

What do Americans want from a U.S. – UK Trade Agreement? Analysis of USTR' public consultation.

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What do Americans want from a U.S. – UK Trade Agreement? Analysis of USTR' public consultation.

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This paper analyses the responses to the request of the Office of the United States Trade Representative (“USTR”) for comments on negotiation objectives for a U.S. – UK Trade Agreement. The consultation received 125 responses, including 583 policy requests classified in ten policy areas. The findings reveal a significant discrepancy between the type of policy requests and actual trade flows, including: a) overrepresentation of respondents from the agricultural sector and an underrepresentation of respondents from the services sector; b) an overwhelming majority of policy requests referred to trade in goods, with only eleven percent referred to trade in services and just over seven per cent to digital trade; and c) contrasting to the increasing servicification of trade in goods, the study found limited evidence of the service industry interest in policy measures affecting trade in goods and manufacturing sector interest in policy measures affecting trade in services. The study also identified offensive requests on a number of policy areas particularly sensitive for the British public including mutual recognition of food safety rules; relaxation of UK approval standards, government pricing and reimbursement determination of pharmaceutical products; ambitious commitments on postal and courier services, with appropriate safeguards against abuse by national postal operators; the need to avoid unnecessary cultural carveouts affecting audio visual services, calls to facilitate the movement of natural persons across borders, including a chapter on labour mobility to allow easier movement of staff at all levels of seniority; and fierce opposition to digital services taxes.

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Key Findings

- The consultation received 125 responses from the public, the vast majority of which (86.6 per cent) were filed by business associations and firms. Only seventeen responses (13.6 per cent) were filed by the civil society representatives or public authorities.
- The distribution of respondents by sector of activity differed significantly with the structure of the United States (“U.S.”) economic output, with an overrepresentation of respondents from the agricultural sector and an underrepresentation of respondents from the services sector.
- We identified a total of 583 policy requests related to 34 different policy areas. The overwhelming majority of policy requests (43.7 per cent) referred to trade in goods, followed by requests related to trade in services (11.3 per cent), intellectual property (7.9 per cent), regulatory coherence (7.7 per cent), digital trade (7.4 per cent), societal concerns (6.3 per cent), levelling playing field (5.5 per cent), government procurement (3.9 per cent), investment (3.8 per cent), dispute settlement (1.5 per cent), and other policy matters (0.9 per cent).
- 72 per cent of the policy requests referred to policy areas already covered by World Trade Organisation (“WTO”) disciplines, whereas only 28 per cent referred to new policy areas not covered by the WTO disciplines such as digital trade, state owned enterprises and exchange rate policies.
- We identified limited evidence about the **servicification of trade policy making**, including 43 policy requests relating to trade in goods filed by respondents from the service sector, particularly from the information and communications sector. By contrast, we only found four requests on trade in services and four on digital trade filed by respondents from the industry sector. We did not find requests relating to trade in services or digital trade filed by respondents from the agricultural sector.
- On **trade in goods**, most requests were offensive, asking for ambitious tariff commitments, particularly on agricultural products (other than sugar and sugar related products), a raise in the United Kingdom (“UK”) *de minimis* threshold for low-cost shipments (\$200) to U.S. standard (\$800), and to streamline customs rules and procedures to the maximum extent possible.
- Respondents, mainly from the agricultural sector, asked for a robust chapter on **sanitary and phytosanitary measures**, taking the United States-Mexico-Canada Agreement (“USMCA”) chapter as a blueprint for negotiations with the aim to ensure that sanitary and phytosanitary (“SPS”) measures are science-based, risk-based, transparent and least trade restrictive, avoiding the European Union (“EU”) precautionary type of regulatory approaches. Some respondents demanded the mutual recognition of food safety rules of the two countries and others noted that

regulations and labelling requirements on genetically modified organisms (“GMOs”) would prevent U.S. producers to compete on a level playing field with non-GMO products.

- On **rules of origin**, however, waters were clearly divided between those who requested to keep them fairly flexible to accommodate production to global value chain needs (typically respondents from the chemical, pharmaceutical, information and technology, textiles and apparel industries), and those who asked for rigid ones, with no *de minimis* exceptions to prevent transshipments (respondents from the agricultural sector, distilled spirits, glass tableware products, iron and steel sector). Respondents from the iron and steel sector also asked to maintain U.S. trade remedy laws intact.
- Representatives from the pharmaceutical industry raised concerns about the impact of British policy on the access of U.S. **pharmaceutical products** in the UK, including strict regulatory approval standards and positive government pricing and reimbursement determinations, which distort markets and artificially depress prices below what a competitive market would provide.
- On **trade in services**, the vast majority of responses asked for ambitious commitments, taking those included in the USMCA as a floor, to ensure open and non-discriminatory access to the British services markets for American service suppliers. Requests included ambitious commitments on **postal and courier services**, with appropriate safeguards against abuse by national postal operators; the need to **avoid unnecessary cultural carveouts** affecting audio visual services, and calls to facilitate the **movement of natural persons** across borders, including a chapter on labour mobility to allow easier movement of staff at all levels of seniority.
- On **digital trade**, requests covered almost every topic of the current digital trade agenda, including requests aimed at facilitating electronic transactions, prohibiting the imposition of customs duties on digital products transmitted electronically, non-discriminatory treatment of digital products, commitment to ensure the free flow of data, prohibition of data localisation requirements, access to internet and open government data, promotion of a risk-based approach to deal with cyber threats and regulatory dialogue and cooperation on e-commerce
- On **investment**, requests from business associations aimed to secure high standards of protection for foreign investors, removal of investment restrictions and a strong Investor State Dispute Settlement System (“ISDS”), whereas requests from civil society representatives requested to limit the scope and depth of investment protection and to avoid including an ISDS mechanism in the agreement.
- On **intellectual property** (“IP”), the third most popular policy area for requests behind trade in goods and trade in services, requests were mostly filed by respondents from knowledge-intensive industries and thus demanded the inclusion of a robust IP chapter, with the highest standards of

protection of all intellectual property rights, and equally robust enforcement standards. We identified strong discrepancies with respect to the liability of online service providers for copyright breaches, with requests for maximum protection for online platforms and marketplaces coming from the software industry camp, clashing with requests to resist any attempt to insert overbroad exceptions, limitations and safe harbours for online intermediaries filed by respondents from the creative industries.

- On **government procurement**, most requests asked for ambitious commitments, while requests from the iron and steel, textiles and apparel and maritime transport advocated for a defensive approach. Non-governmental organisations (“NGOs”) called not to undermine ‘Buy American’ policies and preserve policy space to condition procurement to green, labour and human right policies.
- With respect to the **levelling playing field**, a number of respondents asked to include disciplines on state owned enterprises and macroeconomic and policy exchange rate matters, aimed not so much at the UK government, but as a means to set an international precedent by powerful market oriented economies for future trade agreements and as a means to protect themselves from third parties’ controlled state-owned enterprises (“SOEs”) and currency manipulation practices.
- Quite a few number of respondents requested to include strong disciplines on **good regulatory practices** to promote regulatory compatibility between the two parties and reduce costs associated with regulatory differences. In particular, many asked for a commitment to the use of sound science in regulatory decision-making, following the U.S. risk approach and avoiding EU precautionary type of regulatory approaches to regulate on matters as varied as food security, cyber threats and technical regulations.
- We identified a number of requests on **regulatory transparency** filed by respondents from the pharmaceutical industry, aimed at enhancing the transparency of regulatory procedures and decisions regarding the approval and reimbursement of medicines, including clear timetables for pricing and reimbursement decisions, clear justifications given for government decisions, the right to appeal decisions to an independent body, and provisions that ensure fair reward for innovative products within the NHS system.
- Requests related to **societal concerns** covering small and medium enterprises, consumer protection, labour, human rights, public health, animal welfare and environment, accounted for six per cent of the total number of policy requests. Unlike in the rest of policy areas, the majority of the requests were filed by representatives of the civil society. A common pattern to these requests was an emphasis on preserving the policy space to champion interests in all these areas.

1. Introduction

The purpose of this paper is to analyse the responses to the request of the Office of the United States Trade Representative (“USTR”) for comments on negotiation objectives for a U.S. – UK Trade Agreement. Following the UK’s decision to leave the EU, the U.S. and the UK established the U.S.-UK Trade and Investment Working Group in July 2017.¹ This group aimed at providing commercial continuity for U.S. and UK businesses, consumers and workers, explore ways to strengthen trade and investment ties and lay the ground for a potential future free trade agreement once the UK formally left the EU.² The group met six times between July 2017 and July 2019. As part of the group’s work, the parties signed agreements on mutual recognition of standards and regulations for specific products and services, including wine, spirits, marine equipment and insurance.³

On 16 October 2018, the USTR notified the U.S. Congress of the Administration’s objective to initiate negotiations on a trade agreement with the UK as soon as it is ready after it exits from the EU.⁴ The notification was made in accordance with section 105(a)(1)(A) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.⁵

The USTR has a legal duty to seek input from the public during the trade negotiations.⁶ In accordance with the legal mandate, the USTR developed written guidelines for consultation and engagement with the public.⁷ The guidelines stipulate that the USTR must issue Federal Register notices for every trade agreement under negotiation encouraging interested members of the public to submit comments, recommendations, or concerns they may have to inform U.S. positions and strategies in that negotiation.⁸ The document also requires that both the notice and all non-confidential comments received must be made available electronically on the Federal Register website.⁹

¹ The Office of the United States Trade Representative, Press Release on U.S.-UK Trade Agreement Negotiations (Preparations), <<https://ustr.gov/countries-regions/europe-middle-east/europe/united-kingdom/us-uk-trade-agreement-negotiations>> last accessed 04 March 2021.

² Ibid.

³ Ibid.

⁴ Letter from the Office of the United States Trade Representative [to the Senator Hatch](https://ustr.gov/sites/default/files/20181017004930805-3.pdf), <<https://ustr.gov/sites/default/files/20181017004930805-3.pdf>>, last accessed 04 March 2021.

⁵ Bipartisan Congressional Trade Priorities and Accountability Act of 2015, 19 USC 4201, <<https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf>>, last accessed 04 March 2021.

⁶ Section 104 (d) Trade Priorities Act.

⁷ USTR’s Guidelines for Consultation and Engagement issued on 27 October 2015. <<https://ustr.gov/sites/default/files/USTR%20Guidelines%20for%20Consultation%20and%20Engagement.pdf>>, last accessed 04 March 2021.

⁸ Ibid.

⁹ Ibid.

On 16 November 2018, the USTR issued a notice in the Federal Register seeking public comments in writing and orally at a public hearing on a proposed U.S.-UK Trade Agreement, including U.S. interests and priorities, in order to develop U.S. negotiating positions.¹⁰ The deadline for the submission of written comments was set for the 15 January 2019 and the public hearing was held on 29 January of 2019. Both the non-confidential comments received and the minutes of the public hearing including the testimony of the twenty four witness that attended the hearing are available online.¹¹ Following the public consultation, the USTR issued a summary of specific negotiation objectives.¹² The negotiations were officially launched on 5 May 2020.¹³

2. Respondents

The consultation received 125 responses from the public.¹⁴ As it stems from Chart 1 below, ninety-one responses (73 per cent) were submitted by business associations, i.e. entities that represent the interests of profit-making members. Of these, eighty five were based in the U.S. and six in the UK. Seventeen responses (13.6 per cent), were filed by firms. Of these, fourteen were large firms (250 employees or more), one was medium-size (between 50 and 249 employees),) and two were micro firms (less than 10 employees). All of the firms were based in the U.S. and traded or invested in the UK . Twelve of them had subsidiaries or branches abroad. Only seventeen responses (13.6 per cent) were filed by the civil society, including eight by NGOs, three by individuals other than individual businesspersons, two by public authorities, three by academic institutions and one by a trade union.

