



A new transatlantic gold standard?

The future of US/UK trade in financial services post Brexit

As the UK's transition arrangements with the EU draw to a close and the US moves towards a new Administration, significant efforts are being made on both sides of the Atlantic to hammer out a deal to support a closer US-UK trading relationship in financial services.

Summary

Redefining the UK/US trading relationship presents a unique opportunity to establish a world leading framework for cross border regulatory and supervisory cooperation, and to create a transatlantic capital markets powerhouse with a strong focus on financial innovation and green finance sitting at the heart of the global economy.

Led by HM Treasury and the US Department of the Treasury, and under the auspices of the US-UK FTA negotiations, the US-UK Financial Regulatory Working Group and the US-UK Financial Innovation Partnership negotiations are advancing with a shared determination to reach a comprehensive agreement which would provide significant and mutual benefit to the US and UK economies and the transatlantic financial services industry. Those negotiations are also shaped by the British American Finance Alliance of major trade associations, who are advocating closer ties in key areas with a collective voice.

Global economic uncertainty lies ahead. However, there appears to be substantial ambition and bipartisan support for this vision in both London and Washington, and there is every reason for confidence in the belief that the conditions are right for a new gold standard in US-UK financial services in the period ahead.

Background

On 21 June 2018, the then Chancellor of the Exchequer, Phillip Hammond, announced the Global Financial Partnerships Strategy. Led by HM Treasury, this is a post Brexit vision for the UK financial services industry which goes beyond the future trading relationship with the EU, encompassing a dynamic and recalibrated series of partnerships with key financial markets globally.

UK/US trade and investment in financial and professional services is already significant. The US is the UK's largest single export market and both the US and the UK are each other's largest source of foreign direct investment. US investors are the largest international employers in UK financial services, covering banking, asset management, insurance and law. It is estimated that the US exports around \$16bn worth of financial services to the UK per annum which is 70% more than it exports to neighbours Mexico and Canada combined under the USMCA free trade agreement. In turn, the UK exports over \$28bn worth of financial services to the US.

Redefining the UK/US trading relationship therefore presents a unique opportunity to establish a new gold standard in cross border regulatory and supervisory cooperation, and to create a transatlantic capital markets powerhouse with a strong focus on financial innovation and green finance sitting at the heart of the global economy.

What steps have there been towards this goal and what might be expected in 2021 as the UK emerges from the end of its transition agreement with the EU and the US beds in a new Administration?

US-UK Free Trade Agreement negotiations

Financial services is of course part of a much broader umbrella negotiation around the future of US and UK trade, albeit responsibility for driving the financial services chapter forward has been largely devolved to industry specific forums in the manner set out below.

The fifth round of US-UK FTA negotiations took place between 19 and 30 October 2020, just before the US presidential election. This was the most intensive round of negotiations held so far, with 38 sessions covering 19 different chapter areas. Almost all chapter areas are now in the advanced stages of talks and a significant proportion of legal text has been agreed. This includes detailed textual exchanges on a digital chapter and consensus around the legal framework for a future agreement. The Department of International Trade's report on the discussions concluded that significant progress had been made and that "both sides are confident that we are on track for a comprehensive agreement which would provide a significant and mutual benefit to our economies" and that "we believe we are in a good position to move forward after the US election".

The US-UK Financial Regulatory Working Group ("FRWG")

In 2018, HM Treasury and the US Department of the Treasury established the US-UK Financial Regulatory Working Group the purpose of which is to promote financial regulatory cooperation and increased compatibility between the countries' regulatory frameworks.

On 20 October 2020, the FRWG met for the first time since the UK left the EU on 31 January 2020. This was the third meeting since the FRWG was created. Participants included officials and senior staff from the US Department of the Treasury and HM Treasury, and from US and UK independent regulatory agencies including the Federal Reserve, the Commodity Futures Trading Commission ("CFTC"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Comptroller of the Currency ("OCC"), the Securities and Exchange Commission ("SEC"), the Bank of England and the Financial Conduct Authority.

That meeting focussed on five key themes:

- the economic response to, and potential financial stability impacts of, the COVID-19 crisis
- international cooperation and 2021 priorities
- cross-border rules and overseas recognition/equivalence/ substituted compliance regimes
- sustainable finance
- financial innovation

At the meeting, the UK and US participants discussed the outlook for future financial regulatory reform including possible areas for deeper bilateral and multilateral regulatory cooperation to further facilitate trade in financial services between US and UK markets. The meeting also took stock of ongoing public and private sector efforts in relation to benchmark transition, and provided updates on their respective cross-border rules, overseas recognition, equivalence and substituted compliance regimes.

The meeting participants noted that the US-UK financial regulatory relationship and Working Group discussions will enter a new phase after the UK's transition period with the EU expires on 31 December 2020 and committed to a continued dialogue on areas of mutual interest ahead of the next FRWG meeting which is expected to take place in the first half of 2021.

