Department for International Trade

UK-US Trade & Investment Working Group

13-14 November 2017

Full Readout

Department for International Trade

Agenda and Table of Contents

Department for International Trade

Title of Meeting: ***Plenary Session***

Date: ***13th November 2017***

Time: ***11:00 – 12:45***

Participants

Name	**Department/Directorate**
Oliver Griffiths	UK-US Team, Trade Policy Group, DIT (Lead)
Richard Salt	UK-US Team, Trade Policy Group, DIT
Tom Josephs	Policy Directorate, DIT
Julian Farrell	Policy Directorate, DIT
Neil Feinson	Policy Directorate, DIT
Ada Igboemeka and Maryam Teschke-Panah	Policy Directorate, DIT
Sophie Brice	UK-US Team, Trade Policy Group, DIT
Katie Waring	UK-US Team, Trade Policy Group, DIT
Cordelia Jonathan	UK-US Team, Trade Policy Group, DIT
George Radice	UK-US Team, Trade Policy Group, DIT
Rebecca Schneider	UK-US Team, Trade Policy Group, DIT
Mike Bartling	DIT Legal
Edward Barker	DIT
Sarah Clegg	FCO
Paul Bedford	HMT
Hannah Young	DEXEU
Emma Coppack	DEXEU
Rhys Bowen	DEXEU
Tim Holmes	DEXEU
Jacques Sheehan	DEXEU
Ceri Morgan	DEFRA
Harry Lee	DCMS
Elizabeth Chatterjee	BEIS
Dan Mullaney	United States Trade Representative
Tim Wedding	United States Trade Representative
Katherine Kalutkiewicz	United States Trade Representative
Christine Peterson	United States Trade Representative
Thomas Fine	United States Trade Representative
Casey Mace	US State Department
Jessica Simonoff	US State Department
Whitney Baird	US State Department

Department for International Trade

Joseph Burke	US Embassy London
Gregory Burton	US Embassy London
Jeffery Seigel	US Treasury
Rosalyn Steward	US Small Business Administration
Sarah Bonner	US Small Business Administration
Susan Wilson	US Patent and Trademark Office
Rachel Salzman	Department of Commerce
Andrew Lorenz	National Security Council

Key Points to Note

- All participants to continue engaging outside of formal TIWG and to be open to opportunities for short term outcomes.
- UK DIT and US USTR Legal Advisers to set up a call to discuss guidance document for TIWG participants on the arrangements for sharing information.
- US USTR and UK DIT to discuss creation of secure web portal with permissions for UK TIWG participants to facilitate sharing of documents.

Report of Discussions and Outcome

1. Oliver Griffiths (UK - DIT) opened the meeting by referencing the already strong bilateral relationship between the UK and US and setting out the objectives for the second UK-US Trade and Investment Working Group (TIWG). These were two-fold: 1. Deepening engagement (including in areas such as sustainability where leads were meeting for the first time), and building knowledge of each others' systems and processes, for example by discussing constitutional frameworks. On this occasion the UK's devolution settlements and the balance between London and the Devolved Administrations and hopefully picking up the US' state/federal split in future WGs; and 2. Driving forward discussions on Continuity Agreements and Short Term Outcomes, with a view to an announcement on progress at the end of the TIWG. In all discussions, participants should bear in mind the 4 pillars of the TIWG: Continuity Agreements, Short Term Outcomes, laying the foundations for a potential future UK-US FTA and cooperation on strategic trade issues.
2. Dan Mullaney (US - USTR) responded by commenting that the substance of, and attendance at, the TIWG demonstrated the importance that the current US Administration the US-UK relationship. Discussions would build on shared values and the already deeply integrated trade and investment relationship. He agreed with the overarching objectives set out by Oliver Griffiths (above), emphasising that discussion and action shouldn't be confined to the formal TIWG – there should be continuous engagement, including on new opportunities to deepen the relationship. Continuity Agreements were also critically important to provide certainty for US and UK stakeholders and to deliver the message that the current trading relationship would continue. The TIWG would help lay the groundwork for the future – post-Brexit - relationship, by identifying where priorities lie and how we do things differently. We should also use the discussions to agree how we can work together on shared global concerns/ strategic trade issues.

Department for International Trade

Updates since last TIWG

3. Ceri Morgan (UK – DEFRA) updated on the **Spirits, Wine and Organics Continuity Agreements**, which had been discussed in a productive VTC between DEFRA and US Department for Agriculture last week. Parties were close to an agreement on Spirits (subject to a couple of outstanding questions) and the UK was now in a position to present text on Organics – to which we weren't expecting an immediate response from the US. On Wine, the UK had responses to US questions and we would hopefully reach agreement on text in the New Year.
4. Julian Farrell (UK – DIT) updated on **Mutual Recognition Agreements (MRSs) and the Conformity Assessment on Marine Equipment,** which fall within the Continuity Agreement basket. Jeremy Heywood and Gary Cohn had agreed that this technical replication exercise should be completed by August 2018, meaning that text had to be agreed by April to allow lawyers to complete a legal scrub. In the TIWG, leads would run through the key issues which would need technical adjustment and share thoughts on how to achieve this, with the aim of having text agreed in the New Year.
5. Tim Wedding (US-USTR) agreed with the assessments (above) and highlighted that a broader conversation on technical rectification was needed to iron-out some key issues, which would hopefully lead to resolution by the summer.
6. Alexandra Whittaker (US – USTR Legal Counsel) briefed the group on recently agreed information handling arrangements, which allowed both sides to share documents without them being disclosed via the US Freedom of Information Act. The protective marking on the documents circulated for the TIWG (*'UK OFFICIAL-SENSITIVE – UK/US official use only/U.S.-U.K. CONFIDENTIAL, modified handing authorized')* should be used on all documents and emails shared between US and UK counterparts. She recommended the creation of a secure site to facilitate the exchange of documents and to enable US inter-agency circulation. This was also a good way of managing information. Alexander reassured participants that if they inadvertently omitted the protective marking on a document, they would not automatically lose protection privileges but that including the markings was best practice. Tim Wedding (US -USTR) confirmed that he would speak to DIT about the creation of a secure document site. Oliver Griffiths commented that it would be useful to have a guidance document on the process for protecting documents. Alexandra Whittaker suggested a call between USTR and DIT lawyers to take forward.

UK Context

7. Rhys Bowen (UK-DEXEU) updated on Brexit. The focus was now on the December European Council (15 December), where the UK had three objectives: 1. Progress on the separation talks; 2. Agreeing an implementation period; and 3.Agreeing guidelines on the U's future relationship with the EU. In turn:
   i. Separation. The UK and EU needed to agree on three key issues: i) citizens' rights, where there had been progress last week in Brussels; ii) Northern Ireland, in particular the border and Common Travel Area and citizens' rights with regard to the Good Friday Agreement – the area of separation talks most closely tied to the UK's future relationship with the EU; and iii). Money, on which the Prime Minister had made clear that she didn't want to leave other Member States worse off, but that this was a negotiation. The UK was hoping to wrap these issues-up by December.
   ii. Implementation period. In her Florence speech, the Prime Minister had set out her strong belief that an implementation period was in the interests of both sides. Any implementation period would likely be very similar to the current arrangement with the EU to provide certainty and it

Department for International Trade

should last as long needed, but we were expecting it to be for around two years. The Prime Minister has also been clear that the UK should be able to take forward trade negotiations with third countries during an implementation period. EU Member States are conducting their own discussions on an implementation period for discussion in December. The UK was hoping for a clear signal to be sent at the December Council Meeting.

iii. Future UK/EU Economic Partnership. This was also referenced in the Prime Minister's Florence speech. The UK was not intending on having an EFTA or EEA model, rather a bespoke arrangement. Options were being left open at this stage.

iv. Domestically, the key piece of legislation was the EU Withdrawal Bill. The Committee stages of the Bill would start in the House of Commons tomorrow: in total, there would be eight days of eight hour debates. The main objective of the Bill was to create certainty and continuity on day one after Brexit.

8. Tim Wedding (US – USTR) asked whether there was a relationship between an implementation period and discussions on the UK's future relationship with the EU. Hannah Young (UK – DEXEU) responded by explaining that the concept of an implementation period was a depreciating asset and for this reason the Prime Minister wanted agreement on the concept as soon as possible. An implementation period would provide a "glide path" for the future relationship, but it would also be important for certainty and continuity should agreement not be reached.
9. Alexandra Whittaker (US –USTR Legal Counsel) asked whether there was a distinction between the term "transition" and "implementation". Rhys Bowen (UK – DEXEU) explained that the Prime Minister had chosen the term "implementation period", because the UK would be taking actions forward on future economic relationship with the EU. The Prime Minister had been clear that she wanted the UK to be able to negotiate (but not agree) trade agreements with third countries during an implementation period.
10. Rhys Bowen (UK – DEXEU) also briefed on the UK's **"Future Partnership Paper"**. Discussions with the EU needed to be guided by what was in the UK's best interests, including: i) the future relationship with the EU being as frictionless as possible; ii) there being no hard border with Northern Ireland; and iii) an ability to negotiate our own trade deals and have an independent UK trade policy.
11. Dan Mullaney (US- USTR) asked whether the UK was considering a "tracing programme" to distinguish products for/ from EU and whether there would be a link to the EU Single Market. In response Paul Bedford (HMT) explained that there were two potential options regarding goods to/ from the EU: i) a tracking method; or ii) a re-payment method (high tariff initially with ability to reclaim). All of this was tied to the critical issue of the Northern Ireland border and the UK was thinking through options. The Customs Bill, to be introduced later this year, would be the framework for this – followed by a large amount of secondary legislation setting out the detail.
12. UK Edward Barker (UK – DIT) briefed participants on the development of the UK's independent trade policy. The Trade White Paper laid the ground work for the Trade Bill (recently introduced into Parliament) and set out a first pitch on how the UK proposed to use its independence when it left the EU, which were: i). Strong support for the rules based system; ii) An ability to enforce rules and achieve a level playing field; and iii) Maintaining existing and developing new trading relationships. Over the coming months, the UK would be working through strategic choices.
13. Amanda Brooks (UK- DIT) set out the legislative programme of work to enable the UK to have an independent trade policy. The Trade Bill was introduced into the House of Commons last week. This

would enable the UK to: implement the Government Procurement Act; make non-tariff related changes to existing EU trade agreements with third countries; set up a Trade Remedies Authority (an independent arm's length body making recommendations to the Secretary of State for International Trade) ; and to share trade related data amongst agencies. The Trade Bill would link into the Customs Bill, which would enable the UK to set tariffs, impose retaliatory measures through the WTO and set up GSPs. Together the two Bills would provide the framework for the UK's independent trade policy.

US Context

14. Dan Mullaney (US – USTR) updated on **US trade policy**. The current Administration had been clear that multilateral and plurilateral agreements had not been kind to the US and were therefore focussed on bilateral trade agreements. Within this there was recognition that **TTIP** was a bilateral agreement (the President did make a decision to pull out of TPP, but not TTIP) and the Administration remained favourably minded when the time was right. However, the Administration wanted to revisit a number of bilateral agreements, as there was a sense they were not working for US in the way they should. What might be done differently to rectify deep and continuing trade deficits was the focal point. USTR were therefore engaged in discussions with Korea on how to amend the Korea-US Trade Agreement (KORUS) and a renegotiation of the North America Free Trade Agreement was taking place. On **NAFTA**, there had been four rounds so far and all text had been tabled. The fifth round would start on November 15th and negotiations would continue through the first quarter of 2018. Everybody was looking at the NAFTA renegotiation as a barometer of the Administration's trade policy. Dan indicated that he had no particular insights on where the negotiations would end up. He explained that the challenges with Mexico and Canada – high trade deficits, huge integrated borders etc. – were not necessarily relevant to a UK-US FTA.
15. Another priority for the Administration was dealing with common global problems, particularly **China.** The US had commenced an investigation on overcapacity of steel and aluminium vis-a-vis China, the outcome of which would be a standard through which to protect other industry (semiconductors, solar panels etc.). An important element of positive agendas with the UK and the EU would be shared action on China. On the **Trade in Service Agreement (TISA)** the Administration recognised the potential to come back to table, but no decision had been made to date.
16. Richard Salt (UK – DIT) asked how much the UK should read into NAFTA renegotiation objectives as priorities for KORUS and other bilateral FTAs. Dan Mullaney responded by saying that the focus was on "free, fair and reciprocal trade". Rules of Origin and dispute mechanisms were important issues and USTR Robert Lighthizer had been clear that he wanted to look at dispute such as ISDS to see if they were working for the US and to move more control back home.

Department for International Trade

Title of Meeting: ***Stakeholder Engagement & Communications***

Date: ***13th November 2017***

Time: ***12:15-1:00***

Participants

Name	Department/Directorate
Oliver Griffiths	UK-US Team, Trade Policy Group, DIT (Lead)
Richard Salt	UK-US Team, Trade Policy Group, DIT
Katie Waring	UK-US Team, Trade Policy Group, DIT
Sophie Brice	UK-US Team, Trade Policy Group, DIT
Jack Kennedy	UK-US Team, Trade Policy Group, DIT
Magdalena Ruda	UK-US Team, Trade Policy Group, DIT
Timothy Wedding	United States Trade Representative
Alexandra Whittaker	United States Trade Representative

Key Points to Note

- The US provides updates on the trade dialogue with the UK to meetings of its cleared external stakeholders and Congressional staff, but there is no document sharing, and no confidentiality requirements at this stage.
- The DIT and USTR agreed to form a small stakeholder engagement group (with delegated responsibility from the TIWG) to continue discussion about stakeholder engagement and coordination.

Report of Discussions and Outcome

1. The UK (Waring) inquired about the US plans to engage with external stakeholders in relation to the UK-US trade policy dialogue, and the applicable rules, including possible requirements imposed by the Trade Promotion Authority (TPA) legislation.
2. The US (Wedding) explained they inform external (cleared) stakeholders about the trade policy dialogue with the UK; however, the intention was to share only publicly available information and no documents at this stage. Until the start of the formal trade negotiations, the rules set out in the legislation (including in TPA) will not apply.
3. The UK (Waring) asked if the USTR would also provide information to the Congress.
4. The US (Wedding) confirmed that oral information sessions are held for Congressional staff (on committees with oversight responsibilities for trade) both before and after the UK-US TIWG meeting. USTR does not have to inform Congress 'publicly' unless asked to appear before a committee - USTR raised the prospect of questions arising from a forthcoming congressional inquiry on Brexit.
5. The UK (Waring) provided information about the planned DIT engagement with external stakeholders, including public request for comments (to be uploaded on gov.uk), quarterly briefing meetings with a wide range of stakeholder groups, bilateral meetings, and sector specific workshops. Public request for comments may be coordinated with a similar US initiative or done unilaterally by the UK.

Department for International Trade

6. Responding a question from the US, the UK explained quarterly meetings will initially focus on the UK-US TIWG but may expand to include other UK dialogues with partner countries.
7. The UK stated that stakeholder engagement initiatives following presentation of Trade White Paper and Trade Bill may encourage contributions related to transparency, sustainability, and the role of the Parliament in trade policy development and implementation, including in trade negotiations.
8. The US (Wedding) suggested staying in touch over plans for a UK 'request for comment. The US did not plan a similar engagement at present, and would like to receive more details on the information that would be sought and how it would be used (both internally and externally). In case the US wished to launch a public request for comments, there would be a need for the USTR to justify it.
9. The UK and the US agreed that TIWG should delegate responsibility for UK and US to have a continued and regular dialogue on stakeholder engagement. Moreover, conversation should continue on stakeholder engagement throughout the remainder of this TIWG in other sessions.

Action Items

- For UK and US to remain in contact over plans for a UK 'request for comment.' US not necessarily opposed to running a similar channel of engagement but would like more details on the information that would be sought and how it would be used (both internally and externally).
- Agreed that there should be delegated responsibility given from the TIWG for UK and US to have a continued and regular dialogue on stakeholder engagement. This might entail the planning of 'stakeholder days' in the margins of future meetings of the TIWG. If it was decided that if something along these lines was to take place at the next TIWG, planning would need to start soon.
- Conversation should continue on stakeholder engagement throughout the remainder of this TIWG in other sessions.
- For UK to make relevant contacts with US Public Relations team.

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- Useful session. Different levels of experience and stakeholder framework on each side mean coordination (but not joint initiatives) are important so need to keep it on the agenda, even if covered briefly.

Department for International Trade

Title of Meeting: ***SME***

Date: ***13th November 2017***

Time: ***14:30-17:00 pm***

Participants

Name	**Department/Directorate**
Julian Farrel	Policy Directorate, DIT (Lead)
Kate Maxwell	Policy Directorate, DIT
Daniel Harrison	BEIS (Co-Lead)
Andrei Murariu	BEIS
Huw Parker	BEIS
Oliver Nash	DCMS
Sophie Brice	UK-US Team, Trade Policy Group, DIT
George Radice	UK-US Team, Trade Policy Group, DIT
Bob Collier	ITI, DIT
Rebecca Schneider	UK-US Team, Trade Policy Group, DIT
Lawrence Key	DIT
Nick Morgan	Better Regulation Executive, BEIS
Ellen Duffy	Better Regulation Executive, BEIS
Ben Leich	Better Regulation Executive, BEIS
Muhammad Abbas	Policy Directorate, DIT
Christina Sevilla	United States Trade Representative
Lori Cooper	US Department of Commerce (by phone)
Richard Fergusson	State Department
Tricia Van Orden	Department of Commerce
Sarah Bonner	US Small Business Administration
Rosalyn Steward	US Small Business Administration
Additional officials	United States Trade Representative

Department for International Trade

Key Points to Note

Good atmosphere and energy in the room. Clear sense that this was a positive area for engagement both pre- and post-Brexit, in particular given alignment with POTUS' interest in supporting SMEs and supporting parts of the US that are less economically vibrant.