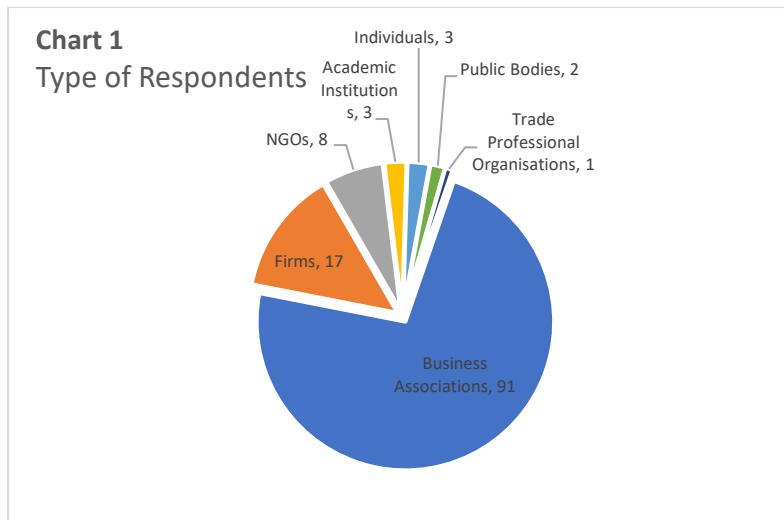
¹⁰ Federal Register, Request for Comments on Negotiating Objectives for a U.S.-United Kingdom Trade Agreement, <<https://www.federalregister.gov/documents/2018/11/16/2018-24987/request-for-comments-on-negotiating-objectives-for-a-us-united-kingdom-trade-agreement>>, last accessed 04 March 2021.

¹¹ For the comments see <https://www.regulations.gov/document/USTR-2018-0036-0001> and for the minutes of the public hearing see <https://ustr.gov/sites/default/files/0129USTR.pdf>

¹² The Office of the United States Trade Representative, United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives, February 2019, <https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf>, last accessed 04 March 2021.

¹³ Statement of USTR Robert Lighthizer on the Launch of U.S.-UK Trade Negotiations, <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/may/statement-ustr-robert-lighthizer-launch-us-uk-trade-negotiations>>, last accessed 04 March 2021.

¹⁴ The total number of non-confidential written responses from the stakeholders filed to the Federal Register is 132, but this number include some duplications of submissions by the same respondent that submitted separately a written statement with policy requests and a written request to testify at the oral hearings.



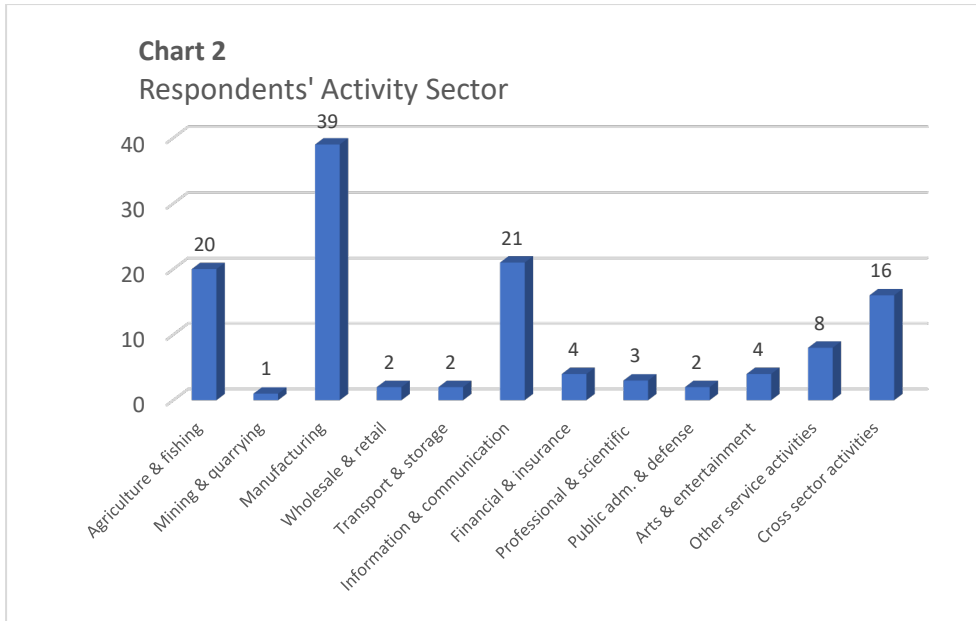
The data shows some interesting findings. First, the total number of responses is similar to that for other USTR public consultations.¹⁵ But when contrasted with the size of the U.S. and the significance of the UK as a trading partnership for the U.S., one cannot but conclude that it represents only a very tiny fraction of the stakeholders' interests at stake. The number of responses also pales in comparison with that for a similar public consultation undertaken by the UK Department of International Trade (DIT) on trade negotiations with the U.S.¹⁶ Second, there is an absolute prevalence of the interests of the private sector as conveyed by businesses and business associations, compared with the interests of the civil society at large. A strong presence of the private sector would be expected in a trade consultation, but the very small proportion of other stakeholders is surprising given the increasingly wider impact of trade policies on non-trade matters such as environment, public health and labour standards to name but a few.

The data on the respondents' principal sector of economic activity, also shows interesting information.¹⁷

¹⁵ For example, 167 comments were received for the consultation on the EU-U.S. trade negotiations (<https://www.regulations.gov/docket/USTR-2018-0035>), 159 for the U.S.-Japan (<https://www.regulations.gov/docket/USTR-2018-0034>) and 131 for the U.S.-Kenya (<https://www.regulations.gov/document/USTR-2020-0011-0001/comment>).

¹⁶ The UK Government received 158,720 responses, submitted via the online survey and by email or post. The number includes 6,300 responses that completed the online survey and 152,420 emails, including those submitted by campaigns. See UK Department of International Trade, Public consultation on trade negotiations with the United States (18 July 2019), page 10. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818312/Public-consultation-on-trade-negotiations-with-the-United-States-Summary-of-responses.pdf, accessed 17 January 2021.

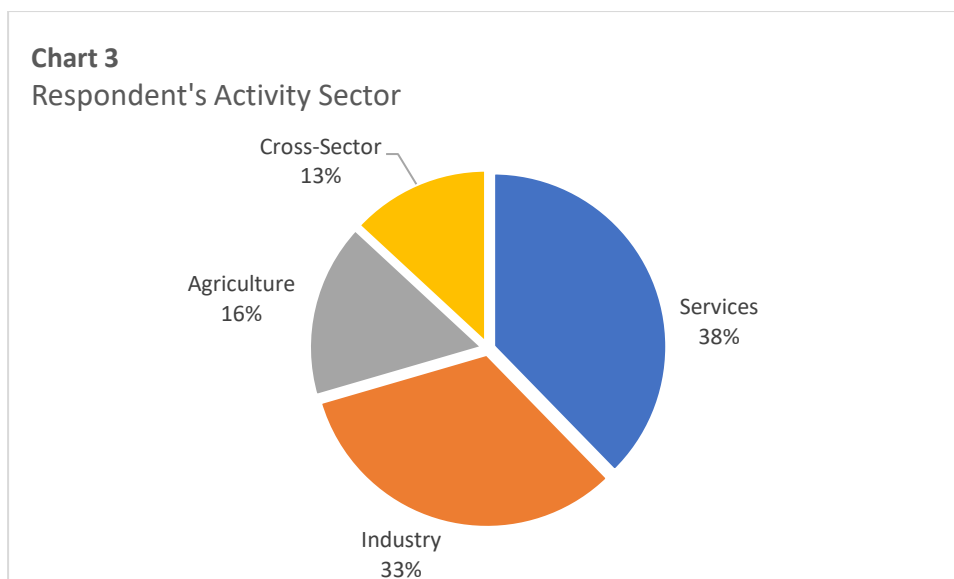
¹⁷ The classification was based on International Standard Industrial Classification of All Economic Activities (ISIC), Rev.4, < https://unstats.un.org/unsd/publication/seriesM/seriesm_4rev4e.pdf>, last accessed 04 March 2021.



As it stems from Chart 2, 39 respondents (32 per cent) represented the manufacturing sector. Within this sector, eleven represented the manufacturing of food products or beverages, ten the manufacturing of chemical or pharmaceutical products, five the manufacturing of basic metals and metal products, four the manufacturing of computer, electronic or electrical equipment, four the manufacturing of textiles or wearing apparel, and three the manufacturing of vehicles or other transport equipment. 21 respondents represented the information and communications sector (17.2 per cent), covering a wide range of sub-sectors including, in particular, telecommunications, computer programming and information service activities, while twenty respondents represented the agriculture, forestry and fishing sector (16.4 per cent). Finally, sixteen respondents (13.1 per cent), were classified as cross-sector because they represent the interests of more than one sector of economic activity, typically business associations or large firms engaged on business spanning over various sectors of economic activity¹⁸.

It is interest to note that there were no respondents from the following sectors: electricity, gas, steam and air conditioning supply; water supply, sewerage, waste management and remediation activities; construction; accommodation and food service activities; education and human health and social work activities.

¹⁸ Cargill and Amway.



When looked at from an aggregated perspective, 46 respondents (37.7 per cent) correspond to the services sector, 40 (32.8 per cent) to the industry sector and 20 (16.4 per cent) to the agricultural sector.¹⁹ This differs significantly from the structure of the U.S. economic output which, for 2019 included 1 per cent for the agricultural sector, 18 per cent for the industry sector and 77.4 per cent for the services sector.²⁰ The discrepancy between respondents' sectors of activity and structure of output is even more marked within business associations. Nineteen business associations (20.1 per cent) advocated for the specific interests of the agricultural sector. These numbers appear to suggest an overrepresentation of the agricultural sector and an underrepresentation of the services sector among the respondents.

Based on the name of the person that signed the submission, seventy six submissions (60.8 per cent) were signed by men, and 40 (32 per cent) by women. The remaining submissions were either signed by more than one person including men and women or it was not possible to identify the gender of the person signing the submission.

3. Responses

3.1 Overview of Responses

To analyse the content of the responses, we identified 34 policy areas which we aggregated into ten categories as indicated in Chart 4 below.

¹⁹ According to the World Bank's structure of output, "agriculture" corresponds to ISIC V.4 divisions 1 to 4, "industry" divisions 5 to 43 (includes mining and manufacturing), and "services" divisions 44 to 99.

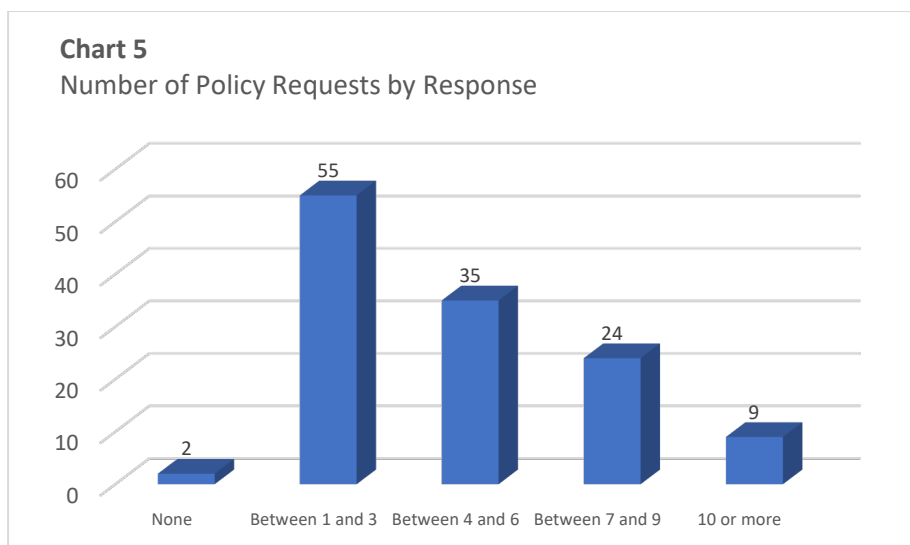
²⁰ World Development Indicators, World Bank. Data for U.S. corresponds to 2017.

