Leading the Way with a US-UK Free Trade Agreement

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ABSTRACT

A US-UK free trade agreement would boost the economic welfare of both nations. For the people of the United Kingdom, the agreement would enhance export opportunities to the world's largest consumer market and expand their access to globally competitive goods and services. For British leaders, it would partially offset the economic loss from exiting the European Union's common market. For Americans, the agreement would eliminate remaining trade barriers to international trade with the world's fifth-largest economy, while deepening commercial ties with America's no. 1 partner in services trade and foreign direct investment. The most promising benefits from a US-UK agreement include elimination of duties on all agricultural and manufactured products, including automobiles; the liberalization of services trade, including financial services; and the freer movement of labor between the two nations. The free trade agreement should be a high priority for both nations once the United Kingdom exits the European Union in March 2019.

JEL codes: F13, F42

Keywords: United States, United Kingdom, Brexit, free trade agreement, exports, foreign direct investment (FDI), immigration, duties, services trade, agricultural trade, digital trade

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Two years after the June 2016 decision by voters in the United Kingdom to exit the European Union, US president Donald Trump and UK prime minister Theresa May agreed at a joint press conference in July 2018 to pursue a free trade agreement (FTA) between the two nations. An ambitiously liberalizing agreement between the world's largest and fifth-largest economies could unlock new opportunities for trade and investment across the Atlantic while setting a global standard for other nations to follow.[1]

At their joint event at Chequers, England, in July, Prime Minister May said, "We agreed today that, as the UK leaves the European Union, we will pursue an ambitious US-UK Free Trade Agreement." May said the two countries will pursue "a deal that builds on the UK's independent trade policy; reducing tariffs, delivering a gold-standard in financial services co-operation, and—as two of the world's most advanced economies—seizing the opportunity of new technology." President Trump added, "We look forward to finalizing a great bilateral trade agreement."[2] On October 16, 2018, the Office of the United States Trade Representative officially notified the US Congress that "the President intends to initiate negotiations on a trade agreement with the United Kingdom."[3]

The United Kingdom is expected to formally exit the European Union on March 29, 2019, under Article 50 of the EU membership agreement. A preliminary plan negotiated with the European Union would allow the United Kingdom to remain inside the EU customs union until December 31, 2020. After that date, the United Kingdom would continue to apply the same duties as the EU tariff schedule, but it would be free to adjust individual duty rates under the rules established by its continued membership in the World Trade Organization (WTO). Under Article 24 of the WTO's basic charter, the United Kingdom would

1. World Bank, "World Development Indicators: Structure of Output," accessed October 17, 2018, http://wdi.worldbank.org/table/4.2, table 4.2.
2. "Full Text: Donald Trump–Theresa May Press Conference," *Politico*, July 13, 2018.
3. Letter from Robert E. Lighthizer, US Trade Representative, to Senator Orrin Hatch, October 16, 2018, https://ustr.gov/sites/default/files/20181017004930805-3.pdf.

also be free to enter into free trade agreements with the United States and other nations outside the EU customs union, on the condition that such agreements cover "substantially all trade."[4]

A US-UK FTA would be an important trade initiative for both nations. For the people of the United Kingdom, a trade agreement with the United States would expand export opportunities to the world's largest consumer market and expand access to globally competitive goods and services. For British leaders, it would help to realize the vision of a "Global Britain" and partially offset the economic loss from exiting the European Union's common market. For Americans, the agreement would eliminate remaining duties on US exports, from passenger cars to dairy products, while deepening commercial ties with America's no. 1 partner in services trade and foreign direct investment.

This paper will describe the current extent of US-UK commercial relations, highlighting the fact that the United Kingdom is both the leading market and the leading supplier for US services trade, as well as the top destination for and source of US foreign direct investment. The paper will then examine the most promising benefits from a US-UK agreement, including the elimination of duties on all agricultural and manufactured products, including automobiles; the liberalization of trade in services, including financial services; and the freer movement of labor between the two nations. Finally, the paper will suggest a timetable and the way forward to negotiate and implement an ambitious, modern agreement that would potentially be open to additional nations seeking to promote more trade, growth, and opportunity for the benefit of their citizens.

US-UK COMMERCIAL RELATIONS TODAY

The relationship between the United States and the United Kingdom, marked by wars and commercial rivalry well into the 19th century, has over time transformed into the close and cooperative relationship the nations currently enjoy. The change can be traced back to a turning point in May 1871, when representatives of the two

4. Under Article 24 of the General Agreement on Tariffs and Trade, WTO members are allowed to join together to form free-trade areas under certain conditions, including that the purpose of such an agreement is not "to raise barriers to the trade of other contracting parties with such territories," and that "duties and other restrictive regulations of commerce . . . are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories." If a US-UK free trade agreement is written according the principles set forth in this paper, it should be fully compatible with Article 24. For the full text of the General Agreement on Tariffs and Trade, see World Trade Organization, "The General Agreement on Tariffs and Trade (GATT 1947)," https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm.

nations signed the Treaty of Washington to settle US claims over the British sale of warships to the Confederacy during the Civil War. The agreement provided for the payment of an indemnity to the United States for damages caused by the *CSS Alabama* and other Confederate ships built in Great Britain, while amicably settling disputes about fishing rights off Newfoundland and about international boundaries in Puget Sound in the Northwest.

