

Toward a State-of-the-Art U.S.-UK Trade Agreement

As the United States and United Kingdom transition from discussions under the U.S.-UK Trade and Investment Working Group to the initiation of formal trade negotiations, both countries have a unique opportunity to establish a new global benchmark for a modern, comprehensive, and digitally focused trade agreement. We recognize that this transition comes at an especially difficult time, and fully appreciate that the first priority of both the U.S. and UK governments is to advance measures that directly contribute to the medical and economic response to the current crisis. We stand ready to continue to work with policymakers in support of those efforts and offer this paper in that spirit.

The U.S. and UK are the world's leading exporters of digitally-delivered services. They are each other's most important cross-border e-commerce markets,¹ and among each other's biggest trading partners for digitally-enabled services. U.S. corporate stakes in the UK total \$748 billion, more than five times U.S. investment presence in China and India combined.² A wide range of companies in both economies – both large and small – are at the forefront of embracing new technology to facilitate trade across a wide range of economic sectors. An agreement reflecting commercially meaningful rules-based and market access commitments as well as sound, transparent, risk-based approaches to regulation will set the stage for digital trade and innovation to flourish across the Atlantic.

The [Information Technology Industry Council](#) (ITI) is pleased to offer our priority recommendations for a U.S.-UK Trade Agreement that provides a model for the modern economy. Our recommendations call for strong, modern commitments in the following areas:

- **Digital Trade;**
- **Regulatory Compatibility and Technical Barriers to Trade;**
- **Services and Goods Market Access;**
- **Taxation;**
- **Customs and Trade Facilitation;**
- **Electronic Payment Services;**
- **Competition Policy;**
- **Intellectual Property;**
- **Government Procurement; and**
- **Investment, Trust and Security.**

In an effort to provide substantive and actionable input to negotiators, we further describe each these priority areas in the pages that follow. We look forward to partnering with both governments as they work toward a trade agreement that has the potential to be the new standard for innovation and growth.

¹https://www.paypalobjects.com/webstatic/mktg/2014design/paypalcorporate/PayPal_ModernSpiceRoutes_Report_Final.pdf

² https://www.uschamber.com/sites/default/files/te2019_full_study.pdf

Modern Commitments for Digital Trade

The UK and U.S. governments share an ambition to conclude a state-of-the-art agreement on digital trade that breaks new ground and sets a new path for future international trade. To achieve this level of ambition, a U.S.-UK Trade Agreement must incorporate the essential foundational principles of digital trade, in particular those that:

- ***Strengthen transatlantic data flows and prohibit data localization;***
- ***Prohibit tariffs and customs formalities on electronic transmissions and enshrine non-discriminatory treatment of digital products;***
- ***Ensure protection of personal data, taking into account best international practices for privacy and interoperability;***
- ***Strengthen and expand good regulatory practices for digital trade, including as a means to promote emerging technologies like Artificial Intelligence (AI) and machine learning, in accordance with OECD principles;***
- ***Promote governmental cooperation and risk-based approaches to cybersecurity;***
- ***Prohibit requirements to disclose source code, algorithms, and proprietary information relating to cryptography;***
- ***Establish limitations to intermediary liability for users and suppliers of interactive computer services to support and safeguard digital supply chains;***
- ***Facilitate access to and use of open public data in minable, machine-readable formats to spur adoption of AI and other emerging technologies; and***
- ***Enshrine acceptance of electronic contracts, signatures and authentication.***

Policymakers have key opportunities in particular as concerns:

Strengthening transatlantic data flows and prohibiting data localization. The free flow of data is the lifeblood of all industries and all sectors in both the United States and United Kingdom. A U.S.-UK Trade Agreement should not only provide businesses with the certainty that they will be able to continue to move and store data, including financial data, across the Atlantic, but also demonstrate the compatibility of commercially meaningful commitments on data with the world's most robust data protection regulatory frameworks. Data-related provisions in a U.S.-UK Trade Agreement should underscore that **strong protections for privacy and cybersecurity go hand-in-hand with the transparent, non-discriminatory transfer of data across borders.**