Chart 4 Typology of Policy Areas		
Policy Area	Policy Area (aggregated)	WTO Mandate (*)
Tariffs	Trade in Goods	WTO plus
Sanitary and Phytosanitary Measures	Trade in Goods	WTO plus
Technical Barriers to Trade	Trade in Goods	WTO plus
Quantity Control Measures	Trade in Goods	WTO plus
Price Control Measures	Trade in Goods	WTO plus
Rules of Origin	Trade in Goods	WTO plus
Trade Remedies	Trade in Goods	WTO plus
Other/Unspecified Non-Tariff Barriers	Trade in Goods	WTO plus
Financial Services	Trade in Services	WTO plus
Telecommunications	Trade in Services	WTO plus
Transport	Trade in Services	WTO plus
Postal and Courier Services	Trade in Services	WTO plus
Professional Services	Trade in Services	WTO plus
Unspecified Service Sectors	Trade in Services	WTO plus
Movement of Natural Persons	Trade in Services	WTO plus
Digital trade / e-commerce	Digital Trade	WTO extra
Investment	Investment	WTO extra
Intellectual Property	Intellectual Property	WTO plus
Government Procurement	Government Procurement	WTO plus
Competition	Levelling Playing Field	WTO extra
Subsidies	Levelling Playing Field	WTO plus
State Own Enterprises	Levelling Playing Field	WTO extra
Macroeconomic and Exchange Rate Matters	Levelling Playing Field	WTO extra
Good Regulatory Practices	Regulatory Coherence	WTO extra
Transparency	Regulatory Coherence	WTO plus
Small and Medium Enterprises	Societal Concerns	WTO extra
Consumer Protection	Societal Concerns	WTO extra
Labour	Societal Concerns	WTO extra
Gender	Societal Concerns	WTO extra
Human Rights	Societal Concerns	WTO extra
Public Health	Societal Concerns	WTO extra
Animal Welfare	Societal Concerns	WTO extra
Environment	Societal Concerns	WTO extra
Dispute Settlement	Dispute Settlement	WTO plus
Other	Others	WTO extra

(*) WTO plus: policy area already covered by WTO disciplines / WTO extra: policy area not yet covered by WTO disciplines

First, we identified a total of 583 policy requests.²¹ The number of policy requests by response varied. As it stems from Chart 5 below, 55 responses (44 per cent) included between one to three policy requests, 35 responses (28 per cent) included four to six policy requests, 24 responses (19.2 per cent) included seven to nine policy requests and 9 responses (7.2 per cent) included ten or more policy requests.

On average, each response included 4.7 policy requests. When looked at the respondent’s sector of activity, the average number of policy requests filed by respondents from the agricultural sector was 3.4, from the industry sector 4.5, and from the services sector 4.3. For respondents representing cross sector activities – typically business associations - the average number of policy requests was considerably higher, 8.18. The responses with the largest number of policy requests were filed by the U.S. Chamber of Commerce with nineteen policy requests, the National Foreign Trade Council, and the British-American Business. This is not surprising given the large number and diversity of firms that these industry associations represent. There were two responses from two individuals who did not include any specific policy request.

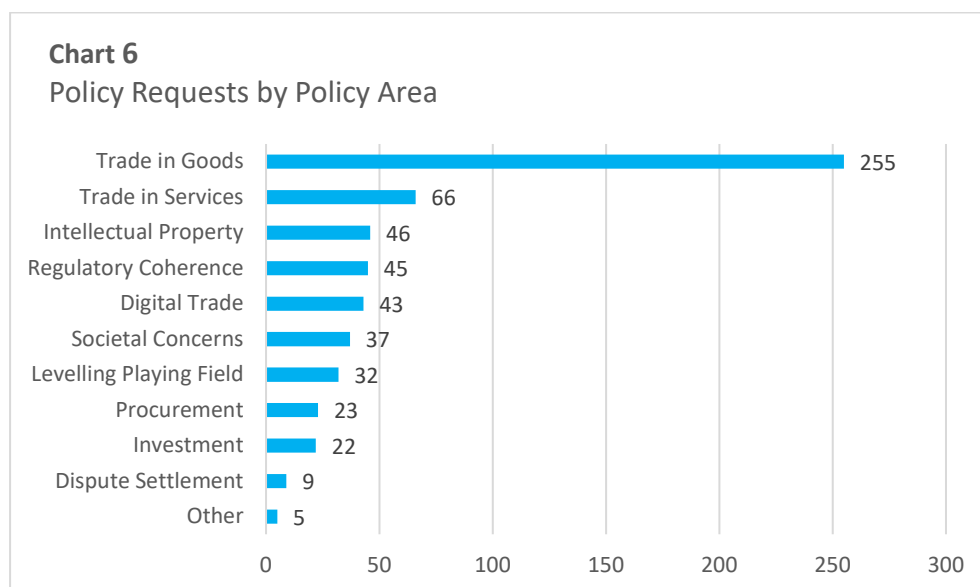


Second, we classified the policy requests by policy area. As it stems from Chart 6 below, the overwhelming majority of policy requests (43.7 per cent) referred to trade in goods. These included, among others, requests on tariffs, sanitary and phytosanitary measures, technical barriers to trade and rules of origin matters.²² In a distant second place came policy requests referred to trade in

²¹ We counted a policy request every time we identified a reference in the response to one of the 34 policy areas identified in Chart 4, regardless of the request’s content and the number of times the specific policy area is mentioned by the response. For example, when a response mentions tariffs, we count it as one policy request, regardless of whether the respondent is demanding a reduction or maintenance of tariff protection and regardless the number of times the word tariffs is mentioned in the response.

²² See below section 3.3.

services (11.3 per cent), followed by requests on intellectual property (7.9 per cent), regulatory coherence, including good regulatory practices and transparency (7.7 per cent), digital trade (7.4 per cent), societal concerns (6.3 per cent), levelling playing field (5.5 per cent), government procurement (3.9 per cent), investment (3.8 per cent), dispute settlement (1.5 per cent), and other policy matters (0.9 per cent).



Third, it is interesting to note that of 583 policy requests, 420 (72 per cent) referred to policy areas already covered by WTO disciplines, whereas only 163 (28 per cent) referred to policy areas that are not yet covered by them such as digital trade, state owned enterprises and exchange rate policies. Arguably, these figures somehow question the role of preferential negotiations as a platform for testing new disciplines that later down the road could eventually be multilateralised.

In terms of their size, the average number of pages per response was 6.5. 76 responses (60.8 per cent) were between one to five pages, 34 responses (27.2 per cent) were between six to ten pages, and 15 responses (12 per cent) had more than ten pages. The largest response had sixty one pages. All together, the public consultation received eight hundred and eighteen pages of feedback.

3.2 Requests outside Respondents' Sector of Activity?

There is a reasonable expectation that the increasing use of services as input and output in the manufacturing sector, also known as the servicification of manufacturing²³, could prompt an interest of the manufacturing sector on the liberalisation of trade in services. By the same token, one

²³ See Kommerscollegium National Board of Trade 'Servicification of Swedish manufacturing' (2010).

could expect service industries to become increasingly interested in trade policies affecting manufacturing products with an increasing service content. But, does the data confirm these expectations? Chart 7 below shows how policy requests are distributed according to the respondent's sector of activity.²⁴

Chart 7

Policy Requests by Policy Area and Respondents' Sector of Activity

	Agriculture & fishing	Mining & quarrying	Manufacturing	Wholesale & retail	Transport & storage	Information & communication	Financial & insurance	Professional & scientific	Public adm. & defense	Arts & entertainment	Other services activities	Cross sector activities	Individuals	Grand Total
Trade in Goods	56	0	109	3	2	19	1	3	2	3	10	46	1	255
Trade in Services	0	2	4	0	3	14	4	7	3	3	1	25	0	66
Intellectual Property	4	0	13	1	0	16	1	1	0	1	1	7	1	46
Regulatory Coherence	3	0	16	0	1	1	6	1	1	0	5	11	0	45
Digital Trade	0	0	4	0	0	20	4	1	1	3	1	9	0	43
Societal Concerns	0	0	5	0	0	1	0	3	0	1	16	9	2	37
Levelling Playing Field	2	0	13	0	0	4	1	3	0	0	3	6	0	32
Procurement	0	1	5	0	0	6	2	1	0	0	1	7	0	23
Investment	1	1	2	0	0	2	4	1	0	1	3	7	0	22
Dispute Settlement	2	0	2	0	0	0	1	0	0	0	1	3	0	9
Other	0	0	1	0	0	0	1	0	0	1	1	1	0	5
Total	68	4	174	4	6	83	25	21	7	13	43	131	4	583

Let's start with the respondents operating in the agricultural sector. Together, they filed 68 policy requests, the overwhelming majority of which (82.4 per cent) related to trade in goods. The few remaining requests referred to intellectual property, subsidies, regulatory coherence and investment. Notwithstanding the increasing added value that services bring to the agricultural sector, there are no policy requests by respondents from this sector related to services or digital trade.

The respondents operating in the manufacturing sector filed a total of 174 policy requests. The vast majority of them (62.3 per cent) were also related to trade in goods. But we identified four requests asking for the liberalisation of specific service sectors²⁵, and four requests relating to digital

²⁴ See in the Annex Chart 7.1, for the same data disaggregated across 34 policy areas.

²⁵ *Libbey Inc* (global manufacturer and marketer of glass tableware products) requested the liberalization of the following sectors – restaurant and food service; hotels; tourism; distribution; franchising; transportation;

trade from manufacturers of motor vehicles, electrical equipment and chemical products asking for the liberalisation of cross-border data flows and the prohibition of data localisation requirements.²⁶ This is hardly surprising given that services and the free flow of data are essential for managing production along the lines of global value chains, which are typical in these sectors. For example, one respondent argued that “a constant stream of data flowing seamlessly across national borders is used by the auto industry to manage supply chains, operate financial and credit operations, improve vehicle performance and enhance navigation and communications functions” and to secure these benefits requested “to have clear, consistent rules in place that allow for the unimpeded flow of data”.²⁷ Another noted that there are EU regulations that limit the movement of cross-border data and information, and asked the United Kingdom to change that upon its exit from the European Union.²⁸

Data revealing an interest of respondents from the service industry on policy measures affecting trade in goods appears to be stronger. We identified forty three policy requests of this nature coming in particular from respondents of the information and communication sector. They requested, inter alia, to align UK’s *de minimis* duty free threshold for low value shipments to U.S. standards²⁹, duty free treatment for ICT products³⁰, harmonization or mutual recognition of technical regulations on ICT products³¹, flexible rules of origin for ICT products³² and facilitation of customs procedures for low value goods³³.

The consultation received very few responses from representatives of other sectors of the services industry, and thus no strong conclusions can be inferred from the data available. It is worth however mentioning a few examples where there is indeed some concern of service providers about policy measures on trade in goods. Representatives from the arts and entertainment industry requested strong technical regulations on connected consumer products³⁴ and duty free treatment

express delivery; and telecommunications; the *National Electrical Manufacturers Association* requested the full opening of the UK’s market for services, including testing and technical services, distribution services, energy services, environmental services, and medical services; and *Herbafile Nutrition* (global leader in nutritional supplements and skin care products) requested commitments on direct selling to ensure that countries are not prohibited from distributing products through direct selling.

²⁶ American Chemistry Council, Association of Global Automakers, National Association of Manufacturers, National Electrical Manufacturers Association (NEMA) and SEMI (industry association of the electronics manufacturing supply chain).

²⁷ Association of Global Automakers.

²⁸ National Association of Manufacturers.

²⁹ It was noted that the UK’s *de minimis* threshold was about \$200, while in the US is about \$800. Internet Association, the Information Technology Industry Council and Etsy Inc.

³⁰ The Computing Technology Industry Association, Telecommunications Industry Association

³¹ Tech UK, Software Alliance, The Computing Technology Industry Association, Telecommunications Industry Association, Information Technology Industry Council.

³² Tech UK, Computing Technology Industry Association.

³³ TechUK, Internet Association, Etsy Inc, The Computing Technology Industry Association.