The treaty reflected the desire for better relations shared by the two national leaders at the time, US president Ulysses S. Grant and British prime minister William Gladstone. In his memoirs, Grant correctly noted that "England and the United States are natural allies, and should be the best of friends. They speak one language, and are related by blood and other ties. We together . . . are better qualified than any other people to establish commerce between all the nationalities of the world."[5]

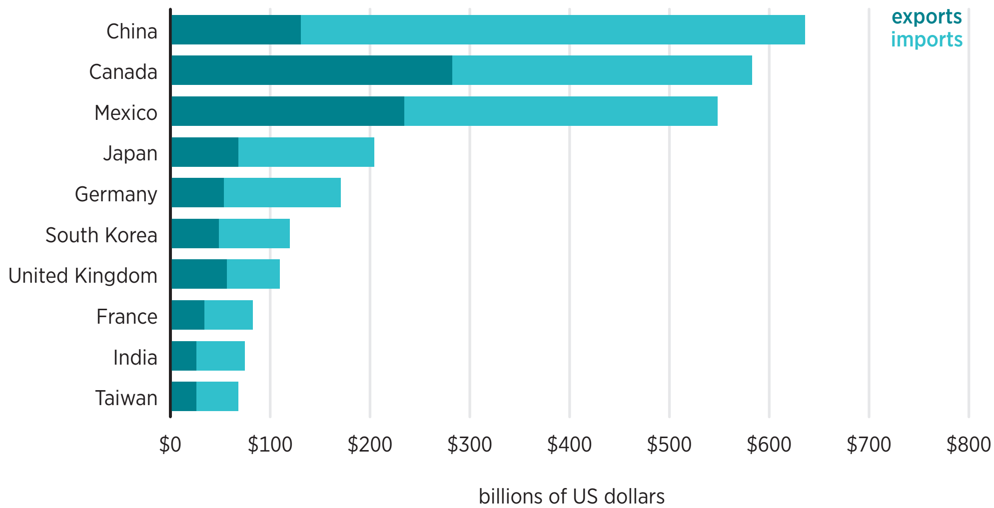
The pattern set by the Treaty of Washington has persisted to this day. In addition to being allies in two great world wars, the United States and the United Kingdom were both founding members of the General Agreement on Tariffs and Trade in 1947, which reduced tariffs and promoted trade in the postwar era. Since the United Kingdom joined the European Common Market in 1973, its trade policy has been delegated to Brussels, but its pending exit from the European Union almost half a century later has created a new opportunity for the Americans and the British to work together directly to build on their existing commercial ties.

The United Kingdom is one of the United States' most important commercial partners. The island nation of 65.6 million people is the United States' no. 7 partner in two-way goods trade,[6] its no. 3 source of tourists, and its no. 1 partner in services trade and foreign direct investment. With an economy of $2.65 trillion, the United Kingdom would be by far the largest FTA partner for the United States in terms of GDP—its economy is larger than the combined economies of Canada and Mexico, the United States' partners in NAFTA (the North American Free Trade Agreement).[7]

In goods trade, the United Kingdom was the no. 5 market for US exports in 2017, behind only Canada, Mexico, China, and Japan, and the no. 7 supplier of imported goods (see figure 1). The top US goods exported to the United Kingdom in 2017 by dollar value were civilian aircraft, engines, equipment, and parts;

5. Ulysses S. Grant, *The Personal Memoirs of U. S. Grant* (New York: Charles L. Webster & Company, 1894), 663, quoted in Ronald Chernow, *Grant* (New York: Penguin, 2017), 684.
6. UK Office for National Statistics, "Population Estimates," accessed February 23, 2018, https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates.
7. World Bank, World Development Indicators (database).

FIGURE 1. US GOODS TRADE, 2017



Source: US Census Bureau, "Trade Highlights: Top Trading Partners," accessed October 17, 2018, www.census.gov/foreign-trade/statistics/highlights/index.html.

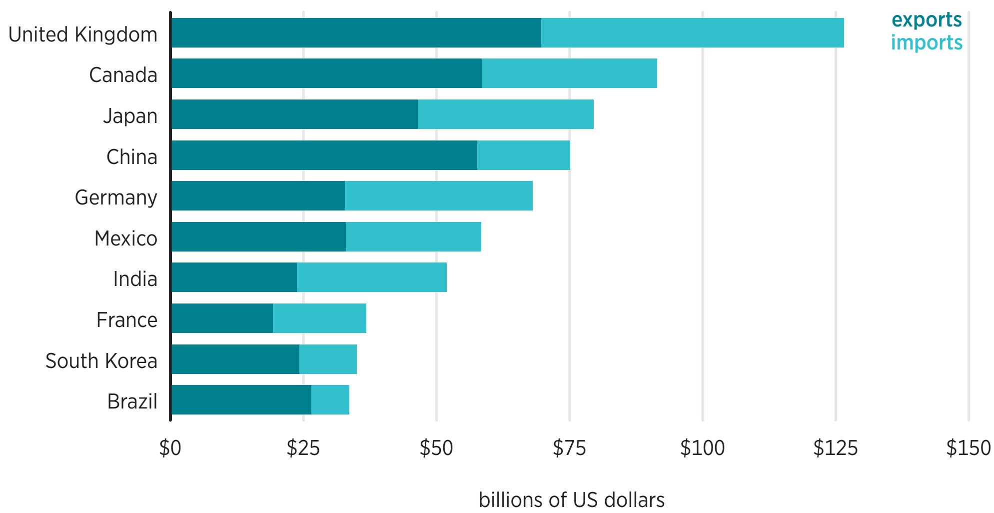
nonmonetary gold; pharmaceuticals; artwork, antiques, stamps, and other collectibles; crude oil; and passenger cars. While UK residents buy 4 percent of total US goods exports, they buy 28 percent of US artwork exports and 23 percent of US nonmonetary gold exports.[8]

By dollar value, the top goods that Americans imported from the United Kingdom in 2017 were passenger cars, pharmaceuticals, petroleum products, alcoholic beverages (excluding wine), and artwork, antiques, stamps, and other collectibles. Although the United Kingdom supplied only 2 percent of US imported goods overall, it was the source for almost a quarter of nonwine alcoholic beverage imports and 22 percent of military aircraft and parts imports.[9]

Trade in services looms especially large in the US-UK relationship. More than half of US cross-border trade with the United Kingdom is in services, compared to one-quarter of US trade with the rest of the world. The United Kingdom is the no. 1 customer for US service exports and the no. 1 supplier, by far, of US

8. US Census Bureau, "U.S. Exports by 5-Digit End-Use Code, 2008–2017," July 12, 2018, https://www.census.gov/foreign-trade/statistics/product/enduse/exports/index.html.
9. US Census Bureau, "U.S. Imports by 5-Digit End-Use Code, 2008–2017," July 12, 2018, https://www.census.gov/foreign-trade/statistics/product/enduse/imports/index.html.

