



United States
International Trade Commission

U.S. SME Exports: Trade-related Barriers Affecting Exports of U.S. Small and Medium-sized Enterprises to the United Kingdom

September 2019
Publication Number: 4953
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United States International Trade Commission

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Acronyms and Abbreviations

Terms	Definitions
ABV	alcohol by volume
ABYC	American Boat & Yacht Council
Agrifood	food and agricultural products
APHIS	Animal and Plant Health Inspection Service (USDA)
ARfD	acute reference dose
ATQ	autonomous tariff quota
BEA	Bureau of Economic Analysis (USDOC)
CAP	common agricultural policy (EU)
CBI	Confederation of British Industry
CE	Conformité Européenne (European Conformity)
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CETA	Comprehensive Economic and Trade Agreement (EU and Canada)
CLP	classification, labelling, and packaging (EU)
DMTs	de minimis thresholds
DPA	Diphenylamine
EASA	European Aviation Safety Agency
EFSA	European Food Safety Authority
ETSI	European Telecommunications Standards Institute
ETSOs	European Technical Standard Orders
EU	European Union
FAA	Federal Aviation Administration
FAS	Foreign Agricultural Service (USDA)
FDI	foreign direct investment
GCFI	gross cash farm income
GDP	gross domestic product
GDPR	General Data Protection Regulation
GMA	Grocery Manufacturers Association
GMO	genetically modified organisms
HTS	Harmonized Tariff Schedule of the United States
ICT	information and communications technology
IEC	International Electrotechnical Commission
IP	intellectual property
ISO	International Organization for Standardization
ISPM	International Standard for Phytosanitary Measures
ITU	International Telecommunication Union
IUU	illegal, unreported, and unregulated (fishing)
IVDR	in vitro diagnostic medical device regulation
JECFA	Joint FAO/WHO Expert Committee on Food Additives
MDR	Medical Devices Regulation
MLs	maximum levels
MRAs	mutual recognition agreements
MRLs	maximum residue levels
NAICs	North American Industry Classification System
NASS	National Agricultural Statistics Service (USDA)
NOAA	National Oceanic and Atmospheric Administration (USDOC)
NMMA	National Marine Manufacturers Association
OR	only representative (REACH)
Ppb	parts per billion

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

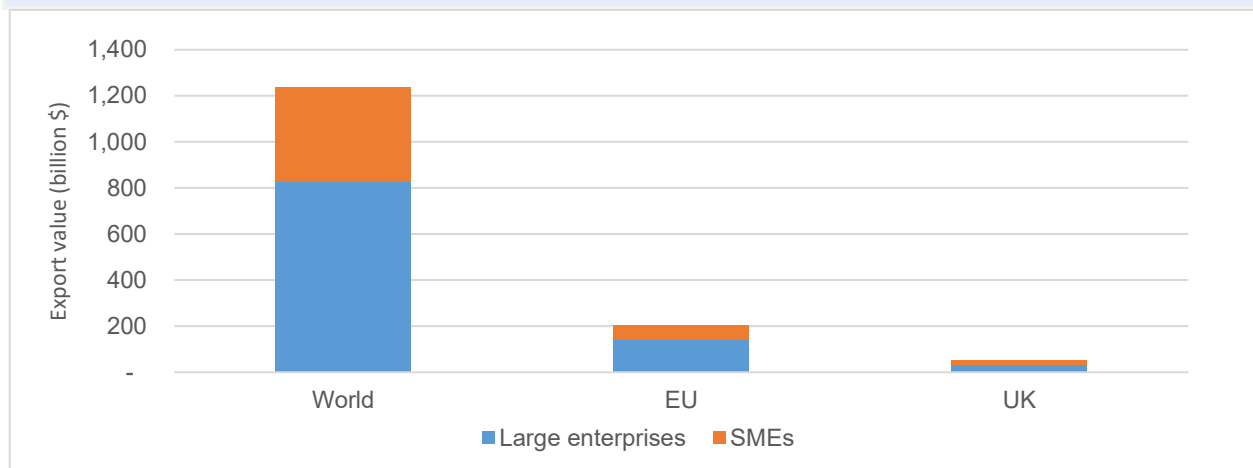
Terms	Definitions
Ppm	parts per million
RASFF	Rapid Alert System for Food and Feed (EU)
RCD	Recreational Craft Directive (EU)
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals (EU)
SBA	Small Business Administration
SMEs	small and medium-sized enterprises
SPS	sanitary and phytosanitary
STRI	Services Trade Restrictiveness Index (OECD)
SUSTA	Southern United States Trade Association
TAA	technical assistance agreement
TIP	Technical Implementation Procedures for Airworthiness and Environmental Certification (FAA and EASA)
TSA	Transportation Security Administration
TSOs	Technical Standard Orders (FAA)
UK	United Kingdom
USDA	U. S. Department of Agriculture
USITC	U.S. International Trade Commission
USML	U.S. Munitions List
USTR	U.S. Trade Representative
VAT	value-added tax
WTO	World Trade Organization

Executive Summary

Overview

The United Kingdom (UK) is an important trading partner for the United States and a key market for U.S. small and medium-sized enterprises (SMEs). It is the largest single-country export market for U.S. services exports.¹ Further, the UK ranked as the fifth-largest destination for U.S. goods exports in 2018,² and the fourth-largest goods export market for U.S. SMEs, following Mexico, Canada, and China.³ U.S. SMEs saw their merchandise exports to the UK increase from \$17.6 billion in 2012 to \$20.4 billion in 2016.⁴ The UK accounted for 32 percent of U.S. SME exports to the EU in 2016.⁵ U.S. Census Bureau data indicates that SMEs exported \$20.4 billion worth of goods to the UK in 2016, which accounted for 39 percent of the known value of U.S. goods exports to the UK (figure ES.1). Top categories of U.S. manufactured goods exported to the UK by SMEs included chemicals; machinery and equipment; computers and electronics; transportation equipment; and miscellaneous manufacturing. Top food and agricultural products exported to the UK by SMEs include processed foods; wine, beer, and distilled spirits; fresh fruits and vegetables; edible nuts; and seafood products. In addition, the UK is the largest single-country export market for U.S. services.

Figure ES.1 Known U.S. goods exports to the world, EU, and UK, by value (billion \$) and company size, 2016



Source: Compiled by USITC from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. See appendix E, table E.1 or a detailed breakdown of known U.S. export values.

¹ U.S. Department of Commerce, International Trade Administration, Export.gov, "United Kingdom: Market Overview," August 31, 2018, <https://www.export.gov/article?id=United-Kingdom-Market-Overview>.

² IHS Markit, Global Trade Atlas database (accessed March 26, 2019).

³ U.S. Department of Commerce, International Trade Administration, "U.S. Exporting and Importing Companies, 2016," April 2018, https://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_005538.pdf.

⁴ Compiled by USITC from official statistics of the U.S. Census Bureau (accessed March 26, 2019).

⁵ Compiled by USITC from official statistics of the U.S. Census Bureau (accessed March 26, 2019).

The U.S. Trade Representative requested the U.S. International Trade Commission (USITC or Commission) to conduct an investigation and prepare a report that catalogs trade-related barriers that U.S. SMEs perceive as disproportionately affecting their exports to the UK, as compared to larger U.S. exporters to the UK. The Trade Representative also noted that the report may include suggestions gathered from SMEs or the relevant literature for actions that would help address some of the identified barriers and enhance the participation of U.S. SMEs in U.S.-UK trade.

In this report, the term “barrier” is used in a generic sense to include a number of impediments to trade. This broad definition encompasses both tariff and nontariff measures that may affect U.S. SME exports to the UK. This report focuses on two types of barriers. The first are categorized as trade-related barriers specifically identified by SMEs that are imposed by EU, UK, or U.S. laws, regulatory measures, or policies and hinder SMEs’ ability to export to the UK. The second type of barrier is made up of market-related barriers that are not tied to an EU, UK, or U.S. policy or regulation. Rather, SMEs perceive these market-related barriers as negatively affecting their ability to export to the UK and as posing challenges related to managing the cost of doing business, achieving economies of scale, and accessing certain foreign markets.

Crosscutting Trade-related Barriers

SME representatives and other interested parties identified a large number of trade-related barriers that they perceive as disproportionately affecting them as compared to larger U.S. firms, and these barriers cut across numerous industry sectors. Table ES.1 lists a number of specific crosscutting trade-related barriers imposed by an EU or UK government law or policy that include tariffs and taxes, customs procedures, intellectual property measures, and temporary entry provisions.

SMEs perceive that tariffs (whether ad valorem or specific duties) and taxes affect them disproportionately compared to larger U.S. firms even though these are typically variable costs, which fluctuate depending on value of exports shipped.⁶ There are several possible reasons for a disproportionate impact of tariffs on SMEs: SME exports tend to be more concentrated in sectors with high tariff rates, and the firms often export lower-revenue and less profitable goods that are more impacted by tariff-driven price increases.⁷ Furthermore, according to a report by the World Trade

⁶ USITC, *Trade-Related Barriers That U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union*, USITC Publication 4455 (Washington, DC: USITC, March 2014), xi, <https://www.usitc.gov/publications/332/pub4455.pdf>; Organisation for Economic Co-operation and Development, “Enhancing the Contributions of SMEs in a Global and Digitalised Economy,” Meeting of the OECD Council at the Ministerial Level, Paris, France, June 7–8, 2017, <https://www.oecd.org/mcm/documents/C-MIN-2017-8-EN.pdf>.

⁷ Industry representatives, listening session, Washington, DC, November 9, 2018, 41-42; industry representatives, listening session, Cleveland, OH, December 5, 2018, 12; industry representatives, listening session, Pittsburgh, PA, December 6, 2018, 35–36, 38, and 41; industry representatives, listening session, Boston, MA, December 7, 2018, 29 and 35–36 and; industry representative, listening session, Salt Lake City, UT, December 10, 2018, 16–17.

Organization (WTO), SMEs may be “more sensitive to tariff changes because they produce goods whose demand is more sensitive to price changes.”⁸

For nontariff measures such as customs procedures, temporary entry restrictions, and intellectual property issues, SMEs tend to be disadvantaged because they often incur high fixed costs regardless of the quantity of goods shipped, while larger firms are able to spread their fixed costs more easily over their larger sales volume.⁹ SMEs also often have to dedicate a larger share of their resources to deal with the administrative burden imposed by nontariff measures than larger firms.

Table ES.1 Summary of crosscutting trade-related barriers that SMEs face when exporting to the UK

Crosscutting area	Trade-related barrier	Summary of SME concerns
Tariffs and taxes	High most-favored-nation (MFN) tariffs	<ul style="list-style-type: none"> High tariffs on certain U.S. exports to the UK, mainly agricultural products
	Additional customs duties on U.S.-origin products	<ul style="list-style-type: none"> EU’s imposition of additional customs duties on certain U.S. industries (whiskey and boats) that have a high concentration of SMEs
	Value-added tax (VAT)	<ul style="list-style-type: none"> Difficulty in understanding and navigating UK’s VAT system Difficulty in recouping the VAT
Customs procedures	Customs procedures	<ul style="list-style-type: none"> Extensive customs paperwork Unfamiliarity with UK customs procedures Shipping delays sometimes caused by the need for a European Union Registration and Identification (EORI) number
	De minimis threshold (DMT) ^a	<ul style="list-style-type: none"> Low DMTs that increase the cost and complexity of exporting to UK
Intellectual property (IP) measures	Registration	<ul style="list-style-type: none"> Financial challenges in acquiring, maintaining, and enforcing IP rights in the UK
	Protection	<ul style="list-style-type: none"> Acquisition and maintenance costs for patents that are higher in the EU than in other markets Financial losses associated with IP infringements
Temporary entry	Visa requirements	<ul style="list-style-type: none"> Limited UK work visa approval/allotments Complex procedure for obtaining visa approval for sponsoring employees Delays in filling positions caused by requirements to advertising for vacancies publicly Reduced access to skilled workers from EU member states due to Brexit uncertainties

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

^a A de minimis threshold (DMT) is defined as a monetary threshold below which customs duties and taxes on imports are not required, and customs paperwork on these imports is reduced.

⁸ World Trade Organization, *World Trade Report 2016: Levelling the Trading Field for SMEs* (Geneva: WTO, 2016), 83–84, https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf; USITC, *Small and Medium-sized Enterprises: Characteristics and Performance*, USITC Publication 4189 (Washington, DC: USITC, November 2010), 6–15, <https://www.usitc.gov/publications/332/pub4189.pdf>.

⁹ World Trade Organization, *World Trade Report 2016: Levelling the Trading Field for SMEs* (Geneva: WTO, 2016), 86, https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf.

Some general suggestions from SMEs of ways the UK government could enhance U.S. trade with the UK included eliminating the UK's additional customs duties on certain products originating in the United States (commonly referred to as retaliatory tariffs); adopting higher de minimis thresholds (DMTs); developing simplified trusted trader programs to streamline customs procedures; harmonizing intellectual property rules to allow for more efficiency; and eliminating the condition that UK residents approve visa allotments.

Standards and Regulations

Standards, technical regulations, and conformity assessment procedures are most often cited by SMEs as limiting their exports to the UK as compared to larger U.S. exporters.¹⁰ Given its prominence, this subset of trade-related barriers is addressed separately in its own chapter of this report. SMEs pointed to several distinct concerns involving standards and regulations in the UK. The most frequently cited is that the UK often does not recognize the standards set by U.S. standards bodies, which forces many U.S. firms to seek dual U.S. and UK certifications before they can export their products. SMEs also expressed concerns with the costs and administrative burden of complying with UK and EU standards, as well as the fact that U.S. firms are usually not given the opportunity to participate in the development of EU/UK standards.

Standards and regulations are particularly costly for SME firms because of high compliance expenses and the administrative burden associated with these regulations, such as requirements for additional paperwork, recordkeeping, testing, and certification.¹¹ SMEs are more likely to lose the ability to export or to exit a foreign market due to high fixed compliance costs, whereas larger firms are better able to absorb these fixed costs because their products have higher market shares and lower demand elasticities (i.e., demand for their goods is often less sensitive to price) than SMEs.¹²

To alleviate these obstacles, SMEs suggested that the regulatory harmonization of common U.S.-UK standards would enable them to enhance their participation in markets in which standards and regulations play an important role. Further, SMEs suggested that the UK and the United States should mutually recognize each other's accreditation bodies and conformity assessment procedures and that the UK should increase the accessibility of information about UK's standards and regulations. Table ES.2 includes a summary of standards- and regulation-related barriers affecting manufacturing goods and food and agricultural products, as well as conformity assessment procedures affecting a variety of goods.

¹⁰ Industry representatives, listening session, Boston, MA, December 7, 2018, 35–36; industry representative, listening session, Salt Lake City, UT, December 10, 2018, 35–37.

¹¹ USITC, *Trade-Related Barriers That U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union*, USITC Publication 4455 (Washington, DC: USITC, March 2014), 6-5, <https://www.usitc.gov/publications/332/pub4455.pdf>.

¹² World Trade Organization (WTO), *World Trade Report 2016: Levelling the Trading Field for SMEs* (Geneva: WTO, 2016), 86–87, https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf.

Table ES.2 Summary of trade-related barriers involving standards, regulations, and conformity assessments that SME firms face when exporting to the UK

Crosscutting area	Trade-related barrier	Summary of SME Concerns
Standards and regulations for manufactured goods	Lack of recognition	<ul style="list-style-type: none"> UK bodies do not recognize international standards developed by U.S.-based standards organizations. Some regulations favor EU products (e.g., the Registration, Evaluation, Authorisation and Restriction of Chemicals regulation, or REACH). SMEs have limited opportunities and ability to contribute to EU standards development process.
	Lack of harmonization	<ul style="list-style-type: none"> U.S./EU regulations are not harmonized completely. Differing U.S./UK product standards shut U.S. products out of UK market.
	Compliance	<ul style="list-style-type: none"> SMEs lack experience in working with UK notified bodies to get products accepted for UK market. Compliance with both established and new UK/EU standards is costly and burdensome.
Standards and regulations for food and agricultural products	Sanitary and phytosanitary measures	<ul style="list-style-type: none"> UK regulatory bodies have restrictions on importing U.S. foods made with genetically modified organisms (GMOs) into the UK. GMO approval process takes longer in the EU than in the United States. EU's ban on antibiotic use for growth promotion has negative effects on U.S. animal product exports.
	Standard-setting approach	<ul style="list-style-type: none"> Use of maximum levels (MLs) for contaminants relies on a hazard-based approach instead of the risk-based approach used in the United States. EU's process for setting maximum residue levels (MRLs) using the hazard-based approach make it difficult for U.S. SMEs to export agrifoods.
Conformity assessment procedures	Testing requirements and procedures	<ul style="list-style-type: none"> UK does not accept testing performed in the United States for certain U.S.-based products. UK testing facilities are sometimes unwilling to adopt different testing procedures to accommodate U.S. products. UK testing facilities delay testing of U.S. products or show preferential treatment in testing EU products. Duplicative certifications may be needed for sales in the United States and the UK. Separate testing is required to acquire Conformité Européenne (CE) markings on products for sale in the EU market, which can add significant costs.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

Market-related Barriers

SMEs noted various market-related barriers that they perceive as affecting their ability to export to the UK market, including logistical and finance-related issues and difficulties in entering or participating in the UK market (table ES.3). These barriers are not tied to specific EU or UK laws or policies; rather, they arise from obstacles within the private sector. SMEs must typically spend a larger share of their financial and administrative resources than larger firms do to gain market entry or have their products shipped into the UK. The costs of accessing a foreign market are problematic for SMEs, especially when they are added directly or indirectly to a good or service that is exported, because they put added pressure on an SME's profit margin.

Direct costs for exporting to the UK become an issue for SMEs because they often pay more in unit transportation costs for their smaller packages than larger firms, which ship larger quantities. Indirect costs that pose similar issues for SMEs included finance-related costs, because banks normally prefer larger firms over SMEs, making it more expensive for SMEs to access working capital or deal with currency fluctuations. Moreover, unlike larger exporters, SMEs often have difficulty accessing the UK market because they lack the resources and connections to find representatives, partners, or distributors that will help them sell their product or service in the UK.¹³

¹³ USITC, *Small and Medium-sized Enterprises: Characteristics and Performance*, USITC Publication 4189 (Washington, DC: USITC, November 2010), 6-6, <https://www.usitc.gov/publications/332/pub4189.pdf>.

Table ES.3 Summary of crosscutting market-related barriers that U.S. SMEs face when exporting to the UK

Crosscutting area	Challenge	Summary of U.S. SME concerns
Logistical issues	Shipping/distributing products	<ul style="list-style-type: none"> • Unreliable international deliveries by UK postal services. • Packaging size requirements. • Preference at the UK border to process shipments from larger firms instead of those from SMEs. • High fees and delays associated with using air cargo to distribute U.S. products. • Difficulty of establishing UK distribution centers for SMEs.
	Finance-related issues	<ul style="list-style-type: none"> • Difficulty accessing working capital to finance SME exports.
	Access to funding	<ul style="list-style-type: none"> • Difficulty withstanding currency fluctuations, particularly the recent strength of the U.S. dollar.
Market access	Weakness of the UK pound sterling	<ul style="list-style-type: none"> • Delayed payments and incurred transaction fees.
	Payments and transaction fees	
	Market entry	<ul style="list-style-type: none"> • Difficulty of providing goods or services in the UK market because of high fixed costs associated with having a physical presence or partner in the UK.
Market participation	Market participation	<ul style="list-style-type: none"> • Difficulty in developing distribution channels for SME products. • Lack of strong brand recognition leading to price competition with EU products. • Lack of knowledge about market opportunities and how to sell to UK market.
	Discriminatory treatment	<ul style="list-style-type: none"> • Uneven enforcement of UK laws, which sometimes enables discrimination against U.S. SME firms and a preference for UK or EU firms.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

In discussing how to address market-related barriers, SMEs mentioned that the presence of foreign trade zones in the UK would help to facilitate exports across the UK border. Other suggestions aimed at U.S. government entities included supporting trade missions and educating SMEs on how to bolster exports to the UK market. SMEs also advocated for nongovernmental entities to increase SMEs' access to funding due to the size-related capital and finance issues SMEs face.

Manufactured Goods

U.S. exports of manufactured goods to the UK totaled \$52 billion in 2018. Many of these U.S.-produced manufactured goods exports are concentrated in high-tech sectors and high-value products.¹⁴ SME

¹⁴ Busch, Marc, Michael Gasiorek, Peter Holmes, J. Brad Jensen, Rod Ludema, Emily Lydgate, Anna Maria Mayda, Pietra Rivoli, Jim Rollo, Stephen Weymouth, Rorden Wilkinson, and L. Alan Winters, "The Future of US-UK Trade: The Case for a Bilateral Trade Agreement?" UK Trade Policy Observatory (UKTPO) Briefing Paper 20, July 2018, <http://blogs.sussex.ac.uk/uktpo/publications/the-future-of-us-uk-trade/>; Winton, "How UK-US Trade Has Changed over Time," July 20, 2018, <https://www.winton.com/longer-view/how-uk-us-trade-has-changed-over-time>; U.S.

representatives identified trade-related barriers affecting a number of specific manufactured products for which there was a high concentration of SME exporters. These included aerospace products and parts; defense-related equipment; boats and ocean technology equipment; chemicals and pharmaceuticals; and medical products.

U.S. SMEs in the manufactured products sectors face both tariff and nontariff barriers when exporting to the UK. SMEs interviewed for this study pointed out numerous trade-related barriers that were also identified in previous Commission studies, such as those related to SMEs' trade with the EU.¹⁵ According to SMEs, some of these same trade-related barriers continue to limit their exports to the UK and intersect multiple manufacturing sectors. SMEs producing manufactured goods face numerous regulatory measures as well as standards relating to labeling, licensing, and certification. In some instances, for example, SMEs have to obtain duplicative certifications in the UK and the United States, which adds costs and delays getting their product to the market. These include obtaining certifications, such as a Conformité Européenne (European Conformity or CE) mark, which makes exporting to the UK more challenging, particularly for U.S. SMEs.¹⁶ Tariffs and taxes, particularly the value-added tax (VAT), continue to increase costs for manufacturers. The EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation remains a significant trade-related barrier to exports by U.S. SME chemical and medical device manufacturers.

In addition, there are new trade-related barriers for U.S. SME exporters, such as the EU's retaliatory tariffs and U.S. restrictions on technology transfer when exporting abroad. For example, some of the trade-related barriers raised by SMEs originate with U.S. export controls, such as the Export Administration Regulations ("EAR"), administered by the U.S. Department of Commerce for dual-use products, and the U.S. International Traffic in Arms Regulations (ITAR), administered by the U.S. Department of State for military and defense-related equipment. Customs and logistics issues also increase costs and make it difficult to enter the UK market. Again, owing to SMEs' limited resources and product scope, these obstacles tend to impact their profitability more than they do larger firms.

Department of Commerce, International Trade Administration, Export.gov, "United Kingdom: Market Overview," August 31, 2018, <https://www.export.gov/article?id=United-Kingdom-Market-Overview>.

¹⁵ USITC, *Trade-Related Barriers That U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union*, USITC Publication 4455 (Washington, DC: USITC, March 2014), 4-1 – 4-23.

¹⁶ A *Conformité Européenne* (CE) marking affirms that the product meets all applicable laws and regulations, permitting sales in the European Economic Area.

Table ES.4 Summary of trade- and market-related barriers that U.S. SMEs face when exporting manufactured products to the UK

Industry sector	Trade- and market-related barrier	Summary of SME concerns
Aerospace products and parts	Duplicative certifications	<ul style="list-style-type: none"> • Duplicate certification requirements (both U.S. and EU certifications) add costs and delays. • European Union Aviation Safety Agency (EASA) certification processes hamper UK market sales.
Defense-related equipment	Export controls under EAR for dual-use products, certifications, and standards	<ul style="list-style-type: none"> • Licensing restrictions imposed by U.S. and UK authorities differ for some product classifications. • Different product specifications, labeling differences, and safety testing procedures add to complexity and cost. • This rule increases costs and causes delays. • Delays associated with U.S. export controls and technology transfer regulations make it difficult to reach the UK end customer.
	U.S. flag vessel requirement	<ul style="list-style-type: none"> • This rule increases costs and causes delays.
	Export controls and technology transfer regulations under ITAR for military and defense-related equipment	<ul style="list-style-type: none"> • Delays associated with U.S. export controls and technology transfer regulations make it difficult to reach the UK end customer.
Boats	Duplicative certifications	<ul style="list-style-type: none"> • Duplicate certification requirements (both U.S. and EU certifications) add costs and delays. • EU certification is difficult to get (certifying body staff is predominately located in Germany).
	EU's additional customs duties on imports of U.S. boats	<ul style="list-style-type: none"> • Tariffs increase variable costs on each product shipped.
Chemicals and pharmaceuticals	REACH "responsible person" rule	<ul style="list-style-type: none"> • The EU's Registration, Evaluation, Authorisation and Restriction of Chemical Substances (REACH) requirement to designate a "responsible person" located in the EU increases costs.
	Cosmetics Regulation (EU)	<ul style="list-style-type: none"> • Separate registration is required for each slight variation in product, such as color choices.
	EU labeling requirements	<ul style="list-style-type: none"> • EU labeling regulations may unintentionally reveal SMEs' confidential business information. • Label for each product must be translated into the language of each EU member market.
	Licensing requirements	<ul style="list-style-type: none"> • Licensing requirements differ in individual EU countries.
	Clinical Trials Directive	<ul style="list-style-type: none"> • This directive requires exporting firms to establish a presence in an EU country.

Industry sector	Trade- and market-related barrier	Summary of SME concerns
Medical products	Duplicative certifications	<ul style="list-style-type: none"> • Duplicate certification requirement (both U.S. and EU certifications) adds costs and delays. • Conformité Européenne (CE) mark requirement is time-consuming and expensive. • New medical device internal conformity assessment or third-party conformity assessment is expensive.
	EU's REACH	<ul style="list-style-type: none"> • REACH requires a local presence in the EU, increasing costs.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

U.S. manufacturing sector SMEs suggested several ways of enhancing their exports to the UK. The most significant of these was to provide for reciprocal certifications for aerospace, cosmetics, and medical device products that have closely harmonized standards. SMEs in the chemicals industry encourage the use of a UK REACH program aligned to the EU's current REACH standard, with few exemptions for SMEs that export to the UK. SMEs in the defense industry contend that granting International Traffic Arms Regulations exemptions for defense-related equipment would lower barriers to trading with the UK. More generally, SMEs claimed that mutual recognition agreements (MRAs) are a key step in maintaining commercial continuity for U.S. SMEs that export to the UK during the UK's process of officially leaving the EU. Establishing free trade zones would allow supply chain and assembly flexibility for manufacturing exports. Finally, SMEs stressed the importance of ongoing collaboration and dialogue between the United States and the UK to maintain a positive relationship and policy consistency.

Food and Agricultural Products

The UK is a small but receptive market for U.S. exports of food and agricultural products (agrifoods), and the U.S. exported \$2 billion of agrifood products to the UK in 2018. U.S. SMEs' top agrifood exports to the UK include processed foods; alcoholic beverages; fresh fruits and vegetables; edible nuts; and seafood products, but the total value of U.S. agricultural exports is significantly less than U.S. exports of manufactured goods to the UK. SMEs in the food and agricultural industry face a disproportionately higher number of trade-related barriers (tariff and nontariff), in part because of the EU's protective agricultural policies (table ES.5).

Among the tariff-related measures especially affecting U.S. SME agrifood exporters are additional customs duties on whiskey. Although both large and SME U.S. distillers are affected by additional customs duties, depending on how many units are shipped, SMEs are more prone to limit or cease their exports because of these duties.¹⁷ In addition, several SMEs noted that they perceived EU tariffs as a significant barrier to their UK exports in sectors such as fishery products, fruits, and prepared foods.¹⁸ SMEs also mentioned that their exports are constrained in the UK market because of preferential tariff

¹⁷ WTO, *World Trade Report 2016: Levelling the Trading Field for SMEs* (Geneva: WTO, 2016), 83, https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf.

¹⁸ Industry representatives, interviews by USITC staff, December 1, 2018, September 21, 2018, and November 29, 2018.

treatment granted to competing suppliers that benefit from third-party trade agreements, the EU's tariff-rate quotas, and the EU's tariff escalation system, in which tariffs rise along processing chains (more-processed food is subject to higher tariffs).

U.S. SME agrifood exporters also identified a variety of nontariff barriers that they face in the UK with respect to labeling requirements, sanitary and phytosanitary (SPS) requirements, geographical indications and wine names, packaging rules, food safety requirements, and certifications.¹⁹ Such measures are particularly costly for SMEs and make them more likely to exit a foreign export market if they cannot comply.²⁰ Fixed costs associated with technical barriers to trade impact SMEs more than larger firms because these costs represent a higher share of SMEs' trade revenues, whereas larger firms can absorb more fixed costs.²¹ SMEs claimed that the EU's organic regulations and farm support programs also are nontariff measures that benefit EU producers over U.S. SME agrifood exporters.²²

Table ES.5 Summary of trade- and market-related barriers that U.S. SMEs face when exporting food and agricultural products to the UK

Industry sector	Trade- and market-related barrier	Summary of SME concerns
Alcoholic beverages	Tariffs and preferential access	<ul style="list-style-type: none"> • EU tariff increases cost of U.S. wine exports relative to intra-EU suppliers or free trade agreement (FTA) partners. • Additional customs duties (retaliatory tariffs) impose high costs on U.S. whiskey exports to the EU.
	Labeling requirements	<ul style="list-style-type: none"> • EU label requirements impose additional costs and compliance burdens for U.S. wine, distilled spirits, and beer exporters. • EU alcohol production definitions in conjunction with labeling requirements restrict the exports of certain U.S. distilled spirits and wine.
	Geographical indications (GIs) and wine names	<ul style="list-style-type: none"> • EU GI requirements restrict the exports of U.S. wines.
	Maximum residue levels (MRLs)	<ul style="list-style-type: none"> • EU MRL administration system, the EU's hazard-based approach to MRLs, and low EU MRLs negatively affect U.S. wine exports.
	Packaging standards	<ul style="list-style-type: none"> • EU bottle size requirements impose additional costs on U.S. distillers.
Seafood products	Tariffs, tariff-rate quotas (TRQs), and preferential tariff treatment	<ul style="list-style-type: none"> • EU tariff increases cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU TRQs limit market access for U.S. exports and quota administration introduces uncertainty.

¹⁹ USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 30, 2018, 139–61, <https://ustr.gov/sites/default/files/files/reports/2017/NTE/2017%20NTE.pdf>.

²⁰ WTO, *World Trade Report 2016: Levelling the Trading Field for SMEs* (Geneva: WTO, 2016), 86, https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf.

²¹ WTO, *World Trade Report 2016: Levelling the Trading Field for SMEs* (Geneva: WTO, 2016), 86–87, https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf.

²² USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 30, 2018, 139–61, <https://ustr.gov/sites/default/files/files/reports/2017/NTE/2017%20NTE.pdf>.

