

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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TRADE POLICY STAFF COMMITTEE

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PUBLIC HEARING ON NEGOTIATING OBJECTIVES FOR
A U.S.-U.K. TRADE AGREEMENT

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TUESDAY
JANUARY 29, 2019

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The hearing was convened in Conference Rooms I and II of the USTR Annex Building, 1724 F Street, NW, Washington, D.C. at 9:30 a.m., Edward Gresser, Chair, presiding.

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GEORGE YORK, Recording Industry Association of

America (RIAA)

MATTHEW O'MARA, Biotechnology Innovation

Organization (BIO)

BRIAN TOOHEY, Pharmaceutical Research and

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:29 a.m.)

3 CHAIR GRESSER: Thank you all very
4 much. Welcome to this Trade Policy Staff
5 Committee hearing on a potential U.S.-United
6 Kingdom Trade Agreement. Thank you all for
7 coming.

8 Thank you to our witnesses for taking
9 the time to be here with us to discuss this
10 important topic. We are looking forward to a
11 very full day of testimony today, with five
12 panels of witnesses ahead.

13 That is appropriate, given the scale
14 and importance of this relationship to the United
15 States, to both countries, and in a way to the
16 world.

17 This hearing will be the latest step
18 in the United States' oldest body of trade policy
19 analysis and negotiations. We date back 225
20 years to the Jay Treaty of 1794. And in that
21 period of time we've built up one of the largest
22 bilateral trade and investment relationships in

1 the world. One that is extraordinarily deep,
2 complex, and sophisticated.

3 The U.K., just to take one point, is
4 the U.S.'s largest partner in services trade, and
5 the largest buyer of American ICT-enabled
6 services. More broadly this \$127 billion dollar
7 services relationship is, depending on the
8 statistics one uses, the largest such
9 relationship anywhere in the world.

10 And of course, the changes of policy
11 in the U.K. implicit in Brexit are profound.
12 They're profound for the U.K., they're profound
13 for this relationship. And it's important for
14 the U.S. Government to get the widest possible
15 set of analyses of their implications.

16 And with that let me say three things
17 before we start. First, on behalf of the Trade
18 Policy Staff Committee, our sincere thanks to the
19 International Trade Commission for their
20 willingness to host this and other TPSC hearings,
21 and for their flexibility on the change of venue,
22 during the Government shutdown.

1 Second, to the witnesses. We are
2 grateful to you as well for accommodating to this
3 new venue. And more fundamentally, for this
4 opportunity to hear your views and your insights.

5 We would ask you to please respect the
6 five minute rule on limiting oral testimony.
7 Because we have a very full day ahead, we would
8 like to have full time for each panel, so we can
9 hear from all of you, ask questions, and get your
10 thoughts and response.

11 Last point, let me ask my fellow
12 panelists to introduce themselves one at a time.
13 And then I'll turn the mic over to Dan Mullaney,
14 Assistant USTR for Europe and the Middle East.
15 And let's begin down here.

16 MR. O'BYRNE: Bryan O'Byrne, Small
17 Business Administration, Office of International
18 Trade.

19 MS. HOUSE: Ellen House, Department of
20 Commerce, Office of European Country Affairs.

21 MR. MANOGUE: I'm Bob Manogue. I'm
22 the Director for Bilateral Trade at the

1 Department of State.

2 MR. MULLANEY: Dan Mullaney, Assistant
3 U.S. Trade Representative for Europe and the
4 Middle East.

5 MS. LYNTON-GROTZ: Mirea Lynton-Grotz,
6 Deputy Director of Treasury's Trade Office.

7 MS. LAURY: Emma Laury from the U.S.
8 Department of Labor's Bureau of International
9 Labor Affairs.

10 MR. FERRANTE: I'm Joe Ferrante,
11 Senior Advisor for Trade and Economics at EPA.

12 CHAIR GRESSER: And, Dan, let's turn
13 to you.

14 MR. MULLANEY: Okay. Well, thank you,
15 Ed. And I would like to add to Ed's my thanks to
16 the panel for being here this morning. As Ed
17 said, we have an extraordinarily huge and
18 significant trade relationship with the United
19 Kingdom.

20 We are respectively the first and
21 fifth largest economies in the world. The United
22 Kingdom is a larger economy than both Canada and

1 Mexico combined. Between each other we trade
2 well over \$230 billion dollars in goods and
3 services annually, and have over a trillion
4 dollars in mutually on-shored investment.

5 As you all know, the U.K. is in the
6 process of exiting from the European Union, a
7 process known as Brexit. And one of the results
8 of Brexit is that the U.K. will be able to strike
9 new trade agreements with non-EU countries.

10 So, on our side, the United States has
11 been taking all the necessary legal steps that we
12 need to take to start negotiations soon after the
13 U.K. leaves the EU, should our leadership decide
14 to do so. And we understand from our U.K.
15 colleagues that they have, they are doing the
16 same thing.

17 One of the steps, the first steps that
18 we both took in this process was to launch the
19 U.S.-U.K. Trade and Investment Working Group in
20 July of 2017, to discuss with each other ways to
21 deepen trade both now, at that time, and after
22 Brexit. This followed the meeting between the

1 President and Prime Minister May earlier that
2 year.

3 We then launched the first U.S.-U.K.
4 Small and Medium Size Enterprises Dialogue in
5 Washington, DC in early 2018. And that dialogue
6 has met twice since then, issuing a number of
7 informational and resource documents that assist
8 SMEs to better participate in U.S.-U.K. trade
9 flows.

10 This has been a very useful and
11 excellent tool for us to hear from small
12 businesses from across various sectors about the
13 opportunities and the challenges that they face
14 in exporting and trading between the United
15 States and the U.K. And an opportunity for us to
16 share information and resources with those
17 businesses.

18 We have now had five major meetings of
19 the U.S.-U.K. Trade and Investment Working Group,
20 and three meetings of the SME Dialogue. Of
21 course, we want to hear from all of the
22 stakeholders on their priorities for trade with

1 the United Kingdom, and their recommendations,
2 your recommendations on how to best develop the
3 most ambitious, beneficial trade agreement
4 possible with the U.K. And of course, that is
5 why we are here today.

6 On October 16th of last year we
7 notified Congress of our intention to engage in
8 negotiations with the U.K. once they left the EU.
9 We're now in a fairly unique and special period
10 of time in which we are not yet negotiating with
11 the U.K.

12 Instead, we are taking time out to
13 hear from you, the stakeholders, on what it is
14 that we should be pursuing in this negotiation to
15 improve lives on both sides of the Atlantic.

16 So, we're very much looking forward to
17 your testimony today. Please know that the input
18 that you provide today on behalf of businesses,
19 workers, farmers, ranchers, and consumers, is
20 critical to our work as we consider the launch of
21 trade agreement negotiations.

22 So, once again, thank you very much to

1 the witnesses for taking time out from your busy
2 day to present your views. We're very much
3 looking forward to it.

4 CHAIR GRESSER: Thank you all very
5 much. Let's now turn to our witnesses. Thank
6 you, taking our witnesses proceeding from the
7 left to the right. And again, please respect the
8 five minute limit for oral testimony.

9 (Off microphone comments)

10 CHAIR GRESSER: Okay. Start with Mr.
11 Griswold.

12 MR. GRISWOLD: Let me thank the USTR
13 Chair and members of the Trade Policy Staff
14 Committee for the opportunity to share comments
15 on the potential U.S.-U.K. Free Trade Agreement.

16 With all the turmoil over Brexit we
17 may have an agreement sooner than we thought. Or
18 maybe later. We'll see.

19 The agreement offers a unique
20 opportunity for the United States to deepen its
21 economic ties with a historic ally. An ally that
22 is, as has been noted, the world's fifth largest

1 economy, and our number one partner in services
2 trade and foreign direct investment.

3 When our two countries negotiate this
4 agreement they should have one goal, reaching an
5 agreement that eliminates all barriers between
6 the two people in the free movement of goods,
7 services, capital, and people.

8 I've submitted a recent study from the
9 Mercatus Center that is part of the record that
10 has lots of details in it. But in my limited
11 time today let me just offer three priorities for
12 USTR as we negotiate this important agreement.

13 The first is services trade. The U.K.
14 is one of the few nations in the world where we
15 actually do more two-way trade in services than
16 we do in goods. That argues for an agreement
17 that fully liberalizes services, in particular
18 financial services, which are hugely important.

19 Both nations are global leaders in
20 financial services, with London and New York
21 arguably the world's premier financial centers.
22 Almost one third of U.S. FDI in Britain is in the

1 financial sector.

2 A U.S.-U.K. agreement should seek
3 mutual recognition of rules and standards in the
4 two economies, to enable as much cross border
5 competition as possible.

6 In the area of transportation services
7 the United States should allow U.K.-based
8 airlines to serve the domestic U.S. market. The
9 agreement would have to require an exemption from
10 the current U.S. law that forbids cabotage rights
11 to foreign air carriers.

12 The agreement should also grant an
13 exemption to the Jones Act for U.S.-based
14 merchants' shipping companies. A U.S.-U.K.
15 agreement could bring much needed competition to
16 these protected sectors by allowing companies in
17 a trusted ally to offer services in the United
18 States.

19 A second area deserving special
20 attention is the elimination of all tariffs on
21 all categories of goods, including politically
22 sensitive sectors, like passenger vehicles, where

1 the U.K., under the EU's tariff regime is ten
2 percent. It's 2.5 percent in the United States.
3 Cars and light trucks it's up to 22 percent in
4 the EU, 25 percent here in the United States.

5 Of course, agricultural tariffs remain
6 a significant barrier. The average tariff in the
7 U.K. is 11 percent. It's five percent here in
8 the United States. The U.S. maintains
9 significant import barriers against cheese,
10 butter, raw and refined sugar, canned tuna, and
11 beef.

12 The U.K. currently applies EU duties
13 of 12 to 16 percent on some important export
14 products for the United States, including fresh
15 grapes, cranberries, and confectionary items.
16 Under a U.S.-U.K. agreement all those duties
17 should go to zero immediately, with no phase out
18 periods.

19 A third area of the agreement that it
20 should focus on is facilitating the free movement
21 of people between the two nations. The free
22 movement of workers would allow a more productive

1 matching of labor and jobs within the two
2 nations, enabling workers to move where their
3 skills are most in demand.

4 Free movement will also facilitate
5 services trade by allowing providers to go to
6 their customers to deliver services. And it
7 would enhance FDI by facilitating intra-company
8 transfers.

9 The agreement, either in its text or
10 in separate legislation, should create a special
11 visa category for U.K. citizens to work in the
12 United States without quota, and vice versa.

13 The special visa could be patterned on
14 the E-3 visa that Congress passed in 2005, that
15 allows Australian professionals to come to the
16 United States with two year visas that are
17 renewable indefinitely.

18 So, my conclusion today, my strong
19 recommendation is for the U.S. and the U.K. to
20 aspire to negotiate an ambitious, comprehensive
21 agreement that eliminates all barriers to
22 commerce between the American and the British

1 people. Thank you.

2 CHAIR GRESSER: Thank you very much.

3 Ms. Chorlins.

4 MS. CHORLINS: Thanks to you Ed, Dan,
5 and to Members of the Panel. It's a pleasure to
6 be here this morning. I am testifying on behalf
7 of the U.S.-U.K. Business Council, which is
8 organized under the auspices of the U.S. Chamber
9 of Commerce.

10 I appreciate the opportunity to
11 present our views on a prospective free trade
12 agreement between the United States and the
13 United Kingdom.

14 The U.S.-U.K. Business Council is the
15 premier Washington-based business organization
16 dedicated to strengthening the commercial
17 relationship between our two countries. And it's
18 comprised of companies with interest equity,
19 significant equities on both sides of the
20 Atlantic.

21 U.S. business community is encouraged
22 that the U.S. and the U.K. are committed to

1 securing tangible improvements in our bilateral
2 trade and investment relationship. We stand
3 ready to work closely with both Governments to
4 strengthen ties.

5 It's important to underline the
6 considerable ongoing uncertainty surrounding the
7 U.K.'s future relationship with the EU, and by
8 extension its trade relationships with other
9 countries.

10 The U.S. business community is very
11 eager to see London and Brussels take the
12 necessary steps to ensure that an orderly Brexit
13 takes place, including a sufficient transition
14 period. And that the negotiations of a future
15 U.K.-EU relationship proceed expeditiously.

16 The alternative, a chaotic no deal
17 scenario, would have significant adverse impacts
18 on U.S. exporters and investors. For this reason
19 we are hopeful, if somewhat realistic, that
20 today's deliberations in the British Parliament
21 will yield more clarity on the path forward.

22 Once the contours of the new U.K.-EU

1 trade relationship are established U.S. and U.K.
2 negotiators should turn their attention swiftly
3 to expanding our commercial relationship.

4 Clearly the potential scope of the
5 U.S.-U.K. agreement is highly dependent on the
6 eventual agreement between the U.K. and EU. And
7 for this reason these recommendations presented
8 here today, and in our written submission, should
9 be seen as a set of preliminary recommendations
10 only.

11 In keeping with our mission to
12 advocate for free enterprise, competitive
13 markets, and rules-based trade and investment,
14 one of our primary objectives in these
15 negotiations will be to pursue measures that
16 remove, and do not raise barriers to trade.

17 To ensure this we recommend hewing
18 closely to the negotiating objectives established
19 in the Trade Promotion Authority law. The U.S.
20 and U.K. should remove all tariffs, and establish
21 wide ranging regulatory cooperation mechanisms
22 across relative sectors.

1 To be effective these mechanisms must
2 be transparent, and allow for meaningful
3 stakeholder engagement. For example, we welcome
4 the creation of the U.S.-U.K. Financial Services
5 Regulatory Working Group. And hope that that
6 group will indeed consistently entertain
7 stakeholder input.

8 In addition, we seek considerable
9 opportunities for the U.S. and U.K. to jointly
10 advance global standards, particularly for
11 services, digital economy, and emerging
12 technologies.

13 Services, as has already been cited,
14 make up nearly 80 percent of both economies'
15 GDPs, and represent an area of significant
16 comparative advantage for both countries.

17 There likely will be more room for
18 negotiating on services, even as the U.K. and EU
19 continue to hash out their precise future
20 relationship in terms of market access for goods.

21 Reducing or eliminating barriers to
22 two way trade and investment would significant

1 boost the long term economic outlook for both the
2 U.S. and U.K. with particular benefits for small
3 and medium sized enterprises.

4 Greater cooperation would also provide
5 a pathway for joint leadership in response to
6 shared challenges in a rapidly changing global
7 economy.

8 For example, the U.S. and U.K. should
9 work together to strengthen global trade rules
10 and institutions to adapt to the challenges posed
11 by non-market economies.

12 In separate testimony on the
13 priorities for the U.S.-EU trade talks we cited
14 as an immediate priority the expeditious removal
15 of the existing Section 232 tariffs on imports of
16 steel and aluminum, and the retaliatory measures
17 imposed by the EU.

18 In the event these measures are still
19 in place when the U.K. leaves the EU we believe
20 eliminating duties on imports of U.K. steel and
21 aluminum must be a top priority.

22 I should also note for the record that

1 the U.S. Chamber strongly opposes the
2 administration's threat to impose tariffs on auto
3 imports in the name of national security.

4 Our full written submission to the
5 Federal Register notice includes several
6 additional sector-specific and cross cutting
7 recommendations, including on market access,
8 customs procedures, regulatory cooperation,
9 services trade, the digital economy, intellectual
10 property, and investments.

11 One point of particular concern I'd
12 like to mention here today is the U.K.'s proposed
13 digital services tax, which is set to take effect
14 in April 2020.

15 While tax policy falls outside the
16 scope of trade negotiations, we urge U.S.
17 officials to leverage every opportunity to
18 underscore the importance of national treatment
19 and non-discrimination in the application of tax
20 policies.

21 Tax measures should not discriminate
22 against specific companies or sectors, no matter

1 their size or national origin.

2 As has already been stated, the U.S.
3 and the U.K. are each other's single largest
4 foreign investors. And American and British
5 investments in each other's markets have created
6 more than two million high paying jobs.

7 There are, nonetheless, multiple
8 opportunities to deepen and expand these economic
9 ties, and to collaborate to address common
10 challenges in the world economy.

11 We welcome this and future
12 opportunities to convey the Council's views,
13 whether to the U.S.-U.K. Trade and Investment
14 Working Group, or via other relevant mechanisms,
15 as the negotiating process takes shape. Thank
16 you.

17 CHAIR GRESSER: Thank you. Ambassador
18 Allgeier, would you --

19 MR. ALLGEIER: Thank you. Excuse me.
20 Thank you very much for the opportunity to
21 address the issue of a potential U.S.-U.K. Trade
22 Agreement.

1 I am presenting on behalf of the
2 Institute of Economic Affairs, which is an
3 independent market-oriented think tank and
4 research center in London.

5 Significant benefits would accrue to
6 both the U.S. and the U.K. from a bilateral trade
7 liberalizing agreement. The economic benefits
8 from expanding the already significant flows of
9 trade and investment between the two countries
10 would be substantial. And the prospects for
11 success are great.

12 Now, in addition to the quantifiable
13 economic and commercial benefits from a U.S.-U.K.
14 negotiation, that negotiation provides the ideal
15 opportunity to address new trade issues that have
16 not been addressed in multilateral trade rules in
17 the WTO.

18 And in fact, it would be possible to
19 develop solutions to a number of the obstacles
20 that appear to have occurred in the TTIP
21 negotiations with Europe. And so, this could
22 possibly even provide a pathway for more success

1 in a larger negotiation with the European Union.

2 Now, several such areas come to mind.
3 First of all, financial services. As has been
4 pointed out, these are the two largest financial
5 services economies and centers of international
6 finance in the world.

7 And so, it should be possible for the
8 U.S. and the U.K. to develop new avenues of
9 regulatory cooperation, and to meet the
10 challenges of rapidly evolving financial
11 instruments and practices.

12 Second, digital economy. Trade
13 increasingly is being conducted through digital
14 means, especially in the services area. So, it
15 is essential that countries with the pro-
16 innovation perspective of the U.S. and the U.K.
17 become leaders in defining the proper balance
18 between expanding digital commercial
19 opportunities, and protecting the consumer rights
20 and privacy of individual citizens.

21 Competition policy in the tech
22 economy. This has been, of course, a particular

1 point of controversy between the U.S. and the EU,
2 that is, differences in competition policy toward
3 high tech companies.

4 New issues have arisen quickly, as
5 companies increasingly have sought to combine the
6 information transmission function and the
7 development of content. The traditional
8 approaches to competition policy do not provide
9 readymade solutions.

10 So again, the U.S. and U.K. should
11 explore consistent approaches to ensuring
12 vigorous competition in the increasingly
13 significant field of international commerce.

14 Disciplines on state-owned
15 enterprises. The U.S. and the U.K. face similar
16 challenges and economic consequences from the
17 Chinese model of industrial policy powered by
18 state-owned and state-directed enterprises.

19 Effective international rules on such
20 practices are practically non-existent. So, it
21 is essential that market-oriented economies such
22 as the U.S. and the U.K. assert themselves in

1 developing up to date standards and means for
2 leveling the playing field between market-based
3 enterprises competing with such state entities.

4 Product standards. In areas such as
5 food safety and automobile standards, rigid,
6 proscriptive EU standards have stifled
7 innovation, and impeded U.S. exports. The so
8 called precautionary principle in the European
9 regulatory rules in particular has been a
10 problem.

11 Many attribute the support for Brexit
12 in the U.K. to frustration with this imposition
13 of such extensive rulemaking from Brussels.
14 Given that sensitivity there should be
15 opportunities for the U.S. and the U.K. to
16 fashion effective but trade promoting approaches
17 to standards and regulation in heavily traded
18 goods.

19 Fishing subsidies and IUU. There is
20 increasing global recognition of the damage to
21 the marine environment and economy from subsidies
22 that contribute to overfishing, or that

1 countenance illegal, unreported, and unregulated
2 fishing.

3 And important steps in addressing this
4 issue were taken in the Trans-Pacific
5 Partnership, and in the U.S.-Mexico-Canada
6 agreement. Serious efforts are ongoing in the
7 WTO.

8 Any trade agreement between the U.S.
9 and the U.K. should include enforceable
10 provisions governing this area of significant
11 importance to both countries.

12 So, in conclusion, the possibility of
13 a U.S.-U.K. trade agreement offers a unique
14 opportunity to both countries to expand their
15 economic welfare, and provide direction for other
16 modern trade negotiations, and the multilateral
17 trading system.

18 However, the opportunity will not be
19 possible if the U.K. remains tethered to the
20 European Union through a Brexit arrangement that
21 leaves the U.K. subject to rulemaking from
22 Brussels. Thank you.

1 CHAIR GRESSER: Thank you very much.
2 Ms. Drake.

3 MS. DRAKE: Thank you. I'm Celeste
4 Drake, on behalf of the American Federation of
5 Labor and Congress of Industrial Organizations.
6 Mr. Chairman, Members of the Committee, good
7 morning.

8 I appreciate this opportunity to
9 testify on a possible trade deal between the
10 United States and the United Kingdom, on behalf
11 of the AFL-CIO, and our 55 affiliated unions.

12 I've submitted written testimony for
13 the record, and will highlight key issues here.
14 At the outset we note that the U.K.'s future
15 trading position will depend on the outcome of
16 the Brexit process.

17 The AFL-CIO stands with the TUC, our
18 counterpart in the U.K., in calling for a U.K.-
19 European Union outcome that guarantees that
20 worker rights and standards remain at EU levels.

21 Such an outcome, however achieved,
22 will best protect not only U.K. working families,

1 but also U.S. working families as we develop
2 closer trade relations with both the U.K. and the
3 EU.

4 In addition, we emphasize that one-off
5 trade agreements are simply not an efficient way
6 to create good jobs, raise wages, or address
7 inequality. Even generous projections for recent
8 efforts such as the TPP, projected growth of less
9 than one half of one percent after a decade.

10 A more effective way to grow the U.S.
11 economy, and increase opportunities for hard
12 working families would be a coordinated mix of
13 wage-led growth policies, and significant
14 infrastructure investment, yielding projected
15 growth of more than nine percent for the U.S.
16 after a mere five years.

17 Should the President wish to move
18 ahead with negotiations we urge that he do so in
19 a cooperative, transparent, and inclusive manner.
20 Civil society, including labor unions in both
21 countries are key partners, with critical insight
22 and advice.

1 Keeping the public in the dark, as
2 happened with the T-TIP and TPP negotiations will
3 backfire. The negotiations should focus on key
4 issues such as reducing tariffs, and setting high
5 bars for labor and environmental protections.

6 Where tariffs are reduced, staging
7 must recognize the trade sensitivity of certain
8 products such as glass. Phase-out periods for
9 those products should be lengthy, and trade
10 remedy laws must remain in place.

11 Unlike market fundamentalists, who
12 brought us the great financial crisis, we
13 recognize the value of public interest
14 protections to keep financial systems stable,
15 workers safe on the job, children safe at the
16 breakfast table, and families safe on their
17 travels.

18 We therefore strongly oppose using the
19 U.S.-U.K. deal to enact a corporate wish list of
20 deregulation for banks, food safety, chemical
21 safety, privacy, and public services, or new
22 monopolies for brand name drug makers.

1 They also must omit investor to state
2 dispute settlement, which provides foreign
3 investors with a private justice system. If U.S.
4 courts are good enough for U.S.-based companies,
5 and U.S. citizens, they're good enough for
6 foreign ones.

7 Instead, the deal should create
8 cooperative mechanisms, with the participation of
9 labor unions, and other civic organizations to
10 address and resolve specific trade challenges.
11 This will better protect the rights of citizens
12 on both sides of the Atlantic to decide
13 democratically the levels of consumer protection
14 that we want.

15 The primary goals of the negotiation
16 must be full employment, decent work, and rising
17 standards of living for all. The rules must
18 ensure that businesses, farmers, ranchers, and
19 working families prosper together, and not at
20 each other's expense.

21 Of critical importance are the labor
22 and environmental rules the agreement would

1 establish. The deal's labor rules must protect
2 workers' internationally recognized rights to
3 organize, and act collectively.

4 Unlike the choice of how to label beef
5 and pork, a decision that should be made at the
6 national level, labor rights are fundamental
7 human rights. And we should not undermine them
8 in a trade agreement, any more than we would
9 undermine free speech, or the free practice of
10 religion.

11 The labor rules of the new deal must
12 explicitly require each party to adopt and
13 maintain in law, regulation, and practice
14 fundamental labor rights, with specific reference
15 to ILO Core Conventions.

16 The rules must apply to all workers,
17 regardless of sector or citizenship, and include
18 enforceable standards for acceptable conditions
19 of work and the recruitment of migrant labor.

20 The labor provisions should also stand
21 up an independent secretariat to make monitoring
22 and enforcement certain and professional, and

1 prevent firms from using transatlantic investment
2 to undercut wages and labor standards.

3 Finally, we caution against developing
4 trade policy in a vacuum. The incentives set up
5 by trade agreements require strong public
6 policies, including the promotion of labor
7 rights, fair and just taxation, and strategies to
8 address climate change, to ensure that we create
9 the virtuous cycle of demand-led growth we need
10 to lead us out of global stagnation.

11 We must also transfer the risks of
12 trade and globalization away from the most
13 vulnerable families, where they are now, to
14 entities most able to bear them.

15 In sum, we recommend a new style deal
16 focused on wage-led growth, which requires not
17 merely tariff reduction, but thoughtful,
18 sustainable environmental practices, and rising
19 standards for workers.

20 I thank the Committee, and would be
21 pleased to answer any questions you may have.

22 CHAIR GRESSER: Thank you very much.

1 Ms. Hampl.

2 MS. HAMPL: Good morning, Eva Hampl
3 from the United States Council for International
4 Business. USCIB welcomes the opportunity to
5 provide comments and recommendations on the
6 negotiating objectives regarding a trade
7 agreement between the U.S. and the U.K.

8 Our members include top U.S.-based
9 global companies and professional services firms
10 from every sector of our economy with operations
11 in every region of the world.

12 As the U.S. affiliate of the
13 International Chamber of Commerce, the
14 International Organization of Employers, and the
15 Business and Industry Advisory Committee to the
16 OECD, USCIB has a global network through which it
17 provides business views to policy makers and
18 regulatory authorities worldwide and works to
19 facilitate international trade and investment.

20 USCIB supports negotiations of a
21 comprehensive trade agreement with the U.K. as
22 part of a broader strategy to open international

1 markets for U.S. companies and remove barriers
2 and unfair trade practices in support of U.S.
3 jobs.

4 We strongly believe that continued
5 U.S.-U.K. free trade is overwhelmingly in the
6 interests of both countries and their global
7 trading partners, provided that the agreement is
8 a high standard and comprehensive bilateral trade
9 and investment agreement.

10 A successful trade agreement with the
11 U.K. should cover not just market access for
12 goods but, as we have already heard today from
13 several panelists, it needs to address important
14 services issues.

15 USCIB's comments assume that the U.K.
16 will be successful in exiting the EU on March
17 29th allowing for the ability to negotiate trade
18 agreements with trade partners outside of the EU.

19 A key component furthering the
20 objective of liberalizing trade which drives the
21 U.S.-U.K. relationship is regulatory cohesion,
22 across the U.S., U.K., and the European market,

1 to facilitate trade in a way that ensures the
2 existing market remains intact.

3 Regulatory discrimination and
4 differentiation between trade partners can be a
5 frustrating obstacle to trade, investment, and
6 the ability to conduct business. Affected
7 sectors include pharmaceuticals, chemicals and
8 fintech.

9 Digital trade is another area of vital
10 importance to our members. U.S. companies rely
11 on cross border data flows as part of their day
12 to day operations. A U.S.-U.K. agreement should
13 include requirements that data can flow unimpeded
14 across borders except for limited and well
15 defined public policy exceptions ensuring that
16 they are not used as disguised barriers to trade.

17 A related issue is taxation of the
18 digital economy. The U.K. has proposed an
19 interim unilateral tax measure to address the
20 digitalization of the economy that is
21 inconsistent with current tax principles in
22 fundamental ways.

1 Our members are concerned that, in
2 addition to potentially violating various tax
3 treaty and trade obligations, the measure targets
4 U.S. companies. USCIB urges that these issues,
5 which are currently being addressed at the OECD,
6 be resolved as soon as possible to not detract
7 from the potential benefits of a U.S.-U.K. FTA.

8 Given the dramatic rise in ecommerce
9 globally, the U.S. should also encourage the U.K.
10 to implement high standard trade facilitation
11 measures for physical goods movements across
12 borders. As two of the largest economies in the
13 world, a trade agreement with best in class trade
14 facilitation commitments would set the standard
15 for the rest of the world to follow.

16 Related to that, both parties should
17 commit to working together to make the WTO
18 moratorium on imposing customs duties on
19 electronic transmissions permanent.

20 In addition, the U.S. should seek
21 close cooperation with the U.K. in taking action
22 to address illicit trade. USCIB strongly

1 supports negotiations that work toward reducing
2 barriers and increasing trade in services.
3 Similar to trade facilitation measures, services
4 trade is also complementary to tariff reductions.

5 In the financial services sector, the
6 U.S. should ensure broad and deep market access
7 commitments, enhancing volumes of cross border
8 financial service transactions and foreign direct
9 investment.

10 For electronic payment services, a
11 U.S.-U.K. trade agreement should follow the
12 financial services commitments in the USMCA
13 providing for both market access and national
14 treatment to ensure a level playing field for
15 domestic and foreign-based suppliers in both
16 markets. For those companies engaged in foreign
17 direct investment, USCIB supports strong investor
18 and investment protections.

19 Those protections, which include
20 robust and investor stake dispute settlement
21 provisions, must be included in any final trade
22 agreement. The provisions concluded, in the

1 USMCA on ISDS, favoring specific sectors and not
2 providing comprehensive protections to all
3 investors alike, should not be viewed as
4 precedent.

5 Finally, USCIB members recognize that
6 both the U.K. and the U.S. have high levels of IP
7 protection that already exist in law and
8 enforcement, albeit under different systems. At
9 a minimum, a U.S.-U.K. FTA should, enshrine these
10 existing protections and enforcement mechanisms,
11 it should also address certain sectoral IP issues
12 such as in the pharmaceutical space.

13 A U.S.-U.K. agreement also presents an
14 opportunity for the two countries to demonstrate
15 global leadership and cooperation on IP to combat
16 the corrosion of IP rights in other areas of the
17 world, including ongoing issues with China.

18 Further detail on the above-mentioned
19 and other issues can be found in our written
20 submission. Thank you for the opportunity to
21 testify. I look forward to your questions.

22 CHAIR GRESSER: Thank you very much.

1 Ms. Kessler?

2 MS. KESSLER: Thank you, Mr. Chairman.

3 On behalf of the International Fund for Animal
4 Welfare, otherwise known as IFAW, and its nearly
5 two million supporters, I'd like to thank the
6 U.S. Trade Representative and the Trade Policy
7 Staff Committee for this opportunity to testify
8 on a proposed U.S.-U.K. trade agreement.