FIGURE 2. US SERVICES TRADE, 2017



Source: US Bureau of Economic Analysis, "International Data: International Transactions, International Services, and International Investment Position Tables," October 24, 2017, https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4, table 2.3, "U.S. Trade in Services, by Country or Affiliation and by Type of Service."

service imports (see figure 2). UK residents buy 9 percent of US service exports and supply more than 10 percent of US service imports.[10]

UK residents are especially good customers for such US service exports as air freight transport, financial services, movies and television programming, legal services, accounting, auditing, and business and management consulting. Americans are important customers for such UK services as air passenger transport, education-related travel, financial services, movies and television programming, legal services, business and management consulting, public relations services, and advertising.[11] Both nations are globally competitive in providing financial services and movie and TV programming. Both those service sectors also comprise a wide variety of differentiated products, which allows for robust two-way trade in services that often complement rather than compete directly with services provided in the other nation.

10. US Bureau of Economic Analysis, "International Data: International Transactions, International Services, and International Investment Position Tables," October 24, 2017, https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4, table 2.3, "U.S. Trade in Services, by Country or Affiliation and by Type of Service."
11. US Bureau of Economic Analysis, "International Data," table 2.3.

Tourism is a major source of commercial activity between the two nations. The United Kingdom is the leading source of tourists to the United States from outside North America, accounting for 4.5 million visits in 2017.[12] There are more UK visits to the United States each year than combined visits from the next two leading EU sending countries—Germany and France. In 2017, 3.8 million Americans visited the United Kingdom, making it Americans' most popular tourist destination outside North America.[13]

While the United Kingdom is no longer a major source country for permanent immigrants to the United States, it does rank as the no. 5 source country for nonimmigrant temporary workers and their families. In fiscal year 2016, the United States admitted 168,495 people from Great Britain under temporary worker visas. The United Kingdom accounts for 4.3 percent of total temporary visas, but for 9 percent of L-1 visas for intracompany transfers and for more than 20 percent of O-1 and O-2 visas for "workers with extraordinary ability/achievement."[14]

The US-UK relationship is at its deepest in the area of foreign direct investment (FDI). The stock of two-way FDI between the two nations exceeds $1.2 trillion, according to the US Bureau of Economic Analysis (see figure 3). Each of the two nations is the other's largest investment partner. Of the $598 billion in UK-owned FDI in the United States in 2016, $257 billion was in manufacturing, with finance, information, and professional services being the other major areas of investment. Majority-owned UK affiliates in the United States employed 1.14 million American workers in 2015, more than those of any other country. UK affiliates had the largest US payroll, at $84.9 billion, and contributed the most value added to the US economy, at $136.7 billion.[15]

In the United Kingdom, US multinationals controlled $682 billion in FDI stock in 2016. US firms account for 27 percent of all the FDI stock in the United

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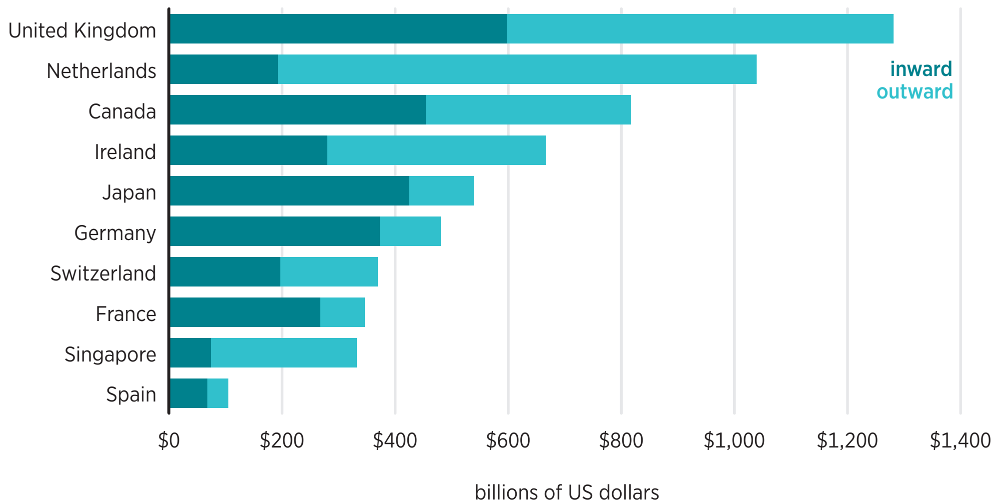
12. International Trade Administration, National Travel and Tourism Office, "2017 U.S. Travel and Tourism Statistics (Inbound): Fast Facts 2017," accessed October 17, 2018, http://tinet.ita.doc.gov/outreachpages/download_data_table/Fast_Facts_2017.pdf.
13. International Trade Administration, National Travel and Tourism Office, "Top Destinations Visited by U.S. Resident Travelers 2016/2017," accessed October 17, 2018, https://travel.trade.gov/outreachpages/outbound.general_information.outbound_overview.asp.
14. US Department of Homeland Security, "Yearbook of Immigration Statistics 2016," last modified September 13, 2018, https://www.dhs.gov/immigration-statistics/yearbook/2016, table 32, "Nonimmigrant Temporary Worker Admissions [I-94 Only] by Region and Country of Citizenship: Fiscal Year 2016."
15. Sarah Stutzman, "Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2015," *Survey of Current Business*, August 2017, https://apps.bea.gov/scb/pdf/2017/08-August/0817-activities-of-us-affiliates-of-foreign-multinational-enterprises.pdf, table 5.2.

