



January 15, 2019

Ambassador Robert Lighthizer
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: Comments on Negotiating Objectives for a U.S.-United Kingdom Trade Agreement, Docket Number USTR-2018-0036 submitted by the Institute for Agriculture and Trade Policy (submitted electronically through Regulations.gov)

Dear Ambassador Lighthizer:

The Institute for Agriculture and Trade Policy (IATP) appreciates the opportunity to comment on the proposed Negotiating Objectives for a U.S.-United Kingdom Trade Agreement. IATP is a non-profit organization based in Minneapolis, Minnesota with offices in Washington, D.C.; Hallowell, Maine; and Berlin, Germany. We work locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems. IATP has submitted detailed comments on many recent trade agreements and continues to track negotiations and outcomes.¹

We urge you to set negotiating objectives for an agreement between the United States and the United Kingdom that aim to establish the highest possible public health, food safety, environmental and labor standards, and that promote sustainable and equitable development. As articulated in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, trade negotiating objectives must not be limited to advancing the interests of market participants, but should also seek to “raise living standards,” “protect and preserve the environment,” and promote “the protection of legitimate health or safety, essential security, and consumer interests” among other goals.² As you advance these negotiations, we also urge you to ensure an open, participatory and inclusive process that incorporates all interests.

Transparency and inclusion must be assured during negotiations. The lack of transparency surrounding trade negotiations conducted by this and previous administrations must not be allowed in these talks. Consultations with diverse stakeholders should occur early and throughout the process. Stakeholder groups, including those not granted the preferential access of official trade advisory committees, must be able to review proposed draft text if they are to give meaningful input in a time-sensitive manner. USTR should publish all draft proposals, negotiating texts, reports and supporting documents about the U.S.-UK agreement in as close to real time as possible following each negotiating session, to assure ongoing substantive consultation. Greater transparency is consistent with practices followed by some of our negotiating partners, including the European Union, as well as other international treaty negotiations.³

The need to ensure ongoing, broad-based and informed stakeholder consultation is especially critical during negotiations with the UK. With the terms of the UK’s exit from the European Union unresolved at this time, it may well be premature to even initiate these negotiations. We don’t know if the UK will “crash out” of the EU without an agreement; whether the March 29, 2019, exit date will be extended; what EU health, safety, food, labor and environmental standards will still apply; what customs and trade

IATP.ORG

2105 FIRST AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55404
(612) 870-0453

110 MARYLAND AVE NE, SUITE 307
WASHINGTON, D.C. 20002
(202) 543-8602

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arrangements will be in place between the UK and EU; or even if a second Brexit referendum is looming—which could reverse course completely and keep the UK in the EU without the authority to negotiate *any* trade agreement with the U.S. Given this level of uncertainty, our comments are necessarily high-level. We urge USTR to reopen this comment period after the UK Parliament votes on the Brexit deal, when the parameters of the UK's authority to negotiate specific provisions in a trade agreement are clearer.

An agreement should maintain existing protections and promote improvements where standards differ.

In general, we are concerned that an agreement with the UK could become little more than a vehicle to facilitate deregulation on both sides of the Atlantic. Conservative think tanks and business organizations promoting these negotiations have openly expressed their intention to take advantage of a UK market untethered to European Union standards in order to facilitate trade in agricultural and consumer products that do not meet EU standards.⁴ This outcome has also been promoted as an opportunity in statements by both U.S. and UK agricultural and trade policy officials, including U.S. Commerce Secretary Wilbur Ross and President Donald Trump himself.⁵ Especially in the context of a hard or “no-deal” Brexit, there is a danger that critical consumer, food safety and environmental safeguards could be weakened by means of a flood of tariff-free or reduced tariff U.S. imports that do not meet the more protective EU standards currently in effect in the UK. Mutual recognition agreements between the U.S. and UK, as well as regulatory cooperation and harmonization initiatives, could also lead to lower standards and regulatory ceilings. Any trade agreement must not limit the United States or the United Kingdom from adopting and enforcing standards that provide higher levels of consumer, worker and environmental protections, nor undermine current standards under the guise of tackling “trade irritants.” A binding chapeau for all chapters should state that governments will ensure that there are adequate financial, human and infrastructural resources to implement and enforce the chapters.