9 My testimony highlights some of the
10 key recommendations put forward by IFAW, though a
11 more comprehensive review has been provided in
12 our previously submitted written comments.

13 I'm here today to urge the U.S. to
14 negotiate a strong environment chapter in the
15 upcoming U.S.-U.K. Trade Agreement, building upon
16 the recent successes of the U.S.-Mexico-Canada
17 Agreement.

18 That agreement contains a number of
19 provisions that will contribute to improved
20 environmental outcomes, including promoting the
21 conservation of marine species and encouraging
22 actions to combat illegal wildlife trade.

1 It provides a reasonable baseline from
2 which to enter new trade negotiations. Notably,
3 the USMCA contains specific requirements
4 regarding the prevention and reduction of marine
5 litter, as well as measures designed to prohibit
6 shark finning, which are welcome additions to the
7 environment chapter.

8 As a member of the Trade and
9 Environment Policy Advisory Committee, TPAC, we
10 also agree that certain environment provisions of
11 the USMCA are deficient. And we urge the U.S. to
12 consider the recommendations to support and
13 strengthen them, particularly with regard to
14 trade in fauna and flora and climate change and
15 energy.

16 In a U.S.-U.K. Agreement, the U.S.
17 should continue the progress made in the USMCA
18 and negotiate even stronger provisions to protect
19 biodiversity and individual welfare of
20 endangered, threatened, and otherwise imperiled
21 animals.

22 Protecting the world's wildlife and

1 species vulnerable to over-exploitation and other
2 human-induced threats is not a restriction to
3 industry and innovation. In fact, quite the
4 opposite is true. Here in the United States we
5 have some of the strongest domestic standards and
6 policies to protect endangered and declining
7 species.

8 And we strive for effective
9 implementation of international environmental
10 treaties to which we are a signatory. We believe
11 that other particularly economically advanced
12 nations, like the United Kingdom, must achieve
13 the same.

14 To allow them not to be held to such
15 high standards creates an uneven playing field
16 for U.S. agencies and companies who take their
17 obligation seriously.

18 We'd like to elaborate on two areas of
19 biodiversity conservation where the U.S. should
20 focus its efforts during negotiations, combating
21 illegal wildlife trade and conserving marine
22 species.

1 The illegal trade in wildlife has
2 become a massive global industry with profoundly
3 negative impacts for endangered species
4 protection and ecosystem stability, as well as an
5 increasing threat to national and global
6 security.

7 The U.S. and U.K. have been leaders in
8 the fight to end wildlife trafficking and have
9 dedicated significant funding to anti-poaching
10 efforts, building capacity of law enforcement
11 agencies, reducing demand for illegally traded
12 products, and other efforts to mitigate the
13 scourge on the world's wildlife.

14 In February 2014, the U.K. government
15 hosted the first International Conference on
16 Illegal Wildlife Trade, bringing together leaders
17 from more than 40 nations.

18 Later that year, the Duke of Cambridge
19 called for the creation of the United for
20 Wildlife Transport Task Force to engage and
21 motivate the transportation industry to take
22 measures to combat wildlife trafficking

1 transiting through their system.

2 The U.S., in 2016, closed its domestic
3 ivory market, and the U.K. has recently followed
4 suit, passing legislation that is expected to go
5 into effect in late 2019. Those countries have
6 seen support to combat wildlife trafficking span
7 the political spectrum and continue across shifts
8 in elected government seats.

9 A new trade agreement should reaffirm
10 and progress the U.S. and U.K. commitment to work
11 together, and with all other affected nations, to
12 end the illegal wildlife trade and the poaching
13 and decimation of biodiversity that it drives.

14 We urge the U.S. and the U.K. to
15 commit to a time-bound plan to implement the
16 actions outlined in the London Conference in the
17 Illegal Wildlife Trade Declaration and agreed to
18 by both countries in October of 2018, including
19 the U.S. commitment to work through trade
20 agreements to address these crimes.

21 Our second focus area is conserving
22 marine species. Marine mammals face more threats

1 today than ever before, whether it be through
2 exploitation, the effects of climate change, or
3 other stressors and lethal dangers also stemming
4 from anthropogenic activities.

5 The accumulation and increased
6 presence of these threats, as well as their
7 global and transnational nature, make marine
8 conservation as ever crucial in ensuring marine
9 ecosystems and animal health and well-being.

10 The U.S. and U.K. are also global
11 leaders in establishing and managing marine
12 protected areas, a position that should be
13 reaffirmed with trade negotiation.

14 The negotiating parties should also
15 aim to eliminate detrimental impacts to marine
16 mammals within and outside of marine protected
17 areas, including taking all necessary measures to
18 reduce bycatch of marine mammals, minimize ship
19 strikes, reduce plastic pollution, and mitigate
20 disturbances which can occur due to seismic
21 exploration for the oil and gas industry and the
22 construction of offshore wind farms.

1 The U.K. government in 2018 put forward
2 an ambitious and admirable 25-year plan to
3 improve the environment. While it symbolizes
4 strong political will and opens the government to
5 public accountability, it is a non-binding plan.

6 We urge the U.S. to capitalize on this
7 moment as the U.K. exits from the European Union,
8 where more than 80 percent of the current
9 environmental legislation has its roots, and
10 secure strong commitments to protect habitat and
11 biodiversity.

12 Thank you for your time and
13 consideration of these comments. We'd be pleased
14 to work with you on these recommendations as
15 negotiations move forward.

16 CHAIR GRESSER: Thank you very much.
17 And thanks to all of our witnesses. Let me now
18 turn to Dan to begin the questioning.

19 MR. MULLANEY: Well, thanks to
20 everybody. This has been an extraordinarily rich
21 panel, I have to say. I'm going to maybe start
22 with Mr. Griswold. And then other members of the

1 panel, I think, will probably, in order, pose
2 some questions to the panelists down the road.
3 And time permitting, we'll maybe go for a round
4 two.

5 So starting with Mr. Griswold, in your
6 submission, you noted a number of priorities,
7 including financial services, free movement of
8 people, agricultural trade.

9 First question is on agricultural
10 trade. How do you see the priorities that you
11 identified for agricultural trade being impacted
12 by the U.K.'s negotiation with the EU, or
13 potential negotiation with the EU, on
14 agricultural issues?

15 And how do you see the U.K.'s
16 potential own sensitivities with respect to
17 agriculture impacting our ability to achieve the
18 priority that you've identified?

19 MR. GRISWOLD: Yes. You know, in
20 sheer trade numbers, agricultural trade between
21 the two countries is not huge compared to other
22 avenues of trade. But it's politically

1 sensitive.

2 On the tariff side, as long as they're
3 in the common customs area of the EU, there won't
4 be any room for them to negotiate lower tariffs.
5 And I think that's important.

6 Even though tariff barriers are
7 generally low, there are some, I think,
8 indefensibly high tariffs on a number of
9 agricultural products on both sides of the
10 Atlantic. And we need to, as soon as they're
11 outside the customs, you need to negotiate to get
12 those down to zero as soon as possible.

13 But yes, you put your finger on
14 something that's much more difficult even than
15 tariffs, and that is regulatory framework.

16 You know, I think Ambassador Allgeier
17 mentioned the precautionary principle. I think
18 as soon as the U.K. can free itself from the
19 precautionary principle, we'll have lot more
20 opportunity to trade based on sensible
21 regulations that are aimed at public health and
22 safety, not at ill-founded fears about certain

1 things.

2 You know, there are some very specific
3 issues, hormone-treated beef, chlorine cleaned
4 chicken, things like that, genetically modified
5 organisms. There, the British public
6 sensibilities may be, while they may be a little
7 different than Continental Europe, they're
8 certainly somewhat different than the United
9 States.

10 And I think that is going to require
11 some hard negotiating. And frankly, there has to
12 be flexibility on both sides. We don't want to
13 see the tremendous opportunities of this
14 agreement forfeited because we're hung up on one
15 or two issues that don't involve a huge amount of
16 trade.

17 I think the U.S. has generally had
18 this issue right in its negotiations, that health
19 and safety regulations cannot be used as
20 disguised trade barriers. We've won cases in the
21 WTO against the European Union and others, and we
22 need to stick to our guns on this. But let's not

1 let it prevent the overall agreement from taking
2 place.

3 MR. MULLANEY: Okay, thank you very
4 much. I hope we'll have an opportunity in a
5 second round to follow-up with a few more
6 questions. But in the interest of covering
7 everybody, I'm going to maybe turn to Mr. Manogue
8 from State to ask a question of Ms. Chorlins.

9 MR. MANOGUE: Thank you for your
10 testimony. It was quite interesting. I've got a
11 variety of questions. I'll try to ---

12 MS. CHORLINS: Oh-oh.

13 MR. MANOGUE: No, maybe I won't ask
14 that. No, it was all very fascinating, but let
15 me just stick with one, and we'll start with
16 that.

17 A number of witnesses had talked about
18 working towards regulatory convergence and
19 cooperation. Could you identify the areas with
20 the U.K. where U.S. exporters face the greatest
21 challenges in this area and what are the biggest
22 opportunities?

1 MS. CHORLINS: Thanks very much for
2 the question and for making it a relatively easy
3 one. If you take a look at the written
4 submission we made before the end of the year,
5 you'll find a series of sector-specific policy
6 priorities we outlined.

7 These are not inconsistent with the
8 same sectors that we were looking at in the
9 context of the T-TIP negotiations. So
10 agriculture, medical devices, chemicals,
11 pharmaceuticals, ag and biotech, financial
12 services, and express delivery services are ones
13 that we highlighted here.

14 I think that it goes without saying
15 that we do have -- I think Mr. Griswold has
16 identified the fact that we do have different
17 ways of regulating products and services between
18 the U.S. and Europe and, by extension, between
19 the U.S. and U.K. I do believe there are
20 opportunities for us to demonstrate leadership in
21 a number of these sectors when we're talking in a
22 U.S.-U.K. context.

1 They are different, depending on the
2 sector. And the extent to which we can allow for
3 greater convergence, I think, again, depends on
4 the sector. But this does represent a
5 significant area for collaboration and for the
6 ability to help set those global standards.

7 MR. MANOGUE: Excuse me. You had
8 mentioned in your --- as you were just
9 testifying, there would be a major impact on U.S.
10 companies if there's a hard Brexit.

11 MS. CHORLINS: Yes.

12 MR. MANOGUE: What is the danger for
13 U.S. companies from a hard Brexit?

14 MS. CHORLINS: Well, the list is very
15 long. And the dangers exist in many instances
16 for U.S. companies that are invested in the U.K.,
17 as well as for U.K. companies, as well as for
18 American companies who are exporters, and for
19 American companies who have a presence in the EU
20 and do business with the U.K.

21 The dangers touch on just about every
22 aspect of trade, whether it's in flows of goods,

1 services, investment, data, or people.

2 Obviously, a lot of attention has been paid to
3 potential disruptions at the border in terms of
4 the free flow of goods.

5 But there are certainly questions that
6 come up in terms of the ability to move people,
7 even on a temporary basis. There are questions,
8 significant questions that cross all sectors
9 related to the free movement of data, you know,
10 how quickly the U.S. and U.K., for example, could
11 negotiate an adequacy agreement, assuming that
12 the U.K. decides to adhere very closely to the
13 GDPR measures.

14 So every aspect of trade that you can
15 possibly imagine, potentially, is affected. As I
16 said, border related issues, warehousing issues,
17 some of our member companies have been encouraged
18 to stockpile products, especially in the
19 pharmaceutical and medical device areas.

20 The ability, again, to move people on
21 a temporary basis, even in between within a
22 company are fairly significant. And so I think

1 you could look at every aspect and find a
2 potential downside. In fact, a little bit later
3 today, we will be releasing, I suspect it'll come
4 in the form of a blog, a bit of an outline of
5 some of those key impacts.

6 MR. MULLANEY: And then I invite Ms.
7 House to address a question to Ambassador
8 Allgeier.

9 MS. HOUSE: Thank you. Thank you for
10 your testimony this morning. Actually, I think
11 you provided some answers to most of our
12 questions in your testimony, but I would ask you
13 to elaborate a little bit on the issue of the
14 digital economy. You cited that as a potential
15 area of mutual benefit.

16 Can you discuss any challenges in this
17 area, given that the U.K. is also going to be
18 negotiating with the EU on the future
19 relationship between those two entities on
20 digital economy. And also, are there some EU
21 approaches to the digital economy that will make
22 U.S.-U.K. cooperation more difficult?

1 MR. ALLGEIER: Well, first and
2 foremost is something that Eva mentioned, which
3 is the free flow of data across borders and
4 ensuring that that is able to occur and that we
5 don't have any kind of requirements for
6 localization of data processing and data storage.

7 That's, in a way, the easy part. The
8 more difficult part is navigating these issues,
9 which are legitimate, where people have concerns
10 about protecting privacy and data security.

11 And so what sorts of regulations,
12 especially, let's say, on personal health data,
13 are agreed upon so that businesses can continue
14 to operate, and yet people feel that their data
15 is being --- their privacy is being respected.

16 Then you face two areas where it's
17 been very controversial with the EU and,
18 therefore, is going to be difficult if the U.K.
19 and the EU negotiate arrangements that are
20 similar to what the EU has now in terms of
21 taxation, or competition policy.

22 I mean, we may be seeing a change in

1 competition policy when there is a new Commission
2 in the EU at the, I guess, at the end of this
3 year they would come in. But there has been, I
4 think, by Europe, a very, I'll say protectionist
5 approach to competition policy affecting high
6 tech, digitally oriented companies.

7 And we'll have to see what happens
8 between the U.K. and the EU on that. And
9 hopefully, the U.K. will have a bit more
10 flexibility than they have as a member of the EU.
11 So that would be a very important area in
12 addition to taxation schemes.

13 MR. MULLANEY: Maybe I'll turn to Ms.
14 Laury of Department of Labor for questions for
15 Ms. Drake.

16 MS. LAURY: Great, thank you. And
17 thank you, Ms. Drake, for your thoughtful
18 testimony this morning. In your written
19 submission, and you touched on this a bit in your
20 written --- or your oral testimony, you indicated
21 that the U.S.-U.K. FTA should not include a
22 number of rules related, for instance, to

1 technical barriers to trade, regulatory
2 practices, sanitary and phytosanitary standards,
3 and other rules that are typically in U.S. FTAs.

4 But given this position, you do attach
5 importance to including broader rules on labor.
6 And I wonder if you could elaborate on the
7 importance of those rules.

8 MS. DRAKE: Sure. I think just to
9 start, we would distinguish the importance of
10 labor rules. Because those are recognized as
11 fundamental human rights by the ILO, the
12 International Labor Organization, which goes back
13 to 1919, having its 100th year anniversary this
14 year, but also rights that are recognized in the
15 U.N. Declaration on Human Rights. And that's the
16 founding document of the U.N.

17 These are international standards,
18 below which no country should go, that don't
19 attach because of the level of development of a
20 country or the level of GDP of a country. They
21 attach because we're human beings.

22 Other things that folks are talking

1 about here, like free flow of data and these
2 things, these are not fundamental international
3 human rights. And they are things about which
4 people of good will can genuinely disagree.

5 And therefore, because the Labor
6 standards are so fundamental, and the ILO says
7 that those rights include the right to join a
8 union, the right, if workers chose, to engage in
9 collective bargaining, the right to be free from
10 forced labor, the right to be free from
11 discrimination in the workplace, if a U.S.-U.K.
12 Trade Agreement did not guarantee those, what we
13 would see is something quite similar to what
14 we've seen in the past 25 years of NAFTA.

15 Although in this case, it's possible
16 that the U.S. would be in the role of Mexico
17 where companies would use the United States to
18 invest, probably in the south of the country
19 where wages are lowest, where labor rights are
20 lowest, in an effort to escape having to treat
21 workers with dignity and respect their
22 fundamental rights.

1 So it's a critical issue. Is the
2 agreement going to be set up to lift up all of
3 us, workers, businesses, in the U.S. and the
4 U.K.? Or is the agreement really just a tool for
5 companies to engage in labor arbitrage? And we
6 would like to avoid the second. Thanks.

7 MR. MULLANEY: Well, maybe let me turn
8 to Mr. O'Byrne for a question for Ms. Hampl.

9 MR. O'BYRNE: Thank you for your wide
10 range of issues that you covered in your
11 testimony and your submission.

12 I wonder, from a small business
13 perspective, what are some of the most important
14 barriers to trade that, if addressed in a U.S.-
15 U.K. Agreement, would yield benefits for the
16 United States?

17 MS. HAMPL: Well, I answer this
18 question with the caveat that our membership
19 really consists mostly of large companies though,
20 of course, they have the small businesses in
21 their supply chains. So to that extent, I would
22 say that a lot of the things that benefit our

1 companies would also benefit the small companies
2 when it comes to anything that has to do with
3 predictability and having certainty in rules.

4 This is, of course, not something
5 we're currently experiencing in the context of
6 Brexit. So hopefully, some of these issues will
7 be resolved soon.

8 But one thing that I did mention in my
9 submission is the importance to our members of
10 having the market stay intact, and not just
11 between the U.S. and the U.K. but also with the
12 EU.

13 As Marjorie mentioned, our companies
14 engage with the U.K. in various ways. Some of
15 them are invested in the European market and deal
16 with the U.K. And to that extent, it is
17 important to keep that cohesion. And this is
18 also something that, for smaller companies, it's
19 going to be important.

20 Because the more disjointed the trade
21 environment is, the more complicated it becomes.
22 So that is certainly something that we're looking

1 for. And we're lucky to be negotiating with the
2 EU as well. So hopefully, there are going to be
3 some synergies achieved in that space.

4 MR. MULLANEY: All right. Well, maybe
5 I'll turn to Mr. Ferrante of the Environmental
6 Protection Agency to pose a question to Ms.
7 Kessler.

8 MR. FERRANTE: I do have one. First
9 I want to thank all of the panelists for your
10 testimony, I found it really interesting, and for
11 your other contributions to this discussion.

12 One for Ms. Kessler, actually a quick
13 one, and then perhaps a follow-up. In your
14 written submission and then in your testimony,
15 you noted the USMCA and that it includes a number
16 of provisions that contribute to improved
17 environmental outcomes. And I wonder if you
18 think that the U.K. can meet those commitments,
19 all of those commitments, or you anticipate
20 challenges?

21 And then as a secondary sort of
22 complementary question to that, are there areas

1 of environmental protection where you think they
2 U.K. could improve its approach and its
3 protections?

4 MS. KESSLER: Sure. So with regard to
5 the USMCA who, as I mentioned, it's not perfect
6 still. But it certainly has made significant
7 progress, particularly in regards, for example,
8 to marine litter.

9 And this is something, I mean, many of
10 the things that are outlined in the USMCA are
11 also outlined in the U.K.'s 25-year Environment
12 Plan and go significantly beyond what is
13 mentioned in the USMCA.

14 So, you know, certainly from what
15 they've put forward in terms of a green Brexit
16 or a political will standpoint, that all seems to
17 be very nicely queued up for our U.S.-U.K.
18 Agreement.

19 They already have committed to a
20 eliminating, I think, by 2042, pretty much all
21 plastics that are unnecessary. And so there's
22 already been some commitments on the part of the

1 U.K. government. So I don't anticipate many
2 hurdles in some of those regards.

3 And, I'm sorry, what was the follow-
4 up?

5 MR. FERRANTE: The follow-up was
6 pertaining to environmental protections and
7 approaches in the U.K. And do you think there
8 are areas for improvement?

9 MS. KESSLER: Sure, absolutely. So as
10 mentioned, about 80 percent of the current
11 Wildlife Policies Legislation is contained in EU
12 legislation right now. And so there is a
13 significant void within the U.K. policies at this
14 point that needs to be filled.

15 And so that is where, you know, I
16 think some pressure through a trade agreement to
17 really bring the U.K., its implementing
18 legislation, up to at least where the U.S. is.
19 And there's some real progress that needs to be
20 made there.

21 For example, you know, the EU, the
22 European Commission, European Court of Justice,

1 those are sort of the oversight bodies right now
2 that can bring forward cases. There's not a
3 similar body within the U.K.

4 There are some proposals on the table.
5 An environment bill will hopefully be coming
6 forward, but all of those things need to make
7 sure that there is an oversight, an independent
8 oversight body, as U.K. laws are in place to make
9 sure that the environmental legislation is being
10 implemented.

11 MR. MULLANEY: Great. Well, thank
12 you. Let me -- I'll start again. So I did get a
13 chance to come back to Mr. Griswold. And I think
14 there will be ample time, I think, to have
15 another round of questions.

16 So my first question to you, Mr.
17 Griswold, was how the impact of U.K.
18 sensitivities in the agricultural area, and their
19 negotiation with the EU, and how that might
20 affect our ability to achieve the priority that
21 you identified in the area of agriculture?

22 And I wonder if you might also address

1 that question in the context of services, which
2 is one of the other areas you identified as a
3 priority.

4 MR. GRISWOLD: Yes. There the list is
5 a lot shorter because both nations are world
6 competitive in services, and we have a lot of --
7 you know, we set the standard really in the world
8 in trading services with each other and the rest
9 of the world so it's a much shorter list.

10 I would say, and I'm not prepared to
11 do a deep dive into the details, but the U.S. has
12 tended to be more resistant than I think it
13 should be in liberalizing financial services.

14 So I would like the U.S. to do
15 everything it can to work with our friends over
16 in Britain to liberalize the financial services
17 as much as possible.

18 We also have, and I mentioned it and
19 I suppose the chances of the Jones Act and
20 airline cabotage being in the agreement are not
21 great. But I think somebody should raise those
22 issues. We have pretty much a closed domestic

1 market to competition in both intercoastal
2 shipping and in airline transportation.

3 A lot of national security arguments
4 are made for both. I think they are not
5 compelling. But they're certainly not compelling
6 when we're talking about a country like Great
7 Britain, which is very sophisticated in all these
8 services areas, a very trusted ally.

9 So there are some issues on services
10 trade. I think in this case they fall at least
11 as much on the United States to come to the table
12 with offers as it does our friends in the United
13 Kingdom.

14 MR. MULLANEY: Thank you. Well, to
15 switch it out, I think I may turn to our
16 colleague from the Treasury Department to pose a
17 question to Ms. Chorlins.

18 MS. LYNTON-GROTZ: Ms. Chorlins, your
19 submission suggests that a U.S.-U.K. agreement
20 should promote the use of cloud technologies in
21 financial services. Would you be able to provide
22 more details on how you think a trade agreement

1 could do this?

2 MS. CHORLINS: With your indulgence,
3 what I'd like to do is come back to you with a
4 more detailed written answer because I think it
5 will be easier for me rather than trying to
6 articulate very specifically in great detail what
7 we would envision here. So with your indulgence,
8 I will do that in writing.

9 MS. LYNTON-GROTZ: Yes, that would be
10 fine. And if I could ask you another question
11 then.

12 MS. CHORLINS: Sure.

13 MS. LYNTON-GROTZ: You're welcome to
14 come back in writing if you prefer. And this was
15 because your submission also mentioned that the
16 U.S.-U.K. trade agreement could enhance a
17 regulatory sandbox for fintech companies.

18 And specifically I was interested in
19 whether there are any specific market access
20 barriers in the fintech space that you think
21 should be addressed in the trade agreement.

22 MS. CHORLINS: Again, not being a

1 particular subject matter expert with respect to
2 fintech, I'd appreciate your indulgence in coming
3 back in writing.

4 MS. LYNTON-GROTZ: Of course.

5 MR. MULLANEY: Great. Maybe I can
6 turn to our colleague from the Department of
7 Commerce, Ms. House, to see if there are any
8 follow-up questions for Ambassador Allgeier.

9 MS. HOUSE: Sure. You did, in your
10 testimony highlight a few specific areas that you
11 wanted to see addressed in the trade agreement.
12 But I just wanted to give you the opportunity to
13 highlight some more areas where the U.S. and the
14 U.K. share some similar interests and where you
15 see we could potentially work together for global
16 solutions.

17 MR. ALLGEIER: Well, first of all I
18 think in the whole area of regulatory cooperation
19 so, for example, let's say financial services.
20 As our countries face new financial instruments
21 and financial practices, the regulatory bodies in
22 both countries are going to have to address those

1 and figure out what is the proper amount or
2 degree of approach on regulation.

3 So what would be very helpful is if
4 there were some kind of a mechanism when a new
5 issue arises that rather than have the two sides
6 work separately to find their own preferred
7 solution, to start with a bilateral discussion
8 about the issue and what sorts of approaches make
9 sense.

10 Now it may be that at the end, you
11 know, the different regulatory systems don't lend
12 themselves to the identical solution. But one
13 question would be whether there could be some
14 mechanism where there would be a recognition that
15 okay, if the U.K. is doing something that is
16 somewhat different than the U.S. regulatory
17 authorities but that they both are seen as
18 equally effective that somehow there would be
19 some mechanism for acceptance of that.

20 I don't know what -- you know, you
21 start using particular words like mutual
22 recognition and equivalency, you run into all

1 sorts of problems. But basically that's the
2 concept that there be an effective mechanism for
3 regulatory bodies in financial services to get
4 together at very early stages to try to figure
5 out compatible, let me say compatible approaches,
6 and therefore make it easier for businesses to
7 comply.

8 MR. MULLANEY: Great. I think I may
9 need to turn to Treasury colleague, Ms. Lynton-
10 Grotz for a question for Ms. Drake.

11 MS. LYNTON-GROTZ: Thank you. Ms.
12 Drake I was interested in the part of your
13 submission where you talked about the parties
14 agreeing to coordinate action with regard to
15 currency manipulation or misalignment and
16 overcapacity by non-parties and also to maintain
17 existing methodologies and coverage of non-market
18 measures. Could you provide some more detail on
19 how you envisage this working?

20 MS. DRAKE: Sure. So to give an
21 example, both the United States and the United
22 Kingdom share some common challenges when

1 operating in the global trading space because
2 when, for instance, the time when China was
3 widely regarded as manipulating its currency,
4 that posed a threat not only to exports from the
5 U.S. but exports from the U.K., and yet our
6 systems are really developed so that you can only
7 address them, you know, as a unilateral player.

8 And so part of what we would envision
9 is that as a part of a trade agreement that the
10 parties would say when we share a threat, so
11 whether it's intellectual property theft by
12 China, whether it is overcapacity and
13 overproduction in steel and aluminum, whether it
14 is misaligned currencies, and we both agree that
15 it's a real threat, that we would agree to act
16 together in concert to address them.

17 And we believe that would make the
18 actions of the United States that much more
19 effective and convincing in the space. And we
20 would really do a better job at sort of getting,
21 you know, China is the one I've mentioned, but
22 whoever is the problem country, back into

1 alignment and really promoting that good actor,
2 you know, mentality in the global trading space.

3 MR. MULLANEY: Let me turn back to Mr.
4 O'Byrne for any follow-up questions for Ms.
5 Hampl.

6 MR. O'BYRNE: Ms. Hampl, your
7 testimony notes a number of digital trade issues
8 such as force localization and cybersecurity. Do
9 you see any challenges for the U.S. and the U.K.
10 in working on these issues together since the
11 U.K. is likely to be negotiating with the EU on
12 those very same issues?

13 MS. HAMPL: Thank you for that
14 question. Digital trade is, of course, a very
15 important issue for our members. As I mentioned,
16 most of our companies rely on data flows for
17 their day-to-day businesses.

18 So from that perspective we've, of
19 course, gone through a lot as you mentioned, with
20 the EU. On GDPR there was various issues related
21 to that. And we do expect the U.K. in some form
22 to prioritize their relationship with the EU on

1 some of those issues. So there are certainly
2 challenges ahead.

3 But as I mentioned before, for us the
4 priority is to ensure that the market stays
5 intact. So while we, of course, think that this
6 is an opportunity to push for some U.S. interests
7 also with the U.K., it should also be done with a
8 view of perhaps still having the same
9 conversation with the EU to have something that
10 is a little bit more cohesive than separate
11 agreements.

12 Because as was mentioned before, our
13 companies operate in all of these various
14 markets. And so whatever that can be done to
15 ensure data flows and the free flow of data
16 across all of these markets would really be vital
17 to our companies.

18 This is not to say that we don't
19 anticipate difficulties. And we, of course,
20 stand ready to provide any information from a
21 business perspective that is necessary to help in
22 this endeavor, but we do hope there will be a

1 positive outcome.

2 MR. O'BYRNE: And one additional
3 question regarding regulatory issues, you suggest
4 that improved regulatory cohesion --

5 MS. HAMPL: Yes.

6 MR. O'BYRNE: -- between the U.S.,
7 U.K. and EU would be among the greatest potential
8 gains from a U.S.-U.K. agreement. Could you
9 discuss further areas that U.S. businesses faced
10 these specific problems?

11 MS. HAMPL: I'd be happy to follow-up,
12 as Marjorie also mentioned, in writing with a
13 little bit more detail on what we're looking at
14 there. Some of this may depend on the outcome of
15 Brexit, to be frank.

16 This is the response that we get from
17 our members a lot, which is why our submission is
18 more aspirational in what we are looking for
19 because until we know what regulations will be in
20 place, we can't really say what practically we
21 would need to be done.

22 Of course, on the assumption that

1 perhaps a lot of it will look similar to what is
2 currently in the EU, we do have a few sectors.
3 But I would hesitate to speak in detail about
4 something that is really unknown at this point.

5 MR. O'BYRNE: Thank you.

6 MR. MULLANEY: I'm going to turn it
7 back to EPA's Joe Ferrante to see if there are
8 any follow-up questions for Ms. Kessler.

9 MR. FERRANTE: I do have just one
10 more. You referred to in your testimony possible
11 areas of collaboration between the U.S. and the
12 U.K. I think it was particularly in the area of
13 wildlife trafficking.

14 I wonder if there are other areas or
15 if you would care to elaborate on that where the
16 U.S. and U.K. could partner more globally to push
17 for higher standards and a more level playing
18 field.

19 MS. KESSLER: Yes. So I think they're
20 continuing to push and collaborate in the area of
21 the illegal wildlife trade and these are two
22 countries that aren't often thought of because

1 they're not necessarily the source countries
2 always.

3 But there is an enormous role that
4 both of these countries play in the illegal
5 wildlife trade. And having the support and the
6 collaboration of those two countries to really
7 push this, we've seen a lot of progress in terms
8 of other countries coming along for the ride.

9 So we really, you know, there's been
10 these series of illegal wildlife trade
11 conferences. We're at the end of the fourth
12 series of it now. The problem is not gone. But
13 there's no more conferences that will be bringing
14 that together.

15 And so this is where we really do want
16 to see increased collaboration between the U.S.
17 and the U.K. to say what's next? We've got some
18 people in the room. We have the political will
19 but where do we take it from here and that needs
20 to be continued.