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

Industry sector	Trade- and market-related barrier	Summary of SME concerns
	Traceability standards and labeling requirements	<ul style="list-style-type: none"> • EU labeling standards for seafood impose burdensome reporting requirements/constrain U.S. exports.
	Live mollusk ban under sanitary and phytosanitary (SPS) measures	<ul style="list-style-type: none"> • EU protocol prevents U.S. exports of live molluscan shellfish.
Fresh fruits and vegetables	Tariffs, tariff-rate quotas (TRQs)	<ul style="list-style-type: none"> • EU tariff increases cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU TRQs limit market access for U.S. exports.
	Maximum residue levels (MRLs)	<ul style="list-style-type: none"> • EU MRL administration system, the EU's hazard-based approach to MRLs, and low EU MRLs inhibit U.S. fruit exports.
	Sanitary and phytosanitary (SPS) protocols Food additives (wax)	<ul style="list-style-type: none"> • EU SPS protocols inhibit U.S. citrus exports, particularly of grapefruit. • EU food additive protocols increase costs of exporting grapefruit.
Edible nuts	Tariffs and tariff-rate quotas (TRQs)	<ul style="list-style-type: none"> • EU tariff increases cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU TRQs limit market access for U.S. exports.
	Maximum levels (MLs) on contaminants	<ul style="list-style-type: none"> • EU's hazard-based approach to MLs and EU MLs on aflatoxins limit U.S. nut exports.
	Administration of maximum residue levels (MRLs)	<ul style="list-style-type: none"> • There is a lack of regulatory transparency in the process of setting MRLs for chemicals. • Insufficient time is allowed between adoption and implementation of MRL limits.
Processed foods	Tariffs	<ul style="list-style-type: none"> • EU tariff increases cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU system of tariff escalation especially affects processed food exports.
	Food additive restrictions and labeling	<ul style="list-style-type: none"> • EU food additive protocols result in extra costs due to U.S. product reformulation, additional costs imposed by ordering new labels, and limit overall U.S. product export potential.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMES.

SMEs recommended various ways to enhance the trade environment so as to increase U.S. agrifood exports. These included lowering UK tariffs on agrifood products (mainly processed foods, seafood, and whiskey); preserving distinctive product recognition for U.S. distilled spirit exports; and maintaining simplified certification requirements for wine producers. SMEs also advocated for the UK's adoption of a risk- or science-based approach in establishing maximum residue levels (MRLs), and allowing for a longer grace period during which U.S. agrifood products subject to new MRLs can continue to be accepted into the UK. Lastly, SMEs suggested that mutual recognition of U.S. standards and reciprocity of SPS and food safety regulations would help to facilitate more exports to the UK market. In some instances, SMEs mentioned that keeping the status quo on trade would be preferable because it would ensure the continuity of trade between the two countries.

Services

The UK is the largest single-country export market for U.S. services.²³ Compared with SMEs in other market sectors, SMEs in the services sector identified few barriers to the provision of services in the UK. U.S. SMEs that are reportedly most apt to face barriers in the UK are professional services (particularly in the architectural industry) and computer services (table ES.6). The largest hardships faced by U.S. SMEs engaged in the professional services industry are temporary entry provisions (i.e., provisions affecting the movement of people into the UK for a limited time), licensing and credential issues, and finding business partners in the UK market.²⁴ Computer services SMEs reportedly encounter issues related to data protection and privacy laws, cybersecurity, and customs requirements. As a digitally intense industry, computer services are also impacted by barriers identified by other digitally intensive sectors, including a tax on diverted profits and measures restricting temporary entry, among others.

Table ES.6 Summary of trade-related barriers that U.S. SMEs face when providing services to the UK

Industry sector	Trade-related barrier	Summary of SME concerns
Architectural services	Licensing and credential issues/ finding UK partners	<ul style="list-style-type: none"> UK licensure process forces unregistered foreign firms/architects to work as consultants or to partner with local firms that have licenses.
	Temporary entry restrictions	<ul style="list-style-type: none"> These provisions may affect the length of time that a foreign professional may stay in the country.
Computer services	Data protection and privacy laws, particularly the EU's General Data Protection Regulation (GDPR)	<ul style="list-style-type: none"> Compliance with GDPR poses a significant additional cost and administrative burden for U.S.-based SMEs exporting to the UK. These laws create ongoing direct costs (particularly staffing). Regulations limit potential client outreach. Perceived absence of clarity in data privacy laws make it difficult to send information across borders.
	Cybersecurity	<ul style="list-style-type: none"> There is potential for business disruption if the UK does not uphold the same cybersecurity policies following Brexit.
	UK diverted profits tax	<ul style="list-style-type: none"> This tax creates an impediment to cross-border investments into the UK. SMEs may spend more time and resources complying with this new tax policy requirement.

²³ U.S. Department of Commerce, International Trade Administration, Export.gov, "United Kingdom: Market Overview," August 31, 2018, <https://www.export.gov/article?id=United-Kingdom-Market-Overview>.

²⁴ Industry representative, interview by USITC staff, October 4, 2018; Organisation for Economic Co-operation and Development (OECD), Services Trade Restrictiveness Index Simulator, <http://sim.oecd.org/Simulator.ashx?lang=En&ds=STRI&d1c=trmar&d2c=usa> (accessed July 2019).

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

Industry sector	Trade-related barrier	Summary of SME concerns
	Customs requirements	<ul style="list-style-type: none"> Firms must complete U.S. customs and excise paperwork to export or re-export the equipment needed to provide services at a client site.
	Temporary entry restrictions	<ul style="list-style-type: none"> These provisions affect SMEs' ability to attract talent for U.S.-based digital trade firms operating in the UK.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

SMEs in the professional services industry advocated for the mutual recognition of professional qualifications and harmonization of regulatory frameworks, which may increase the supply of services to the UK. Moreover, improving the ability of U.S. services providers to travel to UK jurisdictions on a temporary basis would also enhance bilateral services trade.²⁵ With respect to computer services, SMEs suggested that the current U.S.-EU Privacy Shield framework for SMEs could potentially be a useful model to replicate in a future U.S.-UK free trade agreement, as would the data flow provisions found in the United States-Mexico-Canada Agreement.²⁶ Some SMEs suggested adopting mutual recognition agreements or shared standards to facilitate the flow of information between the United States and the UK, especially for the medical services and medical device industries.²⁷ Further, computer services SMEs stated that some ways to enhance bilateral trade for the computer services industry include regulatory cooperation and common privacy standards across the UK and the United States.

²⁵ Confederation of British Industry, *Smooth Operations: An A-Z of the EU Rules that Matter for the Economy*, April 2018, 88–92, http://www.cbi.org.uk/index.cfm/_api/render/file/?method=inline&fileID=FCOBD1F9-72C8-4C91-A9C930D89FB0279D.

²⁶ Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 50; ACT | The App Association, written submission to the USITC, “Comments RE: U.S. SME Exports: Trade-Related Barriers Affecting Exports of U.S. Small- and Medium-sized Enterprises to the United Kingdom (Investigation No. 332-569),” February 13, 2019.

²⁷ Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 53–54; industry representative, listening session, Seattle, WA, December 3, 2018, 15–17, 25.

Chapter 1

Introduction and Purpose

Introduction

The United Kingdom (UK) was the world’s seventh-largest economy in 2018, representing about 3.3 percent of world gross domestic product (GDP).²⁸ U.S. firms are attracted to the UK by the shared language and cultural ties between the two nations, as well as by the UK’s production capabilities, relatively open business environment, high workforce skills, positioning along global manufacturing supply chains, and current access to the European Single Market.²⁹ Both consumption- and production-oriented factors have made the UK a top investment and export destination for U.S. firms. Total U.S.-UK foreign direct investment (FDI) was higher than with any other U.S. trading partner in 2017, amounting to \$1.3 trillion.³⁰ In that year, the UK ranked as the second-highest destination for U.S. FDI after the Netherlands, with a large concentration in the manufacturing sector.³¹

The UK is also an important trade destination for the United States, given the size of the UK’s market. U.S. exports of goods and services to the UK totaled \$142 billion in 2018, with services exports accounting for 53 percent of the total, and goods exports accounting for the remaining 47 percent.³² The United States had a positive merchandise trade balance with the UK in 2018 of \$5.4 billion.³³ After the European Union (EU), the United States was the top agricultural goods exporter to the UK, and the UK was the largest market for U.S. services exports.³⁴

Small and Medium-sized Enterprises in the United States

U.S. small and medium-sized enterprises (SMEs) play a key role in the U.S.-UK trade relationship. Overall, SMEs are important drivers of U.S. economic growth.³⁵ They employed about 59 million people

²⁸ IMF, World Economic Outlook database (accessed March 6, 2019).

²⁹ CRS, *U.S.-UK Free Trade Agreement*, April 14, 2017, 2, 6.

³⁰ Of this FDI total, \$748 billion in direct investment from U.S. firms to the UK were from majority-owned multinational enterprises. USDOC, BEA, “International Trade and Investment Country Facts” (accessed March 22, 2019).

³¹ CRS, *U.S.-UK Free Trade Agreement*, April 14, 2017.

³² In 2018, U.S. services exports to the UK were valued at \$75 billion and goods exports to the UK were valued at \$67 billion. USDOC, BEA, “U.S. International Transactions” (accessed March 27, 2019); USDOC, BEA, “U.S. International Trade in Goods and Services by Selected Countries and Areas” (accessed March 26, 2019).

³³ IHS Markit, Global Trade Atlas database (accessed March 26, 2019).

³⁴ CRS, *U.S.-UK Free Trade Agreement*, April 14, 2017; USDOC, ITA, Export.gov, “United Kingdom: Market Overview,” August 31, 2018.

³⁵ Generally, firms with less than 500 U.S.-based employees are considered SMEs. For a detailed definition of SMEs, see “Approach” in this chapter.

in the United States in 2018 and accounted for about 48 percent of the private workforce.³⁶ Statistics from the U.S. Small Business Administration (SBA) indicate there were 30.2 million small businesses in the United States in 2018, making up 99.9 percent of all businesses.³⁷

SMEs are a vital contributor to U.S. exports to the world as well. According to the U.S. Department of Commerce, over 400,000 U.S. SMEs engaged in goods trade in 2016, representing 98 percent of exporters and accounting for 33 percent of the value of exports.³⁸ The number of SME exporters and the value of SME exports increased during 2012–14, but declined amid a broader fall in exports in 2015 and 2016 that was due to the strong dollar, weakness in emerging markets, and declining crude oil and gas prices.³⁹ The value of SME exports (though not the number of exporters) grew more rapidly than the value of larger firm exports during 2012–14. However, both the value of SME exports and the number of SME exporters declined more quickly during 2014–16 compared with larger firms.

SMEs are important contributors to U.S. services trade. More than 95 percent of all U.S. firms that exported services in 2015 had less than 250 employees, and such firms accounted for almost half of the total value of U.S. services exports in that year.⁴⁰ Further, firms with less than 10 employees accounted for almost a quarter of the total value of U.S. services exports in 2015.⁴¹ At the same time, only a very small share of all U.S. services firms export, and services SMEs are less likely than larger services firms to engage in trade.⁴² Services industries in which U.S. SMEs play a particularly large role include professional services and computer services.

SMEs and Goods Trade with the UK

SMEs also play an important role in U.S.-UK bilateral goods trade. While the UK ranked as the fifth-largest destination for U.S. goods exports in 2016, during that same year it was the fourth-largest goods export market for U.S. SMEs (following Mexico, Canada, and China). The UK also served as a key entry

³⁶ SBA, Office of Advocacy, “2018 Small Business Profile” (accessed February 14, 2019).

³⁷ SBA, Office of Advocacy, “2018 Small Business Profile” (accessed February 14, 2019).

³⁸ USDOC, ITA, “U.S. Exporting and Importing Companies, 2016,” April 2018.

³⁹ Compiled by USITC from official statistics of the USDOC, Census Bureau (accessed March 7, March 21, and March 26, 2019). For a detailed breakdown of known U.S. export values, U.S. SME export values, and U.S. SME exporters during the period 2012–16, see appendix E, tables E.1 and E.2. USITC, *Trade Shifts 2015: U.S. Trade*, September 2016; USITC, *Trade Shifts 2015: Special Topics*, September 2016; Irwin, “The Invisible Recession of 2016,” September 29, 2018.

⁴⁰ International Standard Industrial Classification of All Economic Activities (ISIC) is a United Nations industry classification system that classifies data according to kind of economic activity in the fields of employment and health data. For the purposes of this calculation, “services” includes the following ISIC (rev. 4) sectors: wholesale trade and repair; construction; transportation and storage; accommodation and food service activities; information and communication; financial and insurance activities; real estate activities; professional, scientific, and technical activities; administrative and support service activities; education; human health and social work activities; arts, entertainment and recreation; and other service activities.

⁴¹ OECD, I—Trade by Enterprise Characteristics by sector and size class, database, https://stats.oecd.org/Index.aspx?DataSetCode=TEC1_REV4# (accessed March 19, 2019).

⁴² Meltzer, “Using the Internet to Promote Services Exports,” February 2015, 4; WTO, *Levelling the Trading Field for SMEs*, 2016, 21.

point for U.S. SME exports to the EU.⁴³ During 2012–16, U.S. SME merchandise exports to the UK grew by an average of 15.9 percent, compared to a decline of 6.4 percent for larger firms during the same period.⁴⁴ On the other hand, during 2012–16 the number of identified SME exporters to the UK increased only slightly, by 0.3 percent, compared to 5 percent for larger firms.⁴⁵

According to U.S. Census Bureau data,⁴⁶ SMEs exported \$20.4 billion worth of goods to the UK in 2016, which accounted for 39 percent of the “known value”⁴⁷ of U.S. goods exports to the UK (figure 1.1).⁴⁸ Moreover, the UK accounted for 32 percent of U.S. SME exports of goods to the EU in 2016. Top categories of U.S. manufactured goods exported to the UK by SMEs included chemicals; machinery and equipment; computers and electronics; transportation equipment; and miscellaneous manufacturing. Top food and agricultural products exported to the UK by SMEs include processed foods; wine, beer, and distilled spirits; fresh fruits and vegetables; edible nuts; and seafood products.

⁴³ USDOC, ITA, “U.S. Exporting and Importing Companies, 2016,” April 2018; IHS Markit, Global Trade Atlas (accessed March 26, 2019).

⁴⁴ Compiled by USITC from official statistics of the U.S. Census Bureau (accessed March 7, March 21, and March 26, 2019).

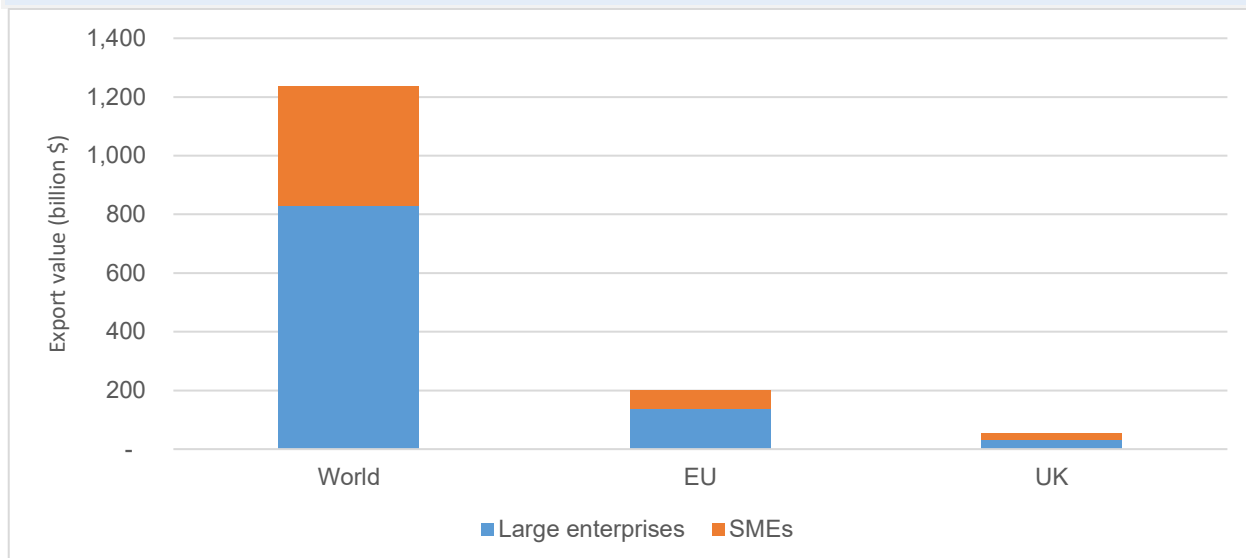
⁴⁵ Compiled by USITC from official statistics of the U.S. Census Bureau (accessed March 7, March 21, and March 26, 2019). For a detailed breakdown of known U.S. export values, U.S. SME export values, and U.S. SME exporters during 2012–16, see appendix E, tables E.1 and E.2.

⁴⁶ The official statistics of the U.S. Census Bureau use the same classification based on the number of employees of the identified exporting SMEs as does this report (less than 500 employees). U.S. federal agencies use statistical disclosure limitation procedures, including cell suppression in the Annual Survey of Manufactures, to minimize the risk of disclosing confidential information about persons, businesses, and other units. Therefore, due to confidentiality issues, these data are only available at the 3-digit subsector level of the North American Industry Classification System (NAICS), which is broader than the industries discussed in chapters 5 and 6 and do not separately classify these companies directly as producers or wholesalers. These value data are for products directly exported by companies and do not include inputs into a product that is later exported by another firm. SME subsector-level export data were available for crop production (NAICS code 111), fishing, hunting, and trapping (114), food manufacturing (311), beverage and tobacco product manufacturing (312), chemical manufacturing (325), fabricated metal product manufacturing (332), transportation equipment manufacturing (336), and miscellaneous manufacturing (339). All other SME exports are grouped under “all other NAICS.”

⁴⁷ The term “known value” is used throughout this report and is defined by the U.S. Census Bureau (U.S. Census) as the “value of transactions linked to specific companies.” USITC requested SME-specific data from U.S. Census, which included the known value of SME exports. Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census’s official published data. Methodology notes and a summary of matching results for identified and unidentified company exports is available in U.S. Census, *Profile of U.S. Importing and Exporting Companies*, April 5, 2018; Federal Committee on Statistical Methodology, Statistical Working Paper 22 (Second Version, 2005), *Report on Statistical Disclosure Limitation Methodology*, Office of Management and Budget, December 2005.

⁴⁸ A disproportionately faster growth trajectory of merchandise exports from U.S. SMEs has meant that they have accounted for an increasingly large share of U.S. merchandise exports to the UK over the past five years. In 2012, for example, U.S. SMEs supplied a third of U.S. merchandise exports, compared with the 39 percent mentioned above for 2016. The most recent year for which U.S. SME export data are available from the U.S. Census Bureau is 2016. For a detailed breakdown of known U.S. export values and U.S. SME export values for 2016 by the NAICS codes listed in this report and state of origin, see appendix E, table E.3.

Figure 1.1 Known U.S. goods exports to the world, EU, and UK, by value (billion \$) and company size, 2016



Source: Compiled by USITC from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census’s official published data. See appendix E, table E.1 for a detailed breakdown of known U.S. export values.

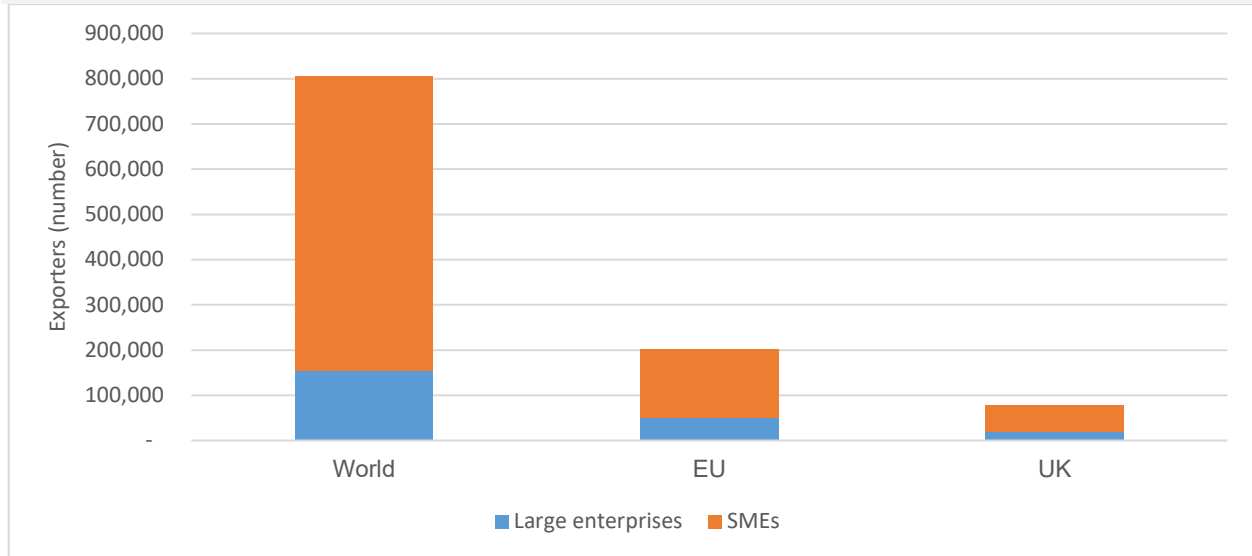
According to the most recent data available, the U.S. Census Bureau (U.S. Census) identified 57,833 U.S. SME goods exporters to the UK in 2016 (figure 1.2).⁴⁹ These SMEs represented 74 percent of all identified goods exporters⁵⁰ to the UK, and represented 29 percent of identified exporters to the EU. Forty percent of the identified SME firms exported products in the manufacturing sectors listed above to the UK, while 1 percent exported goods in the food and agricultural sectors listed above.⁵¹ U.S. Census data indicate that California, New York, and Texas are the three states with the most SME goods exporters to the UK.⁵²

⁴⁹ For a detailed breakdown of number of identified U.S. SME exporters for 2016 by the NAICS 3-digit codes outlined in this report and top 3 states, see appendix E, table E.4.

⁵⁰ Used throughout the report, the term “identified” companies, as defined by the U.S. Census, refers to those companies to which one or more transactions were matched. The export value associated with these companies is termed the “known value.”

⁵¹ For the purposes of this study, NAICS 325, 332, 334, 336, and 339 represent the manufacturing sector, and NAICS 111, 114, 311, and 312 are included in the food and agriculture products sector.

⁵² Ranking based on the number of SME exporters to the UK located in each state for 2016. For a detailed breakdown of the top three states by NAICS codes and number of SME exporters, see appendix E, table E.4.

Figure 1.2 Identified U.S. goods exporters to the world, EU, and UK, by company size, 2016

Source: Compiled by USITC from official statistics of the U.S. Census Bureau (accessed March 26, 2019).

Note: As defined by U.S. Census Bureau, identified enterprises are those to which one or more transactions can be matched. See appendix E, table E.2, for a detailed breakdown of identified U.S. exporters.

Purpose and Scope

This report describes trade-related barriers that U.S. SMEs perceive as disproportionately affecting their exports to the UK, as compared to their effect on larger U.S. exporters to the UK. The report also addresses market-related barriers that SME exporters perceive as hindering their ability to export to the UK, such as challenges related to the cost of doing business, economies of scale, or the ability to participate in the UK market. The report includes suggestions from SMEs or the relevant literature for actions that would help address some of the identified barriers and enhance the participation of U.S. SMEs in U.S.-UK trade. The report was prepared in response to a request letter for the U.S. Trade Representative (USTR) received by the Commission on August 3, 2018. The USTR's request letter notes that small businesses are significant to both the United States and the UK and that the United States-United Kingdom Trade and Investment Working Group is seeking to promote closer collaboration and best practices to support SME businesses and export opportunities in each other's markets, as the UK prepares to leave the EU (box 1.1).⁵³ The report does not speculate on what UK's withdrawal from the European Union may mean for the current list of trade barriers that U.S. SMEs may face when exporting to the UK. Some issues in this report may be resolved without further trade negotiations with the UK, such as EU's retaliatory tariffs currently placed on U.S. SME products to the UK, while other issues may be exacerbated by withdrawal from the EU. At the same time, new issues may arise that are not current trade barriers for U.S. SMEs.

⁵³ Appendix A contains USTR's request letter, dated August 2, 2018.

Box 1.1 Status of the United Kingdom’s Withdrawal from the European Union (Brexit)

On June 23, 2016, citizens of United Kingdom (UK) voted in a referendum to withdraw from the European Union (EU).^a In March 2017, UK Prime Minister Theresa May invoked Article 50 of the Treaty of the European Union, which provides a two-year window for an EU member state to negotiate the terms of its withdrawal from the EU (otherwise known as “Brexit”).^b That period was originally scheduled to end on March 29, 2019; however, the UK government and the EU have agreed to extend the date of the UK’s departure several times. The most recent extension scheduled the withdrawal period to end on October 31, 2019.

By virtue of its EU membership, the UK is part of (1) the European Single Market, which allows goods, services, capital, and persons to move freely within the EU; (2) the EU Customs Union, which means that each EU member state abides by common customs tariffs and processes at the EU border; and (3) the EU’s Common Commercial Policy, which means that all EU member states follow a single trade policy (defined at the EU level) regarding third countries.^c It is uncertain which—if any—of these arrangements the UK will continue to participate in following its exit from the EU.

The UK government’s final trade arrangements with the EU could affect U.S. firms in a few significant ways.^d First, without regulatory cohesiveness between the EU and UK (facilitated by single-market access during the transition period), U.S. firms of all sizes operating in the UK and EU will face regulatory uncertainty. Second, U.S. firms with European value chains extending through the UK to other EU member states could face higher tariffs. For example, some exported agricultural goods shift between the Republic of Ireland and the UK as many as six times, while certain exported auto products move across the UK and EU member states more than one dozen times.^e

U.S. firms with investments in or ownership of such ventures could face serious problems in the event of a no-deal Brexit. Noting the possibility of a no-deal Brexit scenario, the U.S. Trade Representative and the UK government have separately negotiated mutual recognition agreements (MRAs), providing for several shared U.S.-EU standards, particularly on electronics and medical devices.^f Specifically, these MRAs contain conditions under which each country will accept conformity assessment procedures from one another. For example, US exports can be tested in the US against UK regulations, and then sold in the UK without additional testing in the UK. These MRAs can take effect if the UK leaves the EU without a deal, or at the end of an implementation period.

^a In the final vote, about 51.9 percent of voters (17.4 million votes) voted in favor of withdrawing from the EU, while 48.1 percent (16.1 million) voted in favor of remaining in the EU. There was substantial divergence between regions and cities: England (53.4 percent) and Wales (52.5 percent) voted in favor of leaving the EU, while Scotland (62.0 percent against) and Northern Ireland (55.8 percent against) both voted to remain in the EU. Additionally, most major cities either voted to remain (London, Leeds, Glasgow, Edinburgh, and Liverpool) or narrowly voted in favor of leaving (Bradford, Birmingham, and Sheffield). BBC, “EU Referendum Results,” June 24, 2016.

^b Allen, Parker, and Beesley, “Brexit Begins,” March 30, 2017.

^c Hunt and Wheeler, “Brexit: All You Need to Know,” January 31, 2019.

^d Oliver, “Special Relationships in Flux,” 2016.

^e IIEA, “The Future of Irish Agriculture after Brexit,” June 23, 2017; Campbell, “UK Car Manufacturing Drops,” December 20, 2018.

^f USTR, “Agreement on Mutual Recognition,” February 4, 2019.

Approach

Unless otherwise specified, this report uses the same definition of SMEs—firms with less than 500 U.S.-based employees—that was used in previous USITC reports on SMEs.⁵⁴ For the purposes of this report, the SME definition applies to U.S. firms engaged in exporting manufactured goods, food and agricultural products, and services to the UK. Likewise, this report also largely uses the same definition of “disproportionate effect on SMEs” as that used in the Commission’s previous SME reports.⁵⁵ A disproportionate effect implies that a trade-related measure affects SMEs more than larger firms, even though the impediments typically do not explicitly discriminate against SMEs. In one of the Commission’s previous SME reports, survey responses from firms of all sizes were analyzed to learn which trade impediments had a disproportionate effect on SMEs compared to larger firms.⁵⁶ The report found that most trade impediments had a disproportionate effect on SMEs.

In this report, the term “barrier” is used in a generic sense to include a number of impediments to trade. This broad definition encompasses both tariff and nontariff measures that may affect U.S. SME exports to the UK. There are many barriers that affect both large and small exporting firms, and this report does not cover them all.

Rather, the report focuses on two types of barriers. First, it examines trade-related barriers specifically identified by SMEs (or by trade associations that predominantly represent SMEs) that (1) are imposed by EU, UK, or U.S. laws, regulatory measures, or policies and (2) hinder SMEs’ ability to export to the UK. Often such UK or EU regulations and policies affect all firms and are not designed to discriminate against foreign firms or U.S. SME firms.⁵⁷ Second, SMEs and trade associations often reported concerns that are not necessarily trade-related barriers nor tied to an EU, UK, or U.S. policy or regulation. Rather, these are market-related barriers that they perceive as negatively affecting their ability to export to the UK relative to larger firms. Such market-related barriers include challenges related to managing the cost of doing business, achieving economies of scale, and accessing certain foreign markets.

U.S. SMEs are disadvantaged by comparison with larger firms that export to the UK because of their lack of resources, which affect their ability to meet fixed and variable costs. SMEs often face high fixed costs for numerous nontariff measures regardless of the quantity of goods shipped. Large firms are able to spread their fixed costs more easily over their larger sales volume than SMEs and thus are in a better

⁵⁴ See USITC, *Small and Medium-sized Enterprises: Characteristics*, November 2010, 6-2; USITC, *Trade-Related Barriers that U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 1-1; USITC, *Small and Medium-sized Enterprises: Overview of Participation*, January 2010; USITC, *Small and Medium-sized Enterprises: U.S. and EU Export Activities*, July 2010; USITC, *U.S.-Korea Free Trade Agreement: Effects on U.S. SMEs*, May 2013.

⁵⁵ USTR request letter, August 2, 2018.

⁵⁶ In that report, trade impediments were defined as challenges faced by exporters, including business impediments and trade barriers. Trade barriers were defined as tariffs and nontariff measures imposed by the government. USITC, *Small and Medium-sized Enterprises: Characteristics and Performance*, November 2010, 6-1 to 6-4.

⁵⁷ This report discusses policies, regulations, and other measures that SMEs perceive as barriers. It does not compare these measures to the U.S. regulatory environment or the regulatory environment in other export markets unless firms made that comparison themselves, and it does not discuss whether the measures may fulfill legitimate policy objectives or whether they are consistent with international obligations.

position to export than SMEs.⁵⁸ For example, SMEs face high fixed costs when trying to comply with stringent EU standards, such as EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) standard. A single SME firm can incur fixed costs up to \$2 million in five years in complying with REACH.⁵⁹ Large firms can exploit their economies of scale to help absorb these high fixed costs, thus giving these firms a competitive advantage over SMEs in exporting.⁶⁰ Table 1.1 catalogs the types of trade-related barriers that SMEs are subject to in exporting to the UK, including tariffs/taxes and nontariff measures.

