**

- Eliminate the need for duty refunds on returned goods and mutually raise de minimis thresholds.
- Establish a Mutual Recognition Agreement between US authorities and HM Revenue and Customs (HMRC) covering AEO status. HMRC should look to expedite the application process for businesses looking to achieve AEO status with a view to increased SME participation.
- Create a UK-US SME Joint Committee to monitor implementation of a deal and communicate its benefits to SMEs.

### **Go beyond a trade deal to build bridges at the state and local level**

- Staff the UK's regional network in the US with trade policy teams dedicated solely to lobbying municipal and state leadership on market access barriers, in states with the biggest potential.
- Create a bilateral Working Group on Professional Services to facilitate conversations, opportunities, and openings at the state level for UK regulators.

### **Work with business to build support for a deal**

- Manage the complexity of simultaneous negotiations by establishing stakeholder engagement groups covering both EU and non-EU trade and appoint a Chief Business Trade Envoy to coordinate trade policy.
- Establish and publicise the 'clearing house' mechanism to ensure defensive interests and sectoral trade-offs are effectively managed, based on extensive evidence from business.

### **Navigate the political realities**

- Commit to ground-breaking levels of transparency and openness with the public and elected bodies during negotiations.
- Work with business to campaign for the benefits UK businesses bring to American citizens and individual Congressional districts.



*“Companies right across the UK are optimistic about potential new opportunities. Increased trade with the US can have a significant benefit for job creation and living standards.”*

# Introduction

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The UK is beginning a brand-new chapter in its national story. The new government's ambitious global agenda represents an opportunity for the UK to recast its place on the international stage.

Striking a trade deal with the United States is a welcome part of that. The UK and the US share the world's largest bilateral investment relationship, which creates over one million jobs in both countries and represents one trillion dollars of combined foreign direct investment. British investment fuels every sector of the American economy, reaches all 50 states, and exceeds the investments of Japan, Canada, Germany, and France. This close relationship gives us the strongest possible foundation for a new trade agreement.

The whole UK economy stands to benefit if the right deal is achieved. Small business could profit from simplified customs procedures. Services firms could be given greater market access and move their staff across the Atlantic more easily. And areas of modern trade, such as e-commerce, can be supported. Companies right across the UK are optimistic about potential new opportunities. Increased trade with the US can have a significant benefit for job creation and living standards.

With their interconnected ecosystems in finance, technology and life sciences, the UK and US are also natural partners in innovation. Both countries should set the bar high for a future deal and facilitate the design of global standards in emerging sectors like Artificial Intelligence and FinTech.

But with opportunity comes challenge. As the UK seeks to negotiate trade deals with both the EU and US simultaneously, it will have to ensure the very best outcome is achieved on both fronts. For CBI members and many US investors, continued access to European markets is crucial.

This shouldn't be seen as an either/or choice. If the UK approaches the US negotiations in the right way, deals with the EU and US can be complementary. The focus needs to be on where a deal can add value to an already thriving relationship while managing the trade-offs and sequencing with other negotiations transparently. Doing so will enable the UK to play a role as a global leader on trade liberalisation and bridge the world's two largest trade blocs.



This report sets out the wide range of potential benefits for business on both sides of the Atlantic in a UK-US trade deal, while allowing for a close UK trading relationship with the EU. It builds on the UK government's objectives for a US deal, which have been broadly welcomed by business as targeting the right opportunities.

Critical to a deal's success is putting business insights at the heart of negotiations. Business involvement – along with consumer groups, trade unions and civil society – will be essential to build the trust on which trade deals depend. Business communities on both sides can help win public support and set out clear arguments for the fair benefits of any deal. And forging common interest between business on both sides of the Atlantic may also bridge some of the trickiest issues confronting a deal, whether in food standards, pharmaceutical pricing, or digital taxation.

Together, both countries have a once-in-a-generation opportunity to secure a trade deal that not only drives further growth and job creation, but also helps shape the modern global economy through joint leadership at an international level. Let's take it.



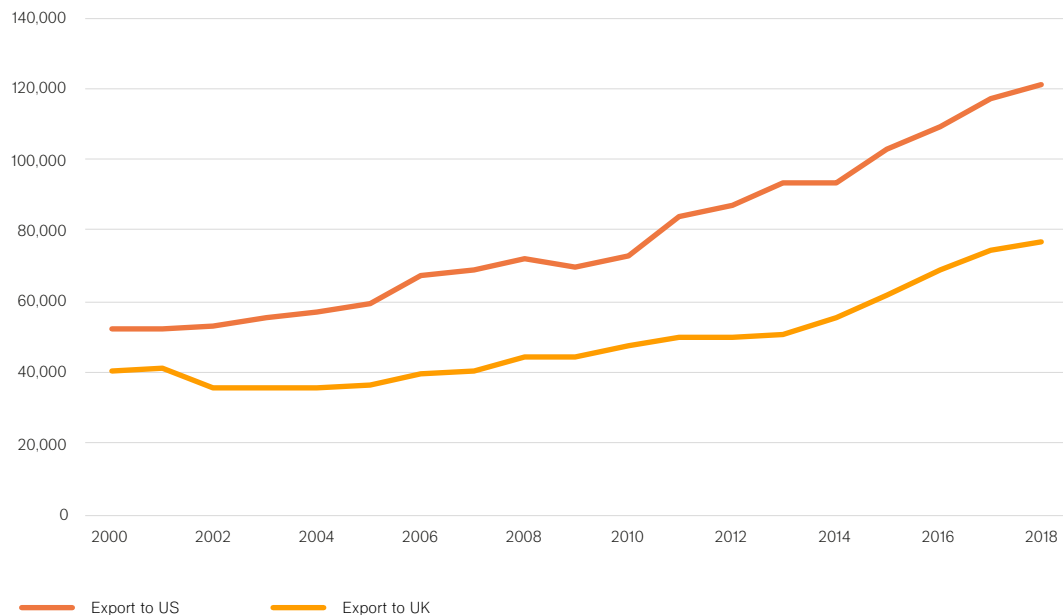
# Starting point: a world-leading economic relationship

The UK and US have the largest bilateral investment relationship in the world today, which is worth more than one trillion dollars and supports employment of more than one million people in each other's countries. The US is the UK's biggest single country investor.

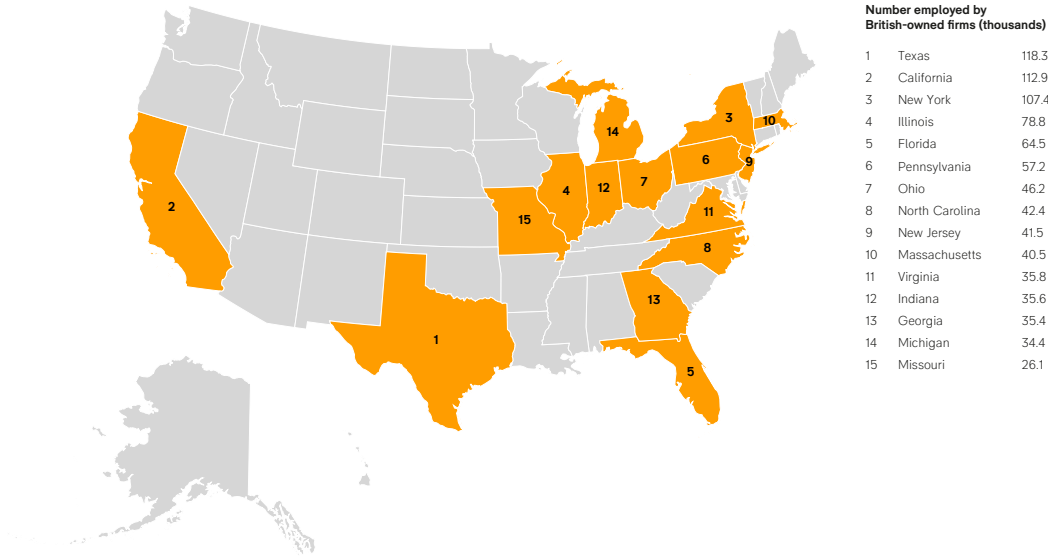
This partnership is anchored by more than two hundred years of commercial exchange, as well as closely aligned business cultures, legal systems, and structures of governance.

As the graph below shows,<sup>1</sup> UK exports to the US have more than doubled in the last 20 years. The investment relationship is also on an upward trend. American jobs supported by British companies have increased from around 964,000 in 2014 to over 1.2 million in 2018. Total UK FDI in the United States has increased by over \$76 billion during the same period.<sup>2</sup> A trade agreement can further increase these positive trends.

**Exhibit 1.1** Bi-lateral trade between the US and UK (£m)



### Exhibit 1.2 UK investment creating American jobs



■ Top 15 states by number of employees at British-owned firms (Source: BEA)



# How a trade deal can boost prosperity

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## Expand access for services

The US is the UK's biggest single country export market for services.<sup>3</sup> The two countries are the world's largest service exporters and leaders in service industries such as finance and tech. UK investment in American professional, technical, and scientific services jumped from \$10.8 billion in 2015 to \$22.8 billion in 2018.<sup>4</sup> UK government figures show that total UK-US services trade all but doubled between 2007 and 2018.

However, only 20% of UK service companies which export sell to the US.<sup>5</sup> It is a market that offers significant potential for this figure to increase. US services output grew by 3.4% in 2018, or \$1,328bn.<sup>6</sup> A future trade deal is an opportunity to increase cross-border trade, including by encouraging greater mobility and developing regulatory dialogues that can help increase market access and shape industries of the future.