FIGURE 3. US FOREIGN DIRECT INVESTMENT (STOCK), 2016



Note: The US Bureau of Economic Analysis defines foreign direct investment as "an investment by an entity resident in one economy that represents a lasting interest, defined as 10 percent or more voting ownership, in an enterprise resident in another economy."

Source: US Bureau of Economic Analysis, *Direct Investment by Country and Industry, 2017*, July 30, 2018.

Kingdom, more than any other single country.[16] Majority-owned US affiliates employed 1.4 million workers in the United Kingdom in 2015 and sold $623 billion in goods and services through their UK affiliates, ranking first in both categories among all nations.[17]

By virtually every measure, the United Kingdom is a key commercial partner of the United States. While the flow of goods, services, and investment between the two nations is largely free of government restrictions, significant opportunities exist for lowering barriers further through a US-UK free trade agreement.

OPPORTUNITIES FOR POST-BREXIT LIBERALIZATION

A US-UK free trade agreement will need to focus not only on duties imposed on goods at each nation's border but also on "behind the border" regulations

16. UK Office for National Statistics, *UK Foreign Direct Investment: Trends and Analysis: Summer 2017*, 2015, table 2, "Top 10 Countries with the Largest Inward UK Foreign Direct Investment Positions on an Ultimate Basis."
17. "Activities of US Multinational Enterprises in 2015," *Survey of Current Business*, December 2017, https://apps.bea.gov/scb/pdf/2017/12-December/1217-activities-of-us-multinational-enterprises.pdf, table 7.2.

that may be impeding cross-border trade in goods and services as well as direct investment opportunities. A comprehensive agreement should also consider the movement of people, which can be an important mode for delivering services and meeting specific labor-force needs.

Trade in Manufactured Goods

Both the United States and the European Union impose relatively low average tariff rates on goods imported to their customs territories. According to the WTO, the average trade-weighted tariff applied to nonagricultural products exported from the United States to the European Union is 1.4 percent, and the average tariff applied to exports from the European Union to the United States is 1.6 percent.[18] The low averages, however, disguise tariff spikes on certain politically sensitive goods, including apparel, footwear, and motor vehicles. Once the United Kingdom exits the European Union's common external tariff, a US-UK free trade agreement should aim to eliminate all tariffs on all categories of goods in both nations upon enactment of the agreement.[19]

One of the most economically promising and politically significant sectors for liberalization is motor vehicles trade. The European Union currently imposes a 10 percent import duty on passenger vehicles, and imposes duties on trucks ranging up to 22 percent.[20] The US government, in turn, imposes a 2.5 percent import duty on passenger vehicles and a 25 percent duty on light trucks and commercial trucks. In 2017, the United States exported $3.4 billion in passenger vehicles, engines, and parts to the United Kingdom while importing $9.9 billion in such goods.[21]

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18. *World Tariff Profiles 2017* (Geneva, Switzerland: World Trade Organization, United Nations Conference on Trade and Development, International Trade Centre, 2016), 177 (US), 82 (EU).
19. Trade economists have raised the concern that free trade agreements may cause significant trade diversion rather than trade creation. Trade diversion occurs when imports from an FTA partner replace those from a more efficient producer outside the FTA area, depriving the import-receiving country of tariff revenue without providing the offsetting gains of lower-cost production. There is no evidence that trade diversion would be a major factor in a US-UK free trade agreement, since tariff rates are already low on most product categories. For more background on trade diversion, see Richard E. Baldwin and Anthony J. Venebles, "Regional Economic Integration," in *Handbook of International Economics, vol. 3*, ed. Gene M. Grossman and Kenneth Rogoff (Amsterdam: Elsevier, 1995).
20. *2017 National Trade Estimate Report on Foreign Trade Barriers* (Office of the United States Trade Representative, March 2017), 157.
21. US Census Bureau, "U.S. Exports by 5-Digit End-Use Code, 2008–2017"; US Census Bureau, "U.S. Imports by 5-Digit End-Use Code, 2008–2017."

Residents of the United Kingdom import 85 percent of the cars they purchase each year,[22] with 80 percent of their nation's two-way trade in automotive products occurring within the European Union.[23] Eliminating duties on cars and light trucks within a US-UK agreement would increase potential exports from the United States to the United Kingdom. Such liberalization would allow the US and UK automotive industries to integrate their production platforms and supply chains, and if the United Kingdom were to join NAFTA, which includes Canada and Mexico, the UK auto industry and the entire North American production platform could integrate further.

Automobiles proved to be a politically sensitive topic in the recent renegotiation of NAFTA by the United States, Canada, and Mexico. Under pressure from the United States, Canada and Mexico agreed to tighten the rules of origin and to accept certain quotas on the number of motor vehicles that can be imported to the United States duty free under the reconfigured US-Mexico-Canada Agreement (USMCA). A US-UK FTA should include less-strict rules of origin and avoid any quotas on automobile imports to either party.

Other commercially significant tariffs that should be at the front of the line for elimination are the European Union's 12 percent duty on shirts, dresses, and trousers; its 6.5 percent duty on plastics, paints, and organic chemicals; and its 7 to 10 percent duties on certain aluminum and titanium products. Among the most egregious US tariff barriers ripe for elimination are the 7 percent duty on light oils; the 5 to 6.5 percent duties on certain chemicals; the 10 to 37.5 percent duties on a range of clothing and footwear items; the 15 percent duty on certain titanium products; and the 16 percent duty on parts and accessories for LCDs. Without an FTA, these duties will remain in place when the United Kingdom leaves the European Union.[24]

Trade in Agricultural Products

Another sector ripe for bilateral trade liberalization is agriculture. In 2017, US agricultural producers exported $2.1 billion in goods to the United Kingdom, with wine and other alcoholic beverages, nuts, and processed food items being