SMEs also perceive that tariffs (whether ad valorem or specific duties) and taxes affect them disproportionately, even though these are typically variable costs that depend on the quantity of the value shipped.⁶¹ A number of studies have supported the conclusion that SMEs, whether in the United States or globally, are more heavily burdened by tariffs than are large firms. SME exports tend to be more concentrated in sectors with high tariff rates, and often SMEs export lower-revenue and less profitable goods that are more affected by price changes due to higher tariffs. Further, SMEs may be disproportionately impacted by tariff rate changes because they tend to incur lower marginal costs in reaching additional consumers.⁶²

⁵⁸ WTO, *Levelling the Trading Field for SMEs*, 2016, 86.

⁵⁹ USITC, *Small and Medium-sized Enterprises: Overview of Participation*, January 2010; industry representative, email message to USITC staff, March 21, 2019.

⁶⁰ WTO, *Levelling the Trading Field for SMEs*, 2016, 19.

⁶¹ An ad valorem tariff is a tariff rate charged as the percentage of the good's price. USITC, *Trade-Related Barriers that U.S. Small and Medium-sized Enterprises Perceive*, March 2014, xi; OECD, "Enhancing the Contribution of SMEs," June 7-8, 2017.

⁶² WTO, *Levelling the Trading Field for SMEs*, 2016, 83-84; USITC, *Small and Medium-sized Enterprises: Characteristics*, November 2010, 6-15.

Table 1.1 Catalog of barriers that impact U.S. firms' ability to export to the UK

Trade-related barriers (chapters 2 and 3)		Market-related barriers (chapter 4)
Nontariff barriers	Tariffs and taxes	
Standards and technical regulations	High MFN tariffs	Logistical issues
<ul style="list-style-type: none"> Sanitary and phytosanitary measures (e.g., maximum residue levels, bans on certain agricultural products) Export controls/technology transfer restrictions Labeling requirements Licensing requirements Packaging requirements Standards development 		<ul style="list-style-type: none"> Shipping and distribution of physical goods
Conformity assessment procedures	Additional customs duties on certain products	Finance-related issues
<ul style="list-style-type: none"> Certifications Testing requirements CE (Conformité Européenne [European Conformity]) certification markings 		<ul style="list-style-type: none"> Access to financing Devaluation of the UK sterling Payment and transaction fees
Intellectual property (IP) regulations	Value-added tax	Market entry and participation
<ul style="list-style-type: none"> IP protection costs IP infringement 		<ul style="list-style-type: none"> Discriminatory treatment in the UK market Establishing distribution channels Finding partners in the UK
Temporary entry requirements	De minimis thresholds ^a	
Customs procedures	Tariff-rate quotas for agricultural products	
EU support programs	EU's tariff escalation system for agricultural products	
EU data protection and privacy measures	UK diverted-profits tax	
Geographical indications		

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SME representatives.

^a A de minimis threshold (DMT) is defined as a monetary threshold below which customs duties and taxes on imports are not required, and customs paperwork on these imports is reduced.

In addition to trade-related barriers, the ability of SMEs to export to the UK is also impeded by market-related barriers related to logistical, financial, and market access constraints. SMEs export smaller quantities than larger firms, resulting in less efficient and more expensive logistics that translate to higher per-unit costs for SME goods than for those of larger firms.⁶³ Finance-related issues also pose problems for SMEs. SMEs have insufficient access to credit due to their lack of collateral, resulting in higher lending and transaction costs to participate in a foreign market. Moreover, banks frequently prefer to extend credit to larger firms over SMEs due to the larger firms' often more robust financial health.⁶⁴ SMEs experience market access constraints more often than larger firms do because they often

⁶³ WTO, *Levelling the Trading Field for SMEs*, 2016, 93.

⁶⁴ WTO, *Levelling the Trading Field for SMEs*, 2016, 86.

lack knowledge of foreign standards and regulations; also, they have difficulty in developing brand recognition, finding partners, and accessing distribution channels. Compared to large U.S. firms, SMEs are unable to realize economies of scale in gathering market information, which may increase the costs of retaining market share abroad.⁶⁵

Information Sources

The USTR's request letter specifically asked that the Commission focus in its report on sectors with a high concentration of SMEs.⁶⁶ In choosing those sectors, the Commission relied on public trade data obtained from IHS Markit that highlighted the most prominent industry sectors exporting to the UK. The Commission also consulted with numerous government entities and interagency groups that engage with SMEs. Further, the Commission reached out to trade associations and SMEs in order to learn whether certain industries had a high concentration of SMEs exporting to the UK. Lastly, it received specially tabulated data from the U.S. Census Bureau (U.S. Census) on SME exports to the UK for 2012–16, broken down by 3-digit North American Industry Classification System (NAICS) codes. The U.S. Census dataset included the known value of exports and identified U.S.-based SME exporters to the UK.⁶⁷ These data informed the report's assessment of overall U.S. exports to the UK, the number of SME exporters to the UK, and specific industry sector exports to the UK.

Overall, the extent of industry interest and participation in the Commission's investigation varied. This disparity is to an extent reflected in the varying depth of information provided by SMEs in this report for certain sectors.

In assessing the trade-related barriers that SMEs face when exporting to the UK, the Commission collected and catalogued primary qualitative information and data using a variety of methods. These methods, many of which allowed SMEs to provide their views and experiences directly to the Commission, included (1) listening sessions in the United States and the UK; (2) outreach to trade associations and SMEs in specific industry sectors via email, telephone, or in-person meetings; (3) cooperation with numerous government entities, small business development centers (SBDCs), and trade associations; (4) a public hearing; and (5) a review of the relevant literature. The Commission sought information and participation from various industry sectors engaged in exporting manufactured goods, agricultural products, and services to the UK. The Commission sought to validate the views provided by SMEs through independent research or secondary sources such as additional SME or trade association testimony. The Commission did not include SME claims that were inaccurate or could not be validated in this report.

⁶⁵ USITC, *Small and Medium-sized Enterprises: Overview of Participation*, January 2010.

⁶⁶ USTR request letter, August 2, 2018.

⁶⁷ The most recent year for which these data are available is 2016. As noted previously, the known value of exports is the value of transactions linked to specific companies, which excludes transactions that cannot be attributed to specific exporting companies. Identified SME exporters are companies to which one or more transactions were matched.

The Commission held 18 listening sessions, 14 in the United States and 4 in the UK, between November 2018 and April 2019 (table 1.2).⁶⁸ Two Commission staff members moderated each listening session, and a transcriber was present at each session.⁶⁹ The locations of the U.S. listening sessions were determined based on the value of state-level exports to the UK, as well as the concentration of SMEs exporting to the UK in major metropolitan areas. The UK listening sessions were chosen based on consultations with the U.S. Commercial Service in London and BritishAmerican Business; cities with a U.S. embassy or consulate were preferred.⁷⁰ In total, over 390 participants registered for the listening sessions.

Table 1.2 USITC listening session dates and locations

Date	Location	Date	Location
November 9, 2018	Washington, DC	December 6, 2018	Los Angeles, CA
December 3, 2018	Seattle, WA	December 6, 2018	Louisville, KY
December 3, 2018	Houston, TX	December 7, 2018	Boston, MA
December 4, 2018	Chicago, IL	December 7, 2018	Charleston, SC
December 4, 2018	San Diego, CA	December 9, 2018	Salt Lake City, UT
December 4, 2018	Dallas, TX	March 19, 2019	New York, NY
December 5, 2018	Cleveland, OH	April 23, 2019	London, England
December 5, 2018	San Francisco, CA (canceled) ^a	April 25, 2019	Birmingham, England
December 5, 2018	Dallas, TX (canceled) ^a	April 26, 2019	Belfast, Northern Ireland
December 6, 2018	Pittsburgh, PA	April 29, 2019	Edinburgh, Scotland

^a The listening sessions in San Francisco and Dallas were canceled due to the declaration of December 5, 2018, establishing a national day of mourning in honor of President George H.W. Bush.

Besides drawing on the assistance of government agencies and the SBDCs, the Commission organized an extensive outreach effort to make sure that all industries had an opportunity to participate in the listening sessions or otherwise provide information to the Commission through other means. The Commission worked closely with trade associations to disseminate information about its investigation

⁶⁸ A copy of each listening session transcript by U.S. or UK location is publicly available on the USITC's EDIS website, www.edis.usitc.gov (registration required).

⁶⁹ The U.S. Small Business Administration (SBA) graciously assisted the USITC in arranging the listening sessions. SBA worked closely with the Commission to identify venue sites (either at SBA's field offices or alternate venue sites), as well as create online invitations for the sessions, manage the participants' RSVP responses, host the listening sessions, provide introductory speakers for each session, and reach out to local companies through their networks in order to encourage attendance for the U.S. listening session tour. Other U.S. government entities also assisted with the listening sessions. The U.S. Department of Commerce (USDOC) U.S. Commercial Service organized the listening session in Salt Lake City during their "Discover Global Markets" event on December 9, 2018, and actively promoted the listening session to participants at the event and other outside attendees. The Virginia Small Business Development Council organized the Washington, DC, listening session on November 9, 2018, at the Commission's location. Several other entities, including USDOC's U.S. Commercial Service, USDOC's U.S. Export Assistance Centers, and SBA's Small Business Development Centers (SBDCs), were instrumental in identifying and marketing the U.S. listening sessions to potential participants within their networks. The U.S. Embassy in London, England, the Consulates of Belfast, Northern Ireland, and Edinburgh, Scotland, and BritishAmerican Business assisted the Commission with organizing a listening session tour in four cities throughout the UK. These entities aggressively marketed the event to U.S.-based businesses operating in the UK within their respective networks.

⁷⁰ BritishAmerican Business is a transatlantic network of businesses, including SME members, which operate in both the United States and the UK.

and the dates and locations of the listening sessions. Overall, the Commission reached out to over 150 trade associations to educate the public about the investigation and ask for their views.

The Commission held a public hearing in Washington, DC, on April 11, 2019, to gather additional primary information from trade associations, SMEs, and other interested parties. In addition to those groups, the Commission's extensive outreach effort included government associations and other entities, in order to encourage participation in the hearing. Two trade associations that provide digital services—the App Association and the Internet Association—testified at the hearing, and three additional entities provided written submissions.⁷¹

Organization of Report

This report is divided into seven chapters. This chapter contains background information and describes the purpose, scope, and approach of the report. The remaining chapters provide information on trade- and market-related barriers affecting SMEs that export to the UK.

Chapters 2 through 4 present trade-related and market-related barriers identified by SMEs as disproportionately affecting U.S. SMEs exporting to the UK, as compared to larger U.S. exporters to the UK. Those include “crosscutting” trade-related barriers that affect U.S. SMEs in multiple industry sectors. Specifically, chapter 2 provides information on trade-related barriers such as tariffs and taxes, customs procedures, intellectual property issues, and temporary entry provisions. Chapter 3 discusses trade-related barriers involving standards, regulations, and conformity assessment procedures. Chapter 4 highlights market-related barriers related to finance, logistics, and market access.

Chapters 5 through 7 present sector-specific trade-related barriers that SMEs reported as affecting their ability to export to the UK. Chapter 5 examines trade-related barriers affecting exports to the UK of manufactured goods, including aerospace parts and products; defense-related equipment; boats; medical goods; and chemicals and pharmaceuticals. Chapter 6 reports on barriers affecting food and agricultural sectors that export most heavily to the UK, including alcoholic beverages; seafood products; fresh fruits and vegetables; tree nuts; and processed foods. Finally, chapter 7 discusses trade-related barriers covering services that include professional and computer services.

⁷¹ Appendix C contains the calendar of hearing witnesses, and appendix D contains a summary of views of interested parties.

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Chapter 2

Crosscutting Trade-related Barriers

While some trade-related barriers may be sector specific or even product specific, many affect multiple industry sectors. For purposes of this report, these are referred to as “crosscutting trade-related barriers.” Crosscutting trade-related barriers may be imposed by an EU or UK government law or policy and may include tariffs and taxes, customs procedures, intellectual property (IP) measures, and temporary entry provisions (table 2.1).⁷² The Commission asked SME representatives and other interested parties for their views on crosscutting trade-related barriers. Specifically, participants were asked whether, compared to larger U.S. firms that export to the UK, the SMEs were disproportionately affected by these barriers.

SMEs perceive that tariffs (whether ad valorem or specific duties) and taxes affect them disproportionately compared to larger U.S. firms.⁷³ This is despite the fact that these are typically variable costs, which fluctuate depending on quantity of value shipped.⁷⁴ There are several possible reasons for a disproportionate impact of tariffs on SMEs: SME exports tend to be more concentrated in sectors with high tariff rates, and the firms often export lower-revenue and less profitable goods that are more impacted by tariff-driven price increases.⁷⁵

In facing other nontariff measures, such as IP issues, customs procedures, and temporary entry restrictions, SMEs are disadvantaged because they often incur high fixed costs regardless of the quantity of goods shipped, while larger firms have the advantage of spreading the fixed costs over their larger sales volume.⁷⁶ For example, SMEs must devote more of their financial resources to securing IP protections abroad and they are more financially impacted by IP infringements or IP theft than larger firms. SMEs must also dedicate a larger share of their staff resources to handle the administrative burden imposed by nontariff measures. For instance, SMEs have to submit extensive paperwork so they can navigate the process of clearing their products through UK customs, which burdens SMEs more than their larger counterparts because they often ship low-volume packages.

Restrictions on the temporary entry of personnel also make it difficult for SMEs to provide goods or services in the UK market because of the time and resources they must dedicate sending employees to a foreign country, including dealing with visa restrictions. In contrast, due to their greater resources, larger firms often have some personnel based in the country where they export, or they can more easily relocate personnel or hire locally in a foreign country.

⁷² For crosscutting trade-related barriers involving standards, technical regulations, and conformity assessment procedures, see chap. 3, “Standards and Regulations.”

⁷³ An ad valorem tariff is a tariff rate charged as the percentage of the good’s price.

⁷⁴ USITC, *Trade Barriers*, March 2014, xi; OECD, “Enhancing the Contribution of SMEs,” June 7–8, 2017.

⁷⁵ WTO, *Levelling the Trading Field for SMEs*, 2016, 83–84; USITC, *Small and Medium-sized Enterprises: Characteristics*, November 2010, 6–15.

⁷⁶ WTO, *Levelling the Trading Field for SMEs*, 2016, 86.

Table 2.1 Summary of crosscutting trade-related barriers that SMEs face when exporting to the UK

Crosscutting area	Trade-related barrier	Summary of SME concerns
Tariffs and taxes	High most-favored-nation (MFN) tariffs	<ul style="list-style-type: none"> High tariffs on certain U.S. exports to the UK, mainly agricultural products
	Additional customs duties on U.S.-origin products	<ul style="list-style-type: none"> EU's imposition of additional customs duties on certain U.S. industries (whiskey and boats) that have a high concentration of SMEs
	Value-added tax (VAT)	<ul style="list-style-type: none"> Difficulty in understanding and navigating UK's VAT system Difficulty in recouping the VAT
Customs procedures	Customs procedures	<ul style="list-style-type: none"> Extensive customs paperwork Unfamiliarity with UK customs procedures Shipping delays sometimes caused by the need for a European Union Registration and Identification (EORI) number
	De minimis threshold (DMT) ^a	<ul style="list-style-type: none"> Low DMTs that increase the cost and complexity of exporting to UK
Intellectual property (IP) measures	Registration	<ul style="list-style-type: none"> Financial challenges in acquiring, maintaining, and enforcing IP rights in the UK
	Protection	<ul style="list-style-type: none"> Acquisition and maintenance costs for patents that are higher in the EU than in other markets Financial losses associated with IP infringements
Temporary entry	Visa requirements	<ul style="list-style-type: none"> Limited UK work visa approval/allotments Complex procedure for obtaining visa approval for sponsoring employees Delays in filling positions caused by requirements to advertise for vacancies publicly Reduced access to skilled workers from EU member states due to Brexit uncertainties

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

^a A de minimis threshold (DMT) is defined as a monetary threshold below which customs duties and taxes on imports are not required, and customs paperwork on these imports is reduced.

With respect to these barriers, SMEs offered some general suggestions to enhance trade with the UK: (1) eliminate additional customs duties on certain products originating in the United States (commonly referred to as retaliatory tariffs); (2) implement higher de minimis thresholds (DMT) for UK imports; (3) develop simplified “trusted trader” programs to streamline customs procedures; (4) harmonize U.S. and UK IP rules so that IP systems are more efficient; and (5) eliminate the requirement that UK residents approve visa allotments.

Trade-related Barriers

Tariffs and Taxes

U.S. SME exporters cited several barriers related to tariffs and taxes as burdening their operations more than those of larger exporters. In particular, they noted as barriers high tariffs on products entering the UK, other duties and taxes paid on EU imports, and the EU's VAT system as it is applied in the UK. These measures increase costs for SMEs and strain their already limited resources. High tariffs increase the

costs of U.S. exports and make it difficult for SMEs to compete with EU producers.⁷⁷ In addition, SMEs generally cannot expend the same resources as larger exporters to stay up to date on possible tariff changes. As a result, SMEs may have a harder time both planning for tariff or tax changes and adjusting to them after they occur.

High Most-Favored-Nation Tariffs on Certain U.S. Exports to the UK

The EU now applies quotas and tariffs on behalf of the UK and the 27 other EU countries jointly; as a result, EU tariffs currently apply to U.S. goods exported to the UK.⁷⁸ As noted earlier, ad valorem tariffs are proportional to export values and should therefore affect large and small firms equally in the same export sector. However, SMEs are more likely than large enterprises to claim that high tariffs are a very important or the main impediment to exporting.⁷⁹

One reason for this disparate impact is that larger U.S. enterprises are more likely to export multiple types of products, and therefore can spread the impact of tariffs across their export product lines, offsetting higher tariffs on certain products with lower tariffs on others. In contrast, SMEs tend to specialize in a small range of products; they may have more exposure to high tariffs across their narrower product line, depending on the nature of their exports. Moreover, overall, SMEs tend to export goods that are subject to higher tariff rates. The Commission previously found that the trade-weighted average tariff on exports by U.S. SMEs was 41 percent higher than the average tariff on exports by large enterprises (3.4 percent for SMEs compared to 2.4 percent for large enterprises).⁸⁰

Moreover, exporters in the agricultural sectors experience higher tariff rates than other sectors: on average, EU tariffs on agricultural products were substantially higher (10.9 percent) than those on manufactured goods (3.9 percent).⁸¹ U.S. SMEs in the agricultural sectors commonly cited tariffs as an export barrier. Overall, most U.S. producers of agricultural products that export to the UK are SMEs, whereas the concentration of U.S. SME producers of manufactured goods varies, depending on the industry or product exported to the UK.⁸² The U.S. seafood industry, which consists largely of SMEs, faces among the highest tariffs.⁸³ For example, fresh and frozen seafood exports to the UK face average tariff rates of 26 percent.⁸⁴ Not only are seafood producers usually SMEs, but the dealers and

⁷⁷ USITC, *Small and Medium-sized Enterprises: EU*, July 2010, 3-17.

⁷⁸ TARIC is the integrated tariff of the EU. EC, "TARIC" (accessed March 22, 2019).

⁷⁹ USITC, *Small and Medium-sized Enterprises: Characteristics*, November 2010, 612, 6-17, and 6-15; USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 1-2.

⁸⁰ USITC, *Small and Medium-sized Enterprises: Characteristics*, November 2010, 6-15.

⁸¹ USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, 157.

⁸² See chap. 5, "Manufactured Goods," and chap. 6, "Food and Agricultural Products," for more information.

⁸³ See chap. 6, "Food and Agricultural Products" for more information. Industry representative, listening session, Boston, MA, December 7, 2018, 39-40; industry representative, interview by USITC staff, September 25, 2018; industry representative, interview by USITC staff, September 25, 2018.

⁸⁴ Tariff rates on unprocessed seafood are generally lower than for those on processed seafood. USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, 157; Seafish, *Tariffs on Seafood Imported into the EU*, March 2017.

distributors of these products are also SME exporters.⁸⁵ High tariffs were the most important barrier mentioned by the seafood industry.⁸⁶

Tariffs were also cited as the most important impediment to SME exports of processed foods to the UK.⁸⁷ According to a trade association, these SME exporters face tariff rates in the UK—14 percent on average—that are higher than those of many other partner countries.⁸⁸ The tariff level increases with the amount of processing for many products exported by SMEs, such as edible nut products. For example, raw nut exports face no or low tariffs, but processed foods containing nuts, such as peanut butter, face 12 percent tariffs.⁸⁹

SMEs that export other food-related products, such as wine, have difficulty competing against their counterparts that are located in the EU, as well as in certain countries that have preferential trade agreements with the EU, because imports from the United States are subject to higher tariffs. In particular, the UK imports most of its wine from competitors based in these other locations.⁹⁰ SMEs claim that the EU's tariffs on U.S. wine increase their costs relative to these other producers and make them much less competitive on price.⁹¹

Additional Customs Duties on Certain Products Originating in the United States

Similar to high most-favored-nation tariffs, retaliatory tariffs were cited as a trade-related barrier by SMEs. On June 22, 2018, the EU imposed additional customs duties on specific U.S. products in response to the United States' duty on imports of steel and aluminum under section 232 of the Trade Expansion Act of 1962. The EU placed about 180 types of products on its additional customs duties list,⁹² including agricultural products (such as whiskey, including bourbon whiskey) and steel and aluminum products, as well as manufactured goods (such as boats).⁹³ These additional customs duties are added to the tariffs and VATs which U.S. firms already incur when their products enter the UK.⁹⁴

Until the summer of 2018, there were almost no EU import tariffs on most spirits, and the UK had been a relatively open market for U.S. spirit exports. When the retaliatory tariffs went into effect on July 1,

⁸⁵ Industry representative, interview by USITC staff, Washington, DC, September 25, 2018.

⁸⁶ Industry representatives, interviews by USITC staff, December 12, 2018, and February 22, 2019; industry representative, interview by USITC staff, Washington, DC, September 25, 2018.

⁸⁷ See chap. 6, "Food and Agricultural Products," for more information. Industry representative, interview by USITC staff, November 29, 2018; industry representative, listening session, Los Angeles, CA, December 6, 2018, 57.

⁸⁸ GMA, written submission to USTR, *Negotiating Objectives for a U.S.-UK Trade Agreement*, January 15, 2019, 2.

⁸⁹ WTO, Tariff Analysis Online (accessed May 2, 2019).

⁹⁰ Industry representative, interview by USITC staff, May 9, 2019; industry representative, interview by USITC staff, May 8, 2019.

⁹¹ See chap. 6, "Food and Agricultural Products," for more information. Government of the UK, *Trade Tariffs: Look Up, Commodity Codes, Duty and VAT Rates*, accessed July 8, 2019. The EU has preferential trade agreements with non-EU producing countries, such as Chile and South Africa.

⁹² For a full list of U.S. products that were subject to additional customs duties, see WTO, *Immediate Notification under Article 12.5 of the Agreement on Safeguards*, May 18, 2018.

⁹³ For a more detailed discussion on bourbon whiskey trade, see chap. 6, "Food and Agricultural Products." For a more detailed discussion on boat trade, see chap. 5, "Manufactured Goods."

⁹⁴ European Commission, *EU Adopts Rebalancing Measures*, June 20, 2018.

2018, the 25 percent added duties on bourbon whiskey weakened demand for small-batch U.S. bourbon imports into the UK, particularly impacting U.S. SME craft distillers.⁹⁵ Several SMEs reported that following the imposition of the tariff, they received requests for price cuts, saw drastic reductions in orders, or had no buyers at all, or stated that they had deferred their market entry plans.⁹⁶ SMEs perceive that the increase in price of their product discourages purchasers and consumers from selecting their lesser-known spirits and that those buyers will choose larger distillers' well-known brands.⁹⁷

Similarly, U.S. SMEs that manufacture boats report that the EU's 25 percent additional customs duties has severely weakened their exports to the UK.⁹⁸ Most U.S. boat makers sell within the UK through a dealer, who already bore the costs of the standard tariff and the VAT.⁹⁹ Fewer UK dealers are able to pay both these costs and the additional retaliatory duties at the UK border, and UK customers are unwilling to pay higher prices than for boats imported from other countries. As a result, U.S. boat exporters are selling fewer boats to the UK than before the retaliatory tariffs were enacted.¹⁰⁰ UK dealers are buying fewer U.S.-made boats for UK boat shows and have stopped stocking U.S. boats in their showrooms.¹⁰¹ One U.S. SME representative noted that, where possible, it has responded by offering discounts (but less than the 25 percent tariff) to help offset the price increase, in an attempt to maintain sales.¹⁰²

UK's Value-added Tax (VAT) System

U.S. SMEs generally find the UK's VAT system difficult to understand and navigate. VATs are taxes applied at each stage of the production and sales process. Firms' sales are taxed, they receive credits for VATs paid on inputs, and they must document all relevant transactions. All firms selling goods and services to customers in the UK are subject to VATs, including foreign firms exporting to the UK from outside the EU.¹⁰³ The UK applies a VAT to all imported goods and services, with a standard import VAT

⁹⁵ The closest NAICS (3121.40) does not specify a classification code for bourbon, since it covers all distilled liquors. Using HTS-based data for bourbon (HTS 2208.30.6020 and 2208.30.6040), the value of UK imports from the United States from June 2018 to April 2019 declined 6 percent, compared to the same period in the prior year. WTO, *Immediate Notification under Article 12.5 of the Agreement on Safeguards*, May 18, 2018; Van Sant, "EU Tariffs Take Effect," June 22, 2018; Porter and Mathis, *Craft Bourbon Craze Is Over*, Bloomberg, November 21, 2018.

⁹⁶ Porter and Mathis, "Craft Bourbon Craze Is Over," November 21, 2018; interviews with industry representatives, interviews by USITC staff, October 11, 2018 and October 16, 2018; industry representative, email message to USITC staff, October 16, 2018 and October 23, 2018.

⁹⁷ Porter and Mathis, "Craft Bourbon Craze Is Over," November 21, 2018.

⁹⁸ The value of UK imports of boats (classified under NAICS 336612) from the United States declined 39 percent from June 2018 to April 2019, compared with the average of the same period the previous three years. Haynes, "Top Two Export Markets," June 1, 2018; industry representative, interview by USITC staff, Washington, DC, October 5, 2018; industry representative, interview by USITC staff, October 24, 2018.

⁹⁹ Industry representative, interview by USITC staff, October 24, 2018.

¹⁰⁰ Industry representative, interview by USITC staff, October 24, 2018.

¹⁰¹ Industry representative, interview by USITC staff, October 24, 2018.

¹⁰² Industry representative, interview by USITC staff, October 24, 2018.

¹⁰³ The UK's VAT is designed to tax the activities of businesses in a production chain based on the value they add to their inputs; so, businesses charge VATs on the sales they make (including sales to the final consumers) and receive credits for the VATs they paid when they purchased their inputs. Imports are subject to VATs so that domestic producers can compete on equal terms with foreign suppliers. The VAT applies to the value of the imported good plus the customs duty. USDOC, ITA, Export.gov, "European Union," October 20, 2016.

of 20 percent (although some imports, such as children’s car seats and most foods, qualify for a lower rate in the UK).¹⁰⁴ If a U.S. SME has a UK location, it may be responsible for paying the import VAT on goods and services it brings into the country. Otherwise, the UK business that imports the U.S. product or service is generally responsible for the VAT.¹⁰⁵ In order to get imported goods released from UK customs, businesses must provide a European Union Registration and Identification number (EORI number), which is usually granted only to VAT-registered firms.¹⁰⁶

Some U.S. firms find it hard to understand the VAT, and those that are responsible for paying the import VAT at the point of entry may need to invest time and effort to recoup the VAT from the UK buyer (which pays the VAT as part of the total purchase price). One SME representative suggested that there should be a way to allow U.S. companies that incur the UK’s import VAT to easily recover the tax before selling their product into the UK market.¹⁰⁷ Other SMEs say that duties and taxes are handled entirely by their UK distributors or dealers.¹⁰⁸ In some cases, SMEs may hire local accounting firms to assist them in recovering their VAT expenditures in the UK.¹⁰⁹ Additionally, U.S.-based SMEs with offices in the UK must register if their VAT-taxable turnover (the total value of everything they sell that is not exempt from VAT) is more than £85,000 (about \$111,000), which is an incentive to keep their operations below this threshold.¹¹⁰

Another VAT-related issue identified by U.S. SMEs arises from the application of a payment system called “Duty Delivery Paid” (DDP) in the UK.¹¹¹ Under rules governing DDP (“Incoterms”) established by the International Chamber of Commerce, the seller is responsible for the costs associated with the transport of goods, including the payment of VAT, as well as completing customs clearance paperwork on behalf of the purchaser.¹¹² However, there can be miscommunication between U.S. SME exporters and UK importers. UK buyers state that they must often pay VAT fees on UK imports on behalf of the U.S. exporter, and are surprised by this outcome.¹¹³

¹⁰⁴ VAT rates vary on different goods and services; see Government of the UK, “VAT Rates on Different Goods and Services” (accessed March 22, 2019).

¹⁰⁵ Responsibility for the VAT depends on several factors, including the location of the recipient and (in the case of services) whether the services will be performed in the UK. Helm, “VAT Responsibility for U.S. Companies,” April 11, 2017.

¹⁰⁶ Agarwal, *What Is an EORI Number?* (accessed March 13, 2019).

¹⁰⁷ Industry representative, listening session, Boston, MA, December 7, 2018, 47–48.

¹⁰⁸ Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 61; industry representative, interview by USITC staff, October 24, 2018.

¹⁰⁹ Industry representative, listening session, Boston, MA, December 7, 2018, 27, 29.

¹¹⁰ Loxton, *What Effect Does VAT Have on SMEs?* July 19, 2018.

¹¹¹ Delivered duty paid (DDP) is a delivery agreement “in which the seller assumes all of the responsibility, risk, and costs associated with transporting goods until the point where the buyer receives or transfers them at the destination port.” A DDP agreement would include payment for shipping costs, export and import duties, insurance, and any other expenses incurred during shipping to an agreed location in the buyer’s country. Investopedia, “Delivery Duty Paid—DDP,” January 29, 2019.

¹¹² Incoterms specify the obligations of buyers and sellers in international trade, including how imported merchandise is valued for the purposes of customs clearance. Investopedia, “Incoterms,” January 29, 2019; industry representative, email message to USITC staff, December 10, 2018; Freight Hub, “DDP Incoterms: Everything You Need to Know About Delivery Duty Paid,” January 9, 2018.

¹¹³ Industry representative, email message to USITC staff, December 10, 2018.