## Skilled Migration

Easing the flow of talent across the Atlantic could offer big gains for business. One of the biggest difficulties CBI members face when trading with the US is moving skilled workers and management personnel into the country on a 'fly in fly out' basis. US companies have reported similar concerns in the UK. A top priority should be to make temporary intracompany transfers and short-term business stays easier, supporting "Mode 4" services trade.<sup>7</sup> If firms can move staff between the UK and US more freely, they can more effectively build working relationships and more easily win business.

### Recommendation

- Allow for greater flow of talent across the Atlantic so that business can make workforce decisions without onerous regulatory challenges.

In addition, addressing the issue of skilled permanent resident visas in the US could allow UK firms to have greater commercial presence across the Atlantic. It will, however, require a strong case to be made in the US Congress. Members of Congress inserted an amendment to the 2015 Trade Promotion Authority (TPA) legislation<sup>8</sup> preventing US negotiators from altering immigration laws in free trade agreements.<sup>9</sup> This was in response to US trade agreements with Singapore and Chile which promised a specific number of H1B visas to Singaporean and Chilean nationals, and the 2005 Australia-US Free Trade Agreement which created a brand-new business visa for Australian nationals.<sup>10</sup>

There are four distinct proposals that UK officials could bring to the table in discussions with Members of Congress about this issue:

1. Pushing for a separate, UK-only skilled visa category, like the Australian E3 structure.
2. Asking for UK-specific exceptions to the length of the L1A and L1B intracompany transfer visa duration (currently capped at a maximum of 5-7 years).
3. Eliminating a provision of the E2 treaty investor visa that requires the holder to be employed at the same job for the entirety of their stay in the United States.
4. Setting aside an annual allocation of six-month non-immigrant B1 business visas specifically for British nationals.

#### **Recommendation**

- Engage with Congress to draft and approve new legislation that improves the ease of access to US residency for skilled British workers.



**Case Study: Omobono**

*"Omobono is a creative and technology partner for global business brands, many of which are headquartered or have significant presence in the United States. Our US office represents 30% of Omobono's talent. It services US clients in partnership with teams in the UK, which enables us to support US clients in their time zone and extends our ability to respond in real time to client needs.*

*It is crucial that our workforce on both sides of the Atlantic have the utmost flexibility to travel and work in our offices in both Chicago and London as our teams are multi-disciplined and can be needed at short notice to work on client projects in different locations. Granting UK nationals greater access to simplified and cost-effective intracompany transfer visas would greatly benefit Omobono as it looks to expand its operations in the United States."*

**Financial Services**

The UK and US are the two leading global financial centres and are the primary hubs for innovation in finance. Financial services are a natural focus for any trade deal, though negotiators may need to respect existing channels of co-operation and target areas where a trade deal offers additional value in an already thriving relationship. Two areas of significant importance for UK investment in the US are wholesale insurance and the banking sector.

**Insurance**

The depth, scale and global reach of the UK's wholesale insurance and reinsurance markets play a critical role in financing business growth as well as managing risks and investments. The US is a major market for several UK (re)insurers.

At present, British insurers benefit from relatively good, if not entirely frictionless, access to the US market. The priority for UK reinsurers is to ensure implementation of the UK-US Covered Agreement ("Covered Agreement") by US state insurance regulators. This replicates the EU-US Covered Agreement. The focus of the UK government should therefore be on realising the substantial benefits of the Covered Agreement, rather than commencing additional negotiations on other regulatory issues.

An important element of the Covered Agreement is that, from 22 September 2022, on a prospective basis, it will prevent a US supervisor from imposing any requirement to post collateral in relation to a reinsurance contract with a UK assuming reinsurer meeting specified requirements, and vice versa. It will therefore allow UK reinsurers to compete in the US on a more equal footing. The UK does not impose collateral requirements on foreign reinsurers.

Bilateral agreements have brought about significant opportunities for (re)insurance. That being said, tackling cross-cutting issues such as mutual recognition of data protection regimes in trade negotiations may facilitate cross-border business and reduce frictional costs.

### Finance and Banking

The US is a major market for UK banks that want to build on existing strengths in investment banking and enter the midcap and SME banking market. While US financial services firms are building their presence in the UK, UK firms investing in the US face cross-border frictions. These frictions should be tackled through market liberalisation measures in any UK-US FTA, in combination with bilateral regulatory coordination and supervisory cooperation.

#### Case Study: Barclays

*"Barclays is optimistic about how we can deepen the economic relationship between the UK and US. As the two deepest and most sophisticated capital markets in the world, we believe there are lots of opportunities for the two countries to demonstrate leadership in financial services. Be it through the newly formed US-UK Financial Regulatory Working Group or through future Free Trade Agreement negotiations, we are hopeful that significant improvements can be made to deepen our relationship and reaffirm our leadership as the most developed trading partners worldwide.*

*Barclays have proudly worked in both the UK and US markets since our foundation in 1690, notably being the first British bank to have its shares listed on the New York Stock Exchange. As a bridge for the transatlantic relationship, we organise trade missions for our technology clients to Silicon Valley, we are the market leader for US firms issuing in sterling and euros, and we have credit card relationships with quintessential US firms, such as American Airlines and Apple, that go back over a decade."*

Regulatory dialogue is essential to ease frictions in the financial services market and navigate these complex regulatory hurdles successfully. In April 2018 the US and UK established a working group to facilitate dialogue between the financial regulatory authorities in both jurisdictions. The US-UK Financial Regulatory Working Group meets twice a year and includes officials from the US Department of the Treasury, HMT and some financial regulators. If supported by strong private-sector involvement, this dialogue could underpin a world-leading regulatory relationship. In addition, the establishment of the U.S - UK Financial Innovation Partnership (FIP) in 2019 provides a ready-made platform to build on and deepen bilateral engagement on emerging trends in financial services innovation.

British financial providers would also welcome more ambitious efforts to achieve alignment in prudential regulation, such as a jointly recognising each other's stress testing regimes (so banking groups don't have to comply with two different annual tests) and a mutual recognition approach to both sides' host-country prudential requirements for pre-positioning of capital and liquidity.

Strong collaboration with formal dialogue between the UK and US in financial service innovation, leveraging UK and US thought leadership in areas such as FinTech, green finance and cyber security, would allow a future UK/US deal to set the path for future global standards.

### **FinTech**

The UK and US are leaders in FinTech, and regulatory fora have a role in taking forward co-operation and innovative solutions in this area. This is particularly important as the traditional prudential model of regulation based on capitalisation and liquidity is not suitable for technology companies that facilitate transactions without holding money reserves or providing capital themselves, or for start-up companies. One of the stated aims of the Financial Innovation Partnership is to boost collaboration with the private sector and to share information and expertise about regulatory practices and promoting growth and innovation.

### **Cyber security and operational resilience**

As the pace of technology innovation and adoption increases, cyber-attacks are becoming more sophisticated and targeted. For many firms, technology risks and vulnerabilities are heightened through increased use of mobile, social, cloud, and web technologies. Regulators and industry could share insights and learning around protecting the financial and related professional services industry from cyber risks. Industry and regulators could also share insights on their approaches to operational disruptions which have the potential to harm consumers and market participants, threaten firm viability, and cause instability in the financial system. This issue also has potential relevance to the FIP agenda.



**Recommendation**

- Build a formal architecture in financial services for regulatory dialogue and world-leading collaboration to keep pace with rapid technological change and shifting customer demands.

**Transport Services**

Investment in US transport sectors could offer potential for UK business if existing barriers are addressed. UK airlines currently face restrictions in how much they can invest in US airlines – a restriction that’s not equally applicable to US investments in the UK.<sup>11</sup> US law states that foreign investment in domestic airlines cannot exceed 25% of total voting equity shares (by contrast, the EU allows up to 49% foreign ownership in EU airlines). UK-carveouts to these provisions could boost an already prosperous sector of the UK-US trading relationship.

**Recommendation**

- Work with Congress to adjust Title IV of the Federal Aviation Act of 1958 (FAVA), which provides guidelines and restrictions for foreign investment in the US aviation industry.

Shipping is another longstanding challenge. UK shipping companies are restricted from operating port-to-port within the United States due to the Jones Act.<sup>12</sup> Cabotage (the right to ship between intermediate points on a journey) is currently only available to ships built in the United States, registered under a US flag, and owned by a US-controlled corporation. Domestic stops along an international journey are also considered cabotage and are regulated accordingly, which means foreign carriers can’t make multiple stops at US ports without first switching to a vessel that fits Jones Act requirements. Additionally, 75% of the vessel employees are required to be American citizens. This is a burden to the UK shipping industry. The Jones Act is frequently identified as an ask in market access discussions with the United States. But it is important to note that national security and labour sensitivities surrounding the Jones Act will make it a difficult issue to negotiate concessions on. Moreover, the question remains whether the economic opportunities are outweighed by the political challenge.



### **Recommendation**

- Look to secure a handful of UK-specific carveouts for maritime transport barriers caused by the Jones Act.

### **Telecommunications**

Telecommunications services are crucial for a thriving digital economy.<sup>13</sup> Effective global communications services depend largely on access to underlying global network infrastructure that is competitive, open, and affordable. Business data services in particular enable this broadband economy; these dedicated, high-speed lines connect businesses and institutions around the globe. The US market, however, presents major barriers for foreign firms looking to lease the “last mile” of telecom infrastructure. This decades-old problem impacts not only the American economy, but also prevents a transatlantic level playing field. Competitive telecoms network access regimes in all major markets – consistently applied, transparent, fact-based, and in line with WTO norms – are essential. A competitive transatlantic market for business data services will lower user and business prices and support global value chains.