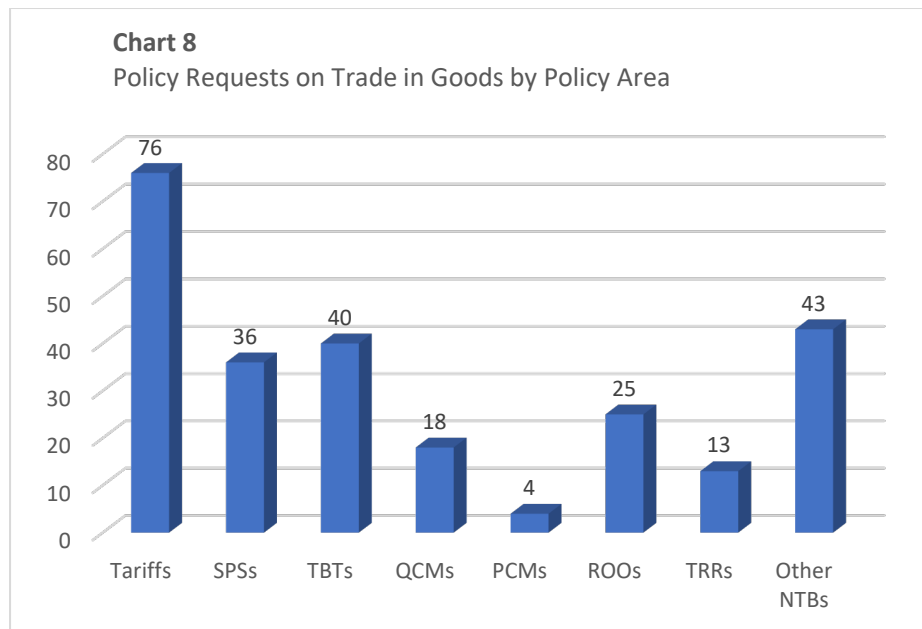
³⁴ Pokemon International Inc.

for cinematographic equipment³⁵; a representative from the wholesale and retail sector requested the elimination of tariffs and quotas on automobiles³⁶; an insurance industry association requested the elimination of tariffs on certain goods that have a substantially negative economic impact on insurers such as construction materials, autos and auto parts³⁷; and a logistics and delivery industry association also requested to align UK’s *de minimis* duty free threshold to U.S. standards and facilitate customs procedures for low value goods.³⁸

3.3 Trade in Goods

We identified 255 policy requests related to trade in goods. Of these, the vast majority were filed by the manufacturing sector (43 per cent), agricultural sector (22 per cent) and cross-sectoral respondents – typically business associations - (18 per cent). Interestingly, we found forty three policy requests on trade in goods filed by respondents from the service sector.³⁹

The study identified eight specific policy areas relevant for trade in goods: tariffs, sanitary and phytosanitary measures (“SPS”), technical barriers to trade (“TBTs”), quantity-control measures (“QCMs”), price-control measures (“PCMs”), rules of origin (“ROO”), trade remedies (“TRRs”) and other non-tariff barriers not classified as any of the previous ones, typically customs rules and procedures (“NTBs”).



³⁵ Motion Picture Association of America.

³⁶ National Automobile Dealers Association.

³⁷ The American Property Casualty Insurance Association.

³⁸ Express Association of America.

³⁹ See Section 3.2.

We identified 76 policy requests on **tariffs**, accounting for 13 per cent of the total number of policy requests. It is the policy area that attracted the largest number of policy requests. Respondents demanded their reduction or elimination in all cases but for sugar and sugar containing products.⁴⁰ The request for tariff reductions was particularly relevant for respondents from the agricultural sector. In this sector, policy requests on tariffs accounted for 28 per cent of the total number of policy requests. Typical agricultural products for which tariff reductions were requested included meat⁴¹, cereals⁴², seafood⁴³, berries⁴⁴, fruit⁴⁵, vegetables⁴⁶, groceries and dairy products⁴⁷, and nuts. Requests for tariff reductions were also quite relevant for respondents from the manufacturing sector. In this sector, policy requests on tariffs accounted for 18 per cent of the total number of policy requests. Typical manufacturing products for which tariff reductions were requested included products in healthcare and pharmaceuticals⁴⁸, automobiles and motor vehicles⁴⁹, alcoholic and non-alcoholic beverages⁵⁰, textiles and apparel⁵¹, metals⁵², electronics⁵³, and chemicals⁵⁴.

⁴⁰The *American Sugar Alliance* requested that "NO additional market access commitments should be given on sugar or the sensitive sugar-containing products (SCPs) covered by our TRQs in the proposed trade agreement with UK or in any other new trade agreement the U.S. might pursue". The request was based on the following reasons: (1) the existing market access commitments on sugar and SCPs in the WTO, NAFTA/USMCA, and other FTA regimes already create a risk of jeopardizing the effective operation of U.S. sugar policy, and (2) the UK is a large net importer of sugar and is expected to have little or no legitimate commercial interest in access to the U.S. sugar market.

⁴¹ National Pork Producers Council, U.S. Meat Export Federation, National Cattlemen's Beef Association.

⁴² USA Rice, U.S. Grains Council, U.S. Wheat Associates, Corn Refiners Association, North American Export Grain Association and National Grain and Feed Association.

⁴³ Alaska Seafood Marketing Institute.

⁴⁴ California Cherry Board, Cranberry Marketing Committee.

⁴⁵ Northwest Horticultural Council (NHC), California Table Grape Commission, Welch Foods, Inc., A Cooperative.

⁴⁶ National Potato Council.

⁴⁷ International Dairy Foods Association, Grocery Manufacturers Association (now rebranded into Consumer Brands Association), American Olive Oil Producers Association (AOOPA), American Frozen Food Institute (AFFI), National Confectioners Association.

⁴⁸ Advanced Medical Technology Association (AdvaMed), Pharmaceutical Research and Manufacturers of America (PhRMA), Herbalife Nutrition, AbbVie, Sanofi, Bristol Myers Squibb, Merck and CO, MFJ International, Personal Care Products Council, Animal Health Institute.

⁴⁹ Association of Global Automakers, Inc. and the Here For America, Society of Motor Manufacturers and Traders (SMMT), American Automotive Policy Council.

⁵⁰ Wine Institute, National Association of Beverage Importers, Inc. (NABI), Distilled Spirits Council, Scotch Whisky Association (SWA).

⁵¹ Association of the Nonwoven Fabrics Industry (INDA), American Apparel and Footwear Association, U.S. Fashion Industry Association, National Council of Textile Organizations, the Narrow Fabrics Institute, and the U.S. Industrial Fabrics Institute.

⁵² Can Manufacturers Institute, Titanium Metals Corporation, American Iron and Steel Institute, Steel Manufacturers Association.

⁵³ SEMI, National Electrical Manufacturers Association (NEMA), Air-Conditioning, Heating, and Refrigeration Institute.

⁵⁴ The Fertilizer Institute, American Chemistry Council, CF Industries, Inc., Society of Chemical Manufacturers & Affiliates (SOCMA).

We identified 36 requests relating to **Sanitary and Phytosanitary measures**, accounting for 6.2 per cent of the total number of policy requests. Almost half of them were filed by respondents from the Agricultural sector, who, in general, asked for a robust SPS chapter with science-based, risk-based, transparent and least trade restrictive SPS measures, avoiding EU precautionary type of regulatory approaches. For example, the American Sugar Alliance held that notwithstanding some expectations that “the UK will take a more liberal and flexible view towards GMOs, this is by no means certain as there is considerable public aversion to GMO products as well”⁵⁵. It noted that regulations and labelling requirements on GMOs would prevent U.S. producers of beet sugar to compete on a level playing field with non GMO products and thus, it requested to combat any differential treatment between sugar derived from bioengineering beet and conventional beet or cane sugar on health or safety grounds.⁵⁶

A number of requests on SPS measures targeted the trade restrictive effect of food safety rules. For example, one respondent demanded the mutual recognition of food standards on agricultural products: to “[p]rioritize internationally recognized science-based standards and a harmonized approach to regulation, particularly as it relates to food safety and animal health”.⁵⁷ Another one argued that “[s]anitary and phytosanitary standards, such as food safety regulations, can be used for the purpose of protecting domestic producers rather than for legitimate reasons of public health ...”, and thus “A US-UK trade agreement should strive to remove all such unnecessary impediments to trade, expanding opportunities for both businesses and consumers.”⁵⁸ Yet another respondent submitted a blunt request regarding SPS measures on beef, poultry and pork: “[t]he agreement must restore science as the basis for food safety regulation by removing scientifically unjustified SPS restrictions on U.S. beef, poultry and pork. Full recognition by the UK of the safety of the U.S. agricultural and food system must be included.”⁵⁹ Requests were also made for the mutual recognition of safety standards for dairy products⁶⁰ and for flavourings. With respect to flavourings, one respondent asked for the U.S.-UK Trade Agreement to “seek a solution in which the United States and UK either mutually recognize flavorings approved as safe and/or establish a process for aligned evaluation and findings. This would maintain current levels of health and safety, while reducing unnecessary costs, duplication, and delay”.⁶¹

⁵⁵ American Sugar Alliance’ response.

⁵⁶ Ibid.

⁵⁷ Cargill.

⁵⁸ American Association of Exporters and Importers.

⁵⁹ American Farm Bureau Federation.

⁶⁰ National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC).

⁶¹ Grocery Manufacturers Association (now rebranded into Consumer Brands Association).

Other policy requests on SPS came mainly from respondents from the manufacturing sector⁶² (ten) and cross-sectoral respondents⁶³ (seven). They too demanded a robust SPS chapter, taking the USMCA chapter on this matter as a blueprint for the U.S.-UK negotiations. By contrast, the largest trade union in the U.S., requested to exclude disciplines on SPS from the negotiations to avoid restrictions on the right to regulate for the protection of public interests.⁶⁴

Responses included a total of 40 policy requests relating to **technical barriers to trade**. Unsurprisingly, more than half of them (23) came from the manufacturing sector, in particular, manufacturers of food and beverages (6), chemical and chemical products (5) and motor vehicles and transport equipment (3), followed by cross-sectoral respondents (6) and respondents from the information and communication technology sector (5). Most responses called for the mutual recognition of technical regulations, however, they differed with respect to the need for their harmonisation. For instance, respondents from the glassware manufacturing industry were against regulatory convergence, as it could result in more stringent standards, whereas respondents from the manufacturing of automobiles and medical devices sector supported harmonisation of technical regulations in their particular areas.

Respondents engaged in manufacturing of chemicals and chemical products asked to adopt the U.S. risk-based approach to analysing TBT compliance. Distilled and spirits manufacturers requested to use the WTO TBT Agreement as a blueprint, developing unbiased standards, eliminating certain TBTs, including a section on best practices. Cross-sectoral entities called for mutual recognition of standards and minimisation of duplicative testing along with harmonisation of certification requirements. There were also three TBT requests filed by respondents from the Agricultural sector respondents who asked for the WTO TBT Agreement to serve as a base for negotiations, to adopt recommendations of the WTO TBT Committee, eliminate unnecessary TBT barriers, and ensure mutual recognition but not harmonisation of the regulatory standards.⁶⁵ Finally, AFL-CIO, the largest federation of labour unions in the United States, also requested to exclude disciplines on TBTs from the FTA in order to avoid restrictions on the right to regulate for the protection of public interests.

Responses included eighteen policy requests on **quantity-control measures**, nine of which were filed by respondents from the agricultural sector, four by respondents from the manufacturing

⁶² American Feed Industry Association (AFIA), International Dairy Foods Association, Libbey Inc., Grocery Manufacturers Association (now rebranded into Consumer Brands Association), CF Industries, Inc., Animal Health Institute, National Council of Textile Organizations, the Narrow Fabrics Institute, and the U.S. Industrial Fabrics Institute, Scotch Whisky Association (SWA).

⁶³ Biotechnology Innovation Organization (BIO). National Foreign Trade Council (NFTC), U.S. Chamber of Commerce, American Association of Exporters and Importers.

⁶⁴ American Federation of Labor & Congress of Industrial Organizations (AFL- CIO).

⁶⁵ National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC), Corn Refiners Association, U.S. Grains Council.

sector, one from the wholesale and retail sector, two by respondents from other services activities and two by cross-sectoral respondents. Regardless of the sector, the vast majority of requests asked for the elimination of UK's QCMs or avoid the introduction of new ones, among others, on beef, grains, steel and aluminium. One respondent filed a very detailed request for a specific tariff rate quota.⁶⁶ By contrast, we identified significant discrepancies among policy requests on QCMs for sugar and sugar containing products. On the one hand, the American Sugar Alliance filed a defensive request, asking to maintain the current U.S. tariff rate quotas for sugar or sugar containing products and avoid granting additional market access to the UK on these products. They expressly requested to exclude these products from the negotiations on the grounds that this process will not result in equitable and fair trade. On the other hand, the National Confectioners Association requested to remove all tariff rate quotas on Chapter 18 products with a view to alleviate tight supply and provide more certainty for confectionery manufacturers of all sizes.

With respect to **price-control measures**, a couple of respondents raised concerns about market access restrictions affecting pharmaceuticals such as strict regulatory approval standards and positive government pricing and reimbursement determinations. The British American Business requested negotiators to ensure non-discriminatory pricing and access solutions for medicines in the UK.⁶⁷ In a similar vein, the Pharmaceutical Research and Manufacturers of America raised concerns about British policy on pharmaceutical products, namely, that "the UK fails to appropriately recognize the value of innovation in its pricing and reimbursement policies, instead engaging in actions that distort markets and artificially depress prices below what a competitive market would provide".⁶⁸ To address this problem, they requested to include in the proposed U.S.-UK trade agreement market access commitments on pharmaceutical products and a chapter on pharmaceutical products similar to the USMCA one, including disciplines to ensure that decisions regarding the pricing and reimbursement of medicines are governed by transparent and verifiable rules guided by science-based decision-making.⁶⁹

We identified 25 policy requests relating to **rules of origin**, of which fifteen were filed by respondents from the manufacturing sector, five by cross-sectoral respondents, two by respondents from the agricultural sector, two by respondents from the information and technology sector and one by an NGO. This policy area reflected, like no other, significant differences among respondents.