21 And then also in the area of marine
22 conservation, these are really two nations that

1 are leading in terms of marine protected areas.
2 They have significant marine protected areas.
3 And particularly, like here in the U.S., so one
4 of the things that we've been addressing is ship
5 strikes where we've seen significant reduction in
6 the number of whales that are being killed due to
7 restricted speeds in certain zones and during
8 certain times of the year.

9 And so seeing some sort of cooperation
10 in terms of sharing that information, getting
11 similar sorts of regulations input on it in the
12 U.K. would be useful as well. And so I think
13 overall on marine conservation they could really
14 collaborate well.

15 CHAIR GRESSER: We are coming close to
16 the end of the session but not there yet. So
17 what I would like to do is ask all of our
18 panelists, is there anything that you would like
19 to say that you weren't able to say in the early
20 discussion or any points that came up that you
21 would like to respond to?

22 MR. MULLANEY: What questions did we

1 not ask that you wish we had asked?

2 CHAIR GRESSER: Ms. Hampl.

3 MS. HAMPL: Thank you. I would like
4 to just raise a point about the digital tax
5 issue. Of course, that was part of my comments
6 and also some of my colleagues that mentioned it.

7 But since it didn't come up
8 specifically up in the questions, I mean, that
9 really is of big concern to our companies. Some
10 of them have even suggested that that needs to be
11 resolved before we even more forward with
12 negotiations.

13 So there are very strong feelings on
14 that topic. And we really do hope that issue
15 will be resolved in the appropriate forum which
16 we see this as being discussed at the OECD right
17 now.

18 And we strongly feel that the U.K. and
19 the EU is doing something similar. It's trying
20 to push the global dialogue by basically forcing
21 the global dialogue in a certain direction with
22 these unilateral measures, and that is not

1 something that we support.

2 And so whatever that can be done to
3 resolve this issue as soon as possible because,
4 as mentioned before, the cohesion of these
5 markets and the digital tax issues fall right
6 into that as well.

7 They go to the heart of the discussion
8 we're having on privacy, on competition, on all
9 of those issues. And this is kind of one of the
10 outgrowths and one of the symptoms from that.
11 And until we resolve that, we're afraid that
12 there will be a lot of detraction from the
13 benefits that could come from a U.S.-U.K.
14 agreement that we do believe is possible. Thank
15 you.

16 CHAIR GRESSER: Any other comments or
17 are there final words you'd like to leave us
18 with?

19 MR. ALLGEIER: Just one. Actually I
20 would like to reiterate something that Dan said
21 about the Jones Act. We get more complaints from
22 trading partners about the protectionism of Jones

1 Act than almost anything else. We're not going
2 to overturn Jones Act.

3 But an important first step could be
4 to get a relaxation of that with such a trusted
5 partner as Great Britain.

6 MR. GRISWOLD: The only thing I'd like
7 -- just to emphasize automobiles and passenger
8 vehicles. For reasons I don't understand, the
9 U.S. seems to be taking that off the table in
10 discussions with the European Union. I think it
11 should be very much on the table with discussions
12 with the United Kingdom.

13 They actually have a strong automobile
14 sector in Britain. They're part of the European
15 Union's supply chain. But I could see them
16 shifting some of their supply chain activity to
17 the United States and maybe Britain could become
18 more of an export platform for the United States
19 into Europe.

20 So let's not take both passenger
21 vehicles and light trucks off the table. Let's
22 go for zero tariffs all around and welcome the

1 British to become part of what I would argue as a
2 very successful North American motor vehicle
3 manufacturing platform. Make Britain part of
4 that and that would be a bridge to the very large
5 continental European automobile market.

6 MS. CHORLINS: Just very quickly, in
7 response to the Committee member from the Small
8 Business Administration, you put the question to
9 Ms. Hampl about specific impacts or benefits for
10 small and medium-sized enterprises.

11 What I would note is that more than my
12 95-ish percent of the U.S. Chamber's members are
13 actually small and medium-sized enterprises. And
14 so I think it's important simply to underscore a
15 point that I do think she made, which is that the
16 benefits that would accrue from an agreement
17 between the U.S. and U.K., particularly as
18 regards eliminating some of the most obvious
19 tariff barriers, but in addition a number of the
20 non-tariff barriers, particularly in the
21 regulatory space, would accrue significant
22 benefit to small and medium-sized enterprises.

1 And indeed one of the biggest concerns
2 that we have about the prospect of a no deal
3 scenario relates directly to the interests of
4 small and medium-sized enterprises and the fact
5 that they may find themselves having to deal with
6 new customs barriers and requirements that
7 they've never had to deal with before.

8 MS. DRAKE: And I'll just respond to
9 the comments about the Jones Act. And I would
10 say it's important to note that in addition to
11 the contribution of ship building in the United
12 States to our national and economic security, the
13 United States by maintaining the Jones Act
14 happens to be a country where you can still make
15 a good living as a seafarer.

16 And we don't, as other countries do,
17 have forced labor in the shipping industry. We
18 don't have the problem of seafarer abandonment
19 when shipping companies decide they haven't made
20 enough money and they're just going to leave the
21 seafarers at some random port.

22 So there are really beneficial

1 contributions to not only the economy of the
2 whole country but to specific people's lives of
3 maintaining the Jones Act. Thank you.

4 CHAIR GRESSER: Ms. Kessler, anything
5 to close with?

6 MS. KESSLER: Just as mentioned, you
7 know, we really would push on this -- the U.K. is
8 probably more willing to go farther in the
9 environment chapter than we've seen in other
10 trade agreements thus far.

11 And so we really would like to see the
12 U.S. urge that to get some specific mention,
13 particularly in areas where the USMCA was
14 deficient with regard to addressing climate
15 change and other aspects like that.

16 CHAIR GRESSER: Okay. Well, again,
17 thank you again to all of you for giving us your
18 time this morning. And that closes the first
19 panel.

20 (Whereupon, the matter went off the
21 record at 10:49 a.m. and resumed at 10:58 a.m.)

22 CHAIR GRESSER: Thank you very much.

1 Let's now open our second panel. We have a
2 couple of new panelists so perhaps we could
3 introduce one another.

4 MR. MULLANEY: Ellen, why don't we
5 start with you and we'll just introduce for the
6 people who might be new.

7 MS. HOUSE: Ellen House, Commerce
8 Department.

9 MR. MANOGUE: Good morning. I'm Bob
10 Manogue. I'm the Director for Bilateral Trade
11 for the Department of State.

12 MR. MULLANEY: Dan Mullaney. I'm
13 Assistant U.S. Trade Representative for Europe
14 and the Middle East.

15 CHAIR GRESSER: Ed Gresser, Assistant
16 USTR for Trade Policy and Economics.

17 MS. CEFALU: Janine Cefalu, Department
18 of Energy, International Affairs.

19 MR. SPITZER: Bob Spitzer, U.S.
20 Department of Agriculture, Foreign Agricultural
21 Service.

22 MR. FERRANTE: And Joe Ferrante, EPA.

1 CHAIR GRESSER: Thank you to our
2 witnesses for making time for us this morning.
3 I'd like to proceed from left of the table down
4 to the right of the table or from my right to my
5 left. And, again, please we would ask all the
6 witnesses to respect the five minute limit for
7 oral testimony so that we save as much time as
8 possible for discussion and questions. And let's
9 begin with Mr. Herman.

10 MR. HERMAN: Thank you. My name is
11 Nate Herman. I'm the Senior Vice President for
12 Supply Chain at the American Apparel and Footwear
13 Association, the national association for the
14 apparel and footwear industry.

15 Through the power of global value
16 chains, our members directly employ millions of
17 Americans in such diverse areas as design,
18 manufacturing, compliance, logistics and retail.
19 Our products are designed, made and sold in every
20 country in the world, including the United States
21 and the United Kingdom.

22 International trade has been good for

1 our industry. But the persistence of high trade
2 barriers, be they in the form of tariffs, customs
3 requirements, or burdensome regulations continues
4 to inject unnecessary costs into our supply
5 chains.

6 Trade agreements are opportunities to
7 reduce these costs and expand the U.S. jobs our
8 global value chains support. It's through this
9 lens that we view the U.S.-U.K. trade agreement.

10 The goal of the negotiations should be
11 to craft an agreement that expands trade between
12 the United States and the United Kingdom while
13 reducing regulatory and market access costs
14 currently associated with those trade links.

15 The bottom line is that creating more
16 opportunities through trade agreements will
17 support far more U.S. jobs and growth than
18 restrictive rules.

19 We have six recommendations to achieve
20 this goal. One, we support the immediate and
21 reciprocal elimination of the high duties that
22 both countries charge on textiles, travel goods,

1 clothes and shoes.

2 We also support the immediate
3 elimination of any retaliatory duties imposed by
4 the U.K. as well as any duties imposed by the
5 U.S. that led to those retaliatory duties.

6 The duties imposed costs on
7 activities, including manufacturing activities in
8 the U.S., and undermine markets for U.S. exports
9 to the United Kingdom.

10 Two, the agreement should contain
11 flexible rules of origin for our products. For
12 footwear, that means a tariff shift rule of
13 origin. For apparel, the bottom line is that
14 yarn forward doesn't work. When you require
15 everything to be made in trade agreement
16 countries, you end up with 100 percent of
17 nothing.

18 The numbers bear this out. And today
19 trade agreements account for only 18.9 percent of
20 all U.S. apparel imports versus 26.6 percent in
21 2003. That is despite the proliferation of U.S.
22 trade agreements over the last 15 years.

1 The more flexible the rules are the
2 more everyone benefits. Fifty percent of a large
3 pie is much better than 100 percent of a small
4 slice.

5 We need to incorporate sufficient
6 flexibilities into the rules of origin so that
7 different supply chains and the U.S. jobs they
8 support can take advantage of the agreement.

9 Even the recently concluded U.S.-
10 Mexico-Canada Agreement, or USMCA, uses tariff
11 preference levels to promote the export of U.S.
12 made apparel to Canada.

13 These TPLs recognize that apparel
14 manufacturing jobs sometimes need access to
15 foreign textiles in order to be competitive.

16 Similarly, we should explore
17 accumulation provisions with joint FTA partners
18 like Mexico. Currently many U.S. yarn and fabric
19 exports go to Mexico where they're made into
20 clothes and re-exported back to the United
21 States.

22 Wouldn't it be great if the U.S.-U.K.

1 Trade Agreement allows U.S. yarn and fabric
2 exports to go to Mexico, be made into apparel and
3 to be sold duty free into the United Kingdom.
4 The U.K. already has similar provisions in many
5 of its free trade agreements through the European
6 Union.

7 Three, we can promote usage of the
8 agreement by including facilitative customs
9 measures such as those that are included in the
10 general customs chapter of USMCA.

11 We believe the USMCA is the gold
12 standard for trade facilitation. The agreements
13 should include, among other things, proper
14 enforcement that treats trusted traders as
15 partners and instead focuses enforcement on those
16 importers with the highest risk, customs
17 provisions that apply to the whole agreement not
18 singling out any one industry and increasing the
19 threshold that the U.K. applies to its de minimis
20 shipments.

21 Four, promote regulatory
22 harmonization. The U.K. and the United States

1 both maintain an extensive array of product
2 safety chemical management and labeling
3 regulations regarding clothes, shoes, travel
4 goods and textiles.

5 In many cases, they are intended to
6 achieve the same goal yet they often contain
7 different requirements such as testing or
8 certification requirements that greatly add to
9 compliance costs.

10 For example the U.S. and U.K. both
11 regulate phthalates in child care articles yet
12 only the U.S. applies the rules, incorrectly in
13 our view, to children's pajamas.

14 We believe the U.S.-U.K. trade
15 agreement presents an important opportunity to
16 achieve harmonization or alignment for these
17 regulations.

18 Five, any trade agreements should
19 reflect the U.S. and U.K.'s shared commitment to
20 the protection of intellectual property rights.

21 This is more than just protecting
22 American businesses from damage to their

1 reputation or American jobs from being in
2 jeopardy due to lost sales. This is about child
3 safety and knowing that the pajamas that a
4 consumer bought for their baby do not cause a
5 rash.

6 This is about worker safety, knowing
7 that a consumer who bought shoes, those shoes
8 were made in a factory where the workers were
9 treated properly.

10 And this is about the environment and
11 knowing that the water used to dye the jeans that
12 a consumer is wearing was treated appropriately.

13 And six, finally, any U.S.-U.K.
14 agreement should protect the Berry Amendment,
15 which requires all clothing, textiles and
16 footwear purchased by the Defense Department to
17 be made in the United States in order to maintain
18 a war industrial base for national security.

19 As a final note, many AFA members
20 depend on a stable U.S.-U.K. and U.K.-EU trade
21 relationship that are in jeopardy due to Brexit.

22 As the EU and U.K. authorities

1 continue their discussions, we urge the
2 administration to push for the smoothest Brexit
3 possible. It is vital that Brexit occur in a
4 transparent and predictable manner to minimize
5 the damage to the U.S.-U.K. trade relationship
6 and the many U.S. workers that depend on it.

7 Thank you again for providing us this
8 opportunity to testify. I would be happy to take
9 any questions.

10 CHAIR GRESSER: Thank you very much.
11 And let's turn to Mr. Chittooran.

12 MR. CHITTOORAN: Thank you very much
13 for the opportunity to present testimony on the
14 negotiate objectives for a U.S.-U.K. trade
15 agreement.

16 My name is Jay Chittooran. I'm a
17 global public policy manager at SEMI, the global
18 industry association for the electronics
19 manufacturing industry.

20 With more than 2,100 members
21 worldwide, which includes more than 430 based in
22 the U.S. and dozens more based in the U.K., SEMI

1 represents designers, materials makers, equipment
2 producers, chip makers and of course end use
3 consumer electronics companies.

4 Our member companies are the
5 foundation of the \$2 trillion electronics
6 industry and SEMI members support 350,000 jobs
7 here in the U.S. and overseas.

8 Semiconductors are essentially the
9 brains of all electronic systems making possible
10 the countless products on which we rely for
11 entertainment, business, communications, health
12 care and essentially all activities in the modern
13 human endeavor.

14 These products have boosted economic
15 growth, enhanced productivity and driven
16 innovation and, of course, will be central to
17 U.S. and global growth and prosperity. Of
18 course, the success of this industry is built on
19 trade and a vast network of supply chains that
20 span the globe.

21 In 2017, for instance, more than 90
22 percent of semiconductor equipment that was made

1 here in the U.S. was exported.

2 The U.K., of course, is a vital market
3 to the semiconductor industry. U.S. exports of
4 semiconductor goods to the U.K. exceeded \$700
5 million, making it a top 15 export market.

6 But this, of course, understates the
7 U.K.'s role in this global industry. Many of the
8 world's leading semiconductor companies have
9 operations in the U.K. and, of course, there are
10 several fabs in the U.K. as well.

11 But most notably, the U.K. is home to
12 leading semiconductor designed work including AI
13 designed work. Reducing tariffs, eliminating
14 regulatory barriers and ensuring both parties are
15 competing on a level playing field would benefit
16 both U.S. and U.K. semiconductor companies, the
17 industry writ large and the global economy, which
18 is underpinned by this industry.

19 It is because of this that SEMI
20 supports the administration's willingness to open
21 bilateral trade negotiations with the U.K.

22 SEMI listed 11 guiding principles in

1 our written comments, which includes language on
2 SOEs, anti-discrimination, of course, development
3 of market-oriented standards. I want to
4 highlight four particularly relevant principles
5 here.

6 One, any trade detail should maintain
7 a strong respect for IP and trade secrets through
8 robust safeguards and significant penalties for
9 violators.

10 As companies in our industry invest
11 about 15 percent of revenues into R&D annually,
12 protection of valuable IP is essential. SEMI
13 supports robust copyright standards, strong
14 patent protections and regulations that safeguard
15 industrial design.

16 We also strongly support rules that
17 enhance trade secrets protection, including
18 establishing criminal procedures and penalties
19 for theft.

20 Two, remove tariffs and technical
21 barriers on semiconductor products. The parties
22 should eliminate tariffs not only on

1 semiconductors but all products that rely on
2 chips. This includes establishing permanent
3 duty-free treatment on all digital transmissions,
4 removing tariffs and technical barriers is
5 crucial obviously for businesses, including SMEs,
6 in the market penetration.

7 Three, enable the free flow of cross-
8 border data and combat any attempts on forced
9 tech transfer. All industries, including the
10 semiconductor industry, rely on data. Countries
11 should refrain from putting in place
12 unjustifiable regulations that limit the free
13 flow of information and that includes any data
14 localization laws. To this end, we support the
15 creation of clear and firm rules that prohibit
16 countries from requiring the transfer of any
17 proprietary information.

18 Four, establish protections that
19 balance security with privacy. Any trade deals
20 should have firm consumer protections but must
21 not forego security. The key to this is the use
22 of encryption products.

1 We also believe that parties should
2 work to advance efforts in cybersecurity through
3 self-assessment, declaration of conformity,
4 increased cooperation and information sharing,
5 all of which we believe will help prevent
6 cyberattacks and stop the diffusion of malware.

7 In closing, SEMI strongly supports the
8 administration's view of undertaking negotiations
9 between the U.S. and U.K. for a trade deal. We
10 urge negotiators to include high standards in
11 this agreement.

12 This will usher in further growth, not
13 just in this industry, but will fuel each
14 country's economy. I look forward to answering
15 any questions you have. Thank you very much.

16 CHAIR GRESSER: Thank you. And Mr.
17 Brzytwa.

18 MR. BRZYTWA: Good morning, everyone.
19 My name is Ed Brzytwa. I'm the Director for
20 International Trade at the American Chemistry
21 Council. I appreciate the opportunity to appear
22 here today and to testify on U.S. chemical

1 industry's priorities, potential trade
2 negotiations between the United States and the
3 United Kingdom.

4 Trade in chemicals is a strong feature
5 of the U.S.-U.K. trading relationship, totaling
6 \$5.7 billion in 2017. U.S. exports of chemicals
7 to the U.K. were \$2.8 billion in 2017. And U.S.
8 imports of chemicals from the U.K. were \$2.9
9 billion.

10 A significant portion of U.S.-U.K.
11 chemicals trade is to related parties, 54 percent
12 of chemical imports from the U.K. and 39 percent
13 of chemical exports to the U.K.

14 A significant volume of trade between
15 related parties is due to the highly integrated
16 and efficient nature of the U.S. and U.K.
17 manufacturing supply chains.

18 We believe the U.S.-U.K. trade
19 agreement would achieve concrete and tangible
20 outcomes for chemical manufacturers in both
21 markets.

22 To that end, ACC is pleased to share

1 with you today an overview of our recommendations
2 and objectives for a successful trade agreement
3 with the United Kingdom.

4 One, tariff elimination and market
5 access. According to ACC analysis, a trade
6 agreement that eliminates U.S. tariffs on
7 chemical imports from the U.K. can save U.S.
8 chemical manufacturers \$88 million per year.
9 Eliminating U.K. tariffs on chemical imports from
10 the United States would reduce tariffs paid in
11 the U.K. by \$84 million.

12 Cost savings from the elimination of
13 tariffs would help boost economic and job growth.
14 As part of a comprehensive tariff elimination
15 plan, ACC also encourages the U.S. to eliminate
16 its Section 232 tariffs on steel and aluminum
17 imports from the United Kingdom.

18 Any potential U.K. retaliatory tariffs
19 targeting chemicals would limit the ability of
20 U.S. chemical manufacturers to access the U.K.
21 market.

22 We also urge both countries to avoid

1 the imposition of quotas of any kind on imports
2 of U.K. steel and aluminum which would impede the
3 construction of chemical manufacturing plants in
4 the United States.

5 Two, regulatory cooperation. The goal
6 of regulatory cooperation is to explore
7 opportunities for creating efficiencies within
8 and between regulatory systems while maintaining
9 high levels of protection for human health and
10 the environment.

11 Regulatory cooperation should not
12 undermine or weaken regulatory mandates. Rather,
13 it can help to ensure that those mandates do not
14 result in unnecessary barriers to trade.

15 ACC would encourage the U.S. and U.K.
16 to build on progress already made on talks
17 related to regulatory cooperation during the
18 Transatlantic Trade and Investment Partnership
19 negotiations, the U.S.-Mexico-Canada Agreement
20 and the ongoing U.S.-Canada Regulatory
21 Cooperation Council, both of which have created a
22 distinct track for regulatory cooperation for the

1 chemical sector, are informative models.

2 Three, rules of origin on chemical
3 substances. Chemical manufacturers will benefit
4 from duty free trade only if the rules of origin
5 for chemical substances are flexible, simple and
6 transparent. We recommend that the United States
7 build on the rules of origin outcomes of the
8 USMCA, in particular by ensuring that the
9 chemical reaction rule is available to traders
10 for conferring origin and avoiding regional value
11 content requirements.

12 Four, digital trade. Digital trade
13 based on the free flow of data across borders is
14 critical to chemical manufacturers. State of the
15 art provisions on promoting data privacy,
16 enabling open cross-border data flows,
17 prohibiting data localization requirements and
18 strengthening cybersecurity while respecting
19 intellectual property rights will be critical.

20 We recommend that the U.S. and U.K.
21 take the best in class digital trade outcomes of
22 the USMCA as their starting point and build on

1 and strengthen them where possible.

2 Five, trade facilitation. ACC
3 recommends that the U.S. and U.K. pursue World
4 Trade Organization Trade Facilitation Agreement
5 plus approach to customs and trade facilitation
6 efforts in their bilateral negotiations.

7 This includes promoting digital trade,
8 targeting infrastructure projects to remove
9 bottlenecks in the movement of exports,
10 modernizing transport security requirements and
11 harmonizing clearance procedures.

12 Six, dispute settlement. Chemical
13 manufacturers in the United States rely on
14 enforceable state-to-state dispute settlement in
15 trade agreements. We urge both the U.S. and U.K.
16 to accept investor-state dispute settlement
17 provisions for all sectors without limitations on
18 the claims that investors can make on specific
19 investment protections.

20 Seven, duration of the agreement. A
21 U.S.-U.K. trade agreement that stands the test of
22 time will help ensure maximum predictability and

1 certainty to investors and traders.

2 ACC supports making improvements to
3 the agreement as international trade evolves but
4 recommend avoiding the inclusion of time frames
5 for an early termination or sunset of the
6 agreement.

7 Eight, addressing root sources of
8 marine litter. The U.S. and U.K. can play a
9 strong role together in promoting better waste
10 management capacity for used plastics in all
11 countries. Trade in used plastics enables
12 efficient processing of those materials while
13 creating valuable new materials and products and
14 business opportunities.

15 We recommend that the U.S. and U.K.
16 trade agreement build on the marine litter
17 language in the USMCA environment chapter.

18 Nine, addressing trade distorting
19 practices. Lastly, the U.S. and U.K. must work
20 with like-minded governments to address trade
21 distorting practices by other countries.

22 ACC and its members stand ready to

1 assist the administration in the creation of a
2 coalition of allies in the WTO to protect and
3 enforce WTO trading principles around the globe.

4 We look forward to working with USTR
5 and interagency leaders and staff to achieve
6 success in the negotiations with the United
7 Kingdom.

8 Thank you again for the opportunity to
9 provide input on behalf of ACC members and the
10 business of chemistry in the United States.

11 CHAIR GRESSER: Thank you very much.
12 Dan, would you like to give him a question?

13 MR. MULLANEY: I think maybe we'll go
14 from one testifier to another with questions from
15 various panelists here. And I may turn to our
16 colleague from the Department of Commerce, Ellen
17 House, to question Mr. Herman.

18 MS. HOUSE: Thank you. Thank you for
19 your testimony today. I guess I'll start with
20 that you mentioned in the written submitted
21 comments that you are proposing that customs
22 claims be submitted at the six digit level

1 instead of the ten digit level. And we're
2 wondering if you could elaborate on this a little
3 bit.

4 For example, have your members
5 indicated that submitting claims at the ten digit
6 level is unduly burdensome? Given the broad
7 range of products covered at the six digit level,
8 would this impact CBP's ability to track imports
9 and enforce trade rules?

10 MR. HERMAN: The idea was not that --
11 we're saying the rules at the six digit level
12 that are part of the trade agreement not
13 necessarily getting rid of everything at the 8
14 and ten digit level.

15 MS. HOUSE: Okay.

16 MR. HERMAN: And the idea is that's
17 where the U.S. and the U.K. are the same because
18 of the World Customs Organization and the
19 establishment of the harmonized codes.

20 The concern is once you get beyond
21 that there is a difference in interpretation.
22 And so a shoe described under our eight or ten

1 digit is different than described under their
2 eight digit and so creates some confusion.

3 So we're trying to propose a way to
4 eliminate some confusion.

5 MS. HOUSE: Another thing that we were
6 interested in understanding more about is your
7 proposal that an agreement with the U.K. not
8 require direct export and allow for interim
9 storage solutions. I believe you mentioned this
10 in your opening testimony a bit maybe with
11 discussing Mexico.

12 Can you provide an example of an
13 interim storage location besides Mexico or
14 elaborate on that? And what conditions would you
15 propose accompany the use of interim storage
16 locations?

17 MR. HERMAN: So when our members sell
18 in Europe, a lot of times they have a
19 distribution center in one country that serves
20 the entire European Union, at this point
21 including the United Kingdom.

22 And so in order to manage their

1 inventory, they might ship a product to their
2 distribution center in Amsterdam, for example,
3 but it qualifies under the U.S.-U.K. trade
4 agreement, whatever the rules may be. And they
5 eventually want to export that to the U.K.

6 They would be prevented from doing so
7 if direct shipment is required because it's not
8 direct shipped from the United States. And so
9 that's the example is that in many cases our
10 members work through one distribution center.
11 That's supposed to serve the entire European
12 Union. And that's where they would be shipping
13 to first and then distributing to individual
14 countries.

15 MS. HOUSE: Thank you. That's
16 helpful. So the issue is the current trade with
17 the EU and the way it operates for the U.K., if
18 you will, so --

19 MR. HERMAN: Right. And we run into
20 this issue in other countries and regions of the
21 world as well. But the idea is that if you can
22 prove, and you have the documentation to prove,

1 that you met the rules of origin, it doesn't
2 matter where the transit point -- it shouldn't
3 matter where the transit point is.

4 MS. HOUSE: Okay. So I'm sorry I
5 confused it. So it's just transit? It's not the
6 finished goods, not interim goods like you were
7 talking about.

8 MR. HERMAN: Yes. It's finished
9 goods. Yes.

10 MS. HOUSE: Okay. Thank you.

11 MR. MULLANEY: If I might, Mr. Herman,
12 you mentioned as one of the priorities of
13 regulatory harmonization, you referred to testing
14 and certification.

15 So I wonder if there are particular
16 areas you have in mind where regular
17 harmonization, which I think was a term that you
18 used, would be useful in arranging -- I think you
19 mentioned safety testing. Is that something that
20 you looked at in the area of labeling, for
21 instance, for apparel or are there other areas?

22 And then within those areas in terms

1 of the harmonization, quote-unquote, do you
2 envision something more along the lines of a
3 mutual recognition or equivalents or actual
4 literal harmonization of regulation between the
5 United States and the U.K.?

6 I realize that's a mouthful. So if
7 you want to follow-up after the session that's
8 great.

9 MR. HERMAN: No, I mean, so
10 harmonization, that's why we threw in the word
11 alignment is so that we can have mutual
12 recognition. Because in the case of, say, for
13 example, care labeling, the United States follows
14 an ASTM standard where the U.K. follows an ISO
15 standard that's based on something called Ginetex
16 care symbols, which companies have to pay for in
17 order to use these symbols on their labels.
18 Whereas ASTM, as long as you're a member of ASTM,
19 you don't have to pay for the use of the words
20 that are used on U.S. care labels.

21 And so we would envision a system
22 where either would be acceptable and so that

1 somebody who is labeling for both the U.S. and
2 the U.K. markets can use just one set of labels
3 and not have two different set of labels and
4 either set of labels would be recognized by both
5 governments.

6 MR. MULLANEY: If I may follow-up, how
7 much of that divergence that we see in the
8 labeling between the United States and the U.K.
9 is due to U.K.'s membership in the European Union
10 and how much of that is independent?

11 MR. HERMAN: It's mostly related to
12 U.K.'s membership in the European Union for
13 chemical management. They have the REACH system.
14 We have the Consumer Product Safety Commission
15 and now TSCA with convergence of TSCA under EPA.
16 And so it's mostly related to the EU.

17 MR. MULLANEY: Well, maybe for
18 questions for Mr. Chittooran, I'll turn to my
19 colleague, Bob Manogue from the State Department.

20 MR. MANOGUE: Thank you very much and
21 thank you for your testimony. It was very
22 informative.

1 In your written testimony, you call
2 for a global standard, one standard, one test, to
3 be accepted everywhere. How do you see a U.S.-
4 U.K. trade agreement acting as a means of
5 achieving that goal?

6 MR. CHITTOORAN: Thank you very much
7 for the question. So that's actually something
8 that we think about a lot. So semiconductors, as
9 you might be well aware, require a good deal of
10 standards.

11 SEMI is a standard-setting organization. In
12 addition to the other things that it does, we
13 hold about 1,000 standards that we created for
14 the industry, which is primarily an industry-led
15 effort.

16 How we view the agreement being able
17 to set standards is putting in place various
18 things on safety standards, EHS as we call it,
19 Environmental Health and Safety Standards.

20 We consider -- really on the safety
21 component, that's a priority we think can be
22 added into or used within a trade agreement to

1 further or establish further safety mechanisms
2 there.

3 You know, looking beyond just EHS,
4 there's many things just on R&D and what the
5 standards can be in terms of applying R&D and
6 using this R&D either jointly or collaboratively
7 as this industry is in effect a global one,
8 advancing the industry for pursuing down the
9 semiconductor roadmap, so to speak.

10 MR. MULLANEY: Mr. Chittooran, if I
11 may, you mentioned a priority on IP protection
12 and trade secrets. So would you say that this is
13 a bilateral priority between the United States
14 and the U.K. in which there may be some
15 challenges in the U.K. that we should be
16 addressing? Or is it more something that the
17 United States and the U.K. can reaffirm together
18 to set up a high standard globally?

19 In other words to what extent is this
20 is a U.S.-U.K. issue versus a global issue that
21 the U.S. and the U.K. faces together?

22 MR. CHITTOORAN: So thanks. That's a

1 good question. So really of those two options,
2 it's really the latter. This is more, there's no
3 -- you know, if you want to look at this way,
4 there's no specific, super specific, horrible
5 egregious problems in the U.K. market and then in
6 looking at the U.S. there's no issues industry
7 specific and egregious in the U.S.

8 That said, our belief is that this
9 trade deal could be the model agreement creating
10 these high standards with not just aspirational
11 marks but really high standards that are put in
12 place about creating firm protections for IP.

13 MR. MULLANEY: Thanks for that.

14 That's helpful. You mentioned that you're also a
15 standards development organization. Do you find
16 that there are standards barriers, barriers that
17 arise due to, say, differences in standards that
18 you develop versus other standards that might be
19 out there as a barrier to trade that we should be
20 conscious of or focusing on?