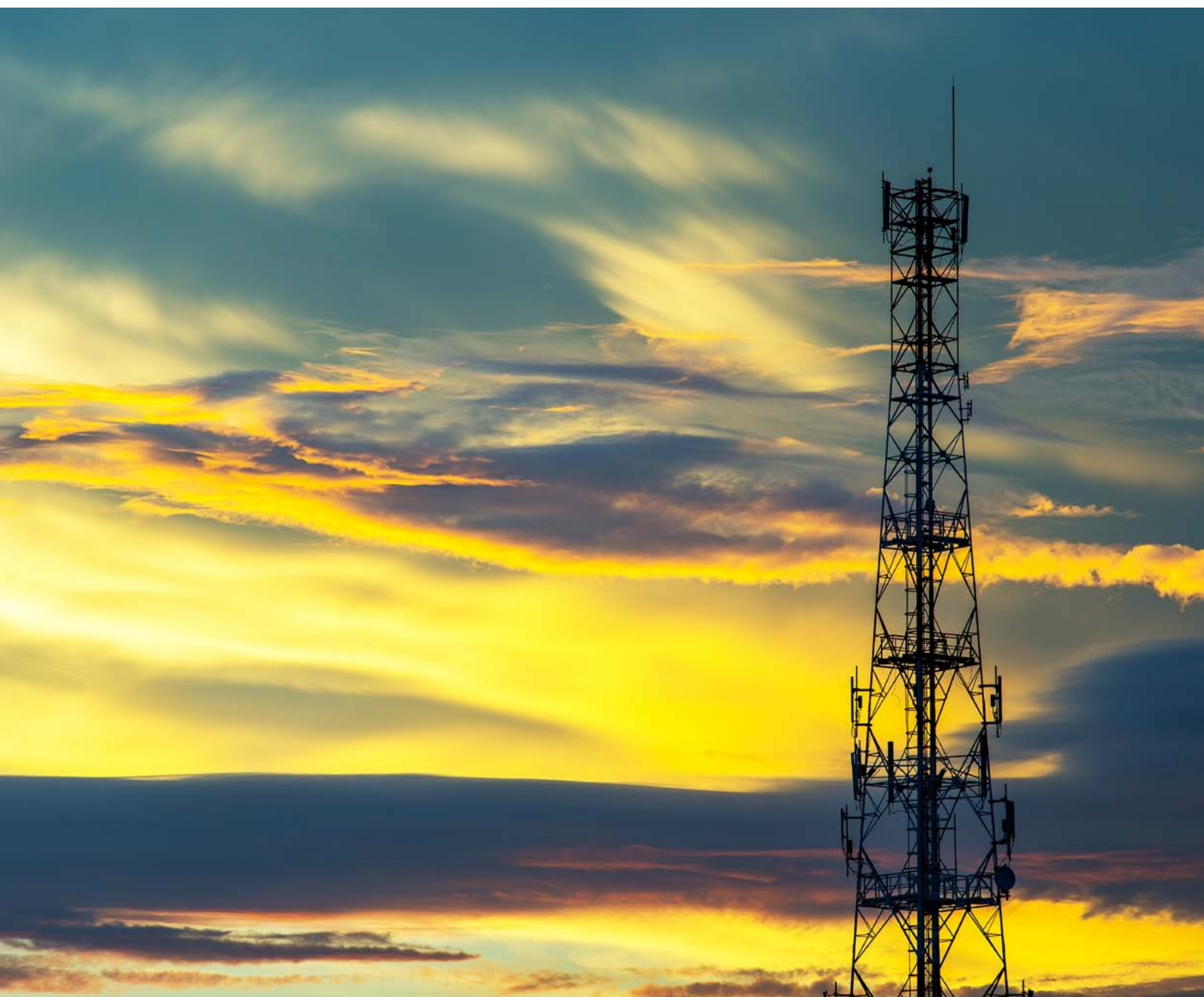
Studies suggest that markets with competition tend to introduce the latest network innovations earlier than those where monopolies exist.<sup>14</sup> As both sides look ahead to new and emerging technologies, they should ensure that competition is a key consideration. Cloud computing, AI, and the Internet of Things all rely on the enabling role of a thriving, competitive global communications market.

### **Recommendation**

- Tackle obstacles for foreign investment in the “last mile” of telecoms infrastructure to help create a more competitive transatlantic market for business data services.

**Case Study: BT**

*"The US is a key trading partner for the UK and source of potential trade growth and therefore more jobs, innovation and competitiveness in the UK and across the Atlantic. Both the UK and the US are leaders in trade in services as well as in the digital economy. An ambitious agreement provides an opportunity to lead in global best practices on data flows, data protection, artificial intelligence and other transformative technologies. Telecommunications services in particular underpin our digital economy. Any UK-US agreement therefore should match the standards we have in the UK in terms of pro-competitive telecommunications market access rules."*



## Drive innovation

The UK and US are natural partners in innovation, with world-beating universities and compatible strengths in digital, tech and life sciences. The relationship is expanding rapidly. Investment in Research and Development (R+D) from majority British-owned affiliates in the United States went from \$6.48 billion in 2011 up to \$8.8 billion in 2017.<sup>15</sup> According to the UK's Tech Nation, 32% of the foreign investment in the UK's fast-growing tech sector in the first half of 2019 came from the US – more than from the whole of Asia and more than domestic investment.<sup>16</sup>

Major US tech companies are framework investors in the UK. A trade deal gives both countries an opportunity to boost an already thriving relationship and agree rules which could contribute to better global standards. It could also be a chance to navigate potential obstacles to the innovation economy, such as restrictions on investment in US legislation or Transatlantic disagreements over proposals for a digital services tax.

## Digital Trade and Data

The UK and US government share a clear ambition to develop a world-leading approach to digital trade that reflects the nature of the 21st century global economy. Both countries are global leaders in artificial intelligence, cloud computing, and data flows – a digital trade chapter should ensure that this continues.

The US-Mexico-Canada Agreement (USMCA) provides a strong starting point for accelerating digital trade. Eliminating customs duties on digital products, protecting source code and algorithms, and supporting the cross-border flow of data are welcome provisions.

Cross-border data flows are the bedrock of the modern global economy, especially for service sectors such as retail, finance and legal. Data flows now generate more value than the global goods trade<sup>17</sup> and so a UK-US agreement must enable the cross-border flow of data and protect high privacy standards. The UK securing an adequacy decision with the EU will also be important for UK and US firms alike. To set a benchmark in view of other trade agreements, the cross-border data flow chapter in the UK-US FTA should oblige the existence of onward transfer mechanisms for personal data in full compliance with applicable data protection rules.

### Recommendation

- Restate a joint commitment to the moratorium on tariffs being applied to electronically delivered products and data transfers. Provisions on the cross-border flow of data should be as broad as possible while not impacting each parties' domestic data protection regimes.

The US and UK have an opportunity to strike a deal that makes a significant impact on the industries of the future. The UK and the United States should work together in promoting strong regulatory frameworks for artificial intelligence that reflect shared values like personal privacy, civil liberties, safety, and human dignity. An AI chapter should establish a joint forum for AI regulatory dialogue, which would enable information exchange at the bilateral level and allow both sides to collaborate on strategies to influence the multilateral discussion. This cooperative spirit is shared by the current US administration, given that a recent Executive Order on AI prioritises “enhancing international and industry collaboration with foreign partners and allies.”<sup>18</sup>

Beyond bilateral cooperation, the US and UK should look to set a benchmark for the rest of the world by ensuring that international standards do not result in a “race to the bottom.” Existing proposals such as the OECD’s Principles on AI and the Institute of Electrical and Electronics Engineers Standards Association’s (IEEE) work on standardisation of facial recognition accuracy are starting points that the US and UK should endorse in an FTA.<sup>19</sup> Ensuring that the global AI landscape evolves through common standards rather than unscrupulous competition is vital to maintaining trustworthy and safe AI systems – and the world’s most innovative economies have a responsibility to lead by example. If we start the conversation on quality and safety, the rest of the world will be encouraged to follow.

### **Recommendation**

- Establish a UK-US Working Group on Artificial Intelligence regulation and standards development.

### **Intellectual Property**

The protection of IP is critical for companies to succeed internationally. The UK’s IP regime is highly respected and CBI members want to see the UK take a lead on the multilateral level to harmonise IP systems globally. The US can be a helpful partner in this regard. Business wants to see UK commitments to existing treaties maintained and divergence from the UK’s current IP ecosystem is therefore undesirable. The UK should be confident in the design of its domestic IP rights and connected regimes, such as enforcement mechanisms, and ensure they are respected and upheld in any trade agreement with a third country.

Copyright and its enforceability play key roles in the digital and creative economies in ensuring that authors, composers, performers, and coders have the freedom to create and are compensated for their creative works and innovations. The UK's world-leading creative industries publishing, film, television and music have been built on these solid foundations and these should be upheld in any trade agreement. A priority for CBI members would be to maintain the UK's current IP ecosystem and see UK commitments to existing treaties including the European Patent Convention are maintained. These commitments are also valued by US companies operating in the UK.

On a bilateral level, however, there are ways where a trade deal could build on the US and UK's desire to incentivise innovation and entrepreneurship. For example, the EU-Japan trade deal (EPA) included IP provisions that were welcomed by business, building on and reinforcing commitments at the WTO. The agreement sets out provisions on protection of trade secrets, trademarks, copyright protection, patents, minimum common rules for regulatory test data protection for pharmaceuticals, and civil enforcement provisions.<sup>20</sup>

Areas of collaboration for an IP chapter could include:

- Committing to working together to work for wider IP harmonisation on a global level, as was done in the EU-Japan trade deal.
- Strengthening the provisions relating to legal privilege for IP practitioners in the UK and recognition of these rights in the US.
- Harmonising UK and US to the highest standards on regulatory data protection ("RDP") in pharmaceuticals, so that investments by innovator companies in generating clinical data can be recouped and re-invested in future innovation. This could come in the form of
  - o UK raising RDP requirements for biologics to align with the current US 12-year standards
  - o UK matching the US approach of three years for new formulations
  - o US raising RDP standards for small molecules to match the ten-year level of protection currently afforded in the UK.