We are concerned that the process leading to the launch of the U.S.-UK negotiations has been dominated by transatlantic business interests, which appear intent on undermining the strongest public interest safeguards on either side of the ocean with which their products and operations must now conform.⁶ With their earlier agenda to use negotiations with the European Union as a means to pursue deregulation efforts having been unsuccessful (the Trans-Atlantic Trade and Investment Partnership (TTIP) is now in the “deep freeze”), these same groups have turned to a potential deal with the UK as an alternative means to achieve their goals. Rather than pursuing TTIP by the back door by means of a UK deal, or taking advantage of a regulatory free-for-all in a post-Brexit United Kingdom, U.S. trade negotiators should be guided by the following objectives:

An agreement should exclude Investor-State Dispute Settlement. Any trade agreement between the United States and United Kingdom must not include investor-state dispute settlement (ISDS). The ISDS system that allows panels of three private sector lawyers to order taxpayer-funded compensation to firms that claim that a country's policies undermine their expected future profits must be eliminated entirely. International investment rules must also be revised to more narrowly define terms, including “investment,” “expropriation,” and “minimum standard of treatment,” to safeguard the ability of governments to regulate in the public interest. Private investment in foreign countries carries risks as well as potential benefits. Part of the due diligence of investment research is to measure risks and insure the private entity against losses deriving from those risks, including political ones. Trade policy must not enable investors to pass on to the public the costs of those risks. We agree with your position, in testimony to Congress in March 2018, that purchase of business risk insurance and state-to state dispute settlement are the appropriate mechanisms to resolve disputes affecting investors.⁷ The United States must not be in the business of ensuring the profitability of individual investors through government intervention, whether direct or indirect.

In this regard, the reforms in the investment chapter of the United States-Mexico-Canada Agreement (USMCA) and the phase-out of ISDS with Canada provide a valuable model for negotiators. Given that the U.S. and UK currently do not have a trade and investment agreement, the way is clear to keep ISDS out of any new agreement. Since U.S. and UK property rights law and judicial systems are robust—indeed, U.S. law derives in large part from British law—there is no justification for granting foreign investors superior rights to those of domestic investors or subjecting our judicial systems to tribunals empowered to raid our Treasury. The inclusion of such extreme provisions in prior trade and investment deals has enabled powerful interests, from tobacco companies to corporate polluters, to use investor-state dispute resolution to challenge and undermine consumer, public health and environmental protections, with taxpayers on the hook to compensate foreign corporations with billions of dollars for the domestic, non-discriminatory enforcement of such protections.⁸

An agreement should protect food sovereignty and prioritize safe food and enhanced consumer protections. A U.S.-UK trade agreement must respect governments' ability to implement programs that ensure farmers and other food workers receive fair compensation and that consumers have access to safe and affordable foods and the right to know where and how their food is produced. Likewise, nations must be able to protect themselves from agribusiness export dumping and other unfair trade practices that force farmers off their land. Trading partners must be free to establish facially non-discriminatory food safety, nutrition and labeling standards that are stronger than any harmonized norm set in an agreement and that meet the objective of the highest levels of consumer protection and environmental and ethical considerations. Each nation must be allowed to set such standards based on consumer demands and priorities alone, even in the face of scientific uncertainty.

As a member state of the EU, the UK currently has more protective food safety standards than the U.S., with many foods and additives that are banned in the UK widely used in the U.S.⁹ The EU's farm-to-fork food safety approach applies strict standards across the food supply chain and supports robust traceability of products. The UK's system for regulation and approval of food additives assures independent assessment and oversight, unlike the U.S. reliance on the dated and ineffective "Generally Recognized as Safe" standard that effectively grandfathered in many ingredients and relies heavily on industry self-reporting. The UK does not permit the use of growth hormones for beef production and the use of the hormone rBGH to boost milk production, and bans use of ractopamine in meat production. The UK does not permit chlorine and other antimicrobial rinses of poultry, all of which are allowed in the U.S.¹⁰ As an EU member, the UK follows the precautionary principle, which helps ensure that any food additives or food products derived from emerging technologies are proven safe before they enter the food system.¹¹ Further, the UK follows the EU's labeling requirements for genetically engineered foods and ingredients, which like the regulations in more than 60 other countries, requires on-label disclosure—something the new U.S. "bioengineering disclosure" rule fails to require.¹² With respect to animal welfare, the UK has supported stronger protections than even in the EU, where protections already exceed U.S. standards.¹³