21 MR. CHITTOORAN: I'm glad you asked
22 this question. So broadly, yes, in the highest

1 terms, yes. So sometimes standards on, going
2 back to EHS, on the environment and health and
3 safety issues, there are some standards that are
4 set either in the U.K. or elsewhere in Europe
5 that are not in congruence with what there is
6 here in the U.S.

7 Of course, when we -- in terms of the
8 damage that either one of those standards are
9 currently set, it's pretty low. In terms of what
10 the difference what the delta between the U.K.
11 standard and U.S. standard is, it's relatively
12 low.

13 Of course, are there areas for
14 congruence, of course. But I think broadly it
15 kind of goes back to your earlier question, much
16 of the work that's done here can be more in terms
17 of reaching norms that we'd like to see out of
18 the deal.

19 MR. MULLANEY: Thank you very much for
20 that. We may have time for a second round as we
21 go through. But let me turn to our colleague,
22 Ms. Cefalu, from the Department of Energy for

1 questions for Mr. Brzytwa.

2 MS. CEFALU: Thank you, Mr. Brzytwa.
3 You talked about the inclusion of chemical
4 reaction rules of origin. How do the chemical
5 reaction rules in the USMCA and the EU-Canada FTA
6 compare?

7 Additionally, does the EU agreement
8 with Canada include any new rules that the U.S.
9 should consider?

10 MR. BRZYTWA: Thank you for that
11 question. These compare and contrasts are always
12 interesting. We took a look at the USMCA
13 chemical reaction rule and the CETA, if I may
14 call it, the CETA chemical reaction rule. And
15 the text of the rule on chemical reaction is
16 identical. The difference is not so much the
17 rule but the applicability of the rule.

18 So for USMCA it's a menu-based
19 approach. If you're a trader, you can use one of
20 a number of options to confer origin. My read,
21 and, you know, I'm still conferring with our
22 members on this, is that for CETA, the use of the

1 chemical reaction rule is more limited.

2 So, for example, CETA rules chemical
3 reaction is only -- you can only use it for
4 Chapters 28 and 29 of the HS Code. That's pretty
5 limiting.

6 I mean, for USMCA it covers every
7 single chapter from, I believe, 28 through 38 and
8 then, you know, it's also treated, I think, in 38
9 and 39, like for plastics, and 39 and 40 include,
10 like, synthetic rubber.

11 So it's easier for our chemical
12 manufacturers to use the chemical reaction rule
13 in USMCA relative to CETA. That's my take at
14 this point. We can continue the conversation if
15 you want greater detail.

16 But, you know, if you ask chemical
17 manufacturers if there are any redeeming value
18 points in the CETA, the reaction I'm getting is
19 that they think USMCA is a better model. They
20 prefer the USMCA as the starting point.

21 MS. CEFALU: Thank you. Additionally,
22 in follow-up, you noted a high percentage of

1 inter-company trade in chemicals between the U.K.
2 and the United States due in large part to the
3 integrated supply chains.

4 How would the elimination of tariffs
5 and regulatory barriers change trade flows,
6 export/import balance, between the U.S. and the
7 U.K.?

8 MR. BRZYTWA: Well, generally speaking
9 when you eliminate tariffs, you're creating
10 opportunities for more trade. You know, there
11 are certain reasons why some chemical
12 manufacturers don't export to certain markets and
13 one of those reasons could be tariffs.

14 We just don't know yet what the tariff
15 schedule in the U.K. is going to look like for
16 chemicals. So our operating assumption is that
17 it's going to look somewhat like the EU's and
18 that's an average of 3 percent across the board
19 in the chemical sector.

20 I hope it's that low. If it goes
21 lower, we would want immediate tariff
22 elimination. This is our advocacy point on any

1 single trade agreement. We want zero tariffs
2 immediately for all U.S. trade agreements. We
3 don't want any staging. We don't want any
4 transition periods.

5 You know, I think, we want more
6 opportunities to trade. I've said this before at
7 other hearings. This is an industry that's
8 poised for export growth.

9 Chemical manufacturers are coming to
10 the United States to build chemical manufacturing
11 capacity, multibillion dollar facilities.

12 They're doing that to export to the
13 rest of the world. That could include the U.K.
14 So we want these opportunities, and we need the
15 tariff elimination to effectuate that.

16 When it comes to non-tariff barriers,
17 you know, I think this is somewhat of a tricky
18 area because we're not advocating for the
19 elimination of regulation in the U.K. We're
20 assuming that the U.K. is going to be a part of
21 REACH after it leaves. The European Union, it
22 will stay within that regulatory regime.

1 What we want is a conversation with
2 the U.K. regulator about how to create greater
3 efficiencies so that we can both work together on
4 addressing, you know, issues that are important
5 to us in the chemical regulatory space.

6 MR. MULLANEY: Thank you for that, Mr.
7 Brzytwa. You had referenced, in connection with
8 that last question, you had referenced the work
9 that had been done in the past in the
10 negotiation. I think you were referencing
11 negotiations with the European Union.

12 And in that context we were, I think,
13 recognizing we were dealing with two very
14 different regulatory regimes, REACH on the one
15 hand, TSCA on the other hand. And that created
16 certain parameters in terms of what we could do
17 in the regulatory space in terms of regulatory
18 coherence or cooperation or what have you.

19 And I was wondering whether, you know,
20 taking the assumption that you laid out as to the
21 U.K.'s relationship to REACH where you see the
22 real opportunities in a sector where there is,

1 relatively speaking, divergent regulatory
2 structures?

3 MR. BRZYTWA: Yes. I think the real
4 opportunity here is to have EPA, and Mr. Ferrante
5 can perhaps elaborate on this, the EPA have a
6 direct conversation with the U.K. chemical
7 regulator on regulatory cooperation.

8 I am not sure that they would be
9 afforded that opportunity if we didn't have this
10 possibility of a trade agreement. You have to
11 keep in mind that when it comes to regulatory
12 cooperation discussions with the EU, it's really
13 a conversation between the U.S. government and
14 the European Commission not with the individual
15 chemical regulators.

16 So that for us is a great opportunity
17 to have continuing conversations, structured
18 conversations about things that are important to
19 the U.S. chemical sector, such as risk-based
20 approaches, science-based approaches to chemical
21 regulation, how you prioritize certain types of
22 issues, how you create greater alignment, but not

1 necessarily changing the regulations, per se.

2 So, for example, I think one of the
3 biggest priorities we have is greater alignment
4 on the implementation of the U.N. globally
5 harmonized system on chemical classification and
6 labeling. That's priority number one if you look
7 at the USMCA chemical sectoral annex and the list
8 of issues there.

9 So, I mean, there are a whole host of
10 issues included there. I think that's a good set
11 of guideposts.

12 CHAIR GRESSER: We have a fair amount
13 of time. Let's do a second round.

14 MR. MULLANEY: Depending on how you
15 look at it, this panel either has the advantage
16 or disadvantage of being relatively small. So we
17 have a chance to come back at you with relatively
18 more questions than we do in other panels. So
19 thank you for your indulgence.

20 Let me maybe turn again to our
21 Department of Commerce colleague, Ms. House, for
22 a follow-on question for Mr. Herman, please.

1 MS. HOUSE: Thank you. Can you
2 elaborate on your concerns regarding commitments
3 to enforce against counterfeiting through third-
4 party marketplaces? What commitments would you
5 like to see in the FTA to address these concerns?

6 MR. HERMAN: So the third-party
7 marketplace has become a major source for
8 counterfeits. And you can see it on many third-
9 party marketplaces, including here in the United
10 States where they are not regulated. Where the
11 marketplace, the entity that owns the marketplace
12 is not regulating as well as they could
13 counterfeits even when they're brought to their
14 attention by the brand owners.

15 And so the concern is, how can we
16 create ways to facilitate that to work together
17 because many online third-party marketplaces run
18 in both the United States and the U.K. so they
19 have the same effects.

20 You have Amazon running in both
21 countries. eBay is running in both countries.
22 And Walmart has a rainbow of countries. You have

1 third-party marketplaces that operate in both
2 countries. Maybe we can work together to address
3 those issues.

4 We're not looking necessarily at
5 regulations but raising the awareness and
6 increasing the facilitation and cooperation to
7 address the growing issue.

8 MS. HOUSE: Okay. Your submission
9 also supports ease in the recordation and
10 registration of IP. Can you elaborate on current
11 obstacles in the U.K. that would be remedied by
12 such a commitment?

13 MR. HERMAN: I'm going to have to get
14 back to you on that.

15 MR. MULLANEY: Maybe we'll move back
16 over to Mr. Chittooran now. I'll turn to my
17 colleague, again, Bob Manogue, from the State
18 Department for questions.

19 MR. MANOGUE: Right. Thank you very
20 much. In your testimony, you underscored the
21 importance of establishing rules for state-owned
22 and state-supported enterprises to ensure a level

1 playing field.

2 Is that a big issue with the U.K. in
3 looking at it globally and what is that global
4 concern companies are facing?

5 MR. CHITTOORAN: Yes. So let's divide
6 it out. For the U.K., no, broadly this is more
7 of a global concern. And what does that look
8 like?

9 Without naming specific companies, it
10 could be in the form of a subsidy. It could be
11 in the form of tech transfers. It could be in
12 the form of a forced tech transfer, really. Any
13 type of forced IP sharing arrangement, a joint
14 venture or otherwise that would require a company
15 in a domestic country that would presumably be
16 unable to compete with a U.S. company or any
17 other company for that matter is now able to
18 produce this certain technology.

19 That's something that happens a lot in
20 this industry. It's a very high tech industry.
21 It's something that happens more often than you
22 would think. So that's what happens.

1 MR. MANOGUE: And can you give me a
2 sense of what the solution for that would like,
3 what we would incorporate into this agreement?

4 MR. CHITTOORAN: You know, I will
5 probably have to get back to you on the specific
6 recommendation for that. I'll just kind of give
7 you a flavor of what this really looks like.

8 A few years ago SEMI did a survey of
9 nearly all their membership in terms of what IP
10 actually looks like in terms of violations,
11 right? This was 2016 was the year it was done,
12 and we're re-doing it now.

13 Our companies on average have about an
14 annual loss of, like, \$4 billion collectively,
15 right? So for a whole industry it's a \$4 billion
16 loss in terms of IP violations.

17 And a lot of that violation comes from
18 either their customer supplier relationship,
19 either there's an unintentional leakage or
20 there's more problematically an intentional
21 leakage of IP.

22 And so that's kind of what we're

1 operating with. In terms of the specifics, I'll
2 get back to you with, like I said, what we would
3 like to see.

4 MR. MULLANEY: If I may, Mr.
5 Chittooran, since you are an association that
6 represents global industry, including many
7 members in the U.K., do you see significant
8 opportunities for the United States and the
9 United Kingdom to get together to combat some of
10 the global challenges, whether it's IP leakage,
11 as you put it, or IP theft, or, you know, forced
12 technology transfer or other issues that we
13 arguably together face vis-a-vis other global
14 players? Do you see other opportunities for
15 united action, united front in that respect?

16 MR. CHITTOORAN: Yes, I do. The U.S.
17 has been pretty good of working together with
18 allies. Japan being one of them. European Union
19 being another.

20 And so this industry looks at the U.K.
21 as being another country that's very able to sit
22 at that table and willing to sit at that table,

1 allies that want to work together on confronting
2 IP issues, not only in their own countries where
3 they have them, but also elsewhere.

4 MR. MULLANEY: Maybe I'll turn again
5 to our colleague from the Department of Energy
6 for follow-up questions for Mr. Brzytwa.

7 MS. CEFALU: Thank you. Mr. Brzytwa,
8 a question relating to your testimony about
9 addressing the issue of marine litter.

10 In your written testimony, you stated
11 that you would recommend that the U.S.-U.K.
12 agreement promote global and regional cooperation
13 in facilitating trade in used plastics.
14 Countries lack adequate capacity to recycle used
15 plastics and so ship plastics to other areas for
16 processing. Trade in used plastic enables
17 efficient processing of those materials while
18 creating valuable new materials and business
19 opportunities.

20 How do you foresee the free trade
21 agreement between the U.S. and the U.K. including
22 that?

1 MR. BRZYTWA: If my memory serves me
2 right, I mean, U.S. trade agreements are about
3 creating more opportunities for trade and that
4 even applies to used products.

5 I mean, I think there are some
6 examples in the past where trade in used products
7 had limitations. But I think in this instance,
8 there is such a global commerce priority in the
9 plastics sector where we need to ensure that
10 plastics are recycled.

11 They're not just thrown into the
12 oceans. They're not thrown into landfills where
13 they cease to be valuable to society. I think
14 trade can play a role here.

15 What our industry's experience is, a
16 very significant, I think, paradigm shift over
17 the last year or two, where China -- China was
18 the biggest importer of used plastics for the
19 purpose of recycling. Then China decided, well,
20 we're not going to do that anymore. They
21 instituted an import ban.

22 So now you're looking at a different

1 value proposition in the United States and in
2 Europe and the U.K. on how you can keep the value
3 of the used plastics. You can't really recycle
4 them to the greatest degree possible.

5 So this is a priority issue for us
6 globally, not just with respect to trade
7 agreements but across the board, like, how can we
8 get societies, people, communities, to recycle
9 plastics, to change their behavior so they see
10 recycling plastics as an opportunity as opposed
11 to just something that they have to do or, you
12 know, maybe they don't even think about recycling
13 plastics.

14 Maybe they just throw them away and
15 think they have no value. Well, they do have
16 value. And we want to extract that value for the
17 benefit of society.

18 And I think we want both the U.S. and
19 the U.K. to consider ways to use the trade
20 agreement to promote greater plastics recycling,
21 and trade in used plastics could be a part of
22 that.

1 MR. HERMAN: I did just want to add
2 quickly on that is that the textile industry is
3 increasingly using used plastic PET bottles and
4 other things to make recycled polyester. And so
5 the import ban on China has been a big issue for
6 our industry as well because the quantity of
7 recycled polyesters has dried up significantly
8 over the last year. And so that's a big deal for
9 our industry as well.

10 MS. CEFALU: Just curious, you know,
11 we all see on our plastic the symbol. Does the
12 U.K. have a similar system? Is it different?
13 I'm just asking the question for knowledge.

14 MR. BRZYTWA: I would have to get back
15 to you on that question with some more specific
16 information. I'm just not aware of the U.K.
17 system at this point.

18 MS. CEFALU: Okay. Thank you.

19 CHAIR GRESSER: We have a little bit
20 of time. But I want to thank all of you for
21 giving us your time this morning and as a final
22 question ask the panel at large is there anything

1 that you would like to raise but didn't have the
2 opportunity to do so? Or is there anything that
3 came up in the discussion that you would like to
4 respond to?

5 MR. HERMAN: I did want to just
6 mention that in the case of textiles and apparel,
7 the United States has trade surplus with the
8 United Kingdom, a \$400 million surplus, so a
9 significant surplus. And that goes in all three
10 categories, apparel, textiles and what we call
11 made-ups.

12 And apparel, it's a really great
13 opportunity. Our top five apparel items that we
14 export to the United Kingdom are foundation
15 garments, jeans, dresses, underwear and hosiery.

16 But right now because of the steel
17 duties and the retaliation by the U.K., the
18 European Union, including the U.K., has a duty, a
19 retaliatory duty, on U.S. made jeans and also a
20 few other U.S. made apparel items.

21 We expect that retaliation to grow
22 significantly in our industry if there is action

1 on autos. And that obviously impacts the U.K.
2 and most of the jeans exported in the European
3 Union go to the U.K. And so it's a big deal for
4 our industry. A great opportunity but also it's
5 an opportunity that's being lost right now
6 because of things that are out of our industry's
7 control.

8 MR. BRZYTWA: I think one thing that
9 hasn't come up but I think a couple of members
10 have cited this, just ensuring that the U.K. can
11 actually have good terms at the WTO.

12 It strikes me that the U.K. market
13 access negotiations with respect to goods are
14 having some bumps in the road. And it would be
15 useful -- I mean, we didn't include this in our
16 written submission.

17 But just as a matter of sequencing,
18 we've got to get that done at the WTO. We have
19 to have some parameters for how the U.K. is going
20 to exit the European Union if you want to have
21 this trade negotiation. So I would just
22 encourage, you know, helping the U.K. along in

1 both of those processes.

2 MR. CHITTOORAN: And I second that
3 broader comment.

4 CHAIR GRESSER: Okay. Well, we thank
5 you all very much and this brings this panel to a
6 close.

7 (Whereupon, the matter went off the
8 record at 11:49 a.m. and resumed at 12:01 p.m.)

9 CHAIR GRESSER: Thank you all. Thank
10 you to each of our witnesses for returning for
11 this third panel. I think there's little new to
12 say, so let me turn to Dan to begin the
13 questioning after we hear from our witnesses.

14 MR. MULLANEY: Maybe we can start,
15 because I think there might have been other folks
16 who have cycled in since we did the original
17 introductions -

18 CHAIR GRESSER: Yes.

19 MR. MULLANEY: Can we go down and the
20 panel can, this side can introduce themselves and
21 then we can start with the testimony, maybe start
22 with Joe?

1 MR. FERRANTE: Good morning, Joe
2 Ferrante from the Environmental Protection
3 Agency.

4 MR. SPITZER: Bob Spitzer, Foreign
5 Agricultural Service of the USDA.

6 MR. WENTZEL: Roger Wentzel, USTR
7 Office of Agricultural Affairs.

8 CHAIR GRESSER: Ed Gresser with the
9 USTR.

10 MR. MULLANEY: Dan Mullaney, Assistant
11 USTR for Europe and the Middle East.

12 MR. MANOGUE: Bob Manogue, I'm the
13 Director for Bilateral Trade at the Department of
14 State.

15 CHAIR GRESSER: And let's begin the
16 testimony. Again, please respect the five-minute
17 limit for oral testimony so we have ample time
18 for question and discussion, and let's begin with
19 Mr. Gaibler.

20 MR. GAIBLER: Well, thank you, Mr.
21 Chairman, and fellow Trade Policy Staff Committee
22 members. On behalf of the U.S. Grains Council, I

1 appreciate the opportunity to provide our
2 perspective on the proposed trade agreement with
3 the United Kingdom.

4 At the outset, the Council believes
5 that it is fundamental that food and agriculture
6 issues are a key component of this issue.

7 As the United Kingdom represents the
8 fifth largest global economy, a trade agreement
9 with the U.K. will provide opportunities for free
10 and fair trade, and strengthen our economic and
11 strategic relationship, and help promote economic
12 growth of the European region.

13 Obviously overlaying these
14 negotiations is a concern that rather than
15 operating under a regulatory autonomy from the
16 EU, the current Brexit withdrawal agreement
17 continues to have the U.K. subject to EU tariff
18 schedules and regulatory system, meaning tariffs,
19 quotas, issues like biotech, pesticides, and
20 other SPS issues will be as intractable as they
21 have been with and under the EU.

22 And another key issue obviously is the

1 political decoration of the companies in the
2 withdrawal agreement that, you know, describes
3 the framework for the future relationship between
4 the EU-27 and the U.K.

5 With respect though to the specific
6 issues, particularly for our array of
7 commodities, the EU, as you know, limits the
8 entry of lower priced grains from non-EU
9 countries through quotas and a reference price
10 system based on U.S. exchange prices and
11 transportation costs.

12 Assuming that the U.K. would adopt the
13 reference system duties and the remaining
14 portions of quotas that would have to be
15 distributed, we would advocate that the U.S.
16 government should demand the U.K. eliminate the
17 price reference system and commit to zero duties
18 for U.S. corn, barley, sorghum, dried distiller
19 grains and its coproducts.

20 In addition, there are EU tariffs on
21 ethanol depending on the content level, and as
22 you know, the U.S. is subject continually to an

1 antidumping/countervailing duty on ethanol. It's
2 been in effect since 2012.

3 It is undergoing an expiry review, but
4 we would certainly advocate that, you know, as
5 part of this negotiation, that these tariffs on
6 ethanol should be removed and as well as
7 eliminating the antidumping duty if it's still
8 going to remain applicable as part of this
9 separation.

10 In addition, the asynchronous approval
11 process between the U.S. and the EU, as you well
12 know, severely limits our ability to provide our
13 traditional customers with corn and corn
14 products.

15 Again, the U.K. needs to establish
16 some regulatory autonomy from the EU system to
17 regulate both plant, or biotechnology and new
18 plant breeding innovations and techniques.

19 And for this agreement, the Council
20 would endorse the adoption of the biotech
21 provisions that were included in the U.S.-Mexico-
22 Canada trade agreement.

1 Given the current uncertainty of how
2 the EU will regulate particularly the new
3 breeding techniques given the recent European
4 Court of Justice decision, we believe that these
5 provisions would enable the United Kingdom to
6 work cooperatively and enable the efforts to have
7 more effective policies on these products that
8 are used or produced through these new plant
9 breeding techniques.

10 We would also request that the
11 administration reconsider our previous request in
12 other trade agreements for language supporting a
13 mutual recognition agreement with the United
14 Kingdom on the safety determination of biotech
15 crops intended for food, feed, and further
16 processing. This would provide the U.K. with
17 another alternative as it transitions to a
18 synchronous approval process.

19 Separately, as we've testified in the
20 past, we've seen developments in the EU policies
21 and regulations pertaining to crop protection
22 products that have the potential to negatively

1 impact future grain exports to the EU.

2 Again, you know, the U.K. would need
3 to establish its own independent policies and
4 regulations on crop protection products, and
5 again, to address these issues, the Council would
6 strongly advocate for inclusion of provisions to
7 the sanitary phytosanitary measures again
8 included in USMCA into this U.K.-U.S. agreement.

9 We would also endorse inclusion of
10 several provisions under the national treatment
11 of goods chapter which we have referenced in our
12 formal comments, as well as chapters on technical
13 barriers to trade and custom administration and
14 trade facilitation.

15 So in summary, the Council strongly
16 supported the completion of the Transatlantic
17 Trade and Investment Partnership, which at the
18 time obviously included the United Kingdom, in an
19 effort to remove existing tariffs and quotas, the
20 anti-competitive price reference system, and
21 fundamentally address the regulatory challenges,
22 particularly the long-term asynchronous biotech

1 approval policy and the lingering ethanol
2 antidumping duty.

3 In addition, the most recent
4 challenge, regulatory challenges facing
5 pesticides will have major repercussions on U.S.
6 feed and exports.

7 So the U.S. and the U.K. need to
8 consider a transparent, science-based, and
9 systematic approach to normalize trade and avoid
10 these tariff and non-tariff barriers. Thank you
11 very much.

12 CHAIR GRESSER: Thank you very much.
13 Mr. Thorn?

14 MR. THORN: Thank you, Mr. Chairman.
15 My name is Craig Thorn and I'm here on behalf of
16 the National Pork Producers Council.

17 The NPPC is a national federation of
18 42 state-produced organizations that represents
19 the federal and global interests of 60,000 pork
20 operations.

21 The U.S. pork industry is a major
22 valued market component of the agricultural

1 economy and a significant contributor to the
2 overall U.S. economy. In 2017, U.S. producers
3 shipped 2.5 million tons of pork valued at \$6.5
4 billion to over 100 nations.

5 NPPC shares the administration's view
6 that trade negotiations with the United Kingdom
7 offer a historic opportunity to achieve free and
8 fair trade between the United States and one of
9 its closest allies.

10 As a member of the European Union, the
11 U.K. for decades has been a moderating force in
12 the EU's debate on agricultural policy and
13 regulatory policy. We are hopeful that the same
14 pro-market approach will prevail in the U.S.-U.K.
15 negotiations.

16 Currently, the U.S. pork industry,
17 which produces pork that is second to none in
18 terms of safety, quality, and affordability, is
19 almost completely locked out of the U.K. and the
20 rest of the EU.

21 If the terms of Brexit allow the U.K.
22 to negotiate trade agreements consistent with its

1 pro-market principles, we see the potential for
2 an important and mutually beneficial agreement.

3 However, if the U.K. agrees to remain
4 part of the EU customs union or to maintain
5 regulatory harmonization with Europe, it will be
6 difficult or impossible to achieve the kind of
7 agreement that would benefit U.S. agriculture and
8 the pork industry.

9 In order to benefit our industry, the
10 agreement must deal with the following barriers
11 to trade.

12 First, the U.K. must be willing to
13 eliminate the high tariffs that it currently
14 imposes as a member of the EU. The EU tariff rate
15 quota for pork is only 70,000 metric tons, a
16 quantity that represents less than one percent of
17 the EU consumption.

18 The EU also maintains high end quota
19 duties and a licensing system that makes it
20 difficult for exporters to adjust to market
21 conditions. Out of quota tariffs are prohibited.

22 Secondly, the U.K. must adopt a

1 science-based approach to sanitary and
2 phytosanitary regulation and eliminate WTO
3 inconsistent EU SPS barriers including the
4 following, and I'll list five serious SPS
5 barriers.

6 First, the EU bans the import of pork
7 produced with ractopamine, a feed additive that
8 is widely used by U.S. pork producers. This
9 restriction is not science-based. In fact, the
10 Codex Alimentarius Commission has declared the
11 substance to be safe and has established a
12 residue standard.

13 Second, the EU requires the U.S. to
14 conduct trichinae risk mitigation such as testing
15 or freezing. According to the USDA's Plant and
16 Animal Health Inspection Service, the risk of
17 trichinae in U.S. commercial pig herd is
18 negligible because of biosecurity protocols and
19 modern production systems which ensure a high
20 level of safety.

21 Third, the EU prohibits the use of
22 pathogen reduction treatments for pork even

1 though scientific studies have demonstrated that
2 such treatments produce a safer product, and even
3 though the EU itself has approved certain PRTs
4 for use in the production of beef.

5 Fourth, in contrast to most U.S.
6 trading partners, the EU does not recognize the
7 U.S. meat inspection system as offering a level
8 of safety equivalent to its own system. There is
9 no scientific justification for imposing
10 additional inspection requirements.

11 And fifth, the EU is in the final
12 stages of developing legislation that could
13 prohibit imports of animal products including
14 pork from any producer that does not impose the
15 same restrictions on the use of antibiotics as
16 those the EU is putting in place.

17 This so-called reciprocity provision
18 provides no opportunity for exporters to
19 demonstrate that use restrictions in effect in
20 their countries provide an equivalent level of
21 protection.

22 The EU must reject all of these non-

1 science-based regulations. Any bilateral
2 agreement that doesn't address these problems
3 risks legitimizing WTO inconsistent measures and
4 facilitating their spread to other U.S. export
5 markets.

6 And finally, we urge the
7 administration to negotiate an SPS chapter as
8 part of the U.S.-U.K. agreement that includes the
9 kind of WTO plus disciplines that are part of the
10 new USMCA agreement and to make those disciplines
11 fully enforceable. Thank you, Mr. Chairman.

12 CHAIR GRESSER: Thank you very much.
13 Ms. Morris?

14 MS. MORRIS: Thank you. My name is
15 Shawna Morris and I'm with the National Milk
16 Producers Federation and the U.S. Dairy Export
17 Council. I appreciate the opportunity to testify
18 before you today on behalf of America's farmers,
19 farmer and dairy cooperatives, processors, and
20 dairy exporters.

21 Under the current European Union trade
22 regime, the U.K. imports a significant quantity

1 of dairy products, but only a small portion of
2 those come from the United States.

3 In the meantime, despite the fact that
4 the U.S. is a net dairy exporter while the U.K.
5 is a net dairy importer, the U.K. ships ten times
6 as much dairy to this market as we do to theirs.

7 This lopsided trade dynamic is driven
8 by disparities in market access opportunity
9 created by current tariff and non-tariff
10 policies, not by a lack of interest nor
11 availability of competitive product from American
12 producers.

13 The negotiation of a U.S.-U.K. trade
14 agreement represents a valuable opportunity to
15 invest in the American dairy industry by
16 incentivizing the U.K. to import more American
17 dairy products.

18 Post-Brexit, if the U.K. exercises its
19 independence to establish a regulatory framework
20 that's more conducive to fair trade and safe food
21 products, we see strong potential to expand
22 bilateral dairy trade and bring benefits to both

1 sides of the Atlantic.

2 Given that access to this market is
3 currently dictated by EU policies, our priority
4 issues, the demand resolution, and negotiations
5 with the U.K. largely mirror those identified for
6 talks with the EU.

7 Key elements that we believe must be
8 part of a successful U.S.-U.K. agreement include
9 the following, a mutual and truly comprehensive
10 recognition of our dairy safety systems, and this
11 would include a simplified and streamlined
12 program for permitting safe dairy imports and to
13 replace the current multiple and complex
14 certificates and associated requirements that
15 continue to shift over time.

16 Equally important, it's essential that
17 any negotiated trade agreement incorporates
18 assurances that new barriers to dairy products
19 will not be introduced unless genuinely required
20 to address a new and scientifically supported
21 threat to food safety.

22 We also see these negotiations as an

1 opportunity to simplify and streamline border
2 administration measures and TRQ administration
3 procedures facing U.S. exporters to the U.K. in
4 order to craft regulations that best support
5 smooth trade flows.

6 Furthermore, these talks offer the
7 opportunity to design a fair geographical
8 indication system than the one that's currently
9 enforced, one that both adequately protects GI
10 producers as well as users of common food names.

11 The U.K. has been a model of how to do
12 GIs right to date, protecting unique terms such
13 as West Country Farmhouse Cheddar, but rightfully
14 rejecting any notion that the generic term
15 cheddar should be reserved solely for use by U.K.
16 cheese makers.

17 In keeping with that approach, under
18 a U.S.-U.K. trade agreement, American producers
19 must be able to export to the U.K. common-named
20 dairy products such as parmesan, feta, and other
21 terms well recognized by consumers on both sides
22 of the Atlantic.

1 In addition, in order to avoid future
2 unwarranted restrictions of common food names,
3 the U.K. and the U.S. should agree on terms to
4 govern GI products, including provisions such as
5 developing a non-exhaustive list of names that
6 the two parties consider generic, designing
7 objective criteria to determine what constitutes
8 a generic name, and establishing a solid due
9 process system for considering GI applications
10 that provides a reasonable scope of protection
11 for GIs and robust rights for opponents to GI
12 applications.

13 Another important element are rules of
14 origin in this agreement. In light of the highly
15 integrated nature of U.K. and EU dairy trade
16 today, strict product-specific rules of origin
17 that concentrate the benefits of the agreement on
18 the U.S. and U.K. dairy sectors are needed to
19 ensure that the U.K. is not used as a processing
20 hub for European companies to export their dairy
21 products and milk to the U.S. while benefitting
22 from the terms of the agreement.

1 Providing that a U.S.-U.K. trade
2 agreement removes the non-tariff barriers that
3 are hindering improved American access to the
4 U.K. market and that appropriate product specific
5 rules of origin are employed, we support full
6 tariff elimination on all dairy products over a
7 reasonable time period, and completed in a manner
8 that reflects the current disparity between the
9 tariff levels of the U.K. and the U.S.