### **Recommendation**

- Maintain all aspects of the domestic copyright regime, including existing exceptions, enforcement rules and relevant intermediary liability regime. Harmonise approaches to intellectual property protection in regulatory data protection (RDP) to encourage innovation in pharmaceuticals.



## **Life Sciences**

As the leading global innovation hubs for life sciences, the UK and US already have strong, reliable, and mostly transparent policy frameworks. Specific cooperation through technical agreements such as mutual recognition agreements (MRAs) could offer more immediate benefits to some parts of the UK economy. CBI members encourage the UK government to pursue such targeted technical agreements, including with the US, as these could be negotiated and enter into force quickly while a comprehensive FTA is explored.

Prior to the UK's departure from the EU, the UK life sciences industry were able to access the benefits of the EU-US MRA, which provided for mutual recognition of Good Manufacturing Practice inspections and some batch test waivers. By negotiating a bilateral MRA or including this in a UK-US FTA, it would enable industry and regulators to continue to benefit from this reduced friction. There could be also considerable benefit in accelerating access to new treatments in the UK through deeper regulatory cooperation regarding investigational medicinal products and clinical trials governance.

### **Recommendation**

- Include a bilateral mutual recognition agreement in Life Sciences to provide mutual recognition of Good Manufacturing Practice inspections and some batch test waivers. Accelerate access to new treatments in the UK through deeper regulatory co-operation regarding investigational medicinal products and clinical trials governance.

## **Sustainability provisions**

Sustainability and environmental provisions frequently feature in trade agreements. 630 FTAs signed between 1947 and 2016 include sections on conservation, eliminating the trade of illegal resources, flora and fauna protection, and more. Despite this, the language tends to be vague, non-binding and aspirational. For the US and UK to deliver more concrete and measurable environmental commitments, an FTA could promote the enforcement of international standards, while also giving both sides the freedom to develop policies deemed most appropriate for their domestic market.

This means that the UK and its trading partners have the flexibility to increase their own standards over time in pursuit of legitimate domestic climate and environmental policy objectives. In this way, buy-in to enhanced domestic standards may be more easily assured, as additional obligations won't be imposed upon them externally, but rather built with in-market national experts who are closer to the concerns and priorities of local producers.

In addition, the CBI recommends that both sides should conduct sustainability impact assessments (SIAs) before ratification occurs, to provide adequate information and transparency for decision-makers to assess appropriate evidence and facts. These should be complemented by regular post-ratification SIAs that identify areas where more progress is required.

### **Recommendation**

- Conduct Sustainability Impact Assessments (SIAs) before and after ratification and promote the enforcement of international sustainability standards.

### **Avoiding potential roadblocks to innovation**

While UK-US innovation continues to thrive, there are two potential roadblocks that will require careful consideration and dialogue. The first is the issue of foreign investment oversight. In 2018, Congress passed the most significant change to foreign investment review in the United States in over a decade. The Foreign Investment Risk Review and Modernization Act ("FIRRMA") is designed to strengthen the capacity of the Committee on Foreign Investment in the United States (CFIUS) to limit foreign investment where national security concerns might be impacted – such as investment in technology firms or real estate located near military bases. FIRRMA has also expanded CFIUS to review non-controlling purchases and investments from foreign entities in critical infrastructure, critical technologies, or collection of personal data – which will impact a wider range of investors than ever before.

While the US Department of the Treasury has announced plans to exempt qualifying companies from the UK, Australia, and Canada, which is welcome, it remains unclear whether companies who only have distant supply chain connections to third parties will qualify for this exemption.<sup>21</sup>

### **Recommendation**

- Ensure that changes to the CFIUS investment regime do not disrupt co-operation in areas like artificial intelligence and cloud computing.

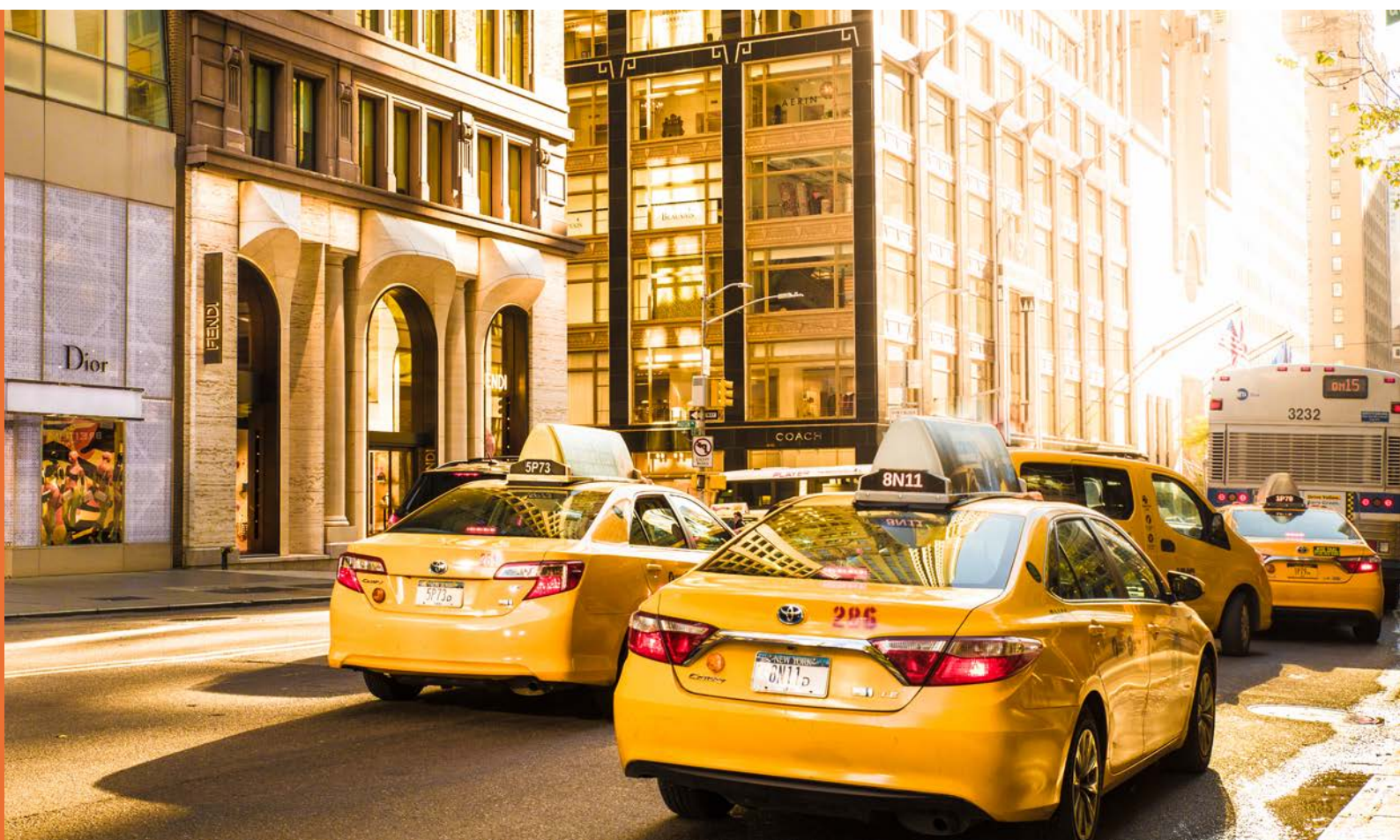


The second is growing controversy around a Digital Services Tax. The US Government is fundamentally opposed to unilateral efforts to pass revenue-based digital services tax (DST) measures, including the UK's own proposal that will come into force on 1st April 2020. US stakeholders have expressed to the CBI that the UK's DST will complicate their relationship with the United States in advance of a trade negotiation. The OECD has been working on an international solution to resolving the tax challenges of the digitalisation of the economy and there is widespread consensus that the OECD is the right organisation to lead reform to ensure a cohesive international tax framework.

The CBI has long called on the UK government to delay the introduction of the DST until the OECD has been given an opportunity to reach a consensus-based solution, especially in light of the fundamental weaknesses of revenue-based taxes. This includes the risks of double taxation and spill-over effects to the wider economy due to the risk of the tax being passed on to consumers. It may also send a message contrary to the aspiration of the government's Industrial Strategy and its Digital Strategy to "make Britain the best place to start and grow a digital business."

### Recommendation

- The UK should keep the implementation of the UK Digital Services Tax under review and focus all efforts to on finding a solution at the OECD.



## Ease the trade in goods

A trade deal with the US can significantly increase trade in goods. Tariffs are disproportionately impacting individual sectors, while progress can be made working together to set global standards. A trade agreement can also address some of the non-tariff barriers to trade in goods with the US, though this should not create new barriers to trade with other partners such as the EU.

### Tariffs and Taxes

There remain notable examples of tariffs impacting the competitiveness of businesses in the UK when looking to export their products to the United States.