⁶⁶ Amway, an American multi-level marketing company selling health, beauty and home care products, requested "that a tariff quota (like US-EU 090096) be established until a trade agreement will be final and published. It should qualify the sub-heading 2106.90, not only limited to 2106.90.98. We would advise to increase the volume to 5,000,000kg".

⁶⁷ British American Business' response.

⁶⁸ Pharmaceutical Research and Manufacturers of America' response.

⁶⁹ Ibid.

On the one hand, there were those who advocated for flexible ROOs, requesting, *inter alia*, for *de minimis* content allowance or cumulation of inputs sourced from third countries in order to better reflect the value chain structure of the sector in question. They also requested to ensure that compliance rules were ‘modern’, ‘manageable’, ‘easy to qualify’, ‘rationale’, ‘business friendly’, and ‘avoid unnecessary burdens’. These demands came from some cross-sectoral respondents and those representing the chemical and pharmaceutical industry, information technology industry and the textile and apparel industry.⁷⁰ For example, the U.S. Chamber of Commerce noted that supply chains between the U.S. and UK are less developed than they are within Europe or within North America and thus “the agreement should avoid stringently defined rules of origin that would make it overly burdensome for companies to comply with the terms of this agreement. If the eventual agreement’s rules of origin are excessively stringent, many companies would likely choose to simply pay the relevant tariffs, making the agreement irrelevant.” In a similar vein, the U.S. Council for International Business wrote: “Chemical manufacturers will benefit from duty-free trade only if the rules of origin for chemical substances are flexible, simple, and transparent. We recommend that the United States build on the rules of origin outcomes of the USMCA, in particular by ensuring that the chemical reaction rule is available to traders for conferring origin and avoiding regional value content requirements. In this regard, we propose a menu-based approach that has the fewest number of exceptions as possible.”

On the other hand, there were those who demanded rigid rules of origin, with no *de minimis* exceptions, to ensure that products were manufactured only with U.S. and UK inputs and to prevent transshipments. This type of requests came from the following sectors: agricultural⁷¹, distilled spirits⁷², glass tableware products⁷³, iron and steel sector⁷⁴. For example, the American Iron and Steel Institute wrote: “U.S. negotiators need to make certain that any trade agreement with the UK is not used to improperly provide preferences for steel (or other manufactured goods) from outside of the UK to the United States. Accordingly, a free trade agreement with the UK should include the strongest possible rules of origin to ensure steel produced outside of the United States and the UK does not receive the benefits of the agreement.” In a similar vein, the Steel Manufacturers Association requested: “The U.K. is a manufacturer of motor vehicles and the production of motor vehicles is an important market for value-added steel in the United States. In any U.S.-U.K. trade agreement, U.S. negotiators should seek to maximize provisions that would incentivize the use of U.S.- produced steel in originating steel-

⁷⁰ American Chemistry Council, Tech UK, Consumer Brands Association, Pharma companies, American Apparel and Footwear Association, U.S. Fashion Industry Association, National Confectioners Association.

⁷¹ National Milk Producers Federation and Northwest Horticultural Council.

⁷² Distilled Spirits Council.

⁷³ Libbey Inc.

⁷⁴ Titanium Metals Corporation, Allegheny Technologies, American Iron and Steel Institute.

containing goods such as automobiles. These provisions should meet or exceed the regional value contents and the steel and aluminium requirements for originating vehicles agreed in the 2018 USMCA.” Interestingly, one NGO also requested rigid ROOs, including not only high national content requirements but also high wage standards.⁷⁵

We identified thirteen policy requests relating to **trade remedies**, nine of which were filed by respondents from the manufacturing sector, two by respondents from the agricultural sector, one from the wholesale and retail sector and one by a cross-sectoral respondent. The majority of requests on this policy area were prompted by the trade conflict caused by U.S. levying import duties on EU products following a Section 232 investigation on steel and aluminium and the retaliatory response by the EU levying duties on a variety of U.S. imports. A number of the respondents caught in the middle of this trade conflict requested that a U.S. – UK agreement should immediately suspend both U.S. and UK import duties on products stemming from this conflict such as EU duties on import of U.S. footwear and apparel, whiskey, rice and auto parts.⁷⁶ In addition, the U.S. Grains Council, requested to eliminate special safeguards on agricultural products.

On the other hand, representatives from the U.S. iron and steel industry requested to avoid adopting rules that could undermine in any way or shape U.S. trade remedy laws.⁷⁷ For example, the Steel Manufacturers Association requested to avoid including in the U.S.-U.K. trade agreement provisions that reduce, impede or delay the ability of U.S. petitioning industries to seek and obtain relief from injurious dumped or subsidized imports under the normal operation of U.S. AD and countervailing duty (CVD) laws.

Finally, we identified forty three policy requests relating to **other non-tariff barriers**, the majority of which were filed by respondents from the manufacturing sector (16) and by cross-sectoral respondents (12). In this case, all policy requests, regardless the respondents’ sector of activity, aimed at the same goal, namely, to streamline customs rules and procedures and facilitate and speed customs clearance procedures to the maximum extent possible. Requests included, among others, electronic filing of customs documents and digital signature, use of a single window, automated processes wherever possible, protection of confidential business information, smart customs provisions to speed legitimate goods across borders and provide predictability and transparency to regulations, and unrestricted use of duty drawback and deferral programs. A number of respondents requested to take the USMCA chapter on Customs and Trade Facilitation as a blueprint⁷⁸

⁷⁵ Citizens Trade Campaign.

⁷⁶ Grocery Manufacturers Association, US Rice, American Apparel and Footwear Association, Personal Care Products Council, Distilled Spirits Council, Scotch Whisky Association, National Automobile Dealers Association.

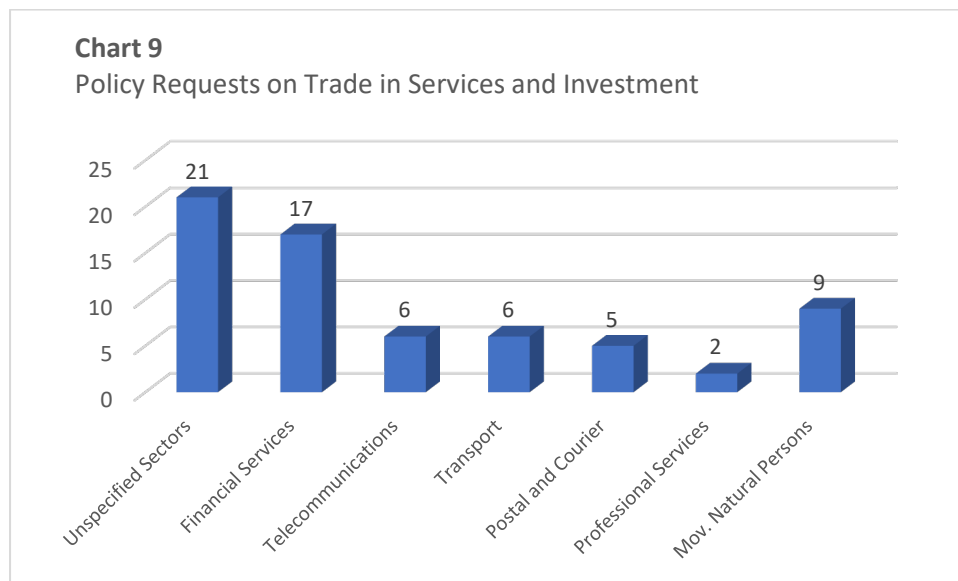
⁷⁷ American Iron and Steel Institute, Steel Manufacturers Association.

⁷⁸ American Apparel and Footwear Association, U.S. Wheat Associates, Association of Global Automakers.

A couple of respondents filed very specific requests. For example, the American Association of Exporters and Importers requested, *inter alia*, to provide a maximum 48-hour release of origin goods (including 48-hour maximum conditional release if under review for any customs matter) and rulings to be issued within 150 days and valid for minimum of three years. In its turn, the Scotch Whisky Association requested the elimination of specific custom fees applicable to the import of Scotch Whisky (HTSUS number - 2208.30.30) from the U.S., namely, the merchandise processing fee (MPF) and a harbour maintenance tax (HMT), levied on CIF value, both of which add to the costs of importing to the U.S.. Respondents from the agricultural sector requested simplified and streamlined border administration measures, particularly relating to the administration of TRQs and licensing procedures.

3.4 Trade in Services

The study classified policy requests on trade in services according to the following sectors and modes of supply: financial services, telecommunications, transport, postal and courier, professional services, movement of natural persons and policy requests on trade in services without specifying any specific service sector.



We found sixty six policy requests related to trade in services, accounting for 11.3 per cent of the total number of policy requests, including seventeen related to financial services, six on telecommunications, six on transport, five on postal and courier services, two on professional services, nine related to the movement of natural persons and twenty one related to trade in services in general, not linked to any specific service sector.

Just over half of the requests (35) were filed by respondents from the service sectors, in particular the information and communication sector and the professional (14), scientific and

technical activities sector (7). Another significant proportion of the requests on trade in services were filed by cross-sectoral respondents, typically, business associations (25). There were just four requests on services filed by respondents from the industry sector and none from the agricultural sector.⁷⁹

The vast majority of responses asked for ambitious commitments to ensure open and non-discriminatory access to the British services market for American suppliers. In particular, responses specified the need to take commitments and rules on services included in the USMCA treaty as a floor and work upwards from there. Responses specified the need to use of negative lists for recording specific commitments, supported by a ratchet mechanism to capture future liberalisation and robust commitments on new services to secure protection against future discrimination.⁸⁰ Many responses also requested to promote regulatory equivalence and ongoing regulatory cooperation.

Specific requests for **financial services** asked for specific commitments to cover the cross-border supply of services in this sector, including insurance, investment advice, portfolio management and electronic payment systems⁸¹ and a prohibition to use or locate computing facilities in a country's territory as a condition for supplying electronic payment services. There were also requests to discipline subsidies to financial services related entities, a prohibition to impose priority sector lending⁸², to open the procurement market to financial services⁸³ and to build up the capacity of the U.S.-UK Financial Services Regulatory Dialogue, encouraging active stakeholder involvement in it⁸⁴. Industry associations representing the insurance sector requested to streamline prudential requirements and to define the prudential exception narrowly to prevent its misuse for protectionist purposes.⁸⁵ On the other hand, NGOs requested to ensure enough policy space to regulate financial services for prudential reasons, emphasising the need to set a floor on this matter, not a ceiling.⁸⁶

On **telecommunications**, a few respondents requested to replicate the telecommunications chapter of the USMCA, including a ban of requirements to set a local office as a condition to supply cross-border services in the lines of Article 15.6 of the USMCA and a commitment to refrain from applying heavy-handed regulations designed for telecommunications or broadcast companies to online services offered to enterprises.⁸⁷ There was also a request by a British-based respondent to

⁷⁹ See Section 3.2 above.

⁸⁰ See, e.g. response by The Software Alliance.

⁸¹ Securities Industry and Financial Markets Association.

⁸² US Council for International Business.

⁸³ See further details on Section 3.8 below.

⁸⁴ British American Business.

⁸⁵ American Property Casualty Insurance Association and American Council of Life Insurers.

⁸⁶ Citizens Trade Campaign, AFL-CIO, Institute for Agriculture and Trade Policy.

