

CBI Scotland

INTRODUCTION

1. **The CBI strongly supports the negotiations for a ‘Transatlantic Trade and Investment Partnership’ between the European Union and the United States**, officially launched at the G8 Summit in June 2013 in the United Kingdom. It is important that political support for TTIP remains high as we move into a more advanced phase of negotiations in 2015.

To tackle those trade and investment barriers that are of most importance to UK business, the CBI supports a comprehensive agreement that includes ambitious commitments to:

- **Eliminate tariffs**
- **Liberalise trade in services**
- **Improve access to US public procurement contracts**
- **Reduce any remaining barriers to foreign direct investment, with provisions on access and protection.**
- **Reduce current non-tariff barriers to trade in key sectors upon entry into force of the agreement**
- **Prevent new non-tariff barriers to trade from arising in the future**
- **Simplify customs rules and administrative procedures to facilitate trade**

2. The US is an extremely important trading partner for the UK, responsible for 17.1% of our total exports of goods and services in 2012¹. Moreover, the US is a crucial investment destination for UK businesses, with the UK holding more investment in the US than any other country in the world, \$487 billion at the end of 2012 – substantially more than the next foreign investors including Japan, Netherlands and Canada, and 18% of the total \$2.7 trillion of FDI in the US². This is a reciprocal relationship as US businesses have invested more in the UK than anywhere else, with the US responsible for 24.6% of all inward FDI to the UK in the period from 2002 to 2011.
3. The trade and investment relationship between the UK and US is already functioning relatively well, but it is by no means complete. Businesses continue to face a variety of barriers and costs that could be avoided, many of which are attributable to regulatory divergences. An historic EU-US trade deal would open up new opportunities for business, delivering growth and jobs without any additional public expenditure.
4. Independent studies have projected that EU exports to the US would increase by 28% each year as a result of an ambitious trade and investment agreement, and

¹ Office for National Statistics, United Kingdom Balance of Payments – The Pink Book 2013

² CBI report July 2014, Sterling assets 6 – British investment creating U.S. jobs

that the UK economy could be given a boost of £10 billion each year³⁴. To achieve these results, negotiators must come to the table with an ambitious mind-set, ensuring that solutions to difficult topics are found during the talks. We would like to stress the importance of a swift and successful conclusion to the TTIP negotiations.

5. The TTIP negotiations not only provide an opportunity to directly boost bilateral trade flows between the UK and US upon entry into force of an ambitious agreement, but also to help set global rules, norms and standards that can be conducive to global trade and investment in the long term. For example, in the wake of continued concerns about the enforcement of intellectual property rights in key markets, the EU and US should work to develop joint approaches on key global IPR challenges within the remit of the TTIP negotiations.

CBI priorities in detail:

A) MARKET ACCESS - GOODS

Eliminating tariffs and establishing clear rules of origin

6. According to WTO data, the EU and US apply low tariffs on goods, with simple average MFN tariff rates of 5.2% and 3.5%, and a trade-weighted average tariff of between 2% and 3% for EU exports to and imports from the US.⁵ However, given the sheer size of the trade flows between the UK and US, as well as the rising amount of intra-firm trade, the UK economy will significantly gain if all remaining tariffs are eliminated. Some companies are forced to shell out millions, tens of millions, and even hundreds of millions of pounds and dollars to customs authorities each year, which hurts consumers and diverts revenue away from much needed investment. High tariff costs affect UK companies exporting to the US as well as companies that source parts and components from the US.
7. As is the case for all other EU FTAs, tariff elimination on a zero-for-zero basis upon entry into force of the agreement should be the level of ambition. Any exemptions from this rule, such as the insertion of phase-out periods or partial tariff liberalisation, should be reserved for the most sensitive products only. The CBI expects all industrial tariffs to be removed upon entry into force of the agreement, and appreciates that some agricultural tariffs will be more sensitive due to the higher level of duty currently applied.
8. Rules of origin criteria should be clear for exporters to understand, notably avoiding the use of any traced value/list schemes that apply to the automotive

³ Centre for Economic Policy Research, Reducing Transatlantic Barriers to Trade and Investment - An Economic Assessment, March 2013.