For example, American tariffs of 20%-30% apply for many UK clothing exports<sup>22</sup> and up to 28% for specialised ceramic tableware.<sup>23</sup>

Chemicals and pharmaceuticals together account for 20% of all UK goods exports and support 600,000 jobs in the UK. The removal of chemical import duties would help the UK chemicals industry, which is critical to regions such as the North West of England. Analysis in the lead-up to Transatlantic Trade and Investment Partnership (TTIP) negotiations suggested that this would have brought about an estimated £168 million per year boost to other associated sectors in the US and UK, such as automotive, construction, pharmaceuticals and household products.<sup>24</sup>

In the pharmaceutical sector, active ingredients (APIs) and intermediates – which are used in the manufacture of medicines – do not automatically qualify for zero tariffs under the WTO Pharmaceutical Agreement unless they are formally added to a list that has not been updated since 2010. This means that new APIs used to produce innovative medicines are at risk of import tariffs, which increase supply chain costs for UK medicine manufacturers and affect their global competitiveness. Tariff liberalisation for all APIs and intermediates used in the manufacturing of medicine, including products which are used in research and clinical trials, would be welcomed by UK medicine producers in a UK-US FTA.

In automotive, current tariffs in the UK are 10% for passenger cars, 22% for commercial vehicles and 2-5% on components. The US imposes 2.5% tariffs on cars, 25% tariffs on trucks and 0-2% tariffs on components. Under an ambitious UK-US agreement, CBI members would support removing all automotive tariffs, providing there are appropriate phase-out periods to allow the markets to adjust and workable rules of origin that ensure zero tariff access to both markets.

#### **Recommendation**

- Address longstanding tariff issues affecting specialty industries in the UK.

Additionally, beer imported to the US is subject to higher federal taxes than US-produced beer, whereas American producers pay the same tax in the UK as domestic producers. Negotiators should look to ensure that British small brewers are treated the same as their American counterparts. Separately, existing wine and spirit agreements could benefit from revisions to help address tariffs, regulatory and trademark concerns, and set a precedent for future trade deals.

### Case Study: British Beer and Pub Association

*"The total value of beer exports to the US have declined, with unequal treatment of excise duty rates being a major factor. This trend was exacerbated with the introduction of the Craft Beverage Modernization and Tax Reform Act (CBMTRA) in 2017. Under the act, the federal excise tax on the first 60,000 barrels for domestic brewers producing less than 2 million barrels annually was halved to \$3.50/barrel. Although British brewers who brew no more than 6 million barrels also benefit from a reduction of duty under the act from \$18/barrel to \$16/barrel, their relative position in the market suffered. The already stark gap between domestic duties (\$7/barrel) and duties on imported beer (\$18/barrel), which was a \$11/barrel is now \$12.50/barrel.*

*The UK has a similar discount which is applicable to all brewers whether British or foreign who fall within the designated annual production volumes. The BBPA would therefore seek reciprocal treatment, whereby British brewers receive equal treatment with respect to the specific duty charged as their American counterparts."*

### Public Procurement

US government procurement is a huge potential prize for UK exporters but remains a sensitive subject in American policymaking. Non-defence discretionary federal government spending amounted to over \$660 billion in FY 2019.<sup>25</sup> There are numerous opportunities for UK companies to deliver both goods and services in areas such as advanced manufacturing, fintech, and public transport. These opportunities could increase in the event an infrastructure bill is approved by the US Congress.

**Recommendation**

- Work with the US government to shift its “Buy American–Hire American” strategy towards a more unified “Buy–Hire Transatlantic” approach that recognises the ability for British firms to meet American needs. Rules to maximise transparency in tendering public contracts would be a minimum goal.

The challenge to overcome is decades old “Buy American” legislation, which requires federal government contracts to favour domestic content, often regardless of the price or ease of access. While the President has the authority to waive these provisions in a trade agreement if reciprocity is provided to US firms, Congress traditionally has been hesitant to support this policy. This is due to fearing that if “Buy American” provisions are waived, a perception is created amongst voters that trade deals undermine the American manufacturing base and prioritise foreign firms over local business.

This administration’s policy to enforce “Buy American” and implement further provisions is a further challenge for UK firms.<sup>26</sup> Latest proposals would require US federal government agencies to review their commitments to the WTO’s Government Procurement Agreement (GPA) and determine if they are “unfair” to American firms. If formalised, these provisions could effectively shut out UK firms from the federal procurement market.

At a bare minimum, the US and the UK could collectively agree to rules to maximise transparency in tendering public contracts. This would help ensure that American and British firms have a level playing field at the federal level. Equal footing for UK companies in this area would drive competition and create jobs across the American economic landscape.



## Working together to set global standards

The UK occupies a strong global leadership position in international standards development, a key part of its global soft power.<sup>27</sup> Through the British Standards Institution (BSI), the UK manages nearly 100 international standards committees and has more participating members in ISO committees than any other country. This enables UK businesses and consumers to shape standards used globally. International standards simplify the conditions of market access across the world, reduce technical barriers to trade, and underpin the rules-based system of international trade. Indeed, standards are estimated to contribute to 37% of the UK's economic productivity growth.<sup>28</sup>

The Technical Barriers to Trade (TBT) chapter of any agreement with the US should refer to international standards as the basis of technical regulation and make provision for a formal standards dialogue between the UK and US. There are two major potential gains for goods trade facilitation from work on standards in any UK-US deal:

- Opportunities for the US and UK to work together to develop common standards in emerging areas, where no international standards exist. These standards can then be promoted internationally through the recognised international standards bodies ISO and IEC. The UK, through BSI, already works with US standards development organisations, when the market needs them, for example in the areas of additive manufacturing and artificial intelligence.
- Promoting the mutual recognition of conformity assessment results would allow the conformity assessment bodies in each country to test products for export against standards in the destination country. A UK exporter would therefore be saved the cost and hassle of sending products to be tested in the US because the same product could be tested against US standards in the UK – and vice-versa.

The UK should be careful in any deal not to undermine its leadership position in international standards making. This could happen by accepting that private US standards are defined as international and recognising US standards as equivalent to those in the UK in sectors where they are used as a voluntary means to demonstrate regulatory compliance. The parties could, however, explore further facilitations to sectoral regulation through specific annexes to the TBT chapter.

In addition, there would be huge obstacles to genuine reciprocity: many US standards are required by state level legislation and UK products would not get the same nationwide access to the US, as US companies would enjoy on the UK market, where there is a nation-wide standards structure.



### **Recommendation**

- Fully reflect the attachment of both parties to use international standards, primarily through the recognised international standards organisations of ISO and IEC, as a basis for technical regulation.

### **Cosmetics**

In recent years, governments around the world have recognised that divergent regulations inhibit trade and economic competitiveness, and that Free Trade Agreements can be used to promote predictable and consistent regulations that will enhance consumer safety while at the same time promoting international commerce.

The inclusion of a Cosmetics Annex in the UK-US Agreement could reaffirm our two countries' commitment to strong principles and practices that promote regulatory convergence and facilitate trade, and that would serve as a model for other countries.

To provide continuity and certainty for business and consumers, the UK's decision to not deviate from the EU framework would be supported. But with the US, the affirmation of good regulatory practices for cosmetics, and closer cosmetics regulatory alignment between both countries would enhance the ability of US companies to offer UK consumers innovative products that are designed to meet their needs, and with the information necessary to make informed choices.

### **Recommendation**

- Include a Cosmetics Annex to reaffirm a commitment to strong principles and practices that promote regulatory convergence and facilitate trade.

## Make it easier for SMEs to export

The CBI believes SMEs could be big winners from a UK-US FTA and support a dedicated chapter for small business in the agreement. Of the UK SMEs which export, 40% export to the US, making the US second only to the EU in importance as a market.<sup>29</sup> Most companies which export goods to the US would benefit from simplified customs procedures, but SMEs probably stand to gain the most. Small businesses often lack the time, budget, and in-house expertise to navigate obstacles to trade – and sometimes opt-out of exporting altogether as a result.

### Customs and wider trade facilitation measures

Making it simpler for businesses to export, with less paperwork to navigate, would encourage more UK SMEs to look at the US market. Streamlining import procedures and certification of origin reports would lower costs for exporters and consumers, save time for companies, and lead to greater efficiencies within supply chains. Safety and regulatory compliance checks at the border can add significant delays to US operations. This is true even if businesses are frequent traders and known to meet American standards upon arrival. Moving towards a system in which both border authorities can fast-track approval processes and avoid duplicative measures would be a clear win.

British retailers enjoy a bilateral e-commerce trade surplus with the US built on a well-established demand for their products. Both sides should look to raise *de minimis* thresholds<sup>30</sup> in order to spur cross-border e-commerce and help small business become more competitive. Cross-border e-commerce is predicted to grow at a rapid rate, so setting 21st century standards with an agreement in this area offers huge commercial opportunities.

#### Recommendation

- Eliminate the need for duty refunds on returned goods and mutually raise *de minimis* thresholds.

An additional way to tackle customs deficiencies would be a mutual recognition agreement (MRA) between the two countries' Authorised Economic Operator (AEO) programmes. In the US, the Customs Trade Partnership Against Terrorism (C-TPAT) enables foreign companies to fast-track goods that don't pose a threat to US national security. C-TPAT status tells border authorities that a product meets American supply-chain security standards – that the company maintains satisfactory records, properly secures their cargo, is financially viable, and can exchange proper information with authorities when necessary.<sup>31</sup>

An MRA already exists between C-TPAT in the US and the EU Taxation and Customs Union Directorate (TAXUD), the body covering AEO status recognition for products entering the EU. This means that if one company has AEO status with the EU then the US treats them as C-TPAT compliant.

### Recommendation

- Establish a Mutual Recognition Agreement between US authorities and HM Revenue and Customs (HMRC) covering AEO status. HMRC should look to expedite the application process for businesses looking to achieve AEO status with a view to increased SME participation.