The UK's VAT affects services exports to the UK as well. One representative of the legal services industry stated that exports of these services are problematic for SMEs because their clients are perplexed by the UK VAT's certification and registration requirements, and have difficulty judging whether a VAT needs to be charged or collected.¹¹⁴ These U.S.-based legal firms are also unsure how to specifically collect or remit the VAT, which appears to be a recurring issue for the industry.¹¹⁵

Tariffs and Taxes: Ways to Enhance SME Participation in U.S.-UK Trade

SMEs had limited suggestions about ways to address the difficulties they face with respect to tariffs and taxes when exporting to the UK. Multiple sources suggested that lowering tariffs is an important way to enhance trade.¹¹⁶ In addition, industry representatives advocated for eliminating the retaliatory tariffs imposed by the EU, which they believe would enable them to increase exports back to levels seen before the EU enacted the retaliatory tariff.¹¹⁷ With respect to the VAT, the Commission's previous SME reports noted that some SMEs hire local personnel such as sales managers and consultants to deal with VAT systems.¹¹⁸

The UK government has said that the VAT may be modified when the UK officially leaves the EU, though the overall impact may be mixed.¹¹⁹ For example, imported goods that are worth less than £15 (about \$20) are currently exempt from VAT.¹²⁰ Industry sources indicate that there is possibility that if the UK makes no deal with the EU, then all goods that enter the UK from U.S. businesses may be liable for VAT.¹²¹ However, the UK has also said that businesses importing goods from the United States will be able to pay the VAT later—in their tax returns instead of at the border (which is how the UK currently treats imports from the EU)—a concession that could improve the cash flows of importers.¹²²

Customs Procedures

U.S. SME firms face challenges with respect to customs procedures, which create more administrative burden for these firms when they export to the UK.¹²³ Previous Commission reports on SMEs and industry research on barriers faced by U.S. SMEs exporting to the EU have also noted customs-related

¹¹⁴ Industry representative, listening session, Cleveland, OH, December 5, 2018, 14–15.

¹¹⁵ Industry representative, listening session, Cleveland, OH, December 5, 2018, 14–15.

¹¹⁶ NCA, written submission to the USITC in connection with Inv. Nos. TA-131-045 and TPA-105-006, March 15, 2019, 1; industry representative, interview by USITC staff, November 29, 2018; GMA, Letter to USTR on Negotiating Objectives for a U.S.-UK Trade Agreement, January 15, 2019.

¹¹⁷ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018; industry representative, interview by USITC staff, October 24, 2018.

¹¹⁸ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 2–11.

¹¹⁹ Government of the UK, *VAT for Businesses If There's No Brexit Deal*, August 23, 2018.

¹²⁰ Currency equivalents calculated using International Monetary Fund exchange rate data, June 25, 2019, https://www.imf.org/external/np/fin/data/rms_mth.aspx?SelectDate=2019-03-31&reportType=REP.

¹²¹ Robins, *Insight: VAT and Customs Implications*, September 4, 2018.

¹²² Robins, *Insight: VAT and Customs Implications*, September 4, 2018.

¹²³ Industry representative, interview by USITC staff, October 18, 2018; industry representative, interview by USITC staff, October 24, 2018.

challenges that add time and costs to exporting to the EU.¹²⁴ SME industry representatives indicated that they sometimes lack adequate resources to successfully navigate certain customs requirements at the UK border.¹²⁵ For example, an SME representative in the brewing industry noted the extensive paperwork required to export alcohol to the UK.¹²⁶ Separately, representatives from a large U.S. express firm pointed out that the rules concerning customs processing for small packages are similar to those for large container shipments into the UK, as well as other countries, and may therefore be burdensome for U.S. SMEs.

The need to present an EORI number at customs has caused shipping delays for SME exporters. An industry representative from the ocean and marine technology equipment industry stated that the company's products encountered shipment delays of up to 2.5 months in the UK because their products lacked an EORI number.¹²⁷ The company was not previously aware of the requirement to include an EORI number on their orders.¹²⁸

De Minimis Thresholds (DMTs) for Customs and VAT

Another major concern for SMEs are low DMTs for export shipments into the UK. A DMT is defined as a monetary threshold below which customs duties and taxes on imports are not required, and customs paperwork on these imports is reduced. DMTs are important not only because they reduce customs duties and fees for low-value shipments, but also because they reduce the paperwork needed to clear these shipments through customs.¹²⁹ The UK currently follows EU trade policy with respect to DMTs on customs duties and taxes. The UK DMT is £135 (about \$180) for imposing customs duties and £15 (about \$20) for imposing VATs (table 2.2).¹³⁰ The EU is reducing its VAT DMT to zero by January 1, 2021, which would make all shipments subject to VATs. Draft legislation proposed by the UK Parliament would likewise eliminate the VAT DMT (reducing it to zero) when the country officially leaves the EU.¹³¹ The UK's DMTs are already well below the U.S. DMT of \$800 for both customs duties and taxes; the U.S. DMT is among the highest (i.e., most favorable to SMEs) in the world.

¹²⁴ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 2-9 to 2-12.

¹²⁵ Industry representative, listening session, Houston, TX, December 3, 2018, 23; industry representative, listening session, Charleston, SC, December 7, 2018, 17, 30; USDOC, ITA, *Export.gov*, "United Kingdom Country Commercial Guide: Trade Barriers," September 8, 2018.

¹²⁶ Industry representative, listening session, Washington, DC, November 9, 2018, 19.

¹²⁷ Industry representative, listening session, Charleston, SC, December 7, 2018, 30; EC, Taxation and Customs Union, "Economic Operators Registration and Identification number (EORI)" (accessed February 6, 2019); Government of the UK, "Implications for Business and Trade of a No Deal Exit," February 26, 2019, 5.

¹²⁸ Industry representative, listening session, Charleston, SC, December 7, 2018, 30.

¹²⁹ Industry representatives, interview by USITC staff, October 29, 2018.

¹³⁰ Government of the UK, "Tax and Customs for Goods Sent from Abroad" (accessed July 8, 2019).

¹³¹ Government of the UK, "HMRC Impact Assessment of the VAT Treatment," February 25, 2019; European Council, "VAT on Electronic Commerce: New Rules," May 12, 2017; industry representative, interview by USITC staff, October 18, 2018.

Table 2.2 UK and U.S. de minimis threshold levels, 2019

	Value of goods	Payments
United Kingdom (EU DMTs)	Up to £15 (\$20)	No duties or VAT
	£15 (\$20) - £135 (\$178)	No duties; pay VAT
	Over £135 (\$178)	Duties and VAT required
United States	Up to \$800 (£607)*	No duties or taxes
	Over \$800 (£607)*	Duties and taxes required

Sources: Government of the UK, "Tax and Customs for Goods Sent from Abroad," <https://www.gov.uk/goods-sent-from-abroad/tax-and-duty> (accessed March 11, 2019); Mulcahy, "Brexit and Online Retail," May 2016, 9; Global Express Association, "Overview of De Minimis Value Regimes," March 28, 2018.

*Note: Currency equivalents calculated using International Monetary Fund exchange rate data, March 14, 2019, https://www.imf.org/external/np/fin/data/rms_mth.aspx?SelectDate=2019-03-31&reportType=REP.

Low UK DMTs increase the cost and complexity for SMEs exporting to the UK, increase delivery time, and add uncertainty for online customers.¹³² Another concern for SMEs is the large gap between the U.S. and UK DMTs. One U.S. SME representative commented that the difference between the high U.S. rate and relatively low UK rate disadvantages U.S. SMEs because there is a very big difference in the volume of goods that U.S. exporters can ship to the UK duty free, compared to what UK SMEs can ship to the United States.¹³³ In addition, the UK set its DMTs many years ago and has not adjusted them for inflation, which has eroded the value of the DMTs over time.¹³⁴ One industry association commented that DMT barriers "are so significant that they can prevent SMEs from exporting altogether."¹³⁵

The rapid growth of e-commerce shipments globally has increased the importance of DMTs, particularly with respect to the UK.¹³⁶ In 2018, the United States represented the single largest source for e-commerce imports into the UK; the UK consumers purchased €51.3 billion (\$61.6 billion) of goods from U.S. e-commerce retailers.¹³⁷ Because the UK's DMTs are low, a substantial share of e-commerce sales from the United States face customs and regulatory barriers akin to those for larger shipments.¹³⁸

Customs Procedures: Ways to Enhance SME Participation in U.S.-UK Trade

Given the growing importance of e-commerce, the development of streamlined customs procedures and higher DMTs for small e-commerce shipments would facilitate global trade.¹³⁹ Specifically,

¹³² Industry representatives, interview by USITC staff, October 29, 2018; International Trade Centre, "Bringing SMEs On to the E-Commerce Highway," 2016, 38.

¹³³ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 12.

¹³⁴ Industry representative, interview by USITC staff, October 18, 2018.

¹³⁵ Internet Association, written submission to the USITC, April 11, 2019.

¹³⁶ International Chamber of Commerce, "ICC Policy Statement on Global Baseline," February 2015.

¹³⁷ The United States is the leading foreign supplier of cross-border e-commerce to the UK. Internet Association, written testimony to the USITC, April 11, 2019, 1–2; E-commerce News Europe, "The Biggest Foreign E-commerce Market for UK Shoppers," February 12, 2019; eBay, written submission to the USITC, December 19, 2018.

¹³⁸ DMTs primarily impact SME business-to-consumer (B2C) e-commerce exports, as they are generally low-value, low-volume trade items; low DMTs limit U.S. SME e-commerce exporters from expanding into international markets by reducing the number of goods supplied by U.S. SMEs that can enter foreign markets through the simpler and expedited customs process.

¹³⁹ Industry representatives, interview by USITC staff, October 18, 2018.

representatives from the U.S. express industry suggest that the development of simplified “trusted trader” programs would facilitate trade by U.S. SMEs in the UK.¹⁴⁰ Such programs would reduce the burdensome paperwork and other requirements necessary to qualify for many of the larger “authorized economic operator” (AEO) programs that allow firms to benefit from streamlined customs procedures.¹⁴¹ SMEs typically lack the resources to successfully complete AEO program applications.¹⁴²

As noted above, high DMTs simplify cross-border delivery for U.S. SME exporters, and industry representatives note that higher DMT levels would result in a substantial increase in U.S. SME exports to the UK.¹⁴³ Packages that fall under a higher DMT face fewer customs procedures and paperwork requirements, including minimal data requirements and shorter processing times.¹⁴⁴ An SME representative commented that U.S. trading partners—including the UK—should harmonize at the higher U.S. DMT at \$800.¹⁴⁵ Moreover, the SME representative noted that in any future free trade agreements with the UK, the United States should seek to have a reciprocal rate for DMTs.¹⁴⁶

Intellectual Property Measures

The United States has consistently been the world’s top exporter of IP, with a substantial trade surplus.¹⁴⁷ The top destination for these exports has consistently been Europe, led by Ireland, Switzerland, and the UK, in that order.¹⁴⁸ IP is often an important contributor to the value and

¹⁴⁰ Trusted traders are firms (e.g., exporters, importers, manufacturers, and transportation services providers) that are preapproved as having met certain security requirements established by the World Customs Organization. UN, “Trade Facilitation Implementation Guide,” 2012; industry representatives, interview by USITC staff, Washington, DC, October 18, 2018.

¹⁴¹ Authorized Economic Operators (AEOs) are entities approved by their national customs administrations as trusted traders. AEOs benefit from expedited and streamlined customs procedures at border checkpoints. UN, “Trade Facilitation Implementation Guide,” 2012; industry representatives, interview by USITC staff, Washington, DC, October 18, 2018.

¹⁴² Industry representatives, interview by USITC staff, Washington, DC, October 18, 2018.

¹⁴³ Internet Association, written submission to the USITC, April 11, 2019.

¹⁴⁴ IMRG, E-commerce Worldwide, “Brexit and Online Retail?” May 2016, 9; industry representatives, interview by USITC staff, October 29, 2018.

¹⁴⁵ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 54–55.

¹⁴⁶ To further enhance trade for SMEs, the International Chamber of Commerce recommends DMTs of, ideally, \$1,000—or at least a minimum of \$200 that is indexed for inflation. Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 54–55; industry representative, interview by USITC staff, October 18, 2018; International Chamber of Commerce, “ICC Policy Statement on Global Baseline,” February 2015; International Chamber of Commerce, “Customs and Trade Facilitation” (accessed March 14, 2019).

¹⁴⁷ One measure of the value of U.S. IP in the international marketplace is U.S. exports in the services trade category “charges for the use of intellectual property,” which includes fees for the use of industrial processes, trademarks, franchise fees, computer software, and audiovisual and related products. In addition to this direct measure, a wide range of exports are considered IP-intensive. These encompass goods such as chemicals, semiconductors and components, and pharmaceuticals and medicines, as well as the products of many service sectors including software publishing, portfolio management, computer systems design, and audiovisual production. USPTO, *Intellectual Property and the U.S. Economy: 2016 Update*, 2016, 28–29.

¹⁴⁸ Ranked according to 2016 data. USDOC, BEA, table 2.2, “U.S. Trade in Services, by Type of Service and by Country or Affiliation” (accessed January 27, 2019); National Science Foundation, *Science and Engineering Indicators 2018* (accessed March 12, 2019), 8–55.

competitiveness of U.S. firms of all sizes.¹⁴⁹ For example, according to ACT|The App Association, “strong protection of intellectual property for copyrights, patents, trademarks, and trade secrets is essential” to its small firm members, who focus on software application development and technology.¹⁵⁰ While a larger business may be able to absorb the losses associated with IP infringement, for SMEs it can be an “end-of-life occurrence.”¹⁵¹

U.S.-based SMEs in a wide range of industry sectors—including agriculture, alcoholic beverages, medical devices, pharmaceuticals, information and communications technology, and other equipment—noted the importance of effective and affordable IP protection in the UK.¹⁵² Yet U.S. SMEs often face significant financial challenges in acquiring, maintaining, and enforcing their IP rights abroad.¹⁵³ One example is in the area of patents, where acquisition and maintenance costs are substantially higher in Europe than in the United States and other major markets.¹⁵⁴

Costs associated with gaining IP protection are particularly high because IP rights are territorial in nature; that is, IP rights are valid only in the country or region in which they are granted.¹⁵⁵ Many SMEs, however, are not aware that their U.S. IP rights do not protect against infringement in other countries.¹⁵⁶ The Patent Cooperation Treaty maintained by the World Intellectual Property Organization (WIPO) provides a unified procedure for filing patent applications to protect inventions in member countries. National or regional authorities retain the right to grant or reject the patent according to applicable law.¹⁵⁷ One SME industry representative said that his firm had spent more than \$150,000 in attorneys’ fees and costs to obtain U.S. patents, and that it was not worth spending more to broaden the firm’s IP protection so it could operate abroad.¹⁵⁸ Other SME representatives stated that the high costs and complexity associated with obtaining and protecting patents were overwhelming, with the result that SMEs often focus more on the U.S. market and less on international opportunities.¹⁵⁹

The EU’s Directive on Copyright in the Digital Single Market (EU Copyright Directive) is also an issue for U.S. SMEs wanting to trade with the UK. As the UK is currently a member of the EU, the country will be

¹⁴⁹ USPTO, *Intellectual Property and the U.S. Economy: 2016 Update*, 2016, 2; NSF, “Business Research and Development and Innovation: 2015,” August 30, 2018, tables 59 and 60 (showing percentages of survey respondents who consider IP rights to be important, broken out by firm size).

¹⁵⁰ ACT|The App Association, written submission to the USITC, February 13, 2019, 3.

¹⁵¹ USITC, hearing transcript, April 11, 2019, 20.

¹⁵² Industry representative, listening session, Boston, MA, December 7, 2018, 54–55; industry representative, listening session, Chicago, IL, December 4, 2018, 48–49; industry representative, listening session, Pittsburgh, PA, December 6, 2018, 75–77; industry representative, listening session, Salt Lake City, UT, December 10, 2018, 38; industry representative, listening session, Washington, DC, November 9, 2018, 48–49.

¹⁵³ USPTO, *International Patent Protection for Small Businesses*, 2012, 4.

¹⁵⁴ EC, “Patent Costs and Impact on Innovation,” December 2014, 21; USPTO, *International Patent Protection for Small Businesses*, 2012, 16 (in comparison to the United States, patenting in other markets tends to be expensive).

¹⁵⁵ National Research Council, *Global Dimensions of Intellectual Property Rights*, 1993, 4.

¹⁵⁶ USPTO, *International Patent Protection for Small Businesses*, 2012, 10; industry representative, listening session, Seattle, WA, December 3, 2018, 30.

¹⁵⁷ WIPO, “PCT FAQs,” October 2017.

¹⁵⁸ Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 76–77.

¹⁵⁹ Industry representatives, listening session, Pittsburgh, PA, December 6, 2018, 75, 79; USPTO, *International Patent Protection for Small Businesses*, 2012, 13.

required to implement the EU's new standards into its national legislation within two years (by 2021).¹⁶⁰ A key aim of the directive is to ensure remuneration and greater control in the online environment for content owners in the audiovisual, music, and press publishing sectors, as well as clearer rules for users of copyrighted materials.¹⁶¹ While there is a diversity of views on the potential effects of the EU Copyright Directive on U.S. SMEs,¹⁶² the UK has two years to determine how it will be implemented, and it has stated that it will focus on striking an appropriate balance between the interests of the affected parties.¹⁶³

Intellectual Property Measures: Ways to Enhance SME Participation in U.S.-UK Trade

Many SMEs have limited understanding of how to obtain and enforce IP rights abroad, as well as the potential impacts of Brexit on these issues. According to SME representatives, having information as soon as possible and in a readily understandable format would go a long way toward demystifying regulatory requirements.¹⁶⁴ In this regard, one SME representative mentioned that the UK government's Intellectual Property Office (UKIPO) publishes a "toolkit" to inform U.S. SMEs about protecting their IP within the UK and the tools available to help them.¹⁶⁵ The toolkit describes the major types of IP rights, gives contact information for the relevant government agencies, and includes links to online training for firms to use to order to identify their assets and how to protect them.¹⁶⁶

SME industry representatives also support the harmonization of IP systems so that SMEs can save on IP costs and more efficiently enter or export to the UK market.¹⁶⁷ The United States and others have entered into international treaties that set common standards and procedures for different types of IP rights.¹⁶⁸ Members of the EU and the European Economic Area (EEA)¹⁶⁹ also have harmonized certain requirements for trademarks, patents, trade secrets, and copyrights through various treaties, regulations, and directives.¹⁷⁰ The current status of EU harmonization is summarized briefly in table 2.3, as well as the potential effects of Brexit on this harmonization, as assessed by the UKIPO and UK lawyers.

¹⁶⁰ The Copyright Directive was proposed in 2016 and, in a series of proceedings, approved by the Council of the EU, the Commission, and the European Parliament in spring 2019. Daniel, "What to Make of the European Directive," April 25, 2019; CClA, written submission to the USITC, April 30, 2019, 5.

¹⁶¹ EC, "EU Negotiators Reach a Breakthrough to Modernise Copyright Rules," February 13, 2019.

¹⁶² Internet Association, written submission to the USITC, April 11, 2019, 4–5 (stating that the directive will make it harder for U.S. SMEs to compete in the EU); CClA, written submission to the USITC, April 30, 2019, 5–6 (raising concerns about the effects of the directive on SMEs); News Media Alliance, written submission to the USITC, April 30, 2019, 2–4 (stating that the directive will benefit small U.S. news publishers and the creative industries).

¹⁶³ CClA, written submission to the USITC, April 30, 2019, 6, note 22.

¹⁶⁴ Industry representative, listening session, Washington, DC, November 9, 2018, 55–57.

¹⁶⁵ Industry representative, interview by USITC staff, March 4, 2019.

¹⁶⁶ Government of the UK, UKIPO, "Guidance: UK Toolkit for US SMEs," March 14, 2018; industry representative, interview by USITC staff, March 4, 2019.

¹⁶⁷ Industry representative, listening session, Boston, MA, December 7, 2018, 35–36, 54–55; industry representative, listening session, Washington, DC, November 9, 2018, 53–54.

¹⁶⁸ WIPO, "PCT FAQs," October 2017.

¹⁶⁹ The EEA includes EU countries and also Iceland, Liechtenstein, and Norway.

¹⁷⁰ Government of the UK, UKIPO, "Guidance: IP and Brexit," April 2, 2019.

Table 2.3 Intellectual property rights harmonization in the EU

	Trademarks	Patents	Trade secrets	Copyrights
Subject matter	Brand names, slogans, and logos that identify and distinguish the source of goods or services.	Inventions, in all fields of technology, that are new, involve an inventive step, and are susceptible to industrial application.	Valuable information that is treated as confidential and gives the firm a competitive advantage.	Artistic, musical, literary works, sound recordings, broadcasts, and films.
EU harmonization	EU trademarks are obtained through a single application and include a single enforcement mechanism applicable in all member states. National trademarks are also available.	Patents covering the UK can be granted by the UK's Intellectual Property Office or the European Patent Office (EPO), if a company wants a patent in multiple jurisdictions including the UK.	The EU's 2016 Trade Secrets Directive harmonized definitions and clarified rights related to trade secrets in the EU.	International treaties and EU copyright legislation harmonize many aspects of copyright law.
Potential effects of Brexit	EU trademarks would no longer include UK protection. UK expects to create independent UK trademarks that will retain the filing dates and seniority of the EU trademark.	UK expects to remain a member of the EPO, and that European patents would continue to include the UK. Entry into force of the EU Unitary Patent System, which is intended to provide greater patent harmonization, has been delayed.	International treaties and EU legislation generally have been implemented into UK law.	The UK would not be required to adopt national laws implementing the requirements of the EU Copyright Directive.

Sources: Government of the UK, UKIPO, "Guidance: IP and Brexit," April 2, 2019; Loyens & Loeff, "Brexit: What Might Change in Intellectual Property?" (accessed July 8, 2019); Marks & Clerk, "Brexit and Patents," 2019; Marks & Clerk, "Brexit and Trademarks," 2018; Marks & Clerk, "Brexit and Copyright," 2018.

Temporary Entry Restrictions

Other potential barriers to doing business in the UK are temporary entry issues relating to sponsoring foreign employees, the UK's visa approval process, and hiring regulations. These may have a substantial impact on SMEs because SMEs have fewer resources to pay visa fees and maintain expertise in visa legislation than do large companies.¹⁷¹ Measures affecting the temporary entry of businesspersons, which are typically embodied in a country's visa regulations, dictate the conditions under which (1) individuals can travel across international borders to supply a good or service overseas, and (2) firms can

¹⁷¹ Industry representative, listening session, London, England, UK, April 23, 2019, 76; industry representative, listening session, Birmingham, England, UK, April 25, 2019, 37–38; industry representative, listening session, Edinburgh, Scotland, UK, April 29, 2019, 23, 29; industry representative, listening session, Seattle, WA, December 3, 2018, 22, 43–44.

transfer employees to overseas affiliates. Restrictions on the movement of persons may raise costs and hinder trade and investment.¹⁷²

SMEs cited a few examples of the difficulties they currently experience with temporary entry. For example, a representative of a trade facilitation company notes that firms may experience problems when sending U.S. technicians to the UK to service or repair their products.¹⁷³ A representative of a U.S.-based SME that has a UK affiliate reports difficulty in recruiting talent from outside of the UK and the EU to address specific skill gaps.¹⁷⁴ Another SME representative reports that UK work visas may require approval from a company officer with British residency or may need to be allocated from a firm's limited visa allotment; the representative contends that the removal of these requirements would facilitate SMEs' operations in the UK.¹⁷⁵

At present, the cross-border movement of persons from non-EU and non-EEA member countries (including the United States) to the UK is subject to a tiered points-based system.¹⁷⁶ Firms must meet certain criteria in order to sponsor an employee's visa application. For example, to sponsor applicants for certain types of Tier 2 and Tier 5 visas, an employer must conduct a "resident labour market test" to ensure that no settled worker is available to fill a particular position.¹⁷⁷ Under this requirement, employers must advertise vacancies via certain channels and for a minimum of 28 calendar days.¹⁷⁸ A few SME representatives noted the existence of this requirement, and one SME representative indicated that this particular requirement is challenging and delays the process of filling open positions.¹⁷⁹

Until the UK officially leaves the EU, EU citizens will be able to enter, leave, and work in the UK without a visa. However, tighter post-Brexit entry requirements reportedly may pose a barrier to firms that operate in the UK and that rely on the ability to access skilled workers from EU countries.¹⁸⁰ The UK

¹⁷² Neumayer, "On the Detrimental Impact of Visa Restrictions," 2011.

¹⁷³ Industry representative, interview by USITC staff, October 11, 2018.

¹⁷⁴ Industry representative, listening session, Belfast, Northern Ireland, UK, April 26, 2019, 19.

¹⁷⁵ Industry representative, email message to USITC staff, October 23, 2018.

¹⁷⁶ Under this system, the UK issues work-related visas under three tiers: Tier 1 (issued to entrepreneurs, investors, and those with exceptional talent), Tier 2 (long-term visas issued to intra-corporate transferees and skilled workers), and Tier 5 (short-term visas issued to individuals that engage in activities permitted under an international agreement, among others). Government of the UK, "Work in the UK" (accessed March 27, 2019); Workpermit.com, "UK Five Tier Points-Based Immigration System" (accessed February 13, 2019).

¹⁷⁷ In 2017, U.S. nationals accounted for 9,841, or 8 percent, of all work-related visas issued by the UK to main applicants. The majority of these U.S. nationals (60 percent) received Tier 2 visas. A "settled worker" is a UK national; or a European Economic Area (EEA) national exercising their "treaty right" to free movement (to work in the UK); or a citizen of a UK Overseas Territory, except citizens of Sovereign Base Areas in Cyprus. Visas requiring a "resident labour market test" include Tier 2 (general) visas (which are issued to skilled workers), Tier 2 (minister of religion) visas, and Tier 5 (temporary workers) visas; temporary workers may include religious workers, seasonal workers, creative and sporting workers, and others. Sponsors of Tier 2 (general) visas may be exempt from this requirement under certain circumstances (for example, if the position that is being filled by a foreign employee is on the list of "shortage occupations"). Government of the UK, Home Office, "Tiers 2 and 5: Guidance for Sponsors," March 2019, 118; Government of the UK, "UK Visa Sponsorship for Employers" (accessed May 3, 2019).

¹⁷⁸ Government of the UK, Home Office, "Tiers 2 and 5: Guidance for Sponsors," March 2019, 122–27.

¹⁷⁹ Industry representative, listening session, London, England, UK, April 23, 2019, 41–42; industry representative, listening session, Belfast, Northern Ireland, UK, April 26, 2019, 22–24.

¹⁸⁰ Industry representatives, listening session, Seattle, WA, December 3, 2018, 43–44.

government has indicated that citizens of the Republic of Ireland will remain eligible for visa-free entry and exit following Brexit,¹⁸¹ and citizens of EU countries who currently reside in the UK will likely be eligible to remain in the country—either indefinitely or for an extended period of time—under the EU Settlement Scheme. However, the process for admitting other EU citizens after Brexit has not yet been determined.¹⁸²

An SME representative specifically states that there is unease regarding the possibility that post-Brexit barriers affecting EU workers' access to the UK could disrupt some companies' operations.¹⁸³ Further, some industry representatives indicate that while they do not currently face difficulties in transferring workers to the UK, future access to skilled workers is a concern.¹⁸⁴ UK data on long-term migration reveals that emigration by EU citizens to the UK has declined substantially since the Brexit vote in June 2016.¹⁸⁵ Some argue that this decline may be a result of EU citizens' uncertainty regarding their post-Brexit status.¹⁸⁶ Already, skill shortages resulting from Brexit concerns have led to salary inflation that reportedly has a large negative effect on SMEs.¹⁸⁷

Temporary Entry Restrictions: Ways to Enhance SME Participation in U.S.-UK Trade

SME representatives identified a few measures related to temporary entry that may enhance SME participation in U.S.-UK trade, or that already do so. One source indicates that the UK Department for International Trade assists and provides guidance to firms in recruiting overseas talent and navigating

¹⁸¹ The UK has indicated that Brexit will not affect the rights of citizens of the Republic of Ireland—including, for example, their right to enter, live and work, and obtain public services in the UK—even if the UK does not reach an agreement with the EU before Brexit occurs. Brexit has reportedly led to a large increase in Irish passport applications among British citizens, as some hope to retain benefits of EU citizenship, such as the ability to travel to EU countries easily, after the UK leaves the EU. Gannon, “Irish Status in UK ‘Is Assured’ after Brexit,” September 20, 2018; Halpin, “Brexit Sends Britons Seeking Irish Passports Up,” December 30, 2018; Doyle and Edwards, “How Much Might Irish Passport Be Worth?” November 13, 2018; O’Riordan, “My Children Say I’m Hypocritical,” March 5, 2019.

¹⁸² The EU Settlement Scheme is a program through which citizens of the EU, Iceland, Liechtenstein, Norway, and Switzerland and their family members that currently reside in the UK can apply to remain in the country following Brexit. Individuals must apply by June 30, 2021 (if the UK and EU agree to an exit agreement) or December 31, 2020 (if there is no deal). Successful applicants are typically granted settled status if they have been continuously resident in the UK for five years, or pre-settled status if they have been resident for less than five years. Both settled and pre-settled status allow individuals to work and study in the UK; travel to and from the country; and access public benefits. For more information, see Government of the UK, “Apply to the EU Settlement Scheme” (accessed June 17, 2019).

¹⁸³ Industry representatives, listening session, Seattle, WA, December 3, 2018, 43–44.

¹⁸⁴ Industry representatives, listening session, Seattle, WA, December 3, 2018, 22, 43–44.

¹⁸⁵ Specifically, work-related migration by EU citizens to the UK declined at an annual rate of 22.5 percent from June 2016 to June 2018, in stark contrast to the 23.0 percent growth rate in such migration during June 2012–June 2016. USITC calculations based on Government of the UK, Office for National Statistics, *Provisional Long-Term International Migration Estimates*, table 3, “International Passenger Survey (IPS) Estimates of Long-term International Migration,” rolling annual data for the UK, year ending June 2018.

¹⁸⁶ Grierson, “Net Migration to UK Drops to Lowest Level,” August 24, 2017.

¹⁸⁷ Booth, “Salary Inflation Hits 53-Month High in London,” January 9, 2019.

the UK visa system suggesting that other SMEs can better use this resource if they knew about it.¹⁸⁸ An SME representative suggests that U.S. SMEs operating within the UK would benefit from the elimination of the UK provision requiring UK residents to approve visa allotments.¹⁸⁹ Additionally, one SME representative said that the reintroduction of Scotland’s Fresh Talent Initiative would prompt U.S. firms to establish a presence in that country.¹⁹⁰

¹⁸⁸ Industry representative, interview by USITC staff, Belfast, Northern Ireland, UK, April 26, 2019.

¹⁸⁹ UK firms that are licensed to sponsor foreign workers for Tier 2 visas may assign a limited number of certificates of sponsorship each year. These sponsor-specific caps are based on several factors—for example, the firm’s request, the extent and type of the firm’s operations, and its past observance of immigration regulations. Government of the UK, Home Office, “Tiers 2 and 5: Guidance for Sponsors,” March 2019, 15, 99–101; industry representative, email message to USITC staff, October 23, 2018.