10 A comprehensive free and fair trade
11 agreement with the U.K. presents a critical
12 opportunity to disable trade barriers and
13 establish equitable treatment for America's dairy
14 producers and exporters, and thank you for the
15 opportunity to provide input to the
16 administration on this key issue.

17 CHAIR GRESSER: Thank you very much,
18 and Mr. Carlin?

19 MR. CARLIN: Thank you. Good
20 afternoon. My name is Dave Carlin. I'm the
21 Senior Vice President of Legislative Affairs and
22 Economic Policy at the International Dairy Foods

1 Association.

2 IDFA represents the nation's dairy
3 manufacturing and marketing industry, which
4 supports nearly three million jobs and has an
5 overall economic impact of more than \$628
6 billion.

7 IDFA members range from multinational
8 organizations to single plant companies.
9 Together, they represent 90 percent of the milk
10 processed and marketed in the United States.

11 After being a net importer of dairy
12 products roughly a decade ago, the United States
13 now benefits from a dairy trade surplus of more
14 than \$2 billion and sends American dairy products
15 to over 140 countries around the world.

16 Free trade agreements like the USMCA
17 that open markets and lower trade barriers are
18 critical to continuing this trend of growing the
19 U.S. dairy exports. Maintaining and expanding
20 access to international markets is essential for
21 the future success of the U.S. dairy industry.

22 The U.S. dairy industry welcomes a

1 trade agreement with the U.K. It is imperative
2 that this agreement be comprehensive in scope and
3 provide meaningful market access across all dairy
4 tariff lines. Tariffs and non-tariff barriers
5 must be eliminated to give U.S. dairy exports a
6 level playing field.

7 The U.K. has the potential to be a
8 large export market for the U.S. dairy industry
9 as it is a net importer of dairy products. In
10 2017, the U.K. imported \$3.1 billion in dairy
11 products. Of that, only \$8.8 million was from
12 the United States while \$3 billion was from the
13 European Union.

14 As a member of the EU, the U.K.
15 tariffs on U.S. dairy imports are significant.
16 For instance, the tariff on U.S. cheese is 188.20
17 Euros per 100 kilograms. The tariff on U.S.
18 butter is 186.90 Euros per 100 kilograms, and the
19 tariff on U.S. skim milk powder is 125.40 Euros
20 per 100 kilograms.

21 Assuming tariffs are eliminated, there
22 are opportunities for the U.S. to export larger

1 amounts of cheese, butter, whey, and milk
2 powders, as well as cream, yogurt, buttermilk,
3 and condensed milk to the U.K.

4 Until the outcome of Brexit is settled
5 and a customs arrangement between the U.K. and
6 the EU is finalized, it is difficult to quantify
7 the potential gain in market share of the United
8 States.

9 Furthermore, it is critical that an
10 independent United Kingdom not adopt any of the
11 EU regulations that curtail U.S. dairy exports to
12 that region. Otherwise, any benefit or gains
13 made in market access will not be realized.

14 I would like to highlight two areas
15 where improvements to existing EU regulations
16 could yield great benefits to U.S. dairy exports
17 to the U.K.

18 First, geographical indications are a
19 significant market challenge for the U.S. dairy
20 industry. GIs are an attempt by the EU to
21 monopolize uses of certain cheese and other food
22 names the United States and many other countries

1 regard as generic.

2 Retaining the use of product names
3 that have long been commonly used in the United
4 States and around the world is a critical issue
5 for the U.S. dairy industry with generic cheeses
6 being the primary target.

7 The importance of these well-
8 recognized cheese names goes beyond their
9 significant commercial impact to the United
10 States dairy industry.

11 Preservation of the right to continue
12 to use these names affirms what producers
13 throughout much of the new world and certainly
14 this country strongly believe to be true, that we
15 are using these terms in good faith and largely
16 as a result of the influence of generations of
17 European immigration.

18 The EU's desire to turn back the clock
19 and claw back names that had already become
20 generic is an outrage to many U.S. corporations
21 and companies small and large that helped build
22 the market for these products, as well as to the

1 industry as a whole through the incorrect
2 suggestion that our use of these terms has not
3 been legitimate.

4 IDFA urges the U.S. government to
5 oppose any effort by the U.K. to adopt similar GI
6 regulations that ban our food producers from
7 using cheese names that have long been generic
8 internationally and in the U.S. market and run
9 counter to international trade commitments.

10 Secondly, we need to have a stronger,
11 more scientific set of sanitary and phytosanitary
12 measures that will govern U.S.-U.K. trade in the
13 future. The U.S.-Mexico-Canada agreement chapter
14 on sanitary and phytosanitary measures should
15 serve as the basis for the U.S.-U.K. trade
16 agreement.

17 The agreement should include critical
18 improvements, including strengthening disciplines
19 on science and risk analysis, provisions on
20 equivalence and regulatory systems, disciplines
21 on import checks, transparency in rulemaking, and
22 adoption of trade facilitated residue levels and

1 advantageous presence mechanisms.

2 The U.S. dairy industry faces high
3 tariffs and other non-tariff barriers such as
4 restrictions on common cheese names due to the
5 United Kingdom's membership in the European
6 Union.

7 Once the U.K. is no longer a member of
8 the EU, IDFA urges the administration to
9 negotiate a comprehensive trade agreement with
10 the U.K. that covers all dairy products,
11 eliminates current tariffs, increases market
12 access, incorporates strong SPS provisions, and
13 protects the use of common cheese names.

14 Thank you for the opportunity to
15 testify at today's hearing and I look forward to
16 answering your questions.

17 CHAIR GRESSER: Thank you all very
18 much. Dan, shall we start the questions?

19 MR. MULLANEY: Sure, I think what
20 we'll do is maybe move down the table with one or
21 two questions and maybe go several rounds, and
22 for the first questions, I'm going to defer to

1 our Office of Agriculture, Roger Wentzel.

2 MR. WENTZEL: Thank you. Mr. Gaibler,
3 you mentioned in your statement your concerns
4 regarding EU pesticide policy and I wondered if
5 there are any particular substances of concern if
6 the EU were to continue the EU's approach on
7 pesticides, the hazard-based approach, and what
8 are your thoughts regarding the U.K. taking,
9 going in a different direction and taking a
10 science and risk-based approach?

11 MR. GAIBLER: Yeah, we're in the
12 process of trying to identify all of the
13 substances that are caught up under the EU's
14 pesticide regulatory policies, particularly as it
15 relates to, you know, the category of pesticides
16 that are viewed, you know, as being high risk,
17 and then, you know, just the list of pesticides
18 that their registrations are expiring and the
19 reconsideration of those under the new process.

20 One pesticide that we are aware of is
21 called glufosinate. It is used by our producers
22 intermittently, so we are following that one, but

1 we are trying to track down and pay attention to
2 the list of various pesticides that are coming up
3 for either renewal or on the targeted list that
4 are likely to go through this process that's
5 going to, you know, take a more, in our view, a
6 harsher approach in terms of the level of
7 determination, you know, and whether it will be
8 viable in terms of resulting import tolerances or
9 no import tolerances at all, you know, a default
10 zero.

11 You know, with respect to the U.S. or
12 U.K. being more science-based, you know, I've
13 heard the U.K. described as the pebble in the
14 EU's shoe when it comes to issues like science-
15 based provisions.

16 And we see this, you know, clearly in
17 the biotech approval process where the risk
18 management process involves the 28 member
19 countries and the EU is consistently supporting
20 the authorization of the biotech, and we believe
21 they would have the same issues with respect to
22 pesticides.

1 And, you know, we've heard that, you
2 know, obviously the British farmers are, you
3 know, much like the rest of the European farmers,
4 are already concerned about the loss of
5 pesticides that they have access to.

6 And again, that leads us to have more
7 concern that because of the pressure they're
8 facing, that we're going to see increasing focus
9 on removing import tolerances for pesticides that
10 we use.

11 MR. WENTZEL: Thank you, just one
12 follow up. I think you said towards the end of
13 your response that you saw, just let me clarify
14 that you see the U.K. as being more supportive to
15 approval of biotech advances. Is that correct?

16 MR. GAIBLER: Yes, they have
17 consistently voted in approval of the risk
18 assessments that are provided by the European
19 Food Safety Authority, and, you know, again,
20 talking to, you know, officials in the U.K., you
21 know, they take that same science-based approach
22 on issues like pesticides.

1 MR. WENTZEL: Thank you, just one more
2 question before we move to the next panelist.
3 You noted your interest in the approach that we
4 took on biotech in the USMCA agreement as a model
5 for this agreement.

6 So I was wondering if you could give
7 your thoughts on the U.K.'s ability to meet those
8 provisions that are in the USMCA and do you think
9 that would pose any particular challenges for the
10 U.K.?

11 MR. GAIBLER: Well, you know, they are
12 going to have to, if they are going to, you know,
13 assume or obtain this regulatory autonomy, they
14 are going to have to obviously come up with their
15 own regulatory infrastructure and, you know, it
16 may be somewhat of a challenge to do that, but
17 again, you know, the provisions that are in the
18 USMCA, for example, provides a process to deal
19 with low level presence.

20 You know, we're suggesting the use of
21 looking at, you know, the determination of using
22 like five OECD countries that have gone through

1 the approval process and have evaluated those
2 results, and so they have approved the process.

3 So, you know, in addition to what's in
4 the biotech provisions, particularly there are
5 provisions as well in there that will deal with
6 the new plant breeding techniques that was, you
7 know, precedent setting that was in the USMCA.
8 It provides, you know, a mechanism. They are
9 binding provisions unlike what they were under
10 TPP.

11 So we think it's the right mix of
12 policy to, you know, to be part of this
13 agreement. And again, you know, we believe that
14 the U.K. would be more open to that, you know,
15 clearly than what we believe the EU did, which we
16 obviously would also like the EU to adopt under a
17 bilateral.

18 MR. WENTZEL: Thank you.

19 MR. MULLANEY: Okay, this question is
20 for Mr. Thorn. I will refer to Mr. Spitzer from
21 the U.S. Department of Agriculture.

22 MR. SPITZER: Okay, Mr. Thorn, thank

1 you for your testimony this morning and your
2 written comments. In the written testimony, you
3 didn't bring up the idea of an SPS chapter, but
4 in your testimony, you recommended that we have
5 an SPS chapter in the agreement.

6 I wonder if there are specific
7 elements of the chapter that you thought would be
8 valuable, and are there other elements from the
9 USMCA agreement that you think would be valuable
10 additions to a bilateral agreement between the
11 United States and the U.K.?

12 MR. THORN: Thank you. Yes, you're
13 right. There was no mention of the SPS chapter
14 in our written testimony, but as we discussed in
15 the oral testimony, we decided to add a reference
16 because we are big admirers of that achievement
17 in the USMCA negotiations, and we thought that we
18 should mention it in this context. We hope that
19 is a high priority for the U.S. in this
20 negotiation.

21 The provisions that I think will be
22 most useful are the provisions related to risk

1 analysis and risk management. That, after all,
2 is the, those are the core disciplines of the WTO
3 agreement, and the WTO agreement is strong, but
4 we have enough experience with it now that we can
5 identify some of the areas where it needs a
6 little bit more strengthening.

7 I thought especially the additional
8 detail on risk assessment and risk management
9 that was included in the USMCA is potentially
10 valuable and we're pleased too that in the end,
11 we would agree that those provisions should be
12 fully enforceable through binding dispute
13 settlement.

14 MR. SPITZER: Were there any other
15 chapters or provisions from the USMCA that you
16 think might be important?

17 MR. THORN: Well, I guess the obvious
18 feature of the USMCA that we in the industry
19 would like to see is that it was comprehensive or
20 nearly comprehensive. I guess it wasn't totally
21 comprehensive, but anyway, it covered pork
22 products fully.

1 Now, you know, I'm frankly quite
2 worried that we're hearing some of, hearing from
3 the U.K. comments similar to those that we're
4 hearing from some European officials about the
5 need to add agriculture all together or the need
6 to avoid sensitive regulatory issues.

7 And it bothers me in particular that
8 we've heard comments from the Agriculture
9 Minister about, you know, the U.K. refusing to
10 lower its standards to allow in unsafe U.S.
11 product.

12 Of course we don't view the issue that
13 way at all. We don't view U.S. food safety
14 standards to be lower than EU standards and we
15 view many of the EU standards that have blocked
16 U.S. access as being non-scientific and WTO
17 inconsistent.

18 And so I think the USMCA on that issue
19 was, is totally defensible, both from a
20 standpoint of consumer safety and WTO
21 consistency, and that's the kind of agreement
22 that we need to get in this negotiation as well.

1 MR. MULLANEY: Great, well, so for
2 questions for Ms. Morris, I'm going to defer
3 again to Roger Wentzel of the USTR's Office of
4 Agriculture.

5 MR. WENTZEL: Thank you. Ms. Morris,
6 I wondered if you could maybe say a little bit
7 about what U.S. dairy products you feel would
8 benefit the most from tariff elimination in a
9 U.S.-U.K. agreement?

10 MS. MORRIS: Thanks. We have heard
11 interest from our members on a broad variety of
12 them. I concur with the list of products that
13 David mentioned during his testimony.

14 So included among those are some of
15 the major commodity areas, cheese, butter,
16 different varieties of whey products, skim milk
17 powder, as well as some of the other more
18 tangential less commodity block areas like
19 condensed milk.

20 So really I think there's broad
21 appetite given the similarities in the market and
22 stymied ability to be able to meet the needs of

1 consumers, excitement about the opportunity to be
2 able to do that if the tariff and non-tariff
3 areas are tackled.

4 MR. WENTZEL: Thank you, and just
5 related to that, you mentioned the concerns you
6 have currently with the EU regarding TRQ
7 administration and all of the regulation around
8 quotas. Can you elaborate a little bit on that
9 and how that might relate to a future agreement
10 with the U.K.?

11 MS. MORRIS: Sure, one of the
12 challenges that we've heard from our exporters
13 about in terms of shipping to the EU has been how
14 they handle TRQ allocations, particularly the
15 licensing.

16 The issue we've heard about the most
17 frequently has been divvying out of the licenses
18 in levels that are not commercially viable, so
19 their particularly larger customers that may be
20 interested in sourcing from the U.S. aren't able,
21 at least easily, to be able to combine the volume
22 that they need through that TRQ process.

1 The other issue with TRQ utilization
2 is on the tariff side too of course, the fact
3 that the EU has quite sizable in-quota tariffs
4 for dairy products in comparison to the
5 relatively negligible U.S. in-quota tariffs.

6 MR. WENTZEL: Thank you. Do I have
7 time for one more? Just maybe switching to SPS,
8 it's kind of piggybacking on the question to Mr.
9 Thorn. I think in your statement, you pointed to
10 the USMCA SPS chapter as a potential model, and I
11 just wondered if you could maybe elaborate on
12 that a little bit, what elements of that chapter
13 you would want to see in a U.K. agreement?

14 MS. MORRIS: Sure, yeah, we thought
15 that the USMCA SPS chapter and importantly its
16 enforceability provisions were a particularly
17 valuable advancement.

18 We certainly think that folding that
19 in here into this agreement would be quite
20 helpful, but I'd add that for the dairy dynamics
21 between us and Europe, including the U.K., it
22 would not be sufficient.

1 So unlike in the USMCA where there
2 weren't sizable SPS challenges unique to the
3 dairy sector that needed resolution, that is not
4 the situation we face here, so we would see the
5 SPS chapter modeled strongly off of the USMCA
6 text as being an important floor, but then
7 certainly the need for specific work being done
8 on a sector by sector basis where there are
9 concrete issues that need ironed out in those
10 particular areas.

11 Our comments on the EU agreement
12 detail out what those are, and of course those
13 are just as applicable in this context too.

14 MR. MULLANEY: I'm going to turn back
15 to Bob Spitzer for questions for Mr. Carlin.

16 MR. SPITZER: Mr. Carlin, thanks for
17 your testimony this morning. Similar to some of
18 the other questions we've asked, you mentioned
19 the SPS chapter from the USMCA. Were there other
20 chapters from the USMCA, other provisions that
21 you thought would be important to include in the
22 U.S.-U.K. agreement?

1 MR. CARLIN: Well, we singled out the
2 SPS chapter for reasons that are similar to those
3 that were expressed by other panelists.

4 It's, I think, a template, we believe,
5 for building an agreement with the U.K. that
6 gives us the opportunity or puts us in a position
7 to take advantage of the significant opportunity
8 we see for U.S. dairy in that market.

9 Echoing a little bit about what Mr.
10 Thorn said about the comprehensive nature of the
11 USMCA, obviously, you know, the markets that we
12 cover here with the USMCA are significant and
13 important to U.S. dairy.

14 Mexico is our number one market, and
15 the fact that we've been able to have a
16 comprehensive agreement that allows such free
17 trade in dairy products among our two countries
18 is a significant victory that's been achieved
19 over a period of time that we want to see, we'd
20 love to see replicated with the U.K. if that's
21 achievable.

22 We start from a bit of a disadvantage

1 because of the history with the EU and the
2 reliance of the U.K. up to this point on their
3 regulatory regime. We are hopeful that there is
4 an opportunity here to rectify that so that we
5 can have a level playing field that does not
6 exist at present.

7 MR. SPITZER: Thank you. Geographic
8 indications was an important element of your
9 testimony and I wonder if there are specific
10 disciplines that you'd like to see included in
11 the agreement on that topic?

12 MR. CARLIN: Well, there are a number
13 of very important and very detailed
14 recommendations that we would make in that regard
15 as we've alluded to. I think both my colleague
16 from the U.S. Dairy Export Council and I have
17 both talked about the importance of having a
18 strong GI provision in this agreement.

19 The U.K. historically has done a
20 better job on this than the EU writ large by
21 recognizing that there are geographic linkages to
22 certain products that need to be maintained, but

1 not necessarily going above and beyond that to
2 include generic cheese names that have again been
3 long used in the industry, over decades in this
4 country, and frankly used to build markets in
5 other countries that are now susceptible to being
6 clawed back.

7 I look at Mexico as a good example of
8 that where asiago cheese is a cheese that was
9 relatively unknown in Mexico except for the fact
10 that U.S. companies marketed it there and
11 developed a market, and now we're seeing as a
12 result of the EU-Mexico agreement, some
13 possibilities there that that cheese name might
14 be treated as a cheese name that only European
15 countries could use, European companies could
16 use.

17 So that, this is a real challenge for
18 our industry, and so in addition to sort of the
19 geographic linkages, the other thing I would
20 point out is having a transparent process by
21 which companies can go back in later and protest
22 and advocate for their position would be

1 important to include.

2 That's not something that is available
3 largely now, and I think that's an improvement
4 that this agreement could make having, again,
5 building on some of the work that's been done
6 previously, so we would like to see that included
7 as well.

8 MR. MULLANEY: Well, great. I think
9 looking at the clock, I think we have time for a
10 second round of questions, fortunately. Thanks
11 to the panel for offering really super, expert
12 advice on a lot of the issues affecting
13 agriculture.

14 One maybe overall question I'd ask
15 maybe the panelists to consider, and if you would
16 like to address it, feel free to during this
17 second round. Most of the emphasis of the
18 testimony this morning has been on the need for
19 additional regulatory autonomy on the part of the
20 U.K. so that they can do things a little bit
21 differently from how they've been done in the
22 past.

1 So one question is as the U.K. moves
2 towards Brexit, and as they consider their future
3 relationship with the EU, are there elements of
4 the high degree of integration between the U.K.
5 and the EU that are beneficial to the industry
6 that we should keep in mind as we're engaging
7 with the U.K.?

8 Again, I appreciate this doesn't
9 relate specifically to anybody's testimony, so
10 don't feel an obligation to respond, but if there
11 are things we should be aware of -

12 We've heard much about the positive
13 side of additional regulatory autonomy in order
14 to do things differently. Are there risks to
15 that in terms of the relationship with the U.K.
16 and the EU that could impact the industry that we
17 should be aware of going forward?

18 It would be interesting to hear views
19 on that, but with that, maybe I'll turn to Roger
20 again to start off the second round.

21 MR. WENTZEL: Thank you, Dan. Mr.
22 Gaibler, just one follow up on your discussion on

1 biotech. You had recommended a mutual
2 recognition approach with the U.K. on safety
3 determinations for biotech crops, and I just
4 wanted - it's not something we've ever done, and
5 I just wondered from your perspective, is that an
6 approach that would require U.S. legislation
7 changes in our legislation?

8 MR. GAIBLER: To the best of my
9 knowledge, it would not. It may require some,
10 you know, regulatory modifications, but it is one
11 practice that is in effect. For example, the
12 country of Vietnam has a mutual recognition
13 process in place.

14 Again, it involves them evaluating
15 five OECD countries, either exporters or
16 importers, that have gone through and done risk
17 assessments of biotech traits that they are
18 currently considering.

19 And they, you know, rather than go
20 through the risk assessment process themselves
21 because they don't have the ability, they don't
22 have the regulatory infrastructure, they, you

1 know, simply review, have experts review those,
2 and then based on that, will adopt the traits.

3 Now, I will say that, you know,
4 Vietnam right at this point is lagging behind,
5 but for different reasons, but it is an agreement
6 or it is a process that has, you know, been
7 around for a while. It's been discussed, you
8 know, by numerous nations. You know, the global
9 LLP network that the Department of Agriculture is
10 involved with talks about mutual agreement as
11 well as low level presence.

12 Again, you know, we would offer that,
13 you know, because it, you know, it provides a
14 different way, a bridge until the point where the
15 U.K. could actually have a regulatory system or
16 process in place.

17 You know, and just secondarily, your
18 earlier questions about whether they could have a
19 process like that for SPS or biotech, you know,
20 it's my understanding that, one of the -- in
21 addition to the U.S., one of the other top
22 prospects that they're looking for in terms of

1 trade negotiations is with the CPTPP group, the
2 CPT 11.

3 So the fact that they're demonstrating
4 a strong interest to me and we're really, and
5 they obviously understand the provisions in
6 there, and those are the provisions that are
7 obviously, as you well know, you negotiated for
8 us in USMCA.

9 So I don't think it's a real heavy
10 step for them if they're committed to independent
11 trade policies, particularly if that's a
12 priority.

13 MR. WENTZEL: Thank you.

14 MR. SPITZER: Mr. Thorn, I want to
15 talk just a little bit about antimicrobial
16 resistance. I wondered if the EU process is just
17 beginning as a three-year phase in, and I
18 wondered if your industry has done work kind of
19 trying to figure out what your concerns are, your
20 priorities would be in terms of whatever they're
21 called, substances that would be at risk that we
22 should be trying to focus on?

1 MR. THORN: Well, obviously this is an
2 issue that's of big concern to the pork industry.
3 We don't yet have a very good target to shoot at
4 since we don't know what substances are going to
5 be on the list of substances that will be subject
6 to use restrictions in the EU. That process of
7 building that list is just starting.

8 The list that's already in place or,
9 you know, there's already a list that the
10 European Medical Association put together that
11 might provide a template, but we don't know if
12 it's going to bear any relationship to the final
13 list that comes out of this process.

14 But one thing that we do know very
15 clearly about the legislation because it's right
16 there in black and white is that it's going to be
17 difficult or impossible no matter how much
18 flexibility the EU shows under its implementing
19 legislation for them to allow imports of animal
20 products from producers that don't have in place
21 exactly the same use restrictions that they're
22 developing.

1 We don't know what those use
2 restrictions are going to be. We don't know what
3 substances will be on that list, but we do know
4 that the legislation says quite clearly that
5 those standards, whatever they end up being, will
6 be imposed on third countries, third country
7 operators.

8 And so, you know, that's a fundamental
9 problem, whether that list is short or long.
10 It's just a bigger problem if it's a long list of
11 substances.

12 And so, you know, I have a hard time
13 imagining how we could accept a trade agreement
14 with the U.K. that involves implementation of
15 that legislation because it would be, when it's
16 in place in three years' time, it very well could
17 be to complete cutoff in imports of animal
18 products from third countries.

19 And could I return to Dan's question
20 because I think it's an important one to consider
21 at this point? I think it's accurate to say that
22 most U.K. agricultural trade associations are in

1 favor of continuing regulatory harmonization, and
2 I think most of them are probably in favor of
3 staying inside the customs union as well, and
4 it's pretty obvious why that's the case.

5 The overwhelming majority of U.K.
6 agricultural exports go to the continent, and so
7 there's, I guess, understandable concern of
8 disruption in trade if they were to give up
9 regulatory harmonization.

10 They've got a fundamental decision to
11 make. I don't see how they could keep regulatory
12 harmonization and still negotiate trade
13 agreements with countries like the U.S., but I
14 realize it's not an easy decision.

15 And I have a friend who is a title
16 official in the U.K. government who was involved
17 in the Brexit debate who points out as often as
18 he's given the opportunity that there are a lot
19 of countries that export to the EU that don't
20 have regulatory harmonization with the EU, that
21 it is possible to maintain that trade if that's
22 what they want to do, if they want to maintain

1 their markets in Europe by segregating
2 production.

3 And it's not easy. It's expensive.
4 It's the kind of thing we complain about all of
5 the time. We hope that if they end up doing
6 that, they will then help us argue in favor of
7 changes in the EU regulatory policy, but that's
8 really their choice. They do that or they give
9 up the opportunity to negotiate trade agreements.

10 MR. MULLANEY: Thank you for that.
11 Roger?

12 MR. WENTZEL: Thank you. Ms. Morris,
13 just you discussed GIs in your statement, and Mr.
14 Carlin also addressed that issue, but I just
15 wondered if you had any further comments or
16 advice for us in terms of what sort of principles
17 we would want to pursue in an agreement with the
18 U.K. to get at some of these issues? Thank you.

19 MS. MORRIS: I guess first and
20 foremost, I'd convey that in my view, this is a
21 very different opportunity than the dynamic with
22 Europe, and that is because to date at least in

1 the food space, the U.K. has been such a
2 reasonable actor on this.

3 And whenever we have approached them
4 about it, if anything, we hear a little bit more,
5 you know, similar attitudes from them in terms of
6 being dismayed or mystified even at the extremes
7 to which some of the other European Union member
8 countries take this whereby you aren't simply
9 protecting legitimate, unique terms, and you're
10 eradicating the use of generic names by all of
11 the other competitors in the market.

12 So a result on this we think could
13 actually open up opportunities both for our
14 industry and the U.K. industry. They used to
15 produce some of these products that then were
16 outlawed under EU regulations not all that long
17 ago.

18 Reclaiming their right to make those
19 and reestablishing the right of our companies to
20 ship those products to their market would be a
21 win/win for both of us, as well as the
22 opportunity to forge a more reasonable and

1 positive template on this moving forward.

2 I would point to some of the USMCA
3 provisions as being helpful to build further upon
4 to help achieve that goal. Certainly the side
5 letter on cheese names in the USMCA was an
6 important precedent, one that needs to be
7 certainly significantly expanded to be fully
8 inclusive, but a very good start, as well as a
9 number of the GI-related provisions in the
10 intellectual property chapter that made important
11 advances too. Thank you.

12 MR. SPITZER: Mr. Carlin, following up
13 on Dan's question, I wonder if you've got any
14 views related to the risks of the U.K. going a
15 separate way in terms of regulations? Are there
16 opportunities lost if they do that?

17 MR. CARLIN: Well, I guess from a
18 dairy perspective, in some ways we've got nowhere
19 to go but up in terms of our ability to reach
20 that market.

21 So I guess my short answer is we're
22 prepared to again be a constructive partner with

1 you all as you engage in this process to see if
2 we can come up with an agreement that will open
3 that market in a significant way to level the
4 playing field that currently is very unlevel, and
5 it provides a bit of a foothold in an important
6 part of the world for our industry.

7 We are very export dependent. We are
8 excited about this opportunity. There are a lot
9 of unknowns, a lot of uncertainties in this
10 particular negotiation that we'll know a little
11 bit more about perhaps in 60 days, but we, you
12 know, again, we see it as a good market for our
13 industry and we think that as we go forward, we
14 see a lot of potential upside and not a lot of
15 downside.

16 CHAIR GRESSER: Again, thanks to all
17 of you. As a final question to the panel as a
18 whole, I would like to give you a chance to raise
19 any issues that you would like to raise, but
20 didn't have a chance to do so earlier, or respond
21 to any comments that you feel you'd like to
22 answer, or finally, just give us any last

1 thoughts you'd like to leave us with as we close
2 the panel.

3 MR. MULLANEY: You may have to talk
4 loud because it seems that our audio system has
5 gone down. The audio system is now on furlough.

6 CHAIR GRESSER: Yes, if not, then -

7 MR. MULLANEY: Well -

8 CHAIR GRESSER: Oh, I'm sorry, okay.

9 MR. GAIBLER: Well, I just wanted to
10 reiterate this lingering issue that we have with
11 the EU on the ethanol duty, and again, you know,
12 I've had discussions, you know, with Roger about
13 this, but, you know, how does things like this
14 ethanol duty that the EU has, you know, transfer
15 or, you know, interplay with this negotiation.

16 Frankly, you know, what we would like
17 to see is, you know, the whole thing dropped.
18 It's been in effect since 2012. You know, the
19 main issue raised was the concern because we had
20 a credit in place. That's been dropped.

21 We have very - you know, we are
22 actually, you know, exporting ethanol to Europe

1 right now in larger volumes, but it's all being
2 immediately transshipped to other markets to
3 avoid the tariffs.

4 And so we would really, frankly,
5 number one, if you could help us just get rid of
6 the thing so it isn't an issue for either the EU
7 or the U.K. would be very helpful.

8 CHAIR GRESSER: Okay, well, then thank
9 you all very much, and this panel has come to a
10 close. We will be taking a short break for lunch
11 and we'll reconvene at 1:30.

12 (Whereupon, the above-entitled matter
13 went off the record at 12:58 p.m. and resumed at
14 1:36 p.m.)

15 CHAIR GRESSER: Please come to order.
16 Welcome to this fourth panel of our Trade Policy
17 Staff Committee hearing on the U.S.-U.K. Trade
18 Agreement. We want to welcome all of our
19 witnesses and thank each of you for spending some
20 of your time with us on this possibly snowy
21 afternoon. We look forward to your testimony.
22 But I think before we get started I would like

1 our Panelists to introduce themselves, and we can
2 start at the left end of the table.

3 MR. CORSO-PHINNEY Hi, my name is Eli
4 Corso-Phinney with the U.S. Department of
5 Commerce, United Kingdom Desk Officer.

6 MS. HOLMAN: Hi, I'm Amy Holman from
7 the Department of State. I'm the Office Director
8 in the Office of Multilateral Trade Affairs.