22. "UK Car Sales at Record High in 2016," *BBC News*, January 5, 2017.
23. European Automobile Manufacturers Association, "Motor Vehicle Trade between the UK and Its Main EU Partners," March 19, 2018, https://www.acea.be/statistics/article/motor-vehicle-trade-between-the-uk-and-main-eu-partners.
24. Duty rates are available to the six-digit level of the Harmonized Tariff Schedule as reported to the World Trade Organization, Tariff Download Facility (2017), available at http://tariffdata.wto.org/Default.aspx?culture=en-US.

the leading exports.[25] Meanwhile, Americans imported $2.7 billion in agricultural products from the United Kingdom, with nonwine alcoholic beverages accounting for 71 percent of those imports.[26]

In contrast to trade in manufactured products, in agricultural trade tariffs remain a significant barrier. According to the WTO, the US-applied tariffs on agricultural imports average 5.2 percent, while EU tariffs on agricultural imports average 11.1 percent.[27] The US government maintains significant import barriers for foreign-produced cheese, butter, raw cane sugar, refined cane sugar, and canned tuna and beef, according to the US International Trade Commission's biannual report on significant US import restraints.[28] Of special interest to UK producers are US duties of 10.8 percent on cheese and 4.8 to 5.6 percent on chocolate and other cocoa products. Of special interest to US producers are the current EU duties of 12 to 16 percent on fresh grapes, cranberries, and confectionary items.[29]

The agreement should aim to eliminate all duties on agricultural products as well as on nonagricultural goods. This ideal should be easier to achieve in a US-UK bilateral trade agreement than in an agreement with the entire European Union, because there are fewer agricultural protectionist interest groups within the United Kingdom than within the European Union as a whole.

One potential area of contention for agricultural trade will be nontariff barriers such as sanitary and phytosanitary standards. The United States has complained that the European Union has maintained certain food safety regulations not for legitimate reasons of public health, but for the protection of domestic producers. The United States has complained that those barriers "are not based on scientific principles and evidence, thereby restricting trade without improving public health."[30] Similar complaints have been lodged against the United States; a WTO review of US trade policy reported the concerns of other WTO

25. US Census Bureau, "U.S. Exports by 5-Digit End-Use Code, 2008–2017."
26. US Census Bureau, "U.S. Imports by 5-Digit End-Use Code, 2008–2017."
27. *World Tariff Profiles 2017* (Geneva, Switzerland: World Trade Organization, United Nations Conference on Trade and Development, International Trade Centre, 2016), 177 (US), 82 (EU).
28. US International Trade Commission, *The Economic Effects of Significant U.S. Import Restraints*, September 2017, 26.
29. World Trade Organization, Tariff Download Facility.
30. *2017 National Trade Estimate Report on Foreign Trade Barriers*, 153. Article XX of the 1994 General Agreement on Tariffs and Trade among WTO members allows measures that are "necessary to protect human, animal or plant life or health," subject to the requirement that such measures are not "a disguised restriction on international trade." For further discussion about balancing health and environmental regulations and freer trade, see Nita Ghei, "Evaluating the WTO's Two Step Test for Environmental Measures under Article XX," *Colorado Journal of International Environmental Law and Policy* 18, no. 1 (Winter 2007).

members that "burdensome new requirements regarding verification, certification, audit and inspection had become undue barriers to trade."[31]

A US-UK FTA should strive to remove all unnecessary impediments to trade from the enforcement of sanitary and phytosanitary standards. Each nation should be allowed the regulatory space to ensure the protection of legitimate public health and safety standards, but those standards should not be allowed to be twisted into disguised protections for domestic producers. The agreement should strive, as much as possible, for mutually recognized standards and for guarantees that those standards are transparent and based on science and the public interest in health and safety. Those guidelines should be applied to such issues as animal cloning and the genetic modification of plants.

One ongoing complaint the European Union has against the United States that is especially important to producers in the United Kingdom is related to bovine animals and their products. Since 1997 widespread import restrictions have been imposed on these products owing to bovine spongiform encephalopathy (commonly known as mad cow disease). Although the United States eventually agreed in 2014 to significantly reopen the US market, the European Commission for Trade contends that "this process is unnecessarily lengthy and burdensome and is ongoing for several EU Member States," including the United Kingdom.[32] Resolving this dispute in a way that legitimately protects public health while facilitating trade should be a priority in any US-UK negotiations.

Another current sanitary and phytosanitary issue that may prove difficult to resolve in negotiations is the use of chlorine in the rinsing of chicken produce. The issue involves, in the words of the US government, "antimicrobial rinses used to kill pathogens that commonly exist on meat after slaughter."[33] The European Union prohibits the use of any substance other than water to remove contamination from animal products unless it is approved by the commission, which has effectively barred the importation of US chicken rinsed with chlorine. Ideally, UK restrictions would reflect legitimate scientific concerns about the process rather than public perceptions.

Another sensitive area for negotiation will be geographical indications, which identify products as originating from a specific place. Producers in the

31. World Trade Organization, "Trade Policy Review: United States: Concluding Remarks by the Chairperson," December 19 and 21, 2016, https://www.wto.org/english/tratop_e/tpr_e/tp450_crc_e.htm.
32. European Commission for Trade, "Trade: Market Access Database," last modified October 12, 2018, http://madb.europa.eu/madb/barriers_result.htm?isSps=false&countries=US.
33. *2017 National Trade Estimate Report on Foreign Trade Barriers*, 151.

United Kingdom have registered more than 60 geographical indications, including for Stilton cheese and Cornish pasties.[34] One of the most economically important is for Scotch whiskey, which is one of the United Kingdom's leading exports to the United States and the world. Scotland exports 90 percent of the whiskey it produces, with one-quarter of production going to North America.[35] Scotch producers in the United Kingdom are understandably concerned with how their brand will be protected in any post-Brexit agreement.