- US tabled a one-pager summarising the main "trade issues" for SMEs, some that could be addressed now and others in an FTA – UK thanked US for tabling this and noted similarities with areas outlined in UK slides on the same subject.
- US mentioned that TTIP chapter on SMEs was 4 square brackets away from being finalised
- Digital is seen as the single biggest game changer for SME exporters – likely they will push for provisions (e.g. zero tax on digital sales) in other FTA chapters
- Both sides outlined their approach to Trade Promotion, noting many similarities
- Areas for potential collaboration that were discussed:
  - UK highlighted that exchanges between entrepreneurs would be highly beneficial, possibly by building on existing Start Up Exchange programme (between Newcastle, Atlanta and Toulouse) – likely will be wrapped into SME Dialogue.
  - US highlighted a joint brochure on support measures for SMEs as a first deliverable for the group – US to share draft with UK.
  - US outlined its Best Practice Workshops with EU, which were seen as a short term deliverable that UK and US could replicate as an SME Dialogue bringing together officials and SMEs to discuss trade issues for SMEs – UK provisionally agreed.
  - US outlined its MoU relating to SMEs with the EU as something that could be replicated between US and UK in longer time, building on the work of the SME Dialogue

Report of Discussions and Outcome

1. Daniel Harrison (UK – BEIS) explained UK's approach to SME policy. Whilst SME policy was spread across government, BEIS ensured that there was an effective framework for departments to work within and for SMEs to be successful. This included economy-wide issues such as flexible labour laws and specific policies like targets on government procurement. The UK also had an SME help line and 38 growth hubs across the country. In addition, sector teams (digital, agriculture etc.) all had an SME focus. The UK had a supportive framework for SMEs: reduced corporation tax (17% by 2020), increased employment allowance and innovation and R&D tax credits (18,000 SMEs claimed tax credits in 2016). 60% of Innovate UK's core budget went to SMEs. Access to finance was an important part of SME growth. By the end of 2014, the UK government had provided 60,000 SMEs with start-up loans worth £350m in total. BEIS had 5 priorities for SMEs: 1. Simplification and access to information; 2. Accelerating growth for the highest ambition actors; 3. Celebrating success and inspiring; 4. Growing future sectors (e.g. artificial intelligence) and capturing opportunities for the UK to become a leader in new areas; and 5. Engagement.
2. The key challenge was making sure all information was readily available and in one place. Many SMEs were not aware of the barriers to trade and didn't know where to get information from. A Federation of Small Business report in 2017 identified the US as a priority market for 50% of SMEs, most of whom would want an SME Chapter in a future FTA.

Department for International Trade

3. Christina Sevilla (US – USTR) confirmed that the US had many of the same priorities for SMEs. There had been an increasing focus on SMEs in recent years. Most people tended to think that international trade was just for big multinationals. However, out of 300,000 firms which export from US, 298,000 were SMEs (Comment: US definition of SME is up to 500 staff: UK goes by the OECD definition up to 250 staff). If SMEs engaged in international trade, they grew faster than those just staying in domestic markets. The US was No. 1 destination for UK SMEs (96% UK firms exporting were SMEs by US definition). UK was the 3rd largest SME market for US firms after Canada and Mexico. UK-US relationship was therefore already very important. Christina also mentioned that a focus on new-disruptive technology was also considered as an important area for USTR.
4. Christina Sevilla (US – USTR) then set out the standard US instruments in SME Chapters of FTAs, designed to support SMEs trade internationally [final 4 bullets of US handout]: reduction of customs tariffs; reduction of unnecessary duplication of regulation; reduction of regulatory barriers; automation of documentation; advanced classification of documents; expedited release of goods. Digital trade had been the single biggest change factor for SMEs in terms of exporting; therefore keeping digital products duty free, promoting free flow of information (e.g. not requiring a server in every single market) and better protection of IPR, were all very important. In terms of US-UK cooperation, there was also potential for short-term outcomes such as cooperation dialogues. Cooperation within the Transatlantic Economic Council workshops informed much of the discussion on the TTIP SME chapter.
5. Lori Cooper (US – Department of Commerce, Brussels) explained how the US and EU cooperated to help SMEs access the transatlantic market. Talks started in 2008 and signed in 2012 Commerce and (then) DG Enterprise concluded an SME MOU – a very simple document, the basic framework of which was to provide a foundation to build cooperation. The MOU was renewed in 2015 and runs to end 2019. The overarching goal continues to be job creation and promoting innovation, investment and export. Under these SME cooperation arrangements the US and EU have shared resources, including joint trade shows, joint match-making and information sharing. Information sharing commenced with both sides becoming familiar with systems and resources: Enterprise Europe Network and US Commercial Service. The focus had since been honed to enhance business to business contact between US and EU SMEs. There has been particular success with match making at trade shows and the US took advantage of the MoU to bring 100 US entities to a trade show in Hannover resulting in 400 meetings/ leads. Now cooperation is being focussed at a more grass roots level (Industry Offices and Bilateral Trade Desks). There has been a history of cooperation between UK and US Commercial Service, and Commerce's Office of Finance and Insurance Industries has expressed interest in working on US/UK SMEs in Fintech.
6. Christina Sevilla (US – USTR) **then briefed on the US-EU SME Best Practices Workshops,** initiated with EU prior to TTIP. The format was for SMEs on both sides of Atlantic to meet with officials. There was an opportunity to go further with UK/US cooperation and best practice discussions, which would fall outside purview of an FTA. Agendas were jointly developed by both sides. Workshops led to deeper engagement and could potentially lead to an MoU. Output was usually a one page joint statement and some concrete initiatives. It was written into the US-EU MoU that all work would be carried-out within existing resources. By sharing information and sharing programmes both sides were essentially doing more within existing resources.

Department for International Trade

7. Bob Collier (UK – DIT) agreed that this was a good way of cooperating and we would need to involve Innovate UK. The Enterprise Network was a good way to do this as it reaches directly into business. He then explained the UK model. There were 5.5 million business enterprises in the UK, a significant proportion of which were in the services sector. Economic development activity in the UK was devolved and Devolved Administrations organised export activity in their own territories, but when SMEs go global they liaised with DIT's international team. DIT's network was nationally controlled but regionally managed via a strong regional structure of 250 International Trade Advisers (trade advisers with business experience, not civil servants). The government wanted to drive more exports and get more business and more value exported. This was potentially scalable within the current model but resources would be a challenge. 90% of UK exporters were SMEs, around 40% of UK export value: DIT reached out to around 30-40,000 businesses every year. There was a strong link between exports and innovation.
8. DIT was rolling out a new strategy, looking at how many businesses could be engaged, to save on resources. There are three arms of the UK's model which had the most impact for SMEs: 1. Global Network; 2. Strong sector focus (campaign related activity around specific sectors globally); and 3. Supporting current exporters to extend their global reach. "Gov.UK" was a "one stop shop" which encouraged businesses to self-serve. The government was also looking at how to best help exporters in other regions (North and East and West Midlands). DIT were also trying to formalise/ build up support networks via Chambers of Commerce (overseas delivery partners in around 30 markets around the world). This would free up international staff (at post) to focus on more high value work. In terms of preparing small businesses to export, the idea was to start with a diagnostic process, analysing business strengths and development needs, followed with workshops and master classes (e.g. IP protection, trade finance - UKEF).
9. Trisha Van Orden (US – Department for Commerce) delivered a presentation on the **US Federal Trade Promotion Service**
10. Sarah Bonner (US - US Small Business Administration) delivered a presentation on the work of the **US Office International Trade.** A Cabinet level agency representing small businesses at cabinet level and the first place small businesses go for one-on-one help. Small Business Development Centres (SBDCs) consisting of 3000 business counsellors offer advice designed to provide an international soft landing for SMEs – UK subsidiaries were welcome to drop in. Enterprise Centres usually located in universities and colleges helped small business with research – counselling was free, with small charges ($40) for services. The SBDC network engaged regularly and worked on trade missions. The Small Business Association was co-located with Commerce in export assistance centres and had finance staff to help SMEs build business cases for export loans. They also provided Women's Business Centres, designed to help diaspora women and under-serviced communities by offering child care and weekend and evening classes. The Small Business Administration gave trade loan guarantees - not loans unless it's for disaster relief.
11. The group then discussed ideas for potential cooperation: exchanges between UK and US entrepreneurs (peer to peer support); sharing of best practice in developing business to get SMEs "export ready"; enabling conversations between Growth hubs in UK and Small Business Administration counsellors; bringing networks of entrepreneurs together – how to build on this to reach those business that might not seek support (e.g. small business in US having a peer relationship with small business in UK so when they were ready to export they already had access to a network); bringing two

Department for International Trade

groups of entrepreneurs from UK and US together; using the current support infrastructure to link entrepreneurs even before they are ready for export.

12. The group agreed that the ideas would fit well with the general framework of SME workshops and a potential MoU. A UK-US SME workshop could be vehicle to start pilots such as this. There was lots of potential to connect government institutions, state service providers and SMEs. One outcome of the UK/US working group could be to announce launch of best practice workshops with a focus on entrepreneurship. There was also the potential to launch a joint "Doing Business In" brochure – a one pager on doing business in UK and US with links to available resources for SMEs - joint document.

Action Items

- US – USTR to draft the initial (US side) text for "Doing Business in UK/US" brochure and send to UK for comment/ contributions.
- First SME workshop to be planned for March 2018, likely in the margins of the next TIWG in Washington DC.

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- High degree of common interest in establishing an SME dialogue to pursue exchanges of information on support measures for SMEs, and to produce a short brochure to assist UK and US SMEs to do business in the other country. Wording agreed on this for the joint press statement. A successful Short Term Outcome.

Department for International Trade

Title of meeting: ***Sustainability / Labor and Environment***

Date: ***13th November 2017***

Time: ***14:30-15:30***

Participants

Name	Department / Directorate
Maryam Teschke-Panah	Policy Directorate, DIT (Lead)
Magdalena Ruda	UK-US Team, Trade Policy Group, DIT
Sohail Ismail	Policy Directorate, DIT
Joanne Lawson	Policy Directorate, DIT
Elie Howe	Policy Directorate, DIT
Sophie Hale	Analysis Directorate, DIT
Peter Gysin	BEIS
Trevor Salmon	DEFRA
Rebecca Lavery	DWP
Oliver Griffiths	UK-US Team, Trade Policy Group, DIT
Katie Waring	UK-US Team, Trade Policy Group, DIT
Timothy Wedding	United States Trade Representative
Alexandra Whittaker	United States Trade Representative
Carlos Romero	United States Trade Representative, Labour
Sarah Stewart	United States Trade Representative, Environment
Mark Palermo	US Department of State
Emma Laury	US Department of Labor
Anne Zollner	US Department of Labor
Brooke Hobbie	US Department of Interior

Key Points to Note

- UK and the US agreed that the objective for the first discussion should be to develop a better understanding of each side's institutional set-up (range of institutions involved in discussion and work on sustainability / labor and environment), current approaches (e.g. to scope, enforcement mechanism and stakeholder engagement), and elements which may be included into the sustainability / labor and environment chapters.
- US indicated there may be some room for manoeuvre to extend the scope of labor and environment chapters by including issues which are not covered by TPA, but these would be rather limited.
- US firm on dispute settlement mechanism based on sanctions, as well as main elements covered by labor and environment chapters (e.g. core labour standards, a list of Multilateral Environmental Agreements, and the obligation of domestic compliance and enforcement). These are enshrined in the US legislation, and as such guide the US team in the way it conducts negotiations with partner countries, and impose limits on what can be discussed and agreed upon in an FTA (both, concerning the scope, and the level of ambition). The FTA provisions are not seen as a right vehicle to force changes in the US legislation.

Department for International Trade

- US see merits in having sanctions-based dispute settlement mechanism, even if it is rarely used (its presence encourages partner countries to improve their legislation and practice in the areas of labour and environment). The mechanism is supported by financial and technical assistance, as well as capacity building.
- US indicated climate change and greenhouse gas emissions are very sensitive in the US, and have not been included in the recent trade agreements (and tested yet with the current Administration), as there was no Congressional approval for it.

Reports of Discussions and Outcome

1. The meeting opened on a discussion of intent for the meeting. UK opened with comments indicating a desire to discuss the institutional set-up of the United States Trade Representative (USTR), and their cooperation with other US departments and agencies, so as to compare with UK set-up, as well as enquiries as to dispute settlement mechanisms pertaining to labour and the environment. Additionally highlighted was that these would be exploratory discussions for setting up future dialogues.
2. UK provided a brief outline of the UK's institutional framework; Department for International Trade (DIT) has a sustainability team who work closely with colleagues from other departments (such as DEFRA, DWP for labour interest and BEIS).
3. Intent for the UK was outlined in the context of the UK's departure from the European Union (EU); that the UK cannot actively pursue trade policy measures (such as negotiations of a trade agreement) while a member-state of the EU but has interest in scoping possible action for the future.
4. US responded with a description of institutional makeup around USTR: the US Constitution allocates power for negotiation of trade agreements to Congress; however in 1974 the US Congress passed the Trade Act which established the 'Trade Promotion Authority' (TPA) for the office of the President (ex-'Fast Track Authority'). As long as the administration of the President conducts trade negotiations along certain principles (outlined in the Trade Act 1974 and subsequent amendments, and the renewed TPA) Congress will expedite the legislative process, though USTR still maintains constant interaction with Congress pre-negotiation, during negotiation and afterwards. The TPA has evolved over time, and most recent version was adopted in 2015.
5. US highlighted the importance of the legislative component in their work (guiding USTR in negotiating the scope and level of ambition of trade agreements), as well as the extent to which the role played by labour and environment in US trade agreements has evolved over time. This was stressed multiple times during the meeting. US further commented that they felt that other countries consistently underestimated the role that US Congress played in negotiations.
6. Further comments described the interwoven nature of work between USTR and relevant departments for sustainability (environment and labour) issues (such as Department of Labor, Department of Interior, Department of Agriculture, Department of Energy, Forest Service and Commerce and Oceanic Agency) as well work with border agencies.
7. The most recent amendment of the TPA was adopted in 2015, which set out key negotiation objectives for USTR. In the field of sustainability (environment and labour) this included to seek commitments that parties to the agreement adopt and enforce domestic labour and environmental laws (consistent with their international obligations), and do not disregard them for the purposes of attracting trade or FDI; as well as that labour and environment chapters need to have the same dispute resolution mechanisms (based on sanctions) as other chapters.

Department for International Trade

8. US also mentioned that as of the latest TPA, the US should seek inclusion into trade agreements of commitments consistent with 7 multilaterals on the environment that the US has ratified. In addition there are two new post-2015 objectives relating to sustainable management of natural resources, notably fisheries: clauses to prohibit harmful fishing subsidies that lead to overfishing, and against illegal unreported and unregulated (IUU) fishing.
9. UK response mirrored sentiments of US: regarding reliance on other departments. UK also pointed out the ongoing process of transposition of EU law through the EU Withdrawal Bill.
10. Climate Change. UK (Gysin) inquired about the possibility of including reference to climate change in a future UK-US trade agreement given that the UK has a strong historical stance on climate change and pushed strongly for the Paris Agreement. UK also highlighted the pressure for this that would come from civil society and NGOs. US (Stewart) responded emphatically that climate change is the most political (sensitive) question for the US, stating it is a 'lightning rod issue', mentioning that as of 2015, USTR are bound by Congress not to include mention of greenhouse gas emission reductions in trade agreements. US (Stewart) stated this ban would not be lifted anytime soon.
11. Stakeholders. UK (Teschke-Panah) also wanted to know which role stakeholders play within labour and environmental issues in the US. US (Stewart) provided a description of the institutional role that stakeholders play within USTR; there is the Advisory Committee for Trade Policy and Negotiations (ACTPN), containing 20-25 members, being drawn from NGOs, industry and academia. These stakeholders are given security clearance and allowed to offer candid input on trade agreement texts. USTR does engage with other stakeholders that operate outside ACTPN. These had been happy in recent years due to the inclusion of enforceability mechanisms (for environment) in trade agreements. For labour, US (Romero) said that there had been dissatisfaction among some stakeholders in recent years due to the fact since 2007, there has been no expansion of labour provisions in the TPA; there is a feeling that NAFTA affects jobs and working conditions and other countries should address these issues (the current administration echoes these sentiments).
12. TPA and labour. UK (Lawson) queried the nature of the TPA and its expanding scope with regards to labour. US (Romero) replied stating that the labour provisions of the TPA are the product of a political compromise within the US: when Democrats took Congress in the 2006 mid-term elections there was compromise to include a commitment from parties to the agreement to adhere to the core labour standards (1998 ILO Declaration on the Fundamental Principles and Rights at Work), and to adopt and effectively enforce domestic labour laws compliant with those standards.
13. Dispute resolution. UK (Teschke-Panah) enquired about analytical work that had been conducted on the US side around effectiveness of the sanctions-based dispute resolution for these issues (labour and environment). US answer was brief but stated that there had been no analytical work conducted on this issue by the US Government, but claimed that there were some robust studies carried out by research institutes. Additionally the US agreed to potentially discuss with the UK in detail the US-Guatemala labour dispute case brought about in 2010.
14. Dispute resolution. Another point that US (Romero and Stewart) raised were that the benefits of dispute resolution can be achieved without using it. US stated that dispute settlement and the use of sanctions is for the US a matter of last resort; most work is conducted through diplomatic and policy dialogue, as well as financial and technical assistance, and capacity building. The latter is the 'engine of progress' in the sense that partner countries are encouraged to improve their legislation and practice in line with the commitments enshrined in trade agreements.

Department for International Trade

15. Joint-action. US (Stewart) stated that they felt joint UK-US leadership on sustainability (environment and labour) with regard to third countries was a possible way forward given the UK's prominence on these issues historically. UK noted the need for further and deeper discussions in future and responded positively to the idea for joint cooperation.

Action Items

UK and US agreed to continue discussion about the sustainability (labour and environment). Future discussions could focus on (but will not be limited to):

- The aspects of interest to the UK and the US which go beyond the basic provisions, and which may be covered by sustainability (labour and environment) chapters of future trade agreements (these could include e.g. anti-corruption, forced labour, modern slavery, sustainable management of natural resources, including fisheries and forestry, and others).
- The enforcement mechanism (US proposed to present more in detail the case of Guatemala, the reasoning behind including the labour and environment chapters into the general dispute settlement mechanism, and the benefits of having the sanctions based mechanism even if it is perceived as a "last resort" measure and rarely used).
- The opportunities for the UK-US leadership on sustainability related aspects worldwide and in relations with developing countries (this could include exchange of views about impacts of trade agreements on developing countries, and addressing development-related aspects in trade agreements).
- Sharing wider analysis and evidence of impact of sustainability (labour/environment) provisions in trade agreements

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- A useful introductory meeting, although limited by length of session and the VTC format. It confirmed that the US continues to see labour and environment chapters being subject to dispute resolution mechanisms of the agreement /sanctionable. There are some restrictions on extending the scope of issues with climate change being considered out with, but the possible flexibility on labour provisions e.g. forced labour, modern slavery, could be an area to explore in the next dialogue. It would be preferable to have face to face engagement with USTR (and possibly agency) counterparts in a next dialogue.