9 MR. WEDDING: Good afternoon. I'm Tim
10 Wedding, the Deputy Assistant USTR for Europe.

11 CHAIR GRESSER: Ed Gresser, Assistant
12 U.S. Chair for Trade Policy and Economics and
13 TPSC Chair.

14 MR. SULLIVAN: Matt Sullivan, U.S.
15 Treasury, Office of International Trade.

16 MS. BONNER: Sarah Bonner, U.S. Small
17 Business Administration, Office of International
18 Trade.

19 MS. SNYDER: And Anne Snyder, Office
20 of Global Affairs, U.S. Department of Health and
21 Human Services.

22 CHAIR GRESSER: Great. Without

1 further ado, let's get started. I'd like to ask
2 each of the panelists to present beginning with
3 Mr. Mullen and going on in -- from my right to my
4 left, and would ask each of the panelists please
5 to observe the five-minute limit on oral
6 testimony. It's a large panel and we would very
7 much want to hear from all of you and have
8 adequate time for discussion and questions.

9 And with that, Mr. Mullen, would you
10 begin?

11 MR. MULLEN: Thank you, Chairman
12 Gresser. I want to thank the entire Panel for
13 the opportunity to talk today. I'm testifying on
14 behalf of the Express Association of America
15 which represents DHL, FedEx and UPS, the three
16 largest express delivery service providers in the
17 world. EAA member companies serve over 200
18 countries, have estimated annual revenues in
19 excess of \$200 billion, employ more than 1.1
20 million people, and deliver more than 30 million
21 packages each day.

22 The U.S.-U.K. Trade Agreement presents

1 an excellent opportunity to speed the flow of
2 trade by improving and harmonizing regulations,
3 and EAA believes regulatory harmonization should
4 be the major focus of this negotiation.

5 The first area for harmonizing
6 regulations is customs and trade facilitation
7 measures which are complementary to the process
8 of maximizing the benefits of tariff reductions.
9 Specific opportunities with regard to the U.K. in
10 this area include: separating the physical
11 release of goods from the duty and tax collection
12 process; providing for the immediate release of
13 express shipments upon arrival; creating common
14 data elements for import and export to simplify
15 the clearance process and reduce programming
16 costs for both government and industry; creating
17 a single window to allow the trade community to
18 provide the information to satisfy all government
19 agency requirements with a single data
20 transmission; harmonizing the informal entry
21 level between the U.S. and the U.K. to provide a
22 simplified clearance process for lower-value

1 goods that still require an entry; enhancing the
2 mutual recognition of our respective trusted
3 trader programs by providing a common application
4 process; and a broader set of common benefits for
5 program membership.

6 Raising the U.K.'s current de minimis
7 level for duties of 135 pounds, about 173 U.S.
8 dollars, to a more commercially meaningful level
9 should also be an objective in the talks. As a
10 highly-developed economy with a modernized
11 customs agency the U.K. should recognize the
12 considerable savings that accrue to both the
13 public and private sectors from a higher de
14 minimis level.

15 The U.K. has announced its intention
16 to eliminate its current de minimis level of 15
17 pounds, about 20 U.S. dollars, for taxes and
18 replace it with a simplified system that moves
19 collection of taxes off the border. The U.S.
20 should encourage the U.K. to ensure the new
21 approach includes a simplified process for
22 collecting the taxes that all traders can easily

1 access and a periodic schedule for paying the
2 taxes such as monthly or twice yearly rather than
3 the current transaction-by-transaction basis.

4 As has been pointed out in bipartisan
5 letters to USTR from both the Senate and the
6 House, under no circumstances should the United
7 States suggest it would lower its de minimis
8 level as negotiating leverage in these or any
9 other trade negotiations. The border clearance
10 processes of the United States set a gold
11 standard for best practices that is not matched
12 by any other country.

13 Our relatively high de minimis value
14 is one of these best practices as it allows small
15 and medium businesses to import low-value
16 components for a manufacturing process or goods
17 for retail sales without the burden of
18 contracting with a broker or concerns over
19 customs compliance which can be handled by the
20 carrier. These competitive advantages would be
21 lost if the U.S. de minimis value were lowered.

22 Reducing the de minimis level is the

1 equivalent of raising taxes as it will cause more
2 shipments to be subject to tariffs which is just
3 a tax by another name. This would be a highly
4 regressive tax as it falls mostly on small
5 businesses and individual consumers for whom
6 paying the tariff could be particularly
7 burdensome. That is why a lower de minimis rate
8 is strongly negative for the U.S. economy. It
9 imposes higher bureaucratic costs on the small
10 businesses likely to be the most dynamic
11 entrepreneurs in the U.S. business community.

12 Another area for harmonizing
13 regulations is services trade. The U.S.-U.K.
14 Trade Agreement should include binding market
15 access and national treatment commitments in
16 transportation and logistic services and the
17 delivery services annexed where the parties
18 commit to non-discriminatory treatment of non-
19 postal providers.

20 Thank you again for the opportunity to
21 testify. I look forward to your comments.

22 CHAIR GRESSER: Thank you very much.

1 Mr. Simchak?

2 MR. SIMCHAK: Thank you. Thank you
3 very much, Mr. Chairman and to all the members of
4 the Panel this afternoon. And I appreciate the
5 opportunity to testify today on the goals of the
6 U.S. insurance industry for trade negotiations
7 between the U.K. and the U.S.

8 My name is Steve Simchak and I serve
9 as Vice President and Chief International Counsel
10 for the American Property Casualty Insurance
11 Association, which was formed on January 1 from
12 the merger of the American Insurance Association
13 and the Property Casualty Insurance Association
14 of America.

15 My testimony today will highlight the
16 most important issue areas for our association in
17 the negotiations, and I would urge those who are
18 interested in more detail to read APCIA's January
19 14th written submission.

20 The insurance industries on both sides
21 already enjoy close links and arguably constitute
22 the most important bilateral insurance

1 relationship in the world. A bilateral trade
2 agreement that includes deep innovative
3 commitments on financial services will strengthen
4 that relationship benefitting people and
5 businesses in both countries and can serve as the
6 best model for future trade agreements with other
7 partners.

8 We therefore encourage the governments
9 to think creatively about how to best shape new
10 commitments on financial services that will
11 enhance trade and economic growth and to create
12 new processes for regulatory cooperation that
13 explicitly address market access implications of
14 regulatory measures while maintaining appropriate
15 credential controls.

16 Turning to that regulatory
17 cooperation, we believe that strengthening
18 regulatory cooperation between our two markets
19 could yield significant benefits for industry and
20 consumers in both markets because most of the
21 areas in which there could be improvements in
22 conditions in the U.K. for U.S. insurers are

1 regulatory in nature.

2 A bilateral agreement should establish
3 an industry-involved, formal, comprehensive U.S.-
4 U.K. financial regulatory forum with the explicit
5 mandate of addressing regulatory measures that
6 unnecessarily restrict financial services trade.
7 Generally though, we encourage the U.K. to
8 consider where it can lessen the regulatory
9 burden on U.S. groups without jeopardizing
10 reasonable credential expectations. Member
11 companies have reported that even relatively
12 small levels of business in the U.K. exposed
13 them to high levels of regulation that
14 discouraged them from entering or expanding in
15 the U.K. market.

16 Finally, on regulatory cooperation -
17 as comfort with each other's systems grows as a
18 result of enhanced regulatory dialogue and the
19 recently concluded U.S.-U.K. covered agreement on
20 insurance credential matters, we believe that it
21 would be appropriate for each government to
22 support the other's system in plurilateral and

1 multilateral regulatory standard setting fora.

2 Turning to market access commitments,
3 although the U.S. and U.K. insurance markets are
4 generally open for international trade and
5 investment, we recommend negotiating the highest
6 standard trade commitments in all areas and
7 especially where new trade commitments have
8 emerged in recent years. In this way the U.S.-
9 U.K. agreement could represent the best model for
10 other trade agreements.

11 For example, U.S.-U.K. trade -- the
12 U.S.-U.K. Trade Agreement should reflect the
13 outcomes of the U.S.-Mexico-Canada Agreement,
14 USMCA, on the location of computing facilities.
15 For the first time in a U.S. free trade agreement
16 USMCA introduced commitments that prohibit data
17 and IT localization requirements for insurers and
18 other financial services suppliers, subject of
19 course to regulatory access to required data.
20 This commitment was a significant achievement of
21 the USMCA, met congressional negotiating
22 objectives under trade promotion authorization

1 and should be a necessary piece of all future
2 U.S. trade agreements.

3 We also believe that the U.S. and the
4 U.K. should explore expanding the type of
5 commitments that are generally included in trade
6 agreements for cross-border insurance trade. In
7 most trade agreements to which the U.S. is a
8 party national treatment and most-favored nation
9 treatment apply to certain types of cross-border
10 insurance and reinsurance. The cross-border
11 commitments for direct insurance typically
12 include insurance for maritime shipping,
13 commercial aviation, space launching and freight
14 in goods in international transit. These types
15 of insurance are referred to in trade policy as
16 marine, aviation and transportation, or MAT
17 insurance.

18 The general agreement on trade and
19 services and other agreements make cross-border
20 commitments for these lines because they directly
21 facilitate trading goods and agriculture flowing
22 across border commerce. However, as our

1 conception of what constitute international trade
2 evolves and increasingly trade is performed by
3 multinational enterprises across multiple
4 national jurisdictions, we believe that trade
5 negotiators should consider expanding the cross-
6 border insurance commitments to insurance lines
7 that facilitate global value chains.

8 MNEs make up roughly two-thirds of all
9 trade in global value chains and these global
10 value chains raise new risks for those companies
11 engaging in international trade. This new
12 reality demands that we look at how risks are
13 managed globally and promote solutions through
14 international agreements to facilitate the
15 management of those risks to support
16 international trade.

17 Discussions about how to structure
18 those solutions, those insurance solutions will
19 necessarily involve creative thinking from
20 industry, trade negotiators, regulators and
21 others as to how we can best modernize insurance
22 trade commitments to support global commerce

1 while maintaining strong credential outcomes.

2 Our written submission includes some
3 initial ideas on starting those conversations,
4 but one option for governments would be to
5 consider commitments that make it easier for
6 insurance groups to offer international insurance
7 programs for MNEs by making commitments for
8 difference in conditions, DIC, and difference in
9 limits coverage.

10 A broader option would be to consider
11 cross-border commitments for lines covering large
12 commercial risks for large MNEs as was the case
13 in Costa Rica's commitments in the CAFTA-DR
14 Agreement.

15 Finally, no testimony would be
16 complete without addressing investor-state
17 dispute settlement. APCIA supports the
18 application of strong ISDS provisions to
19 investment commitments for insurers. Under the
20 USMCA a limited number of sectors such as the
21 energy industry retained the full suite of ISDS
22 coverage despite the fact that most services

1 sectors, and insurance in particular, must make
2 considerable investments in foreign markets in
3 order to effectively compete abroad. We
4 encourage the U.S. to consider advocating for the
5 same protections for the U.S. insurance industry
6 in the U.K.

7 Thank you again for the opportunity to
8 testify today and I look forward to answering any
9 questions.

10 CHAIR GRESSER: Thank you very much.

11 Mr. Whitlock?

12 MR. WHITLOCK: Thank you very much for
13 the opportunity to testify at today's hearing.
14 My name is Joe Whitlock. I'll testify today on
15 behalf of BSA, the Software Alliance.

16 BSA's member companies are at the
17 forefront of data-driven innovations including
18 cutting-edge advancements in artificial
19 intelligence, machine learning, cloud-based
20 analytics and the Internet of Things. Software
21 contributes over \$1 trillion of the U.S. value-
22 added GDP and over 10 million U.S. jobs driving

1 growth across all 50 states.

2 The U.K.'s software industry is the
3 largest in Europe responsible for 170 billion
4 euros in the total U.K. value-added growth and
5 supporting 2.7 million jobs there. More broadly
6 the United States had a \$10.9 billion services
7 trade surplus with the U.K. in 2017 reflecting
8 among other things robust bilateral trade
9 involving software and other emerging
10 technologies.

11 This negotiation presents an
12 opportunity for the U.S. and the U.K. to solidify
13 their partnership building on the digital trade
14 provisions of the United States-Mexico-Canada
15 Agreement, the USMCA. As the White House has
16 explained, USMCA contains the strongest measures
17 on digital trade of any agreement including rules
18 to ensure the data can be transferred across the
19 border and to minimize limits on where data can
20 be stored.

21 Congressional trade promotion
22 authority also includes the following

1 negotiating objectives: Intellectual property
2 rules that reflect a standard of protection
3 similar to that found in U.S. law and digital
4 trade rules that ensure the governments refrain
5 from imposing trade-related measures that impede
6 digital trading goods and services with strict
7 cross-border data flows or require local storage
8 or processing of data.

9 BSA urges USTR to include digital
10 trade provisions in these negotiations to, among
11 other things: obligate the parties to permit
12 cross-border transfer of data while protecting
13 personal information; prohibit data localization
14 requirements; prohibit customs duties on
15 electronic transmissions; protect source codes
16 and algorithms; recognize electronic signatures
17 and commercial transactions; protect intellectual
18 property while including appropriate exceptions
19 and safeguards; promote the use of innovative
20 technology in the public sector; support
21 encryption in commercial products; promote
22 interoperability through adherence to

1 internationally-recognized standards in
2 regulating emerging technologies; and prohibit
3 preferential treatment for state-owned
4 enterprises.

5 The U.S. and the U.K. have each
6 prioritized investment in software and emerging
7 technologies with the U.S. Government investment
8 in unclassified R&D for these technologies
9 growing by over 40 percent since 2015 and the
10 U.K. Government investment also increasing
11 significantly. Software and the emerging
12 technologies, and the ability to transfer data
13 across borders, are critical to U.S. and U.K.
14 global competitiveness and advanced manufacturing
15 and our exports of goods.

16 By way of example, the newest vehicles
17 today are reportedly built with 100 times more
18 lines of software code than the space shuttle had
19 when it launched with up to 40 percent of the new
20 vehicles value attributable to its electronics
21 and software content, and these vehicles sold in
22 global markets need to communicate with data

1 receivers and data centers located across borders
2 and around the world.

3 We encourage USTR to build upon the
4 USMCA's digital trade provisions to help ensure
5 continued U.S. technology leadership, create U.S.
6 jobs and improve U.S. competitiveness.

7 Thank you again for the opportunity to
8 testify today and I look forward to your
9 questions.

10 CHAIR GRESSER: Thank you very much.

11 Ms. Swanson?

12 MS. SWANSON: Thank you for giving me
13 the opportunity to testify here today. I'm K.C.
14 Swanson with the Telecom Industry Association,
15 the leading trade association for the information
16 and communications technology industry. We
17 represent companies that supply the products and
18 services used in global communications.

19 In considering negotiating objectives
20 for the proposed trade agreement with the U.K.,
21 we think it would be beneficial to draw upon a
22 number of highly-constructed provisions in the

1 recently-negotiated U.S.-Mexico-Canada Agreement
2 which represents a major advance in trade rules
3 for the ICT industry. I'll briefly focus today
4 on several aspects of digital trade as well as
5 technical barriers to trade and government
6 procurement. Under digital trade I'll briefly
7 note a ban on data localization, unrestricted
8 cross-border data transfers, IPR protections and
9 risk-based cybersecurity.

10 Under banned data localization, one of
11 the biggest threats to U.S. ICT services trade is
12 the trend by governments around the world to
13 force companies to bottle up data within their
14 own borders. USMCA tackles this challenge head
15 on, prohibiting partner countries from mandating
16 that computer facilities must be based in their
17 territory.

18 Unrestricted cross-border data
19 transfers. On a related note, the trade
20 agreement creates a default for unrestricted data
21 transfers across borders. Enabling cross-border
22 data flows in this manner will help promote the

1 growth of telecom-based services in which the
2 U.S. is a global leader including cloud
3 computing. In addition, we request that both the
4 U.S. and the U.K. make permanent the prohibition
5 on the imposition of tariffs on cross-border data
6 flows and digital products.

7 IPR protections. The USMCA also
8 offers important new IPR protections that we hope
9 will be carried forward. This includes a ban on
10 government requirements for companies to disclose
11 source code or algorithms in exchange for market
12 access. The agreement also forbids governments
13 from forcing companies to provide specific
14 information about cryptography in commercial
15 products as a pre-condition for market access.
16 In addition the provision -- the agreement
17 provides criminal penalties for adaptive trade
18 secrets.

19 And promotion of risk-based
20 cybersecurity approaches, the last point under
21 the digital trade section, USMCA sets out an
22 expectation that both partner countries and firms

1 within their borders should use risk-based
2 approaches based on consensus-based standards to
3 deal with the evolving constellation of global
4 cyber threats. We see this new language as a
5 helpful step forward in forging cyber norms.

6 I'll briefly address several elements
7 of the technical barriers to trade chapter which
8 we consider very robust and very helpful to the
9 ICT industry.

10 The first is the ban on requirements
11 for in-country testing and certification. One
12 especially important provision bans localization
13 requirements for testing and certification, which
14 is also known as conformity assessment. A
15 government demands that firms use only testing
16 and certification facilities on their home
17 territory frequently collide with the
18 complexities of ICT global supply chains posing
19 substantial commercial burden to U.S. companies.
20 The language marks an important effort to craft
21 new norms in a commercially-significant area of
22 TBT, a better disclosure on the protection of IP

1 in the conformity assessment process.

2 A second important provision grants
3 trade partners the right to ask how confidential
4 business information will be protected during
5 conformity assessment procedures by government
6 bodies, and a growing tendency of governments
7 around the world to enact requirements for cyber-
8 related testing is critical to provide better
9 protections for American IP.

10 And last within that section, a
11 requirement to allow e-labeling. Another very
12 beneficial provision for ICT companies is
13 language that allows for electronic labeling. So
14 regulatory information such as that for radio
15 frequency can be displayed electronically rather
16 than posted on physical labels, which saves
17 considerable money and time. As the EU itself
18 was slow to embrace e-labeling, we would strongly
19 encourage U.S. negotiators to press for such
20 commitments with the U.K.

21 And last very briefly on government
22 procurement. In some countries governments

1 constitute the biggest market for ICT products,
2 thus we value language in USMCA that maintains
3 open, non-discriminatory and transparent market
4 access in government procurement.

5 And that concludes my comments today
6 and thank you. I look forward to your questions.

7 CHAIR GRESSER: Thank you very much.

8 Mr. Matheson?

9 MR. MATHESON: Thank you. My name is
10 Peter Matheson. I am the Managing Director for
11 International Policy with the Securities Industry
12 and Financial Markets Association. SIFMA is the
13 leading trade association for broker/dealers,
14 investment banks and asset managers operated here
15 in the United States and we very much look
16 forward to development of a comprehensive and
17 forward-looking United States-United Kingdom Free
18 Trade and Investment Agreement. We thank you all
19 for the opportunity for us to be here today.

20 SIFMA is also proud to be a member of
21 the U.K.-U.S. Financial and Related Professional
22 Services Industry Coalition, a cross-industry

1 group comprising 17 trade associations from both
2 the U.S. and the U.K. working towards
3 strengthening trades and investment between the
4 two economies.

5 A trade and policy negotiation between
6 the U.S. and the U.K. is a unique opportunity to
7 push out the boundary of what is possible in
8 international and commercial economic relations.
9 That is particularly true for the financial
10 services industry for the two countries exhibit
11 quite striking similarities. For example, New
12 York and London remain the two world's leading
13 financial centers. Financial services in each of
14 the two economies accounts for approximately 7
15 percent of gross domestic product and both these
16 countries are very much capital market-based
17 financial systems with similar regulatory
18 philosophies.

19 On a personal note I hope I can also
20 personally attest having spent five years here as
21 the Economic Counselor of the British Embassy to
22 the quality of the relationships between the U.S.

1 Government and the U.K. government. The quality
2 of those relationships is very important I think
3 to the future development of the special
4 relationship between the two countries and offers
5 a very positive and solid foundation on which to
6 build a trade and investment agreement.

7 So in short, a future U.S.-U.K. Trade
8 Agreement offers an unprecedented opportunity for
9 creating financial services at the heart of a new
10 21st Century economic relationship. We at SIFMA
11 are enthusiastic in playing a role in helping to
12 achieve that outcome.

13 Two important pieces of context I
14 think is worth mentioning as we look towards
15 these negotiations. First, as everybody is
16 aware, the eventual terms that the U.K. and the
17 EU reach on their future relationship are yet to
18 be determined. That future relationship will
19 inevitably be part of the context in which the
20 U.K. goes on to make its own trade policy with
21 other countries including the United States. But
22 that does not make trade with the U.S. or the --

1 or with the U.K. or with the EU either/or
2 scenarios. SIFMA very much hopes to see
3 continued and increasing trade, investment and
4 regulatory cooperation between all three: the
5 U.K., the U.S., and the EU.

6 Second, this process is taking place
7 shortly after the signing of the USMCA. That
8 agreement includes some very valuable benchmarks
9 that provide an excellent starting point for a
10 future trade relationship, however, SIFMA
11 believes the U.S. and the U.K. together can go
12 further. The details of what we think an
13 agreement should include were covered within our
14 submission of January 15th. I will not recount
15 each and every one of them here, but rather
16 highlight four aspects that I think are worthy of
17 further discussion.

18 First, maximizing cross-market --
19 cross-border market access in trade investment.
20 A U.S.-U.K. FTA could build on this further in
21 striking a gold standard in terms of mutual
22 market access, enhancing the volumes of cross-

1 border financial services transactions and
2 foreign direct investment.

3 Second, as has been mentioned by other
4 panelists here, comprehensively addressing the
5 role of technology including prohibiting data
6 localization measures and ensuring the free flow
7 of data. The USMCA is vital here in that it
8 prohibits data localization given certain
9 conditions and we thank the policy makers in the
10 different departments and agencies for working
11 towards that goal and that agreement. We think
12 that needs to go forward in the U.S. and U.K.
13 negotiation and trade agreement.

14 Third, securing investor protections
15 and effective dispute resolution systems for
16 financial services. Cross-border investments
17 should be protected and there should be credible
18 effective means of resolving disputes.

19 Finally, pushing out the frontier of
20 bilateral regulatory cooperation. There is
21 already a strong record of U.S.-U.K. regulatory
22 cooperation in financial services. The forging

1 of this agreement is a unique opportunity to use
2 the process of the negotiation to establish a new
3 formal and comprehensive mechanism for cross-
4 border financial regulatory cooperation.

5 There are many features that we think
6 such a mechanism should have, but I'll just
7 mention one or two. First, I think it's
8 fundamentally important that it has extensive
9 stakeholder engagement. That would mean robust
10 transparency obligations that ensure stakeholders
11 can review and comment on proposed measures.

12 Second, the basis for future
13 regulatory cooperation. As some of you will be
14 aware, there are a range of options for how
15 improved regulatory cooperation is codified. One
16 possibility would be to enshrine within the text
17 of the trade agreement. Another is to have
18 regulatory cooperation outside of the trade
19 agreement - in some ways compatible to the
20 existing EU-U.S. relationship.

21 But instead of that, SIFMA looks
22 toward something with more rigor regarding

1 outcomes as well as stronger transparency and
2 industry engagement. Independent of how it's
3 done inside the trade agreement or outside,
4 strengthening existing regulatory cooperation is
5 crucial, so we therefore believe that all the
6 options should be discussed as this process goes
7 forward.

8 In conclusion, this is the moment for
9 the U.K. and the U.S. authorities and their
10 respective financial services industries to begin
11 laying the groundwork for how the new U.S.-U.K.
12 relationship can develop. Further trade
13 investments or regulatory cooperation between the
14 two will lead to greater job creation, enhance
15 growth and support competitiveness in both these
16 countries. Thank you.

17 CHAIR GRESSER: Thank you very much.

18 And finally, Mr. Schonander?

19 MR. SCHONANDER: Thank you. I'd like
20 to thank the Committee for this opportunity to
21 testify on behalf of the Software & Information
22 Industry Association. My name is Carl Schonander

1 and I handle international public policy for the
2 association.

3 SIIA is the principal trade
4 association for the software and digital
5 information industries. More than 800 software
6 companies, data and analytics firms, information
7 services companies and digital publishers that
8 make up our membership serve nearly every segment
9 of society including, business, education,
10 government, health care and consumers.

11 So on November 6th, 2018 SIIA,
12 together with 29 other trade associations, sent a
13 letter to Ambassador Lighthizer urging the
14 administration to make digital trade a priority
15 in its negotiations with the European Union,
16 Japan and the United Kingdom. We reiterate that
17 request in this context.

18 Also in this context, and sort of
19 following and echoing what a number of colleagues
20 have said, we generally endorse the intellectual
21 property rights and digital trade provisions and
22 the financial services chapter in the United

1 States-Mexico-Canada Agreement, and therefore
2 believe that that serves as an excellent basis
3 for negotiating many provisions with the United
4 Kingdom.

5 So I'll focus on seven subjects here:
6 an affirmative data flow obligation;
7 interoperability for data flows especially
8 including personally-identifiable information;
9 financial data; proprietary software, encryption
10 keys and data; intellectual property rights;
11 digital taxation; and customs duties on digital
12 products.

13 So with respect to the first one, not
14 a surprise, we seek an affirmative data flow
15 obligation. Now, we recognize given the state of
16 negotiations between the United Kingdom and the
17 European Union that the U.K. may come under
18 pressure from the EU to avoid cross-border
19 commitments entirely or to include the broad
20 exceptions language developed by the EU which
21 reads, "Nothing in this agreement shall affect
22 the protection of personal data and privacy

1 afforded by the parties' respective safeguards."

2 So although the U.K.'s room for
3 maneuver may be limited by trade arrangements it
4 makes with the EU, it is essential for the U.S.
5 Government to find a way to limit this exceptions
6 language so that enforcement of privacy rules
7 cannot be used to distort trade or discriminate
8 against foreign competitors.

9 Interoperability. There should be a
10 commitment on both sides to ensuring that there
11 are mechanisms available to the private sector to
12 transfer personally-identifiable information.
13 USMCA's Article 19(8)(6) provides for a useful
14 template in this regard.

15 Financial data. Financial data should
16 be included in an agreement with the United
17 Kingdom.

18 Next - proprietary software,
19 encryption keys and data. There are many
20 different business models in the digital trade
21 space. For example, software code development
22 through open source or through copyright patent

1 protection are equally legitimate from an SIIA
2 perspective. The parties should not
3 establish requirements that force suppliers to
4 share source code, encryption keys and/or
5 proprietary algorithms. Businesses should be
6 free to choose the business model that works for
7 them. That goes as well for companies that
8 invest in curating data including scientific
9 data. Such companies have an interest in
10 protecting proprietary data and should be able to
11 do so.

12 The United States and the United
13 Kingdom should articulate in the agreement that
14 access to government data or publicly-funded
15 research should continue to incentivize private
16 sector dissemination of proprietary data and/or
17 publishing of research results. There's more
18 detail on that in the testimony.

19 Intellectual property rights. There
20 should be a robust IPR chapter, meaning it should
21 contain high standards that can be emulated in
22 other trade agreements around the world. The two

1 countries should find ways to enhance cooperation
2 on enforcing IPRs and develop a common standard
3 of the measures available to stakeholders with
4 respect to infringing activities over the
5 Internet.

6 Digital taxation. The British
7 government proposed in October 2018 a digital
8 services tax. Look, it's complex. We realize
9 the tax is not going to be per se a subject for
10 negotiation in a trade agreement, but we do
11 consider that the issue should be resolved either
12 bilaterally or preferably through an
13 international agreement in the OECD context,
14 probably.

15 Customs duties on digital products.
16 It should be possible to reach an agreement with
17 the EU on a prohibition of customs duties on
18 digital products. There should in fact be a
19 recognition of the need to prohibit customs
20 duties for digital products.

21 So on behalf of SIIA I would like to
22 thank you for this opportunity to comment and I'm

1 happy to answer questions. Thank you.

2 CHAIR GRESSER: Thank you very much.

3 Let me now turn to my colleague Tim
4 Wedding to begin the questioning.

5 MR. WEDDING: Great. Thank you all
6 for some very good testimony, some very rich
7 discussion. We are going to ask some questions
8 of you going down -- starting with Mr. Mullen
9 first and going through. And if we have time,
10 we'll do a second round of questions as well.

11 I'll start with my colleague from the
12 Department of Commerce.

13 MR. CORSO-PHINNEY: Mr. Mullen, thank
14 you again. In your written testimony you've
15 highlighted the importance of regulatory
16 convergence on supply chain efficiencies. Could
17 you elaborate on how harmonized regulations could
18 benefit U.S. cooperativeness and also stimulate
19 U.S. jobs?

20 MR. MULLEN: Well, we feel that
21 particularly with the increasing importance of e-
22 commerce there's a whole range of regulatory

1 activities that could be potentially taking place
2 in the near future around those activities. It's
3 an item of discussion at the WTO and at the WCO,
4 the World Customs Organizations.

5 And we think the U.S. is also to some
6 extent struggling with this issue right now and
7 that it's really important that we come up with a
8 harmonized set of regulations so that the whole
9 e-commerce supply chain is not being presented
10 with 200 different sets of regulations that they
11 have to meet in order to move products through
12 the e-commerce supply chains. So this is going
13 to impact e-commerce platforms. It's going to
14 impact financial services providers. It's
15 certainly going to impact the express industry
16 and other transportation companies.

17 So e-commerce presents a tremendous
18 opportunity for U.S. entrepreneurship. We are in
19 many ways leaders in this area now and by
20 harmonizing regulations through trade agreements
21 and any other means we have available, we think
22 we can preserve those advantages, which is

1 certainly going to contribute to U.S. growth and
2 jobs as this area continues to increase in
3 importance in the future.

4 MR. CORSO-PHINNEY: Thank you, Mr.
5 Mullen.

6 MR. WEDDING: Treasury, would you like
7 to ask a question of Mr. Simchak?

8 MR. SIMCHAK: Can I ask, in your
9 comments you suggest expanding cross-border
10 market access in insurance services and you gave
11 little details, but I was wondering if you could
12 just provide a little bit more detail on specific
13 services, insurance services you think should be
14 covered.

15 MR. SIMCHAK: Sure. Thanks, Matt. So
16 right now the types of commitments -- the types
17 of insurance that are covered by the mode 1
18 cross-border commitment to most FTAs and in the
19 GATTs for which national treatment applies are
20 really quite limited.

21 So it's reinsurance, which of course
22 is inherently international and global in a lot

1 of contexts. It's insurance around marine,
2 aviation and transportation. And the reason that
3 those types of lines were decided -- why it was
4 decided that those types lines of insurance
5 should get those expanded cross-border
6 commitments back in the day was that those are
7 the types of insurance which facilitate
8 international trade, or what people considered to
9 be international trade at the time, which was an
10 agricultural product or a manufactured product is
11 developed in one country and shipped from one
12 country to another. And that made total sense at
13 the time with the GATTs because that's sort of
14 how we thought about trade.

15 Since that time there's been a lot of
16 change in the way international trade is done and
17 the way we think about international trade. So
18 it's no longer an agricultural product or a
19 manufactured product is developed in one country
20 and shipped to another country. The rise of
21 global value chains has made it so that it's a
22 much different picture in the way in which

1 international trade is done, but the types of
2 international commitments for insurance haven't
3 kept pace with that change and the way the trade
4 is done. So now because of the global value
5 chains companies need global insurance solutions
6 and the type of commitments in the trade
7 agreements for insurance don't -- haven't kept
8 pace.