¹⁹⁰ Under this initiative, which was in effect from 2005 to 2008, non-EU students that had earned an undergraduate or graduate degree in Scotland were eligible for a two-year work visa. Government of the UK, UK Parliament, “Post Study Work Schemes,” accessed May 8, 2019; industry representative, listening session, Edinburgh, Scotland, UK, April 29, 2019, 25–26.

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Chapter 3

Standards and Regulations

Collectively, technical regulations, standards, and conformity assessment procedures form the crosscutting trade-related barrier cited most often by SMEs as inhibiting their exports to the UK.¹⁹¹ Technical regulations are government-mandated characteristics, production methods, packaging, or labeling requirements for specific products. Standards are “approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods.”¹⁹² By contrast with regulations, standards are voluntary in nature. Both standards and technical regulations may include “terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method.”¹⁹³ Conformity assessment is a procedure carried out to ensure that an item that a seller is supplying actually meets the requirements specified or claimed under a standard or regulation. Methods of conformity assessment include sampling and testing, inspection, a supplier’s declaration of conformity, certification, management system assessment, and registration.

SMEs noted several distinct issues with respect to standards and regulations in the UK that disadvantage them, in their view, more than larger companies. A major problem cited by SMEs is that the UK often does not recognize the standards set by U.S. standards bodies. According to previous SME studies by the USITC, differences in standards and regulations disproportionately impact SMEs because they are less able to afford the high cost of complying with regulatory systems abroad, including the cost of dedicating staff resources to compliance.¹⁹⁴ Also, SMEs are less likely to participate in developing EU standards, either because of the costs involved or because SMEs lack familiarity with the standard-setting process in the EU.¹⁹⁵

Administrative burdens associated with these regulations include additional paperwork, recordkeeping, testing, and certification requirements.¹⁹⁶ SMEs are more likely to lose export potential or exit a foreign market due to high fixed compliance costs. A WTO report stated that larger firms are better able to absorb these fixed costs because they have higher market shares and lower demand elasticities (resulting in customer demand being less affected by price changes) than SMEs, thus they can pass less of the standards-related compliance cost onto their end customers.¹⁹⁷

SMEs suggested several measures that would help them to enhance their participation in markets in which standards and regulations play an important role. These included regulatory harmonization, mutual recognition of standards or credentials, and more-accessible information about these standards

¹⁹¹ Industry representatives, listening session, Boston, MA, December 7, 2018, 35–36; industry representative, listening session, Salt Lake City, UT, December 10, 2018, 35–37.

¹⁹² Trade Agreements Act of 1979, 19 U.S.C. § 2571 (1979), “Technical Barriers to Trade (Standards), Definitions and Miscellaneous Provisions,” <https://www.law.cornell.edu/uscode/text/19/2571>.

¹⁹³ WTO, “Agreement on Technical Barriers to Trade,” Annex I, accessed July 12, 2019.

¹⁹⁴ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 2-3.

¹⁹⁵ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 2-3.

¹⁹⁶ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 6-5.

¹⁹⁷ WTO, *World Trade Report: Levelling the Trading Field*, 2016, 86–87.

and regulations. Table 3.1 summarizes the specific issues SMEs encounter with respect to standards, regulations, and conformity assessment procedures.

Table 3.1 Summary of trade-related barriers involving standards, regulations, and conformity assessments that SME firms face when exporting to the UK

Crosscutting area	Trade-related barrier	Summary of SME concerns
Standards and regulations for manufactured goods	Lack of recognition	<ul style="list-style-type: none"> UK bodies do not recognize international standards developed by U.S.-based standards organizations. Some regulations favor EU products (e.g., the Registration, Evaluation, Authorisation and Restriction of Chemicals regulation, or REACH). SMEs have limited opportunities and ability to contribute to EU standards development process.
	Lack of harmonization	<ul style="list-style-type: none"> U.S./EU regulations are not harmonized completely. Differing U.S./UK product standards shut U.S. products out of UK market.
	Compliance	<ul style="list-style-type: none"> SMEs lack experience in working with UK notified bodies to get products accepted for UK market. Compliance with current and new UK/EU standards is costly and burdensome.
Standards and regulations for food and agricultural products	Sanitary and phytosanitary (SPS) measures	<ul style="list-style-type: none"> UK regulatory bodies have restrictions on importing U.S. foods made with genetically modified organisms (GMOs) into the UK. GMO approval process takes longer in the EU than in the United States. EU's ban on antibiotic use for growth promotion has negative effects on U.S. animal product exports.
	Standard-setting approach	<ul style="list-style-type: none"> Use of maximum levels (MLs) for contaminants relies on a hazard-based approach instead of the risk-based approach used in the United States. EU's process for setting maximum residue levels (MRLs) using the hazard-based approach make it difficult for U.S. SMEs to export agrifoods.
Conformity assessment procedures	Testing requirements and procedures	<ul style="list-style-type: none"> UK does not accept testing performed in the United States for certain U.S.-based products. UK testing facilities are sometimes unwilling to adopt different testing procedures to accommodate U.S. products. UK testing facilities delay testing of U.S. products or show preferential treatment in testing EU products. Duplicative certifications may be needed for sales in the United States and the UK. Separate testing is required to acquire Conformité Européenne [European Conformity] (CE) markings on products for sale in the EU market, which can add significant costs.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

Development of EU/UK and U.S. Standards and Technical Regulations

The United States and the EU have markedly different approaches to involving producers in developing and adopting standards and regulations. The EU approach makes it especially difficult for SMEs to export to the UK compared to larger U.S. and EU exporters, a concern noted in the Commission’s previous SME reports.¹⁹⁸

In the United States, standards are largely developed by private entities with input from government entities. The American National Standards Institute (ANSI) coordinates this voluntary system, with the goal of including all interested parties in the standards development process.¹⁹⁹ U.S. government regulators then typically base technical regulations on these developed standards. U.S. regulations may also be based on standards developed by other U.S.-based organizations, such as the American Society of Mechanical Engineers (ASME), or those developed by international organizations such as the International Organization for Standardization (ISO).²⁰⁰

By comparison, harmonized technical regulations in the EU may have been developed under either the “New Approach” that took effect in 1985 or under the “Old Approach” that preceded it.²⁰¹ Under the Old Approach, detailed technical requirements were included in legislation, and conformance with the regulation was often directly confirmed by a governmental body.²⁰² Under the New Approach, only the essential requirements²⁰³ for a good or service are included in EU legislation. Standards are then developed by approved EU standard-setting bodies to ensure that a product meets the essential requirements set down by the legislation, and these bodies seek to coordinate with international standard-setting bodies recognized by the EU.²⁰⁴ A product that conforms to a standard developed by one of these EU organizations is assumed to comply with the relevant regulation.²⁰⁵ There are also some

¹⁹⁸ Industry representative, listening session, Washington, DC, November 9, 2018, 17–18; ASTM International, “Strengthening Transatlantic Trade Through a Common Understanding” (accessed March 25, 2019); USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 2-3.

¹⁹⁹ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 2-4 to 2-5.

²⁰⁰ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 2-4.

²⁰¹ The New Approach was updated in 2008 into the New Legislative Framework but is still commonly referred to as the New Approach. BSI, *European Standards and the UK*, 17 (accessed February 6, 2019).

²⁰² Goods such as food products, motor vehicles, pharmaceuticals, and cosmetics are regulated under the “old” approach. EC, Trade Help Desk, “Technical Requirements” (accessed April 1, 2019).

²⁰³ These essential requirements can cover groups of similar products or horizontal issues such as electromagnetic compatibility. CEN, CENBoss, “The New Approach,” June 14, 2019, 2.

²⁰⁴ Three general EU bodies that develop the standards are the European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC), and European Telecommunications Standards Institute (ETSI). CEN, “Developing European Standards” (accessed March 11, 2019). The international bodies are the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU), all based in Geneva, Switzerland. EU, Regulation (EU) No. 1025/2012, October 25, 2012, 9 (accessed March 25, 2019).

²⁰⁵ If a good does not conform to an EU standard developed by one of these approved EU standards-setting bodies, the producer bears the burden of proof that the product meets the essential requirements. CEN, CENBoss, “The New Approach,” June 14, 2019, 3.

goods for which there are no harmonized EU-wide regulations, but that may be subject to national regulation. With very few exceptions, a product that is approved for sale in one EU country may be legally sold throughout the EU.²⁰⁶

SMEs may have difficulty in meeting EU or UK standards and regulations because these are often developed by EU members, and U.S.-based SMEs usually have little participation in developing them. A white paper by ASTM International, a U.S. standards development organization, claims that the EU system has been very effective in facilitating standards within the EU internal market, but that these EU standards do not integrate well with the U.S. system of standards.²⁰⁷ Further, ASTM International reports that U.S.-based SMEs without an EU presence have “limited opportunities to contribute to the European standards development process.”²⁰⁸ Industry research and SME representatives reaffirmed that the lack of participation of U.S. bodies in the development of EU standards, and the cost of compliance with those standards, is a major barrier for U.S.-based SMEs when exporting to the UK.²⁰⁹

Furthermore, a lack of transparency in the UK’s laws makes SMEs hesitant or nervous to export products to the UK because they are unsure if they would be in violation of UK law.²¹⁰ It is often difficult for SMEs to find information about the UK’s numerous industrial regulations pertaining to manufacturers.²¹¹ Moreover, many SMEs do not have enough resources to understand regulations.²¹²

Standards and Technical Regulations for Manufactured Goods

SMEs often struggle with both U.S. and UK standards and rules for regulatory compliance when exporting manufactured goods abroad, especially when the EU imposes new standards. One observer described the EU’s reluctance to recognize ASTM International standards as a significant barrier to U.S. SME firms exporting manufactured goods to the UK.²¹³ An industry representative noted that even though some ASTM International standards are similar to those of ISO, the International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU), the ASTM International standards are not accepted because they are not recognized by EU standard-setting bodies.²¹⁴ SMEs

²⁰⁶ Government of the UK, “Mutual Recognition Regulation across the EEA,” October 16, 2012.

²⁰⁷ ASTM International, “Strengthening Transatlantic Trade through a Common Understanding” (accessed March 25, 2019).

²⁰⁸ ASTM International, “Strengthening Transatlantic Trade through a Common Understanding” (accessed March 25, 2019).

²⁰⁹ WTO, *Levelling the Trading Field*, 2016, 81, 106; industry representative, listening session, Dallas, TX, December 5, 2018, 15–16.

²¹⁰ U.S. state government representative, listening session, Pittsburgh, PA, December 6, 2018, 31–32.

²¹¹ Industry representative, listening session, Washington, DC, November 9, 2018, 55–56.

²¹² Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 38.

²¹³ According to ASTM International’s website, ASTM International standards contribute to “research, production, and environmental safety for finished products manufactured from rubber, plastics, and raw materials.” ASTM International, “About Us,” <https://www.astm.org/ABOUT/overview.html> (accessed March 11, 2019); industry representative, interview by USITC staff, October 30, 2018.

²¹⁴ According to its website, the International Electrotechnical Commission (IEC) is the world’s leading organization that prepares and publishes international standards for all electrical, electronic, and related technologies. IEC,

interested in exporting have already invested time and money to meet ASTM International standards, and are disadvantaged by comparison with larger firms because they do not have large staff or financial resources to absorb the cost of meeting these differing standards.²¹⁵ Moreover, a certain level of knowledge or experience is required for firms to work with UK and EU notified bodies so that their ASTM-compliant products can be accepted in the UK; SMEs often lack these abilities, forgoing potential export opportunities in the UK as a result.²¹⁶ SME representatives cited numerous EU or UK standards and regulations as particularly problematic when exporting to the UK (table 3.2).

Table 3.2 Standards and regulations noted as barriers for manufactured goods exports to the UK

Industry sector	Standard/regulation	Description	Governing body
Marine and ocean technology equipment	Recreational Craft Directive	Standard that sets out minimum technical, safety, and environmental standards for the trade of boats, personal watercraft, marine engines, and components in Europe.	International Organization for Standardization
Medical goods	In Vitro Diagnostic Medical Device Regulation (IVDR)	Regulation that creates a harmonized set of rules to ensure the safety of in vitro diagnostic medical devices (IVDs), including new testing requirements and reclassification of medical devices based on risk.	European Medicines Agency
Medical goods	Europe Medical Devices Regulation (EMDR)	Regulation that concerns the placing on the market of medical devices for human use and accessories in the EU; also applies to clinical trials concerning such medical devices conducted within the EU.	European Medicines Agency
Chemicals	Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation	Regulation that requires companies to communicate information on chemicals up and down their supply chain in order to ensure that manufacturers, importers, and customers are aware of information relating to health and safety of the products supplied.	European Chemicals Agency
Chemicals	Classification, Labelling, and Packaging Regulation	Regulation that requires companies to identify hazardous chemicals and communicate these hazards to users through labeling. It also provides the basis for safety data sheets regulated under the REACH Regulation, and sets requirements for the packaging of hazardous chemicals.	European Chemicals Agency

Sources: Compiled by USITC.

“About the IEC,” <https://www.iec.ch/about/?ref=menu> (accessed March 11, 2019). The International Telecommunication Union’s website states that it is a specialized agency of the United Nations that is responsible for issues concerning information and communications technology. ITU, “About the ITU,” <https://www.itu.int/en/about/Pages/default.aspx> (accessed March 11, 2019); industry representative, interview by USITC staff, October 30, 2018.

²¹⁵ Industry representative, interview by USITC staff, October 30, 2018.

²¹⁶ Industry representative, interview by USITC staff, October 30, 2018.

The aerospace industry is subject to technical regulations both in the EU/UK and the United States through their respective organizations—European Aviation Safety Agency (EASA) and the Federal Aviation Administration (FAA). In recent years, the EASA and FAA have been working together to harmonize some regulations through bilateral agreements and regulatory cooperation agreements. For example, EASA and FAA reciprocally accept FAA’s Technical Standard Orders (TSOs) and EASA’s European Technical Standard Orders (ETSOs) under the Technical Implementation Procedures (TIP), making it easier to accept design certificates from each other.²¹⁷ However, SMEs in the sector noted that FAA regulations are still not fully harmonized with EASA regulations, and some SMEs have been forced to recertify their products under EASA standards when exporting to the UK; this is a major concern.²¹⁸

A representative of the medical device industry stated that SMEs in that sector find it difficult to comply with domestic regulations set by the U.S. Food and Drug Administration and maintain accreditation to ISO standards, while also complying with UK-specific country requirements.²¹⁹ New EU standards and regulations have increased costs and administrative burden for medical goods manufacturers. Examples include the EU’s In Vitro Diagnostic Medical Device Regulation (IVDR) and the European Medical Devices Regulation (MDR), which both went into effect in 2017.

A report by EY stated that these new regulations greatly affect both SMEs and large firms. For example, as a result of IVDR going into effect, for the first time approximately 80 percent of medical devices will require CE approval. (“CE” is an acronym for the French “Conformité Européenne,” or “European Conformity.”) Before these new regulations were implemented, only 20 percent of medical devices were required to obtain CE markings.²²⁰ A representative of a U.S. medical device SME noted that the firm was working with the British Standards Institute, UK’s national standards organization, and with Intertek, a product testing and certification company based in London, to meet certain standards for the recertification of their products for sale in the UK market.²²¹ One industry representative noted that sometimes the British Standards Institute’s requirements can conflict with U.S. standards, raising costs for SMEs and disproportionately affecting them compared to larger firms.²²²

Technical regulations in other sectors were cited as significant barriers for U.S. manufactured goods exports, and some are seen as “protectionist” in favor of EU-made products.²²³ One example is EU’s Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) program, which regulates exports of chemical substances to the UK. A chemicals industry representative said that REACH has made U.S. firms reevaluate their participation in the UK market because the program requires the company to register every substance used in a product (as opposed to only registering the entire product).²²⁴ As a result, this representative’s SME had to narrow its product offering for the EU market.²²⁵ REACH has forced some SMEs to use a vendor to perform all the REACH registrations for a

²¹⁷ The sixth revision of the TIP was signed on September 26, 2017.

²¹⁸ Industry representatives, listening session, Salt Lake City, UT, December 10, 2018, 46–48.

²¹⁹ Industry representative, interview by USITC staff, October 29, 2018.

²²⁰ EY, “MDR and IVDR: Reshaping Europe’s Medtech Industry,” 2017.

²²¹ Industry representative, interview by USITC staff, October 29, 2018.

²²² Industry representative, listening session, London, England, UK, April 23, 2019, 32–33.

²²³ Industry representative, listening session, Chicago, IL, December 4, 2018, 24–25.

²²⁴ Industry representative, listening session, Chicago, IL, December 4, 2018, 22–24.

²²⁵ Industry representative, listening session, Chicago, IL, December 4, 2018, 22–24.

product on behalf of the firms. Alternatively, some SMEs simply chose to manufacture chemicals in the EU; however, the latter approach is more feasible for a large firm than an SME due to economies of scale.²²⁶

In other industries as well, differing standards and regulations between the UK and the United States may shut U.S.-made manufactured products out of the UK market. One SME representative stated that his client, which produces electromechanical components for the nuclear industry, was unable to sell in the UK market because the EU market is unwilling to accept the ASME standards commonly used in the United States.²²⁷

Standards and Technical Regulations for Food and Agricultural Products

Sanitary and phytosanitary (SPS) standards are a major barrier to SMEs interested in exporting agricultural products to the UK. Food products are regulated under the “Old Approach,” as described above. Exports of food and agricultural goods to the UK are subject to EU requirements meant to guarantee health, safety, and production standards of EU member states.²²⁸ As with regulations that apply to manufactured products, most legislation covering agricultural products is harmonized at the EU level. For those cases in which legislation is not harmonized at the EU level, the principle of “mutual recognition” provides that for the vast majority of products, a product lawfully produced or marketed in one EU country may be marketed in any other EU country.²²⁹ Table 3.3 presents information on specific standards or regulations cited by U.S. agricultural SMEs as restricting exports to the UK.

²²⁶ Industry representative, listening session, Chicago, IL, December 4, 2018, 22–24.

²²⁷ Industry representative, listening session, Charleston, SC, December 7, 2018, 15.

²²⁸ The USDA’s Foreign Agricultural Service (FAS) publishes reports covering the import regulations and standards of the EU, and the UK is cited in its Food and Agricultural Import Regulations and Standards (FAIRS) reports. USDA, FAS, *EU-28 Food and Agricultural Import Regulations*, February 12, 2019.

²²⁹ Exceptions are described in European Parliament, Regulation (EC) No 764/2008, July 9, 2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0764&rid=1>, although changes to the regulation have been proposed.

Table 3.3 Standards and regulations noted as barriers for agricultural product exports to the UK

Industry sector(s)	Standard/regulation	Description	Governing body
Seafood products	Sanitary certificate	EU Regulation (EC) No. 1020/2008 sets sanitary standards for handling of seafood products. ^a	Food Standards Agency (UK)
Fish products	Catch certificates	EC Regulation No. 1010/2009 requires catch certificates in order to prove fish were caught legally. ^b Catch certificates also contain information about when and where the fishing took place, and how much fish was caught. U.S. National Oceanic and Atmospheric Administration (NOAA) certificates are not accepted in the UK.	Department for Environment, Food and Rural Affairs (DEFRA) (UK)
Fresh fruits and vegetables	Maximum residue limits (MRLs) on phosphites	EU Regulation 396/2005 sets out MRLs for pesticides in food. EU Commission Regulation (EC) No 178/2006, Annex I, lists fresh fruit and vegetable products to which the MRLs on phosphites apply.	Food Standards Agency (UK)
Processed foods	Labeling	Regulation (EC) No. 1333/2008 requires that processed food products containing artificial dyes include a warning label stating: “May have an adverse effect on activity and attention in children.” ^c	Food Standards Agency (UK)
Edible nuts	MRL on fosetyl-al	EU Regulation 2018/832 sets out MRLs for fosetyl-al (the sum of fosetyl, phosphonic acid, and their salts, expressed as fosetyl) on tree nuts at 500 ppm in 2018. Without this change, the temporary level of 75 parts per million (ppm) that had been in place for the most commonly traded tree nuts would have reverted back to 2 ppm on March 1, 2019. ^d	Food Standards Agency (UK)
Wine	Labeling	EU Regulation 607/2009 sets out rules for placing compulsory and optional information on wine labels. In addition, some terms common in the United States cannot be used in the EU.	Food Standards Agency (UK); Department for Environment, Food and Rural Affairs (DEFRA) (UK)
Beer	Labeling	EU Regulation 1169/2011 mandates that exporters list information such as a “best before” date on labels.	Food Standards Agency (UK); Department for Environment, Food and Rural Affairs (DEFRA) (UK)
Wine and distilled spirits	Bottle sizes	EU Council Directive 2007/45/EC harmonizes packaging of wine and spirits throughout the EU and mandates that certain prepackaged products be sold in standardized volumes.	Department for Environment, Food and Rural Affairs (DEFRA) (UK)
Crops and processed foods	Endocrine-disrupting chemicals (EDCs)	Regulation (EU) 2018/605 adds EDCs to the list of banned products, with an exception for “negligible exposure.”	Food Standards Agency (UK)

Sources: Various industry representatives, listening sessions and phone interviews, October 2018–February 2019.

Notes:

^a EC, “Regulation (EC) No 1020/2008,” October 17, 2008.

^b Government of the UK, “The Food Safety and Hygiene (England) Regulations 2013,” 5; Government of the UK, “Catch Certificates for Non-EU imports and Exports of Fish,” May 2, 2018.

^c Food additives approved for use in foods in the EU are listed in European Commission Regulation (EU) No. 1129/2011, November 11, 2011, <https://publications.europa.eu/en/publication-detail/-/publication/28cb4a37-b40e-11e3-86f9-01aa75ed71a1/language-en>.

^d USDA, FAS, *EU Establishes Trade-Facilitative MRL for Fosetyl-AI*, June 19, 2018.

All food and feed imported into the EU must comply with EU food law. The EU General Food Law Regulation, adopted in 2002, lays out the framework for both EU-wide and national laws covering the safety of food and feed, in addition to establishing the European Food Safety Authority (EFSA) and the Rapid Alert System for Food and Feed (RASFF).²³⁰ This regulation lists the basic provisions with which all food businesses must comply, covering traceability, presentation, labeling, and recalls. Food safety and hygiene are regulated by both EU and national legislation. Within the UK, the Food Standards Agency (FSA) has primary responsibility for national regulations dealing with food safety and hygiene, including the regulation of food consisting of or containing genetically modified organisms (GMOs).²³¹ The Food Standards Agency's Food and Feed Law Guide provides guidance on specific responsibilities of EU and national institutions.²³²

SME food and agricultural exporters stated that they find that the EU is generally very concerned about U.S. food products being genetically modified. For example, they said that the EU has a perception that U.S. almonds and meat products have been genetically altered, despite the fact that no genetically modified almonds or meat animals are approved for production in the United States.²³³ A state government representative familiar with regulations that affect SMEs echoed this concern, indicating that it is "frustrating to have each individual [food or agricultural] product approved by the EU health commission."²³⁴

In 2001, the European Parliament and European Council issued a directive regulating GMOs.²³⁵ The EU regulations do allow for the low-level presence of GMOs, but food or feed containing GMOs or consisting of GMOs may enter the EU only following a risk assessment by the EFSA.²³⁶ Further, the decision to allow a specific variety of food or feed must also take consumer interests into account.²³⁷ Approval of GMOs in the EU reportedly takes much longer than in many supplying countries, including the United States, and as a result, fewer products are approved than are produced in exporting countries.²³⁸ The only crops for which genetically modified varieties have been approved for import into the EU are cotton, corn, oilseed rape (canola), soybeans, and sugar beets.²³⁹

The EU's stance on antibiotic use in agricultural products is viewed as a major trade-related barrier for U.S. exporters of animal products. A SME representative claimed that the EU is very strict about antibiotic use, and the industry representative perceived that the lack of antibiotic use is actually detrimental to animals' health. The industry representative observed that EU standards may conflict with the desired outcomes, commenting that the EU appears to want the safety of animals, but will not allow for antibiotic use.²⁴⁰ The issue is complex. While the EU banned the use of antibiotics for growth

²³⁰ USDA, FAS, *EU-28 Food and Agricultural Import Regulations*, February 12, 2019.

²³¹ UK Government, *Food and Feed Law Guide*, January 2018.

²³² UK Government, *Food and Feed Law Guide*, January 2018.

²³³ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 24.

²³⁴ Government representative, listening session, Salt Lake City, UT, December 10, 2018, 37.

²³⁵ European Parliament, Directive 2001/18/EC, March 12, 2001.

²³⁶ European Parliament, Regulation (EC) No 1829/2003, September 22, 2003, Article 47.

²³⁷ European Parliament, Regulation (EC) No 1829/2003, September 22, 2003, Article 1.

²³⁸ USDA, FAS, *EU-28 Agricultural Biotechnology Annual 2018*, December 14, 2018, 22-23.

²³⁹ EC, EU Register of Authorised GMOs (accessed April 4, 2019).

²⁴⁰ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 36-37.

promotion in 2006, antibiotic use for disease prevention and treatment of disease is still allowed.²⁴¹ In late 2018, however, the EU proposed further bans on the provision of antibiotics to a group of animals in the absence of clinical signs of infection and on animal use of antimicrobials that have been designated by the EU as reserved for human use. If this regulation is enacted, exporters of animal products to the EU will be required to avoid the use of antibiotics for growth promotion and for prevention of disease, and will not be allowed to use those antibiotics that EU regulators have decided to reserve for human use.²⁴² Some industry sources have reported that UK officials might avoid applying these new EU regulations on antibiotics following Brexit.²⁴³

Maximum levels (MLs) for contaminants on U.S. SME agricultural exports act as a standards-related barrier, which often inhibit SME exports to the UK market. In general, the EU uses a hazard-based approach in establishing MLs for contaminants, and the United States uses a risk-based approach.²⁴⁴ A hazard-based approach considers the intrinsic nature of the chemical without taking into account the probability and the amount of consumers' exposure to the substance, while a risk-based approach considers the hazard and the likelihood of exposure of the substance.²⁴⁵ Most hazard-based regulations prohibit the presence of a contaminant at any detectable level.²⁴⁶

The process used by the EU in setting maximum residue limits (MRLs) and the EU's hazard-based approach in establishing MRLs are concerns for many U.S. SMEs, including those producing and exporting wine, fresh produce, and edible nuts to the EU. Representatives of U.S. SMEs that produce edible nuts also reported the lack of transparency in the EU's process of setting these limits and insufficient notice before implementation. These representatives stated that they saw the limits for nuts as trade barriers in that U.S. producers must face more uncertainty and high added costs to comply with varied limits.²⁴⁷ A trade association representing U.S. SME producers contends that the EU's hazard-based approach is overly restrictive while not contributing to consumer safety.²⁴⁸

Conformity Assessment Procedures

U.S. SME companies find the EU certification system to be overly complex, burdensome, and expensive.²⁴⁹ They noted that differences between conformity assessment procedures in the United States and Europe can create barriers that disproportionately affect SMEs compared to larger firms,

²⁴¹ EC, "Ban on Antibiotics as Growth Promoters," December 2005.

²⁴² European Parliament, "Veterinary Medicines: Another Step," October 22, 2018; WTO, Committee on Sanitary and Phytosanitary Measures, "Summary of the Meeting of 12-13 July 2018," October 15, 2018. Current U.S. regulations allow the use of antibiotics to prevent disease when prescribed by a veterinarian and allow the use of some antibiotics that are primarily for human use.

²⁴³ Harvey, "UK Could Use Brexit to Avoid EU Ban," September 27, 2018.

²⁴⁴ Nordlander, Simon, and Pearson, "Hazard v. Risk in EU Chemicals Regulation," September 2010, 239–40.

²⁴⁵ EC, "Frequently Asked Questions: Endocrine Disruptors," June 15, 2016.

²⁴⁶ Nordlander, Simon, and Pearson, "Hazard v. Risk in EU Chemicals Regulation," September 2010, 239.

²⁴⁷ For a detailed discussion on standards and regulations relating to food and agricultural products, see chapter 6. APG, written submission to USTR, December 14, 2018, 2; industry representatives, telephone interviews by USITC staff, March 1, 2019 and May 1, 2019.

²⁴⁸ Industry representative, telephone interview by USITC staff, May 1, 2019.

²⁴⁹ Industry representative, interview by USITC staff, October 17, 2018.

owing to SME's sensitivities to costs and procedural delays. Conformity assessment is a procedure carried out to ensure that what is being supplied actually meets the requirements specified or claimed under a standard or regulation. Conformity can be assessed for a product (including a service), a process, or a system. Examples of conformity assessment procedures include sampling and testing, inspection, a supplier's declaration of conformity, certification, and management system assessment and registration.²⁵⁰ In some cases, conformity can be assessed by a body that is independent of any party interested in the outcome of the assessment (third-party conformity assessment); in other cases, it can be assessed by any party that is interested in the outcome of the assessment (including self-assessment).

U.S. SME exports to the UK are often constrained by the lack of recognition in the EU of U.S. testing certifications, as well as differences between the testing procedures performed by some certifying bodies in the EU and those performed in the United States. For example, in the United States, the American National Standards Institute (ANSI) is a leading organization involved in promulgating standards and assessing the conformity of products to standards. ANSI itself does not conduct tests or technical evaluations of products, systems, or services, but rather provides accreditation to entities that offer such services.²⁵¹ ANSI accreditation, however, is not always sufficient for purposes of EU certification. For example, a representative from a water treatment trade association stated that some SME members' products that had been certified by ANSI-accredited labs in the United States were not accepted in EU member states.²⁵²

In another instance, an SME representative stated that the representative's firm had developed a product that was certified and approved for use in the United States, but the firm had difficulty selling in the EU market.²⁵³ The issue was not the quality of the product, but rather a discrepancy in standards and testing procedures.²⁵⁴ The SME representative claimed that its product competed with EU-manufactured products and performed the same function, but was technically different and required different testing methods for certification.²⁵⁵ A potential buyer in Europe trialed one of the SME's products, a process that would usually take no more than two years for a similar EU-manufactured product; however, because the SME's certification did not conform to the EU standards, the buyer ended up having to test for five years, substantially delaying the introduction of the product into the EU market.²⁵⁶ At the end of the testing period, it was found that the SME's product reliably passed every single test.²⁵⁷

In a third example, an SME that produces accessories and supplies for explosive detection systems that are used in airports was unable to sell its products in Europe even though its products had passed the

²⁵⁰ ANSI, "The United States Conformity Assessment Principles," September 2011.

²⁵¹ ANSI governs several accreditation programs for certification activities, including those for products, laboratories, systems, and personnel. ANSI, "The United States Conformity Assessment Principles," September 2011.

²⁵² Industry representative, listening session, Washington, DC, November 9, 2018, 31.

²⁵³ Industry representative, listening session, Dallas, TX, December 5, 2018, 13–31.

²⁵⁴ Industry representative, listening session, Dallas, TX, December 5, 2018, 13–31.