Strengthening and expanding good regulatory practices for digital trade. Given the high quality of their respective regulatory practices, both governments are well-positioned to strengthen and expand the application of **state-of-the-art good regulatory practices (GRPs)**. To the extent that both governments wish to explore novel approaches to address specific issues with regard to new and innovative services, they must be targeted, proportionate, and developed in a fit-to-purpose manner that facilitates trade, innovation, and strong protections. Such approaches must also ensure ample opportunity for broad stakeholder input, stipulate reliance on global, industry-driven, voluntary

consensus standards,³ due consideration of the technical and economic feasibility of requirements, and publication of an impact assessment encompassing a range of considerations to ensure the appropriateness, efficiency, and effectiveness of a direct regulatory approach. As part of these efforts, the UK and the U.S. could also explore creating innovative approaches to testing new technologies using data (e.g., sandboxes). By broadening application of these and other good regulatory practices, both governments can leverage the maximum range of existing tools to address legitimate public policy objectives in a manner that prevents unnecessary policy fragmentation, avoids new non-tariff barriers to trade, minimizes conflicts of laws for companies engaged in digital trade, creates a framework worthy of emulation around the world, facilitates the implementation of new technologies, and maintains U.S. and UK leadership in the modern global economy.

Promoting emerging technologies like AI and machine learning. Emerging technologies like AI and machine learning are increasingly prevalent in the way companies do business, including small businesses that use AI tools to increase productivity and find new markets abroad, and industries that build and export AI technologies across borders. To strengthen public trust in AI and enable next-generation innovation to flourish, it is important to develop responsible and internationally aligned AI governance frameworks and, where appropriate, risk-based regulatory approaches that are sufficiently flexible to account for new opportunities and challenges. Accordingly, consistent with OECD principles on AI,⁴ **the U.S. and UK should agree to adopt targeted, risk-based, technology neutral, sector-specific approaches to the governance and potential regulation of AI**, while recognizing the extent to which potential risks can be mitigated or addressed using existing instruments and regulatory frameworks. This agreement is also an opportunity to advance non-discriminatory regulation of AI applications, while promoting interoperability, including through reliance on global, industry-driven, voluntary consensus standards. In addition, the U.S. and UK should engage in bilateral and international cooperation to promote the development and deployment of AI, including cooperation on AI deployments that can address global challenges in areas such as public health, humanitarian assistance, and disaster response.

Promoting governmental cooperation and risk-based approaches to cybersecurity. A U.S.-UK Agreement should continue to encourage the Parties to use **risk management approaches to cybersecurity** that rely on consensus-based standards and best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events. The United States and United Kingdom can also use this negotiation to build the capabilities of national entities responsible for cybersecurity incident response and require the Parties to build the capabilities of their national entities responsible for **coordinated vulnerability disclosure and handling**. This should include (but not be limited to) developing voluntary processes for coordinated disclosure of both known and unknown ("zero-day") security vulnerabilities to private sector organizations and other governments (i.e., CERT-CERT cooperation) for the purpose of improving the likelihood of mitigation, in alignment with international standards and best practices. With regards

³ Governments should promote the broadest degree of flexibility through consideration of all standards that adhere to principles laid out in the TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations (TBT Committee Decision, November 2000, G/TBT/9), regardless of *where* the standard is developed and whether the developing body is non-governmental or inter-governmental.

⁴ <https://www.oecd.org/going-digital/ai/principles/>

to Internet of Things (IoT) devices, governments should collaborate on IoT baseline security through aligned approaches to baseline cybersecurity standards. The U.S. and UK should also explore creating collaboration structures on emerging security research and development.

Establishing limitations to intermediary liability for users and suppliers of interactive computer services. Internet services rely on a complex supply chain and have enabled small businesses and consumers in the U.S. and UK to reach a global customer base in ways never before possible. Businesses are building trust with customers through a range of activities, many of which are unseen by end users but crucial to the sustainability of the online ecosystem. A fundamental reason that services have been able to play this role is their open nature: internet services, including intermediaries, can facilitate communications and transactions among millions of businesses and people, enabling them to connect directly on a global basis. The U.S. and UK should secure an agreement ensuring that intermediaries can continue to enable engagement and transactions with limited exposure to non-IP legal liability for all interactive computer services for the intermediary activities they perform, ranging from content hosting and distribution to user review and other e-commerce activities. A U.S.-UK Trade Agreement would not prevent governments' work to combat illegal activity and could, for example, also encourage companies to work with public authorities to ensure a safe online environment.