A US-UK trade agreement will give both countries the opportunity to free themselves from the impact of the European Union's trade-stifling "precautionary principle." There is no generally agreed upon definition of the principle, but as enforced by the European Union, it generally means that where government regulators determine there is a potential threat of serious or irreversible damage from a new product, they should impose regulations even though there is no scientific certainty that the product is harmful. The European Union has used the principle to effectively ban the importation of genetically modified organisms, a practice that was successfully challenged by the United States, Canada, and Argentina in a WTO case decided in 2003. A US-UK trade agreement should commit both parties to conform to established WTO case law allowing trade in products that have proved to be safe for consumers according to generally accepted scientific standards.[36]

To the furthest extent that is politically possible, a US-UK FTA should establish the mutual recognition of regulatory standards. If a product meets the safety standards of the United Kingdom, it should be allowed to be sold in the United States, and vice versa. Any exceptions should be based on scientifically founded concerns and not on political pressure from domestic producers seeking to limit foreign competition. The agreement should avoid the EU requirement that imported products meet internal EU regulatory standards rather than globally accepted international standards.

Trade in Services

The United Kingdom is one of the few nations in the world in which there is more two-way trade in services with the United States than in goods. This points

34. Shayera Ilias Akhtar, *US-UK Free Trade Agreement: Prospects and Issues for Congress* (Washington, DC: Congressional Research Service, April 14, 2017), 16.
35. Scotch Whisky Association, "Facts & Figures," February 9, 2018, http://www.scotch-whisky.org.uk/what-we-do/facts-figures/.
36. Gilbert R. Winham, "The GMO Panel: Applications of WTO Law to Trade in Agricultural Biotech Products," *European Integration* 31, no. 3 (May 2009): 418.

TABLE 1. US SERVICES TRADE WITH THE UNITED KINGDOM, 2017

Service category	US exports to the UK (billions of US dollars)	US imports from the UK (billions of US dollars)
Maintenance and repair	$2.577	$2.443
Transport	$7.378	$8.091
Travel	$12.920	$8.512
Insurance	$2.515	$4.121
Financial services	$13.908	$8.763
Charges for IP	$9.250	$3.653
Telecommunications and IT	$4.295	$2.285
Other business	$12.705	$13.058
TOTAL	$65.729	$51.698

Source: US Bureau of Economic Analysis, "U.S. International Services Tables," October 24, 2017, https://apps.bea.gov/scb/pdf/2017/10-October/1017-international-services-tables.pdf, table 2.2, "U.S. Trade in Services, by Type of Service and by Country or Affiliation."

to the fact that bilateral US-UK commerce is highly developed, and it argues for giving special attention to the potential two-way gains from liberalizing services trade through a US-UK FTA.

One of the most robust areas of services trade between the two nations is in financial services, including banking and insurance. Both nations are among the global leaders, with New York and London being arguably the world's two premier financial centers. Of the $65.7 billion in cross-border services the United States exported to the United Kingdom in 2016, 21 percent was financial services (see table 1), whereas financial services account for 12 percent of total US service exports to the rest of the world.[37] Almost 30 percent of US foreign direct investment in the United Kingdom is in the financial sector, compared to 11 percent of US outward FDI in the rest of the world.[38] A US-UK FTA should seek to harmonize standards between the two nations to facilitate trade in financial services, insurance, and accounting.[39]

An ambitious agreement would also allow providers to offer competitive transport services in the other nation without restrictions. For instance, the

37. US Bureau of Economic Analysis, "U.S. International Services Tables," October 24, 2017, https://apps.bea.gov/scb/pdf/2017/10-October/1017-international-services-tables.pdf, table 2.2, "U.S. Trade in Services, by Type of Service and by Country or Affiliation."
38. US Bureau of Economic Analysis, "Direct Investment by Country and Industry: 2017," July 30, 2018, table 4, "U.S. Direct Investment Position Abroad on a Historical-Cost Basis, Country by Industry of Foreign Affiliate, 2017."
39. John Pruitt et al., "Legal Alert: US-EU Covered Agreement: An Overview," *Eversheds Sutherland*, July 2, 2018.

United States should allow British-based airlines to serve the domestic US air transport market. This would require an exception to the current US law that forbids cabotage rights for foreign-owned air carriers—that is, the right to carry fare-paying passengers between destinations within the United States.[40]

Another opportunity for liberalization would be in television and audiovisual services. Under current EU regulations, member states are required to "ensure that on-demand services encourage the production of and access to 'EU works.'"[41] A US-UK FTA should prohibit restrictions on content delivered by TV and audiovisual services, whether those restrictions are formal quotas or informal requirements to encourage local productions. The US-UK agreement should clarify that cross-border investment in this sector is allowable and will be treated no differently than other FDI. British media consumers should not be denied the audiovisual content they desire just because it originates in the United States, just as American consumers should not be denied content that originates in the United Kingdom.

The US-UK agreement should include enhanced protections for digital trade and e-commerce. The language of the agreement should promote the free flow of data between residents in the two nations while protecting legitimate interests in privacy and security. One area for enhanced liberalization is in cloud computing services. Cloud computing allows for shared access to the storage, management, and processing of data over a network of remote servers. As in the United States, cloud computing has been growing rapidly in the United Kingdom.[42] A more integrated cloud computing sector between the two nations will allow for the more efficient allocation of resources and for lower prices through competition. It will also facilitate the cross-border flow of data for such industries as advertising, financial transfers, and communications, further stimulating cross-border trade.[43]

To promote robust competition in cloud computing and other services, an FTA should include provisions that limit requirements for data localization. Such rules seek to limit the ability of foreign-based service providers to transfer data collected from a nation's citizens to data storage facilities abroad. US service

40. Kenneth Button, "Really Opening Up the American Skies," *Regulation (Cato Institute)*, Spring 2014, 40–45.
41. *2017 National Trade Estimate Report on Foreign Trade Barriers*, 167.
42. Jorge Pardo, Andrew Flavin, and Michael Rose, *2016 Top Markets Report: Cloud Computing; A Market Assessment Tool for U.S. Exporters* (Washington, DC: US International Trade Administration, April 2016), 39.
43. For background on the importance of cross-border cloud computing, see Christine McDaniel, "Data Localization Requirements: What They Are and Why They Matter," Mercatus Original Podcast, April 3, 2018, www.mercatus.org/bridge/podcasts/04032018/DataLocalizationRequirements.