Additionally, the UK government should look to expedite the application process for businesses looking to secure AEO status and promote its benefits in boosting export capacity to the United States to SMEs. As of January 2019, fewer than 700 UK firms had registered AEO status, compared to over 6300 in Germany.<sup>32</sup> Anecdotal evidence suggests that UK SMEs are currently less likely to use AEO status than larger companies.

Mutual recognition covering AEO status would help UK firms break down entry barriers in the US. The Congressional Research Service has noted that “C-TPAT members are considered to be of low risk, and enjoy a number of benefits, including a reduced number of CBP [Customs and Border Patrol] examinations, shorter wait times, and access to special expedited lanes for customs clearance at the border.”<sup>33</sup>





### Case Study: British Beer and Pub Association

*“Our Owen Mumford USA division contributes 35% of the total turnover for the Owen Mumford Group. A successful US-UK negotiation has the potential to make us more competitive within the US marketplace in an increasingly globalised trade environment. Currently, our medical device products can be delayed for weeks on end by US authorities to make sure they are Food and Drug Administration (FDA) compliant, despite consistently shipping high quality devices and securing countless FDA approvals. Simpler import procedures that reduce wait times, grant approvals based on import history, and log reference numbers from older orders will make our operations more efficient.*

*However, we must acknowledge that renewed dialogue between the EU and USA on medical device regulation has the potential to be the biggest win, as it would significantly reduce time and effort required to introduce new devices to the marketplace. The UK government should encourage this and look to drive a transatlantic (UK-included) approach to regulation in this vital industry.”*

To help small business prosper through the trade deal, negotiators could insert a chapter establishing a UK-US SME Joint Committee. This could formalise the SME Dialogue that met during the six rounds of the UK-US Trade and Investment Working Group from 2017-2019. The group would meet regularly after the trade deal’s implementation to ensure that the agreement works for the benefit of SMEs. It would consist of officials from relevant departments in both governments, including BEIS in the UK and the Small Business Administration (SBA) in the United States. Their conclusions should then feed into a ministerial level committee from both countries to review the terms and conditions of a UK-US trade agreement on a regular basis, not dissimilar to the mechanism proposed in Chapter 30 of the USMCA.<sup>34</sup>

So that small business takes advantage of the new deal, the government will also need a comprehensive and effective communications plan targeted at SMEs. The new SME Joint Committee could build communication and practical support for small businesses into its remit.

### Recommendation

- Create a UK-US SME Joint Committee to monitor implementation of a deal and communicate its benefits to SMEs.

# Go beyond the trade deal to build bridges at the state and local level

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Building a trading relationship fit for the 21st century will require a comprehensive, long-term strategy to liberalise trade and investment at the state and municipal level. The federal structure of the US means that many regulatory issues are decided at the state level. This is significant, given that many US states are major economies in their own right. California's total GDP exceeds the UK's, and the economies of Texas and New York are each bigger than the economy of South Korea.<sup>35</sup> With success depending on engaging different levels of government across the US, the UK will need to be ambitious and prepare a strategy that lasts longer and goes wider than a single FTA negotiation.

There is often a contrast to how messages on trade are received in governor's offices as opposed to Capitol Hill. Governors welcome the prospect of foreign investment creating new jobs in their state, and the UK should look to capitalise on this. But there are also longstanding, significant barriers to British investment in the US which will only be resolved by significantly boosting lobbying resources outside Washington.

## **Procurement at the state level**

Access to public procurement at the state and municipal level is a longstanding barrier for British companies in the US. Foreign investors and suppliers are hamstrung by "Buy America"<sup>36</sup> restrictions that Congress ties to federal grant money dispersed to individual states. This effectively means that significant portions of financing used by state governments for public projects are off limits to qualified UK firms.

A further challenge is that 13 states are not signatories to the WTO's General Agreement on Procurement ("GPA"), a treaty designed to ensure openness for foreign firms in domestic procurement markets.<sup>37</sup> Even those states who do recognise the GPA often give domestic preferences for contracts and have vague or unfair bidding processes that can hamper qualified UK firms. This is problematic for the UK, given that 65% of American procurement contracts are given at the state level.<sup>38</sup>

### Recommendation

- Staff the UK's regional network in the US with trade policy teams dedicated solely to lobbying municipal and state leadership on market access barriers.

Due to constitutional limitations, the UK will not be able to achieve progress in this area through a formal FTA negotiation with the US federal government. CBI members, however, see improving the economic relationship between our two countries at *every level* as a top priority. They encourage the UK government to develop a long-term strategy to tackle sub-federal market access barriers alongside its official negotiations with the US Trade Representative.

### Professional Qualifications

The opportunity to achieve mutual recognition for professional qualifications is often seen as an easy win for the UK-US relationship. But the federal structure means that most of these services are licensed at the state level, and therefore not within the scope of a trade negotiation. For example, each state administers its own bar examination to license attorneys and includes sections on specific legal fields relevant to their state. Other high-skilled industries such as architecture, engineering, and medicine are licensed in the same manner.

While the UK cannot enter trade negotiations with individual states, it can look to Canada for a blueprint on how to deliver mutual recognition at the sub-federal level. Canada's professional bodies have made it a priority to engage with their American counterparts. The Canadian Architectural Licensing Authorities (CALA) and the National Council of Architectural Registration Boards (NCARB) in the United States have a Mutual Recognition Agreement that enables architects to pursue reciprocal licencing between the two countries. 42 of the 55 US jurisdictions and all 11 Canadian jurisdictions are signatories.<sup>39</sup> Engineers Canada has also negotiated deals on mutual recognition with the Texas State Board of Professional Engineers and the Nevada State Board of Professional Engineers. The Texas board has shown willingness to move at pace by signing foreign adequacy agreements to ensure that skilled foreign workers are quickly vetted.<sup>40</sup> UK officials could look to assist likeminded groups in professional services to set up similar agreements. The Institute of Chartered Accountants of Scotland ("ICAS") have already signed an MRA with counterparts in accountancy, a positive step in this direction.

Without these adequacy agreements, British services professionals will fall behind other international competitors in the United States. As an example, the CBI has heard from British construction firms which choose to hire Australian architects for projects based in the US instead of UK architects. This is due to a 2017 MRA signed between the NCARB in the US and the architectural licensing boards of Australia and New Zealand.

**Recommendation**

- Create a bilateral Working Group on Professional Services to facilitate conversations, opportunities, and openings at the state level for UK regulators.

Other sectors are more difficult. There is no federal licensing system for medical professionals in the US, but there may be opportunities that reflect the world class quality of medical education in the US and UK. All state licensing jurisdictions require a graduate of a foreign medical school to complete at least one year of accredited US or Canadian graduate medical education before becoming licensed to practice, while 12 states require two years and 25 states require three years.<sup>41</sup> Working with state medical boards to add graduates of the British medical system to this list would be a welcome step forward.



*"Business can help by bringing government the information it needs in negotiations and by building wider public support by advocating for the trade deal."*

# Work with business to build support for a deal

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The UK government is to negotiate with the EU and US simultaneously as part of a manifesto commitment to agree trade deals covering 80% of the UK's trade within three years. This is an ambitious goal and business wants to help government achieve it.

As well as facing complex potential trade-offs between its two major trading partners, the UK will also face the challenges of complex US domestic politics and potential public distrust towards a deal. Business can help by bringing government the information it needs in negotiations and by building wider public support by advocating for the trade deal.

## **How business can help navigate the complexities of simultaneous negotiations**

With complex technical and political challenges ahead, effective engagement between business and government can maximise opportunities by helping Ministers navigate the trickiest dossiers and potential trade-offs. Close partnership between government and business, as well as effective collaboration across Whitehall to coordinate alignment between EU and US negotiations, will be critical to success.

The CBI has already set out ideas for a close partnership with government in its paper, *Building a World Leading Trade Policy*, drawing on the experience of leading trade partners like the US, EU, Mexico, Australia and New Zealand. CBI recommendations follow three key principles based on global good practice: a strong mandate built through consultation; formal and informal business engagement structures; transparency to secure buy in from business, labour and consumers.<sup>42</sup>

The successful US approach to trade negotiations, which draws closely on business expertise through formal networks and a system of cleared advisers, shows how negotiators can benefit from business insight and advice.

Close and transparent cooperation with business will be critical when it comes to one of the biggest challenges of the UK-US FTA: agreeing any trade-offs between market access to the EU and the US. In some areas, such as customs facilitation, businesses see no challenges in overlap between the two sets of negotiations. In others, most obviously regulation of food, there are potential conflicts.

Whatever issue proves the most difficult in negotiations, the principle will be the same. While it will be for government to settle on the negotiating strategy for the deal, business should be consulted regarding the outcomes and potential trade-offs. It is unclear how the government intends to do this. Ensuring business engagement, including through the Expert Trade Advisory Groups (ETAGs), is comprehensive and transparent will be critical.

**Recommendation**

- Manage the complexity of simultaneous negotiations by expanding the remit of DIT's stakeholder engagement groups to cover both EU and non-EU trade and appoint a Chief Business Trade Envoy to coordinate across all negotiations.

Whether it is standards development, copyright provisions, protecting creative industries, or the issue of drug pricing, the government will need an effective mechanism to balance trade-offs in order to secure the very best outcome for the UK. That starts with a close partnership with business and includes putting in place effective mechanisms in Whitehall to ensure trade-offs are judged on the evidence business can deliver. Continued dialogue between the sectors bodies concerned from both countries, may also help to secure better outcomes from the trade talks.