Facilitating access to and use of open public data. Small and large companies can build innovative commercial applications and services based on government data. By making government data available in an open, machine-readable format, governments spur the inclusive adoption of artificial intelligence (AI) and other emerging technologies and encourage innovative new uses that bring about positive economic and social impacts. As part of current negotiations, we urge the U.S. and UK governments to leverage the benefits of emerging technology by committing to facilitate public access to and usage of government data.

Regulatory Compatibility and Technical Barriers to Trade

Beyond more specific applications referenced above, a U.S.-UK Trade Agreement chapter on GRPs should seek **to strengthen and build upon commitments like those in the U.S.-Mexico-Canada Agreement (USMCA)**, taking advantage of the significant degree of commonality between each government's transparent, evidence-based approach to development of policy, legal frameworks and regulation.

Technical barriers to trade. In line with the promotion of good regulatory practices for the regulation of emerging technology, U.S.-UK Trade Agreement commitments should build upon approaches in existing agreements with regard to technical barriers to trade (TBT) in order to enable regulatory compatibility, foster convergence with respect to the regulation of digital services and emerging technologies, and provide regulators on both sides of the Atlantic with the broadest range of tools to pursue fit-to-purpose solutions. Expanding disciplines **ensuring regulatory consideration of the broadest range of global, industry-driven, voluntary consensus standards – including services standards** – would be extremely meaningful in facilitating the kind of regulatory compatibility necessary to allow for the expanded exchange of goods, services, and information in the modern

economy. In doing so the UK and U.S. can pioneer TBT commitments for the digital age, enabling regulators to leverage broad industry expertise and better keep pace with advances in technology.

Acceptance of test reports. Where governments deem it necessary to consider the use of **conformity assessment** as a component of potential regulatory approaches to emerging technology, the U.S. and UK could be global leaders in the development of **strengthened provisions that facilitate the mutual acceptance of test results and certifications through reliance on existing international schemes, including the International Laboratory Accreditation Collaboration (ILAC) Mutual Recognition Arrangement (MRA) and International Accreditation Forum (IAF) Multilateral Recognition Arrangement (MLA)**. Each of these schemes provides for a rigorous peer-review process that ensures the quality of test results produced by CABs and certification bodies accredited by MLA and MRA members. The IEC System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) CB Scheme is another example of a successful international system for mutual acceptance of test reports and certificates that has yielded global benefits for the information and communications technology (ICT) industry. Expanding reliance on these would not only facilitate greater transatlantic trade, but would have positive ramifications for safety, quality, and consistency, both by broadening the range of acceptable, trustworthy results, and allowing regulators and market surveillance authorities to concentrate resources in the most efficient manner possible.

Supplier's declaration of conformity. The ICT industry has a proven, global track record in leading in the development of safe, high-quality, and state-of-the-art products. As such, in product areas where third-party testing requirements are unlikely to lead to improved regulatory outcomes, **we promote supplier's declaration of conformity (SDoC) as the ideal attestation choice both for the satisfaction of regulatory requirements and the facilitation of trade**. This model is already used for a wide variety of products in the UK, United States, and other countries. A greater reliance on SDoC in the marketing of ICT products would maintain regulatory and market surveillance assurances on the quality and safety of products while allowing for a focus on those classes of products with the greatest risk profiles. Bilateral negotiations should further explore where SDoC can be implemented as an effective means to ensure that products meet regulatory requirements while minimizing delays and impediments to market access.

Electronic labeling (e-labeling). Allowing the display of regulatory and other product information via electronic means is a sensible solution that ensures labels do not inhibit product innovation while helping to minimize cost and maximize consumer convenience.⁵ We urge both governments to refer to the text on e-labeling contained in the ICT Annex of the USMCA in crafting language for a U.S.-UK Trade Agreement. **Requiring Parties to allow electronic display of regulatory information (e.g., radio frequency, compliance markings) rather than traditional physical labels on devices, which may no longer be feasible with new device sizes and designs, would ensure alignment with global best practices**. E-labeling is widely used for screen devices, but the ICT industry has also sought other methods of e-labeling for various device types to better accommodate new, increasingly small product types and an increasing number of certification labels.