9 So today if you have a large
10 multinational enterprise -- let's say it's a
11 manufacturing company and they have a global
12 value chain and they're operating in 10 different
13 countries. They want the same level of insurance
14 coverage to manage their risks and to manage new
15 risks from the global value chain across all
16 those 10 countries. But unfortunately the
17 regulatory conditions or the market access
18 conditions in those 10 countries may vary and you
19 may not be -- or just the development of the
20 insurance market in each of those 10 countries
21 will probably vary widely. So they're not able
22 to get the same level of insurance coverage that

1 they want that facilitates their global value
2 chains in all of those 10 markets.

3 So currently what they do is they try
4 to get as much local coverage as they can, both
5 in terms of the risks that are covered and in
6 terms of the limits on the coverage, the monetary
7 limits on the coverage. And then they rely on
8 their global insurer, their global insurance
9 group generally to make up the difference.

10 And that could be done in a number of
11 ways, and some are more efficient and clearer
12 than others. And unfortunately in a lot of
13 countries they don't let you go with the most
14 efficient and the clearest route, which would be
15 to have sort of a global master policy. There
16 are a lot of barriers to those global master
17 policies.

18 So what we're advocating is that all
19 of those involved: trade negotiators, regulators,
20 industry, think about ways that the cross-border
21 commitments could be updated and modernized to
22 include those types of global master policies,

1 which we believe really fits the original
2 philosophy of why those marine, aviation,
3 transportation reinsurance lines were included
4 back in the GATT days. It's the same philosophy.
5 These are the types of insurance which facilitate
6 global trade and -- but now we need new types of
7 insurance included in that list.

8 MR. WEDDING: Thank you. State
9 Department?

10 MS. HOLMAN: Yes, good afternoon. My
11 question is for Mr. Whitlock. Thank you for
12 coming and telling us your views this afternoon.

13 Your written submission from BSA
14 indicates that, quote, "The agreement should
15 ensure that copyright laws are sufficiently
16 flexible to permit commercial text and data
17 mining of all lawfully accessible content."

18 In the view of BSA, are the current
19 laws of the United States and the U.K.
20 sufficiently flexible in this regard?

21 MR. WHITLOCK: Thank you very much for
22 that question. Data analytics, or text and data

1 mining is an important area for the development
2 of artificial intelligence and emerging
3 technologies and is currently employed by many
4 U.S. companies across the board.

5 In the United States, text and data
6 mining is subject to rules of fair use, or the
7 exceptions of fair use under copyright law and it
8 is well established that text and data mining is
9 permissible in that context where there is lawful
10 access such as via subscription, for example, to
11 data included within a data set or otherwise.

12 In the context of the U.K. the laws
13 are also broadly consistent with our objectives,
14 however, we're looking -- we've been tracking
15 developments in the EU as amendments to the
16 copyright directive have been under consideration
17 and have been encouraged by developments there.

18 So I think this is -- as we're looking
19 at the evolving relationship between the U.K. and
20 the EU, this would be something that we need to
21 study carefully and consider how it develops.

22 MS. HOLMAN: Thank you.

1 MR. WEDDING: Small Business
2 Administration?

3 MS. BONNER: Thank you. This question
4 is for Ms. Swanson. TIA's submission notes that
5 the USMCA represents a major advance in trade
6 rules for the ICT industry in several areas,
7 including digital trade and technical barriers to
8 trade. Can TIA identify particular challenges
9 that member companies face in the U.K. market and
10 give any examples that illustrate how those
11 particular barriers would be addressed through
12 USMCA provisions or provisions that you'd like us
13 to include?

14 MS. SWANSON: I think our members
15 don't have a lot of specific concerns with regard
16 to the U.K., although they do have some concerns
17 in terms of Europe's approach. Actually one of
18 the most relevant to our industry; if somewhat
19 niche, is e-labeling. That's very important for
20 -- especially as devices get smaller and it's
21 harder to affix physical labels to things like
22 phones. And there are more and more around the

1 world.

2 I think e-labeling is really something
3 that's seen as very beneficial. Our members
4 really support it. I know there's work underway
5 now on an international standard that would be
6 helpful, but at this point, although a number of
7 geographies have adopted e-labeling, the EU has
8 really lagged behind. And so that's -- the same
9 is true for the U.K., of course. So therein is
10 our -- that's where our concern lies and where we
11 think -- and actually have talked to colleagues
12 at USTR who I think are very interested in
13 carrying on that -- carrying forth that
14 discussion. So we're very encouraged by that and
15 hope there could be some again very specific
16 progress in that area.

17 Broadly speaking, we were really
18 impressed with the TBT chapter as something
19 that's very specific to the ICT industry. There
20 were a lot of -- I think it really raised the bar
21 a lot in terms of some of the testing and
22 certification requirements, just helping craft

1 norms that hopefully over time could become
2 established in other free trade agreements. So I
3 would just want to call that out as well.

4 I know many of my colleagues often --
5 we often talk about the digital trade elements,
6 which are extremely important, but for our
7 industry some of the equipment makers, some of
8 the more technical TBT elements are also really
9 extremely important.

10 MS. BONNER: Thank you.

11 MR. WEDDING: Turn back to Treasury.

12 MR. SULLIVAN: Thanks. So another
13 question on the cross-border market access. In
14 your submission you also suggest kind of
15 expanding the list. And just wondering if you
16 have any specific suggestions on what could be
17 included in a cross-border annex in terms of --
18 for banking and securities asset management
19 beyond what's in USMCA.

20 MR. MATHESON: Thank you for that
21 question, Matt. You know, we're still really in
22 the process of doing our thinking about this. We

1 should recognize that we're still talking only
2 about hypothetical trade agreement that won't be
3 released until, whenever it is, March the 30th or
4 April the 1st. But I think the submission that
5 we put in really kind of talked about what could
6 be done at a minimum in this area in terms of --
7 Steve talked about insurance provisions.

8 Obviously from the SIFMA perspective we want to
9 see that to cover as comprehensively as possible
10 the asset management industry, the investment
11 advice industry, and really kind of all parts of
12 the industry.

13 But I think another dimension of this
14 that our members have certainly raised and
15 continue to think about is how we shape this
16 agreement so it captures what the future will
17 hold on a particular future liberalization and
18 making sure that there's something within the
19 agreement in some form of ratchet mechanism which
20 ensures that that gets captured in this
21 agreement.

22 So, but you know, in terms the kind of

1 nitty-gritty and the kind of precise details we
2 felt was something that we still have to invest
3 some time in.

4 MR. WEDDING: Thank you. And my
5 colleague from Health and Human Services?

6 MS. SNYDER: Hi, my question is for
7 Mr. Schonander. Your submission indicates
8 support for USMCA provisions on digital trade and
9 financial data. And you touched on this a bit in
10 your oral testimony already, but could you please
11 expand on which particular provisions you view as
12 most important, particularly with regard to
13 financial services? Financial data. Sorry.

14 MR. SCHONANDER: Sure. So I mean, I
15 think people know the background that the TPP
16 agreement at the United States requested did not
17 include financial data, but U.S. policy
18 subsequently changed. And the reason it changed
19 was I think that U.S. regulatory agencies -- it
20 was an interagency process. Anyway, the relevant
21 regulatory agencies became comfortable with the
22 approach.

1 And if you look at the language -- I
2 can't remember the paragraphs off the top of my
3 head, but if you look at the articles, relevant
4 articles in the financial services chapter, you
5 really see an effort there to ensure that there
6 is a meaningful cross-border data flow obligation
7 with respect to financial data, but also an
8 appropriate emphasis on the sort of legitimate
9 requests from regulatory agencies to have access
10 to the data when they need to have access to the
11 data.

12 And some of the language in there is
13 actually new and not language that I have seen in
14 other trade agreements, and so we thought that
15 was quite innovative. And in context where other
16 countries in the world: China, Vietnam,
17 Indonesia, take your pick, are saying, well, you
18 have to localize the data because otherwise you
19 won't have access to the data, we think this is a
20 really useful template to push back on that. So
21 thanks.

22 MS. SNYDER: Okay.

1 MR. WEDDING: Okay. Thank you.

2 We do have a few more minutes, and so
3 we'd like to do another round of questions
4 briefly. I would also give you the opportunity
5 that if there's anything that we have not yet
6 asked you or colleagues don't ask you now, feel
7 free to throw in additional remarks of things we
8 should know. Thank you.

9 And we'll start with Commerce.

10 MR. CORSO-PHINNEY: So, Mr. Mullen,
11 back to you. Just to follow up, your written
12 testimony contains a number of recommendations on
13 customs and trade facilitation. I know you
14 touched on this a little bit already, but which
15 among these are the most important from your
16 point of view?

17 MR. MULLEN: Well, I would say the
18 USMCA represents a really good template for this
19 area of the trade agreement. The customs and
20 trade facilitation negotiators on that agreement
21 went way beyond anything we've ever had in the
22 past including areas like goods being transferred

1 through a country, goods moving in bond. These
2 are all things that are very important to the
3 logistics industry that really weren't addressed
4 in previous trade agreements. So you have a very
5 good template there to use for additional
6 agreements.

7 But I would say the one area that's
8 the most important is the way the de minimis
9 negotiations are handled because in that area the
10 USMCA was a tremendous disappointment. And we
11 think it's important to try to depressurize this
12 issue a little bit. In previous trade
13 agreements; it happened in TPP, this issue was
14 identified early on as a politically difficult
15 issue. So then it get pushed off to the end game
16 negotiations. And in that context it's not
17 possible for the U.S. to gain any ground on that,
18 because when we're in a situation where we're
19 talking about making a tradeoff between access to
20 another country's agricultural markets and a
21 higher de minimis level, we're not going to get
22 the higher de minimis level.

1 So we would like to see de minimis
2 handled up in the front of the negotiations with
3 all the other trade facilitation and customs
4 issues and see if there aren't any tradeoffs at
5 that level. And it's really just important to
6 try to get the other side to raise their level
7 somewhat to a more commercially equal level, get
8 them to recognize how that's in their benefit to
9 their economy and not let this get into too much
10 of a political difficulty in the end.

11 MR. WEDDING: Thank you. Treasury?

12 MR. SULLIVAN: Another question for
13 Mr. Simchak. Can you explain a little further
14 how mutual recognition of U.S. and U.K. data
15 protection regimes would benefit insurers?

16 MR. SIMCHAK: Surely. Well, I think
17 that the -- sort of the back story here is that
18 U.S. insurance companies that have done business
19 in the U.K., even with a very small scale of
20 operation, have found that the GDPR has been very
21 burdensome for them. The requirements that are
22 placed on them have really discouraged them from

1 wanting to get into the U.K. or grow in the U.K.
2 And of course this applies to the EU writ large,
3 but since the U.K. now has an opportunity to
4 revisit the way that it handles these issues, I
5 think it would be very helpful for part of this
6 negotiation to have another look at how the U.K.
7 handles the implementation of the GDPR and
8 whether -- I think that if they were willing to
9 reexamine the way they've implemented it, it
10 could be a great boon to them in terms of
11 attracting more insurers into their market, which
12 is something they're very concerned about in the
13 Brexit process, of course, as well as great for
14 U.S. insurers that wouldn't have that very, very
15 intense regulatory burden as a result of GDPR on
16 them.

17 So I think that the -- if there could
18 be some discussions of mutual recognition of
19 saying that the U.S. system or systems or data
20 protection are high-standard, which they are,
21 that that could be a great outcome to the
22 agreement.

1 MR. WEDDING: Okay. Thank you. State
2 Department?

3 MS. HOLMAN: Thank you. In your
4 submission -- this is a question for Mr.
5 Whitlock. In your submission you indicate that,
6 quote, "The agreement should require governments
7 to adopt civil and criminal causes of action and
8 penalties for the theft of trade secrets." In
9 BSA's views do the current laws of the United
10 Kingdom address this matter sufficiently? Thank
11 you.

12 MR. WHITLOCK: Thank you. I think
13 we'll have to supplement our testimony on that.

14 Actually I will supplement with one
15 other point, and that was just to say that the
16 USMCA does provide a very interesting model in
17 that regard.

18 MR. WEDDING: Great. Thank you.

19 And to Small Business Administration?

20 MS. BONNER: I have a follow-up for
21 Ms. Swanson. Since you've identified the USMCA
22 as a model we're really interested in knowing if

1 there were anything in additional to e-labeling
2 that was left out that you would like to see in a
3 U.S.-U.K. agreement specifically helping U.S.
4 telecommunication equipment companies. You
5 mentioned remanufacturing and reused goods. Is
6 there anything specific to that for example that
7 we could look into?

8 MS. SWANSON: I wouldn't identify
9 particular problems in the U.K. Just to clarify,
10 our members haven't come to us and said the U.K.
11 is sort of a problem child in this area at all.
12 I think we just see that as very helpful to
13 include sort of standard language in any high-
14 standard FTA basically, because many of our
15 members do use sort of -- for example, they might
16 need to send particular parts that may have been
17 used into a foreign country for use.

18 So having -- when countries sort of
19 have rules against allowing that kind of -- that
20 are very restrictive, that can be very difficult
21 for our member companies to offer service and
22 maintenance to really offer the high-level

1 service they want to their customers.

2 MS. BONNER: Thank you.

3 MR. WEDDING: Thank you. Treasury?

4 MR. SULLIVAN: For Peter, in your
5 statement you noted -- or in the submission noted
6 that the trade agreement should cover financial
7 institutions using cloud computing. Can you just
8 give any more details on how you think that could
9 be captured potentially in a trade agreement?

10 MR. MATHESON: I think again that's
11 probably something that we'll have to come back
12 on perhaps in more detail after consultation with
13 our members, if that's okay.

14 MR. WEDDING: All right. Thank you.
15 And Health and Human Services?

16 MS. SNYDER: For Mr. Schonander. Out
17 of all your recommendations which ones would best
18 address concerns by U.S. small businesses and any
19 unique needs in innovative health technology
20 firms?

21 MR. SCHONANDER: That one I would have
22 to probably get back to you on. For the specific

1 innovative health technologies, there may be
2 something in the artificial intelligence space,
3 but again I'll have -- and emerging technology in
4 general, but I'll have to get back to you on
5 that, which I will.

6 And I'd like to make -- since you
7 suggested the opportunity, I want to make one
8 more comment, which is this: It is SIIA's view
9 that you will -- and I think some of this came
10 out here -- you will sometimes be asked to
11 include things in a possible agreement even if
12 the subject or subjects isn't really a problem in
13 U.S.-U.K. trade simply because of the
14 precedential value that including language will
15 have.

16 So there's two areas that we
17 highlighted in our testimony: One, language you
18 can include banning forced technology transfer as
19 a condition for doing business. Obviously that's
20 the issue, or one of the issues in the U.S.-China
21 trade relationship, but it might be helpful to
22 have precedential language there.

1 And secondly, again, not a problem
2 with the United Kingdom, and I think we have
3 pretty similar views on this, let's avoid a
4 cultural carve-out. There is one in USMCA for
5 Canada. We were disappointed by that. We think
6 that something -- there should be something
7 indicating that there is no such carve-out in a
8 future U.S.-U.K. agreement. And I'm sure there
9 are going to be other areas like that, but
10 there's two. Thanks.

11 MR. WEDDING: That brings us about to
12 the end of our time. Following Ed, is there
13 anything that anyone would like to raise, any
14 last thing you would want to leave us with before
15 we close?

16 (No audible response.)

17 MR. WEDDING: And with that, let me
18 thank you all very much and this panel is closed.

19 (Whereupon, the above-entitled matter
20 went off the record at 2:32 p.m. and resumed at
21 2:40 p.m.)

22 CHAIR GRESSER: Welcome to our fifth

1 and final panel on this TPSC hearing on a
2 potential U.S.-U.K. trade agreement. We look
3 forward to your testimony and are grateful to all
4 of you for spending your time with us this
5 afternoon.

6 Before we get started, I would like to
7 ask our government panelists to introduce
8 themselves. Let's start on the left.

9 MR. CORSO-PHINNEY: Good afternoon,
10 gentlemen. My name is Eli Corso-Phinney from
11 Department of Commerce, United Kingdom Desk
12 Officer.

13 MS. HOLMAN: Good afternoon. Thank
14 you all for coming. It's good to see some of you
15 again. I'm Amy Holman from the Department of
16 State. I head up the Office of Multilateral
17 Trade Affairs.

18 MR. WEDDING: Good afternoon. Tim
19 Wedding, Deputy Assistant USTR for Europe.

20 CHAIR GRESSER: Ed Gresser, Assistant
21 USTR for Trade Policy and Economics and TPSC
22 Chair.

1 MS. SNYDER: Anne Snyder, Office of
2 Global Affairs, Department of Health and Human
3 Services.

4 MS. BONNER: Sarah Bonner, U.S. Small
5 Business Administration, Office of International
6 Trade.

7 CHAIR GRESSER: Thank you all. Let's
8 now go to our witnesses. We'll start on my left
9 -- my right or the panel's left and continue that
10 way.

11 I'd just like to ask all the witnesses
12 to please observe the five-minute limit for oral
13 testimony, as we want to be sure to hear from all
14 of you and leave ample time for questions and
15 discussion. And with that, let's begin.

16 MR. ABINADER: Good afternoon. Thank
17 you for the opportunity to participate in this
18 hearing. My name is Luis Gil Abinader, and I'm
19 testifying on behalf of Knowledge Ecology
20 International.

21 So, our written statement has a list
22 of proposals that we support for a U.S.-U.K.

1 trade agreement. These are proposals similar to
2 ones that we have shared before in USTR hearings
3 similar to this one; for example, the U.S.-EU
4 proposed trade agreement. So what I'm going to
5 do today is briefly mention some of those
6 proposals and dedicate about half of my opening
7 statement to the issue of damages for
8 infringement of intellectual property rights.

9 So, with regards to medical
10 technologies, we propose -- and I'm going to
11 highlight four of the proposals -- promote
12 innovation, including drugs, vaccines, genes, and
13 cell therapies; creating more competition;
14 progressively de-link R&D incentives from the
15 price of medical products; increase transparency
16 in the area of R&D investments.

17 In regards to intellectual property
18 rights, I'm going to highlight two proposals.
19 One of them is to expand access to orphan
20 copyrighted works. One way you can do that is by
21 limiting the damages for infringement of orphaned
22 copyrighted works. This is something that the

1 U.S. Copyright Office has proposed before.

2 And the other thing that I want to
3 highlight is evergreening of patented drugs. One
4 way you do that is by not having trade agreement
5 provisions on patentable subject matter that
6 require the grant of secondary patents. One
7 particular issue that we are concerned about is
8 medical technologies or medical treatments. The
9 U.K. has a provision on that and allows the
10 Patent Office to reject those type of patents.
11 Some of the organizations at this table propose
12 to restrict that flexibility, and we oppose that
13 kind of patent or the grant of that kind of
14 patent.

15 With regards to access to knowledge,
16 we propose to enhance the production,
17 transparency, and access to scientific research,
18 and require public access for government-funded
19 databases, reports, and papers. There are other
20 proposals that we have, and we mention those in
21 our submission, in the area of climate change, in
22 the area of the quality of life chapter, in the

1 area of tax avoidance, and other proposals. I'm
2 not going to mention them in detail because I'm
3 going to dedicate the remainder of my time to
4 issues of damages, right now, for the
5 infringement of all intellectual property.

6 KEI opposes trade agreement provisions
7 on damages that are more aggressive than the
8 current court standard in the United States,
9 which is "damages adequate to compensate for
10 infringement." That is a court standard in U.S.
11 law.

12 There are several other provisions in
13 U.S. law that create specific limitations for
14 damages in the case of patent infringement. One
15 of them is Section 271, Title 35, which provides
16 that, in some cases, damages aren't limited to a
17 reasonable royalty. In the case of Section 271
18 of Title 35, it creates a medical practitioner
19 immunity. In that case, a medical practitioner,
20 a doctor, that infringes a patent cannot be
21 actionable for damages. In that case, damages
22 are zero because they are immune.

1 Section 1498, Title 28, allows that
2 when the U.S. government uses or manufactures a
3 patented invention, the only action that the
4 titleholder of that patent has is the recovery of
5 a reasonable and entire compensation for that use
6 or that manufacture. The U.K. has a similar
7 provision, the Crown use license, and there are
8 several other statutes in regards to copyright,
9 trademark, designs, semiconductors, plant
10 varieties, and other types of intellectual
11 property. Some of those provisions are currently
12 U.S. law. It is not all of the provisions that
13 are currently enacted by U.S. law.

14 And I'm going to conclude by saying
15 that KEI opposes any trade agreement provision
16 that will limit the ability of Congress of
17 enacting new laws like this. And KEI will oppose
18 any trade agreement provision that will undermine
19 the laws that are currently enacted with regards
20 to limiting damages for patent or any other
21 intellectual property infringement.

22 Thank you again for the opportunity to

1 testify at this hearing.

2 CHAIR GRESSER: Thank you very much.

3 Mr. Francer?

4 MR. FRANCER: Good afternoon, Mr.

5 Chairman and members of the Committee. My name
6 is Jeff Francer. I'm general counsel and senior
7 vice president of the Association for Accessible
8 Medicines (AAM).

9 AAM represents the manufacturers of
10 generic and biosimilar medicines in the United
11 States. Our companies provide 90 percent of the
12 prescriptions in the United States at 23 percent
13 of total drug spending.

14 In the last decade, generic medicines
15 have saved U.S. patients, taxpayers, and insurers
16 \$1.67 trillion compared to prices that would have
17 been paid for more expensive brand name drugs.
18 In 2017 alone, generic medicines saved patients
19 and taxpayers \$265 billion, and the potential for
20 savings from biosimilars is projected to reach
21 nearly the same level.

22 In 2016, AAM members manufactured over

1 61 billion doses of prescription medicines in the
2 U.S. at 149 facilities in 16 states. Our members
3 manufacture generic and biosimilar medicines in
4 the U.S. for both domestic and export.

5 As an initial matter, AAM strongly
6 supports the administration's blueprint for
7 lowering prescription drugs. President Trump, as
8 recently as last week, noted that generic drug
9 competition is a centerpiece of the
10 administration's plans for lowering drug prices,
11 because fair competition is the best way to bring
12 down the cost of prescription drugs. We must
13 ensure that free trade agreements foster a
14 stronger generic and biosimilar industry to
15 provide savings for patients here in the U.S.

16 AAM supports provisions in U.S. trade
17 agreements that deliver on the TPA mandate to
18 ensure that IP rights foster innovation and
19 promote access to medicines. Any trade agreement
20 reached with the U.K. must maintain this careful
21 balance, which is also reflected conceptually in
22 current U.S. law.

1 Absent such balance, AAM opposes the
2 inclusion of IP provisions that extend monopoly
3 protection for branded pharmaceuticals, such as
4 longer pharmaceutical data exclusivity periods or
5 mandates to extend a patent term based on delays
6 in granting the patent or obtaining marketing
7 approval.

8 AAM would also like to note that the
9 U.S. and U.K. already have strong protection of
10 pharmaceutical IP and strong engines for
11 innovation under existing provisions. Thus, it's
12 unclear whether there needs to be a pharma-
13 specific IP chapter.

14 Moreover, AAM does not believe that
15 USMCA pharmaceutical IP provisions as currently
16 drafted establish the appropriate balance between
17 protecting innovation and encouraging access to
18 affordable medicines. Thus, it does not serve as
19 an appropriate model for the U.S.-U.K. trade
20 agreement.

21 One area of great concern for AAM is
22 the requirement for countries under USMCA to

1 provide a ten-year exclusivity period for brand
2 name biologics independent of patent protection.
3 President Trump's blueprint for lowering
4 prescription drug prices counts on accelerating
5 patient access to biosimilars, and the U.S. is
6 already far behind Europe in this area. Delaying
7 patient access to biosimilars harms patients by
8 blocking U.S. exporters from potential markets
9 and hampering their ability to invest in the
10 development of biosimilars for the U.S. market.

11 Moreover, this provision will handcuff
12 U.S. policymakers from lowering the U.S.
13 exclusivity period to below ten years should
14 Congress decide that doing so is needed to lower
15 drug prices in the U.S.

16 If there is an IPR chapter in the new
17 U.S.-U.K. free trade agreement, AAM recommends
18 that it contain provisions to facilitate the
19 timely development of and patient access to
20 generic and biosimilar medicines in the U.S. and
21 the U.K. These features are outlined in more
22 detail in our written submission and include a

1 clear and robust regulatory review, or Bolar
2 period; an incentive for promoting generic and
3 biosimilar competition as exists in current
4 statute in the U.S.; and requirements to disclose
5 the best mode for carrying out a new invention,
6 also required by Congress here in the U.S.

7 All of these requirements are
8 contained in U.S. law and, without such
9 provisions, the required balance between
10 protecting IP and encouraging access to medicines
11 will not be met.

12 In conclusion, any U.S.-U.K. trade
13 agreement presents an opportunity to improve on
14 the USMCA by including provisions that enhance
15 generic and biosimilar drug development and
16 access. This approach will benefit U.S.
17 exporters of these medicines and advance the
18 President's goals of lowering drug prices for
19 U.S. patients.

20 Thank you for the opportunity to
21 testify, and I look forward to answering any
22 questions.

1 CHAIR GRESSER: Thank you very much.
2 Mr. York?

3 MR. YORK: Many thanks to the TPSC.
4 And I know it's been a long day for you all. My
5 name is George York with the Recording Industry
6 Association of America (RIAA).

7 RIAA is a U.S. trade organization that
8 supports and promotes the creative and financial
9 vitality of major music companies. Our
10 membership includes several hundred companies,
11 many of which are small to medium-sized
12 enterprises distributed by larger record labels.

13 I'm grateful for this opportunity to
14 provide our views with respect to trade agreement
15 negotiations between the United States and the
16 United Kingdom. My brief remarks this afternoon
17 will focus on three key issues: the significance
18 of the U.K. music market, copyright protection
19 and enforcement priorities, and barriers to trade
20 in recorded music, including with respect to
21 digital trade.

22 Turning first to the U.K. music

1 market, the United Kingdom is a critical market
2 for the American recording industry. In fact, it
3 is the fourth largest music market in the world
4 and the second largest digital music market.
5 Notably, it is the second largest music streaming
6 market globally, accounting for eight percent of
7 global streaming revenues.

8 Regarding physical music sales in the
9 U.K., it's also a critical market, ranking fourth
10 globally in terms of recorded industry revenues.
11 In fact, the U.K. is responsible for eight
12 percent of global physical revenues.

13 A particular highlight of the U.K.
14 market is on sales of vinyl records, where the
15 United Kingdom is a leader, second only to the
16 United States in terms of the percent share vinyl
17 makes up of total physical sales in the market.
18 Be sure to check it out.

19 Therefore, for all these reasons, the
20 United Kingdom is a top priority to our industry.
21 As we work to maintain and grow this market, we
22 continue to rely on strong copyright protection

1 and enforcement, which fuels our ability to
2 license music on commercial terms to legitimate
3 platforms and make music widely available to
4 listeners.

5 Second, turning to our copyright
6 protection and enforcement priorities, I will
7 highlight a few exemplars today and refer TPSC
8 members to our written comments for greater
9 detail.

10 Regarding strong copyright
11 protections, I wanted to underscore our support
12 for full exclusive rights in copyright, including
13 making available communications to the public,
14 and broadcast rights, which are provided in the
15 United Kingdom. Additionally, we also support
16 strong obligations on technological protection
17 measures, or TPMs, where both parties, the United
18 States and the United Kingdom, also provide high
19 levels of protection.

20 Moving on to copyright enforcement.
21 A strong copyright enforcement framework is
22 predicated on a clear legal basis for liability,

1 including both primary and secondary civil and
2 criminal liability. These are critical features
3 of both U.S. and U.K. law and are the basis for
4 U.S. creative industries' efforts to enforce
5 their copyrights.

6 Also on enforcement, we note that
7 injunctive relief for addressing foreign
8 infringing websites is a highly effective form of
9 copyright enforcement in the United Kingdom, and
10 in numerous other jurisdictions around the world,
11 to combat infringing websites and is a critical
12 tool in ensuring the legitimate trade in digital
13 products and services, including sound
14 recordings.

15 Finally, members of the Committee, I
16 will conclude by underscoring the need to
17 dismantle barriers to trade and music, including
18 with respect to disciplines for both goods,
19 services, as well as digital products. Here,
20 copyright loopholes rank among our top concerns
21 where there are overbroad safe harbors or
22 exceptions and limitations. While we agree that

1 effective safe harbors are necessary for a
2 legitimate online ecosystem, the proper
3 interpretation and application of those safe
4 harbors is very complex with many different and
5 strongly held views on all sides. International
6 negotiations heighten the potential that critical
7 aspects of U.S. safe harbor law gets lost or
8 modified in the transposition. On this highly
9 technical issue, which is undergoing constant
10 legal and technological change here in the United
11 States, and globally, we recommend that we look
12 forward to closely working with USTR on this
13 issue.

14 Moving to exceptions and limitations,
15 we very much support the administration's
16 position on copyright exceptions and limitations,
17 confirming the internationally recognized and
18 longstanding three-step test. We also note here
19 that the United Kingdom does not provide for fair
20 use.

21 Finally, platform accountability
22 should be a central feature of U.S. digital trade

1 policy and should feature prominently in the
2 U.S.-U.K. trade agreement. While the internet
3 presents opportunities for legitimate commerce,
4 there are also significant and copious challenges
5 to such commerce.

6 To conclude, I want to thank the TPSC
7 Committee for this opportunity to present our
8 priorities with respect to the U.S. and U.K.
9 trade agreement and look forward with you to
10 working forward.

11 And on a personal note, I wanted to
12 thank everyone who worked so hard pulling this
13 hearing together under difficult circumstances.
14 RIAA is extremely grateful for your public
15 service. Thank you very much.

16 CHAIR GRESSER: Thank you. And let's
17 now go to Mr. O'Mara.

18 MR. O'MARA: Good afternoon. Thank
19 you for the opportunity to testify today. I am
20 Matthew O'Mara, vice president for international
21 affairs at the Biotechnology Innovation
22 Organization, representing a thousand members or

1 so developing biotech products with applications
2 spanning agricultural, environmental, health, and
3 industrial sectors.

4 Our member companies, predominantly
5 small and medium-sized enterprises, many without
6 products on the market, proudly harness the power
7 of biotechnology tools to address a number of
8 global challenges identified by the U.N.
9 Sustainable Development Goals, such as no
10 poverty, zero hunger, good health and well-being,
11 and clean water, to name a few.

12 To successfully bring these products
13 to market, the proper policy and regulatory
14 frameworks are necessary. These include strong
15 IP, science-based decision-making that is free
16 from political influence, timely and predictable
17 market access.

18 The biotechnology sector is becoming
19 increasingly global, making trade policy critical
20 to our membership, particularly the small and
21 medium-sized companies that lack the resources to
22 navigate the global marketplace.