⁴ Centre for Economic Policy Research, Estimating the Economic Impact on the UK of a Transatlantic Trade and Investment Partnership (TTIP) Agreement between the European Union and the United States, March 2013

⁵ WTO online statistics database, tariff profiles for European Union and United States

sector under NAFTA. It is essential that rules of origin are as simple as possible for exporters to understand; otherwise there is a risk that opportunities for companies to benefit from the elimination of tariffs will be foregone due to the incorrect classification of originating or non-originating goods.

B) MARKET ACCESS – SERVICES AND INVESTMENT

Liberalising trade in services

9. Services are highly important in the context of transatlantic trade, and the US and UK are the world's top two exporters of commercial services.⁶ The CBI would strongly welcome horizontal commitments from the EU and US to bind existing levels of liberalisation and to grant improved market access and national treatment in all four modes of delivery, with the scope of commitments covering all services sectors.
10. State-level barriers to trade in services are particularly important to clarify and address. Just like the EU, the US is not a harmonised internal market for trade in services. As a first step, the CBI supports detailed clarifications of the barriers that apply at state-level, which are particularly prevalent in highly regulated fields such as professional services and financial services. There should be full transparency of all regulated professions and restrictions that apply at state level, going beyond indicative measures or general principles.
11. On mode 4, UK citizens with e-passports currently do not require visas when travelling to the US under 90 days due to the Visa Waiver Program, which is important given the high degree of regular business travel between the UK and US. However, for the temporary movement of persons over a longer term, problems have been reported relating to the predictability of the US visa regime. Given the importance of labour mobility for services trade, we support measures to reduce burdens and uncertainty for employers when visas are required for longer-term stays in the US.

Sector specific market access issues

12. Sector specific market access priorities identified by the CBI for the services and investment negotiations include:
 - Removal of ownership and control restrictions for foreign investment in US airlines (following the 2007 Open Skies agreement, a 25% cap still applies in the US compared to a 49% cap in the EU).

⁶ WTO International Trade Statistics 2012

- Authorisation for EU commercial vessels to transport merchandise between US ports (currently vessels are required to be built, owned, operated and manned by U.S. citizens and registered under the U.S. flag).
- Address lack of wholesale market access for competitors in US electronic communications sector, ensuring competitors have access to broadband networks and business access services at non-discriminatory, transparent and cost-based rates.
- Removal of discriminatory collateral requirements in the re-insurance sector.
- Reduced barriers for the professional services sector (e.g. allowing UK qualified professionals to take relevant US exams regardless of route to qualification in sectors like accountancy and legal services).
- Removal of nationality restrictions on ownership in accountancy and banking sectors.

Investment – increasing access and protection

13. Transatlantic investment flows are essential in achieving deep economic integration which explains the high degree of intra-firm trade between the UK and US. The CBI welcomes the shared EU-US principles on international investment that have emerged from the TEC process. The TTIP should promote the free transfer of capital, a level playing field for foreign and domestic companies, and protection for investors and their investments.
14. On investment protection and the specific issue of investor-to-state dispute settlement (ISDS), the CBI supports the insertion of bilateral investment treaty provisions into the agreement, under the condition that commitments by both parties are consistent with the high levels of protection afforded in standard UK BITs to date. The objective should be to provide legal certainty that investments in the US cannot be discriminated against on grounds of nationality.

C) MARKET ACCESS – PUBLIC PROCUREMENT

15. The EU should look to open up US public procurement contracts to the highest degree possible, going beyond GPA commitments in terms of coverage and lowering existing thresholds due to the imbalance between EU and US commitments under the GPA. The agreement should include binding transparency rules for award process and national treatment, as well as clear criteria and deadlines in the selection and decision-making process.
16. Currently, 'Buy America' provisions prevent UK firms from being able to compete for US contracts due to local content requirements, whereas the UK market is considered one of the most open in the world, and no local content requirements are applied. The negotiations should seek to ensure that 'Buy National' criteria no

longer exclude EU companies from competing for contracts. If these restrictions cannot be fully removed at state level, solutions should be reached to achieve a lowered and consistent percentage of local content requirements among the different states to prevent states from pushing forward with 'Buy National' legislation.