⁸⁷ Telecommunications Industry Association, Computing Technology Industry Association.

tackle pricing barriers due to infrastructure rental agreements that limit opportunities for businesses looking to invest in the U.S..⁸⁸

On **transport**, there was a defensive request from the maritime transport sector to exclude maritime cabotage subsectors cargo, passengers, dredging, towing and fishing, which are protected by the Jones Act and related cabotage laws from the services, investment and procurement chapters.⁸⁹ Here too there was a request by a British-based respondent to remove U.S. restrictions on investment in the aviation industry.⁹⁰

With respect to **audio-visual services**, there were a couple of requests to avoid unnecessary cultural carveouts, which would be counterproductive to shared UK and U.S. export interests.⁹¹ With respect to **postal and courier services**, respondents asked to include a chapter for this sector along the lines of the USMCA one, which includes commitments to non-discriminatory treatment of non-postal providers and addresses the unique challenges they face regarding competition with postal operators.⁹² In particular, they requested the inclusion of appropriate safeguards against abuse by market dominant players, i.e. national postal operators.⁹³ Many requested the elimination of barriers to trade affecting express shipments of goods into the UK, such as fees, taxes, and time-consuming customs inspections.⁹⁴

There were a few specific requests relating to a niche service sector, i.e. distribution through **direct selling**, a distribution method through which companies outsource sales and sales-management services to independent contractors. Three respondents filed a request to include commitments to enabling this selling method, which is commonly used for health, beauty and home care products.⁹⁵ They also requested to include specific language that supports direct selling like the one included in the USMCA.⁹⁶

Last, but not least, there were nine requests to facilitate the **movement of natural persons** across borders, including the need to promote the mutual recognition of professional qualifications, tackling delays in the UK processing of U.S. visa applications and mechanisms to facilitate the mobility of talents between the two countries. Some went even further, calling for a chapter on labour mobility to allow easier movement of staff at all levels of seniority.⁹⁷

⁸⁸ Confederation of British Industry.

⁸⁹ US Maritime Coalition and Dredging Contractors of America.

⁹⁰ Confederation of British Industry.

⁹¹ US Council for International Business, Motion Picture Association of America.

⁹² US Chamber of Commerce.

⁹³ Coalition of Services Industries, Express Association of America, National Federation of Independent Business.

⁹⁴ See more on this on section 3.5 Digital Trade below.

⁹⁵ Coalition of Services Industry, Herbalife Nutrition and Amway.

⁹⁶ Article 15.10, paragraph 1, footnote 7, USMCA.

⁹⁷ American Association of Exporters and Importers, CityUK.

3.5 Digital Trade

We identified 43 requests on digital trade, accounting for 7.4 per cent of the total number of policy requests. Thirty of them (69.8 per cent) were filed by respondents from the service sector, in particular from the information and communication sector; nine of them were filed by cross-sectoral respondents – typically business associations-, and just four of them were filed by respondents from the manufacturing sector.⁹⁸ We found no policy requests on digital trade filed by representatives from the agricultural sector.⁹⁹

Notwithstanding some discrepancies identified below, the vast majority of the requests on this policy area share the common goal of opening digital trade with the UK. The content of the requests covered almost every topic of the current digital trade agenda, including requests aimed at facilitating electronic transactions, prohibiting the imposition of customs duties on digital products transmitted electronically, non-discriminatory treatment of digital products, commitment to ensure the free flow of data, prohibition of data localisation requirements, access to internet and open government data, promotion of a risk-based approach to deal with cyber threats and regulatory dialogue and cooperation on e-commerce. Many of the respondents requested to take the USMCA chapter on digital trade as a reference, if not as a template to be reproduced on almost identical terms.

On the tax front, in addition to requests to prohibit customs duties on electronic transmissions, a number of respondents questioned on severe terms the British government proposal for a Digital Services Tax outlined in the Finance Bill 2019, to the extent of someone requesting to avoid moving forward with the negotiations until this digital tax concern is addressed¹⁰⁰.

Quite a few responses raised concerns about the impact that different privacy protection regimes could have on the free flow of data across borders and thus requested to promote interoperability between the U.S. and UK privacy regimes. For example, it was suggested to integrate the U.S. – EU privacy shield to the agreement¹⁰¹; to include the personal information protection language of the USMCA Article 19.8, including a commitment to adopt the Asia-Pacific Economic Cooperation (“APEC”) Cross-Border Privacy Rules, despite the UK not being an APEC member¹⁰²; to include procedures that companies can use to demonstrate that they are in compliance with UK rules and regulations on conditions for onward data transfers such as binding corporate rules and model contract clauses that articulate a commitment to maintain the data protection standards of the

⁹⁸ See Annex Chart 7.1

⁹⁹ See above Section 3.2 for observations on requests on policy areas outside respondents’ sector of activity.

¹⁰⁰ Computing Technology Industry Association.

¹⁰¹ American Association of Exporters and Importers.

¹⁰² Information Technology Industry Council, Software Information Association, Computing Technology Industry Association.

country from which the data originates¹⁰³. We found only one response that called for identifying a the proper balance between expanding digital commercial opportunities and protecting the consumer rights and privacy of individual citizens.¹⁰⁴

An area where we found strong discrepancies among respondents has to do with the way to handle interactive computer-based service providers' (online intermediaries) liability for third party content. On the one hand, respondents from the information and technology sector requested maximum protection for online platforms and marketplaces without being treated as the originators of the content.¹⁰⁵ On the other hand, respondents from the news and creative industries requested to resist any attempt to insert overbroad exceptions, limitations and safe harbours for online intermediaries.¹⁰⁶ Another area where we found discrepancies, although to a much lesser extent, has to do with source codes. The vast majority of respondents requested to prohibit requirements to transfer technology, source code, algorithms or encryption keys as condition for market access, including a carve out for conditions related to the provision of source code in commercially negotiated contracts. But one respondent requested to enhance the transparency of software, algorithms and protocols for software, and software-enabled products, including in particular cases where software programs present risks to privacy, theft, fraud and other hostile acts and thus to not prohibit measures to make software code, protocols and algorithms transparent.¹⁰⁷

3.6 Investment

We identified 22 policy requests on investment, accounting for 3.7 per cent of the total number of requests. When looking at the distribution of requests across sectors, the numbers indicate that they were more or less evenly distributed across sectors, with the largest numbers coming from cross-sectoral respondents (seven). These results suggest that investment is a policy area that attracts the interest of stakeholders across most of the spectrum of economic activities.¹⁰⁸ The analysis of requests by the type of respondent suggests a slightly higher interest in this area among representatives of the civil society compared to firms and business associations.¹⁰⁹

¹⁰³ RELX Group.

¹⁰⁴ Institute of Economic Affairs.

¹⁰⁵ Internet Association, Tech UK, Etsy, BSA/The Software Alliance, Information Technology Industry Council, National Foreign Trade Council, US Chamber of Commerce.

¹⁰⁶ Recording Industry Association of America, International Intellectual Property Alliance, News Media Alliance, Motion Picture Association, Creative Future, Association of American Publishers, Digital Creators Working Group.

¹⁰⁷ Knowledge Ecology International.

¹⁰⁸ Annex Chart 7.1.

¹⁰⁹ One out three academic institutions, three out of eight NGOs and the only trade union that responded to the consultation included requests related to investment in their responses.

Typically, requests from business associations were aimed at securing high standards of protection for foreign investors, removal of investment restrictions and a strong ISDS system. For example, the Securities Industry and Financial Markets Association noted that ISDS is the most effective dispute settlement mechanism for investors, and thus requested to include such a mechanism in the agreement and “ensure it extends to financial services to enable investors to bring their claims on a depoliticized basis and seek damages for breaches of the obligations”. In a similar vein, the Groceries Manufacturers Association requested to resist calls to limit ISDS, which, it argued, offers investors critical protections against unfair or discriminatory treatment.

Requests for investment liberalisation were filed, among others, by The National Foreign Trade Council, which requested to secure the right of investors “to invest and expand investments without discriminatory barriers (such as equity cap requirements or non-national security-based screening mechanisms) in all sectors on a pre- and post-establishment basis, with only limited exceptions”. Similarly, the American Property Casualty Insurance Association requested to prohibit the UK from requiring a specific type of legal entity (i.e.; branch or subsidiary) or joint venture through which a U.S. financial institution may supply a service. And the Motion Pictures Association called to resist any effort to default to unnecessary cultural carveouts, which would be counterproductive to shared UK and U.S. export interests.

On the other hand, requests from civil society representatives were aimed at limiting the scope and depth of investment protection to be provided by the agreement. For example, one NGO called for narrow definition of terms such as “investment,” “expropriation” and “minimum standard of treatment” in order to safeguard the ability of governments to regulate in the public interest.¹¹⁰ Another one requested to exclude tobacco control measures from the scope of ISDS¹¹¹, and yet four others requested to exclude ISDS from the agreement altogether.¹¹²

3.7 Intellectual Property

We identified 46 policy requests on intellectual property (IP), accounting for eight per cent of the total number of requests. This was the third most popular policy area for requests behind trade in goods and trade in services. Almost two thirds of these requests were filed by respondents from the manufacturing and the information technology sector. For the respondents of the information and technology sector, IP was the second most frequent policy area for requests (16 out of 83), just behind digital trade (20 out of 83).

¹¹⁰ Citizens Trade Campaign.

¹¹¹ Tobacco Free Kids.

¹¹² Citizens Trade Campaign, The Sierra Club and AFL-CIO, Institute for Agriculture and Trade Policy.

Most respondents represented IP-intensive industries and thus demanded the inclusion of a robust IP chapter, with the highest standards of protection of all intellectual property rights and equally robust enforcement standards. We found just a couple of requests highlighting the need to balance IP protection with other public interests such as public health, affordable health care, combatting anticompetitive and predatory licensing demands from patent holders, and facilitating access to orphaned copyrighted works.¹¹³ One firm from the U.S. generic and biosimilar industry requested a balanced approach to patent protection of drugs that promotes both innovation and competition.¹¹⁴

Copyright was, by far, the topic that attracted the largest number of requests. Representatives from the creative industries asked for a strong outcome on copyright protection including strong enforcement standards on unauthorized camcording, cable and satellite signal theft, *ex-officio* authority for law enforcement, border enforcement, and criminal enforcement such as those prescribed by the USMCA.¹¹⁵ One response requested to avoid any kind of exception for cultural industries.¹¹⁶ This is a singular request in the sense that it asks to depart from rather than align to the exception included in the USMCA (which was influenced by Canada's strong protection for cultural diversity).

As mentioned in the digital trade section, the liability of online service providers for copyright breaches proved to be a particularly contentious issue, with antagonistic requests from different industry sectors. On the one hand, the creative industries asked for limited language regarding exceptions and limitations to copyright protection, subject to the "three step test" prescribed by the Bern Convention, TRIPS and WIPO Internet Treaties, and no online safe harbours for online service providers like those included in the USMCA.¹¹⁷ On the other hand, the internet industry asked for a copyright system that includes limitations and exceptions necessary for the U.S. digital economy including limitations and exceptions modelled on the U.S. Digital Millennium Copyright Act and Article 20.88 of the USMCA.¹¹⁸

A few respondents, particularly from the agricultural sector, requested to address the problem of inappropriately overprotective geographical indications, which serve to limit the opportunities for U.S. agricultural and food producers. They thus asked to ensure that the UK Geographical Indication (GI) system breaks away from the EU system and operates in a more equitable and WTO-compliant manner, including the removal of restrictions on the use of common names for

¹¹³ Institute for Agriculture and Trade Policy and Knowledge Ecology International.

¹¹⁴ MFJ International.

¹¹⁵ Motion Picture Association of America

¹¹⁶ International Intellectual Property Alliance.

¹¹⁷ Entertainment Software Association, Association of American Publishers, Digital Creators Working Group

¹¹⁸ Internet Association, CompTIA, Computer and Communications Industry Association.

dairy and meat products in the UK market.¹¹⁹ A couple of respondents requested to align the standards of data protection for biological medicines to the U.S. standards by including a 12 year period of regulatory data protection.¹²⁰

3.8 Government Procurement

We identified 23 policy requests on government procurement (“GP”), accounting for 3.9 per cent of the total number of requests. The vast majority of them were filed by cross-sectoral respondents (seven), respondents from the information and technology sector (six) and the manufacturing sector (five). A review of the content of the requests reveals the existence of two clearly opposing camps on this policy area.

On the one hand, there are those advocating for an offensive approach that ask for a strong procurement chapter with clear, transparent, predictable and non-discriminatory rules and access to the UK procurement market beyond the level established in the WTO’s Government Procurement Agreement (GPA).¹²¹ A few respondents specifically requested to include broad commitments on financial services, which are typically excluded from the scope of procurement chapters in FTAs.¹²² Respondents from the information and communications sector also requested ambitious commitments on procurement, with lower threshold limits and freedom of government agencies to use the technology of their choice, rather than being required to purchase and use local or other specific technology.¹²³ One respondent expressly requested not to use the USMCA as a model for market access gains in government procurement with the UK, but instead to look to achievements in the EU-Japan Economic Partnership Agreement (EUJEP), where the EU agreed to improved access to procurement for some sectors in towns and cities (municipal authorities).¹²⁴ Another one, asked to include “cloud first” policies¹²⁵ for all sectors, a first of its kind request that would set an important precedent for the negotiation of other agreements.¹²⁶

¹¹⁹ National Milk Producers Federation, American Farm Bureau Federation, National Manufacturers Association.