1 Recognizing the significant
2 uncertainty surrounding Brexit, our sector-
3 specific issues could evolve depending on the
4 outcome. Nevertheless, the U.K. is an important
5 ally and trading partner and BIO encourages the
6 U.S. government to move quickly once Brexit is
7 complete to shore up these deep bonds.

8 For the regulation of the
9 pharmaceutical healthcare sector, it is extremely
10 important that a path forward is found to ensure
11 that there's a clean exit from Europe and that,
12 frankly, the regulatory authorities remain as
13 close as possible. Thinking about it from a
14 small company perspective, having to get approval
15 in the U.S., U.K., and Europe is daunting and
16 it's an important part to keep in mind.

17 Having said that, from an agricultural
18 perspective, with respect to the long history of
19 challenges on agriculture biotechnology in
20 Europe, we would like to see the U.K. move as far
21 away and be as independent with respect to
22 agricultural innovation as possible.

1 BIO considers the potential for a
2 U.S.-U.K. agreement to be a significant
3 opportunity to achieve a world-class 21st century
4 agreement. Both the U.S. and U.K. are home to
5 innovative biotech companies and world-renowned
6 academic institutions. A trade agreement between
7 the two economies should be focused on fostering
8 an environment for the biotechnology industry to
9 thrive.

10 BIO has recommended negotiating
11 objectives for the U.S.-U.K. built on recent
12 agreements, including that of the USMCA, the
13 Korea Free Trade Agreement, as well as the U.S.-
14 Australia Free Trade Agreement, and the
15 negotiating objectives recently proposed in both
16 the U.S.-EU and U.S.-Japan agreements. As such,
17 ensuring the high standards of IP in both
18 markets, our sustained regulatory relationships
19 and cooperation is strengthened, and the value of
20 innovation is respected through improved market
21 access are our primary objectives.

22 With respect to biopharmaceuticals,

1 much aligns the U.S. and U.K. industries. Many
2 U.S. companies maintain European headquarters in
3 the U.K., and many U.K. companies seek to expand
4 first into the U.S. This agreement should look
5 to encourage and ease this exchange in
6 collaboration. Facilitating ongoing
7 international science collaboration would also
8 benefit U.S. and U.K. companies.

9 Specifically, BIO recommends U.S. and
10 U.K. capture provisions from the USMCA, Korea,
11 and Australia to establish greater transparency
12 and accountability with regard to pricing and
13 reimbursement decisions to ensure patients in the
14 U.K. receive timely access to new innovations.
15 BIO also feels strongly that any formal price
16 controls distort market incentives and stifle
17 future innovation.

18 With respect to regulatory, which will
19 largely be dictated the most by Brexit, it is
20 critical to avoid a no-deal scenario.
21 Complicated supply chains, regulatory process,
22 and international cooperation will be negatively

1 impacted if the U.K. is a disorderly exit.
2 Nevertheless, BIO strongly supports close
3 regulatory cooperation, and to model the U.S.-
4 U.K. cooperation on what has been achieved with
5 Europe, including quickly re-establishing an MRA
6 on good manufacturing practices. And once that
7 is in place, we believe there's room and we
8 should give consideration to how it can be
9 expanded.

10 With regard to IP, both economies
11 maintain high standards and we strongly support
12 further strengthening. Chief among the
13 objectives would be to achieve 12 years of
14 regulatory data protection for biologics and that
15 the RDP provided should be based on the data-
16 first marketing in the U.K., not the EU or
17 elsewhere.

18 Finally, on agricultural innovation,
19 I'll be very brief. I think it's really
20 potentially a clean slate with the U.K. We
21 welcome the opportunity and the potential for
22 this agreement to really focus on ensuring

1 regulation of agricultural innovation is science-
2 based, transparent, and predictable. BIO seeks
3 to continue to build upon the improvements in the
4 global policy environment for ag biotech achieved
5 in the USMCA agreement, as well as seek gains in
6 the policy environment for veterinary medicines.

7 Predictable science- and risk-based
8 regulation is critical to enabling innovation and
9 attracting investment, especially for small and
10 medium-sized enterprises. BIO encourages the
11 U.S. and U.K. to utilize this opportunity to
12 improve the global policy environment and better
13 enable SMEs to operate in this space, in
14 particular.

15 One final point: the U.K. has been an
16 ally within the European Union with respect to
17 agriculture biotechnology. They've always been a
18 proponent of science. It will create a challenge
19 with them leaving, but, at the same time, we see
20 an independent U.K. as an opportunity to forge a
21 new path on the continent.

22 Thank you very much.

1 CHAIR GRESSER: Thank you. And,
2 finally, Mr. Toohey.

3 MR. TOOHEY: Good afternoon. My name
4 is Brian Toohey. I'm senior vice president for
5 international at PhRMA, Pharmaceutical Research
6 and Manufacturers of America. I really
7 appreciate the opportunity to testify. I'm sure
8 it's been a very long day, and I think I'm the
9 last witness between you and a building storm
10 outside. So I will try to be as brief as
11 possible.

12 PhRMA represents the country's leading
13 innovative biopharmaceutical research companies,
14 which are devoted to inventing, manufacturing,
15 and distributing valuable medicines that enable
16 patients to live longer, healthier, and more
17 productive lives.

18 A key component of America's high-tech
19 economy, the research-based industry supports
20 nearly 4.7 million jobs across the economy,
21 including more than 800,000 direct jobs, and
22 contributes nearly \$1.3 trillion in economic

1 output each year. Our sector is one of the most
2 research-intensive in America and a top U.S.
3 exporter among IP-intensive industries. In 2017
4 alone, we exported more than \$55 billion in
5 biopharmaceuticals.

6 The U.K. is an especially important
7 market for our industry, and the U.S. and the
8 U.K. are home to many of the most innovative
9 biopharmaceutical companies in the world. PhRMA
10 and its members, therefore, strongly support the
11 negotiation of a very high-standard agreement
12 with the U.K. Such an agreement could
13 significantly enhance one of the world's largest
14 and most sophisticated trading relationships,
15 spur further innovation, support additional
16 cures, and cement high market access, IP, and
17 regulatory standards. Biopharmaceutical
18 innovators depend on fair, transparent market
19 access, robust IP protections and enforcement,
20 and strong regulatory systems.

21 The recently concluded USMCA
22 successfully addressed many of those issues, and,

1 therefore, provides a very strong base for which
2 to negotiate a U.S.-U.K. agreement.

3 Recognizing the scope of the proposed
4 agreement remains uncertain, pending ongoing
5 U.K.-EU Brexit negotiations, from the perspective
6 of our industry, U.S. negotiations with the U.K.
7 should address the following.

8 First, negotiations should build on
9 common ground to ensure transparency and due
10 process for approving, pricing, and reimbursing
11 pharmaceuticals. In the U.K., the government is
12 a primary payer for medicines and, in effect,
13 dictates prices. This dominant position often
14 results in the U.K. failing to appropriately
15 recognize the value of innovation in its pricing
16 reimbursement systems, and, instead, engage in
17 actions that distort markets and artificially
18 depress prices.

19 With these concerns in mind, PhRMA
20 welcomes the administration's continued focus on
21 the problem of advanced economies undervaluing
22 innovative medicines. These negotiations thus

1 provide an important opportunity, consistent with
2 TPA, to ensure government regulatory
3 reimbursement regimes are transparent, non-
4 discriminatory, and provide procedural fairness
5 and full market access for U.S. products, which
6 includes the setting of reimbursement amount on
7 competitive market-derived pricing, or an
8 equivalent process, such as one that
9 appropriately recognized the value of an
10 innovative product.

11 PhRMA recommends the pharmaceutical
12 market access commitments in existing agreements,
13 most notably the U.S.-Korea agreement, KORUS,
14 form the basis for the market access commitments
15 in any U.S.-U.K. agreement.

16 Second, negotiations between the U.S.
17 and the U.K., two of the most innovative
18 economies in the world, should reinforce strong
19 intellectual property protections and effective
20 enforcement mechanisms. Both the U.S. and the
21 U.K. offer strong IP protections within their
22 respective systems and the parties should

1 capitalize on these negotiations to reaffirm
2 their existing commitments to IP and secure the
3 highest international standards.

4 Consistent with U.S. law and TPA, the
5 U.S. should seek IP protections that meet the
6 highest global standards, including at least 12
7 years of regulatory data protection for
8 biologics. IP is the backbone of the innovative
9 biopharmaceutical industry. By cementing strong
10 IP standards in the U.S.-U.K. agreement, the U.S.
11 could build on the successes of USMCA, establish
12 a significant precedent for other future
13 agreements, and help pave the way for the next
14 generation of treatments and cures.

15 Third, the negotiations should
16 increase regulatory compatibility. The
17 innovative biopharmaceutical industry strongly
18 supports efforts to address incompatible or
19 duplicative regulatory requirements that can
20 impede efficiency in global drug development,
21 review, and evaluation.

22 An enhanced U.S.-U.K. relationship

1 could be a unique opportunity to seek even
2 greater compatibility and create streamlined
3 processes and procedures. For example, in
4 addition to the regulatory provisions included in
5 the recently concluded USMCA, the U.S.-U.K.
6 agreement could include mutual recognition
7 agreements concerning good manufacturing and
8 clinical practices. Our industry actively
9 endorses these types of initiatives.

10 A strong regulatory framework not only
11 ensures that patients have fast access to safe,
12 high-quality, and effective medicines, but also
13 encourages scientific research and innovative
14 drug development.

15 Thank you again for the opportunity to
16 testify. Thank you.

17 CHAIR GRESSER: Thank you very much.
18 Let me now turn to Mr. Wedding to begin the
19 questioning.

20 MR. WEDDING: Great. Thank you all
21 for your testimonies. A lot of very good
22 information, very helpful to us. We're going to

1 ask some questions here. We'll go down the line
2 with questions, and we'll probably be able to do
3 a second panel of questions as well after that.
4 But I'll start with my first colleague from the
5 Department of Commerce.

6 MR. CORSO-PHINNEY: Yes. This
7 question is for KEI. A key priority in your
8 testimony is the protection of privacy. How do
9 you think that a U.S.-U.K. trade agreement could
10 enhance privacy protections? And is there any
11 prior trade agreement provisions that you believe
12 could serve as a model for this?

13 MR. ABINADER: Thank you for that
14 question. We can supplement that on an
15 additional written submission on that regard.

16 MR. CORSO-PHINNEY: Okay. Thank you,

17 MR. WEDDING: And let me turn now to
18 Health and Human Services.

19 MS. SNYDER: My question is for Mr.
20 Francer. Have AAM members faced issues regarding
21 transparency and procedural fairness with respect
22 to drug pricing in the United Kingdom? If so,

1 what have been the concerns and how would you
2 propose to address them?

3 MR. FRANCER: I'm not aware of
4 specific issues with transparency of pricing in
5 the U.K., but I'm happy to go back to our members
6 and ask them about that.

7 MS. SNYDER: Thank you.

8 MR. WEDDING: Great. And for the next
9 question, I'm going to turn to the Small Business
10 Administration.

11 MS. BONNER: Mr. York, according to
12 the Commerce Department's Bureau of Economic
13 Analysis, the U.K. is America's top market for
14 music and books at nearly \$4 billion in exports,
15 and also the largest source of imports of music
16 at nearly \$1 billion in imports. What
17 implications might different versions of Brexit
18 have for this relationship, and how might a U.S.-
19 U.K. trade agreement help bolster or grow this
20 trade?

21 MR. YORK: Thank you so much. And we
22 relied heavily on BEA statistics, and we've cited

1 to them frequently, I think, including in this
2 submission. So, thank you for that.

3 So, the question has to do with,
4 first, the importance of the market, what Brexit
5 might -- how that might impact that market for
6 the recording industry. I'm probably not in a
7 position to talk as much about the publishing
8 industry and what could the U.S.-U.K.
9 negotiations do to cement or otherwise diminish
10 problems that might grow out of Brexit.

11 So I think with respect to much of the
12 -- much of our business, as I've mentioned, we're
13 effectively 90 percent digital, probably about 80
14 to 85 percent streaming. So, digital rules,
15 rules that govern the internet, and internet
16 enforcement -- so, online piracy, the EU
17 currently is going through a very significant
18 review of its domestic legislation on copyright,
19 including very specifically with respect to
20 online enforcement.

21 So the question will be, can that
22 initiative be completed this year, hopefully

1 before April when the European Parliament
2 concludes? And then to what extent will the U.K.
3 government take up those clarifications to EU
4 online enforcement law as U.K. law?

5 So that's a very significant issue for
6 us. And the question will be then, what position
7 will the U.K. take in a negotiation with the
8 United States? Where, to our view, the recording
9 industry views that copyright safe harbors, for
10 example, which is our top public policy priority,
11 one that SMEs struggle with on a daily basis.
12 Something like a recent study concluded by our
13 sister organization, A2IM, which, by the way,
14 joined a recent submission to the TPSC as part of
15 a DCWG, the Digital Creators Working Group, 19
16 organizations in the creative sector signed that,
17 including A2IM, Association of American
18 Independent Music, found that, among their
19 independent record labels, something on the order
20 of 60 to 75 percent of SMEs simply don't
21 participate in the American notice and takedown
22 system.

1 That's a system, basically a whack-a-
2 mole system, whereby creators, and especially
3 small creators, simply don't have the ability to
4 track every piece of infringing content online.
5 And internet services providers -- not all, but
6 some -- don't take effective measures to address
7 that piracy. And so our question will be to what
8 extent does the EU copyright director for the DSM
9 transfer into the U.K.? And then what will be
10 the position of the U.K. with respect to that law
11 and U.S. law? Which we believe that, in terms of
12 their original intent -- tell me if I've lost
13 anyone -- in terms of their original intent, were
14 exactly identical, which is limited to passive,
15 neutral providers, where your business model,
16 like YouTube's, is to actively engage in making
17 content available, to build an ad network around,
18 to recommend music that's infringing but uploaded
19 by users, so, therefore, outside of the scope of
20 the U.S. USMCA. Our view is that the U.K. will
21 be in a position to not support that in a U.S.
22 trade agreement. Thank you.

1 MR. WEDDING: Great. Thank you. And
2 I'll turn now to the State Department.

3 MS. HOLMAN: Good afternoon. My
4 question is for Mr. O'Mara. In your testimony,
5 you cite concerns about challenges created by
6 some trade partners for agricultural innovation.
7 Once the U.K. leaves the EU, what do you suggest
8 are the greatest areas of change that the U.K.
9 could pursue that would support trade in
10 innovative agricultural products?

11 MR. O'MARA: Thank you for the
12 question. Well, I think, as I said earlier, it's
13 almost like a clean slate, depending on the
14 nature of the agreement with Brexit. But, most
15 importantly, I think the U.K. can be a leading
16 voice on the continent for innovations in plant
17 breeding, products derived through genome editing
18 and other new innovations.

19 The continent of Europe has really
20 lost out on the opportunity to benefit from
21 innovation in agricultural technology for
22 probably two decades at this point. The new wave

1 of technology is, I think, a new opportunity.
2 And, given U.K.'s leadership in developing some
3 of these technologies themselves through Oxford
4 University and such, I think it's an opportunity
5 for us to really cooperate around policies that
6 will enable that innovation.

7 Furthermore, I think, with respect to,
8 you know, working with other like-minded
9 governments, I think adding the U.K. to a growing
10 list of countries that are, frankly, frustrated
11 with the lack of progress, particularly in
12 Europe, around the approval and the openness to
13 new technologies. I think adding the U.K. would
14 be a significant milestone in that global effort.

15 MS. HOLMAN: Thank you. Can I just
16 ask a brief follow-up question? Once Brexit goes
17 through, as it looks like it is likely to do at
18 the end of March, how do you see that the U.K.
19 will be a leading voice on the continent if
20 they're no longer a part of the EU Commission and
21 can't influence the EU, have no real voice in the
22 EU Commission decisions?

1 MR. O'MARA: It's certainly a
2 challenge, but the fact of the matter is, well,
3 depending on what day or time the Brits have
4 decided what they want to do with respect to
5 leaving the European Union, so, yes, not having
6 them within the Commission is a real challenge,
7 but it's what we have. However, I think there
8 are other countries that are frustrated with the
9 gridlock in Brussels with respect to approving
10 products, and I think seeing the U.K. free,
11 seeing the U.K. being able to adopt technologies
12 that the mainland Europe is not able to adopt, I
13 think will have an impact on potentially the
14 voting behavior in Europe.

15 Now, on paper, it's a challenge and I
16 think the fact of the matter is we're going to
17 continue to see a lack of progress in Brussels.
18 Brexit doesn't help, but I think, over time,
19 especially with new technologies and seeing the
20 industry in the U.K. thrive because of accessing
21 new technologies, will hopefully be a draw.

22 MS. HOLMAN: Thank you.

1 MR. WEDDING: Great. Now a question
2 from Health and Human Services.

3 MS. SNYDER: My question is for Mr.
4 Toohey. It's a two-part question. So, first,
5 how has the U.K.'s approach to cost-effectiveness
6 in pricing and reimbursement affected health
7 outcomes in the U.K.? And then, second, could
8 you expand a bit more on what commitments you
9 would like to see in an FTA to address your
10 concerns about pricing and reimbursement writ
11 large?

12 MR. TOOHEY: Sure. Thank you very
13 much for the question. From our perspective, the
14 U.K. operates a health technology assessment
15 system that significantly undervalues innovative
16 medicines and restricts patient access to those
17 medicines, in terms of overall access to the
18 market, but also in terms of how they can be
19 used. Many medicines that are standard of care
20 in the United States are third or fourth line as
21 a result of a very restrictive quality-based
22 system that's operated in the U.K. And so we

1 believe by setting basic elements through the
2 market access provisions we can ensure that the
3 most innovative medicines are available to U.K.
4 patients.

5 MS. SNYDER: And then the second part
6 of the question of what could you expand on the
7 commitments you'd like to see in the FTA?

8 MR. TOOHEY: Sure. Sorry, I apologize
9 I didn't address your second part of the
10 question.

11 So, you know, we believe that the
12 provisions contained in the KORUS agreement on
13 market access around innovative products,
14 ensuring that medicines are priced either through
15 a market-based system, ideally through a market-
16 based system or some type of equivalent system
17 that can be developed. We believe those
18 provisions are a very, very strong baseline for
19 market access in the U.S.-U.K. agreement.

20 MR. WEDDING: Great. Thank you.
21 We're going to go with another round of
22 questions. We have some additional time.

1 In addition to the questions that my
2 colleagues may ask you, is there something we
3 have not asked you and you'd like to make a point
4 of it or it's something that the Committee should
5 know? If you could also share that with us, as
6 well, that would be helpful. Thank you. I'll
7 turn it back to the Department of Commerce.

8 MR. CORSO-PHINNEY: Again for KEI. In
9 your testimony, you included a call for
10 regulation of seats and leg room on airline
11 flights to avert threats to life and also to the
12 productivity of passengers. Why do you believe
13 that it's necessary in this area? And then how
14 would you evaluate the situation in the
15 transatlantic flights we have today?

16 MR. ABINADER: So, I should clarify
17 that we are an organization that works primarily
18 on intellectual property and there are other
19 organizations that work on this particular issue.
20 One of them is Flyers Rights, and we have a
21 letter from them and to us in support of that
22 provision. The provision is that there should be

1 a regulation on the space that you have for legs,
2 the size of the room, and there's research on why
3 this affects security. There is litigation that
4 they are supporting and promoting with this
5 issue, too.

6 The broader point that we're making
7 with the idea that there should be regulation on
8 minimum standards on leg space and the size of
9 the seats and things that affects how comfortable
10 a flight can be, is that trade agreements should
11 be used to promote things that consumers actually
12 care about. Consumers care about climate change.
13 They care about a race to the bottom in several
14 aspects of services and products.

15 So we're not -- we have concerns in
16 the way that trade agreement is being used in
17 recent years to promote broader standards in
18 regards to intellectual property and how that
19 affects drug pricing. But we're not opposed to
20 using trade agreement for positive agenda. And
21 so that's essentially the broader point that
22 we're making with this provision.

1 MR. WEDDING: I think I had an
2 additional question, too. Also in your
3 testimony, you talk about or suggest enhancing
4 transparency of software algorithms and protocols
5 for software as a way to protect against
6 cyberthreats. And I wonder if you'd care to
7 elaborate further on that, particularly in how
8 you see this additional transparency would be
9 helpful in this area.

10 MR. ABINADER: Yeah, so, the more
11 people look into a software, the more chances you
12 have to see how many, you know, problems you
13 have. So, there are specific aspects that can be
14 looked into in a trade agreement; for example,
15 exceptions for researchers in particular.
16 There's also provisions that undermine the
17 transparency of software; for example,
18 prohibiting governments from asking disclosure of
19 a source code.

20 Those are provisions that affect
21 transparency. And so, essentially, the more
22 accountability a software has, the more chances a

1 researcher can find flaws in that software. And
2 trade agreements should not undermine that
3 transparency and should, as long as possible,
4 promote that transparency.

5 MR. WEDDING: And just as a follow-up,
6 is the opposite also possibly true that
7 additional transparency, particularly for
8 cybersecurity, could that actually also undermine
9 or weaken security? Is it a trade-off, or have
10 you seen --

11 MR. ABINADER: Right. So, in a
12 practical manner, what probably happens is, I
13 guess, more of an exercise. So, somebody will
14 find a flaw in the software, and, with the least
15 transparency, either it will be difficult to
16 report that flaw, because the way you found that
17 flaw was illegal if there's a provision on the
18 access to that source code, or it will not be
19 reported at all, and, therefore, could be used to
20 exploit that technology.

21 And so I guess, yeah, with lack of
22 transparency, the public will not be aware of

1 that flaw as soon as it would if the source code
2 had been publicly available.

3 MR. WEDDING: Thank you. I'll turn to
4 HHS.

5 MS. SNYDER: Thank you. This is for
6 Mr. Francer. AAM cites both market access and
7 technical or regulatory barriers as areas for
8 discussions should a pharmaceutical IP chapter be
9 included in a U.S.-U.K. trade agreement. Does
10 AAM see market access or technical/regulatory
11 barriers as having a higher priority in future IP
12 discussions?

13 MR. FRANCER: Well, I think we have
14 several buckets of concerns, and the one I
15 highlighted in my oral testimony today was about
16 IP. We share other concerns, including those
17 voiced by PhRMA, that the regulatory cooperation
18 and the ease of accessing the U.K. market has to
19 be ensured. And I don't think anyone would
20 disagree with that, including folks in the U.K.

21 So, you know, we have several buckets,
22 and I don't necessarily want to prioritize them.

1 But I think there's a real concern there.

2 MS. SNYDER: Thank you.

3 MR. WEDDING: And, Small Business
4 Administration.

5 MS. BONNER: Mr. York, your testimony
6 generally takes a positive view of the U.K.'s
7 2017 Digital Economy Act, including its increased
8 criminal penalties for online copyright
9 infringement, and its Crime Act of 2002. Do you
10 have any particular concerns about the current
11 state of U.K. copyright law and enforcement?

12 MR. YORK: As I indicated -- thank you
13 for the question, first of all -- I think it's
14 critical, and this is, in many respects, what
15 trade agreement negotiations are all about. For
16 us, it's a bit of a stay-tuned exercise as we
17 watch what's happening currently in these
18 conversations in Brussels, and so we are
19 watching, monitoring extremely intensively in
20 that regard.

21 I will say we want to be -- what we're
22 also watching is the potential. We see a

1 tremendous opportunity in U.S.-U.K. negotiations
2 to improve cooperation between the U.S. and U.K.
3 in global leadership on these issues. I'm
4 certain others may agree for different reasons
5 about global leadership in other areas of IP and
6 more broadly.

7 However, we also see some risk in a
8 trade negotiation on things like copyright safe
9 harbors. Again, we have concerns with the U.S.
10 model. We have concerns that it leaves out key
11 pieces of U.S. law, including secondary
12 liability, which is how most of the websites who
13 were responsible for engaging in systemic and
14 mass online piracy, which was devastating to our
15 industry, and the extent to which features that
16 are critical and present in U.S. law and present
17 in U.K. law will, nonetheless, not be explicitly
18 included in the agreement. So, that would be
19 unfortunate for the U.K. to agree to something
20 that's in its law but somehow minimize or omit in
21 a trade agreement.

22 And by the way, this trade agreement

1 is one of many that the U.K. is negotiating
2 potentially at this moment, CPTPP, with other
3 major markets around the world, so what happens
4 with the U.S. may foretell more of a sort of
5 global trade policy for the U.K.

6 One thing I'd also like to mention,
7 following up on Tim's suggestion about other
8 issues, and this certainly falls into this
9 bucket, is with respect to platform
10 accountability. You've seen us reference that in
11 our written submission, and I mentioned it to
12 today in my oral statement. This has to do with
13 the extent to which internet service platforms
14 have some accountability for content and products
15 made available on their websites, right? So we
16 just amended, in the United States, our law to
17 address sex trafficking in children, a horrible
18 human rights crisis. However, some recent trade
19 agreements export the old version of that law
20 without that provision addressing human sex
21 trafficking in children. So it's something we'd
22 like to see as a precedent in future agreements.

1 And the Congress, as you may know, but
2 you may not know, is looking at other facets of
3 Section 230 of the Communications Decency Act,
4 which provides immunities, some may say broad
5 immunities, for internet service platforms. To
6 put these broad immunities in the trade agreement
7 in a manner that's inconsistent with U.S. law and
8 a manner that damages copyright industries but
9 also other human rights priorities would be
10 deeply troubling, obviously.

11 And those issues that members of
12 Congress are talking about is opioids. HHS may
13 have a view on this, but the extent to which
14 trade provisions are promoting opioid addiction
15 and the inability to go after internet providers
16 who make those kind of illegal drugs available to
17 consumers.

18 Democracy manipulation, trade secret
19 theft. There's an IPR carve-out with respect to
20 Section 230 of the Communications Decency Act,
21 which explicitly, by law, omits trade secrets.
22 So I believe on the previous panel you asked what

1 could the U.S. do to better protect trade
2 secrets. I think it would be to not export this
3 provision which basically makes the communication
4 of trade secret information effectively immune
5 with respect to those platforms.

6 And, of course, identity theft and a
7 whole bunch of other issues that are being
8 currently looked at by our Congress but which
9 would simply, if recent precedent were to be
10 followed, could limit the ability of Congress to
11 address these issues, like they just have, again,
12 with respect to the sex trafficking in children
13 crisis. Thank you.

14 MR. WEDDING: And we turn to the State
15 Department.

16 MS. HOLMAN: Thank you. Again, my
17 question is for Mr. O'Mara. In what ways do the
18 U.K. and the U.S. share common interests and
19 could work together globally?

20 MR. O'MARA: Specific to agriculture,
21 or are you talking more broadly?

22 MS. HOLMAN: Agriculture and other

1 biotech issues that you alluded to before, the
2 global cooperation and being a force for good on
3 the continent. Are there other areas that you
4 see?

5 MR. O'MARA: Well, again, thank you.
6 I would say that -- I mentioned earlier the
7 exciting innovations around genome editing. So
8 there is a company based in the U.K., Oxitec,
9 which was part of Oxford that is now a subsidiary
10 of a U.S. company called Intrexon, they're the
11 company that's developing genetically engineered
12 mosquitoes to combat malaria. I think there's a
13 lot of global challenges involving kind of the
14 one-health concept of healthy humans, healthy
15 planet, healthy animals, and I think the U.K.
16 could be a leading voice in that area.

17 So, while they might not be the
18 largest agricultural producer and exporter, I
19 think using the technology in innovative ways to
20 just improve health and general health and
21 environmental safety, I think the sky is the
22 limit, frankly, particularly in Africa and

1 Southeast Asia.

2 MR. WEDDING: And if I could just add
3 an additional question. You mentioned earlier
4 about the MRA on good manufacturing practices
5 that we have with the EU that we're replicating
6 with the U.K. You mentioned that, once that's
7 been replicated, there's ways it could be
8 expanded. Either now or in the future, if you
9 could share any of your thoughts on areas where
10 we could go further in that type of relationship.

11 MR. O'MARA: Happily. I can't get
12 into much depth, but I do know in the vaccine
13 space there's certainly interest.

14 MR. WEDDING: And let me turn it back
15 to HHS.

16 MS. SNYDER: So, Mr. Toohey, the PhRMA
17 submission notes that the U.S. and the U.K. are
18 generally aligned when it comes to IP protections
19 but notes a number of market access, enforcement,
20 and regulatory differences. Which of these areas
21 would PhRMA like to see prioritized in future IP
22 discussions with the U.K.?

1 MR. TOOHEY: Well, thank you for the
2 question, thank you for the question. You know,
3 the U.S. and U.K. generally share high standards
4 for intellectual property, and so we believe that
5 there's opportunity to even build on those
6 standards given the advanced natures of both our
7 industries. We think this is a real opportunity
8 to create a new standard in intellectual
9 property.

10 And with respect to market access, we
11 also believe that there's really good
12 opportunity, given the advanced biopharmaceutical
13 industries in both countries, to create a new
14 standard and go beyond the current standards that
15 exist in USMCA and KORUS. And we talked about
16 areas for regulatory cooperation. I don't
17 necessarily have the -- those three are our
18 priorities, but we certainly believe that there
19 is already a relatively high standard of
20 intellectual property that's shared, and so
21 there's probably larger opportunity or room for
22 progress on the market access provision. Thank

1 you.

2 MS. SNYDER: Thank you.

3 CHAIR GRESSER: Thank you all. As a
4 final question to the panel as a whole, I would
5 like to ask if there's any -- is there anything
6 that you would like to raise and weren't able to,
7 or anything that came up in discussion that you
8 would like to respond to, or anything that you
9 would finally like to leave with us?

10 (No response.)

11 CHAIR GRESSER: In that case, I guess
12 I'd say just one more thing. This has been a
13 really interesting and very informative day.
14 We've had five panels, 24 witnesses, from all
15 sorts of diverse points of view and sectors and
16 NGOs and so forth.

17 I mentioned at the beginning of the
18 hearing that we have a lot of history with the
19 U.K., dating back to the treaty signed by John
20 Jay in 1794. Today, we have looked at some
21 issues that came up then, including fisheries and
22 tariffs and port and logistics, and some quite

1 new issues dealing with digital trade, dealing
2 with labor rights, and so forth.

3 We are coming up on U.K.'s decision on
4 Brexit. This is a turning point in the history
5 of the modern U.K., and, therefore, of our
6 relationship, and we have been very fortunate to
7 have such a high quality of witnesses and such a
8 diverse set of ideas and proposals and analysis
9 to inform the government as we go forward in this
10 very important work with the U.K.

11 So, thank you all very much. And the
12 hearing is closed.

13 (Whereupon, the above-entitled matter
14 went off the record at 3:35 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Negotiating Objectives for a
US-UK Trade Agreement

Before: US Trade Representative

Date: 01-29-19

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

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