⁵ <https://itif.org/publications/2017/09/25/how-e-labels-can-support-trade-and-innovation-ict>

Services and Goods Market Access

Two-way services trade between the U.S. and UK totaled \$126.5 billion in 2017.⁶ The United Kingdom is the United States' biggest trading partner of digitally-enabled services, accounting for 23 percent of U.S. exports and 29 percent of imports from the European market.⁷ While U.S. and UK services markets are in practice already quite open to each other, a U.S.-UK Trade Agreement should reflect global leadership **by enshrining market openness through full liberalization of services market access on a negative list basis, with minimal non-conforming measures**. Consistent with a negative list approach and in the interest of facilitating trade in emerging services sectors, these commitments should ensure that new sectors benefit from market access commitments without further negotiation. Beyond the facilitation of services trade across the board, liberalization in key sectors including computer-related services, data processing, electronic payment services, advertising services, telecommunication services, audiovisual services, and postal and express delivery services will have significant, broader positive repercussions for transatlantic digital trade.

Service negotiators should also pursue **mutual recognition for professional qualifications**. Non-recognition of qualifications in professional service areas creates barriers that increasingly affect the tech sector, especially as technology roles receive greater professional recognition in the form of licenses, accreditation and certification. We support provisions on the mutual recognition of qualification as a central objective of a services chapter.

With respect to goods trade, we would emphasize the productivity and economic growth gains of increased access to and use of ICT goods. Bilateral engagement should therefore also promote UK accession to the **WTO Information Technology Agreement and its expansion** and ensure that existing commitments to not impose tariffs on ICT goods remain in force. **Rules of origin should be flexible** and subject to reasonable content thresholds to enable technology producers to readily make use of them.

Taxation

Consistent with the spirit of deepening bilateral trade and investment engagement, the U.S. and UK should maintain their **commitment to reach a multilateral solution** to the tax challenges arising from the digitalization of the economy. Such commitment should entail **the immediate withdrawal of the UK's unilateral digital services tax (DST)** and refraining from the implementation of other taxation measures that are discriminatory in nature and contravene long-standing principles of international taxation. Unilateral DSTs like the proposed UK measure are inappropriate solutions with punitive impacts on many market participants to address what are inherently international tax challenges, and are incompatible with rules-based, multilateral approaches to international tax and trade policy.

⁶ [https://www.uschamber.com/sites/default/files/te2019 - full_study.pdf](https://www.uschamber.com/sites/default/files/te2019_-_full_study.pdf)

⁷ <https://www.csis.org/programs/future-digital-trade-policy-and-role-us-and-uk>

Customs and Trade Facilitation

E-commerce has played a revolutionary role in opening new opportunities for small and medium-sized enterprises (SMEs) to sell goods across borders. For example, of all UK companies selling products on eBay, 95 percent export, as compared with less than 20 percent of all other firms. Comparable figures in the U.S. market total 97 percent and less than five percent, respectively.⁸ When e-commerce customers in the U.S. and UK shop abroad, they do so primarily in the other country's market. There are tangible commitments that both governments can make in a trade agreement to expand opportunities for these firms to do business online. A U.S.-UK Trade Agreement should build on and strengthen customs and trade facilitation provisions in the WTO Trade Facilitation Agreement (TFA) and USMCA. Further simplifying customs clearance procedures – **including through establishment of commercially meaningful *de minimis* levels**, as well as informal clearance thresholds – would enable greater SME participation in transatlantic trade and send a clear message about the unambiguous economic benefits of such commitments.

Electronic Payment Services

ITI views the **application of digital trade provisions to electronic payment services (EPS) suppliers as an essential feature of modern agreements**. We would echo the recent joint statement of the U.S. and Singaporean governments: **data mobility in financial services supports economic growth and the development of innovative financial services** and benefits risk management compliance programs.⁹ Specifically, digital trade provisions in the agreement should: a) ensure EPS suppliers are able to transfer information across borders; and b) prohibit requirements to use or locate computing facilities in a country's territory as a condition for supplying EPS in that territory.