¹²⁰ BIO and National Trade Foreign Council.

¹²¹ See, inter alia, responses submitted by National Electrical Manufacturers Association, National Foreign Trade Council, US Chamber of Commerce.

¹²² US Chamber of Commerce, US Council for International Business, Securities Industry and Financial Markets Association, The City UK.

¹²³ BSA/The Software Alliance, TechUK, Telecommunications Industry Association.

¹²⁴ The Computing Technology Industry Association.

¹²⁵ The “cloud first” policy requires public sector organisations, when procuring new or existing services, to consider and fully evaluate potential cloud solutions first before considering any other option. In the UK this approach is mandatory for central government and strongly recommended to the wider public sector. See Guidance on Government Cloud First policy, <<https://www.gov.uk/guidance/government-cloud-first-policy>>, last accessed 04 March 2021.

¹²⁶ Internet Association.

On the other hand, there are those calling for a defensive approach, either in specific sectors or across the board. For instance, respondents from the textiles and apparel sector called to maintain the Berry Amendment which requires all clothing, textiles, and footwear purchased by the U.S. Defense Department to be made in the U.S..¹²⁷ Similarly, a respondent from the maritime sector called for the exclusion of maritime cabotage subsectors from the procurement chapter¹²⁸, while two respondents from the iron and steel sector called not to include any kind of commitments on government procurement, sticking to the U.S. commitments under the GPA, including the GPA's reservation for the Buy America restrictions attached to Federal funds for mass transit and highway projects.¹²⁹ Representatives from the civil society also advocated to avoid undertaking commitments on government procurement, maintain existing "Buy American" preferences, secure policy space for existing and potential future prevailing wage requirements, green preferences, sweat-free labour preferences and HHRR preferences and firmly reject demands to include sub-federal procurement commitments.¹³⁰

Interestingly, we identified a request from a British Association to open the U.S. procurement market, both at federal level where market access to foreign bidders is restricted by "Buy American" provisions and at state level, noting that 13 U.S. states are not committed to WTO's General Agreement on Procurement.¹³¹

3.9 Levelling Playing Field

We identified a total of thirty one policy requests related to levelling the playing field, accounting for 5.3 per cent of the total number of policy requests. Thirteen of them (42 per cent) were filed by respondents from the industry sector, eleven (35 per cent) from the services sector, five (16 per cent) from cross-sectoral respondents and just two (6 per cent) from the agricultural sector). As it stems from Chart 10 below, we classified them in four specific policy areas: competition (8), subsidies (8), state owned enterprises (10) and macroeconomic and exchange rate matters (5).

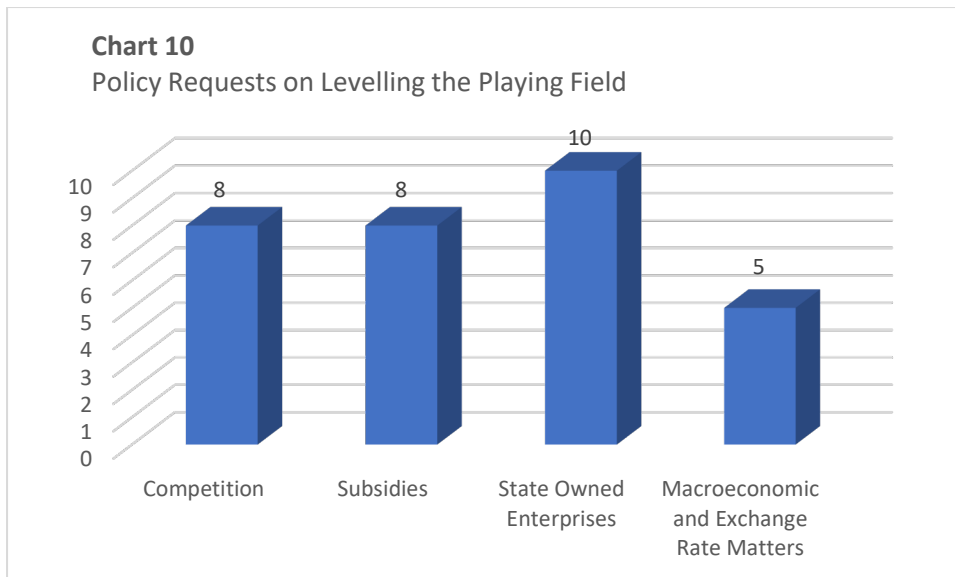
¹²⁷ American Apparel and Footwear Association / National Council of Textile Organizations, the Narrow Fabrics Institute, and the U.S. Industrial Fabrics Institute.

¹²⁸ Dredging Contractors of America.

¹²⁹ American Iron and Steel Institute and Steel Manufacturers Association.

¹³⁰ AFL-CIO, Institute for Agriculture and Trade Policy, Citizens Trade Campaign.

¹³¹ Confederation of British Industries.



Policy requests on **competition** included both fairly general demands for an agreement that bolsters a fair and level playing field for the U.S. manufacturers and exporters, with specific requests to tackle specific anti-competitive practices. For example, one respondent requested strong disciplines to address large tech companies’ practice to combine information transmission function and development of content.¹³² Likewise, a representative of the generic and biosimilar industry requested to include competition provisions for the medicine sector to safeguard patients’ expedited access to more affordable drugs.¹³³ In its turn, a national trade union requested to avoid including in the agreement any disciplines that could limit the U.S. anti-trust law capacity to protect the public interest.¹³⁴

On **subsidies**, two respondents called for the elimination of beef subsidies¹³⁵ and agricultural export subsidies¹³⁶; one respondent asked to include provisions to discipline the granting of subsidies to financial services related entities in the financial services chapter¹³⁷, and two respondents requested disciplines for fisheries subsidies like the ones included in the USMCA, plus a commitment to provide assistance to third countries that need to develop capacity to assess the health of their fish stocks¹³⁸.

Requests for disciplines on **state owned enterprises** (“SOEs”) seeking to ensure competitive neutrality between SOEs operating in the commercial arena and competing private sector companies

¹³² Institute of Economic Affairs.

¹³³ MFJ International.

¹³⁴ AFL-CIO.

¹³⁵ National Cattlemen’s Beef Association.

¹³⁶ US Grains Council.

¹³⁷ Securities Industry and Financial Markets Association.

¹³⁸ Humane Society International and Institute of Economic Affairs.

were filed by respondents from the steel and iron industry, chemical industry, electronics, software and telecommunications sectors. A few of the respondents submitted very detailed requests about the scope and depth of the disciplines, building on the USMCA chapter on this matter, which includes a broad definition of SOE, a duty to make purchases and sales on the basis of commercial considerations, prohibition to discriminate against foreign goods or services, jurisdiction over commercial activities of SOEs with no right to sovereign immunity, prohibition of preferential regulatory treatment, and transparency obligations the degree of government control and financial assistance received.¹³⁹ One respondent noted that market oriented economies like the U.S. and the UK were facing similar challenges and economic consequences from the Chinese model of industrial policy powered by state-owned or directed enterprises, and thus it was essential to develop international rules on SOEs for levelling the playing field for market based enterprises competing with such entities.¹⁴⁰

Five respondents requested to include strong and enforceable disciplines on **macroeconomic policies and exchange rate matters** to prevent to prevent counterparties to gain trade advantage through currency manipulation, in line with the USMCA chapter on this matter.¹⁴¹ In particular, they requested that any U.S.-UK trade agreement needs to discipline unfair, trade distorting currency practices by requiring transparency, accountability and a commitment to refrain from competitive devaluations and targeting exchange rates, and to ensure the U.S.' right to use its existing countervailing duties laws to address currency manipulation as a form of export subsidy.

It is interesting to note that while some of the respondents acknowledged that the UK does not have a history of manipulating its currency, it was still necessary to include disciplines on this matter to set an important precedent for other potential free trade agreements.¹⁴² One respondent requested the parties to the agreement to coordinate action to respond to currency manipulation/misalignment and overcapacity by non-parties and to maintain existing methodologies and coverage of non-market economy measures and enforcement approaches.¹⁴³ Another respondent noted that strong disciplines on this matter were necessary in light of the fact that Chinese investments in the UK are increasing and the UK is reportedly seeking negotiation of a free trade agreement with China once it exits the EU.¹⁴⁴ By contrast, one respondent expressly requested not to include disciplines on this matter in the agreement, arguing first that currency is an international issue

¹³⁹ American Iron and Steel Institute, Steel Manufacturers Association and National Foreign Trade Council.

¹⁴⁰ Institute of Economic Affairs.

¹⁴¹ American Iron and Steel Institute and Steel Manufacturers Association, American Automotive Policy Council and Citizens Trade Campaign.

¹⁴² American Automotive Policy Council.

¹⁴³ AFL-CIO.

¹⁴⁴ Steel Manufacturers Association.

more properly addressed in a multilateral context, such as the G-7 or G-20, and second that those disciplines would also apply to U.S. policies, “restricting our own policy options aimed at achieving economic growth, while leaving the policies of non-signatory countries unaffected” .¹⁴⁵

3.10 Regulatory Coherence

We identified a total of forty five policy requests related to policy coherence, including eleven on regulatory transparency and thirty four on good regulatory practices. Requests on this policy area accounted for 7.7 per cent of the total number of policy requests, becoming the fourth most popular area for requests behind trade in goods, trade in services and almost the same number as requests on intellectual property matters.

Requests on **regulatory transparency** were filed primarily by respondents from the pharmaceutical and financial services industries. Requests by the former were aimed at enhancing the transparency of regulatory procedures and decisions regarding the approval and reimbursement of medicines.¹⁴⁶ One respondent expressly requested “to ensure that government regulatory reimbursement regimes are transparent, provide procedural fairness, are non-discriminatory, and provide full market access for United States products”.¹⁴⁷ Another one asked for the transparency provisions to cover “clear timetables for pricing and reimbursement decisions, clear justifications given for government decisions, the right to appeal decisions to an independent body, and provisions that ensure fair reward for innovative products within the NHS system”.¹⁴⁸

With a view to promote regulatory compatibility between the two parties and reduce costs associated with regulatory differences, quite a few number of respondents also requested to include disciplines on **good regulatory practices**. The interest on this matter cut across all sectors of activities, with requests filed by respondents from the manufacturing sector, including the chemical¹⁴⁹, electronic manufacturing¹⁵⁰ and apparel and fashion industries¹⁵¹; the service sector¹⁵² and the agricultural sector¹⁵³, plus a number of requests from cross-sectoral business associations.

¹⁴⁵ Association of Global Automakers, Inc. and the Here For America.

¹⁴⁶ Advanced Medical Technologies Association, Biotechnology Innovation Organization, Pharmaceutical Research and Manufacturers of America.

¹⁴⁷ Advanced Medical Technologies Association.

¹⁴⁸ Biotechnology Innovation Organization.

¹⁴⁹ American Chemistry Council, Society of Chemical Manufacturers and Affiliates.

¹⁵⁰ SEMI.

¹⁵¹ American Apparel and Footwear Association, US Fashion Industry Association.

¹⁵² American Council of Life Insurers, Securities Industry and Financial Markets Association, Express Association of America.

¹⁵³ Groceries Manufacturers Association, North American Export Grain Association.

A few of the respondents asked to take the relevant chapter of the USMCA on good regulatory practices as a blueprint.¹⁵⁴ One business association asked for a commitment by the U.S. and the UK to endorse the APEC/OECD Good Regulatory Practices, including the use of stakeholder notice and comment, regulatory impact assessments, retroactive regulatory review, and a commitment to the use of sound science in regulatory decision-making, plus the establishment of a bilateral Committee on Good Regulatory Practices to identify opportunities for additional formal regulatory cooperation initiatives between the U.S. and UK.¹⁵⁵ By contrast, one NGO expressly requested not to include a mandatory and enforceable “Good Regulatory Practices” chapter as in USMCA, nor “regulatory cooperation provisions that promote a deregulatory agenda”.¹⁵⁶

Interestingly, a couple of respondents from the pharmaceutical and cosmetic sectors raised concerns about the potential impact of Brexit on the UK’s regulatory alignment with the EU standards in years to come.¹⁵⁷ To provide continuity and certainty for business and consumers, they requested that the UK should not deviate from the EU framework on these matters.