providers are rightly concerned that data localization rules impede the ability of service companies to manage and protect data in the interests not only of the company but also of consumers. Borrowing the language of the Trans-Pacific Partnership trade agreement that the United States had negotiated with 11 other nations, the agreement with the United Kingdom should specify that neither nation will require people to use or locate computing facilities in that nation's territory as a condition for conducting business in that territory.[44]

A related issue that the agreement should address is the ability of firms to engage in "geo-blocking." Currently the European Union restricts the ability of internet companies to engage in the practice, which involves offering different products, prices, and terms to customers depending on where they live or other identity differences. US firms are rightly concerned that restrictions on geo-blocking will negatively impact their ability to "market tailored offerings to different customers or engage in territorial licensing of audiovisual works."[45] A US-UK agreement should allow firms in both countries to tailor their products and prices to meet local demand.

The European Union recently implemented the General Data Protection Regulation, intended "to protect all EU citizens from privacy and data breaches in an increasingly data-driven world."[46] Among the more problematic provisions is the "right to be forgotten," which grants "the right for EU citizens to demand that search engines remove information that is inaccurate, inadequate, irrelevant, or excessive for the purposes of data processing."[47] US providers are understandably concerned that this will limit access to public-interest information and that it conflicts with US values of free speech. The US-UK agreement should guarantee access to information for people in both nations, while allowing the collection, processing, and storage of data in servers in either country without restriction.

Government Procurement

Both the United States and the United Kingdom belong to the Government Procurement Agreement within the WTO. A US-UK free trade agreement offers the

44. Trans-Pacific Partnership, chap. 14, art. 14.13, available at https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text.
45. *2017 National Trade Estimate Report on Foreign Trade Barriers*, 183.
46. EU GDPR.org, "GDPR Key Changes," accessed February 28, 2018, https://www.eugdpr.org/the-regulation.html.
47. *2017 National Trade Estimate Report on Foreign Trade Barriers*, 180.

opportunity to go beyond that agreement to create more competition to meet taxpayer needs in both nations. The potential benefits are large. According to the US Government Accountability Office, US governments at all levels spend $1.7 trillion a year on goods and services.[48] The US government claims to have opened about half of this total spending to potential foreign bidding, but other provisions in US law restrict procurement to domestic providers only.

"Buy America" and "Buy American" provisions generally bar foreign companies from bidding on contracts to provide goods and services for the US military or for government-funded mass transportation projects.[49] The Berry Amendment requires the US Department of Defense to purchase all its food, clothing, and other textile products from domestic providers only.[50] The rationale for such restrictions involves national security, but the political aim is to favor domestic providers, and the result is that the US military must pay higher prices for a more limited range of goods than it would if it were able to source on international markets. Even if the national security concerns were valid, the United Kingdom is one of the most dependable US allies.

A US-UK FTA should open government procurement to nondiscriminatory bidding from providers in both nations. This would be a benefit to UK providers, which would have greater access to the world's largest procurement market. It would also benefit the US government by delivering more competition, choice, and quality in goods and services necessary to meet national defense needs. Citizens of the United Kingdom would also benefit from savings and better services if US providers could freely bid on UK government procurement contracts.

Foreign Investment, State-Owned Enterprises, and Dispute Settlement

Any US-UK FTA should contain robust protections for foreign investment in each country. The agreement should contain guarantees that affiliates will receive "national treatment"—that is, they will be treated on terms equal to those of their domestically owned competitors. The agreement should also protect the right of foreign-owned affiliates to transfer operating profits, dividends, interest payments, and royalties to the parent company or other locations outside the

48. US Government Accountability Office, *The United States and European Union Are the Two Largest Markets Covered by Key Procurement-Related Agreements*, July 2015.
49. World Trade Organization, *Trade Policy Review: United States,* 2016, 11.
50. Defense Procurement Acquisition Policy, "Berry Amendment FAQ," 2014, https://www.acq.osd.mil/dpap/cpic/ic/berry_amendment_faq.html.

host country. And the agreement should guarantee fair and just compensation in case of expropriation. Regarding state-owned enterprises, the agreement should seek to discipline against any anticompetitive or otherwise market-distorting practices rather than to control the structure of such enterprises.

FTAs typically contain measures that allow for the settlement of disputes about their implementation (and the enforcement of such settlements). A US-UK agreement should contain generally accepted provisions that mandate a transparent, workable, and effective dispute-settlement mechanism. The established process should include consultations and the creation of impartial panels to hear and adjudicate the facts in each dispute.[51]

Movement of People

A US-UK FTA should facilitate the movement of people between the two nations. The free movement of workers would allow a more productive matching of labor supply and demand within the two nations by enabling workers to move where their skills are most in demand. Since living standards in the two nations are comparable, it is unlikely that there would be large movements of workers in either direction. Free movement would also facilitate trade in services by allowing specialists to travel to meet the needs of customers in the other market. It would also enhance foreign direct investment by allowing greater flexibility for intracompany transfers.

The agreement, either in its text or by separate legislation, should create a special visa category to allow citizens of the United Kingdom to work in the United States without a quota on their numbers, and to allow citizens of the United States to work in the United Kingdom without a quota. The special visa could be patterned on the E-3 visa that the US Congress created in 2005, that allows as many as 10,500 Australian professionals to work in the United States on two-year visas that are renewable indefinitely.[52] Adjusting for the larger population of the United Kingdom, a proportional number of visas would be about 30,000. These visas for citizens of the United Kingdom would be available in addition to those already offered through existing categories. A reciprocal and

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51. For a more detailed discussion of potential provisions on foreign investment, state-owned enterprises, and dispute settlement, see Daniel J. Ikenson, Simon Lester, and Daniel Hannan, *The Ideal U.S.-U.K. Free Trade Agreement: A Free Trader's Perspective* (Washington, DC: Cato Institute, 2018), in particular chapters 8, 14, and 16.
52. See title V, § 501, "Reciprocal Visas for Nationals of Australia," in the Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302 (May 11, 2005).

proportionate number of visas should be made available to US nationals to work in the United Kingdom.