**Recommendation**

- Establish and publicise the 'clearing house' mechanism to ensure defensive interests and sectoral trade-offs are effectively managed, based on extensive evidence from business.

**Case Study: National Farmers' Union**

*"The NFU believes that there could be benefits to a UK-US trade agreement. The US is the largest export market for UK agri-food beyond the EU, with more than £2.2 billion export trade in 2018. We believe there is potential to continue to grow our exports of high value, desirable agri-food products to the benefit of US consumers. However, there are also significant challenges for our respective trade negotiators, which should not be underestimated. In particular, in recognising that there are very different regulatory approaches to food safety, biotechnology, environmental protection and animal welfare between the UK and the US.*

*Britain is a global leader in sustainable, high welfare and climate-friendly farming. The NFU's central objective is to ensure our trade deals champion these high standards and that the outcome of negotiations will be to require the same high standards from any food entering our shores."*

# Navigate the political realities

Even though there is broad bipartisan support for a UK-US FTA, the US government does not negotiate trade agreements in isolation from its overarching economic and foreign policy goals. Officials should prepare for a negotiation that will encompass much more than a traditional FTA. Any UK-US deal will be scrutinised against several pressing economic and political concerns in Congress and the current administration.

The following table gives a simplified overview of a handful of issues that could be included in a US trade deal and their relative difficulty to negotiate, including alignment with the EU talks.

Issue in future UK-US FTA	Feasibility
Customs and trade facilitation	<ul style="list-style-type: none"> <li><span style="color: green;">—</span> Good</li> <li><span style="color: orange;">—</span> Some challenges</li> <li><span style="color: red;">—</span> Take care</li> </ul>
Trade in industrial goods	A top priority for any deal, with real gains possible for SMEs. Making it as easy as possible for businesses to trade can entice many more companies into benefiting from the other market.
Trade in industrial goods	Potential gains, such as on medical devices, but careful alignment with the UK-EU relationship is necessary.
Trade in Agricultural Goods and SPS	The UK will need to identify areas for progress which respect high standards in food safety and animal welfare. Dialogue between the industries in both countries will need to complement the intergovernmental talks.
Financial Services	Potential win for both UK-US relationship and global regulation but will need careful coordination with EU negotiations and care not to jeopardise existing success.
Digital Trade and Data	Big potential prize but UK will need to secure adequacy agreement with the EU in parallel. There is also an opportunity to set standards for the future in emerging industries such as FinTech and AI.
Staff mobility	Congressional engagement will be key, but business sees this as one of the biggest potential wins for any deal, particularly for services trade.
Public Procurement	UK firms have the expertise to fulfil contracts at federal and state level in the US, but the big challenge will be to move US prioritisation of domestic providers.



## Learning the lessons from TTIP

Transparency in trade negotiations is vital to build the trust necessary to secure support for the deals and achieve successful outcomes. The failures of TTIP and the Trans-Pacific Partnership (TPP) were a reminder that trade policy is inherently political. This is particularly true in the United States, where conversations on trade outside Washington often begin and end with the question of whether American jobs are being offshored. Members of Congress know this, so the UK government will need to equip itself with qualitative and quantitative evidence from business to convince sceptical Members of Congress and to champion the value of UK business at a local level.

In Europe, lack of trust between trade negotiators and national parliaments during the TTIP negotiations prevented the beneficial impact of the agreement from reaching the public. UK Ministers should be transparent with Parliament during negotiations to enable MPs to take positive messages back to their constituents.

### Recommendation

- Commit to ground-breaking levels of transparency and openness with the public and elected bodies during negotiations, reflecting both the shared trust that already exists between our governments and the cohesiveness of our two economies.

## Engaging with Congress

Some of the UK asks in negotiations will be difficult for US negotiators to grant without an overwhelming Congressional mandate. An overhaul to domestic preference requirements in federal procurement law, for example, requires decades old "Buy American" legislation to be repealed and redrafted in Congress. The UK government will need to invest significant resource into relationship-building on Capitol Hill, including regular ministerial visits both to Washington and individual states. It should also work with UK business to make the case that negotiations are win-win, and that British investment creates American jobs.

Although Congress has delegated the day-to-day aspects of international trade negotiations to the Executive Office of the President,<sup>43</sup> the power of the US legislative branch to shape American trade policy should not be underestimated. Both houses of Congress must give their majority approval to any agreement, meaning that issues of importance to relevant committees take centre stage and drive the legislative agenda on trade.

**Recommendation**

- The government should equip its US network to lead a comprehensive messaging campaign that focuses directly on the benefits UK businesses bring to American citizens and individual Congressional districts and work closely with business in order to achieve this.

**Wider Political Concerns**

There are also wider issues that risk creating fault lines between the UK and US in advance of official negotiations. Chief among these concerns are:

**Retaliatory Tariffs**

For much of 2018, the Department of Commerce conducted and concluded a Section 232<sup>44</sup> investigation determining whether a constant flow of automobile imports impacted US national security. Even though this initiative expired, American officials have shown a willingness to use tariffs to address disputes in other areas, for example in the ongoing dispute over large civil aircraft subsidies.<sup>45</sup> The existing US tariffs in the aircraft dispute, combined with the ongoing threat of auto duties, have imposed costs and uncertainty on UK exporters. The UK is a specifically named party of the US retaliatory action, meaning that tariffs on UK products will remain until noted otherwise, not when the UK completes its post-Brexit transition period from EU rules.

**UK-China relations**

Perhaps the most pressing of these concerns is how the US-China relationship continues to impact how America views global trade. In the renegotiation of the North American Free Trade Agreement (NAFTA), American negotiators inserted a clause stating that if one of the countries wished to enter into negotiations with a “non-market” economy, the other two had the option to quit the deal within six months.<sup>46</sup> This was designed to discourage Mexico and Canada from deepening investment ties with China and prevent Chinese companies from using Mexico or Canada as a back door into the United States. Any free trade negotiation with the US will undoubtedly see a demand for a similar commitment from the United Kingdom.

CBI members are clear that while a US trade deal can see gains in a number of areas, the UK-China relationship is also of huge importance and the government will need to coordinate its approach to the US with its strategy on China. While recognising there are genuine concerns caused by China’s support for state-owned enterprises, particularly with respect to national security, CBI members believe that the UK should not be forced into choosing between the United States or China.

The image features a cityscape with the Space Needle tower as the central focus. The entire scene is overlaid with a semi-transparent orange filter. A white rectangular frame is positioned in the center, containing a quote in white italicized text. The background shows various skyscrapers and buildings, with the Space Needle's distinctive structure being the most prominent.

*"A UK-US trade deal has the potential to leave an imprint on how global trade deals are constructed for the foreseeable future."*

# Conclusion

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The trade and investment relationship between the US and the UK is thriving thanks to our cohesive economies. But trade is not just about the exchange of goods and services. It is also about the exchange of values. The common language, history, legal system, and over two hundred years of commercial exchange and consumer confidence shared by the US and the UK could provide us the opportunity to set global standards in 21st century industries.

A UK-US trade deal has the potential to leave an imprint on how global trade deals are constructed for the foreseeable future. If approached in the right way, with a clear vision and collaboration with business, our two countries have a once-in-a-generation opportunity to secure a deal that reflects our values in addition to driving growth.

The British business community is prepared to work with government to shape a deal that works for all parts of the UK economy and builds stronger links with business in the United States. Businesses are prepared to share the information that negotiators need – including on the most difficult areas in negotiations – and collaborate in building support for a deal both in the UK and the US.

The CBI sees a future where the UK can play a vital role as a bridge between the US and EU – the world's two largest trading blocs – seizing the benefits of trade to create jobs, raise living standards, and transform lives in every corner of the UK.



