

How the U.S. and Britain Can Build on Private-Sector Support for an Ambitious U.S.–U.K. Free Trade Agreement

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KEY TAKEAWAYS

The British American Finance Alliance has presented significant proposals for U.S.–U.K. financial regulatory cooperation in the context of a free trade agreement.

The alliance has correctly emphasized the value of the principle of mutual recognition, as opposed to the EU’s preference for regulatory harmonization.

The U.S. and the U.K. should advance both their own interests and the principle of free trade by concluding an ambitious free trade agreement as soon as possible.

With strong political support in both nations, and with Great Britain no longer a member of the European Union, the United States and Britain are working hard to negotiate a free trade area. These negotiations were regrettably delayed by Britain’s drawn-out Brexit, but the negotiations are now proceeding, and Britain is showing its determination to develop the free trading policy merited by its position as an independent nation with the world’s fifth-largest economy.

In the years—and indeed the decades—before the 2016 referendum that led to Brexit, the establishment voices of business in Britain often gave strong, if not unthinking and unconditional, support for Britain’s EU membership. In the run-up to the referendum, it became clear that opinion in British business was more diverse than the establishment allowed, and that many British businesses did not support the

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European project. But, by and large, the major British business organizations continued to view Brexit with a skeptical eye.

More recently, however, business organizations on both sides of the Atlantic have begun to realize the opportunities that Brexit offers. Most significantly, an alliance of major British and American business organizations in the financial sector recently announced their support for deep and broad financial regulatory cooperation between the U.S. and the U.K. within the context of an U.S.–U.K. free trade agreement. The U.S. and Britain must take advantage of this constructive initiative and build on it as they negotiate an ambitious U.S.–U.K. free trade area.

Diverse British Business Opinions on Brexit

Any generalization about British business’s views on Brexit is dangerous because business in Britain—as in any developed nation—is exceptionally diverse. That fact was regularly elided in Britain by the dominance of the established business organizations, including, in particular, the Confederation of British Industry (CBI), which is dominated by large, highly visible, multi-national corporations that export heavily to the EU. The CBI has supported deeper British participation in the European project for decades.¹

Publications that purportedly spoke with Britain’s business community in mind also leaned strongly, if not credulously, in favor of Britain’s EU membership. The *Economist*, for example, argued in 2012 that “[this] membership is not an affair of the heart but an accounting exercise,”² thereby simultaneously minimizing the financial burdens of EU membership and completely ignoring the argument that Britain should be free, as a sovereign nation, to govern itself.

Of course, big businesses have the right to advocate for their interests. But the purported opposition of British business to Brexit in reality represented only the views of a selective and self-interested minority of large businesses that were heavily invested in maintaining a familiar status quo. In the run-up to the 2016 referendum, it became obvious that opinion in British business was more diverse than the establishment allowed. The Business for Britain group played a major role in Leave’s victory in the referendum, and polling in organizations of smaller British businesses showed this large community was narrowly split between Leave and Remain.³

Since the referendum, the establishment British business organizations have largely focused on opposing a British departure from the EU without an agreed exit arrangement (the so-called No Deal Brexit), while maintaining an undercurrent of skepticism about the entire idea of Brexit. At

times, this opposition has verged on the comic—as, for example, when the CBI unhappily described a no-deal Brexit as the “biggest change in terms of trade this country has faced since the mid-19th century.”⁴ That was when Britain adopted free trade in food, one of the greatest reforms and advances in consumer welfare in British history. The CBI’s argument points out that large businesses tend to be conservative—not in their politics, but in their preference for a status quo that benefits them and makes it hard for competitors to emerge.

Private-Sector Support for U.S.–U.K. Financial Regulatory Cooperation

Until recently, business organizations have tended to present Brexit as a problem to be overcome or minimized rather than an opportunity to be exploited. But in late September, the British American Finance Alliance (BAFA), a coalition of 21 British and American trade associations and industry bodies representing both financial and professional services, took an important step forward by presenting significant proposals for Anglo-American financial regulatory cooperation within the context of an ambitious U.S.–U.K. free trade agreement.

The BAFA contains some of the most important business groups on both sides of the Atlantic, including British American Business, the City of London Corporation, the Law Society of England and Wales, TheCityUK, the Securities Industry & Financial Markets Association, the U.S. Chamber of Commerce, and UK Finance. BAFA’s proposals seek to build on the success of the U.K./U.S. Financial Regulatory Working Group (FRWG), representing Britain’s Treasury and the U.S.’s Treasury Department.

According to BAFA, a U.S.–U.K. free trade agreement should include “provisions establishing a framework to continue the existing U.K.-U.S. FRWG, or a similar U.K.-U.S. regulatory forum.”⁵ BAFA argues that the FRWG is too informal and that the U.S. and Britain should improve transparency and stakeholder access and should have an ambitious agenda, including developing mechanisms for ensuring regulated data flows across borders, collaboration on financial technology, cybersecurity cooperation, and market access issues.