US-UK Financial Innovation Partnership

With the US and the UK by far the most favoured locations globally for fintech start-ups and aggregate fintech funding of \$78 billion, financial innovation will be at the heart of the future UK/US trading relationship in financial services.

In recognition of this, in May 2019 HM Treasury and US Department of the Treasury created the US-UK Financial Innovation Partnership ("FIP") to drive greater collaboration in financial innovation. The FIP last met on 6 August 2020 and discussed a range of topics such as digital payments, operational resilience, cross-border testing of innovative financial services and regulatory and supervisory technology. In addition to HM Treasury and the US Department of the Treasury, agencies from both sides of the Atlantic attended including the Federal Reserve, the Federal Reserve Bank of New York, CFTC, FDIC, SEC, OCC the Bank of England, and the FCA.

The FIP has two main areas of focus:

- **regulatory engagement:** dialogue between authorities and with the private sector to identify and address potential regulatory synergies, share lessons, and develop closer working relationships. The US and the UK intend to build on existing regulatory cooperation by discussing regulatory developments and sharing experiences on technical issues related to innovation in financial services
- **commercial engagement:** the FIP also seeks to promote a dynamic private sector that supports entrepreneurs and new business models. It will provide enhanced and regular opportunities for the private sector in the US to engage with industry associations and market participants in the UK and vice versa.

As part of a range of next steps, the US International Trade Administration is organising a trade mission to the UK under the auspices of the FIP from 21 to 24 June 2021. It is currently inviting US fintech, insurtech and regtech companies to join it in that mission to encourage collaboration and expand opportunities.

The British American Finance Alliance (BAFA)

First launched in 2018 as the Financial and Related Professional Services Industry Coalition, BAFA is made up of 20 of the most important trade associations for financial services on both sides of the Atlantic¹. These associations together constitute the joint voice of the UK and US financial services industry for the purposes of inputting into the US-UK FTA negotiations and specifically the work of the FRWG.

In September 2020, BAFA published a scoping paper outlining its views on the future trading relationship between the US and the UK insofar as it relates to financial services. In particular, BAFA advocate that the FRWG should be empowered under the US-UK FTA to be the principal enabler for future regulatory reform/alignment in the US and the UK. Against that backdrop, BAFA lobby for the following issues to be considered by the FRWG as a priority:

- free flow of data and prohibition of data localisation measures
- deeper regulatory cooperation in all aspects of financial innovation
- enhanced comity arrangements through deference/substituted compliance
- clear, transparent and predictable rules on investment
- an effective dispute resolution system

In addition BAFA have highlighted certain priority areas for regulatory alignment through the FRWG including:

- market integrity
- data transfer
- FinTech
- cyber security and operational resilience
- prudential measures
- global financial stability, market fragmentation and level-playing field issues

The work of BAFA is augmented by the policy work of its individual members. For example, the Corporation of London has recently launched a series of papers which will examine some of the key issues in more depth. This includes a focus on the protection of cross border investment in financial services in the context of the US Committee on Foreign Investment in the United States ("CFIUS") rules and data regulation in the context of the European Court of Justice Schrems II decision in July 2020 removing the so called Privacy Shield in respect of EU data sent to the US.

What can we expect in 2021?

There is plenty of uncertainty for the global economy as we enter 2021. The world will remain in the grip of the COVID crisis for many months to come and will require concerted and determined resuscitation in the period ahead. Against that backdrop, there is the added uncertainty of the end of the UK's transition period with the EU and the as yet unknown economic and policy impact of a change in Administration in the US.

Yet it is precisely the unprecedented scale and potential impact of these events which highlights the advantages of closer trading ties in financial services between the US and the UK and the critical role which more closely aligned transatlantic financial markets can have on capital flows, innovation, green finance and all aspects of "build back better". There seems to be substantial ambition and bipartisan support for this vision in both London and Washington and with the collective voice of the transatlantic financial services industry marshalled through BAFA there is every reason for confidence in the belief that the conditions are right for a new gold standard in US-UK financial services in the period ahead.

1 Alternative Investment Management Association (AIMA); American Council of Life Insurers (ACLI); American Property and Casualty Insurance Association (APCIA); Association of British Insurers (ABI); Association of Chartered Certified Accountants (ACCA); Association for Financial Markets in Europe (AFME); Bankers Association for Finance and Trade (BAFT); Bank Policy Institute (BPI); BritishAmerican Business (BAB); City of London Corporation; Coalition of Service Industries (CSI); Institute of Chartered Accountants in England and Wales (ICAEW); Investment Association (IA); Investment Company Institute (ICI); London Market Group (LMG); Re-Insurance Association of America (RAA); Securities Industry & Financial Markets Association (SIFMA); The City UK (TCUK); The Law Society of England and Wales; US Chamber of Commerce (USCC); UK Finance

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