The US-UK free trade agreement should also commit the two nations to seek harmonization of occupational licensing laws. The basic principle would be that a person registered to practice an occupation in the United States would be entitled to practice an equivalent occupation in the United Kingdom, and vice versa. Because much of the occupational licensing in the United States occurs at the state level, the agreement should encourage both nations to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers throughout their jurisdictions.[53] The two nations should seek to minimize exemptions from and exclusions to the agreement. The language of the agreement could be patterned after the Trans-Tasman Mutual Recognition Act of 1997 between Australia and New Zealand, which facilitates the free flow of labor between the two nations.[54]

While immigration is a politically sensitive topic on both sides of the Atlantic, it should not be controversial in an agreement between the United States and the United Kingdom. In a detailed study of a potential US-UK trade agreement, the Legatum Institute in London concluded that the movement of people should be an essential component: "There is such a shared set of values, language and laws between the UK and the US that it should be possible to ensure a situation where British and American people can live and work much more easily in each other's countries."[55]

THE WAY FORWARD TO AN AMBITIOUS AND DYNAMIC AGREEMENT

The governments of the United States and the United Kingdom should commit themselves to negotiating an ambitious and liberalizing bilateral commercial agreement that would enter into force immediately or soon after the United Kingdom exits the European Union's common customs territory.

In his meeting with Prime Minister May in July 2017, President Trump declared, "We're working on a trade deal, which will be a very, very big deal, very

53. Related language can be found in the US-Australia Free-Trade Agreement, Annex 10-A, "Professional Services," available at https://ustr.gov/trade-agreements/free-trade-agreements/australian-fta/final-text.
54. See the opening "Principles" section of the Trans-Tasman Mutual Recognition Act 1997.
55. Shanker A. Singham, Victoria Hewson, and Radomir Tylecote, *Developing a True Transatlantic Partnership—a High Standard Trade Agreement to Propel the Global Economy* (London: Legatum Institute, 2017), 33.

powerful deal, great for both countries, and I think we'll have that done very, very quickly."[56] As this study has shown, there are a number of bilateral issues that may complicate the president's ambitious timeline, but the US experience with previous trade agreements indicates the possibility that an agreement could be implemented relatively soon after the United Kingdom exits the European Union's customs union.

An analysis by the Peterson Institute for International Economics examined the number of months it took the United States to complete each of the 20 free trade agreements it has entered into, from the launch of the negotiations to signing and then to implementation. The median number of months from launch to the signing of a completed agreement was 18 months, varying from four months to negotiate an agreement with Jordan to 38 months to ink the pact with Panama. The median time from launch to actual implementation of the agreement (i.e., when it went into force) was 37 months, or slightly more than three years.[57]

If negotiations on a US-UK agreement were to begin on March 30, 2019, the day after the United Kingdom officially exits the European Union, and if the talks were to follow the median timeline, the agreement would be signed at the end of September 2020 and would go into force at the end of April 2022. US trade agreements with Australia and Canada, two economically advanced, English-speaking nations with close ties to the United States, were near or below the median in terms of the time needed to negotiate and implement. The Australia FTA required 14 months from launch to signing and 22 months to implementation; the Canada FTA required 20 months and 32 months, respectively.

A bilateral trade agreement between the United States and the United Kingdom should be written in such a way that other nations can join the existing agreement with few, if any, modifications. This "open architecture" approach would allow other trading partners, such as Australia, New Zealand, Canada, and Mexico, to join, increasing the extent of the duty-free and barrier-free commercial zone.

As an alternative to bilateral negotiations, the United States and the United Kingdom could jointly seek to enter the reconfigured Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the successor to the Trans-Pacific Partnership. The CPTPP currently includes the 11 original signers

56. Antoine Sanfuentes and Angela Dewan, "Trump: UK Trade Deal Expected 'Very Quickly,' Confirms London Visit," *CNN*, July 8, 2017.
57. Caroline Freund and Christine McDaniel, *How Long Does It Take to Conclude a Trade Agreement with the US?* (Washington, DC: Peterson Institute for International Economics, 2016).

of the Trans-Pacific Partnership minus the United States, which officially withdrew in the early days of the Trump administration.[58] In the official white paper outlining its plans for Brexit, the United Kingdom's conservative government stated, "The UK will potentially seek accession to the [CPTPP] and this would be on terms consistent with the future relationship with the EU, and domestic priorities."[59]

If a US administration were to reconsider joining the CPTPP and were to join simultaneously with the United Kingdom, this would create a free-trade zone spanning the globe and including 41 percent of the world's GDP. While such an arrangement may lack all the liberalizing provisions of an ideal bilateral US-UK agreement, it would achieve a high degree of liberalization and would likely be concluded sooner than a direct agreement between the two nations.

Under the current US Trade Promotion Authority statute, the Trump administration must notify Congress at least 90 days before it begins negotiating a free trade agreement. With the United Kingdom on track to depart the European Union at the end of March 2019, the Trump administration has already met that obligation with the United States Trade Representative's October 2018 letter to Congress. Whether the United States and the United Kingdom decide to pursue a bilateral agreement or another route, the goal should be the same: zero barriers to the movement of goods, services, capital, and people between the two nations that have arguably done more than any other nations in the postwar era to lead the world to a freer and more open global economy.

58. The CPTPP countries are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.
59. "The Future Relationship between the United Kingdom and the European Union" (Policy Paper, Department for Exiting the European Union, United Kingdom, July 12, 2018), 48.

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