In the case of food safety, the USMCA is a poor model for a potential U.S.-UK trade deal. The USTR should avoid replicating the many mistakes of that agreement, which will likely result in a further reduction of food and production inspection and testing and undermine public health and sustainable agriculture in North America.¹⁴ Yet, we know that both corporate interests and Secretary of Agriculture Sonny Perdue have been pushing for an early trade deal with the UK in order to promote these same lax standards for agricultural biotechnology, food inspections and pesticide regulation that, if ratified, USMCA will entrench.¹⁵ IATP strongly opposes this approach and urges USTR to adopt negotiating objectives that ensure the highest standards on both sides of the Atlantic.

Regulatory practices and cooperation must be voluntary and set regulatory floors, not ceilings. All of the UK's existing protections are potentially undermined by a trade agreement that could, as in the USMCA, seek to harmonize different standards between countries or incorporate mutual recognition of sanitary and phytosanitary (SPS) and chemical standards as equivalent, even where they are demonstrably **not** equivalent. A primary negotiating objective of any future trade agreement with the UK must be to maintain the highest standards, and if there are regulatory differences that inhibit trade, to bring the lower standards up to the more protective level. A U.S.-UK trade agreement must not include a mandatory and enforceable "Good Regulatory Practices" chapter as in USMCA, nor regulatory cooperation provisions that promote a deregulatory agenda. Likewise, an agreement with the UK must not incorporate Technical Barrier to Trade (TBT) provisions like those in USMCA, which undermine the precautionary approach to setting protective standards for chemicals, cosmetics, medical devices and drugs.¹⁶

An agreement must respect federal and sub-federal procurement policies and measures. A U.S.-UK trade agreement must not impede governments from spending taxpayer funds in ways that prioritize local development, environmental and social goals. The procurement provisions of an agreement must maintain existing "Buy American" preferences, as well as space for existing and potential future prevailing wage requirements, green preferences, sweat-free labor preferences, human rights preferences and policies designed to address longstanding inequalities.

IATP has a particular interest in assuring the continuation and growth of food procurement and initiatives to promote healthy and sustainable public feeding programs. Whether these are federal, state or municipal in nature, school lunch and farm to early care, school and institution programs and initiatives should be exempt from any government procurement commitments under the trade agreement. IATP has extensive experience with these programs in Minnesota, where they provide public incentives for organic and other sustainably produced local foods.¹⁷ These programs successfully support healthier diets, local job creation and more vibrant rural economies. They must not be undermined by FTA procurement commitments that inhibit bidding requirements designed to enhance sustainability, nutrition and public health or to ensure living wages for farm workers or food service workers. During TTIP negotiations, the UK reportedly expressed interest in U.S. sub-federal procurement commitments, possibly to include state and local government programs.¹⁸ The USTR should remain firm in opposing any such commitments.

An agreement must promote climate security and sustainability. Any agreement must provide policy space for signatory countries to respond to the climate crisis we already face and to facilitate a transition to more sustainable consumption and production patterns.¹⁹ At a minimum, it must include full adherence to the seven Multilateral Environmental Agreements referenced in previous U.S. trade agreements. A U.S.-UK trade agreement should also require parties to adopt, maintain and implement conventions and policies that fulfill the Paris Climate Agreement and other climate measures, and must include mechanisms that ensure swift and certain enforcement. Trading partners must have broad policy space to advance sustainability and avert catastrophic climate change without being subject to challenge under the agreement. These policies may include without limitation carbon and other tax policies; mandatory performance standards; carbon and pollution regulations, including those to mitigate greenhouse gasses emitted in the production process of industrialized meat and dairy; schemes for self-generation or "feed-in" electricity tariffs; procurement policy that gives preference to renewable energy and green products; and renewable energy standards.