²⁵⁵ Industry representative, listening session, Dallas, TX, December 5, 2018, 13–31.

²⁵⁶ U.S. Chamber of Commerce, "Faces of Trade: Polyguard Products" (accessed December 13, 2018).

²⁵⁷ U.S. Chamber of Commerce, "Faces of Trade: Polyguard Products" (accessed December 13, 2018).

Transportation Security Administration (TSA) testing that is required for use in the United States.²⁵⁸ The European Civil Aviation Conference (ECAC), which is responsible for testing these types of products for the EU, does not accept TSA testing as a substitute.²⁵⁹ The SME contends that the standards employed by TSA and ECAC are essentially the same; however, ECAC requires its own testing even though it is identical to the testing performed by TSA.²⁶⁰

In certain other cases, U.S. products are designed and made in a way that makes them significantly different from most competing EU products. As a result, they require different testing procedures to establish that they meet EU requirements. In some instances, EU testing labs were not suited to test U.S. SMEs' products, and SMEs found it difficult to persuade the EU labs to change their testing methods in order to judge the U.S. products' conformity with EU standards.²⁶¹ Between 2008 and 2014, one U.S. SME firm approached three EU labs and two U.S.-based labs that have a global presence, asking them to run tests proving the safety of its products, yet none of the U.S. or UK labs accepted the SME as a client.²⁶² Reportedly, EU labs are set up to run tests on existing standards;²⁶³ setting up test protocols for a new or distinct product is very expensive for such a lab. Moreover, such an initiative does not necessarily lead to repeat business, since the testing method might only apply to a single product.²⁶⁴

Costs and delays for certification pose serious problems for SMEs as well. Costs associated with certification and registration of products for sale in the UK is often prohibitive for SMEs, especially as compared to larger firms.²⁶⁵ For products like cosmetics, even minor variations in a product (such as different colors) require a separate certification and registration under EU rules. This can create substantial cost barriers for SMEs that want to sell their full product lines in the UK.²⁶⁶ Delays associated with obtaining certificates are another barrier that SMEs face when exporting to the UK. One aerospace SME mentioned that EASA delayed the certification process for its equipment by failing to respond to additional technical requests from the U.S. SME.²⁶⁷ Eventually, the EU bidder switched to using European aircraft parts rather than the U.S.-produced equipment.

SMEs are reportedly more affected than larger firms by the added time and costs related to getting duplicate certification. For example, the required U.S. and UK certifications differ for the ocean and underwater technology industry. The American Bureau of Shipping is the approval body in the United States, while industry representatives cited DNV-GL in Norway as the authority to approve ocean and underwater technology for the entire EU (including the UK).²⁶⁸ Many products in this industry, such as offshore rigs, are mobile and may be used and transported across the ocean to different locations for

²⁵⁸ Industry representative, listening session, London, England, UK, April 23, 2019, 20–32.

²⁵⁹ Industry representative, listening session, London, England, UK, April 23, 2019, 20–32.

²⁶⁰ Industry representative, listening session, London, England, UK, April 23, 2019, 20–32.

²⁶¹ U.S. government representative, email message to USITC staff, December 13, 2018.

²⁶² U.S. government representative, email message to USITC staff, December 13, 2018.

²⁶³ U.S. government representative, email message to USITC staff, December 13, 2018.

²⁶⁴ U.S. government representative, email message to USITC staff, December 13, 2018.

²⁶⁵ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 25–26.

²⁶⁶ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 25–26.

²⁶⁷ Industry representative, interview by USITC staff, October 17, 2018.

²⁶⁸ Industry representative, interview by USITC staff, November 13, 2018.

use.²⁶⁹ However, U.S. manufacturers wishing to take advantage of this mobility must ensure these products meet both the U.S. and UK certification requirements.²⁷⁰

Conformité Européenne (CE) Marking

Several SME representatives claimed that CE marking requirements are a significant issue when exporting to the UK. The CE marking certifies that a product has met EU health, safety, and environmental requirements, which ensure consumer safety. A manufacturer that has successfully gone through the conformity assessment process may affix the CE marking to their products, which then may be marketed throughout the EU.²⁷¹

There is no comprehensive list of products that require a CE marking, so manufacturers are responsible for learning if a product requires a CE marking or not.²⁷² Further, the process for certifying products to acquire CE markings can differ depending on whether the products are covered by the New Approach directives or not. There are New Approach directives for electronic and electrical products, machinery, medical devices, radio and telecommunications terminal equipment, recreational craft, pressure equipment, equipment for use in potentially explosive atmospheres, personal protective equipment, toys, simple pressure vessels, and others. Most products covered by New Approach directives can be self-certified by the manufacturer and do not require the intervention of an EU-authorized testing/certifying organization (a “notified body”).²⁷³

However, certain high-risk products cannot be self-certified. These products require the services of a notified body within the European Economic Area.²⁷⁴ Notified bodies are independent testing houses or laboratories authorized by the EU member states to perform the conformity assessment tasks specified in the directives. Many U.S. testing houses act as subcontractors to the EU notified bodies. However, the notified body is the ultimate authority, and a company must gain the notified body’s approval to claim CE marking compliance for its project.²⁷⁵

To obtain CE certifications, third-party verification (which includes visual inspection of every product) is required, but very few inspectors are available in the United States to verify these products for sale to the EU market.²⁷⁶ Therefore, it can take significantly longer to have a product inspected for CE certification than it does for ASME certification, because ASME inspectors are typically available on a

²⁶⁹ Industry representative, interview by USITC staff, November 13, 2018.

²⁷⁰ The U.S. ocean technology industry exporting to the UK would be disrupted if the Norway-based DNV-GL is no longer authorized to approve ocean and underwater technology for the UK. Industry representative, interview by USITC staff, November 13, 2018.

²⁷¹ USDOC, “CE Marking—Home,” August 28, 2009.

²⁷² USDOC, “CE Marking—Home,” August 28, 2009.

²⁷³ USDOC, “CE Marking—Home,” August 28, 2009.

²⁷⁴ The EEA consists of the EU plus three of the four European Free Trade Association (EFTA) countries—Iceland, Norway, and Liechtenstein—but not the fourth EFTA country, Switzerland.

²⁷⁵ USDOC, “CE Marking—Home,” August 28, 2009.

²⁷⁶ Industry representative, interview by USITC staff, March 20, 2019.

daily basis.²⁷⁷ In addition, companies must create a technical file documenting that the product complies with all essential requirements in the EU Directive, which European agencies can request to inspect.²⁷⁸

Costs, such as testing and administrative expenses, associated with acquiring CE markings weigh much more heavily on smaller firms than on large producers. For example, an SME representative that produces heavy industrial equipment reported spending from \$20,000 to \$100,000 per product for CE certification testing.²⁷⁹ The SME representative claimed that paperwork and compliance administration required to get CE certification added 5 percent to the production costs of their products sold in the EU market compared to those sold domestically, even though the products were identical.²⁸⁰ The representative added that all of their products conformed to ASME standards and did not require any modifications to meet the EU requirements needed for the CE marking.²⁸¹

An SME representative stated that it can cost \$10,000 or more to acquire CE markings and that for a “niche company” that sells relatively inexpensive products in small volumes, it can take a long time to recoup these costs, which are substantial for small firms.²⁸² An industry representative stated that larger companies do not mind them because these costs may deter smaller firms from competing in the UK market.²⁸³ SMEs’ representatives also mentioned that SMEs have a harder time getting access to the rules and regulations required for obtaining CE markings than larger firms, making it more difficult for them to meet requirements when they design their products.²⁸⁴

Ways to Enhance SME Participation in Standards and Regulations in U.S.-UK Trade

Regulatory Harmonization

In interviews, SME representatives suggested both regulatory harmonization and mutual recognition as ways to enhance bilateral trade. Under regulatory harmonization, countries share “common regulations across state [national] lines, which prevents or ends barriers due to differences in technical regulations.”²⁸⁵ In other words, both parties take steps to reduce areas where their standards or regulations contradict one another.²⁸⁶ Industry representatives noted that regulatory harmonization of standards or regulations between the United States and the UK would enhance bilateral trade.²⁸⁷ An SME representative stated that harmonization would make sense, since both countries have a general

²⁷⁷ Industry representative, interview by USITC staff, March 20, 2019.

²⁷⁸ Industry representative, interview by USITC staff, March 20, 2019.

²⁷⁹ Industry representative, interview by USITC staff, March 20, 2019.

²⁸⁰ Industry representative, interview by USITC staff, March 20, 2019.

²⁸¹ Industry representative, interview by USITC staff, March 20, 2019.

²⁸² Industry representative, listening session, New York, NY, March 19, 2019, 16, 21–24.

²⁸³ Industry representative, listening session, New York, NY, March 19, 2019, 16, 21–24.

²⁸⁴ Industry representative, listening session, New York, NY, March 19, 2019, 16, 21–24.

²⁸⁵ LSE, “Regulations and Technical Barriers to Trade” (accessed February 25, 2019).

²⁸⁶ Government of the UK, House of Commons, *Future Trade with the EU: Mutual Recognition*, October 8, 2018.

²⁸⁷ Industry representative, listening session, Cleveland, OH, December 5, 2018; industry representative, listening session, Boston, MA, December 7, 2018, 36–38.

idea on safety standards and the rule of law for both goods and service export sectors.²⁸⁸ Another industry representative stated that the U.S.-Mexico-Canada Agreement (USMCA) approach to harmonizing sanitary and phytosanitary (SPS) standards would be preferred under a potential U.S.-UK free trade agreement (FTA).²⁸⁹

On the other hand, another SME representative in the agriculture sector advocated that the UK should allow mutual recognition of the food safety regulations contained in the U.S. Food Safety Modernization Act, given that Canada, Australia, and New Zealand have recently done so for U.S. agricultural exports.²⁹⁰ Historically, the EU pursued a harmonization approach in its FTAs, but has recently adopted a mutual recognition principle in the EU Single Market.²⁹¹

Mutual Recognition

Mutual recognition ensures that any product that is certified or approved for sale in the United States can be sold in the EU, even if the product does not comply with technical rules of the country to which the good is being exported.²⁹² Mutual recognition differs from regulatory harmonization in that EU member states “retain some degree of autonomy, but acknowledge regulations in other states as equivalent to their own in order to provide market access.”²⁹³ Mutual recognition of standards can vary considerably, ranging from full recognition of regulations to recognition only of specific certifications or of standards for a product.²⁹⁴

The mutual recognition concept distinguishes between the mutual recognition of rules and mutual recognition of conformity assessment procedures.²⁹⁵ The UK government defines the mutual recognition of rules as “two countries recognizing each other’s standards as equivalent,” indicating that these different rules may achieve the same outcome and are managed by shared processes or institutions.²⁹⁶ Mutual recognition of conformity assessment procedures is limited in its scope because it “permits one party to test and certify that a product complies with the other party’s regulations,” while acknowledging differences in regulatory regimes between the countries.²⁹⁷ The U.S.-UK Mutual

²⁸⁸ Industry representative, listening session, Boston, MA, December 7, 2018, 36–38.

²⁸⁹ In USMCA, the trading partners agreed to base their SPS standards on “relevant scientific principles” (thereby eliminating rules that have no scientific basis) and to seek alignment and equivalence in their SPS standards. CRS, “Agricultural Provisions of the USMCA,” October 5, 2018; industry representative, listening session, Salt Lake City, UT, December 10, 2018, 48–49.

²⁹⁰ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 59–60.

²⁹¹ According to the European Commission’s website, the Single Market refers to the EU “as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services.” EC, “The European Single Market” (accessed February 19, 2019); LSE, “Regulations and Technical Barriers to Trade” (accessed February 25, 2019).

²⁹² EC, “Mutual Recognition,” accessed July 9, 2019.

²⁹³ LSE, “Regulations and Technical Barriers to Trade” (accessed February 25, 2019).

²⁹⁴ LSE, “Regulations and Technical Barriers to Trade” (accessed February 25, 2019).

²⁹⁵ LSE, “Regulations and Technical Barriers to Trade” (accessed February 25, 2019).

²⁹⁶ Government of the UK, House of Commons, *Future Trade with the EU: Mutual Recognition*, October 8, 2018.

²⁹⁷ Government of the UK, House of Commons, *Future Trade with the EU: Mutual Recognition*, October 8, 2018.

Recognition Agreement (MRA Agreement), signed on February 14, 2019, states that “providing for the mutual recognition of conformity assessment activities is of particular interest to SMEs.”²⁹⁸

Before the MRA Agreement was signed, a U.S.-based SME in the cosmetics industry noted that conformity assessment procedures should be mutually recognized because U.S. companies face arduous testing and registration requirements before they can sell their products in the UK. These requirements, which are regulated by the EU Cosmetics Regulation, include placing a safety label on the product containing the name of a responsible person based in the EU who holds a product information file with the cosmetic’s ingredients, manufacturing process, information supporting claims of effects, and data relating to animal testing, among other criteria.²⁹⁹

With respect to services, an SME representative stated that mutual recognition of accreditation bodies allowing professional credentials to be mutually recognized and validated across borders would enhance bilateral trade.³⁰⁰ For example, U.S. doctors would be able to initiate prescriptions from the United States to the UK, and vice versa, so that patients have a choice whether to use a UK or a U.S. doctor.³⁰¹ SMEs experience difficulty in validating a physician’s credentials between the two countries, especially in terms of their education, making it difficult to prescribe medications through telemedicine.³⁰² An SME representative stated that mutual recognition of credentials could increase the desirability of U.S.-based SMEs interested in providing services in the UK, especially for specialized service firms. However, this would likely lead to only a small increase in desirability;³⁰³ the representative stated that while the United States has mutual recognition agreements with other countries, including Australia, Canada, Mexico, and New Zealand, the agreements do not seem to have had a significant positive effect in those markets.³⁰⁴

Accessibility of Information

A number of industry representatives expressed the view that being able to access current information on UK’s standards and regulations, and having information available that is transparent and easy to understand, would help improve bilateral trade for SMEs.³⁰⁵ An SME representative noted that if the UK’s regulations and laws were in a digestible format and easily searchable online, it would help to demystify the process of operating in the UK.³⁰⁶ Another representative in the aerospace and defense industry supported the idea of a decision tree on UK’s websites to help better understand what regulations they are expected to comply with.³⁰⁷

²⁹⁸ USTR, “Agreement on the Mutual Recognition between the United States of America and the Great Britain and Northern Ireland,” February 14, 2019, <https://ustr.gov/sites/default/files/US-UK-Framework-MRA-signed.pdf>.

²⁹⁹ CBI, *Smooth Operations: An A-Z of the EU Rules*, April 2018, 53.

³⁰⁰ Industry representative, listening session, Seattle, WA, December 3, 2018, 50–51.

³⁰¹ Industry representative, listening session, Seattle, WA, December 3, 2018, 17.

³⁰² Telemedicine consists of using electronic communications and software to provide clinical visits to patients without an in-patient visit, and may include management of medications, chronic conditions, and specialist consultations. Chiron Health, “What Is Telemedicine?” (accessed February 14, 2019); industry representative, listening session, Seattle, WA, December 3, 2018, 50–51.

³⁰³ Industry representative, interview by USITC staff, October 4, 2018.

³⁰⁴ Industry representative, interview by USITC staff, October 4, 2018.

³⁰⁵ Industry representative, listening session, Washington, DC, November 9, 2018, 55–56.

³⁰⁶ Industry representative, listening session, Washington, DC, November 9, 2018, 55–56.

³⁰⁷ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 29–31.

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Chapter 4

Market-related Barriers

In addition to multiple barriers tied to specific rules and regulations, discussed in the prior trade-related barriers chapters of this report, SMEs also face various nontariff measures classified as market-related barriers. These barriers are not tied to any EU or UK government-mandated policy or regulation; rather, they include logistical, finance-related, and market access issues that SMEs encounter when trying to export to the UK.³⁰⁸ SMEs perceive such barriers as disproportionately affecting their ability to export to the UK compared to larger U.S. firms (table 4.1).

Table 4.1 Summary of crosscutting market-related barriers that U.S. SMEs face when exporting to the UK

Crosscutting area	Challenge	Summary of U.S. SME concerns
Logistical issues	Shipping/distributing products	<ul style="list-style-type: none"> Unreliable international deliveries by UK postal services. Packaging size requirements. Preference at the UK border to process shipments from larger firms instead of those from SMEs. High fees and delays associated with using air cargo to distribute U.S. products. Difficulty of establishing UK distribution centers for SMEs.
Finance-related issues	Access to funding	<ul style="list-style-type: none"> Difficulty accessing working capital to finance SME exports.
	Weakness of the UK pound sterling Payments and transaction fees	<ul style="list-style-type: none"> Difficulty withstanding currency fluctuations, particularly the recent strength of the U.S. dollar. Delayed payments and incurred transaction fees.
Market access	Market entry	<ul style="list-style-type: none"> Difficulty of providing goods or services in the UK market because SMEs often need a physical presence or partner in the UK.
	Market participation	<ul style="list-style-type: none"> Difficulty in developing distribution channels for SME products. Lack of strong brand recognition leading to price competition with EU products. Lack of knowledge about market opportunities and how to sell to UK market.
	Discriminatory treatment	<ul style="list-style-type: none"> Uneven enforcement of UK laws, which sometimes enables discrimination against U.S. SME firms and a preference for UK or EU firms.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

³⁰⁸ One exception to the barriers described in this chapter being strictly market-related is a contention that the UK's Transfer of Undertakings (Protection of Unemployment) Regulations law that is not uniformly enforced throughout the UK; this ultimately creates a situation where certain U.S. SME firms find it difficult to export their services to certain parts of the UK.

The costs of accessing any foreign market are problematic for SMEs, especially when those costs must be added directly or indirectly to a good or service that is exported. The added pressure on cost may disproportionately affect a smaller firm's profit margin. Direct costs in accessing a market are likely to include higher logistical costs because SMEs often pay more in unit transportation costs for their smaller packages than larger firms when they export their product.³⁰⁹

Finance-related expenses are among other indirect added costs incurred by SMEs when they export. SMEs reported that they have more difficulty than larger firms in obtaining working capital through domestic and foreign banks due to their relative lack of collateral and creditworthiness.³¹⁰ This raises SMEs' borrowing costs, making it more expensive for a smaller firm to export its products than a larger one.³¹¹ SMEs rely mainly on their own monetary resources to meet their financial needs, which reduces their overall export potential abroad.³¹² SMEs also noted that they are disadvantaged by the ongoing weakness of the UK pound sterling because it is more difficult for them to absorb the currency risk. Delayed payments and high transaction fees are two more factors that further hamper an SME's ability to be competitive in the UK, compared to larger U.S. exporters.

Some indirect fixed costs are incurred even before an SME starts exporting to a foreign market. These high costs are associated with identifying sales prospects and gathering market information on foreign markets.³¹³ Larger firms have a sales force or a marketing strategy that can identify export opportunities in a foreign market, in addition to dedicated marketing budgets.³¹⁴ By contrast, SMEs often lack the resources and connections to find representatives, partners, and distributors in a foreign market.³¹⁵ SMEs more often participate in exporting to foreign markets through intermediaries, such as distributors or wholesalers, because these entities are able to benefit from economies of scale that are unavailable to SMEs. In addition, smaller firms may conclude that it is inefficient to independently enter a new market.³¹⁶ It is crucial for SMEs to have access to distribution channels in order to develop their business and diversify their customer base in order to be viable.³¹⁷

SMEs mentioned several ways to address these market-related barriers: (1) the presence of foreign trade zones; (2) increased SME funding access through nongovernmental and private entities; (3) trade mission support; and (4) education from U.S. government agencies on exporting to the UK market. All could help to strengthen SME exports to the UK.

³⁰⁹ USITC, *Small and Medium-sized Enterprises: Characteristics and Performance*, November 2010, 6-3.

³¹⁰ WTO, *Levelling the Trading Field for SMEs*, 2016, 96.

³¹¹ WTO, *Levelling the Trading Field for SMEs*, 2016, 94.

³¹² WTO, *Levelling the Trading Field for SMEs*, 2016, 94.

³¹³ USITC, *Small and Medium-sized Enterprises*, November 2010, 5-1, 5-7; WTO, *Levelling the Trading Field for SMEs*, 2016, 92.

³¹⁴ USITC, *Small and Medium-sized Enterprises*, November 2010, 6-3.

³¹⁵ USITC, *Small and Medium-sized Enterprises*, November 2010, 6-6.

³¹⁶ USITC, *Small and Medium-sized Enterprises* November 2010, 5-1.

³¹⁷ USITC, *Small and Medium-sized Enterprises*, November 2010, 5-7; WTO, *Levelling the Trading Field for SMEs*, 2016, 92.

Logistical Issues

SMEs contend that they face more challenges when shipping their exports to the UK than larger firms do. SMEs' shipments are often low volume and more frequently consist of single-item packages shipped through express delivery or mail, whereas larger firms rely on other, less costly forms of distribution.³¹⁸ In addition, international deliveries by domestic postal services in the UK are sometimes unreliable. In response, some U.S.-based SMEs employ private couriers and distributors in the UK market, and face additional costs as a result.³¹⁹

SMEs face difficulties in getting their products into the UK market due to the UK custom service's preference for processing larger firms' exports at the border.³²⁰ An SME representative in the chemicals industry noted that its company's shipments are frequently bumped by those of larger companies, which delays them by stranding them at the dock or forcing them to be rerouted.³²¹ During such delays, products may freeze or spoil and need to be destroyed. The SME must therefore ensure that each box is opened upon arrival in the UK to check the condition of the products. The resulting additional costs may be twofold: one for opening the boxes and the other for disposing of ruined shipments, in addition to replacing ruined items.³²²

Other shipping issues that are challenging for SMEs are packaging size requirements. Some SME wine representatives point out that by focusing on low-volume shipments of premium and ultra-premium quality wine, they face disproportionately higher shipping expenses than winemakers who ship bulk.³²³ In addition to higher per-unit freight and logistical costs, SMEs believe that they are negatively affected by the low volumes themselves. While most importers handle the logistics of importing, it is more time-consuming and expensive to arrange for filling a cargo container with orders from multiple small wineries. As a result, importers reportedly prefer to order from wineries that can fill large orders.³²⁴

An SME representative from the brewing industry also expressed concern about a packaging requirement set by the International Standard for Phytosanitary Measures (ISPM), stating that using

³¹⁸ WTO, *Levelling the Trading Field for SMEs*, 2016, 49.

³¹⁹ U.S. SMEs that ship to the UK through large U.S. express and logistics firms would not likely face any particular barriers in the UK, as U.S. express firms indicated that they are permitted to provide last-mile delivery services through their UK affiliates. Industry representative, interview by USITC staff, October 18, 2018.

³²⁰ According to a statement by the National Federation of Independent Business (NFIB), a potential U.S.-UK trade agreement should include, as one of its negotiating objectives, "the elimination of trade barriers of express shipments of goods into the UK, such fees, taxes, and time-consuming inspections." NFIB, "Comments in Response to USTR Notice," December 13, 2018, 2.

³²¹ Industry representative, interview by USITC staff, January 30, 2019.

³²² Industry representative, interview by USITC staff, January 30, 2019.

³²³ Industry representative, interviews by USITC staff, October 10, 2018 and November 27, 2018.

³²⁴ Industry representative, interview by USITC staff, November 27, 2018.

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

ISPM-15 internationally compliant packing pallets for shipping to the UK is costly.³²⁵ Brewers are not required to use such packaging for shipments within the United States.³²⁶

Issues delivering products within in the UK are common for SMEs engaged in the agrifood sector. For example, given the perishable nature of beer, SME representatives noted that timeliness of delivery was an important factor affecting sales.³²⁷ Unlike wine or spirits, beer has a maximum shelf life of about six months. In order to attract and retain customers in foreign markets, SMEs need to deliver the freshest product to market and avoid spoilage; these factors amplify SMEs' concerns about transportation logistics and "time in port."³²⁸ While large U.S. brewers have business relationships that allow them to brew in the UK, or have dedicated staff located directly in export markets, SMEs rely instead on their distribution partners. This third-party relationship increases the level of uncertainty about logistics for SMEs, including the difficulty of ensuring the dependability of the cold storage supply chain.³²⁹

Establishing distribution centers within the UK is one way to address these issues. However, establishing a distribution center in the UK is reportedly more expensive than in, for example, the Netherlands. The Netherlands also has a more straightforward bonded warehouse system.³³⁰ Another SME representative stated that, although the firm would like to establish a distribution center in the UK that could serve the EU, they are awaiting a decision on the likely date that the UK will officially leave the EU (Brexit).³³¹ Industry sources indicate that major logistics firms, such as DHL, are likely to establish new pan-European distribution centers which will serve both the EU and the UK. Doing so would help them avert shipment delays and potential customs issues that could arise from Brexit.³³²

U.S.-based SMEs are reluctant to use air cargo to distribute their products within the UK because of cargo delays at London Heathrow Airport (LHR).³³³ In particular, one SME representative commented that cargo might not reach its intended flight at LHR, resulting in delays of up to several days, whereas the standard time for cargo transfer at most other airports would be 24 hours.³³⁴ Moreover, aircraft landing fees at LHR are high. Many exporters may avoid using LHR (and the UK flagship airline, British Airways) for the transshipment of cargo (i.e., the transfer of cargo from one plane to another so that it

³²⁵ Goods exported to the UK must be transported in wood packaging that meets International Standard for Phytosanitary Measures (ISPM) 15, which is designed to minimize the spread of pests that may be found in bark. The pallets are treated with heat at an additional cost of \$2–\$3 each versus a pallet that is not heat treated. Government of the UK, "Wood Packaging Goods for Import and Export" (accessed December 19, 2018); industry representative, listening session, Cleveland, OH, December 5, 2018, 44, 53.

³²⁶ Industry representative, interview by USITC staff, October 10, 2018.

³²⁷ Industry representative, interview by USITC staff, October 12, 2018.

³²⁸ Industry representative, listening session, Washington DC, November 9, 2018, 19.

³²⁹ Industry representative, listening session, Washington DC, November 9, 2018, 29–30.

³³⁰ A bonded warehouse refers to a building in which dutiable goods may be stored or manufactured without being subject to customs duties. Those duties are paid by the importer when the goods leave the warehouse. USDOC, ITA, Export.gov, "Customs Bonded Warehouse," updated on July 9, 2016; Holland International Distribution Council, "The Netherlands – A Smooth Entry Point Into Europe," accessed August 21, 2019.

³³¹ Industry representative, listening session, San Diego, CA, December 4, 2018, 23; industry representative, listening session, Boston, MA, December 7, 2018, 43–44.

³³² King, "Brexit Prompts UK Logistics Exodus," March 8, 2019.

³³³ Industry representative, email message to USITC staff, November 30, 2018.

³³⁴ Industry representative, email message to USITC staff, November 30, 2018.

reaches its final destination) if these higher landing fees are passed on to cargo customers by the airline.³³⁵

Brexit also creates challenges to U.S. SMEs that sell goods in both the UK and Ireland because of possible issues at the Northern Ireland border. At present, both the UK (including Northern Ireland) and the Republic of Ireland are EU members. Therefore, goods can now flow freely between Great Britain, Northern Ireland, and the Republic of Ireland (box 4.1).³³⁶ U.S.-based SMEs have expressed particular concern that after Brexit—due to new border controls between the Republic of Ireland and Northern Ireland—goods shipped from the Republic of Ireland to the UK may incur additional customs duties and fees upon entry.³³⁷ For example, a U.S. SME manufacturer of boats stated that historically, the company has had numerous sales in Ireland.³³⁸ The company has plans to reestablish a presence in Ireland, but border issues after Brexit could pose potential problems with the export of their products.³³⁹ Another firm has both a distribution office in the Republic of Ireland and a sales office in Northern Ireland, and is concerned that continuity of their firm’s operations may be affected following Brexit.³⁴⁰

Box 4.1 Northern Ireland Border Issues

In 1998, the Good Friday Agreement was signed between the United Kingdom (UK) and the Republic of Ireland following a peace process including extensive negotiations between the two countries. As a result of this agreement, the border between Ireland and Northern Ireland has largely been regarded as “invisible,” with little infrastructure. Goods and services are traded with Northern Ireland and the Republic of Ireland with very few restrictions because both the UK and the Republic of Ireland are in the EU’s single market and customs union. Products crossing between the UK and the Republic of Ireland thus do not need to be examined for compliance with EU standards or otherwise inspected at customs.

When the UK leaves the European Union (EU), the border between Northern Ireland and the Republic of Ireland could become a “hard border,” with supervised crossing posts and products needing to be checked for compliance with the different regulatory regimes in the UK and EU. EU and UK negotiators are negotiating provisions on a backstop solution that avoids a hard border between the Republic of Ireland and Northern Ireland. Under these provisions, a single EU-UK customs territory is set up so that Northern Ireland will remain part of the same customs territory as the rest of the UK with no tariffs, quotas, checks on rules of origin, or other border structures between Northern Ireland and the rest of the UK. Furthermore, the protocol would continue the Common Travel Area arrangements between the Republic of Ireland and the UK. In this way, the new protocol would keep the Irish border open to the flow of goods.

³³⁵ Industry representative, email message to USITC staff, November 30, 2018.

³³⁶ Government of the UK, Dept. for Exiting the EU, “Implications for Business and Trade,” February 26, 2019, 9.

³³⁷ Industry representative, interview by USITC staff, February 7, 2019; industry representative, listening session, Boston, MA, December 7, 2018, 32; industry representative, listening session, Chicago, IL, December 4, 2018, 17; industry representative, listening session, Pittsburgh, PA, December 6, 2018, 32–33; industry representative, listening session, Boston, MA, December 3, 2018, 32.

³³⁸ Industry representatives, interview by USITC staff, October 24, 2018.

³³⁹ Industry representatives, interview by USITC staff, October 24, 2018.

³⁴⁰ Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 32–33; Government of the UK, Dept. for Exiting the EU, “Implications for Business and Trade,” February 26, 2019, 9.

Sources: Campbell, “Which Brexit Options Could Tackle the Border Issue?” April 1, 2019; European Commission, *Protocol on Ireland and Northern Ireland*, updated June 7, 2019.