Department for International Trade

Title of Meeting: ***Goods: Agriculture Market Access***

Date: ***13th November 2017***

Time: ***15:30 - 16:30***

Participants

Name	Department/Directorate
Ceri Morgan	DEFRA (Lead)
Oliver Griffiths	UK-US Team, Trade Policy Group, DIT
Katie Waring	UK-US Team, Trade Policy Group, DIT
Emma Coppack	DExEU
Jack Kennedy	UK-US Team, Trade Policy Group, DIT
Jack Moreton-Burt	Policy Directorate, DIT
Neil Feinson	Policy Directorate, DIT
Edwin Mangheni	UK-US Team, Trade Policy Group, DIT
James Dunn	DEFRA
Jonathan Hoare	DEFRA
Sinjini Mukherjee	DEFRA
Natalie Roberts	DEFRA
Russell Stokes	DEFRA
Roger Wentzel	United States Trade Representative (VTC)
Dana DuBovis	United States Trade Representative
Tim Wedding	United States Trade Representative
Alexandra Whittaker	United States Trade Representative
Sam Russo	United States Trade Representative
Julie Callahan	United States Trade Representative
Cheri Courtney	US National Organic Program
Stan Phillips	US Embassy London

Key Points to Note

- For Organics, Spirits and Wine: Ahead of technical VTCs, Defra is looking to share operability summaries as well as relevant draft continuity texts.
- Defra to provide response to US suggestion for formally launching an Equivalence Determination Procedure. US will also consider what informal processes can be utilised.
- US to highlight their priority annexes in order to inform our ongoing analysis of the VEA, and for Defra to consider whether we anticipate a future audit of US processes.
- Defra and US to facilitate regulator to regulator discussion on VEA.

Department for International Trade

Report of Discussions and Outcome

Each of the four continuity agreements were discussed in turn:

1. Spirits agreement

The UK provided a summary of US questions, taken away from the recent VTC, with associated answers:

Q: The rationale for the inclusion of paragraph 3 in the proposed UK text.
A: Taken from the original text
US: No issues going forward

Q: More information sought on the proposed ratification processes
A: Should be discussed in relation to all continuity agreements; to be put on hold for now
US: Agreed legal discussion in the future

Q: References in the proposed UK text to the Republic of Ireland
A: Still a matter for EU negotiations, but in terms of GIs, if they are trans-border, the GIs will still be protected
US: Sounds fine, but should discuss further once had time to look at it

On operation of the agreement, the UK suggested sharing a summary of the operability assessment with the US and proposed future technical VTCs following a similar approach. The US agreed to this proposal.

2. Wine agreement

At the last working group the US asked a question on certification requirements and labelling. Here the UK stated that EU negotiations and the likely implementation period would need to be considered, however starting a discussion now on simplification of these requirements beyond the period of continuity would be welcome in order to give businesses lead time for changes, if they were to occur. The US welcomed this suggestion. The UK proposed to share draft continuity text on the agreement ahead of a January VTC, and to start discussions on potential future changes at the VTC.

The UK asked the US for their thoughts on the World Wine Trade Group. The US said this is something the UK should think about as the issues being addressed through this group are similar to those they would like to see addressed in a future agreement with the UK.

3. Organics Arrangement

The UK stated they are in a position to share draft continuity text on organics. The US stated that whilst they do not want to disrupt trade on day one, there are other aspects to consider, other than the agreement text. The US invited the UK to begin the formal process of applying for mutual recognition via the National Organic Program. The US also wanted to know if the UK were thinking of making the agreement more formally binding, in-line with the EU's thoughts, and if the UK plans to audit the US.

The UK wanted to make sure that this did not mean they were starting from scratch, and that common elements of the agreement would roll over, with the US focusing on how the UK will deal with changes.

Department for International Trade

It was uncertain whether a formal request for recognition could be made while the UK is still part of the EU. This is something the UK will explore. In the meantime the US agreed to explore options for informal progress on recognition to be achieved.

4. Veterinary equivalence agreement (VEA)

The US explained that the original VEA was produced to take account of the complexity in evaluating Member States, therefore a new UK-US VEA could be simplified and tailored to the UK-US relationship. The UK agreed there were opportunities to look at simplification, and have started by assessing the annexes. The UK would like to share information on this work as soon as possible. Both the US and UK agreed it would be helpful to include the regulators in this discussion.

- On the US question of what recognition would look like, the UK agreed work on this should take place in parallel with the annex work.
- The US asked if the UK would anticipate an audit sometime next year, and if so, they would need to make sure this was on their regulators agenda. The UK said they would get back to the US on this as soon as possible.
- On legislation, the US does not anticipate legislative fixes, but SIS will need to make rules, and this should not hold back VEA discussions.

Action Items

Key actions:

1. For Organics, Spirits and Wine: Ahead of technical VTCs, Defra looking to share operability summaries as well as relevant draft continuity texts.
2. Defra to provide response to US suggestion for formally launching Equivalence Determination Procedure. US will also consider what informal processes can be utilised.
3. US to highlight their priority annexes in order to inform our ongoing analysis of the VEA, and for Defra to consider whether we anticipate a future audit of US processes.
4. Defra and US to facilitate regulator to regulator discussion on VEA.

Other actions:

- Defra to clarify language on Irish Whiskey/whisky in the spirits agreement taking into account border sensitivities.
- Agreed to run twin track discussions on wine, ensuring continuity for businesses in one track whilst also understanding US approach to simplification and challenges of current EU arrangement.
- US to come back on Defra's request for more information on the World Wine Trade Group.
- Defra to share the Organics draft text ahead of Dec VTC.

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- Objectives were largely achieved. The session demonstrated positive progress on all four of the continuity agreement texts. On Spirits in particular, resolution is close, aided by a technical VTC ahead of the Working Group. The US also responded well to the suggestion of maintaining the Wine agreement text while developing a twin track to discuss possible future changes. The situation is more complex with Organics and VEA, as the US' stated regulatory approach is likely to result in disruption to trade on Day One.

Department for International Trade

Title of Meeting: ***Intellectual Property Enforcement***

Date: ***13th November 2017***

Time: ***16:30 – 17:30***

Participants

Name	Department/Directorate
Ada Igboemeka	Policy Directorate, DIT (Lead)
Mark Prince	Policy Directorate, DIT
Dara Beaulieu	Policy Directorate, DIT
Minh Tri Le	Policy Directorate, DIT
Ben Richie	Policy Directorate, DIT
Adam Williams	Intellectual Property Office
Megan Heap	Intellectual Property Office
Peter Cade	Intellectual Property Office
Will Steele	Intellectual Property Office
Tom Walkden	Intellectual Property Office
Katie Waring	UK-US Team, Trade Policy Group, DIT
Edwin Mangheni	UK-US Team, Trade Policy Group, DIT
Christina Sevilla	Office of the United States Trade Representative
Christine Peterson	Office of the United States Trade Representative
Susan Wilson	United States Patent and Trademark Office
Rachel Salzman	US Department of Commerce
Samuel Rizzo	United States Trade Representative
Alexandra Whitaker	Office of the United States Trade Representative
Timothy Wedding	United States Trade Representative (Europe Office)
Jessica Simonoff	Department of State
Joseph Babb	Department of State
Joseph Burke	US Embassy London
Julie Callahan	United States Trade Representative
Casey Mace	Department of State
Andrew Lorenz	National Security Council
Steven Shapiro (VTC)	Federal Bureau of Investigation
Steve Aiken (VTC)	US Intellectual Property Enforcement
Richard Miller (VTC)	US Trade and Patents Office
Additional officials	Head of Trademark and Enforcement
M.D (VTC)	US Patent and Trademark Office
Additional officials from Office of Regional Affairs, Department of State and United States Trade Representative	Via VTC

Key Points to Note

- Joint Economic Study on IP enforcement and global trade: US have no funding for commissioning the work – they will produce the content in house. Outcomes will be split into short-term and long-term initiatives.

Department for International Trade

- Agreed to coordinate with the SME Group to coordinate activity and outreach.
- Work plan for STOs agreed with outputs and approximate timelines.
- Agreed that discussion on Illicit Streaming Devices would focus on 4 areas: public campaigns, role of intermediaries, sharing approaches to enforcement, approaches to tackling streaming. The discussion will be followed up via the US IPEC and IPO Copyright and Enforcement Director conversation taking place on 24th November 2017 as well as further discussions between UK IPO officials and counterparts in the US PTO and FBI.
- US suggested that both sides map out third countries where we have common interests to work. This work to be done through each side's respective IP attaché networks.
- The US proposed to share their list of nominations for their Notorious Markets List and requested access to PIPCU's List of Infringing Websites. UK (IPO) clarifying that IPO does not own the list but could request this from PIPCU.
- The US was pushing for Joint Investigation Operations related to illicit streaming devices. UK clarified that operations involve a range of UK agencies - HMRC, Border Force, PICPU, etc. who are not currently involved in the discussion. UK only able to commit at this point to focus on learning lessons from each other.

Report of Discussions and Outcome

Joint Economic Study

1. The UK (Igboemeka) suggested that the Joint Economic Study (JES) on IP enforcement and global trade could have outcomes such as: producing new knowledge on common global challenges in IP, building on and developing the existing evidence, sharing data and improving methodologies to strengthen the quality of analysis. The UK suggests discussing in the session: potential topics for the Joint Economic Study (JES), and agreeing forward processes.
2. The UK (Williams) stated it does not have the capacity internally to produce the analysis and is looking to commission this work out to independent institutions and asked for the US's view on this. The US (Peterson) states it does not have the budget for this type of project. They have in-house resources that can work on the data. The US can split the work between in-house and external tender. The UK (Williams) highlighted that the IPO budget for this Financial Year (FY) has already been committed and the work could only start from March next year. The US (Peterson) pressed as to whether there could be something we could deliver in the shorter term, within the next 6 to 8 months. The UK suggests that we split the work into short-term deliverables based on developing existing analysis and longer-term work. The UK (Igboemeka) suggested both sides to jointly come up with a specification and a joint decision to be made if we go out to third parties. The UK (Williams) also suggested that the work can be split depending on what both sides want to achieve and we could fill that out with tendering?
3. The US (Peterson) stated that the US has a lot of existing work that can be used again for the JES such as the 2016 Report from United States Patent and Trademark Office (USPTO) which refers to the Intellectual Property Office's (IPO) own work. The report is a granular report on counterfeiting, cease and desist orders, however it does not do a UK-EU comparison. A lot of goods that get counterfeited are sold locally. There have been private sector attempts to measure copyright loss, but the findings were never definitive and were controversial.
4. The UK (Igboemeka) suggested looking at the economic impact of counterfeiting and piracy following the 2017 OECD report and the UK's follow up report. The UK (Steele) pointed out that the IPO are

Department for International Trade

currently looking internally at: online copyright infringement, counterfeiting in social media, and valuing IP Intensive industries. The UK (Williams) suggested that both sides share methodologies. Currently, the UK struggles to get data on the value of IP in trade within the EU because of the complexity of the extraction process. It will be useful to us if the US has good data on this.

5. The UK (Igboemeka) summarised that both sides agreed for a short-term deliverable within 6 to 8 months and another long-term deliverable in the next FY 2018, and that both parties should bring their economists together, US (Peterson) concurring. US (Peterson) asking that the questions for both short term and long term be mapped out together.

Illicit Streaming Devices

6. The US (Peterson) explained potential areas of interest, especially in the creative industries area, are films, sport, TV and video games as they constitute significant trade and investment relationships, and there is much cross investment by both countries. Online platforms generated $2billion US dollars' revenue in streaming content. A challenge to this is the pirated streaming sites and the devices that make these sites accessible. The US' notorious markets analysis identified some issues relating to illegal streaming platforms.
7. US (Shapiro) added that the FBI are aware of this problem and are going after these devices by focusing on the advertising network as an example. Their focus is to target distributors of these set-top boxes. The FBI are currently moving into the sporting events arena to try to shut down these boxes. They work with businesses such as Apple's ITunes to combat illicit streaming. The US highlighted that industry need to target these problems more effectively.
8. The UK (Walkden) agreed with what the US said, highlighting that the UK has done a lot of enforcement work. However, there is a need to consider the effectiveness of legislative change in this area. Industry are keen to tackle these boxes at source but there is an issue to see how possible it might be to outlaw these boxes, as legislative change can also capture devices used in a legal way such as laptops and mobile phones. This is a relatively new problem; therefore, the UK is happy to test prosecution under Fraud Act, Copyright Act, conspiracy to defraud (common law). We already have had some successful prosecutions. The UK have two financial investigators working in the IPO to assist law enforcement bodies and this was proving very useful in these cases in pursuing significant sums through Proceeds of Crime Orders. The UK have also published a guidance document for enforcement bodies to explain the enforcement technical side so we provide clear advice to clarify when and how we can go after people. There have been lots of seizure operations going on and this is an international problem, so the UK is happy to discuss this with the US. The plain or "vanilla" boxes are not illegal. The boxes when they come into the country are often in their legal vanilla form. The boxes become illegal when they receive modifications which turn them into illicit streaming devices. The scale is huge. The UK works closely with industry and have close links with US industry.
9. The UK (Williams) noted by saying it would be useful to collaborate on techniques to combat this. Such as communicating this effectively to the public. The UK (Walkden) highlighted we need to identify what resonates with the public such as the issue of identity theft, stealing of bank accounts, lack of child protection. The UK (Igboemeka) asked if there are areas for cooperation. The US (Peterson) said that National Intellectual Property Rights Coordination Center (IPR) has done public campaign awareness. The UK (Walkden) said a joint government/industry outreach campaign would

Department for International Trade

be launched in the UK in the run-up to Christmas and the IPO would share details with US colleagues when available. The UK said that working with intermediaries such as Facebook, Amazon, Alibaba, Ebay is key. Some of them had made changes to their global policies on ISDs, and processes for removing illegal content were seen by industry to be improving, but there was still a way to go.

10. The US (Wilson) noted that this phenomenon came to their attention two years ago. Companies began doing one-off ligation strategies against individuals. IPR, FBI, PTO have talked to stakeholders to steer them towards a different strategy. The US asked stakeholders for multi-jurisdictional strategies instead of individual litigation. Due to the breadth and depth of this kind of phenomenon, it also has an international reach because of the vast supply chains. There is a lot to do about talking to stakeholders but no real dialogue to work closely with enforcement. The US and UK cannot sequence this in old fashioned piracy way, so both sides need to work with stakeholders in the private sector. The UK engages with intermediaries such as Alibaba, Amazon. The UK highlighted the need for joint pressure on intermediaries and work on public awareness, as the devices are sold through channels that look legitimate. Both sides need to share details to amplify the message to the public.
11. The UK (Walkden) pointed out that both sides needed to look at actual streaming. Additionally, he highlighted that website blocking orders have been very effective in the UK. The US (Aitken) asked if the US and UK can work on joint cross operations? The UK (Williams) stated it agrees to a high-level conversation on this.

Notorious Markets List

12. The US (Peterson) explained that they are currently in the process of reviewing the Notorious Markets List submissions. The US are consolidating all the nominations. The US thinks it would be helpful to share the list with the UK for UK Operations. The US would like access to the UK Infringement Websites List
13. The UK (Williams) stated that the IPO does not hold the Infringement Websites List, another agency – the Police Intellectual Property Crime Unit (PIPCU) holds that list. The IPO can ask PIPCU for the list and IPO can thereafter send it to the US.

Work Plan

14. The UK (Igboemeka) suggested going through the Work Plan by headings. On the SMEs toolkit and SME roundtable the UK (Igboemeka) said the UK will work with our export promotion side to target the right SMEs who want to or are exporting to the US. The US (Peterson) said that this STO should coordinate with the SME group who are working on outreach events.
15. UK (Igboemeka): Global Leadership in IP Enforcement. US (Peterson) said that for the next Working Group, both sides should identify their shared interests in third country markets. The US said that both sides should ensure respective attachés are coordinating on the ground. The UK (Williams) noted that the attaché programme can be done before Christmas if the UK has shared contact information. The US (Wilson) stated they have quarterly meetings with attachés with one coming up in the 1st week of December. The US invited Adam (Williams) or someone from the UK to these meetings.
16. UK (Igboemeka): Joint Economic Study. The US (Peterson) said there is agreement that there are two tracks for the JES. Two different deadlines for the short and long term deliverables. In the meantime, both sides should identify any additional viable short term deliverables.

Department for International Trade

Action Items

Joint Economic Study

- Bring US and UK economists together for a future meeting to plan the short (6-8 months) and long term deliverables of the Joint Economic Study, with both parties mapping out the questions that need to be answered for both the short term and long term deliverables.

Illicit Streaming Devices

- IPO Enforcement Director and IPEC's Director to follow up on key issues from illicit streaming devices discussion including: to work jointly on public awareness raising initiatives; working with intermediaries; sharing approaches to law enforcement; lessons on tackling illicit streaming.

Notorious Markets List

- US to share Notorious Markets List with the UK.
- UK IPO to ask PIPCU for the Infringement Websites List for IPO to send to the US.

Work Plan

- Christine Peterson (USTR) to send over full list of contact details to the UK so that the UK can liaise with the US.

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- Very good atmosphere with both sides involved in an engaging discussion on illicit streaming devices and joint economic work. Session was in fact too short to allow for substantive discussion of all the issues. While there was a good brainstorm on potential topics for the joint economic study on IP enforcement and trade, the US was clearly hesitant around our proposal to commission out the work to an independent party - explaining that they did not have the budget and would conduct the analysis internally. This will impact on the perceived impartiality of any published work and we will need to take this into consideration as we agree on topics. US pushed hard for agreement to joint operations between enforcement agencies tackling illicit streaming devices and on third country cooperation. UK was non-committal but we can expect they will continue to do so. Meeting was successful in that there are concrete topics for follow up on illicit streaming and commitment to producing short term and longer term products for the economic work. Short-term outcome work plan agreed along with outputs and timelines. Progress on the work plan with a focus on the joint economic work are potential topics for the next Working Group.