An agreement must provide space for robust financial regulations and public services. In the words of a recent report by Finance Watch, "Back to Business As Usual" has returned to European financial services

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ten years after that industry triggered a global economic recession.²⁰ Furthermore, Finance Watch has analyzed how European trade policy has restricted the options for urgently needed financial regulation.²¹ Sheila Bair, former member of the Commodity Futures Trading Commission and Chair of the Federal Deposit Insurance Corporation, is just one former U.S. official who tried to prevent the financial deregulation that triggered the Wall Street default cascades²² and the \$29 trillion-plus Federal Reserve Bank rescue of the fruits of deregulation and the elimination of capital reserve requirements for favored banks.²³ Despite the lessons of history, U.S. financial deregulation has returned with a vengeance to induce asset price volatility and resist regulation of automated trading algorithms.²⁴ U.S. trade policy must not reinforce this transatlantic “boom-bust-public bailout” cycle driven by the deregulation of portfolio capital.

The United States and UK must be free—without exception—to establish limits on the size of financial institutions; enact strong regulations on mergers and acquisitions; insist on separation of commercial banking, investment banking, and insurance functions; ban or restrict the offering of risky financial services or products; establish fees and taxes for financial institutions and financial transactions; adopt reserve requirements above international standards; impose performance standards and investment obligations; cap fees and interest rates; and enact capital controls. An agreement with the UK, long the center of Europe’s financial industry, must in no way limit the regulation of banks, insurance companies, hedge funds and other financial service providers, and must again set floors rather than ceilings when describing their regulation.

With its focus on sustainable agriculture, IATP has a particular interest in assuring effective commodity and financial derivative market regulation, including protecting Dodd-Frank provisions to increase the transparency of Over the Counter trading and to limit excessive speculation by any narrow group of investors. IATP, as an individual organization and as a member of Americans for Financial Reform, has submitted regulatory comments to implement the Dodd-Frank Act and most recently, in August 2018, to prevent its evisceration in the name of “reform.”²⁵ An agreement between the U.S. and UK must not be used to limit Dodd-Frank-authorized cross-border rulemaking or future public policies to restore the price risk management capacity for commercial hedgers that has been so badly distorted by speculative financial investments in commodity markets over the last decade.²⁶ Finally, the broader services provisions of an agreement with the UK must contain clear and specific language stating that nothing in the agreement should be interpreted as requiring deregulation or privatization of any private or public service, including water services.

The intellectual property provisions of an agreement must not limit farmers’ access to seeds, hide information on agricultural pesticides, or increase healthcare costs and availability. A trade agreement with the UK must not replicate the approach in USMCA and other recent trade deals where intellectual property provisions protect corporate-led technologies over more sustainable, open source innovations of seeds and plants. Trade-related patent rules must not be used to keep safety and public health data on many pesticides secret. These provisions promote corporate-controlled agriculture while undermining sustainable and organic practices, and will affect the health and safety of farmworkers, backyard gardeners, and consumers of produce, while also limiting effective regulation of toxins in the environment.

An agreement with the UK must also reject the extreme corporate rights granted pharmaceutical patent holders in USMCA, which will exacerbate the problem of high prescription drug prices through several of its provisions. These provisions establish new monopolies for already costly brand-name medicines and impose new requirements on government health care authorities including Medicare, making it more

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difficult to negotiate lower drug prices based on prices in other countries. These latter provisions could also negatively impact the UK's National Health Service and its ability to fulfill its legal obligations to provide quality and affordable healthcare. As a duty of care, U.S. trade policy should promote products and programs to protect and improve human health not only in our own country, but around the world. Any agreement with the UK must reflect this humanitarian, ethical and cost-effective approach, rather than prioritize the interests of health product corporations and shareholders.