Ideally, the new forum would complement a U.S.–U.K. free trade agreement that would protect cross-border data flows, prohibit data localization, facilitate investment, include investor protection, feature an ambitious digital trade chapter, and provide for an effective dispute resolution system.⁶ Finally, BAFA hopes the forum would consider international issues—in

other words, issues that go beyond Anglo-American bilateral relations—such as improving global financial stability, reducing market fragmentation caused by differing regulations, encouraging the emergence of a “level playing field” globally, and developing U.S.–U.K. cooperation in international standard-setting bodies.⁷

Assessing the BAFA Initiative

The BAFA and its member organizations are to be commended for taking a positive and constructive step by putting forward realistic proposals for improving U.K.–U.S. financial regulatory cooperation. Even if the proposals are not accepted by either side exactly as the BAFA has presented them, the BAFA has done a service by setting out the issues at stake, the need for improvements in Anglo-American cooperation in this sector, and the value of placing them in the context of an ambitious U.S.–U.K. free trade agreement. BAFA has taken a significant step away from the largely negative approach of too many business organizations toward Brexit by presenting an ambitious agenda for collaboration that goes well beyond Brexit.

BAFA Framework. The overall framework of the BAFA proposals is one that, as the BAFA notes, seeks to find an approach that “does not limit the sovereignty of national regulators” and that emphasizes agreed standards where possible, and mutual recognition of standards when this approach is more productive.⁸ This is the correct approach. The value of mutual recognition rests partly in the political reality that the U.S. and the U.K. are independent, sovereign democracies, and that neither nation will be willing—rightly—to cede control of its regulatory apparatus to the other.

But it also rests in the fact that harmonization of rules (the EU’s preferred approach) is bad for competition, because it tends to lock in the market power of today’s businesses, which will have an outsized impact on the creation of those harmonized rules. Mutual recognition is both better politics and better economics because it is less corporatist and more competitive.

A Few Hiccups. On occasion, BAFA’s proposals appear to be at odds with these sound principles. The BAFA’s call for the U.K. and the U.S. to promote the global creation of a “level playing field,” for example, is cautiously framed as a way to combat the “unilateral and uncoordinated implementation (and extraterritorial application) of [global] rules.”⁹ But in fact a completely “level playing field” is incompatible with mutual recognition of national standards, because even if those standards have the same ends and are comparable in effect, the fact that they are not identical could be held (and would be held by the EU, for example) to be an offense against the

creation of a “level playing field.” It would have been preferable if the BAFA had avoided the concept of the “level playing field” entirely and had instead emphasized the value of implementing widely accepted rules effectively and in ways that do not defeat the intent of the rules.

What the U.S. and the U.K. Must Do

In order to make a rapid success of the negotiations for a free trade agreement between the U.S. and Britain, which will soon start their fifth round, both governments must:

Encourage private-sector input. As the BAFA initiative has illustrated, the private sector has much to contribute to the successful negotiation of an ambitious U.S.–U.K. free trade agreement. Before the negotiations between Britain and the U.S. began, both governments sought input from the private sector.¹⁰ But given the fact that the U.S.’s negotiating objectives with the U.K. are almost identical to its objectives for negotiations with the European Union, it is not clear that these consultations made a significant difference to the U.S.’s position as it entered negotiations with the U.K.¹¹ The U.S. and the U.K. should encourage private-sector organizations beyond the financial sector to offer substantive and detailed input—while remaining committed to their goal of negotiating a free trade agreement that promotes competition and benefits consumers.

Remain committed to the principle of mutual recognition. The BAFA has rightly emphasized the value of the principle of mutual recognition to the conclusion of an ambitious U.S.–U.K. free trade agreement. In its negotiations with the EU, the U.K. has been clear that it will not become a “client state” by locking itself into the EU’s regulatory framework.¹² A significant part of the value of a U.S.–U.K. free trade agreement rests in the value it can have as an alternative to the restrictive vision of the EU.

The EU’s regulatory imperialism is sometimes defended as a way to create a “level playing field,” which is then framed as a contribution to freer trade on the grounds that it is easier to trade when the field is level. This is incorrect. Regulations, like tariffs, impose costs—and those costs do not disappear just because they weigh equally heavily on both parties.¹³ The U.S. and Britain have an opportunity to offer a new model for trade between sovereign democracies, which lends their negotiations a much wider significance.

Consider announcing an agreement in principle. Ultimately, for a U.S.–U.K. free trade agreement to take effect, it will have to be negotiated and approved by the national legislatures as a complete package. But as

the successful negotiations for a free trade agreement between the U.K. and Japan illustrate, it is possible to announce an agreement in principle between negotiating parties.

Another approach, recommended by trade expert Shanker Singham, is to agree to so-called early harvest measures in particular sectors, some of which (in the U.S.) could be completed by the executive branch without need for legislative approval.¹⁴ Britain and the U.S. should consider demonstrating the momentum behind the negotiations by announcing an over-arching agreement in principle and/or sectoral agreements as soon as possible.

Conclusion

The support the BAFA has demonstrated for an ambitious free trade agreement between the U.S. and the U.K. is a valuable illustration of the approach that the private sector should take toward Brexit and toward Britain's development of an independent trade policy. Instead of complaining about the outcome of the 2016 referendum, the private sector should welcome the fact that Britain, a top-five world economy, is clearly committed to a policy of free trade.

The private sector—and, in particular, large established firms that are heavily invested in today's status quo—will always be nervous about change. But the fundamental fact is that, as long as international trade continues on its present trajectory of slow growth (or even decline), the world will miss out on growth and businesses will miss out on profits that both could otherwise have enjoyed. A commitment to free trade is the best way to alter that trajectory, and, right now, Britain is the major world economy pursuing a policy of free trade most energetically.

Both for the sake of their own bilateral relations and prosperity, and because of the lead it can give to the rest of the world, the U.S. and Britain should move as rapidly as possible toward concluding an ambitious free trade agreement. The steps both parties have taken so far have moved them toward this goal. To reach it, they must work together to keep up the momentum that will bring them to an agreement.

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Endnotes

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