Department for International Trade

Title of Meeting: ***Services Plenary Session***

Date: ***14th November 2017***

Time: ***9:00-12:00***

Participants

Name	**Department/Directorate**
Tom Josephs	Policy Directorate, DIT (Lead)
Graham Floater	DCMS
Gila Sacks	DCMS
Rob Ward	HMT
Henry Shennan	DCMS
Chris Woodward	Policy Directorate, DIT
Ben Rake	Policy Directorate, DIT
Alessandro Fusco	Policy Directorate, DIT
Ben Aldred	Policy Directorate, DIT
Richard Salt	UK-US Team, Trade Policy Group, DIT
Cordelia Jonathan	UK-US Team, Trade Policy Group, DIT
Johanna Michael	Policy Directorate, DIT
Tamsin Morgan	DIT
Eva Smith Leggatt	Policy Directorate, DIT
Jaya Choraria	HMT
Sukhmani Khatkar	DIT
Additional officials	BEIS
Matt Mueller	HMT
Dan Rusbridge	HMT
Casey Mason	United States Trade Representative
Robert Tanner	United States Trade Representative
Jai Motwane	United States Trade Representative
Daniel Bahar	United States Trade Representative
Thomas Fine	United States Trade Representative
Jeffrey Seigel	US Department of the Treasury
Tim Wedding	United States Trade Representative
Alexandra Whittaker	United States Trade Representative
Andrew Lorenz	US National Security Council
Casey Mace	Department of State

*__Bold__ = lead/contributed to the discussion

Key Points to Note

Summary of discussions on the four pillars:

Department for International Trade

- STOs: Good progress has been made by the regulators on the Audit STO, but we are not in a position to make any announcement yet. Language on the Financial Dialogue STO will be ready.
- Continuity Agreements: Further work needs to be done on Insurance, but both sides are keen to take this forward.
- FTA prep: Informative presentations from the US on their approach to services chapters, digital/telecomms, investment, PBS and FS, where the UK was in listening mode.
- Wider trade: US repeated that, while sensitive to the UK's position on technical rectification of our WTO schedules, they do still have concerns about this approach.

General Summary:

Both sides agreed that there are a large number of areas of mutual interest, including, but not limited to, PBS, FS and digital and that we should be working towards an ambitious agreement in areas where we have common ground.

- The US re-iterated their pitch for a negative list approach, arguing that the rest of the world was gradually adopting this way forward.
- The US requested that we refer to discussions on financial services as "US – UK financial regulatory cooperation".
- The US described TISA as "the universe of good ideas" in the PBS space, and specifically suggested the UK mine it for further ideas.
- US re-iterated the importance of giving businesses a clear signal on the proposed Financial Services regulatory framework post Brexit as soon as possible, warning that companies will shortly be forced to set up subsidiaries overseas (something that they are already preparing to do) if further clarity is not provided in the near future.

Actions:

- UK/US data experts to arrange follow up discussion, with particular emphasis on privacy protection issues and continuity discussion.
- UK/US telecoms policy leads to arrange follow up discussion
- On PBS, UK/US to arrange follow up discussions, probably in early 2018, once they have received feedback from the negotiating bodies, to discuss applicability to other institutions.
- General action point for all teams to arrange follow up discussions.

Report of Discussions and Outcome

1. The UK welcomed the US to the discussions and set out that the focus of the discussions would be on three key sectors: digital, professional and business services, and financial services. The US agreed and suggested beginning with a general update on the four buckets: continuity agreements; STOs; the scoping of elements of possible future agreements; and global cooperation within fora such as the WTO and G20. The US also offered a general overview of the US' approach across Services and Investment. DIT agreed that this would fit with the overall objectives outlined the previous day of trying to gain an understanding of each other's approaches towards future FTAs.
2. Continuity of existing agreements: The US highlighted that the main issue in Services and Investment is that of the US/EU covered agreement on insurance and re-insurance measures, noting that there was already an understanding of the kind of information exchange needed for the US to understand where the UK should be going.
3. The US wanted to re-emphasise their stance on WTO Services commitments. They acknowledged that the UK had already signalled interest in taking updated versions of the EU schedule and undertaking a technical rectification process. The US is aware of the complexities the UK faces in determining our

Department for International Trade

approach but they do have concerns - there are many exceptions in the EU schedule that clearly do not reflect the more open nature of the UK's services market. He suggested there would be value in the UK taking these points into account before we put our final proposed schedule on the table, notwithstanding the fact that our relationship with the EU is a key consideration.

4. DIT said that the UK has already set out our approach to GATS schedules. We have commitments in the WTO currently set out in EU schedules, which we want to maintain. Following the technical rectification approach is the way to give reassurance to businesses and consumers, which is the UK's priority. There is a process clearly set out in the GATS that accounts for the different views of WTO members in a formal setting. The UK wants to be transparent and to engage in open discussions with others. We hope to start the formal process towards the end of 2018.
5. The US explained their method of structuring FTA chapters. All sectors are covered by the cross-border trade in services and the investment chapters, other than financial services, which have a separate chapter. The cross-border chapter covers modes 1 and 2, while the investment chapter covers mode 3 issues. The investment chapter covers all services- and non-services-related investment. There are also rules on specific areas such as digital and telecoms on top of the basic, general disciplines. The US negotiates market access related commitments on a negative list basis. From the their perspective, this means that for key obligations in the services, investment and financial services chapters, each party can propose to negotiate exceptions, e.g. MFN or performance requirements in investment. Discussions on market access are generally carried out in the context of this negative list negotiation. Generally, the US has very open markets, but has significant offensive interests in foreign markets that are less open. The US encourages the UK to seek the highest level of openness to help create a global template for further negotiations.
6. Negative vs positive listing: The UK said that we are still in the early stages of developing our approach, and it was very useful to hear the US' perspective. The US said that negative listing has lots of benefits as it allows for high transparency and the ability to push for greater openness. A negative list approach doesn't prejudge a particular level of liberalisation. Some of these debates are not centred on the overall negative list approach, but on whether governments are willing to tie their hands in certain sensitive sectors. There is also a 'messaging gain' to be had with the negative list approach. Governments always have the right to regulate the domestic market, even if foreign service suppliers are given access. The US said that it was not a question of sensitivities, but the assumptions being made about everything else that is not sensitive. The US said that Canada had largely switched to a negative list approach (although this is not widely advertised), and that the EU was the last to hold out for positive listing. With CETA things entirely shifted gears, and China decided to pursue a negative list approach in 2013/14 – this is relevant to future templates and to the UK's potential future agreements.

DIGITAL

7. The US explained their 5 Chapter model. The E-Commerce chapter - increasingly referred-to as 'digital' – is not sector-specific, but essentially an 'overlay'. It applies to all the services and investment areas, with disciplines that have been developed to address issues emerging from the development of the internet and the changing way that businesses provide services, as well as new advances such as the Internet of Things and the increasing prevalence of sensors and connectivity. E-Commerce chapters, as in the original TPP, would include: substantive cross-cutting rules; more technical articles e.g. on SPAM

Department for International Trade

or e-signatures; and more policy-oriented articles on issues such as consumer protection and cyber security.

8. The highest priorities for the US are the articles dealing with cloud services and the interconnectedness of businesses, cross-border data flows and provisions for preventing computer facility localisation requirements. Many companies across numerous sectors, including agriculture, retail and financial services, are using equipment increasingly reliant on cloud services and Artificial Intelligence. The key issue regarding cross-border data flows is to create a level playing field for businesses; decisions about localisations of computer facilities should be driven by costs and climate requirements involved, not by regulations. The scale of interconnection means that costs are driven down dramatically; the US is 'passionate' about advocating this, and about bringing together a first group of countries in agreement on this area. There needs to be a balance between gaining certainty from regulations, and other policy concerns.
9. The US formalise the WTO customs moratorium on E-Commerce (preventing tariffs on electronic transmissions) as a permanent commitment in their FTAs and ask trading partners to do the same. The US also strongly advocate against any rules that discriminate against digital products in terms of location of production or consumption. They aim to create a global norm. The app-based economy allows small businesses to become very successful very quickly thanks to the internet platform, but this depends on countries not putting up barriers that favour or protect domestic producers. The tariff moratorium on electronic transmissions and the principle of non-discrimination of digital products are the most important issues in terms of economic impact.
10. The US has also begun to pursue an additional article on source code, first developed in their work on TPP. There are other countries supporting this, namely Japan. This is recognition that the value in many companies' development is resident in source code work. It is not appropriate to demand that companies give source code as a condition of market participation. There was also recognition that this can evolve – from purely proprietary source code issues to the proprietary algorithms that support software.
11. Due to interest from stakeholders and trading partners, the US have had articles that address SPAM (unsolicited email), which tries to create standards allowing consumers to opt in or out; and e-signatures and e-authentication. The US has a federal law and similar state-level laws that prohibit discrimination on the basis of something being electronic, and thereby allows companies to do business using electronic means. The EU has a more regulatory approach.
12. There are also articles addressing broader policy concerns, including: articles requiring the US and their trade partners to secure consumer protection for online activities; those requiring parties to have a system of data protection for personal information; and one outlining principles around consumers' ability to access the internet ('open internet'). The US highlighted that some countries, perhaps including the UK, contemplate very detailed rules about what carriers can or cannot do, while the US takes a consumer-focused perspective, geared towards the pure trade issue. The US said that trade deals can facilitate cooperation on cyber security, but it depends on the specific trading partner.
13. The US has spent a long time looking at intermediary liabilities for platforms. This is a large part of the US economy, with many US companies relying on the ability to provide internet platform services on a large scale. US domestic law has provided these firms with immunity from liability for the behaviour of their users. The Commission has a similar approach in the e-commerce directive, but differs from the US in terms of the legal practicalities. The US feels this is an appropriate discussion to have around the

Department for International Trade

digital chapters of FTAs, but it is still an area for development. The US is interested in talking with global partners about where there may be a potential need in future trade agreements; they are keen to create meaningful provisions that can solve problems, rather than merely drafting language or creating regulations.

14. The US has spent time talking to non-government stakeholders about the perceived challenges for telecoms and the Internet of Things, and where there may be barriers. Turning these discussions into discrete commitments is a work in progress but they said there are few new problems emerging that are not already under consideration.
15. DCMS highlighted that broadly, the US and the UK clearly have a lot of common interests in this area, and that this will be a fruitful area of future discussion. The US said that the most problematic area within the data localization issue is health information and the HIPAA (Health Insurance Portability and Accountability Act, 1996), which dictates that cross-border data flows are allowed as long as certain standards are met. The US Treasury said that in recent TPP negotiations, financial services were carved out of the data localisation prohibition. The obligation on the location of computing facilities is new to the e-commerce/digital trade chapter. After TPP was signed, there were further discussions with regulators, stakeholders and Congress. They confirmed that it was now clear US policy that financial services are covered in data localisation, but within the financial services chapter. This difference in drafting, as seen for example in TiSA, is based on the different way in which financial services are regulated, and the fact that regulators often need access to data, sometimes on a minute-by-minute basis – as witnessed in the recent financial crisis. The US tries to balance the interest in creating a broad, ambitious prohibition against localisation with respect for the fact that regulators need access to data.
16. DCMS then asked what the UK could learn from the US' discussions with the EU on TiSA. The US responded that the US had had simultaneous discussions on TiSA and TTIP with the EU Commission. The issue was that the Commission had yet to establish its position on data flows. The US had encouraged the EU to consider Member States' offensive interests. They said that the issue of data localisation, e.g. regarding HIPAA, can be a heated debate, but the US does care about privacy and has a fairly robust system. It is different in the EU; the two parties had a lot of debates about the strengths and weaknesses of both systems. The US said they do need to exercise the laws they have and give space to the Federal Trade Commission. In their models, FTAs incorporate the language of the GATS general exception as they find this sufficient. In taking measures to protect privacy, he said, you should have comfort that there is coverage in terms of general exceptions, and focus on making sure that systems are adopted that encourage that. It is important to ensure that there is legal accountability of the enterprises that hold the data. Until the Commission resolves its view, it will be hard to resolve the TiSA issue.
17. DCMS noted that, having seen the evolution of the US digital trade policy in FTAs, it is clear that there have been developments and that there is now a solid e-commerce chapter in TPP, for instance. He asked if the US thought it would be moving further ahead, perhaps integrating telecoms into the digital chapter. Could there be something more ambitious than TPP in the future? The US responded that the US would continue to look at whether or not they needed to add additional tools. The structure would not be changed, as telecoms remains useful as a sector-specific set of disciplines. E-Commerce is an over-lying area, and it is useful to maintain this distinction. The US will not be changing the current 5-

Department for International Trade

chapter structure for the foreseeable future. Cross-references and overlaps between chapters are resolved by having a collaborative nature.

18. On future-proofing in particular, DCMS asked, given the fast-changing nature of the digital world, which aspects of the content the US see as more fixed and which could be subject to change. The US are confident that they have a solid set of articles and that there would be no immediate move to change what was already accomplished in TPP. It may be worth considering whether or not to add things. This conversation is informed by learning from industry stakeholders, who witness first-hand the effects of barriers in foreign markets. One example is the source code provision (as set out above).
19. DCMS asked if there could be further provisions for different platforms. The US responded that much of this is driven by industry concerns. Their model already has 27 or 28 chapters; they are already addressing a lot of the platform issues, so are not inclined to draft any additional rules. The US said that telecoms provisions are much more established. Telecoms chapters try to do 3 things: continue the GATS practice of having a strong article allowing access and usage of telecoms suppliers in US markets, without national discrimination; provide for suppliers competing in each other's markets, e.g. interconnection; establish a series of good government practices, e.g. on transparency in licensing and rulemaking – in a sector that is heavily regulated by other governments.
20. On value added services in particular, the US asks that trading partners take a lighter touch approach, and in particular not to treat them like public Telecoms providers, e.g. with requirements to make their services generally available, or to require cost model/rate review that public telecoms providers must do. DCMS asked about the differing approach the US took between landline and mobile Suppliers in a telecoms chapter. US responded that in terms of suppliers competing with each other, historically the US hasn't applied these to mobile operators, partly because a number of the provisions in the Telecoms chapter are directed towards 'Major Suppliers', and few US mobile suppliers qualify for this designation. Part of the explanation is that the US has always had a very competitive global market. They started with 6 national suppliers, and now have 4, and still numerous regional players. This scenario, in which they have never had one government supplier become privatised and remain dominant, is different from that of other countries. The mobile question is something they are looking at in discussions. DCMS asked if the US sees that as changing in terms of fixed vs mobile offerings. The US responded again that companies had to be in the fixed line business, with point-to-point lines, for provisions like interconnection to be a major issue. He confirmed that major supplier obligations don't really have mobile-specific obligations.
21. DCMS asked which countries the US see as being relatively open in terms of telecoms access, and where the common interests lie. The US responded that different stakeholders have different interests. There are numerous industries in which the primary interest is serving larger companies/customers, and focusing on supplementing their existing network(s). In some markets there are US companies competing on a global basis. The challenge with telecoms is that it is hard to compare and contrast levels of market openness. Generally, the US felt Europe has a good model; European countries are generally very open. In terms of the rest of the world, the US must work on a case-by-case basis.
22. DIT said that UK Ministers have made it clear that digital is indeed an area in which we want to be ambitious, with plenty of common ground in the future. There was agreement to follow up on this discussion with further detailed conversations in order to build up a deeper understanding of the

Department for International Trade

specific issues raised, including organising further conversations around data, (including privacy protection aspects), and more generally on digital, including DSM issues and telecoms.

23. The US asked the UK how we see our internal policy formulation developing, and at what point we might be able to share options with the US. DIT reiterated that as an EUMS, we are not in a position to open up negotiations at this stage. We will be in this situation for some time and we will be using the time to develop our thinking and to learn from others as we build up our position. DCMS added that there would need to be a cross-government consensus on the sequencing of any talks with the US and with the EU. He also said that, in the meantime, there are lots of detailed discussions to be had to allow the UK and US to get to know each other's markets and regulatory environments, which will help inform future negotiations.

PBS

24. DIT began by presenting an update on the status of the PBS audit STO. ICAS and NASBA/AICPA have signed an MOU to take forward a recognition agreement. There is a process we need to go through; the Financial Reporting Council needs to sign it off to make sure it's compliant with UK legislation. The UK are quite hopeful that there is a will to move it forward, but we must respect the process they need to go through. It is too soon to make an announcement but we hope that is something that will happen before the next working group, and that it will serve as a case study or model for the future. ICAEW will hopefully follow.
25. The US team welcomed this and agreed that they were hopeful that a recognition agreement would take place, and also that it could be a case study for future work. It was also noted that there have already been discussions between architects. The US have been keen to encourage agreements like these for some time, including in TTIP, but had met a number of challenges at MS level – not least the EU's insistence on agreements they were party to being for all MS, or none. DIT welcomed this positivity. The UK was clear that we want to ensure our relationship with the Commission is right and that we are respectful of our obligations while we are in the EU. We said that this should be an area where progress can be made and that it would be useful to continue talking to industry to see where there can be future progress.
26. Both sides agreed that we should think about what communications can be done around the ICAS work – if there is an agreement. US noted that there will be a limited degree to which they can try and take credit, given it will not be the work of the federal Government – 'credit must be given where it's due'. Nonetheless, signs point to a concrete trade-related outcome well in advance of Brexit and both sides agree we should try and do communications to promote this as a positive step.
27. More generally, the US explained their approach to professional services. The US explained that, as jurisdiction over most professional services is in the hands of their States, it is difficult for them to commit to anything in an FTA on mutual recognition of professional qualifications that goes beyond 'best endeavour' language or commitments to try and help facilitate agreements through working groups.
28. The US picked up on the morning's conversation by bringing discussion back to the '5-chapter model'. They said that their standard services chapter is very similar to a GATS chapter, with a few differences; the main difference is the fact that investment is put into a separate chapter – covering the whole life cycle of an investment (i.e. including investment liberalisation and establishment – mode 3). For the CBTS chapter they also think they go beyond GATS on transparency and domestic regulation. They see

Department for International Trade

this, in effect, as a residual chapter in the sense that it covers trade in services where it's not covered elsewhere.