17. Without improved market access conditions in some sectors, benefits in public procurement will remain limited only to those sectors that are able to fully operate on both sides of the Atlantic. The CBI encourages negotiators to look specifically at NTBs in those sectors that are particularly relevant for the public procurement market.

18. Additional priorities raised by CBI members at the sector level include:

- Removing restrictions on the sale of any textile product into the US for military use, including for mixed materials (Berry Amendment)
- 'Buy American' provisions for High Speed Rail Projects and Transit Rail Projects that benefit from FRA and FTA funding respectively.
- State laws that impose contracting preference provisions with higher domestic content requirements than those set forth in the federal law (e.g. the Stronger Transportation 'Buy American' requirements in California).

D) REGULATORY CONVERGENCE AND NON-TARIFF BARRIERS

Reducing current non-tariff barriers to trade in key sectors is the top priority for the CBI in the negotiations

19. The TTIP negotiations must take the work that has been done by TEC much further, and should bind in results. Making sure that regulatory agencies are on-board and fully engaged in the negotiations is absolutely essential to reduce the burden of regulation that is frequently seen as the biggest single barrier to transatlantic trade. Regulators must formally recognise compatible and functionally equivalent approaches to approving products and services in their respective markets.

20. Full regulatory harmonisation for most sectors will not be realistically achievable within the ambitious timeframe that has been set for the negotiations, and this applies to both trade in goods and services. As a result, EU negotiators should strive for as many economically meaningful mutual recognition agreements as possible, and to limit any discriminatory regulatory requirements that currently apply to cross-border trade and investment. The most important benchmark of success for the TTIP will be the extent to which new regulatory commitments can be delivered that make a practical difference to businesses on the ground, as opposed to solely focusing on future regulatory co-operation and compatibility,

although this is also important. The TTIP also needs to ensure that regulatory commitments that are taken are fully implemented and held to account.

21. There is a strong sectoral dimension to the regulatory aspect of the negotiations. Counterpart regulatory agencies and standards bodies must work in conjunction with the relevant industry associations for each sector to ensure that costly and unnecessary duplicate testing procedures and regulatory divergence are avoided wherever possible. In some sectors, establishing stronger mechanisms for cross-border co-operation and consistency when designing or updating regulations is an important stepping stone to future regulatory convergence. The level of co-operation and industry engagement needs to intensify as we move into a more advanced phase of the negotiations in 2014.
22. The CBI has so far identified the following sectors and regulatory issues for prioritisation:

Automotive

23. While the compliance procedures are fundamentally different (Type Approval in EU; self-compliance in US), motor vehicles that are safe to drive in one market should be considered safe to drive in the other. For key safety and environmental standards, there is currently duplication between the UN Economic Commission for Europe (UNECE) 1958 Agreement applied in the EU and the Federal Motor Vehicle Safety standards (FMVSS) applied in the US, which increases the complexity of product development, leading to increased compliance costs.
24. Proposals have been put forward by sectoral industry bodies in the EU and US to counter this situation, focusing on introducing mutual recognition agreements for key safety standards, and confirming equivalence for these standards. The TTIP negotiations should build and deliver on these proposals, making sure that meaningful commitments take effect on current barriers to trade. Furthermore, following the signature by both the EU and US on the 1998 Agreement, both partners should commit to adopt global technical regulations (GTRs), of which 11 currently exist on safety and environmental standards with others in the pipeline.
25. Concerns have also been raised relating to divergent emissions standards between different US states, and support has been highlighted for the re-entry of the US into the WLTP (Worldwide Harmonised Light-Duty Test Procedure) process given the importance of establishing a global test procedure to measure light vehicle emissions and energy consumption.
26. On future regulations and standards for the sector, the EU and US should agree to consult each other before introducing new technical legislation, and should

create a process with the objective of harmonising divergent regulations (UNECE 1958 Agreement and FMVSS standards) leading to common future standards.