# References

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- 1 ONS
- 2 Select USA. Foreign Direct Investment: United Kingdom <https://www.selectusa.gov/servlet/servlet.FileDownload?file=015t0000000LKOM>
- 3 ONS. <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/bulletins/exportsandimportsstatisticsbycountryforuktradeinservices/julytoseptember2019>
- 4 Bureau of Economic Analysis. Foreign Direct Investment Position in the United States on a Historical-Cost Basis, 2015 [https://apps.bea.gov/scb/pdf/2017/07%20July/0717\\_direct\\_investment\\_positions.pdf](https://apps.bea.gov/scb/pdf/2017/07%20July/0717_direct_investment_positions.pdf) and See Bureau of Economic Analysis. Foreign Direct Investment Position in the United States on a Historical-Cost Basis, Country by Industry of US Affiliate, 2018 <https://www.bea.gov/system/files/2019-07/fdici0719.pdf>.
- 5 Table 5, p.41-42 of UK Government's negotiating objectives. Also p.38: UK-US total service trade (imports but exports) have gone from £49BN in 2007 to £94BN in 2018.
- 6 BEA. <https://www.bea.gov/data/gdp/gdp-industry>
- 7 The World Trade Organisation (WTO) places services trade into four categories and defines "Mode 4" as "the presence of persons of one WTO member in the territory of another for the purpose of providing a service." [https://www.wto.org/english/tratop\\_e/serv\\_e/movement\\_persons\\_e/movement\\_persons\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/movement_persons_e/movement_persons_e.htm)
- 8 TPA is the process by which Congress grants temporary trade negotiation authority to the President. The current iteration of TPA expires in July 2021.
- 9 SEC. 914 (Amendments to Bipartisan Congressional Trade Priorities and Accountability Act of 2015) of H.R. 644 – Trade Facilitation and Trade Enforcement Act of 2015 – requires the President and his negotiators "to ensure that trade agreements do not require changes to the immigration laws of the United States or obligate the United States to grant access or expand access to visas issued under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15))."
- 10 What is striking is that only a handful of these special visas are filled each year. 10,500 E3 visas are available to Australian nationals each year, but only 5,394 were filled in FY 2018. (See Non-immigrant Visa Statistics, US Department of State - Bureau of Consular Affairs). Likewise, Singaporeans have 5400 H1B1s allocated to them by the US government annually, but only 551 were approved in 2015 (See Leong, Grace. "Fast-Track US Work Visas Put on Hold." Straits Times. April 6, 2017). There is clearly appetite in the US trade community to provide generous and beneficial immigration access for skilled workers from allied countries.
- 11 Title IV Federal Aviation Act of 1958 (FAVA) provides guidelines and restrictions to foreign investment in the US aviation industry.
- 12 The Merchant Marine Act of 1920 (Jones Act) regulates all maritime commerce in the United States, limiting access between US ports to vessels built, owned and operated by US citizens.
- 13 CBI, Ready, Set, Connect: Delivering a roadmap to supercharge the UK's digital infrastructure (December 2018)
- 14 Frontier Economics report for the Future Telecommunications Infrastructure Review by the UK Government's Department of Digital, Culture, Media and Sport (July 2018).
- 15 Bureau of Economic Analysis. Selected Data on Activities of Majority-Owned US Affiliates by Country of Ultimate Beneficial Owner, 2011 [https://apps.bea.gov/scb/pdf/2014/11%20November/1114\\_activities\\_of\\_u.s\\_affiliates\\_of\\_foreign\\_multinational\\_enterprises.pdf](https://apps.bea.gov/scb/pdf/2014/11%20November/1114_activities_of_u.s_affiliates_of_foreign_multinational_enterprises.pdf) and See Bureau of Economic Analysis. Selected Data on Activities of Majority-Owned U.S. Affiliates by Country of Ultimate Beneficial Owner, 2017. [https://www.bea.gov/system/files/2019-11/inne1119\\_0.pdf](https://www.bea.gov/system/files/2019-11/inne1119_0.pdf)

- 16 Page 7 of TechNation August 2019 Summer update on UK Tech Sector [https://www.slideshare.net/WeAreTechNation/us-and-asian-investment-in-uk-tech-skyrockets?from\\_action=save](https://www.slideshare.net/WeAreTechNation/us-and-asian-investment-in-uk-tech-skyrockets?from_action=save)
- 17 James Manyika et al., "Digital Globalization: The New Era of Global Flows", McKinsey Global Institute, March 2016.
- 18 Presidential Executive Order on Maintaining American Leadership in Artificial Intelligence. <https://www.whitehouse.gov/presidential-actions/executive-order-maintaining-american-leadership-artificial-intelligence/>
- 19 Future of Humanity Institute, University of Oxford. Standards for AI Governance: International Standards to Enable Global Coordination in AI Research & Development. [https://www.fhi.ox.ac.uk/wp-content/uploads/Standards\\_-FHI-Technical-Report.pdf](https://www.fhi.ox.ac.uk/wp-content/uploads/Standards_-FHI-Technical-Report.pdf)
- 20 European Commission. Key Elements of the EU-Japan Economic Partnership Agreement-Memo. <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1955>
- 21 US Department of the Treasury. Frequently Asked Questions on Final CFIUS Regulations Implementing FIRRMA. <https://home.treasury.gov/system/files/206/Final-FIRRMA-Regulations-FAQs.pdf>
- 22 2018 Harmonised Tariff Schedule, Revision 13. <https://hts.usitc.gov/?query=suits>
- 23 Ibid. Notably, this industry supports about 2000 direct manufacturing jobs in Stoke-on-Trent.
- 24 UK-US Trade Relations: CBI Submission to the House of Commons International Trade Select Committee Inquiry. November 2017. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-trade-committee/ukus-trade-relations/written/74051.pdf>
- 25 Congressional Budget Office. The Spending Outlook. <https://www.cbo.gov/system/files?file=2019-01/54918-Outlook-Chapter3.pdf>
- 26 Presidential Executive Order on Buy American and Hire American, <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/>
- 27 The UK is a founding member of International Standards Organisation (ISO), International Electrotechnical Commission (IEC), and the European Committee for Standardisation (CEN).
- 28 British Standards Institution. The Economic Contribution of Standards to the UK Economy. <https://www.bsigroup.com/LocalFiles/en-GB/standards/BSI-The-Economic-Contribution-of-Standards-to-the-UK-Economy-UK-EN.pdf>
- 29 FedEx. SME Export Report. 2017. [http://www.fedex.com/images/emea/learn/sme-export-report/FedEx\\_Export\\_Report\\_Document\\_UK.pdf](http://www.fedex.com/images/emea/learn/sme-export-report/FedEx_Export_Report_Document_UK.pdf)
- 30 The minimum value of imported goods for which no customs forms or tariffs are necessary.
- 31 US Customs and Border Patrol. Customs Trade Partnership Against Terrorism - Mutual Recognition. <https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/mutual-recognition>
- 32 AEO – what is it and how could your business benefit?, Institute of Export and International Trade <https://www.export.org.uk/news/320338/AEO--what-is-it-and-could-your-business-benefit.htm>
- 33 Congressional Research Service. WTO Trade Facilitation Agreement <https://fas.org/sgp/crs/row/R44777.pdf>

- 34 Chapter 30, US-Mexico-Canada Agreement. "Administrative and Institutional Provisions." <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/30-Administrative-and-Institutional-Provisions.pdf>
- 35 GDP figures: California \$3.155TN, UK \$2.72TN, Texas \$1.896TN, New York \$1.74TN, South Korea \$1.63TN. See table 3 in US Department of Economic Analysis, Gross Domestic Product by State, Third Quarter 2019 [https://www.bea.gov/system/files/2020-01/qgdpstate0120\\_2.pdf](https://www.bea.gov/system/files/2020-01/qgdpstate0120_2.pdf) and IMF figures for the same period at <https://www.imf.org/external/datamapper/NGDPD@WEO/OEMDC/ADVEC/WEOORLD/SVK>
- 36 This is not to be confused with "Buy American" legislation referenced earlier in this report. "Buy American" refers to federal procurement law while "Buy America" is a general provision tied to state grant money.
- 37 United States Government Accountability Office. Government Procurement Agreements Contain Similar Provisions, But Market Access Commitments Vary. September 2016. <https://www.gao.gov/assets/690/680044.pdf>
- 38 Ibid.
- 39 National Council of Architectural Registration Boards. Canada. <https://www.ncarb.org/advance-your-career/international-practice/canada>
- 40 National Society of Professional Engineers. Going Global. <https://www.nspe.org/resources/pe-magazine/april-2014/going-global>
- 41 American Medical Association. State licensure board requirements for international medical graduates. <https://www.ama-assn.org/education/international-medical-education/state-licensure-board-requirements-international-medical>.
- 42 CBI paper Building a World Leading Trade Policy, January 2020.
- 43 Congress does this by reauthorising Trade Promotion Authority legislation at regular intervals.
- 44 "Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) authorizes the Secretary of Commerce to conduct comprehensive investigations to determine the effects of imports of any article on the national security of the United States." <https://www.commerce.gov/section-232-investigation-effect-imports-steel-us-national-security>
- 45 In October 2019, the United States imposed a 25% tariff on a range of UK food, drink and manufactured products, including Single Malt Scotch Whisky, as part of its retaliatory measures under the WTO litigation against civil aircraft subsidies. The impact is being strongly felt in Scotland, whose affected industries now bear almost two-thirds of the UK's total tariff liability under this litigation.
- 46 Article 32.10, US-Mexico-Canada Agreement, "Non-Market Country FTA" [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32\\_Exceptions\\_and\\_General\\_Provisions.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32_Exceptions_and_General_Provisions.pdf)





# About the CBI

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Founded by Royal Charter in 1965, the CBI is a non-profit business organisation that speaks on behalf of 190,000 UK businesses of all sizes and from across all sectors, employing nearly 7 million people between them. That's about one third of the private workforce. This number is made up of both direct members and our trade association members. We do this because we are a confederation and both classes of membership are equally important to us.

The CBI's mission is to promote the conditions in which businesses of all sizes and sectors in the UK can compete and prosper for the benefit of all. With offices around the UK (including in Scotland, Wales and Northern Ireland) and representation in Brussels, Washington, Beijing and Delhi, the CBI communicates the British business voice around the world.

## **Our mandate comes from our members who have a direct say in what we do and how we do it**

The CBI receives its formal mandate from 9 Regional Councils, 3 National Councils from Scotland, Wales and Northern Ireland plus 16 sector based Standing Committees. These bodies are made up of members in that region, nation or sector who serve a term of office. The chair of each Standing Committee and Regional and National Council sit on the CBI's Chairs' Committee which is ultimately responsible for setting and steering CBI policy positions.

Each quarter this formal engagement process across the CBI Council reaches over 1,000 senior business leaders across 700 of our members who have a direct say in what the CBI do and how they do it, from refreshing their workplan to discussing the key business issues of the day and re-calibrating its influence. Over 80% of the businesses represented on the CBI Council are outside of the FTSE350 as the CBI represents a wide range of sizes and sectors from the UK business community. This formal governance process is supported by a wide range of working groups, roundtables, member meeting and events that makes the CBI unparalleled at listening to and representing British business.

## CBI Council in numbers



1000+

Committee and Council representatives



28+

Regional and National Council and sector based  
Standing Committees



50%

Representatives of the CBI Council at C-Suite level



80%

Of the CBI Council from non-FTSE 350 businesses

To share your views on this topic or ask us a question, contact:



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