29. They described e-commerce and telecoms chapters as an overlay on the basic disciplines: those chapters take the market access commitments undertaken by FTA parties and lay sector-specific rules on top. The UK asked why they had taken the approach of taking some areas – like PBS or delivery services – forward through annexes to the CBTS rather than as specific chapters (though that doesn't mean they can't cover investment too). The US felt annexes were usually the most appropriate way of doing it but that e-commerce and telecoms had become so detailed that they need their own chapters.
30. The US were open to ideas for annexes with new rules and disciplines for specific sectors but felt most were reasonably covered by CBTS/Investment chapters. On PBS, the US responded that it is demand-driven, as they aim to serve their clients. The US does not generally push for a professional services annex, but they are often as a result of trading partners wanting more refined procedures, particularly post-agreement. They thought TiSA was an area ripe for harvest if we did want to look at doing anything – a 'universe of good ideas' worth mining. Financial services are a little different, as their chapter is a combination of market access commitments and specific rules. US then subject their '5-chapter model' to a negative list and ratchet.
31. The US noted a lot of discussion in Geneva and elsewhere around the 'wonders' of mutual recognition; the US agrees with this, but sees it as a 'limited universe'. The US has been as forward-leaning as any country about where they will do mutual recognition agreements (a misleading term, they said) – probably less than two dozen – but they tend to be with very specific countries with sophisticated regulatory regimes that US regulators are comfortable with. That is why they look to the UK with such interest. It doesn't mean that other service suppliers cannot access the US market, merely that they are not offered an accelerated pathway. There is a limit to what they can actually do, however, in an FTA because PBS is generally regulated at state level – hence their annexes in this area tend to be about encouraging regulators and facilitating through establishing working groups.
32. The US said they would be happy to talk us through the complexities of how the chapters link up with each other. They reiterated that digital is an area where the US wants to be ambitious, but that it is impossible to look at digital commitments without looking at all the other chapters. It is necessary, they said, to look at all the commitments with respect to cross-border and investment as a baseline. A lot of the rules that impact a service supplier are not in the digital chapter but the cross-border chapter. It can be difficult to ensure everything is aligned – you need to think about what kind of commitment you are taking in the CBTS chapter.
33. The UK asked if the US had any advice about engaging industry stakeholders. The US offered for their Europe office to brief us more generally on their structure for stakeholder engagement. In terms of a services-specific approach, he said that sometimes they become gradually aware of stakeholder issues, often related to market access problems, and that eventually they realise it must be dealt with horizontally. There is also a more formalised structure for dealing with stakeholder engagement: formal groups made up of environmental groups, labour groups, NGOs and others, whom they consult. These are broken down sector by sector. The issues raised may be within or outside FTAs. In the context of an FTA itself, there is a very formalised approach towards obtaining comments from stakeholders through hearings etc. Thanks to all of these strategies, stakeholders both inside and outside industry are not shy about expressing their views and their concerns about the direction of trade agreements.

Department for International Trade

34. The US said that they are conscious of trying to figure out the policy solutions that make the most sense in these negotiations. They need to understand the different concessions that might be made, or the policy process that might be taken to develop a negotiating position. On the informal side of processes, they are both proactive and reactive. It is often helpful to have a team who knows the issues well enough that they can bring them in to help frame the debate, and help policy makers to get ahead of a particular problem. The US added that in their formal system of stakeholder consultation, the different groups are each co-chaired by the agency heads and the USTR. They sign non-disclosure agreements to allow these group representatives access to some of the texts and confidential information.
35. The UK mentioned that business stakeholders often show concern about the extent to which businesses are regulated at state level, and asked how far agreements can go in terms of domestic regulation and PBS annexes. The US responded that all their commitments apply to the states, most importantly the national treatment commitment. The states are not free to discriminate. They believe that this satisfies one of the key desires of businesses and that it was rare to see another country causing problems for their industry. They said that, contrary to a misconception by the European Commission, many US states are forward-leaning and compete with each other for foreign investment, as well as being focused on ensuring they provide high quality services for their consumers. The main concern for regulators is consumer protection. In PBS there is no discrimination on the basis of nationality in terms of who can apply for access – you have to go through what any American from another state goes through. The OECD has concluded that there are few state-level barriers. The US said it would be open to hearing any thoughts to the contrary.
36. Continuing the discussion on state-level measures, they said that when the US moves forward with any FTA proposals, there is input from representatives of the state governors' offices, representatives of the Attorney-Generals' offices of the states, and sometimes also representatives of regulatory bodies. The states, he said, are not as fractured as often perceived. They feel they have a solid approach to consulting them and engaging them in what is going on in an FTA.
37. To sum up, the UK and the US agreed that PBS is one area in which the US and UK should be able to find common ground in the future. The US said that work should be able to go forward after the end of this year, after receiving feedback from the FRC and negotiating bodies.

INVESTMENT

38. Although UK investment experts were not present in the room, the US said that they were already in close touch with their counterparts in DIT.
39. The US said that the inclusion of investment as a component of trade is becoming the norm, and that the EU had also adopted this approach post-Lisbon. The investment chapter itself is neutral; it touches on Mode 3 (with reference made to the fact that this also applies to services). There are 3 sets of provisions: those that focus on measures that might distort competition or economic decision-making, or make nationality-based preferences; those that focus on protecting property and the rights of investments; and those settling investment disputes. The second of these sets of provisions gives assurance of fair compensation in the case of expropriation, or minimal-standard treatment, and safeguards against denials of justice. The most interesting provisions are those relating to competition, MFN and the national treatment obligation.
40. There is also a discipline in Mode 3 against discrimination of any company manager or board director based on nationality. This is not an agreement to allow immigration – that's a separate issue - but

about freedom for the companies to choose who they want from the choice already available within the market. There are also disciplines against performance requirements discrimination, and against the imposition of local content requirements or technology transfer, which are all very important in the Mode 3 context. There are other disciplines put forward in TiSA, e.g. regarding performance management. For cross-border trade in services and investment together, the US has one set of annexes (financial services have their own). It is possible to negotiate exceptions and there are areas in which space is preserved for future developments.

41. DIT said that they are familiar with this sort of division. The UK would be interested in hearing more about the main advantages of this approach as opposed to one in which there is an establishment chapter, for example. DIT asked if, regarding the discussion around Mode 3 and investment, there are any other provisions in the investment chapter that the US sees as particularly important. The US responded that they take a more common approach, with investment seen as one subject area.
42. The Commission's approach is to have establishment for services, so it therefore makes sense to have the same for non-services. The EU had foresight in keeping them segregated. The EU approach is fairly unique but it derives from a particular history and some internal EU law issues related to the sharing of competencies.
43. DIT asked about the US' latest thinking on dispute resolution in investment chapters. The US were unable to divulge much, but said that USTR had publicly made points about how US sovereignty might be subject to international view. The US is trying to swing the balance in favour of giving states a bit more flexibility or 'sovereignty'. This applies to the notion of dispute settlement more generally. The US reiterated that the ISDS conversation applies more generally to dispute settlement of other types. In NAFTA discussions the US is starting to think about the scope and mechanism for consent, which relates to ISDS. This is different from looking at what the procedures themselves should look like. Based on their experience, the best path is to have an ad hoc, transparent approach with numerous safeguards and mechanisms to ensure the state retains a certain amount of control. The US underlined that, even as they are changing their approach, what is not changing is their fundamental commitment to ad hoc arbitration.

FINANCIAL SERVICES

44. To start the discussion on Financial Services (FS), DIT recalled that earlier in the working group, attendees had mentioned the importance of considering continuity for the covered insurance agreement. The US had also raised data localisation as a potential challenge for FS firms. HMT laid out the agenda, and gave an overview of the recent developments regarding EU Exit and financial services issues. The first phase of EU Exit discussions have focused on other things, but financial services will be covered in Phase 2 as/when it is unlocked. The UK want to have a comprehensive agreement, as the PM set out in her speech when Article 50 was triggered, and in a number of subsequent public statements. The UK wants to achieve a high level of mutual access between the UK and the US, which implies high levels of supervisory cooperation; we want an agreement that is symmetrical, reciprocal and reliable in terms of financial stability. The implementation period is very important for the future of financial services firms from many different countries, including the US. The UK is confident we will be able to reach a form of agreement on that. HMT is keen to ensure continuity for the FS sector as much as possible. To this end they are working to on-shore the EU acquis and statutory instruments will be brought forward to give legal form to regulation currently applying to the UK through its membership

Department for International Trade

of the EU. The sequencing of the onshoring process vis-à-vis other ongoing processes is sensitive, but HMG will attempt to keep the US administration appraised of all relevant developments.

45. UST recognised that much of what is possible to agree within a US-UK FTA on Financial Services depends on the post-Brexit arrangement between the UK and the EU and the UK's ability to continue to passport financial services into the EU. They acknowledged the sensitive political concerns about the sequencing of talks and the internal UK government sensitivities. Nevertheless, they wanted to take the opportunity to raise the concerns of industry on both sides of the Atlantic: the desire for continuity is great not just in the Financial Services space, but in all sectors. The US wants to make sure that continuity is as smooth as possible, and encourages the UK to consider expediting the framework of the implementation period. Any kind of explanation or insight into the nature of the transition period would be very welcome and encouraged. Many Financial Services firms will soon have to start setting up subsidiaries on the continent (and many already have), which is an expensive process. The UST said that the UK is undoubtedly already aware of these issues, but he wanted to raise the concern while being respectful of the PM's difficult political position.
46. HMT said that we had established good channels of communication between our governments on financial services which we should seek to maintain. Over the past few months, the UK has made good progress on financial dialogue and continuity agreements. HMT had provided UST with a scoping note on a proposal for a financial regulatory dialogue, and this is still under consideration from the US. Ahead of this meeting, both sides had agreed some language for public use, which HMT regarded as a positive step. HMT said both sides would need to keep in touch regarding financial regulatory dialogue. UST said that they are working through the scoping paper and look forward to continuing discussions about this, their initial comments were that they would prefer to focus on "coordination", rather than "dialogue". A call had already been set up tentatively for the 22nd November, which would hopefully be an opportunity to move forward on this. US regulators work very closely with the PRA and FCA.
47. The UK said that on continuity of the covered agreement on insurance, there had been a preliminary exchange of views. The UK perhaps owes some more clarity about what the future UK regime will look like but progress will be made over the coming months. The UST is looking forward to seeing a more detailed outline of what the insurance regime in the UK will look like in the future. UST recently released a report on regulation of the asset management and insurance industries pursuant to President Trump's February Executive Order regarding his "Core Principles" for financial regulation. It says the US should consider a covered agreement with the UK. This was created as a vehicle through the legislation that created the insurance office in UST. HMT said that they had interpreted the language in the executive order positively, and that it would be good to keep working together to make sure things move forward within the appropriate time frame. The US echoed this by urging for action 'as expeditiously as possible'.
48. On the US approach to FS chapters in FTAs, UST explained that USTR and US Treasury co-lead on financial services chapters in FTAs. Insurance doesn't have a federal regulator in the US so they maintain joint oversight for the covered agreement and insurance issues.
49. UST set out an explanation of their specific treatment of financial services. Stakeholders, Congress, industry and the US Administration are all interested in having a highly ambitious Financial Services chapter between US and UK, which are two of the world's preeminent capitals for this sector. He noted that both the US and the UK markets are already very open and there is already a lot of cross border

activity between London and New York in particular. The US would like the financial services text to be a model for how countries around the world can raise the standard of standard financial services commitments. The US said they already have quite an ambitious text (from NAFTA negotiations etc.) but they want to think about a text that makes sense for the UK and US. They encouraged HMG to approach the talks creatively.

50. UST recognised that FS are different from other sectors because it is such a highly regulated industry that often demands emergency action from regulation e.g. in recent the financial crisis. It's a sector in which problems can have extremely damaging spill over effects on the economy, so regulators need to be able to take the necessary action. The US has included financial services in agreements since NAFTA (1994), but they have become increasingly ambitious over the years, reflecting market developments. This ties into an issue raised earlier on data localisation, which is a key priority.
51. Two of the most recent obligations the US has added to the financial services text and which are part of their model text for all trade agreements are: a provision that relates to transfer of information (data); and another one on location of computing facilities (prohibition of data localisation measures). Their approach to financial services differs from their data localisation approach in the core text, which reflects the different way in which financial services are regulated, and the need the industry has for data. The US obligation for data localisation is framed in a way that dictates that a country cannot impose arbitrary data localisation, while ensuring that the scope each regulator has in requesting data is protected. The UST works closely with regulators, going through practices and laws to make sure they fit within that structure. The default position is to allow no data localisation, providing regulator access is protected. The data localisation measures are proliferating around the world and pose a challenge not just for industry in terms of cost/operational complexity, but also from a regulatory perspective, e.g. cyber risks emerging from increased regulatory footprints; and it is harder to manage laundering issues for financial terrorism management. The US has had active discussions with regulators, who have become convinced that this prohibition would help them to regulate better. In the cross-border provision, like in PBS agreements, there is a caveat for the protection of personal data.
52. Transparency is another priority for the US; financial regulators have an open system that allows stakeholders to weigh in on how these regulations should be shaped. The US is committed to transparency in financial services.
53. Another key aspect of a financial services chapter is the prudential exception. The language has remained broad over the course of many agreements and the US tries to maintain this. It provides the space for financial regulators to do what they do on a day to day basis, as long as the measure in question is for a legitimate prudential reason and not for protectionism.
54. The US took the opportunity to flag a few changes from resulting from recent discussions, most of which are technical. In TiSA, they laid out the various market access provision requirements, but thought it better for financial services to lay them out in a specific way. They made changes regarding transparency that reflect the discussions they had had in the TiSA context, which added new provisions not previously included in FTAs, such as accepting electronic document authentication.
55. By far the biggest change is in data localisation. The US has an annex covering cross border financial services, specific to this chapter. The US is also seeking commitments for collective investment schemes, portfolio management services, mutual advisory services and electronic credit payment services. Given the level of openness that exists in financial services in cross border areas between the UK and US, this could be an area in which we could raise ambition in a way that protects the ability of

regulators to supervise market entry. There is concern about the right to regulate – this is why the US are insistent in maintaining the breadth of prudential exception in a financial services chapter.

56. The US is actively thinking through things and seeking feedback about where they could take new commitments. They have already moved forward significantly since GATS. USTR advised that this was a snapshot of something that was in motion, and likely to change further. The question of transparency is very close to the conversation about domestic regulation. There is an overlap in the case of some service suppliers between the general digital sphere and the general financial services sphere in terms of data. Some companies are financial services suppliers but do not see the rules as applying to them; we must keep thinking about where to draw the line. Much of this would depend on how a "public person" and a "financial institution" are defined in the text of an FTA. Companies defined as a financial institution should be covered under the data localisation obligation in the FS chapter. Others should be covered under the digital trade chapter.
57. HMT agreed with the US about taking an ambitious approach, and thanked the US for the detail on data localisation. The UK prides itself on our commitment to making sure regulations work for industry, which is similar to the US' approach. HMT asked the US about their thinking on the effectiveness of financial services committee structures, e.g. in NAFTA and KORUS, who participated from the UST and how their thinking had evolved (e.g. in the NAFTA renegotiation). The US responded that the Financial Services Committee was really about implementation of the trade agreement, and about having a vehicle for discussing (rather than resolving) issues and concerns around regulatory developments. UST's International Banking Office participated. They have changed the language in the NAFTA renegotiation proposals to better reflect what the committee actually does. HMT asked whether TPP provisions or US TiSA proposals for cross-border portfolio management services and electronic payment services (which differed in substance, e.g. TPP not including NT commitments – and form) reflected the US model. The US said that their approach was most ambitious in TiSA. HMT asked about reported US proposals for sunset clauses. UST responded that senior officials need an option to review the effectiveness of trade agreements more generally, e.g. to see if a single disputes mechanism serves the broader purpose and to ensure that agreements are effective. The US did not have a mandate to say anything more at this stage, given the confidential nature of the ongoing NAFTA renegotiations.

Summary

58. The UK summed up the key points form the discussion. Good progress has already been made by regulators to advance the STO on audit, although it was too soon for a specific announcement. There would be language on financial dialogue in the statement after this working group. Both sides were keen to take forward discussions on the continuity agreement on insurance. The UK said that both sides seemed to be keen to be ambitious in the digital sphere, as well as on financial services, and to continue close dialogues in these areas. The UK welcomed hearing US views on the WTO and gaining more of an understanding about the US' approaches to trade agreements generally, and chapters on digital, investment, PBS and financial services. The US said that there was a clear sense of the large number of areas in which the UK and US had shared interests and approaches, especially on digital and financial services. They expressed interest in having a detailed discussion about their approach to these areas within an FTA, which could also help inform the UK's approach to other relationships.

Department for International Trade

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- This was a positive and constructive meeting. There was agreement on the status and next steps on the STOs and continuity agreements. The US provided informative and open presentations on their approaches to services and investment generally, and digital, PBS and financial services specifically. The UK was largely in listening mode during these sessions, indicating that policy is still under development but that these are important sectors for the UK and ones where our Ministers have indicated their preference for ambitious agenda once we have left the EU, so that there should be common ground for a future agreement with the US.
- We agreed to follow-up with more detailed discussions between relevant experts, in particular on digital and telecoms. We will need to consider how we frame the discussions at the next WG, if we are still in listening mode, now that the US has set out its overall approach in some detail. We could consider more thematic discussions, for example on state vs federal in US, in these areas.

Department for International Trade

Title of Meeting: ***US SPS Presentation***

Date: ***14th November 2017***

Time: ***9:00-11:00***

Participants

Name	Department/Directorate
Tom Surrey	DEFRA (Lead)
Jonathan Hoare	DEFRA
James Dunn	DEFRA
Neil Feinson	Policy Directorate, DIT
Jack Kennedy	Policy Directorate, DIT
Jack Moreton-Burt	Policy Directorate, DIT
Tom Aitchison	Policy Directorate, DIT
Gareth Evans	Policy Directorate, DIT
Oliver Griffiths	UK-US Team, Trade Policy Group, DIT
Katie Waring	UK-US Team, Trade Policy Group, DIT
Julie Callahan	United States Trade Representative
Jo Babb	State Department
Sam Russo	United States Trade Representative
Stan Phillips	US Embassy London

Key Points to Note

- The US repeatedly emphasised their view that the UK should seek regulatory autonomy following EU Exit to allow us to evaluate methods/products independently. The US suggested this would be beneficial for the UK not only in terms of trade, but in relation to productivity, competitiveness and driving innovation from our agricultural and bio-tech markets.
- The US saw their difference in approach from the EU as a `philosophical difference` between a risk-based approach (US) and an increasingly hazard-based approach (EU). They expressed concern about the process by which decisions were reached on SPS matters, critiquing the comitology process for perceived politicisation when member states are consulted. The EU aims to reduce chemicals on food; the US aims to reduce pathogens, and these two systems are not easily compatible. The illustrative example cited was the struggle to reapprove glyphosate in the EU.
- There was recognition from the US of the sensitivity of SPS issues in the UK in terms of attention from the media and consumer groups. They are also sensitive to the likely push from the EU for harmonisation during EU Exit.
- The US view the introduction of warning labels as harmful rather than as a step to public health.