Chemicals

27. Sectoral industry bodies in the EU and US have presented joint recommendations on regulatory co-operation measures, stressing the importance to the sector of increased consultation and co-operation by regulators when adopting new chemicals regulations. This is seen as an important transitional step towards developing comparable chemical regulations thereby allowing mutual recognition to be applied, in a context whereby there may not be much scope to harmonise or amalgamate the main EU and US chemicals regulations (REACH and TCSA).

28. Within this context, priorities include:

- systematic data and information sharing between EU and US regulators;
- increased co-operation on the processes to prioritise and align chemical substances for review and evaluation, including classification;
- common regulatory principles on how hazards and risks are characterised;
- mandatory and improved transparency of information and rules to protect commercial and proprietary interests;
- a mandatory transatlantic cross-border consultation process when drafting new chemical regulations to avoid future regulatory divergence.

29. New areas for regulatory activities like nanotechnology and endocrine disruptors provide more potential for regulatory convergence by defining common standards on criteria and common methodological approaches, which in the long-term could possibly be extended to other global trading partners.

Cosmetics

30. Divergent classifications of cosmetics and cosmetic ingredients between the EU and US create an unnecessary regulatory barrier to trade, and the CBI supports mutual recognition of classifications (e.g. for toothpaste, anti-dandruff, anti-perspirant) and of positive list materials (e.g. UV filters). There should also be mutual recognition of labelling requirements in cosmetics and sunscreens, and the INCI naming system for cosmetic ingredients should be adopted by the US.

Financial Services

31. Regulatory divergence between the EU and US presents the most pressing trade barrier for the UK financial services sector. Despite the existence of the EU-US Financial Markets Regulatory Dialogue, the CBI is concerned that key rules set at

the global level are being implemented by the EU and US in divergent ways, and hence we fully support the inclusion of the financial services sector within the negotiations on regulatory convergence. Inclusion of financial services is not about giving either party a loss of sovereignty over prudential frameworks, but about working with the other party towards the broad convergence of regulatory outcomes. Sub-federal regulators need to be incorporated within the process, given that key regulations are devised at this level, particularly for insurance.

32. As part of TTIP, negotiators should look at barriers created by the extra-territorial application of rules which may make it difficult for financial services providers to supply their products. For example, further co-operation and clarity on derivatives regulation is essential to prevent the extra-territorial application of rules by either party, and to ensure that EU and US regulatory approaches are compatible.

Food and drink

33. Divergent technical standards and sanitary and phytosanitary (SPS) rules are longstanding barriers to EU and US agri-food trade, with significant differences in policy in areas such as food safety, biotechnology, hormone growth enhancers, pathogen reduction treatments and import procedures. There is a clear opportunity to discuss pragmatic solutions to these barriers, with the agriculture and food and drink industry in the UK supporting the implementation of SPS rules in accordance with the science based approach.

34. As well as being a key market for UK exports, the US is also a source of agricultural raw materials used in EU manufacturing. The EU and US combined represent a third of global trade in food and drink manufacturing and an ambitious deal would afford significant benefits in terms of food security for consumers and security of supply for manufacturers. A major barrier to achieving this is the diverging outlook on food safety between the EU and US. Negotiators should seek to ensure a mutual recognition agreement on technical standards relevant to foodstuffs and an equivalence agreement on internal inspections.

Information and Communication Technologies

35. Information and Communication Technologies (ICTs) have experienced a radical transformation in the last decade with the development of the Internet as a common platform where convergent voice, data and video services are provided by a range of actors, not all subject to the same legacy regulations. A holistic vision with a common understanding of the ICTs ecosystem should be an objective for the EU and US which should be reflected in the TTIP, to ensure a level playing field among all actors involved in the provision of ICT services. As competitive dynamics change with the entrance of new players, the goal of ensuring open markets for ICT services across the Atlantic should come in

parallel with a more flexible approach towards the provision of telecommunications services and healthy competition.