Logistical Issues: Ways to Enhance SME Participation in U.S.-UK Trade

A number of SMEs suggested that the presence of a foreign trade zone in the UK would help facilitate the flow of goods between the United States and the UK after Brexit. A freight-forwarding representative indicated that Europe does not have foreign trade zones as they exist in other major regions of the world, and suggested that the UK, given its island status, would be a good location for a European foreign trade zone.³⁴¹ Another industry representative noted that foreign trade zones in the UK would be useful for transshipping sensitive goods, such as defense equipment.³⁴² At present, these goods are either transported between the UK’s “mini-ports,” increasing transit times, or by airfreight, which is costly for the shipper.³⁴³ Being able to store such goods at secure locations in UK foreign trade zones would therefore make it possible to handle them more swiftly, more safely, and more cost-effectively.³⁴⁴

Finance-related Issues

SMEs reported a number of finance-related challenges that undermine their ability to export. One difficulty involves accessing working capital—that is, credit to cover the period between incurring the expense to produce the export and receiving payment from the customer. SME representatives stated that both in the United States and the UK, they find it hard to access the working capital needed to finance their exports.³⁴⁵ For example, a U.S.-based SME with a subsidiary in the UK notes that it had trouble accessing loans in the UK, as UK banks reportedly would not accept U.S.-located assets as collateral.³⁴⁶ Another SME representative said that Small Business Administration (SBA) working capital loans and export credit insurance do not favor U.S. companies that are new to exporting.³⁴⁷ U.S. SMEs also said that transaction fees made it prohibitively costly to transfer money from the United States to the UK.³⁴⁸

U.S. SMEs have been affected by the decline in the value of the UK pound. After the June 2016 Brexit referendum resulted in a stronger U.S. dollar, U.S. products exported to the UK became more expensive

³⁴¹ In this chapter, foreign trade zones refer to geographic areas where goods may be transported and reconfigured for export without being subject to customs procedures. Foreign trade zones are designed to facilitate cross-border trade. CBP, “About Foreign Trade Zones and Contact Info,” last modified on May 29, 2018; Economy Watch, “International Free Trade Zone,” June 29, 2010.

³⁴² Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 41–42.

³⁴³ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 41–42.

³⁴⁴ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 41–42.

³⁴⁵ Industry representative, interview by USITC staff, November 19, 2018; industry representative, listening session, Los Angeles, CA, December 6, 2018, 15–16.

³⁴⁶ Industry representative, interview by USITC staff, November 19, 2018.

³⁴⁷ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 15–16.

³⁴⁸ Industry representative, interview by USITC staff, November 19, 2018.

to British consumers. After June 2016, the British pound fell by about 10 percent against the U.S. dollar.³⁴⁹ SMEs are concerned that if the exchange rate does not recover, U.S. exports to the UK may suffer.³⁵⁰ A stronger dollar can discourage U.S. SMEs from committing to foreign markets, and businesses that do operate abroad may find that contracts that promised a reasonable rate of return at the time of signing are no longer profitable.³⁵¹ SMEs have fewer resources to withstand unfavorable changes in exchange rates. One academic study finds smaller firms are less likely to be able to adjust prices quickly when exchange rates change.³⁵²

Some U.S.-based SMEs experience delayed payments and incur transaction fees when doing business with certain partners in the UK. One U.S. SME representative reported that the UK government was six months late paying for services after adopting a new Contracting, Purchasing, and Finance (CP&F) payment system. The firm was obligated to use its own assets to pay its employees and suppliers, incurring transaction fees in the process.³⁵³ However, the SME representative reported that the new CP&F system is now working and helps process payments faster than before.³⁵⁴ One consulting firm's survey of 3,000 companies in 11 countries found that 11 percent of all invoices issued by SMEs are paid late, which can lead to reduced investments and delays in paying their own suppliers.³⁵⁵ In some cases, late payments may reflect the fact that customers are able to exercise more market power over SMEs than over large firms.³⁵⁶

Finance-related Issues: Ways to Enhance SME Participation in U.S.-UK Trade

There are already some financial tools and resources available for U.S. SMEs exporting to the UK.³⁵⁷ U.S. SMEs can use forward contracts to manage exchange-rate risks, though not all have the resources to find and manage hedging instruments effectively.³⁵⁸ One survey found that 86 percent of SMEs hedged their foreign exchange risks using forward contracts, options, natural hedging, or other methods (though

³⁴⁹ Winters and Fernandes, "What the Brexit Referendum Tells Us," December 7, 2018. A British pound was worth \$1.48 on June 23, 2016, and fell to \$1.32 by June 27, 2016. As of June 2019, it was worth \$1.27. Federal Reserve System, Board of Governors of the Federal Reserve System, "Historical Rates for the UK Pound" (accessed June 17, 2019).

³⁵⁰ Industry representative, listening session, Boston, MA, December 7, 2018, 30–31; Bahmani-Oskooee and Ratha, "The J-Curve," 2004.

³⁵¹ USDOC, ITA, Export.gov, "A Basic Guide to Exporting: Foreign Exchange Risk," October 20, 2016.

³⁵² Berman, Martin, and Mayer, "How Do Different Exporters React?" 2012, 461.

³⁵³ Industry representative, interview by USITC staff, November 19, 2018.

³⁵⁴ Industry representative, interview by USITC staff, November 19, 2018.

³⁵⁵ Miller and Wongsaroj, "The Domino Effect: The Impact of Late Payments," December 2017.

³⁵⁶ Paul and Boden, "Size Matters: The Late Payment Problem," October 2011.

³⁵⁷ In appendix F, "Trade Resources for SMEs," see the section "U.S. Government Assistance: Government Funding and Finance Programs," which describes U.S. government resources available to help SMEs finance their exports.

³⁵⁸ Forward contracts lock an exchange rate for the future purchase or sale of a currency.

39 percent hedged less than half of their exposure).³⁵⁹ Additionally, digital financial tools like electronic payments, invoicing, and settlement can increase transparency and lower risks for exporting SMEs.³⁶⁰ Some private entities and government agencies provide financial resources that help SMEs export. SME and government representatives noted that nongovernmental entities, such as the Milken Institute and District Export Councils, provide information and facilitate connections that help SMEs find and use financing.³⁶¹ These programs improve SME access to trade finance, though one survey by the Asian Development Bank found that 56 percent of SME trade finance proposals are rejected, compared to 34 percent for large corporations and 10 percent for multinationals.³⁶² The growing availability of financial technology services like peer-to-peer lending may be increasing small businesses' access to capital.³⁶³ Further, U.S. SMEs can access U.S. government and private programs that help with trade finance, which may bolster their entry or increase their exports to the UK market.

Market Access

Challenges with market knowledge, entry, and participation make up another set of problems that can raise costs for U.S. SMEs and hinder their participation in the UK export market. An industry representative stated that SMEs are not exporting to the UK because they believe they are too small, are not aware that there is demand for their products, or do not have the financial assistance to start exporting.³⁶⁴ A U.S. government representative who supports many start-up or early-stage businesses notes that understanding and recognizing export opportunities and how to proceed in the UK market are among the challenges faced by SMEs.³⁶⁵ That same government representative stated that SMEs that have emerging technologies or new finished products to bring to the market might need some extra support to navigate registration issues.³⁶⁶ Industry sources confirm that U.S. businesses are generally disadvantaged when selling to the UK market because they are not as practiced or knowledgeable as European companies in that market.³⁶⁷

Due to the costs associated with trying to understand UK regulations, it is often helpful for SMEs to find a local partner who can address these regulations for them and represent them. However, many SMEs have difficulty in finding or employing a partner; when they do, they must then pay the additional costs

³⁵⁹ Options give buyers the right but not the obligation to buy or sell a currency at a specific exchange rate in the future. Natural hedges refer to the arranging of global operations to match costs with revenues in the same currency. Kantor FX and ACCA, "Hedging FX Risk," 2013; Blackman, "How to Manage Currency and Exchange Rate Risk," May 20, 2017.

³⁶⁰ Camarda, "Global Organizations Address the SME Trade Finance Gap" (accessed March 12, 2019).

³⁶¹ Industry representatives, listening session, Washington, DC, November 9, 2018, 37; industry representative, listening session, Los Angeles, CA, December 6, 2018, 16.

³⁶² Di Caprio et al., "2016 Trade Finance Gaps, Growth, and Jobs Survey," August 2016.

³⁶³ Kocianski, *How Fintechs Are Targeting SME Businesses*, May 19, 2018.

³⁶⁴ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 18.

³⁶⁵ U.S. government representative, listening session, Charleston, SC, December 7, 2018, 16; U.S. government representative, listening session, Los Angeles, CA, December 6, 2018, 18.

³⁶⁶ Industry representative, listening session, Houston, TX, December 3, 2018, 32–33.

³⁶⁷ Rubin, "How to Sell Your Products in the UK," September 1, 2011.

of employing persons abroad.³⁶⁸ In addition, finding an actual partner in the UK that can represent them and introduce them to appropriate contacts is a large concern for SMEs.³⁶⁹

Similarly, although establishing a joint venture or overseas office is not a legal requirement in the UK, it can be very useful to SMEs trying to navigate the UK market and regulations. However, SMEs rarely have the financial resources to establish either a joint venture or an overseas office in the UK. An SME in the legal services industry reiterated that establishing an overseas office is very expensive, and that many law firms make strategic assessments on where they need to serve existing clients. Even so, most of these law firms initially lose money on their overseas offices.³⁷⁰

Many SME representatives noted that once SMEs are able to enter the UK market, they may face a number of apparent disadvantages there—including discriminatory practices. For example, one SME representative in the government contracting industry noted that he felt disadvantaged by the UK’s Transfer of Undertakings (Protection of Employment) Regulations³⁷¹ (TUPE) law because he had to disclose his labor costs (including pensions and vacation costs) when bidding for a services contract in the UK.³⁷² Other UK-based contractors did not have to disclose their cost breakdowns when bidding on the same contract, and were able to outbid this SME representative since they knew his overhead costs. This SME representative perceived that he was unfairly targeted because he was a non-UK bidder and felt that the purchasers were unfairly favoring UK firms over U.S. firms. Although the TUPE law is a UK law, this SME representative did not have to disclose his costs under the law in Scotland. He noted that TUPE was not uniformly enforced throughout the UK, making it a “discriminatory standard” and not conducive to “a fair and equitable playing field” for U.S.-based SMEs.³⁷³

Government support of certain UK-made products also adds to U.S.-based SMEs’ feeling that they are disadvantaged in the EU and UK markets. A U.S.-based SME noted that EU member states, including the UK, supported their domestic industry’s food products over U.S.-made products through the EU’s farm support programs, which disproportionately affects U.S.-based SMEs.³⁷⁴

Some SMEs need to have strong brand recognition in order to be competitive in the UK market. SME representatives mentioned that one factor affecting their U.S. wine exports is the relative unfamiliarity of European and British customers with U.S. wines, noting that consumers are still learning about California wines as well as wines made in other states, like Virginia.³⁷⁵ Given the enormous diversity of

³⁶⁸ Industry representative, listening session, Charleston, SC, December 7, 2018, 26–27.

³⁶⁹ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 14.

³⁷⁰ Industry representative, interview by USITC staff, October 9, 2018.

³⁷¹ The UK’s TUPE law was implemented as part of the EU Transfer of Undertakings Directive in 2006. The TUPE law applies to employees’ jobs—including the previous employment terms and conditions—that usually transfer over to the new company to ensure continuity of employment. UK’s TUPE applies to both SMEs and large businesses. The TUPE law does not apply to the supply of goods and buying-in of services on a one-off basis. Government of the UK, “Business Transfers, Takeovers, and TUPE” (accessed February 20, 2019); Eversheds Sutherland, “TUPE across Europe: The Information You Need” (accessed February 20, 2019).

³⁷² Industry representative, interview by USITC staff, November 19, 2018.

³⁷³ Industry representative, interview by USITC staff, November 19, 2018.

³⁷⁴ For a discussion on EU’s farm support programs, see chapter 6. Industry representative, listening session, Los Angeles, CA, December 6, 2018, 32–33.

³⁷⁵ Industry representative, interview by USITC staff, October 18, 2018.

wine varietal types and labels, consumers have an extremely broad range of purchasing options. SMEs with lower marketing budgets believe they are less able to attract consumer attention in the crowded wine market.³⁷⁶ Moreover, without brand name market recognition in the UK market, SMEs feel they are disproportionately pressured to be price competitive in order to entice first-time purchasers.

Additionally, the wine market in the UK is very competitive, with the majority of wine sales made through retail outlets. Some SMEs believe they cannot compete on the basis of price in the high-volume, cost-conscious supermarket channel, partly due to the relatively high cost of production in the United States compared to other global producers.³⁷⁷ This price disadvantage relative to lower-cost wine-producing regions is compounded by SMEs' limited marketing resources. Several SMEs stated that they focus on premium or ultra-premium wines, selling through high-end wine shops or restaurants, in part because they do not have large enough marketing budgets to compete with larger wineries in the grocery store retail channel.³⁷⁸

Similarly, U.S. SME craft distillers report a market disadvantage in developing distribution channels in the UK for their products, as compared to large, internationally recognized U.S. spirit producers. Domestic SMEs believe that overseas distributors can consistently sell well-known brand names. However, lesser-known or unknown U.S. craft spirits require more time and marketing resources, and distributors are less inclined to devote resources to them.³⁷⁹ In sum, SME representatives claimed that limited marketing resources inhibit U.S. craft spirits producers from promoting their brands and acquiring higher visibility at both the distributor level and at the consumer level.³⁸⁰

Market Access: Ways to Enhance SME Participation in U.S.-UK Trade

U.S. government assistance was cited prominently as a way to address barriers to market entry and participation.³⁸¹ A government representative stated that the International Trade Administration (ITA) needs to educate companies about trade barriers that exist in the UK because SMEs lack awareness of these market-entry barriers and how they can be resolved with SBA support.³⁸² An SME representative suggested that bilateral U.S.-UK trade would be improved if SMEs could use a center of excellence or a mentoring program that could help SMEs break into the UK market.³⁸³ An industry source noted that the

³⁷⁶ Industry representative, interviews by USITC staff, October 18, 2018, and November 27, 2019.

³⁷⁷ For example, some SME representatives pointed to strong competition from lower-cost South American wineries in the high-volume (lower-price) retail segment where U.S. SMEs cannot compete on the basis of price. Industry representative, interview by USITC staff, November 14, 2018.

³⁷⁸ Industry representatives, interviews by USITC staff, October 18, 2018, November 13, 2018, November 14, 2018, and November 19, 2018; USDA, FAS, *UK Wine Market Report 2016*, 2016.

³⁷⁹ Industry representative, interview by USITC staff, October 10, 2018.

³⁸⁰ Industry representative, interview by USITC staff, October 10, 2018.

³⁸¹ In appendix F, "Trade Resources for SMEs," see the section "U.S. Government Assistance: Market Entry to the UK," which describes U.S. government resources available for SMEs trying to export to the UK.

³⁸² Industry representative, listening session, Houston, TX, December 3, 2018, 20.

³⁸³ A center of excellence is a team, facility, or an entity with a focus on best practices, support, or resources. Industry representative, interview by USITC staff, November 19, 2018.

U.S. Commercial Service could assist SMEs to expand into the UK, since 85 percent of their clients are SMEs.³⁸⁴

SME agricultural representatives reported the usefulness of government trade promotion programs to assist in brand recognition. They mentioned the U.S. Department of Agriculture (USDA) Market Access Program (MAP), as well as programs run by other trade organizations such as the Southern United States Trade Association (SUSTA) or the Food Export Association. These assist small businesses in meeting foreign buyers in both inbound and outbound trade events.³⁸⁵ These SME representatives also noted that more funding for these programs, greater transparency in the application process, and a simplified (less labor-intensive) reimbursement process would enhance the usefulness of trade promotion programs for SMEs.³⁸⁶

³⁸⁴ Rubin, "How to Sell Your Products in the UK," September 1, 2011.

³⁸⁵ SUSTA, "Who We Are" (accessed April 27, 2019).

³⁸⁶ Industry representative, email message to USITC staff, October 16, 2018.

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Chapter 5

Manufactured Products

Overview

The UK is a large and important market for U.S. exports of manufactured products. U.S. manufacturing sector exports to the UK in 2018 totaled \$52 billion, accounting for 20 percent of total U.S. manufacturing exports to the EU and 4 percent of all U.S. manufacturing exports.³⁸⁷ U.S. manufactured goods exports to the UK are concentrated in high-tech sectors and high-value products.³⁸⁸ Trade patterns for manufactured products between the United States and the UK show that both countries' supply chains are closely integrated.³⁸⁹ Around 60 percent of products traded between the two countries are intermediate products, although the share varies considerably depending on the industry.³⁹⁰

The focus of this chapter is the manufactured products (1) that were the leading U.S. SME exports to the UK in 2016 on a value basis, and (2) that SME representatives testified were affected by trade-related barriers.³⁹¹ SMEs generally supply only a limited portion of U.S. manufactured products directly to the UK; typically, they act as indirect exporters by participating in the supply chains of larger U.S. firms' exports.³⁹² However, the manufactured products described in this chapter are directly exported to the UK from U.S.-based SMEs. This discussion therefore focuses on the trade-related barriers SMEs face for aerospace products and parts; defense-related equipment; boats; chemicals and pharmaceuticals; and medical products.³⁹³ Among sectors for which breakouts are available, the largest 2016 U.S. SME exports to the UK by known value were in transportation equipment and chemicals (figure 5.1).

³⁸⁷ North American Industry Classification System (NAICS) sectors 31, 32, and 33 collectively represent the U.S. manufacturing sector. However, this chapter does not include the food-related manufacturing industries classified in NAICS 311 (food manufacturing) and NAICS 312 (beverage and tobacco product manufacturing); instead, these industries are included under agrifood products in chapter 6. USITC DataWeb/USDOC (accessed February 14, 2019).

³⁸⁸ Busch et al., "The Future of US-UK Trade," July 2018; Winton, "UK-US Trade," July 20, 2018; USDOC, ITA, Export.gov, "United Kingdom—Market Overview," August 31, 2018.

³⁸⁹ Busch et al., "The Future of US-UK Trade," July 2018.

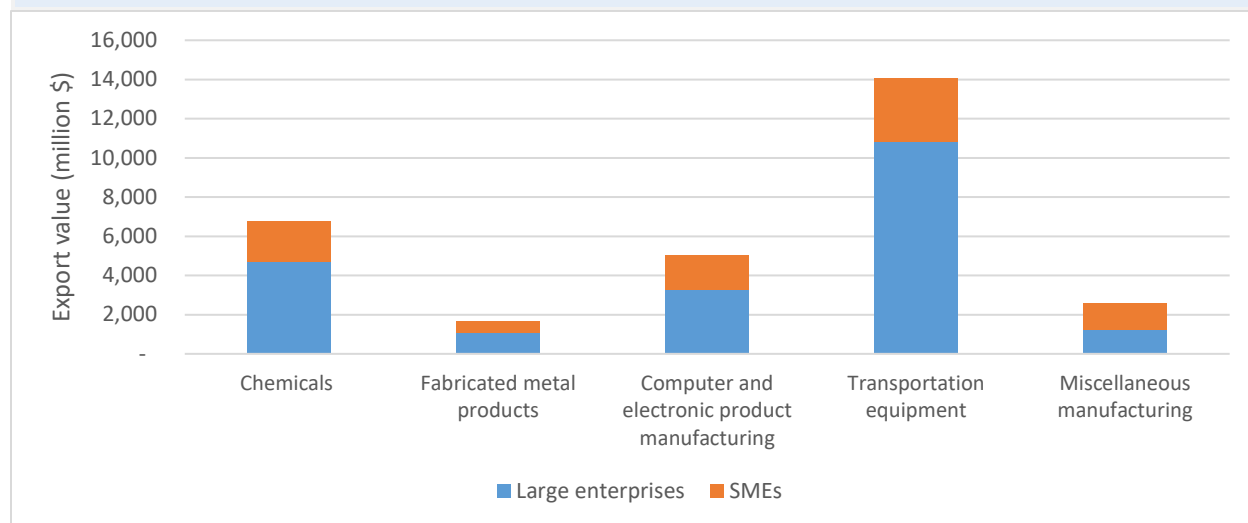
³⁹⁰ Busch et al., "The Future of US-UK Trade," July 2018.

³⁹¹ The report uses the same definition of SMEs—firms with less than 500 U.S.-based employees—that was used in five previous USITC reports on SMEs. See chap. 1, "Introduction and Purpose," for additional information.

³⁹² USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 5-1.

³⁹³ Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level. These select, manufactured products are a subset of products that are included in broader U.S. NAICS codes representing manufacturing as reported in table 5.1: NAICS 325 (chemicals), 332 (fabricated metal products), 334 (computer and electronic product manufacturing), 336 (transportation equipment), and 339 (miscellaneous manufacturing). The breakdown of exports between SMEs and large firms were not available for other subsectors. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values and identified U.S. exporters. USITC DataWeb/USDOC (accessed February 14, 2019).

Figure 5.1 Known U.S. exports of manufactured products to the UK, by value (million \$) and company size, 2016

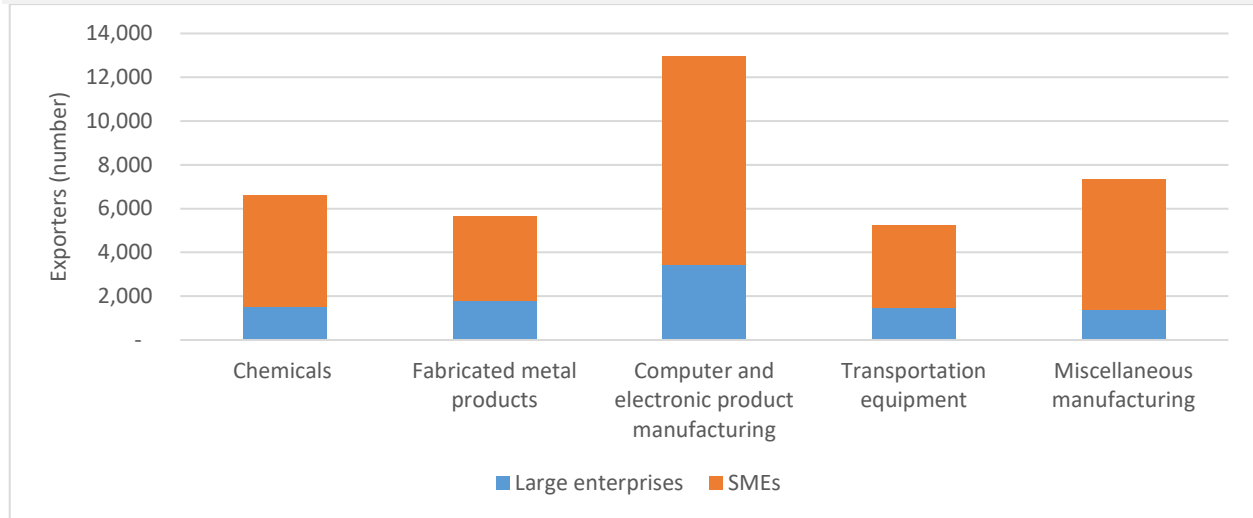


Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 26, 2019).

Notes: Known export values are defined by the North American Industry Classification System (NAICS) codes 325 (chemicals), 332 (fabricated metal products), 336 (transportation equipment), and 339 (miscellaneous manufacturing). Due to confidentiality issues, U.S. Census data were only available at the 3-digit NAICS code level, which encompasses broader NAICS subsectors than the industries discussed in this chapter. Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census’s official published data. See appendix E, table E.1 for a detailed breakdown of known U.S. export values.

The manufactured product sectors in this chapter accounted for approximately 48 percent of all identified U.S. exporters and all SME exporters to the UK.³⁹⁴ In 2016, 28,187 manufacturing SMEs exported to the UK, accounting for 74 percent of total U.S. manufacturing enterprises that exported to the UK (figure 5.2). The computer and electronic product manufacturing subsector had the largest number of identified SME manufacturing exporters to the UK, followed by miscellaneous manufacturing and chemicals.

³⁹⁴ In 2016, there were 78,443 identified U.S. exporters to the UK for all NAICS codes for 2016, of which 57,883 were SMEs; the identified exporters in the focus manufacturing sectors totaled 37,841, of which 28,187 were SMEs, as noted above.

Figure 5.2 Identified U.S. exporters of manufactured products to the UK, by company size, 2016

Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 7, 2019).

Notes: Identified U.S. exporters are defined by NAICS 325 (chemicals), 332 (fabricated metal products), 334 (computer and electronic product manufacturing), 336 (transportation equipment), and 339 (miscellaneous manufacturing). Due to confidentiality issues, U.S. Census data were only available at the 3-digit NAICS code level, which encompasses broader NAICS subsectors than the industries discussed in this chapter. Identified enterprises are those to which one or more transactions can be matched. See appendix E, table E.2 for a detailed breakdown of identified U.S. exporters.

Summary of Trade-related Barriers

U.S. SMEs in the manufactured products sector face both tariff and non-tariff barriers when exporting to the UK. SMEs interviewed for this study pointed out numerous trade-related barriers that were also identified in previous Commission studies, such as those related to trade with the EU.³⁹⁵ According to SMEs, some of these same trade-related barriers continue to limit their exports to the UK and intersect multiple manufacturing subsectors. These include obtaining certifications, such as a *Conformité Européenne* (CE) mark, which makes exporting to the UK more challenging, particularly for U.S. SMEs.³⁹⁶ Tariffs and taxes, particularly the value-added tax (VAT), continue to increase costs for manufacturers. The EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation remains a significant trade-related barrier to exports by U.S. SME chemical and medical device manufacturers.

In addition, there are new trade-related barriers for U.S. SME exporters, such as the EU's retaliatory tariffs and U.S. technology transfer restrictions when exporting to the UK. For example, some of the trade-related barriers raised by SMEs originate with U.S. export controls, such as Export Administration Regulations, administered by the U.S. Department of Commerce for dual-use products, and the U.S. International Traffic in Arms Regulations administered by the U.S. Department of State for military and

³⁹⁵ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014.

³⁹⁶ A *Conformité Européenne* (CE) marking affirms that the product meets all applicable laws and regulations, permitting sales in the European Economic Area.

defense-related equipment.³⁹⁷ Table 5.1 summarizes the information and views provided by SME representatives and other interested parties on trade-related barriers that affect SME enterprises in the manufacturing sector that export to the UK.

Table 5.1 Summary of trade- and market-related barriers that U.S. SMEs face when exporting manufactured products to the UK

Industry sector	Trade- and market-related barrier	Summary of SME concerns
Aerospace products and parts	Duplicative certifications	<ul style="list-style-type: none"> • Duplicate certification requirements (both U.S. and EU certifications) add costs and delays. • European Union Aviation Safety Agency (EASA) certification processes hamper UK market sales.
Defense-related equipment	Export controls under Export Administration Regulations for dual-use products, certifications, and standards U.S. flag vessel requirement Export controls and technology transfer regulations under International Trade in Arms Regulations for military and defense-related equipment	<ul style="list-style-type: none"> • Licensing restrictions imposed by U.S. and UK authorities differ for some product classifications. • Different product specifications, labeling differences, and safety testing procedures add to complexity and cost. • This rule increases costs and causes delays. • Delays associated with U.S. export controls and technology transfer regulations make it difficult to reach the UK end customer.
Boats	Duplicative certifications EU's additional customs duties on imports of U.S. boats	<ul style="list-style-type: none"> • Duplicate certification requirements (both U.S. and EU certifications) add costs and delays. • EU certification is difficult to get (certifying body staff is predominately located in Germany). • Tariffs increase variable costs on each product shipped.
Chemicals and pharmaceuticals	REACH "responsible person" rule Cosmetics Regulation (EU)	<ul style="list-style-type: none"> • The EU's Registration, Evaluation, Authorisation and Restriction of Chemical Substances (REACH) requirement to designate a "responsible person" located in the EU increases costs. • Separate registration is required for each slight variation in product, such as color choices.

³⁹⁷ "Export controls" refers to the network of U.S. federal agencies and interrelated regulations that regulate strategically important transfer of information, commodities, technology, and software in the interest of national security, economic and/or foreign policy concerns. For more information, see NOAA, "Export-Controlled Information," November 28, 2001.

Industry sector	Trade- and market-related barrier	Summary of SME concerns
	EU labeling requirements	<ul style="list-style-type: none"> • EU labeling regulations may unintentionally reveal SMEs' confidential business information. • Label for each product must be translated into the language of each EU member market.
	Licensing requirements	<ul style="list-style-type: none"> • Licensing requirements differ in individual EU countries.
	Clinical Trials Directive	<ul style="list-style-type: none"> • This directive requires exporting firms to establish a presence in an EU country.
Medical products	Duplicative certifications	<ul style="list-style-type: none"> • Duplicate certification requirement (both U.S. and EU certifications) adds costs and delays. • Conformité Européenne (CE) mark requirement is time consuming and expensive. • New medical device internal conformity assessment or third-party conformity assessment is expensive.
	EU's REACH	<ul style="list-style-type: none"> • REACH requires a local presence in the EU, increasing costs.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

The trade-related barriers that SMEs in the manufactured industries face include tariff measures that impose additional customs duties on certain boats. The added customs duties disproportionately affect SME exports of boats to the UK because the industry has a high concentration of SMEs. As mentioned in chapter 2, SMEs tend not to export multiple products.

SMEs producing manufactured goods also must comply with standards relating to labeling, licensing, and certifications before they can export. For example, SMEs engaged in exporting medical devices or aerospace parts and products to the UK have to obtain duplicative certifications in the UK and the United States, which adds costs and causes delays in getting their product to the market. As noted for other sectors, these problems tend to impact their profitability more than that of larger firms. SMEs that are exporting manufacturers also noted customs and logistical issues that increase costs and make it difficult to enter the UK market, including the need for U.S. flag vessels to ship defense-related products and issues with product classification.³⁹⁸ Fixed costs for compliance with standards and customs rules affect SMEs disproportionately because these costs represent a higher share of SME trade revenues; larger firms can absorb more cost increases.³⁹⁹

³⁹⁸ U.S. government representative, telephone interview by USITC staff, September 25, 2018; industry representative, telephone interview by USITC staff, October 18, 2018; industry representative, telephone interview by USITC staff, November 13, 2018.

³⁹⁹ WTO, World Trade Report, *Levelling the Trading Field for SMEs*, 2016, 86–87.

Aerospace Products and Parts

Aerospace product and parts manufacturing, which is classified under the North American Industry Classification System (NAICS) code 3364, accounts for 25 percent of the overall transportation equipment manufacturing industry (NAICS 336) in 2016.⁴⁰⁰ The United States has the largest aerospace industry in the world, followed by the UK, making the UK a major destination for U.S. exports in this sector (which include aerospace parts).⁴⁰¹ In fact, in 2016, the UK was the largest EU destination for U.S. aerospace-related exports, followed by France.⁴⁰² The UK aerospace industry grew by 23 percent between 2010 and 2016, and a majority of UK aerospace firms expect continued future growth.⁴⁰³

The aerospace parts and products (NAICS 3364) industry accounts for a large percentage of overall U.S. transportation equipment exports (NAICS 336) to the UK. In 2016, of the \$14.0 billion in U.S. transportation equipment exports to the UK, over \$9.7 billion worth were aerospace related.⁴⁰⁴ In terms of value, the majority of transportation manufacturing equipment exports under the broader NAICS 336 subsector to the UK were from large firms in 2016 (table 5.2). However, U.S. SMEs contributed a larger share of the value of exports to the EU, and a still larger share to the UK, as compared to all destinations. Moreover, 72 percent of the number of U.S. transportation equipment exporters to the UK were SMEs. There were 3,760 identified SME exporters of transportation equipment that exported \$3.3 billion in products to the UK in 2016 (table 5.2).