Department for International Trade

Report of Discussions and Outcome

1. The UK (Surrey) opened the session, welcoming the US presentation and explaining our position as being in listening mode.
2. The US (Callahan) opened with acknowledging the consumer interest in these issues on both sides of the Atlantic. The US considers their food safety system to be the gold standard, and offered to share their experiences and perspectives on how the SPS chapter of TTIP developed. In particular, there are differing approaches to science and risk between the US and EU.
3. Callahan highlighted a particular area of contention: the US is committed to reducing pathogens in food, and the EU is committed to reducing chemicals in food production. These two positions often conflict with one another; the US maintain use of pathogen reduction treatments (PRT) as a final double check to remove any traces of pathogens. Callahan used this opportunity to affirm that US industry uses PRTs other than chlorine. They offered to share information on this after the Working Group.
4. US (Russo) explained concerns with a secondary scrutiny process following regulatory approval. Glyphosate was used as an example; following relevant Committee approval in the EU, the media speculation resulted in the European Parliament over-ruling the Committee. The US does not believe that this secondary process is helpful, since it can overrule the verified science and risk analyses.
5. US (Callahan) highlighted the EU's increasing move to a hazard-based approach (from risk-based) as a cause for concern. An application that triggers a hazard automatically fails, whilst risk-based allows flexibility to address concerns.
6. Callahan explained that the US is aware of the pressure that the UK will be under to harmonise with the EU during EU Exit. She recommended that the UK maintains regulatory autonomy. The US maintains their own autonomy, and believe that they have been able to make great strides in productivity and competiveness (particularly in bio-tech).
7. The UK (Surrey) thanked the US for the presentation. He asked if Callahan could elaborate on pathogen reduction treatments, approval of new technology, pesticides, and the shift from risk-based to hazard-based. Consumers have a strong voice in the trade sphere, but is that replicated in the US domestic regulatory sphere?
8. The US (Callahan) indicated that every regulator has to go through substantial public engagement on any new rules. The US also receive a substantial number of petitions. The US cited an example of public petitioning triggering a review of rules around BPA (a plastic) in food packaging. The rule did not change, which was disappointing to campaigners, but the process for triggering reviews acted as a buffer between the regulator and campaign pressure.
9. The UK (Feinson) asked how accountable regulatory institutions are to their departments, and what freedom they have to make decisions in their respective spheres. The US (Callahan) responded that it depends on the nature of the rule being proposed. Major rules go through an interagency process. There is significant regulatory scrutiny in the US.
10. The UK (Surrey) asked how differing pathogen reduction treatment approach had been managed with the EU. US (Callahan) responded that some positive applications had been agreed, such as the use of lactic acid on beef. The US cited an obligation in US law to follow up strong hygiene standards with a chemical wash to remove any final pathogens. The US understood that the UK used PRTs until 2003, and wondered if there would be an interest in bringing them back post-EU Exit.

Department for International Trade

11. The US (Callahan) discussed Hazard Analysis and Critical Control Points regulations. These regulations are important. If the US export to a country that bans certain PRTs (individually or on a wholesale basis) then the regulations ensure that producers use the correct processes (example cited was strawberry crop destined for Japan).
12. The US (Phillips) referenced the Secretary Sonny Perdue interview on Farming Today during his visit to the UK. Callahan spoke to the comments made regarding labelling for GM; notably, that the US is keen in making sure labels are useful and will be trusted by consumers without playing to fears.
13. The UK (Surrey) asked how new technology was received during TTIP discussions. The US (Callahan) were concerned that this was an area where the EU was moving away from science towards politics. She was also concerned at the pace of GM approvals.
14. The UK (Hoare) asked how new forms of biotech are processed under existing regulations. The US (Callahan) suggested that this was an area of intense interest at the moment, and wondered if the UK had any suggestions on our future approach to regulating biotech. The UK (Surrey) suggested that this was linked to EU Exit and could not be discussed.
15. The UK (Surrey) asked how the US works with international standards-setting organisations. The US (Callahan) spoke particularly positively about the relationship with Codex, but was concerned at the lengthy lead-in times for standards. Often, the standards are implemented before they are finalised because of how long it can take. She also referenced a NAFTA technical Working Group on MRLs.
16. The UK (Surrey) asked how public health, and broader issues like sugar content, fat, anti-microbial resistance fit into the regulatory system. Callahan acknowledged that these are important global issues. Whilst they follow the guidance set by WHO, they are concerned that labelling food with high sugar content (as has been done with tobacco) is not particularly useful in changing consumer behaviour.
17. The US (Russo) suggested that a future conversation on SPS, potentially ahead of the next Working Group, might be of us. The UK (Surrey) thanked the US for their presentation and the discussion and closed the session.

Action Items

- US to share their public lines on chlorine-washed chicken to help inform the media narrative around the issue.
- UK to look for where we have specific SPS interests and to explore this through engagement ahead of the next TIWG. The US suggested a regulator to regulator dialogue.

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- The atmosphere, on all sides, was very positive. The UK delegation emphasised our position as being in listening mode, and the US respected that; there seemed to be good intent on all sides. There were repeated offers to initiate a regulator to regulator conversation (here and in other sessions).

Department for International Trade

Title of Meeting: ***Intellectual Property Trade Agenda***

Date: ***14th November 2017***

Time: ***9:00 – 11:00***

Participants

Name	Department/Directorate
Ada Igboemeka	Policy Directorate, DIT (Lead)
Mark Prince	Policy Directorate, DIT
Dara Beaulieu	Policy Directorate, DIT
Minh Tri Le	Policy Directorate, DIT
Ben Richie	Policy Directorate, DIT
Adam Williams	Intellectual Property Office
Megan Heap	Intellectual Property Office
Sarah Whitehead	Intellectual Property Office
Peter Cade	Intellectual Property Office
Thomas Walkden	Intellectual Property Office
Ceri Morgan	DEFRA
Bilal Sameja	DEFRA
Andrew Gregory	MHRA
Jane Casterby	DCMS
Edwin Mangheni	UK-US Team, Trade Policy Group, DIT
Christina Sevilla	Office of the United States Trade Representative
Christine Peterson	Office of the United States Trade Representative
Rachel Salzman	Department of Commerce
Tricia Van Orden	Department of Commerce
Sarah Bonner	Small Business Administration
Rosalyn Steward	Office of Advocacy
Rachel Salzman	Department of Commerce
Ray Pavlovskis	Office of the United States Trade Representative (Europe Office)

Key Points to Note

- Both sides agreed to finalise Joint Statement
- US focus was on explaining their legislation and approach in FTAs on trade secrets
- US proposed several objectives for the UK to consider going forward in its approach to Geographical Indications (GIs)
- More limited discussion on pharmaceutical protection than planned given sensitivities in this area related to the NAFTA negotiations
- Both sides agreed to continue to discussions on GIs, Trade Secrets and Innovative Pharmaceutical protection at future Working Groups
- Agreed that topics for next Working Group could include: building a stronger understanding of each other's current IP system; understanding each other's governance procedures and processes for trade policy and negotiations; approaches to stakeholder engagement in the IP area

Department for International Trade

- Agreed to produce a shared brochure for the SMEs Toolkit with guidance on how to do business in both markets by first quarter of 2018 in Washington DC
- Agreed to coordinate our efforts with the wider SME group.

Report of Discussions and Outcome

Introduction

1. The US (Peterson) introduced their IP and trade policy agenda, outlining that they would focus on Trade Secrets and Geographical Indications. The UK (Igboemeka) asked whether the US would cover pharmaceutical protection as previously discussed. The US (Peterson) responded that they could currently only have a limited discussion of this issue given sensitivities regarding the on-going NAFTA negotiations and due to development of US policy in this area.
2. The US (Peterson) explained their agenda on General Provisions. The US sought commitments for international treaties such as accession to the Madrid Protocol and The Hague Agreement. The US seeks full national treatment and commitments on transparency for all IP users for example, electronic databased for registration of rights.
3. The US (Peterson) explained their agenda on Trademarks. The US seeks provisions for not only visual, but for non-visual representation – holographic works, sounds and the protection of similar signs. The US highlighted they seek commitments on electronic trade mark systems and seeks provisions for cybersquatting as well as expanding the wider definition of protection to cover similar signs. The US seeks to promote the protection of GIs through Trademark systems and looks for transparency and due process safeguards.
4. The US (Peterson) provided an overview of their approach to patents in FTAs. The US also typically seeks provisions for grace periods, data exclusivity, patent linkage, and patent term extension related to the market approval process.
5. The US (Peterson) provided an outline of their priorities for Enforcement, both civil and criminal enforcement. The US wants to tackle through its trade agenda issues such as trade secrets theft, cable and satellite theft, cyber theft and unauthorised camera recording. The US noted that new issues and challenges in IP enforcement are emerging and the US is working with sister agencies to work out responses.
6. The UK (Igboemeka) asked for the US to explain the evolution of their IP chapter within US FTAs and what have been the prominent issues over time. The US (Peterson) explained that some of the more prominent features in their current FTAs were around state-owned enterprises and issues on how to address trade secrets.

Trade Secrets

7. The US (Peterson) explained that Trade Secrets was an emerging focus in the Administration's 2013 strategy. There have been recent changes to domestic law and an increasing focus on the Office of the US Intellectual Property Enforcement Coordinator (IPEC). Businesses, especially SMEs are the innovators of IP which can lead to other forms of IP down the road, so where there are risks of infringements, the US tries to protect them by strengthening trade secrets laws. The US highlighted other companies and countries try to steal trade secrets to impede the US Trade Agenda. The US have statues in place to deal with this. The 1996 Economic Espionage Act (which focuses more on criminal penalties), Section 18, Code 1831 and Section 18, Code 1832 criminalises the misappropriation of trade

Department for International Trade

secrets. The US encourages civil and criminal procedures to protect trade secrets. Criminal prosecution demonstrates that the US will not tolerate trade secrets theft. The US views all parties involved in the chain of trade secrets as liable. For example, breaches of computer systems can constitute as cyber theft and count as trade secret theft.

8. The US (Peterson) explained that in May 2016, the US introduced the Defend Trade Secrets Act (a Federal law that allows that allows an owner of a trade secret to sue in federal court when its trade secrets have been misappropriated). This act brings actions into the Federal arena but does not displace State Laws. The act can work in co-existence with State Laws. The Federal Law allows for broader scope beyond the 1996 Economic Espionage Act, allows for a greater scope of witnesses and allows coverage in International Trade; which opens new possibilities and allows the US to advance more aggressively. This demonstrates that the domestic and international planes do not exist separately. The US said it raised this point as it is timely given the EU Directive on Trade Secrets.
9. The UK (Walkden) said that they are in process of transposing the EU Directive by its June 2018 deadline. The UK does not envisage significant changes. The UK enquired how many civil cases the US have seen in Federal Courts under the May 2016 Defend of Trade Secrets Act. The UK (Williams) also asked whether the US has seen Cross Border cases under the May 2016 Act. The UK (Walkden) also asked what the US considered to be the particular barriers to market access in relation to international Trade Secret protection.
10. The US (Peterson) responded they would come back with a little more detail on which industries were affected, including some specific examples. The US explained that the Special 301 Report Review tasks embassies to answer a set of questions about the host country's IP regime and whether the country has any practical IP enforcement in place. The US do not hear back about a lot of problems, however the US highlights that this can be due to companies not reporting back to avoid negative press attention that could impact their stock prices. This is a challenge to the US as US policy makers find it difficult to identify where the problems are. The US highlighted that China is a concern and there is work to be done with India as India's Trade Secret Laws are not harmonised across the country. The US has heard about some issues in Austria but those are specific cases. The US stated that their criminal measures pre-date civil measures. The Special 301 Report is due to be released which contains data reflecting the number of successful prosecutions made under the 2016 Defend of Trade Secrets Act. The US Department of Justice also publishes summaries of Trade Secrets cases that the US can provide the UK with in addition to the Special 301 report.
11. The UK side (Walkden) said that the UK does have criminal remedies available where Trade Secrets are misappropriated through illegal activities, for example offences under the Computer Misuse Act 1990. The UK (Igboemeka) then asked what would be the US's ideal provision in an FTA?
12. The (US) responded that the Trans-Pacific Partnership (TPP) had a dedicated section for Trade Secrets which detailed what misappropriation meant, obligation for criminal enforcement, defined what criminal procedures meant and classification of the lawful use of confidential information. The US encourages the UK to look at the TTP text.
13. The UK (Prince) asked whether the US-Korea FTA (KORUS) and the US-Singapore FTA were a significant shift to TPP.
14. US (Peterson) confirmed that KORUS and the US-Singapore FTA were a significant shift.

Department for International Trade

Geographical Indications

15. The US (Peterson) explained that they were seeking greater transparency, fairness and due process when it comes to Geographical Indications (GIs) and international trade. The US have concerns about the EU's approach of including lists of GI names to be protected within trade agreements which can have the effect of preventing US producers from using the name of the EU GI on their products. The US (Peterson) highlighted that recent trade negotiations between the EU and third countries on GIs, such as with Japan, Mercosur and Mexico, have raised concerns among their political leadership.
16. The US (Peterson) suggested several potential objectives for the UK to consider as it develops its future approach to GIs and international trade:
    i. Implement due process for the recognition of new GIs. This would include opportunities for all interested parties to be consulted and to make oppositions. The US (Peterson) also noted that in the EU system there is no recourse for opposing parties to appeal against decisions to award new GI protection, and that cancellation procedures for GIs could also be considered as part of the due process.
    ii. Distinguish GI names from terms that have become customary in common language. The US (Peterson) noted that the Consortium for Common Food Names regards the UK's approach to 'cheddar' cheese as an example of best practice here. The UK has specific GIs for 'West Country Farmhouse Cheddar' and 'Isle of Orkney Cheddar,' but the term 'cheddar' itself remains a customary term that any cheese producer can use. The US (Peterson) suggested that the UK could consider publishing guidance clarifying which terms it considers as customary in common language.
    iii. The UK could favour recognition of new GIs through domestic application and examination procedures, rather than the EU's favoured approach of exchanging lists of GIs for inclusion in international trade agreements. The US (Peterson) stated that although there are over 4,500 GIs on the EU Register, only 28 GIs from outside the bloc have been accepted through direct applications (as opposed to via an exchange of lists in a trade deal).
    iv. Infringement of GIs should be based on "likelihood of confusion" and the EU's interpretation of the evocation principle should be narrowed.
    v. GIs should be officially examined, like patents and trademarks, informed through international norms/standards on examination processes.
    vi. The UK should consider whether some of the EU GIs still meet British consumer expectations, or whether the consumer now regards some EU GIs as customary common language.
17. In response, the UK (Morgan) welcomed the US' thoughts on GI objectives, and would welcome ongoing engagement. The UK highlighted that the Government supports the appropriate use of GIs to protect UK food and drink names, but currently only has 84 GIs in the EU's GI register. The UK highlighted that GIs is a big issue for the EU, and will be a subject for negotiation in the UK-EU negotiation.
18. The UK (Morgan) stated that the UK is working on Transitional Adoption (TA) of existing EU FTAs as well as new FTAs.
19. The US (Peterson) enquired whether GIs will feature in the transitionally adopted FTAs.
20. The UK (Morgan) responded that it is too early to comment on the transitional adoption process for the GI elements. The aim is to transition as much of the agreements as possible as the UK does not want to disrupt trade flows.

Department for International Trade

Innovative Pharmaceutical Protections

1. The UK (Gregory) enquired why the US have different data exclusivity periods for chemicals and biologics.
2. The US (Peterson) responded that there is data protection for big and small molecules. The US started with small molecule protection which is set as five years. The passage of the American Health Care Act extended protection to Biologics products as there was a need to incentivise R&D for Biologic products. The US highlighted that there are patent vulnerabilities as Biosimilars are not replicas of small molecules, therefore there is more of a need to have a longer-term protection for Biologic products which is current set as 12 years of protection; eight years of data protection plus four years of market protection.
3. The UK (Gregory) stated the EU and UK have eight years of data protection plus two years of market protection for all pharmaceuticals.
4. The US (Peterson) stated that 12 years was a compromise. The initial proposal was 15 years with possibilities for extensions to protect orphan drugs.
5. The UK (Gregory) stated in addition to the eight plus two years, there is an extra 6 months to a year protection for paediatric drugs. The UK enquired if there was a demand for a minimum level of protection.
6. The US (Peterson) responded that TTP did not get into the specifics of data and market protection timelines, it was all encompassing. The US negotiated to look at market realities and dynamics. Most countries approved Biosimilars after it was first approved in the US. Therefore, other countries have a de facto market protection for at least 10 years.
7. The UK (Gregory) enquired about pricing. The UK said that the longer you protect, the longer higher prices are maintained and asked if there is a trade off? How does this work in the US?
8. The US (Peterson) stated that pricing plays out domestically. The US said there is a lot of conversation on drug prices and looking at what other countries pay and this is causing angst. There are worries that the US is not getting a good deal in pharmaceutical industries.
9. The UK (Whitehead) added that the UK has Supplementary Protection Certificate (SPC) regimes to extend terms of protection for pharmaceutical products. The UK noted that it would be useful to look at each other's systems and learn from them. The UK asked whether the US Patent Term Extension (PTE) is only for pharmaceuticals and not plant protection products?
10. The US (Peterson) responded there are patent term adjustments (for office delays) which are available for any products. There are patent term extensions for pharmaceuticals but not for agriculture products. There is also 10 years data protection for chemicals.
11. The UK (Whitehead) stated the EU is looking at the balance achieved by the existing SPC regime in the EU. The UK asked whether the US had done any research on the balance between health systems and rights holders?
12. The US (Peterson) stated that it believes there was some done in TPP and the US can look into this for the UK.
13. The UK (Igboemeka) asked since grace periods are typical in US FTA provisions, has the US seen a trend in companies making use of grace periods?
14. The US (Peterson) said it would look into that for the UK. SMEs are not aware that grace periods differ, so they assume around the world they have a one year grace period. This will prevent them getting

Department for International Trade

patents protection in countries which do not have such a system, by then it will be too late. Harmonisation in this space will be useful.