Medical devices

36. Negotiators should address divergences in regulatory procedures between the EU and US which will help speed up patient access to new medical devices and avoid duplicate regulatory requirements for companies.

37. Within this context, priorities for TTIP include:

- acceptance of successful ISO 13845 audits performed in both the EU and US as the basis for the respective regulatory procedures;
- harmonisation of the technical documentation that provides evidence of demonstrating quality system compliance (based on the results achieved by the 'Global Harmonization Task Force', now the International Medical Device Regulators Forum);
- the development of a single model for a medical device marketing application with electronic submission capabilities.

38. In the long term, the EU and US should work to promote and accept a globally harmonised solution for a Global Unique Device Identification and associated databases for medical devices.

Pharmaceuticals

39. Proposals have been put forward by sectoral bodies to boost regulatory convergence in the pharmaceuticals sector, where the existence of duplicate regulatory requirements is a particularly costly barrier to cross-border trade. In particular, the CBI supports a mutual recognition agreement in the field of Good Manufacturing Practice (GMP) inspections for finished drug products and active pharmaceutical ingredients (APIs), which would give a clear boost to EU-US trade. Other priorities to be addressed include variations in the regulatory assessment of 'changes' in the manufacture and control of APIs, as well as divergent requirements for pharmacopeia (medical explanations for drug use) that do not reflect the globalised nature of the industry.

Transport

40. Issues have been raised relating to difficulties faced by companies in accessing the light rail sector in the US because of diverging standards. European and international norms (IEC) differ from US standards (ANSI) and are not recognised by the US certification agencies. The EU and US should improve co-operation when developing new technological standards.

E) TRADE FACILITATION

The TTIP should simplify customs rules and administrative procedures to facilitate trade

41. In 2012, the EU and US achieved a landmark agreement to mutually recognise AEO and C-TPAT trusted traders. This should be locked into the TTIP agreement with commitments to fully monitor and implement it, including clear benefits and incentives to certified operators, such as automatic known consignor status for cargo security, fast track processing through customs, permission to provide required documentation post-release, and an incentive structure of fewer inspections and validations for fully compliant traders.

42. In addition, the EU and US should:

- work together to establish account-based customs processing for trusted traders, as opposed to transaction-based collection of customs duties;
- create greater incentives for SMEs to take advantage of trusted trader programmes;
- eliminate and harmonise ‘pre shipment’ notifications and reporting requirements (Entry Summary Declarations in the EU and Importer Security Filings in the US).
- build the WCO Guidelines for the Immediate Release of Consignments by Customs into the TTIP agreement to ensure that goods traded between the EU and US are released immediately provided that all the conditions laid down by customs are met and the necessary information required by national legislation is communicated at a stipulated time before the consignments arrive.

43. On air cargo security, the CBI welcomes the June 2012 Air Cargo Security Agreement between the EU and US, and provisions should now be strengthened through steps to harmonise air cargo security regulations based on the new International Civil Aviation Organization Annex 17 framework. In addition, the CBI recommends the use of the U.S. Air Cargo Advance Screening (ACAS) program as a basis for EU-US cooperation on the use of advance data risk assessment.

44. Other issues to look into include the fact that the “de minimis” value threshold for the imposition of duties and customs requirements is lower in the EU than it is in the US. Reaching a common threshold would be to the benefit of both economies, particularly for SMEs who suffer from the additional financial and administrative burden imposed by low and differing de minimis value thresholds.

About the CBI:

Across the UK, the CBI speaks on behalf of 190,000 businesses of all sizes and sectors which together employ nearly 7 million people, about one third of the private sector-employed workforce. With offices in the UK as well as representation in Brussels, Washington, Beijing and Delhi, the CBI communicates the British business voice around the world.