A U.S.-UK Trade Agreement should also emulate and strengthen the financial services commitments in the USMCA that provide market access and national treatment across modes of supply, ensuring a level playing field for domestic and foreign-based suppliers of EPS in both markets. Regulation should account for, and be respectful of, different business models, encouraging a diverse set of players in the payments space. This competition among players would not only result in greater consumer choice, but would also spur open innovation and interoperability, contributing to a more robust payments ecosystem that would allow all market participants to develop and supply a wide range of payment services with differing product features and value propositions. Market-based policies that support service suppliers' decisions to open Application Programming Interfaces (API) and share data with others in the payments ecosystem help to foster an enabling environment which promotes innovation and competition, which will in turn scale and improve the quality of e-payment services for consumers and merchants.

As electronic commerce and digital payments evolve, the U.S. and UK can and should adopt an approach that fully upholds legitimate public interest objectives while allowing space for innovation and growth, premised on the shared view that there is no inherent inconsistency between these ends. In line with broader GRPs, transparency and reasonable opportunity for stakeholders to

⁸ https://www.ebaymainstreet.com/sites/default/files/ebay_global-report_usa.pdf.

⁹ <https://home.treasury.gov/news/press-releases/sm899>

comment and consult on proposed regulations will go a long way in ensuring that such regulations are fit-for-purpose and do not inadvertently stifle innovation and competition.

Competition Policy

A U.S.-UK Trade Agreement should reflect modern competition policy commitments included in USMCA. **Competition policy provisions should ensure transparent, fair, and non-discriminatory application of competition policy tools**, including with respect to proposed mergers. The Parties should commit to affording affected persons the opportunity to obtain all necessary information regarding the national competition authority's concerns, to be heard and present evidence, and to pursue adequate appeal where necessary. Similarly, rules governing extraterritorial application of competition law enforcement should be applied consistently and transparently, with a clear link to national interest and country nexus. Building on existing rules, provisions in a U.S.-UK Trade Agreement **should commit governments to avoiding definitions and standards that apply differently to digital and non-digital businesses.**

Intellectual Property

The nature of content creation, and the tools and platforms used to share that content, has shifted dramatically over the past decade. ITI member companies are creators, disseminators, and sharing platforms that rely on innovative business models to reach global consumers. We encourage a **balanced approach that includes strong copyright protections while allowing for robust limitations and exceptions**, and strong text- and data-mining exceptions. Similarly, for online service providers that provide a platform for content sharing and that have systems in place to address copyright infringement, the U.S. and UK should commit to a **strong copyright safe harbor** that limits the liability of innovative companies for the abuse of their services by third parties.

Government Procurement

The U.S. and UK governments are among the world's largest purchasers of technology products and services. As both governments continue to modernize, become more efficient and productive, and provide more online services to citizens, access to high-quality and trustworthy ICT products and services grows in importance. A U.S.-UK Trade Agreement should **reflect "GPA-plus" rules-based commitments while maintaining and expanding government procurement market access** to enable companies to compete and to broaden government access to a range of innovative and productivity-enhancing tools. Governments should also aim to harmonize or provide equivalency for contracting regulations that are based on country-specific laws, as well as to seek to minimize national security exemptions.

Investment, Trust and Security

The bilateral security relationship between the U.S. and UK governments is among the strongest in the world. Governments could use trade negotiations to **establish a platform for intensified bilateral engagement** with a view to alleviating hindrances to trade and investment in areas where

communication is extensive, and approaches are already largely aligned. For instance, the U.S. and UK could explore expedited review for investments from either country into the other as concerns respective investment screening processes. Furthermore, governments could collaborate on their respective approaches to export control reform with a view to limiting the extraterritorial impact on goods traded between their markets.

The Information Technology Industry Council (ITI) represents over 70 of the world’s leading information and communications technology (ICT) companies from all corners of the technology sector, including hardware, software, digital services, semiconductor, network equipment, and internet, as well as “technology-enabled” companies that rely on ICT to transform their businesses. Promoting innovation worldwide, we engage with governments and associations around the globe to share information and work collaboratively to develop effective policy approaches that enhance cybersecurity, protect privacy, and enable businesses to thrive in an ever-changing and dynamic global market.