15. The UK (Williams) added that the UK has similar issues with academics publishing their articles and disclosing their inventions.
16. The US (Peterson) stated as the US is undergoing North American Free Trade Agreement (NAFTA), this can be shifted in their trade policy and can go through what was considered in the past.

Conclusion

17. The US (Peterson) said for the next Working Group, it would like to understand the UK's trade and IP agenda and its IP system so both sides can discuss and identify similarities and differences. The UK (Igboemeka) responded that the UK is still at an early stage in developing their overall IP and Trade Policy. The UK stated that they can talk about their own IP Trade Policy in future sessions but offered a focus on the UK's current IP system as a useful start. This would focus on the status quo without prejudice to any changes post-Brexit.
18. The US (Peterson) said another fruitful topic for the next Working Group could be to understand each other's governance processes and procedures for trade policy and negotiations. The UK (Igboemeka) suggested a discussion on approaches to stakeholder engagement in the IP area could be another topic. Both sides agreed to continue discussions on specific issues at the next Working Group.

SME Toolkit

1. The US (Sevilla) stated that there is public misconception that international trade only affects big companies, however international trade has a major impact on SMEs. The UK is the US' third largest export destination for US SMEs after Canada and Mexico. The US highlighted that there needs to be joint information and publication to educate SMEs about IP as many SMEs do not understand how to protect their IP. Publications like the proposed SME toolkit would be useful for SMEs. This STO would also demonstrate an early outcomes of UK/US talks and demonstrates leadership for both sides. The US (Peterson) added that it is important to continue to coordinate to evaluate the work of both sides. SMEs are disproportionately innovators. One study concluded that SMEs outperform larger corporations. SMEs are 2.5 times more innovative and produce 15 times as many patents. The US (Salzman) highlighted no matter how good the intention, the benefits of our trade policy will not be effective unless SMEs are educated. SMEs lacked awareness and education usually around costs, perceived benefits and lack of information. The Department of Commerce aims to tackle this through establishing a website: stopfakes.gov, IT audit tools to identify IP and training modules in English, Spanish and French, Stop Fix roadshows to innovative hubs to help them export. The US reports that Select USA states that the UK has large trade investment in R&D worth 7.9 billion dollars in 2015 in US affiliates. There were 22 UK participants at the USA summit. The US and UK are Select USA's best customers in E-commerce. The US would hope that the SME Toolkit would bring more SMEs into the bilateral relationship. The US asked whether/how a web version could exist?
2. The UK (Williams) responded that this topic is very cross cutting and that the UK is entirely supportive with what the US said. The UK also recognises the statistics that the US outlines. The UK sees SMEs being its innovation backbones. SMEs spot the business opportunity first and (as demonstrated on his (Williams') recent visit to China, many UK businesses have not had their trademarks protected while focusing on gaining market access. The UK has a suite of tools; Country Guides detailing how to protect

Department for International Trade

their IP abroad, YouTube channels. The UK would welcome collaboration with the US in this area. The UK stated that it wanted to bring SMEs into the wider dialogue to draw their attention to the importance of IP. The UK (Cade) wanted to highlight the differences of rights between the UK and US. The UK (Williams) highlighted that a lot of this will include links to webpages. SMEs can then see if they have IP via a list which needs to be simple enough to capture the eye. The UK highlighted that it is the promotion of information which may be sitting elsewhere that is important.

3. The US (Peterson) enquired whether to address Brexit in the product for SMEs so that US SMEs have continued confidence that their rights will be protected in the UK market.
4. The UK (Williams) replied yes, but highlighted as the negotiations were fast moving that the content can be outdated and suggested giving a link to the IPO website which will contain updated information. The UK suggested hosting a soft copy and a webpage. The UK highlighted that UK Digital Service has strict rules on term of webpage design which must be consistent with the wider .GOV layout.
5. The US (Salzman) responded that a hardcopy would be useful as well as a web link. The US (Sevilla) enquired whether there is a reduction in fees for registering rights such as trademarks, patents for SMEs.
6. The UK (Williams) replied that there is no reduction of fees for SMES; however the registration fee is low. The private legal fees are the most expensive part which usually stop patent protection applications. The UK (Whitehead) added that there are reductions on fees for electronic filings. The UK (Williams) noted that on the design side, the UK has rebuilt its digital platform where you can file multiple designs. Thus, the UK's designs registration has tripled.
7. The US (Peterson) agreed to have the web version of the brochure to state fees while the hard copy publication refers to the applicable website link for businesses to go to for updated fees. The US (Sevilla) agreed to create a brochure before the next Trade and Investment Working Group in the first quarter of 2018. The US (Peterson) agreed for the US and UK to exchange questions regarding materials that should be included in the brochure. The US (Sevilla) suggested a joint trade SME roadshow as there was interest from the US in the London fancy food trade shows and the Farnborough air show which would be places to hand out the brochures and have joint cooperative activities.
8. The UK (Williams) suggested for the IPO (Cade) and the USPTO (Salzman) to lead on this project. The UK (Igboemeka**)** suggested an idea of workshops with SMEs.
9. The US (Sevilla) suggested inviting the Chamber of Commerce and said that the workshops can happen in London or elsewhere. The US (Peterson) added that US Ministers are saying that IP is an area is not just for multilateral cooperation but it also beneficial for SMEs.
10. The UK (Igboemeka**)** actioned to follow up in the following weeks.

Action Items

- Agreed that topics for next Working Group could include: building a stronger understanding of each other's current IP system; understanding each other's governance procedures and processes for trade policy and negotiations; approaches to stakeholder engagement in the IP area.
- Agreed to produce a shared brochure for the SMEs Toolkit with guidance on how to do business in both markets by first quarter of 2018 in Washington DC.
- Agreed to coordinate our efforts on the SME Dialogue with the wider SME group.

Department for International Trade

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- Very good atmosphere with strong discussion on substantive IP issues. The US made a strong pitch on geographical indicators, proposing six objectives for the UK in this area. Provided a useful insight into the offensive areas the US is likely to pursue in an FTA. Trade secrets discussion was insightful, indicating this will be a key priority for the US. Unclear how far apart we are on this at present. A more limited discussion on pharmaceuticals. The US stated up front that they were unable to have an in-depth conversation given there are difficulties in NAFTA in this area. The US also said that the current Administration may want a shift in some areas of policy here so they were unable to answer some of the questions we posed. It was nevertheless a very helpful exposition on the key areas we can expect the US to push in an FTA and for us to start to determine the areas where we may find ourselves in difficult territory. The impact of some patent issues raised on NHS access to generic drugs (i.e. cheaper drugs) will be a key consideration going forward. Biologics were hugely contentious under TPP so one we were interested in discussing but unclear how far apart we are in this area. Agreed that for the next Working Group we would discuss: getting a better understanding of each other's IP systems; our respective governance processes and procedures in trade negotiations; stakeholder engagement in IP. We also agreed to come back to some of the specific issues such as GIs and pharma patents. Good progress on the SME work stream within the STO work plan with agreement to complete product first quarter of next year and to join up with the wider SME (regulation) group.

Department for International Trade

Title of Meeting: ***SMEs Side Meeting***

Date: ***14th November 2017***

Time: ***11:00-12:00***

Participants

Name	Department/Directorate
Julian Farrel	Policy Directorate, DIT (Lead)
Kate Maxwell	Policy Directorate, DIT
Muhammad Abbas Abdulla	Policy Directorate, DIT
Minh Tri Le	Policy Directorate, DIT
Edwin Mangheni	UK-US Team, Trade Policy Group, DIT
Huw Parker	BEIS
Ellen Duffy	Better Regulation Executive (BRE)
Christina Sevilla	United States Trade Representative
Tricia Van Orden	US Department of Commerce
Rosalyn Steward	US Office of Advocacy, Small Business Administration
Sarah Bonner	US Small Business Administration

Key Points to Note

- Each side listened to each other's presentations on approach to reducing regulatory burden to SMEs in both markets, with the US kicking off proceedings followed by the UK presentation. They had commonalities in their respective approaches albeit the processes were different.
- The UK's presentation included an offer to share guidance on BRE framework due to be published in December 2017.

Report of Discussions and Outcomes

1. The US (Steward) presented on the Regulatory Flexibility Act (RFA). The US introduced the Small Business Administration's Office of Advocacy (OA) as the voice of small businesses. The US' definition of an SME or small business is considered to be 500 employees or less. Executive Order 13272 addressed a number of concerns about RFA compliance and mandated that the OA train all regulatory agencies in compliance issues. The OA's aim is to help US Federal Agencies improve their RFA compliance.
2. The US (Steward) went on to present that RFA compliance has real benefits to the agency and its regulatory development team. It minimises legal problems and challenges regulations which do not comply. The OA now has authority to file a brief as a Friend of the Court. Compliant regulations can avoid litigation and unintended delay. RFA compliance avoids delays. Beyond the delays represented by the legal system, reworking the rule to comply will take more time at the later stages of development, and can hold up your regulation at a key time. RFA compliance improves compliance with the regulation. Small entities are more likely to follow regulations they can understand and which do not impose an unreasonable burden. RFA compliance provides a more level playing field. Cost of regulation per employee is often less for larger entities. Not all entities even of the same size will be affected in the same way, e.g. some accounting or manufacturing systems might accommodate a regulation better than others. RFA Compliance supports the largest and most vital segment of the American economy.

Department for International Trade

RFA compliance supports the growth and vitality of American small businesses in an increasingly competitive world economy.

3. The US (Steward) explained that there are two points at which the process might terminate without completing the whole RFA process. The first is Applicability; if the RFA does not apply no further analysis is required. The US highlighted that there was an exemption for foreign affairs and the military. The other is Threshold Analysis. A threshold analysis is performed to determine if there will be a "significant economic impact on a substantial number of small entities." If no, a certification statement can be placed in the rule and no further analysis is required. The US pointed out that most regulations should be assumed to fall under the Administrative Procedure Act (APA) and RFA unless there is specific reason to believe otherwise. The US emphasised that "significant" and "substantial" are not defined in the RFA, but in general must be interpreted in light of the universe of regulated small entities. A regulation may be exempt from the RFA altogether under the applicability decision. A regulation that is not exempt must undergo a Threshold Analysis to see whether it has a significant economic impact on a substantial number of small entities. If the analysis shows that there is no such impact, the Certification step completes RFA compliance.
4. The UK (Farrel) asked for the US' definition of "significant" and "substantial" economic impact
5. The US (Steward) replied that 1 to 3% of gross revenue – not profit – of SMEs is defined as "substantial". 10 to 30% of gross revenue is counted as "significant"
6. The US (Steward) explained that if the threshold analysis indicates there will not be a significant economic impact on a substantial number of small entities, the head of the agency may so certify. The US explained that the Initial Regulatory Flexibility Analysis (IRFA) is a critical step that represents the OA's best information about the impact of the regulation on small entities. IRFAs can sometimes be waived or delayed such as if it is an emergency regulation or compliance is impractical. However, the Final Regulatory Flexibility Analysis (FRFA) is still required, usually in 180 days. Both prongs have to be satisfied. It is not defined by Congress, rather case-by-case by business. Agencies calculate the direct effect but don't have to assess the indirect effect. Under the IRFA there are considerations of alternatives.
7. The US (Steward) explained compliance costs to consider are implementation costs, capital and equipment costs and operation and maintenance costs. The US went on to explain that an IRFA represents a major investment of time and effort as it provides greater transparency, and is available to the public for comment. However, the US highlighted there are data gaps, with the missing data of costs being revealed only when it is published.
8. The UK (Duffy) presented, firstly stating there is primary and secondary legislation in place. The Small Business, Enterprise and Employment Act 2015 sets out a target to reduce burdens on industry. The Government prepares an impact assessment which is then published alongside their consultation. The UK highlighted currently there is not a 2017 Parliament target. Last Parliament saved approximately £2 to £3 Billion in two years. SMEs matter as they are engines, incubators and accelerators to growth. The UK explained that the Small and Micro Business Assessment (SaMBA) is part of the impact assessment which measures the equivalent annual net costs to business of all measures exceeding £5 million a year. This impact assessment is subject to external scrutiny to decide whether the impact assessment has sufficient information. This is to ensure there has been a correct assessment to ensure it is not disproportionate. The UK seeks to ensure that no policy is introduced that unnecessarily burdens microbusinesses, and wherever possible microbusinesses should be exempt from new regulatory

Department for International Trade

burdens. However, Health and Safety and Environmental areas cannot be exempt. Different sectors may have different approaches which may work better. The UK highlighted the charge for plastic bags as a case study. The UK explained that it introduced a mandatory 5p charge for plastic bags, which goes to charity. Most plastic bags were provided by big high street stores. Local corner shops were therefore exempted from the law, hence not burdening them in any way.

9. The UK (Farrel) explained that Minsters will not proceed with regulations unless the Regulatory Policy Committee is happy with the impact assessment. Public consultations and impact assessments are carried out on draft legislation before it becomes law. The Better Regulation Executive (BRE) in the Department for Business, Energy and Industrial Strategy (BEIS) monitors the measurement of regulatory burdens and coordinate efforts to ensure that the regulation which remains is smarter, better targeted and less costly to business
10. The US (Steward) asked if the UK keeps track of the impact of these policies.
11. The UK (Farrel) replied explaining that there are post-implementation reviews of legislation. After five years, there is an assessment of regulations. The UK offered to share the next update of the Better Regulation Framework Manual, which is due to be published before Christmas, which is a regulation framework for all civil servants who are drafting legislation. The UK (Farrel) asked for the US reactions to the proposal on MSMEs and good regulatory practice which had been tabled for the World Trade Organisation's (WTO) Ministerial Conference 11 in Buenos Aires.
12. The US (Sevilla) replied that the US share an interest in SMEs and want to reduce barriers affecting them. The US highlighted that there are appropriate SME committees that deal with these issues in the WTO.

Action Items

- The UK is to share guidance on BRE framework with the US.

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- See the main SME session. Again, the atmosphere for this session was very positive with both sides interested in learning from each other's practices.

Department for International Trade

Title of Meeting: ***Regulatory Dialogue Follow-Up***

Date: ***14th November 2017***

Time: ***14:30-16:25***

Participants

Name	**Department/Directorate**
Julian Farrel	Policy Directorate, DIT (Lead)
Peter Lee	UK Cabinet Office
Tom Surrey	UK DEFRA
Henry Alexander	Policy Directorate, DIT
Kate Maxwell	Policy Directorate, DIT
Motsabi Rooper	Policy Directorate, DIT
Richard Salt	UK-US Team, Trade Policy Group, DIT
George Radice	UK-US Team, Trade Policy Group, DIT
Sophie Brice	UK-US Team, Trade Policy Group, DIT
Tim Colley	BEIS
Cynthia Morgan	DIT Legal
James Dunn	DEFRA
Haroona Chughtai	DfT
Andy Wibroe	DfT
Jim Sanford	United States Trade Representative
Rachel Shub	United States Trade Representative
Kent Shigetomi	United States Trade Representative
Tim Wedding	United States Trade Representative
Alexandra Whittaker	United States Trade Representative (legal)
Nataliya Langburd	Council of Economic Advisors
Erik Puskar	National Institute of Standards and Technology
Ashley Miller	United States Trade Representative
Brian Trick	United States Trade Representative
Sam Rizzo	United States Trade Representative
Head of Multilateral Affairs	United States Trade Representative
Casey Mace	State Department
Additional official	State Department
Elizabeth W.	State Department
Emma Lloyd	Department for Labor
Wendy Liberante	US Office for Regulatory Affairs

Department for International Trade

Key Points to Note

Atmospherics: positive and inquisitive on both sides

Devolved Administrations

- UK presented on Devolution, including a short history of devolution of powers and stressing the political attention on the return of powers from the EU.
- Outlined approach of Withdrawal Bill – and how constitutionally there is ambiguity around DA involvement in how this is approved in the UK.
- A number of US questions around current devolved powers, including around Agriculture (AMS) and Economic Development (EU structural funds).
- UK expressed interest to hear about State/federal split at a later meeting

MRA

- 1998 MRA: UK set out 10 categories of generic issues for discussion going forward: legal form for the agreement; inactive sectors; references to EU law; entry into force provisions; updated list of CABs, updated list of designating authorities; Joint Committees and Joint Sectoral Committees; translation of text; references to the EU; and the GMP annex.
- ACTION: UK to send list of issues via email to US for reflection and use in their inter-agency engagement.
- US question around UK engagement with regulators – initial UK engagement to raise understanding, next step to focus on details. US suggest regulator-regulator discussions to discuss operation of MRA.
- ACTION: UK and US to consider facilitating regulator-to-regulator discussions.
- Marine Equipment MRA: a lot of work ongoing to possibly amend product scope between the US and the EU – with the UK feeding in as appropriate; UK suggest keeping current product scope for TA.
- ACTION: US to facilitate contact at technical level for discussion of the marine agreement.
- General: US question around need for secondary legislation to enact MRAs into UK law or to set up bodies.
- Beyond MRA, US would encourage exploration of policy space for further cooperation.
- US see particular opportunities in medical devices single audit (MDSAP)— UK made clear that it is only an observer to MDSAP and this is unlikely to change whilst we remain in the EU, but will relay point to experts.

GRP

- UK keen to know where US looking to be ambitious in relation to GRP:
- US highlighted that TPP was not ambitious, TTIP was a good template, if not 100% clear in all areas;
- Guidance provided at federal level concerning development of regulations that contain standards (e.g. A119) – could be a useful area with UK, although not included in NAFTA template
- US highlighted that transparency and public input were most important to make the rest of the measures work.
- US interest in ways that stakeholders can “tickle” the system (i.e. change regulations), e.g. through a petition system.
- The US persuaded the EU to include a GRP chapter in TTIP, and GRP will continue to be a priority in any future US trade deals.
- UK highlighted the transparency of the UK consultation system on new regulation
- ACTION: US suggested that both sides exchange practices or guidance on how to develop regulations and policies that help trade.