Conclusion. We urge you to set negotiating objectives for an agreement between the United States and the United Kingdom that aim to establish the highest possible public health, food safety, environmental and labor standards, and that promote sustainable and equitable development. Any agreement must not take advantage of potential regulatory lapses in a post-Brexit United Kingdom to pursue a deregulatory agenda on either side of the Atlantic, and must be negotiated through an open, participatory and inclusive process not limited to market participants. Further, given the level of uncertainty at this time concerning the ultimate outcome of the Brexit process, we urge USTR to reopen this comment period after the parameters of the UK's authority to negotiate specific provisions in a trade agreement are clearer.

Thank you for your consideration of these comments.

Respectfully submitted,



Sharon Anglin Treat
Senior Attorney

¹ Most recently, IATP submitted comments to the U.S. International Trade Commission on the potential economic impacts of the USMCA. See, Comments on No. TPA-105-003, United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. December 20, 2018.

<https://www.iatp.org/documents/comments-no-tpa-105-003-united-states-mexico-canada-agreement-likely-impact-us-economy>

² 19 USC 4201 et seq.

³ The European Commission has published negotiating texts and papers following negotiation rounds, see TTIP Web site: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=12300>. For WIPO practices, see Flynn, Sean. WIPO Treaty For The Blind Shows That Transparency Can Work (And Is Necessary). Intellectual Property Watch. June 26, 2013. <http://www.ip-watch.org/2013/06/26/wipo-treaty-for-the-blind-shows-that-transparency-can-work-and-is-necessary/>

⁴ The Guardian. Rightwing thinktanks unveil radical plan for US-UK Brexit trade deal. September 18, 2018. <https://www.theguardian.com/politics/2018/sep/18/rightwing-thinktanks-unveil-radical-plan-for-us-uk-brexit-trade-deal-nhs>

⁵ The Guardian. Trump adviser Ross says UK-US trade deal will mean scrapping EU rules. November 6, 2018. <https://www.theguardian.com/business/2017/nov/06/trump-ross-says-uk-us-trade-deal-eu-brexit-chlorinated-chicken>; Trump blasts UK PM May's Brexit plan, says it puts trade deal in doubt. Reuters. July 11, 2018. <https://www.reuters.com/article/us-usa-trump-britain/trump-blasts-uk-pm-mays-brexit-plan-says-it-puts-trade-deal-in-doubt-idUSKBN1K130C>.

⁶ There have been four rounds of meetings between U.S. and EU officials, with little information provided publicly, but these government exchanges have coincided with meetings with business groups. See report on most recent round of pre-negotiation talks: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/deputy-ustr-gerrish-statement-us>

⁷ <https://worldtradelaw.typepad.com/ielpblog/2018/03/brady-lighthizer-isds-exchange.html>

⁸ United Nations UNCTAD. Review of ISDS cases and awards in 2017.

<https://investmentpolicyhub.unctad.org/News/Report/Home/1588>; Kahale III, George. ISDS: The Wild, Wild West of International Practice. April 3, 2018. <https://www.curtis.com/siteFiles/Publications/ISDS%20-%20The%20Wild,%20Wild%20West%20of%20International%20Law%20and%20Arbitration.pdf>; Jun 28, 2018

⁹ New York Times. What Foods Are Banned in Europe but Not Banned in the U.S.? December 28, 2018.

<https://www.nytimes.com/2018/12/28/well/eat/food-additives-banned-europe-united-states.html#click=https://t.co/NmaZkLUDqn>

¹⁰ Which? Consultation: UK trade negotiations with the United States. October

2018. <https://www.which.co.uk/policy/eu-exit/3466/dit-consultations-uktradewithus>

¹¹ European Environment Agency. Late lessons from early warnings: science, precaution, innovation. 2013. See particularly Hansen, Stephen Foss et al., “Nanotechnology: Early lessons from early warnings” at 566.

<http://www.eea.europa.eu/publications/late-lessons-2>

¹² IATP. USDA's GMO disclosure rule designed to cover up, not inform. December 22, 2018.