Finally, a few of the respondents made particular emphasis on the need for both parties to make strong commitments on stakeholder consultations during the rulemaking process. Traditionally, representatives from the civil society are strongly opposed to this type of request for fear of opening the door to regulatory capture by powerful industry lobbies. This was not the exception. We did identify two responses by NGOs that were expressly against public engagement.¹⁵⁸ One of them expressly requested not to include “any obligation that could require governments to provide opportunities for industry stakeholders to challenge, delay, or weaken proposed public interest policies, or to ask that existing regulations be modified or repealed.”¹⁵⁹ However, a third NGO requested to include a commitment by the parties to make their environmental and animal welfare laws and regulations publicly available and to provide opportunities for public comments on changes to such laws or regulations.¹⁶⁰

3.11 Societal Concerns

We identified a total of thirty seven policy requests related to societal concerns, accounting for six per cent of the total number of policy requests. Unlike in the rest of policy areas, the majority

¹⁵⁴ National Electrical Manufacturers Association, U.S. Wheat Associates, North American Export Grain Association, US Wheat Associates.

¹⁵⁵ US Chamber of Commerce.

¹⁵⁶ Institute for Agriculture and Trade Policy.

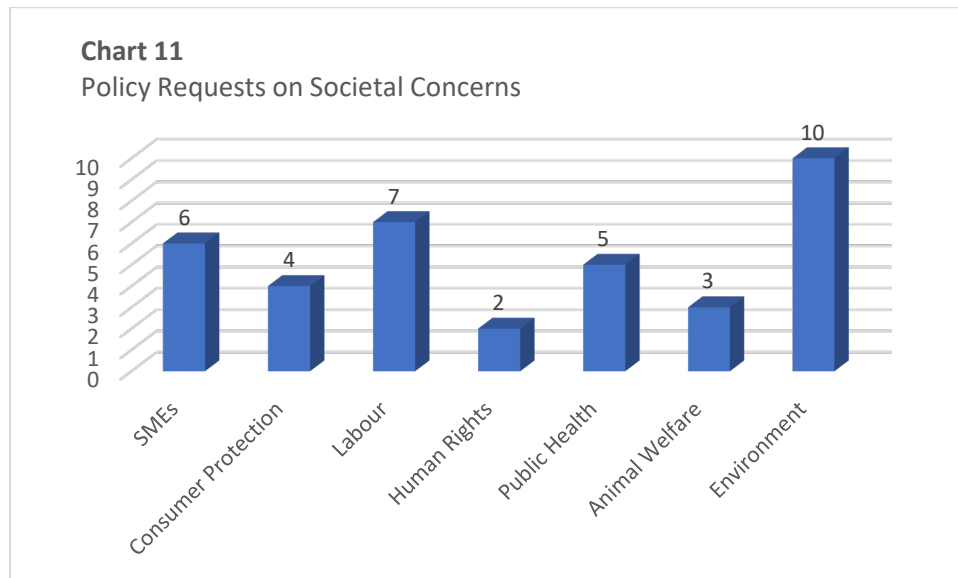
¹⁵⁷ Biotechnology Innovation Organization and Personal Care Products Council.

¹⁵⁸ Institute for Agriculture and Trade Policy and The Sierra Club.

¹⁵⁹ The Sierra Club.

¹⁶⁰ Humane Society International.

of the requests were filed by representatives of the civil society. Indeed, twenty three requests (62.1 per cent) were filed by NGOs, academic institutions, individuals and a trade union. As it stems from Chart 11 below, we identified requests in seven specific areas of societal concern: small and medium enterprises (SMEs) (6), consumer protection (4), labour (7), human rights (2), public health (5), animal welfare (3) and environment (10). We did not identify policy requests specifically related to gender issues.



Policy requests on **SMEs** were filed by five cross-sectoral business associations¹⁶¹ and one firm¹⁶². The requests revolved around the need to tackle barriers that are particularly burdensome for SMEs to ensure they can benefit from the trade agreement. Specific requests included trade facilitation measures to cope with excessively burdensome customs' red-tape, increased transparency of trade rules, including the creation of a dedicated website with information on this matter for SMEs, and a request for the UK to raise its current duty free threshold for low cost shipments to U.S. standards.¹⁶³

Policy requests on **consumer protection** asked to preserve policy space to regulate on food and product safety and consumer right-to-know measures, including the right for adopting policies based on the precautionary principle. Citizens Trade Campaign asked for a broad carve-out that exempts non-discriminatory domestic policies from all of the deal's rules. In a similar vein, the Institute for Agriculture and Trade asked to avoid replicating the USMCA's lax standards for agricultural biotechnology, food inspections and pesticide regulation. On the contrary, it requested for an

¹⁶¹ British American Business, National Trade Foreign Council, Us Chamber of Commerce, National Association of Manufacturers and Confederation of British Industry.

¹⁶² Esty, Inc.

¹⁶³ See above footnote 29.

agreement that does not limit the right of the parties to adopt and enforce standards that provide higher levels of consumer, worker and environmental protections.

Policy requests on **labour** asked to include strong and binding standards on this matter, explicitly based on the International Labour Organization (“ILO”) Conventions and their accompanying jurisprudence, as well as ongoing monitoring and swift and certain enforcement mechanisms.¹⁶⁴ AFL-CIO submitted a complete and comprehensive labour chapter proposal including an obligation to adopt and maintain in law, regulation, and practice, the eight ILO core conventions, to pay living wages for the location in which work is performed, to establish an independent secretariat to monitor labour obligations, and an obligation not to lower the parties’ labour standards, deny labour rights through misclassification, deny labour rights to migrant workers, or to avoid labour obligations in such a way that it constitutes social dumping.¹⁶⁵

Policy requests on **public health** asked to preserve the parties’ policy space to protect food sovereignty and ability to ensure that consumers have access to safe and affordable foods, as well as access to affordable medicine, and policy space to adopt public health measures to protect citizens from the death and disease caused by tobacco products.¹⁶⁶

Finally, on **environmental** matters, all requests aimed at building upon the USMCA’s environmental chapter, including strong provisions addressing issues such as marine litter¹⁶⁷, marine conservation, protection of biodiversity and the individual welfare of endangered, threatened, and otherwise imperilled animals¹⁶⁸; tackling fishery subsidies that contribute to over fishing or that countenance illegal, unreported and unregulated fishing¹⁶⁹, preserve policy space for adopting policies based on the precautionary principle¹⁷⁰, to adopt, maintain and implement conventions and policies that fulfil the Paris climate agreement and other climate measures¹⁷¹. The Sierra Club requested not to offer fossil fuel corporations a lifeline by facilitating exports of gas, oil, or coal to the UK, or by encouraging cross-border fossil fuel investments or services and asked a U.S.-UK FTA to exclude national treatment for trade in gas. AFL-CIO asked to ensure that the parties agree to adopt and maintain in law, regulation, and practice, seven multilateral environmental agreements.¹⁷² Finally, the

¹⁶⁴ Citizens Trade Campaign.

¹⁶⁵ AFL-CIO.

¹⁶⁶ Citizens Trade Campaign and Tobacco Free Kids.

¹⁶⁷ American Chemistry Council.

¹⁶⁸ International Fund for Animal Welfare.

¹⁶⁹ Institute of Economic Affairs.

¹⁷⁰ Citizens Trade Campaign.

¹⁷¹ Ibid.

¹⁷² Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); Montreal Protocol (Ozone Treaty); Convention on Marine Pollution; Inter- American Tropical Tuna Convention; Ramsar Convention on Wetlands of International Importance; International Convention on the Regulation of Whaling; and Convention on the Conservation of Antarctic Marine Living Resources.

Institute for Agriculture and Trade Policy requested to protect the parties' policy space to respond to the climate crisis.

3.12 Other Policy Requests

We identified nine policy requests related to the agreement's dispute settlement mechanism, accounting for 1.5 per cent of the total number of requests. In general, requests supported the inclusion of a binding and enforceable state-to-state dispute settlement mechanism, including timely and responsive remedies for when trade disputes arise. One NGO required that all environmental provisions must be subject to dispute settlement procedures.¹⁷³

We also identified five requests on policy matters not classified elsewhere, including a request for the UK to avoid creating or removing any legal or regulatory barriers preventing UK companies to comply with U.S. imposed sanctions;¹⁷⁴ add disciplines for the use of trade sanctions for national security reasons;¹⁷⁵ include specific provisions to tackle ticketing bots¹⁷⁶ in line with the prohibitions contained in the 2016 Better Online Ticket Sales ("BOTS") Act, subject to civil or administrative penalties;¹⁷⁷ enhance cooperation on addressing tax avoidance in order to ensure fairness and sustainable funding for government programs.¹⁷⁸

¹⁷³ Humane Society international.

¹⁷⁴ American Property Casualty Insurance Association.

¹⁷⁵ SEMI.

¹⁷⁶ Using artificial intelligence, ticketing "bots" allow resellers to rapidly search for and purchase multiple tickets at once, faster than any human, and to the detriment of actual fans.

¹⁷⁷ Ticketmaster.

¹⁷⁸ Knowledge Ecology International.

4. Annex

Chart 7.1 Policy Requests by Policy Area and Respondents' Sector of Activity

	Agriculture & fishing	Mining & quarrying	Manufacturing	Wholesale & retail	Transport & storage	Information & communication	Financial & insurance	Professional & scientific	Public adm. & defense	Arts & entertainment	Other service activities	Cross sector activities	Individuals	Grand Total
Tariffs	19	0	31	1	1	6	1	1	1	1	2	12	0	76
Sanitary and Phytosanitary Measures	15	0	10	0	0	0	0	1	1	0	2	7	0	36
Technical Barriers to Trade	3	0	23	0	0	5	0	1	0	0	1	6	1	40
Quantity Control Measures	9	0	4	1	0	0	0	0	0	0	2	2	0	18
Price Control Measures	2	0	1	0	0	0	0	0	0	0	0	1	0	4
Rules of Origin	2	0	15	0	0	2	0	0	0	0	1	5	0	25
Trade Remedies	2	0	9	1	0	0	0	0	0	0	0	1	0	13
Other/Unspecified Non-Tariff Barriers	4	0	16	0	1	6	0	0	0	2	2	12	0	43
Financial Services	0	0	0	0	0	3	3	3	1	0	1	6	0	17
Telecommunications	0	0	0	0	0	4	0	0	0	0	0	2	0	6
Transport	0	1	0	0	2	0	0	1	0	0	0	2	0	6
Postal and Courier Services	0	0	0	0	1	0	0	0	0	0	0	4	0	5
Professional Services	0	0	0	0	0	1	0	1	0	0	0	0	0	2
Services (unspecified sectors)	0	1	3	0	0	5	0	1	1	2	0	8	0	21
Movement of Natural Persons	0	0	1	0	0	1	1	1	1	1	0	3	0	9
Digital trade	0	0	4	0	0	20	4	1	1	3	1	9	0	43
Investment	1	1	2	0	0	2	4	1	0	1	3	7	0	22
Intellectual Property	4	0	13	1	0	16	1	1	0	1	1	7	1	46
Government Procurement	0	1	5	0	0	6	2	1	0	0	1	7	0	23
Competition	0	0	3	0	0	1	0	1	0	0	1	2	0	8
Subsidies	2	0	2	0	0	1	1	1	0	0	1	0	0	8
State Own Enterprises	0	0	4	0	0	2	0	1	0	0	0	3	0	10
Macroeconomic & Exchange Rate	0	0	4	0	0	0	0	0	0	0	1	1	0	6
Good Regulatory Practices	2	0	13	0	1	1	4	1	1	0	3	8	0	34
Transparency	1	0	3	0	0	0	2	0	0	0	2	3	0	11
Small and Medium Enterprises	0	0	0	0	0	1	0	0	0	0	0	5	0	6
Consumer Protection	0	0	0	0	0	0	0	1	0	1	1	0	1	4
Labour	0	0	2	0	0	0	0	0	0	0	2	2	1	7
Gender	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Human Rights	0	0	0	0	0	0	0	0	0	0	2	0	0	2
Public Health	0	0	1	0	0	0	0	0	0	0	4	0	0	5
Animal Welfare	0	0	1	0	0	0	0	0	0	0	2	0	0	3
Environment	0	0	1	0	0	0	0	2	0	0	5	2	0	10

Dispute Settlement	2	0	2	0	0	0	1	0	0	0	1	3	0	9
Other	0	0	1	0	0	0	1	0	0	1	1	1	0	5
Total	68	4	174	4	6	83	25	21	7	13	43	131	4	583