Department for International Trade

Report of Discussions and Outcome

UK presentation on devolved administrations

1. Peter Lee (UK- Cabinet Office) gave a presentation on **the relationship between the UK Government and the Devolved Administrations (DAs)**. There were three DAs and all were different: Wales did not have a separate legal system; Scotland had maintained its own legal and education systems: and Northern Ireland had had a relatively homogenous system with England for the past 200 years. In 1972 when the European Communities Act had passed, wide-scale devolution was not envisaged. In 1997, different devolution settlements were agreed for each DA: in Northern Ireland, the terms were driven by the Good Friday Agreement. The devolution settlements were slightly different in the 3 countries (e.g. justice and policing was not devolved in Wales). The "Reserved Model" meant that Foreign Policy, Trade, Defence and Security and Constitutional powers were not devolved. Until now, the UK had not had to consider having separate rules to govern its own internal market, as this had been covered by EU regulations. Due to Brexit, the government was now having to look at this. The plan set out in EU Withdrawal Bill, took those powers currently held at EU level which set market conditions in UK and brought them back to UK. At the moment, we were in a "holding pattern" whilst we considered what this meant for DAs. This would likely mean significant further devolved powers for the DAs, with central government retaining some powers (e.g. to negotiate trade agreements).
2. This was a very political space at the moment. A Joint Ministerial Committee involving the DAs was discussing. Trade interests were not homogenous across the DAs: food and drink and oil and gas were particularly important in Scotland; Northern Ireland had a joint food and drink economy with the Republic; and in Wales manufacturing was key. Agriculture was one of the main issues being discussed, as it was deeply important to all four nations. UK agricultural policy had been set at EU level for 50 years: setting this up in the UK, whilst respecting devolution settlements and managing an internal market was very sensitive/ complex. England was not a separate constitutional entity and the key difficulty would be how to differentiate discussions between England as a nation and as central government. Under the constitution, UK parliamentary legislation on devolution issues could only be agreed with approval of DAs, It is very clear that Brexit legislation will touch on devolution, and DAs were not currently content to recommend that their Parliaments give consent. Central government was working with DAs to try to get consent (heart of challenge).
3. The US delegation explained that in the US internal market products must be able to ship across state lines or federal govt/ courts get involved. They would be happy to share experience of how to retain an internal market whilst ensuring that states don't create barriers

Mutual Recognition Agreements

4. The UK (Julian Farrel) explained that both parties had already agreed the importance of the technical replication exercise (via JJH and GC exchange). The overarching principle was absolute replication and to change only what was essential. On conformity assessments, the ambition was to discuss generic issues today, share texts early in the New Year and to have final texts ready for a legal scrub in April 2018. This would allow for completion by the deadline of August 2018 as agreed by JJH and GC.
5. The US (Sanford) added two questions for discussion:
    i. What relationship the UK planned to have with EU regulators such as the European Medicines Agency and the European Maritime Safety Agency going forward; and
    ii. What policy space the UK may have to explore cooperation on regulation beyond MRAs with the US, for example on the medical devices single audit.
6. Henry Alexander (UK) gave a summary of the outstanding issues needing attention in the **1998 MRA**. The ten categories were:

Department for International Trade

i. Legal form: The legal form for transition agreements could be: i) a full mark up of text (change EU for UK in text); or ii) an exchange of letters (with a *mutatis mutandis* mechanism). The aim is to have as simple a process as possible. The US (Sanford) pointed out that in a similar exercise with the EFTA-EEA states, a separate textual form was used.

ii. Inactive sectors. The TA guiding principle is to make as few changes as technically possible. Therefore the UK aims to bring across all sectors, including those which were inactive, but not operationalise inactive sectors. This is the line the UK is taking with all partners. The priority is to get this done as quickly to avoid a "cliff edge". The US (Sanford) questioned the utility in covering inactive sectors in TA whilst they had no interest in making them active.

iii. References to EU legislation: The UK explained that the intention of the EU Withdrawal Bill was to bring across all EU legislation into UK law and not diverge. A discussion is needed on how to refer to this in the MRAs.

iv. Entry into force issues (such as provisions on transition periods): The UK approach is to ensure continuity on day one. Therefore the text should reflect where transitional provisions have expired and where they remain operational (keeping to the schedule in the latter). The US delegation indicated they were broadly content with this approach and are not looking to extend transitional periods. Both sides agreed that the agreement should enter into force on a date that ensures continuity on day 1 of Exit.

v. List of conformity assessment bodies: The UK would want to update the list to reflect designated conformity bodies in the UK and US that are currently approved. The US asked if the UK was envisaging a re-designation process, to which the UK said it was not. The US delegation agreed that this made sense and that no re-designation would be needed.

vi. Updating designating authorities The UK would want to: i) remove EU-27 bodies from the list; and ii) update the names of UK and US designating authorities e.g. to replace DTI. The US agreed to this technical change.

vii. Establishment of joint committees and joint sectoral committees. The UK would want a joint UK-US Committee and to establish Joint Sectoral Committees where indicated. Both parties agreed that this should be as simple as possible. The US (Sanford) emphasised that in a recent exercise with EFTA, these committees were established but were less active in practice.

viii. Requirement to translate into EU languages. Both parties agreed that the text should just be in English.

ix. Generic references to EU. The general principle is to replace all references to "EU" with "UK" whilst ensuring the same effect.

x. GMP Annex. This was very recently updated and specific tweaks may be needed to ensure continuity with regards to the transitional provisions.

7. The aim of the UK is to attempt to share texts in the New Year.
8. In response, the US delegation:
   i. Agreed to the UK timetable of attempting to conclude the drafting exercise by April 2018;
   ii. Emphasised the importance of resolving technical issues before attempting to share text;
   iii. Asked that the UK send via email a list of the ten categories outlined today for review;

Department for International Trade

iv. Questioned how the UK could transition inactive sectors which include an old GMPS annex, when a new GMPs annex now exists. The UK (Farrel) explained that the principle is to transition the agreement as it currently stands, i.e. the updated GMPS annex replaced the old one;

v. Asked how much the UK had engaged in technical discussions with regulators and how transition would work in practice. US regulators were already asking questions and there might therefore be merit in a regulator to regulator discussion, as MRAs could be difficult to implement. Julian Farrel (UK – DIT) confirmed that there had been initial discussions with BEIS and the MHRA and that detailed discussions would soon follow. The UK would be happy to facilitate bilateral discussions between regulators.

vi. Emphasised that particular 'opportunities for reflection' exist in the medical devices single audit and electronic labelling.

vii. Suggested that both sides exchange practices or guidance on how to develop regulations and policies that help trade.

Marine Equipment MRA:

9. The US (Sanford) emphasised that the US Coast Guard is looking to amend the product scope of this agreement and that it remains a work-in-progress with changes in the pipeline.
10. Haroona Chughtai (UK – DFT) gave an update on the **Marine Equipment MRA**. DfT have been contributing to the discussions on the product scope of the agreement with the EU and are aware of the upcoming changes. Meanwhile, DFT has been marking up the MRA for transitioning and would be happy to share this with USTR or the US Coast Guard accordingly. As with the 98 MRA, the priority is continuity.
11. EMSA managed the relationship on behalf of the Csion under the Marine Equipment Directive. The UK would look to replicate this and the Maritime and Coastguard Agency would become the regulator for this requirement. A discussion between the MCA and US Coast Guard would be needed. The US agreed that the technicalities needed to worked out ASAP and agreed to facilitate contact at technical level for this agreement.
12. In response to a question from USTR Legal Counsel, Julian Farrel (UK – DIT) confirmed that the UK would not need secondary legislation to transitionally adopt the MRAs. Royal Prerogative gave the Government the ability to conclude trade agreements. The UK already had domestic regulators in these areas so there should be no need to create new bodies.

Good Regulatory Practice (GRP)

13. Julian Farrel (UK- DIT) and Kate Maxwell (UK - DIT) updated on work in this area. The UK had looked at the text in TTIP and TPP on good regulatory practice: we would aspire to have ambitious provisions in any FTA. The US delegation expressed an interest in understanding how GRP applied in the context of EU regulation being transposed into UK law. The UK confirmed that our better regulation requirements, including consultation and impact assessment, applied equally to domestic and EU-derived legislation. The US did not think TPP was a high water mark of ambition on GRP: TTIP was more ambitious, but UK/US could go further. To the US, transparency and public input are the most important areas of GRP. The US did not prepare impact assessments for every regulation; they relied on evidence-based decision making. It was also important to enable stake holders to petition government to make changes to regulations, as this helped produce a regulatory regime more responsive to the market. It was agreed that the UK and US had a lot in common in this area. There was a difference in the US/EU

Department for International Trade

approach: the US thought the EU focused on cooperation and one regulation common to all; whereas the US aimed for inter-operability in markets, which sometimes resulted in measures focused on outcomes (e.g. auto emissions rather than engine size). It would be important for UK and US regulators to discuss issues during the early stages of preparing regulation. The US had persuaded the EU to include a GRP chapter in TTIP, and GRP will continue to be a priority in any future US trade deals.

Action Items

- 98 MRA: UK to send list to US of 10 issues raised via email to US.
- Subsequent aim is to share a text in the New Year.
- UK and US to consider facilitating regulator-to-regulator discussions.
- **Marine Equipment:** US to facilitate contacts for DfT technical discussions.
- **General:** UK to relay US comments on medical devices single audit to MHRA.

FOR INTERNAL DISTRIBUTION ONLY

Lead Negotiator Analysis/Comments

- The atmosphere of the meeting was inquisitive and largely collaborative. It included several offers from the US for 'exchanges' over UK regulation and policy development.
- On MRAs, the US made clear where that they would only want active sectors of the 1998 MRA to be transitioned – this would exclude 3 inactive sectors (electrical safety, recreational craft, and medical devices) that the US insist have no chance of being made active anyway. The UK stuck to the line that TA means transitioning agreements as they currently stand.
- There were several questions on the implementation of the MRAs and what UK secondary legislation would be needed, reflecting the US emphasis on operability.
- UK objectives of the meeting were generally met – the main categories for discussion have been set out ready for future discussion and agreement was confirmed on the overall timeline for MRA transition. The US has also agreed to facilitate technical level contact for the Marine Equipment MRA.
- The UK will be ready to share a list of MRA issues in a couple of weeks.
- On GRP, confirmation of shared UK-US aspiration to see an ambitious GRP chapter in any UK-US FTA, and we succeeded in providing further reassurance to the US on the extent of UK domestic GRP disciplines.

Department for International Trade

Title of Meeting: ***Final Review and Coordination Meeting***

Date: ***14th November 2017***

Time: ***16:45-17:45***

Participants

Name	Department/Directorate
Oliver Griffiths,	UK-US Team, Trade Policy Group, DIT
Richard Salt,	UK-US Team, Trade Policy Group, DIT
Katie Waring,	UK-US Team, Trade Policy Group, DIT
Sophie Brice,	UK-US Team, Trade Policy Group, DIT
Cordelia Jonathan,	UK-US Team, Trade Policy Group, DIT
Mike Bartling,	Legal, DIT
Tom Josephs,	Policy Directorate, DIT
Neil Feinson,	Policy Directorate, DIT
Julian Farrell,	Policy Directorate, DIT
Dan Lihou,	US Team, Trade Policy Group, DIT
Jack Kennedy	US Team, Trade Policy Group, DIT
Mark Prince	Policy Directorate, DIT
Henry Alexander	Policy Directorate, DIT
Edwin Mangheni	US Team, Trade Policy Group, DIT
Sarah Clegg	FCO
Emma Coppack,	DExEU
Tim Colley	BEIS
Harry Lee	DCMS
Ceri Morgan	DEFRA
Jaya Choraria	HMT
Dan Mullaney	USTR
Timothy Wedding	USTR
Raimonds Pavlovskis	USTR
Sam Rizzo	USTR
Katherine Kalutkiewicz	USTR
Alexandra Whittaker	USTR
Andrew Lorenz	US National Security Council
Whitney Baird	US Dep. Of State
Mitchell Ferguson	US Dep. Of State
Casey Mace	US Dep. Of State
Jessica Simonoff	US Dep. Of State

Department for International Trade

Gregory Burton	US Embassy to UK
Joseph Burke	US Embassy to UK
John Simmons	US Embassy to UK

Key Points to Note

- This meeting summarised the proceedings and take-away points from all the sessions of the Working Group. There were no new key points to note.

Report of Discussions and Outcome

1. Dan Mullaney thanked the UK for hosting the US delegation. Good progress was made on three of the pillars of the Working Group: STOs, Continuity Agreements, and laying the groundwork for a future FTA. On STOs he was impressed by the SME group, with further UK-US dialogue expected on this before the next Working Group. He was also pleased there had been concrete outcomes and agreed public language from the discussions on financial services and intellectual property. On Continuity Agreements there had also been progress, particularly on the four agriculture-related agreements, where there was now a clearer picture of what needs to be done to ensure trade continues smoothly post-Brexit. In terms of preparations for a future UK/US FTA there had been very useful discussions in across many sessions. On services there were strong shared objectives and goals. Some good ideas had been presented on IP, providing a basis for moving this discussion forward. This was also the case with SPS, where the US had presented their views on some of the challenges in TTIP discussions. In sum, there was good progress on all three pillars. Dan also emphasised the importance for US business of having early predictability on what an implementation agreement would look like and how long it would last.
2. Oliver Griffiths agreed with this overall summary and asked the leads for the individual sessions to report back the headline messages.
3. Sophie Brice summarised the Sustainability session. This was a good opportunity for introductory conversations which laid clear groundwork for future work in this area. In particular future conversations were likely to focus on (i) aspects of mutual interest to the UK and the US (e.g. modern slavery/forced labor); (ii) enforcement mechanisms; (iii) opportunities for global UK-US leadership on sustainability and (iv) sharing wider analysis and evidence of impact of sustainability (labour/environment) provisions in trade agreements.
    i. Oliver Griffiths noted that there will need to be further scoping here to ensure alignment of expectations.
    ii. Tim Wedding agreed this had been a good introductory meeting that had set out where each side's interests were and where there was commonality. He agreed that the four priorities Sophie had laid out was where conversations should focus going forward.
4. Ceri Morgan presented the highlights of the Agricultural Continuity Agreements session. Good progress was made overall – it will be vital that work continues between Working Groups. For Organics, Spirits and Wine the next step will be to set up technical VTCs, ahead of which Defra is looking to share operability summaries as well as relevant draft continuity texts. On veterinary equivalence (VEA) the UK will need to look at the US proposals in more detail and revert to the US. The two sides will also facilitate a regulator to regulator discussion on VEA.

Department for International Trade

i. For the US Julie Callahan reflected that veterinary equivalency agreements and organics will need more work by regulators on both sides to ensure they are effective. However, there is clear commitment on both sides to have these in place on day 1.

5. Mark Prince summarised the two IP sessions, which covered enforcement, GIs and trade secrets. Good progress was made on the workplan and next steps. This included encouraging progress on SMEs in particular and Mark thanked the US for the first draft of an SME toolkit. The UK will work jointly with the US on developing this. He also thanked the US for the invitation to the annual gathering of attaches which will be attended by a UK representative from the IP Office.
    i. For the US Christine Peterson thanked the UK and welcomed the progress on the STOs in particular. Groundwork had been laid for a future FTA, with discussions about IP trade policy, geographic indication & trade secrets. The US thanked the UK for being open in these discussions.
6. Julian Farrell summarised the SME session. The teams had compared best practices and experiences of how to remove trade barriers and burdens on SMEs, and had laid the groundwork for future discussions. The work on STOs had been particularly productive over the two days of talks, and concrete outcomes had been agreed, including the intention is to hold a UK-US SMEs workshop in Spring 2018 and produce a short joint document setting support for SMEs.
    i. For the Christina Sevilla commented that the IP and SME brochures should be ready for early 2018. The discussions had been very positive and had demonstrated how much the UK and US had in common, but had only scratched the surface (including in terms of STOs where there was more we could do together). Looking towards a future FTA, discussions had covered the trade policy elements that will benefit SMEs.
7. Tom Josephs summarised the Services session. There had been positive and constructive discussion. Good progress had been made on the STOs, and there would be language on financial dialogue in the statement after this working group. Both sides were keen to take forward discussions on the continuity agreement on insurance. Both sides were also keen to be ambitious in the digital sphere, as well as on financial services, and to continue close dialogues in these areas.
    i. The US agreed there had been productive conversations. There are shared UK-US interests across most areas, especially financial services, professional and business services. The session had looked at past trade deals, building towards conversations on possible future approaches for a UK/US FTA.
8. Ceri Morgan summarised the SPS session. This had been a very useful session, covering a big topic. This was the start of a discussion, which would need careful handling collectively going forwards. The next step will be to move into technical exchange.
    i. For the US Julie Callahan agreed that the session had been a very useful start to what would need to be an ongoing conversation. She also noted (from the session) the US point that US poultry producers don't use chlorine in their food processes. She underlined the US view that US SPS measures are based on science and risk assessment. The US recognised that there are sensitive and critical issues for both sides in this area.
9. Julian Farrell summarised the Regulatory Dialogue Follow-up session, which covered 3 issues: 1) UK devolution and how this interacts with Brexit (the UK will look forward to hearing an equivalent US presentation on the federal/state split at a future date); 2) transition of existing Mutual Recognition Agreements (MRAs) – looking at what would need to be replicated to avoid a cliff edge – with the

Department for International Trade

emphasis on this being a purely technical exercise to ensure continuity; 3) Good regulatory practice, discussing key topics the US would aspire to see in an FTA.

   i. The US agreed that there had been helpful discussion across these 3 areas. On MRAs they would need to get regulators together to discuss substance and ensure this worked on day one post-Brexit. Another theme was commonality of goals and thinking about how we can be ambitious in this area.

10. Oliver Griffiths summarised by noting the good progress across the discussions and particularly on STOs and continuity agreements. This Working Group had been a positive step forwards since July and there is a strong commitment on both sides to make sure everything is in place for day one post-Brexit. He committed to keep the US up to date on progress with the EU and would like to further understand where the main issues are for the US vis-à-vis EU regulation. He also suggested a US presentation on the state / federal split would be helpful. Finally, he noted the good practice on both sides and encouraged continued engagement in between the Working Groups.

   i. Dan Mullaney agreed and reemphasised the point about the importance of continuing engagement outside of the formal Working Groups.

Action Items

- No new actions from this meeting