<https://www.iatp.org/documents/usdas-gmo-disclosure-rule-designed-cover-up>; Treat, Sharon. QR Codes and GMOs: The Proposed Food Labeling Rule. IATP. July 10, 2018. <https://www.iatp.org/blog/qr-codes-gmos>

¹³ Stevenson, Peter. A better Brexit for farm animals: what the Government must do to protect welfare standards. Compassion in World Farming. 2018. <https://foodresearch.org.uk/publications/a-better-brexit-for-farm-animals-what-the-government-must-do-to-protect-welfare-standards/>

¹⁴ Suppan, Steve. Food safety and GMOs in the “new NAFTA”. October 17, 2018.

<https://www.iatp.org/documents/food-safety-and-gmos-new-nafta>. See also IATP's comments on the USMCA submitted to the U.S. International Trade Commission. “Comments on No. TPA-105-003, United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors”. December 20, 2018. <https://www.iatp.org/documents/comments-no-tpa-105-003-united-states-mexico-canada-agreement-likely-impact-us-economy>.

¹⁵ BBC News. US farmers say chlorine-washed chicken should be part of a UK free trade deal. April 28, 2018.

<https://www.bbc.com/news/business-43899603>

¹⁶ Treat, Sharon. “New NAFTA” imposes hurdles to delay and weaken public protections. IATP. October 17, 2018.

<https://www.iatp.org/documents/new-nafta-imposes-hurdles-delay-and-weaken-public-protections>

¹⁷ See, e.g., IATP Community Food Systems web page: <https://www.iatp.org/community-food-systems>; JoAnne Berkenkamp and Lynn Mader, “Farm to Child Care: Opportunities and Challenges for Connecting Young Children with Local Foods and Farmers,” Institute for Agriculture and Trade Policy, June 2012.

http://www.iatp.org/files/2012_06_19_F2CCFeasibility_f_0.pdf

¹⁸ Corporate Europe Observatory. Which groups are lobbying the UK government on TTIP? February 24, 2015.

<https://corporateeurope.org/international-trade/2015/02/which-groups-are-lobbying-uk-government-ttip>;

Government Response to the House of European Union Committee's Fourteenth Lords Report. The Transatlantic Trade and Investment Partnership. 2014. p.22 (public procurement including sub-federal commitments considered a “flagship issue” that should be traded for U.S. agricultural concessions).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/329716/42014-Cm-8907-Transatlantic-trade-and-investment-partnership.pdf

¹⁹ These issues are addressed more fully in IATP's analysis of the USMCA and climate policy. See, Lilliston, Ben.

“New NAFTA” continues damaging climate legacy. October 17, 2018. <https://www.iatp.org/documents/new-nafta-continues-damaging-climate-legacy>

²⁰ <https://www.finance-watch.org/publication/10yearsafter-back-to-business-as-usual-an-assessment-of-the-post-crisis-financial-regulation-in-europe/>

²¹ <https://www.finance-watch.org/publication/financial-regulation-challenged-by-european-trade-policy/>

²² <https://www.barrons.com/articles/sheila-bair-sees-the-seeds-of-another-financial-crisis-1519916556>

²³ <http://www.levyinstitute.org/publications/29000000000000-a-detailed-look-at-the-feds-bailout-by-funding-facility-and-recipient>

²⁴ <https://bettermarkets.com/newsroom/treasury-and-sec-flying-blind-while-computers-drive-wild-market-swings>

²⁵ <https://www.iatp.org/blog/big-number-commodity-market-regulation> and https://www.iatp.org/documents/comment-de-minimis-exception?_ga=2.156277240.2133891661.1547058127-790478123.1511536308

²⁶ IATP. Excessive Speculation in Agriculture Commodities: Selected Writings from 2008 to 2011. http://www.iatp.org/files/2012_ExcessiveSpeculationReader_web.pdf; David Frenk and Wallace Turbeville, "Commodity Index Traders and Boom/Bust in Commodity Prices," Better Markets. 2011. <http://www.bettermarkets.com/sites/default/files/Better%20Markets-%20Commodity%20Index%20Traders%20and%20Boom-Bust%20in%20Commodities%20Prices.pdf>