Table 5.2 Known value of U.S. exports and identified exporters of transportation equipment (NAICS 336), by company size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	232,867	37,883	14,047	6.0	37.1
U.S. SME exports, known value (million \$)	38,854	8,308	3,250	8.4	39.1
SME share (%)	16.7	21.9	23.1	-	-
Number of identified exporters	58,552	14,645	5,242	9.0	35.8
Number of identified SME exporters	47,766	10,927	3,760	7.9	34.4
SME share (%)	81.6	74.6	71.7	-	-

Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 7, 2019 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census

⁴⁰⁰ NAICS 336 also includes other transportation equipment such as boats. Specifically, the NAICS 3364 category includes aircraft manufacturing (336411), aircraft engine and parts manufacturing (336412), other aircraft parts and auxiliary equipment manufacturing (336413), guided missile and space vehicle manufacturing (336414), guided missile and space vehicle propulsion unit and propulsion unit parts manufacturing, and other guided missile and space vehicle parts and auxiliary equipment manufacturing. U.S. Census, "2017 NAICS Definition" (accessed on June 20, 2019); U.S. Census, Annual Survey of Manufacturers, 2016; USDOC, BEA, Gross Domestic Product, 2016 (accessed July 15, 2019).

⁴⁰¹ USDOC, ITA, Export.gov, "United Kingdom—Aerospace," September 8, 2018.

⁴⁰² USITC DataWeb/USDOC (accessed February 14, 2019).

⁴⁰³ Brien and Rhodes, "The Aerospace Industry: Statistics and Policy," November 8, 2017, 10.

⁴⁰⁴ Based on table 5.2 and domestic exports of NAICS 3364. USITC DataWeb/USDOC (accessed August 21, 2019).

data are only available at the 3-digit NAICS code level, which encompasses a broader NAICS subsector than the aerospace products and parts industry. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

Trade-related Barriers

Several U.S. aerospace and aviation associations that represent SMEs in the aerospace product and parts manufacturing industry note that aerospace trade between the United States and the UK is generally open and tariff-free, with few distinguishable trade-related barriers.⁴⁰⁵ SMEs indicated that the only trade-related barriers they face are dual certification requirements and regulatory procedures, both of which hinder their ability to export to the UK market.

Duplicative Certifications

SMEs face increased costs due to the need for dual certification (one certification in the United States and another in the UK for the same product) when exporting to the UK.⁴⁰⁶ Several SMEs and trade associations described trade-related barriers for U.S. exports of aerospace products and parts coming out of discriminatory regulatory and certification processes, which are often unevenly enforced, time-consuming, and expensive. Aircraft and aircraft parts manufactured in the United States are subject to U.S. Federal Aviation Administration (FAA) certification requirements.⁴⁰⁷ U.S.-produced aerospace products and parts are also subject to similar EASA certification requirements when exported to the UK.⁴⁰⁸ While the FAA and EASA continue to work towards harmonizing aerospace safety regulations to avoid unnecessary certification barriers between countries, recent safety incidents have raised concerns about future coordination efforts and differences between the processes still remain.⁴⁰⁹ One of the differences between FAA and EASA certification is that EASA certifications are fee-based, whereas FAA certifications are not.⁴¹⁰ One industry service association estimated the fees associated with EASA certification for one aerospace part to be \$150,000.⁴¹¹ Another difficulty is that EASA certification processes are unpredictable: delays prevent some SME products from ever entering the UK market.⁴¹² Without knowing how long the process will take, SMEs must incur additional costs while facing uncertain timelines.⁴¹³ An industry association reported that it was aware of at least one aerospace SME

⁴⁰⁵ Industry representative, email message to USITC staff, September 26, 2018; industry representative, email interview by USITC staff, October 10, 2018; industry representative, telephone interview by USITC staff, October 17, 2018.

⁴⁰⁶ The majority of aircraft types in the UK are considered “EASA aircraft,” meaning they are subject to EASA regulations. The remainder are considered “non-EASA aircraft,” meaning they are subject to the UK’s Civil Aviation Authority. Civil Aviation Authority, “What Is an EASA Aircraft?” (accessed March 19, 2019); industry representative, telephone interview by USITC staff, October 11, 2018; industry representative, telephone interview by USITC staff, October 17, 2018.

⁴⁰⁷ FAA, “What We Do,” June 27, 2016, <https://www.faa.gov/about/mission/activities/>.

⁴⁰⁸ Industry representative, telephone interview by USITC staff, October 11, 2018.

⁴⁰⁹ Garcia, “Regulatory Rift Threatens to Delay Relaunch of Boeing 737 MAX,” March 19, 2019.

⁴¹⁰ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 46-47; industry representative, telephone interview by USITC staff, October 11, 2018.

⁴¹¹ Industry representative, telephone interview by USITC staff, October 11, 2018.

⁴¹² Industry representative, telephone interview by USITC staff, October 17, 2018; industry representative, listening session, Salt Lake City, UT, December 10, 2018, 47-48.

⁴¹³ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 46-47.

being unable to enter the UK market for aftermarket aircraft parts (the industry producing aftermarket aircraft parts primarily consist of SMEs).⁴¹⁴ Delays in obtaining timely responses to technical information requests during the EASA certification process led the EU-based purchaser of this U.S. SME's parts to ultimately source from an EU-based company instead.⁴¹⁵

Defense-related Equipment

The United States has the largest defense manufacturing industry in the world, while the UK is ranked sixth.⁴¹⁶ In 2016, shipments of U.S. defense-related equipment totaled \$62.4 billion, and the industry employed 228,421 workers.⁴¹⁷ Defense-related equipment manufacturing is a subset of multiple 3-digit NAICS categories including NAICS 332 (fabricated metal product manufacturing), NAICS 334 (computer and electronic product manufacturing), and NAICS 336 (transportation equipment manufacturing). The industry spans across multiple NAICS 6-digit classifications, but for the purpose of this report, defense-related equipment manufacturing consists of NAICS 332992, 332993, 332994, 334511, 336414, 336415, 336419, and 336992.⁴¹⁸ The EU is a major recipient of U.S. defense-related equipment and accounted for 18 percent (\$2.0 billion) of total U.S. exports in 2016;⁴¹⁹ the UK accounted for 17 percent (\$350.9 million) of these exports.

An overview of the broad NAICS categories demonstrates the importance of SMEs in terms of exports to the UK. SMEs were responsible for over one-third of the value of all exports of fabricated metal products (NAICS 332) to the UK in 2016, with SMEs contributing a somewhat lower percentage of exports to the EU and all destinations (table 5.3). In terms of the number of exporters, SMEs accounted for over two-

⁴¹⁴ Industry representative, telephone interview by USITC staff, October 17, 2018.

⁴¹⁵ Representatives from both an aerospace association and the U.S. government claimed that EASA certification delays could be a way to give preferential treatment to EU firms, such as approving certificates for EU-based firms before U.S.-based firms. Industry representative, telephone interview by USITC staff, October 17, 2018; U.S. government representative, listening session, Salt Lake City, UT, December 10, 2018, 47–48.

⁴¹⁶ U.S. Census, 2016 Annual Survey of Manufacturers, accessed February 22, 2019; USDOC, BEA, Gross Domestic Product, 2016; Lineberger, "2019 Global Aerospace and Defense Industry Outlook," 2018, 8.

⁴¹⁷ Shipments increased 12 percent from the previous year, and employment grew 2.7 percent from the previous year. Shipments data include seasonally adjusted shipments of defense capital goods (small arms and ordnance manufacturing; communications equipment manufacturing; search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing; aircraft manufacturing; ship and boat building; guided missile, space vehicle, and parts manufacturing) less defense aircraft and parts. U.S. Census, "Manufacturers' Shipments, Inventories, and Orders" (accessed June 20, 2019). Employment data is from the U.S. Census, Annual Survey of Manufacturers, 2014, 2016 (NAICS 332992, 332993, 332994, 334511, 336414, 336415, 336419, and 336992).

⁴¹⁸ NAICS 332992 includes small arms ammunition manufacturing; NAICS 332993 includes ammunition (except small arms) manufacturing; NAICS 332994 includes small arms, ordnance, and ordnance accessories manufacturing; NAICS 334511 includes search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing; NAICS 336414 includes guided missile and space vehicle manufacturing; NAICS 336415 includes guided missile and space vehicle propulsion units and propulsion unit parts manufacturing; NAICS 336416 includes other guided missile and space vehicle parts and auxiliary equipment manufacturing; and NAICS 336992 includes military armored vehicle, tank, and tank component manufacturing. U.S. Census, North American Industry Classification System, 2017 NAICS Definition.

⁴¹⁹ USITC DataWeb/USDOC, NAICS 332992, 332993, 332994, 334511, 336414, 336415, 336419, and 336992 (accessed February 14, 2019).

thirds of identified exporters of these products to the UK, EU, and globally. There were nearly 4,000 SME exporters of fabricated metal products to the UK in 2016, exporting \$565.2 million worth of products.

In 2016, there were nearly 10,000 individual SME exporters of computer and electronic products (NAICS 334) to the UK, accounting for \$1.8 billion worth of exports (table 5.4). SME exporters accounted for over one-third of exports to the UK in terms of value, a larger share of exports than those to the EU or all export destinations. Despite only accounting for less than half of UK exports by value, SMEs accounted for 73.4 percent of exporters to the UK. (However, the UK represents the lowest share of SME exporters when compared to the EU and all destinations.) For a discussion of SME exporter trends for transportation equipment (NAICS 336), see the aerospace products and parts section above (table 5.2).

Table 5.3 Known value of U.S. exports and identified exporters of fabricated metal product manufacturing (NAICS 332), by company size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	36,706	4,794	1,630	4.4	34.0
U.S. SME exports, known value (million \$)	11,739	1,407	565	4.8	40.2
SME share (%)	32.0	29.4	34.7	-	-
Number of identified exporters	65,493	15,376	5,679	8.7	36.9
Number of identified SME exporters	51,848	10,794	3,866	7.5	35.8
SME share (%)	79.2	70.2	68.1	-	-

Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 7 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level, which encompasses a broader NAICS subsector than the defense-related equipment industry. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

Table 5.4 Known value of U.S. exports and identified exporters of computer and electronic product manufacturing (NAICS 334), by enterprise size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	187,645	26,240	5,028	2.7	19.2
U.S. SME exports, known value (million \$)	61,491	6,780	1,752	2.8	25.8
SME share (%)	32.8	25.8	34.8	-	-
Number of identified exporters	89,662	29,032	12,971	14.5	44.7
Number of identified SME exporters	73,258	22,183	9,517	13.0	42.9
SME share (%)	81.7	76.4	73.4	-	-

Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 7 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code, which is a broader NAICS subsector than the defense-related equipment industry. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

Trade-related Barriers

The main trade-related barriers for U.S. SME exporters of defense-related equipment to the UK involve conflicting classifications of exported products, conflicting certifications and standards (e.g., SMEs facing duplicative and costly certification expenses), the requirement to use U.S. flag vessels, and costs and delays when complying with regulations. SME defense-related exporters noted a number of cross-industry trade-related barriers and market-related barriers to exporting to the UK, including EU's General Data Protection Regulation (GDPR), de minimis thresholds, and difficulty finding legitimate partners in the UK.⁴²⁰

Dual-use Products, and Differences in Certifications and Standards

The classification of dual-use products and differences in certification and standards between the United States and the UK create trade-related barriers for U.S. SME exporters. For example, SMEs face increased costs due to conflicting U.S. and UK government product classifications. The UK sometimes classifies a particular product as being strictly for military use and therefore subject to more restrictive regulations, whereas the U.S. Department of Commerce will classify that same product as a dual-use good—having both military and commercial uses—which is subject to less restrictive regulations. One SME representative noted that when the representatives' firm exports its products using a UK partner, the UK would classify the products as strictly for military use, whereas the U.S. Department of Commerce would not, resulting in the SME being forced to comply with additional UK regulations.⁴²¹

Other certification differences can also increase costs. For example, the lack of harmonization between U.S. and UK hazardous material and protective service certifications leads to U.S. exporters paying certification costs in the United States, which one SME firm estimated could cost \$100,000 per certificate, with duplicative costs in the UK, which creates a disproportionate trade-related barrier for smaller firms with less financial capabilities.⁴²² Differences in product specification (such as radios, connectors, and electrical circuitry that are common in defense-related equipment), labeling differences, and safety testing procedures between the United States and the UK lead to further costly duplication of efforts.⁴²³

⁴²⁰ A de minimis threshold (DMT) is defined as a monetary threshold below which customs duties and taxes on imports are not required, and customs paperwork on these imports is reduced. Industry representatives, listening session, Salt Lake City, UT, December 10, 2018, 13, 25, 32-33, 51. For more information on logistical issues affecting SMEs, see chap 4: "Market-related Barriers." For more information on GDPR issues affecting SMEs, see chap. 7: "Services."

⁴²¹ Industry representative, listening session, Washington, DC, November 9, 2018, 15–16, 65–66.

⁴²² Industry representative, listening session, Washington, DC, November 9, 2018, 16, 59.

⁴²³ Industry representative, listening session, Washington, DC, November 9, 2018, 23–24, 32.

U.S. Flag Vessel Requirement

According to the Military Cargo Preference Act of 1904, exporters must use U.S. flag vessels for all U.S. military exports or exports that are made in conjunction with the U.S. government.⁴²⁴ This requirement affects SMEs by increasing shipping costs and causing delays due to the lack of an appropriate number of ships.⁴²⁵ An alternative to shipping military exports is to use air cargo, which is more expensive.⁴²⁶ One SME said that air transportation for defense-related exports could be three to four times as expensive as shipping through other common means.⁴²⁷ One reason U.S. flag vessels are costlier is that they usually compete with foreign vessels that have much lower labor costs and operating expenses. A 2011 study by the Maritime Administration found that labor costs on U.S. flag vessels were five times those of comparable foreign flag vessels.⁴²⁸ Similarly, a U.S. Government Accountability Office study found that the difference in operating expenses per vessel per year for a U.S. flag vessel versus a foreign flag vessel rose from nearly \$5 million in 2010 to upwards of \$6.5 million in 2018.⁴²⁹

Export Controls and Technology Transfer Regulations

SMEs report that export controls and the complexity surrounding the regulatory environment for products under export control is a trade-related barrier for defense-related equipment manufacturers. These rules limit exports because it is often uncertain whether U.S. SMEs can legally export certain items, and the complex environment creates a large hurdle that is difficult for SMEs to overcome. Delays associated with compliance with U.S. regulations drive up costs for U.S. SME exporters.⁴³⁰ One SME estimated it could take nearly six months to get a license allowing export to the UK, resulting in backlogs and delayed shipments.⁴³¹ SMEs must also submit new technical assistance agreements that incur additional delays and costs following even small changes, such as when a product cost or equipment part changes.⁴³²

For example, much of the new research in ocean technology is incorporated into larger systems that are subject to U.S. export controls because they are used by the U.S. Department of Defense. This ties the export control to the specific technology, rather than the civilian end use, subjecting nonmilitary systems to export controls.⁴³³ Technology that has dual application for military and civilian use is under export control, even if intended for civilian-only applications.⁴³⁴

⁴²⁴ Exports that are in conjunction with the U.S. government include products that have received direct or indirect government involvement and/or financing. USDOT, MARAD, “Office of Cargo and Commercial Sealift” (accessed March 14, 2019).

⁴²⁵ Industry representative, listening session, Washington, DC, November 9, 2018, 19–20.

⁴²⁶ Industry representative, listening session, Washington, DC, November 9, 2018, 19–20.

⁴²⁷ U.S. industry representative, listening session, Salt Lake City, UT, December 10, 2018, 41.

⁴²⁸ Lincione, “If You Like Higher Prices,” January 22, 2015.

⁴²⁹ GAO, “Maritime Security: DOT Needs to Expediently Finalize,” August 2018, 24.

⁴³⁰ Industry representative, listening session, London, England, UK, April 23, 2019, 17–18.

⁴³¹ Industry representative, listening session, London, England, UK, April 23, 2019, 17–18.

⁴³² Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 31.

⁴³³ U.S. government representative, interview by USITC staff, September 25, 2018.

⁴³⁴ Industry representative, interview by USITC staff, November 13, 2018.

Boats

Boats are classified under the broader transportation manufacturing sector (NAICS 336), with boating primarily covered by NAICS code 3366 (Ship and Boat Building). Products classified as boating include shipbuilding and related industries, as well as pleasure boats and accessories. The ship and boat building industry as a whole produced \$32.3 billion worth of goods and employed 136,140 workers in the United States in 2016.⁴³⁵

The EU (including the UK) was the second-largest export destination for U.S.-made boat products, after Canada, in 2016.⁴³⁶ U.S. exports of ships and boats to the UK accounted for between 1.0 percent and 2.3 percent of global ship and boat exports and between 10.1 percent and 17.3 percent of EU ship and boat exports during 2012–16.⁴³⁷ SME exports of boat products are included with transportation equipment, discussed above (see table 5.2).

Trade-related Barriers

Industry representatives stated that the lack of harmonization of certification rules and other regulations disproportionately impedes U.S. SMEs' boat exports to the UK relative to those of larger U.S. exporters. SME boat exporters also reported that the EU's additional customs duties (also referred to as retaliatory tariffs) hinders imports of U.S. boats.⁴³⁸

Duplicative Certifications

U.S. industry representatives noted that EU certificates are difficult for SMEs to obtain and that SMEs find the added time and costs needed to obtain duplicate certifications burdensome. The United States and the EU (including the UK) do not mutually recognize standards and certifications for the boating industry.⁴³⁹ Marine certifications in the EU (including the UK) are required by and administered under the Recreational Craft Directive (RCD), which adheres to standards set by the International Organization for Standardization (ISO). The RCD is a prescriptive list of requirements for the finished vessel, and many marine parts must bear CE markings to indicate their certification.⁴⁴⁰ The U.S. Coast Guard administers a mandatory federal certification for boats in the United States, while the National Marine Manufacturers Association (NMMA) administers voluntary certification based on the American Boat and Yacht Council

⁴³⁵ U.S. Census, Annual Survey of Manufacturers, 2014, 2016, NAICS 3366. U.S. Department of Labor, Bureau of Labor Statistics (BLS), Occupational Employment Statistics, May 2016.

⁴³⁶ Based on domestic exports of NAICS 3366 in 2018. USITC, DataWeb (accessed June 13, 2019).

⁴³⁷ USITC DataWeb/USDOC, NAICS 3366 (accessed February 14, 2019).

⁴³⁸ For a discussion of the EU's additional customs duties (retaliatory tariffs) on boats, see "Tariffs and Taxes" section in chap. 2, "Crosscutting Trade-related Barriers."

⁴³⁹ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴⁰ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

(ABYC) standards.⁴⁴¹ The NMMA certifies the fully assembled boat, not component parts,⁴⁴² while the RCD requires certain component parts be certified, as well as the finished boat.⁴⁴³

While RCD and NMMA certifications, for the most part, are very similar, there is no mutual recognition or harmonization of standards; this leads to duplication of certifications and expenses for U.S. boat exporters.⁴⁴⁴ U.S. exporters of ocean and marine technology equipment, particularly SMEs, may have difficulty understanding the highly technical RCD requirements.⁴⁴⁵ Additionally, an industry representative noted that it is expensive to meet the EU standards; compliance costs can be as much as \$3,000 to \$4,000 per boat.⁴⁴⁶ These hurdles are more difficult for smaller firms to overcome because they lack the financial resources and technical compliance expertise that large firms generally possess.⁴⁴⁷

Furthermore, most EU certifiers are located in Europe (rather than the United States), with a large distributional base in Germany where the EU marine equipment notifying body is located.⁴⁴⁸ There are only a few certifiers in the United States able to certify a limited number of items for export to the EU (including the UK).⁴⁴⁹ SMEs have more difficulty relative to larger boat manufacturing companies in getting certifications in the United States.⁴⁵⁰ In some instances, SMEs are able to obtain EU certification in the United States. In general, though, larger U.S. companies are better able to lobby the EU to allow their U.S.-based certifier to certify to the EU standards.⁴⁵¹

Chemicals and Pharmaceuticals

The chemical sector (NAICS 325) is a major contributor to all segments of the U.S. economy, and SMEs are key players in the industry. The U.S. chemical industry was the world's second largest in 2016,

⁴⁴¹ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴² The U.S. Environmental Protection Agency requires certain boat parts be certified in the United States. For example, engines must meet emissions certification requirements. Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴³ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴⁴ Standards related to electric voltage in boats as well as emissions are two of the largest differences between the International Organization for Standardization (ISO) and American Boat and Yacht Council (ABYC) standards. Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴⁵ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴⁶ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴⁷ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁴⁸ Industry representatives did not identify the specific notifying body in Germany. The National Marine Manufacturers Association (NMMA) has a joint inspection program with the Germany-based International Marine Certification Institute, but there are at least 21 recreational craft notifying bodies and 27 marine notifying bodies in the EU. International Marine Certification Institute, "NMMA-IMCI Joint Inspection Programme" (accessed April 10, 2019); Wellkang Tech Consulting, "Complete List of Notified Bodies" (accessed April 10, 2019).

⁴⁴⁹ There are unsettled issues surrounding the certification process as well as which notifying bodies will certify after the UK leaves the EU. Currently, a notifying body on the continent can certify to EU standards and then the boat can be distributed anywhere in the UK. The largest hub for certifying U.S. exports of boats is in Germany. If the German notifying body is unable to certify for the UK, this could disrupt the U.S. boating export market. Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁵⁰ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018.

⁴⁵¹ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018; industry representative, interview by USITC staff, October 24, 2018.

accounting for about 15 percent of the global industry.⁴⁵² In that same year, the value of the U.S. chemical industry’s shipments was about \$767.8 billion, accounting for about 800,000 jobs.⁴⁵³ The industry produces a wide variety of chemicals, ranging from commodity to specialty chemicals, sold as both intermediate and final products.⁴⁵⁴ Technologies used by the sector range from conventional chemical processes to multidisciplinary emerging technologies such as biotechnology and nanotechnology, with companies often integrating conventional and novel production processes in individual product lines.

The UK chemical market is a key export destination for the U.S. chemical industry.⁴⁵⁵ The EU accounted for about one-third of total U.S. chemical exports. Within the EU, the UK was the fourth-largest U.S. market in 2016, following Belgium, the Netherlands, and Germany.⁴⁵⁶ Total U.S. chemical exports to the UK were valued at \$6.8 billion in 2016, and SMEs accounted for \$2.1 billion of these exports (table 5.5). In 2016, there were 5,083 identified U.S. SMEs that exported chemicals to the UK. Whereas SMEs exported roughly one-third of total U.S. chemical exports by known value to the UK in 2016, SMEs made up almost 77 percent of the identified exporters (table 5.6).

Table 5.5 Known value of U.S. exports and identified exporters of chemical manufacturing (NAICS 325), by company size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	167,009	48,302	6,764	4.1	14.0
U.S. SME exports, known value (million \$)	49,157	13,786	2,083	4.2	15.1
SME share (%)	29.4	28.5	30.8	-	-
Number of identified exporters	57,272	15,988	6,628	11.6	41.5
Number of identified SME exporters	45,887	12,087	5,083	11.1	42.1
SME share (%)	80.1	75.6	76.7	-	-

Source: Compiled from official statistics of the USDOC, Census Bureau (U.S. Census) (accessed March 7, 2019 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census’s official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

⁴⁵² ACC, *2017 Guide to the Business of Chemistry*, n.d., 4–5. China has been the largest chemical industry for several years.

⁴⁵³ ACC, *2017 Guide to the Business of Chemistry*, n.d., 1–2.

⁴⁵⁴ Examples include adhesives (NAICS 3255), dyes and pigments (NAICS 3251), pesticides (NAICS 3253), pharmaceuticals (NAICS 3254), cosmetics (NAICS 3256), and plastics resins (NAICS 3252). One part of NAICS 325—NAICS 325413, in-vitro diagnostic substances—is discussed separately in the section of this chapter addressing medical equipment.

⁴⁵⁵ The global chemical industry is predominantly multinational, so much of the chemical two-way trade between the United States and the EU (including the UK) consists of intra-firm transfers (i.e., related-party trade). Related-party exports accounted for about 44 percent of U.S. exports to the UK. U.S. Census, “NAICS Related Party Database,” for NAICS Code 325 (accessed February 21, 2019).

⁴⁵⁶ USITC DataWeb/USDOC, HTS chapters 28–39, NAICS 325 (accessed March 15, 2019).

Trade-related Barriers

Regulatory trade-related barriers featured prominently among the issues reported by SMEs in this sector. Challenges reported by SMEs in the chemicals industry when exporting to the UK include REACH, the EU’s chemical regulatory system; EU cosmetics regulations; labeling requirements; licensing requirements; and clinical trial requirements.⁴⁵⁷ Compliance with these regulations significantly adds to SMEs’ operational costs. For example, an SME in the pharmaceutical sector said that it hires consultants—at a cost of about \$250,000—to hire experienced advisors to help navigate regulatory issues.⁴⁵⁸

Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

SMEs perceive REACH as a major trade-related barrier when exporting to the UK. REACH adds to SMEs’ overall compliance costs, which include testing and data fees.⁴⁵⁹ One SME recently estimated that costs related to REACH account for 5–10 percent of its total sales.⁴⁶⁰ Another SME representative stated that SMEs could expect to pay as much as \$2 million over 5 years in costs related to REACH, and companies with small sales volumes could expect to pay as much as \$40,000 in testing costs.⁴⁶¹

In addition, REACH requires companies outside the EU to have an EU presence via an “Only Representative” (OR), significantly expanding costs. SMEs reportedly pay ORs about \$5,000–\$12,000 annually, although one firm reported that it paid \$35,000 annually for its OR.⁴⁶² Some SMEs involved in the UK market address REACH’s OR requirement by having a UK subsidiary or by hiring a UK firm.⁴⁶³

Cosmetics Regulation

The need to attain regulatory conformity for cosmetics is seen by industry representatives as a trade-related barrier because it increases costs for U.S. SMEs that currently export or plan to export cosmetic

⁴⁵⁷ One source notes that “the European Union’s framework of chemical and cosmetics regulations are binding on all Member States,” and are enforced nationally, with each member state having a competent authority to maintain compliance. EC, Internal Market, Industry, Entrepreneurship and SMEs, “Legislation” (accessed March 14, 2019); Cosmeticsinfo.org, “U.S. and EU Cosmetics Regulation” (accessed March 14, 2019).

⁴⁵⁸ Industry representative, interview by USITC staff, December 20, 2018.

⁴⁵⁹ Industry representative, listening session, Houston, TX, December 3, 2018, 26; industry representative, listening session, Chicago, IL, December 4, 2018, 24–25, 44; industry representative, listening session, Washington DC, November 9, 2018, 62.

⁴⁶⁰ Industry representative, interview by USITC staff, January 30, 2019; industry representative said that the higher estimate of 10 percent includes personnel costs and time.

⁴⁶¹ Industry representative, email message to USITC, March 21, 2019.

⁴⁶² An “Only Representative” is a designated EU-based entity who complies with REACH obligations on behalf of a non-EU manufacturer or formulator. ECHA, “Only Representative,” <https://echa.europa.eu/support/getting-started/only-representative> (accessed July 16, 2019). Industry representative, email message to USITC, March 21, 2019.

⁴⁶³ Industry representative, interview by USITC staff, January 30, 2019.

products to the UK market.⁴⁶⁴ The applicable EU regulation passed in 2009 not only specifies safety requirements, but also introduced the concept and requirement of an EU-based “responsible person”—similar to the REACH OR requirement—for cosmetics products marketed in the EU.⁴⁶⁵ Costs for a “responsible person” are reportedly similar to those for ORs; many companies supplying OR services also supply “responsible person” services.⁴⁶⁶

SMEs are comparatively disadvantaged by registration and labeling costs related to the Cosmetics Regulation. For example, one SME mentioned that certification and registration costs related to policy measures such as the Cosmetics Regulation (and related labeling) amount to as much as \$1,000–\$2,000 to register individual items in the UK before the products can even be marketed; the cost per company can vary, depending on how many items it registers.⁴⁶⁷ If a U.S. company exports a product line in a dozen colors, it could spend as much as \$12,000–\$15,000 before the cosmetics can be sold in the UK.⁴⁶⁸

EU Labeling Requirements

SME representatives said that they faced challenges related to current EU labeling requirements, including the Classification, Labelling, and Packaging (CLP) Regulation ((EC) No 1272/2008),⁴⁶⁹ which can be costly and may compromise companies’ sensitive information. The CLP requires that labels be added to chemicals before the chemicals are marketed. It also creates a framework for the labels’ contents (e.g., the graphical elements used on the labels).⁴⁷⁰ The CLP requires full disclosure of a chemical formula for a given product, potentially revealing SMEs’ confidential business information.⁴⁷¹

Companies can reportedly apply for “alternative names” for individual product inputs so that proprietary information about the product (e.g., composition, inputs, and production process) is not disclosed. However, applying for an alternative name for individual chemical inputs raises several challenges: (1) the detailed product information required in the application (e.g., the product’s formula and inputs) opens the potential for release of proprietary information; (2) application costs are steep—

⁴⁶⁴ Finished cosmetics are primarily regulated in the EU under Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on Cosmetic Products. Numerous guidelines and amendments to Regulation (EC) N° 1223/2009 have been implemented over the years. EC, Internal Market, Industry, Entrepreneurship and SMEs, “Legislation” (accessed March 14, 2019).

⁴⁶⁵ The responsible person ensures compliance with EU regulations and makes sure the product is safe for use. EC, Internal Market, Industry, Entrepreneurship and SMEs, “Legislation” (accessed March 14, 2019).

⁴⁶⁶ Industry representative, listening session, Boston, MA, December 7, 2018, 38; Whitehouse, “Beauty Industry Body Reveals Brexit Fact Sheet,” October 25, 2018; industry representative, email message to USITC staff, March 21, 2019.

⁴⁶⁷ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 25-26; industry representative, email message to USITC staff, March 16, 2019, and interview by USITC staff, March 21, 2019.

⁴⁶⁸ The industry representative stated that the registrations costs are about \$1,000 to \$1,500 per color. Industry representative, listening session, Los Angeles, CA, December 6, 2018, 25-26; industry representative, email message to USITC staff, March 16, 2019, and interview by USITC staff, March 21, 2019; ITAC-9, “A Trade Agreement with Mexico and Potentially Canada,” September 27, 2018.

⁴⁶⁹ The CLP is based on the United Nations’ Globally Harmonized System (GHS). Industry representative, interview by USITC staff, January 30, 2019.

⁴⁷⁰ European Chemicals Agency, “Understanding CLP” (accessed April 15, 2019).

⁴⁷¹ Industry representative, interview by USITC staff, January 30, 2019.

about €10,000 (\$11,343);⁴⁷² and (3) there is no guarantee that the company will receive the requested alternative name.⁴⁷³ Further, SMEs incur extra costs related to additional rules requiring translations of labels for each product into the language of each EU member market. These additional rules requiring translations increase costs by a minimum of about \$10,000 a year for the translation services and for ordering the labels.⁴⁷⁴

Licensing Requirements

According to industry representatives, the EU's pharmaceutical licensing requirements act as trade-related barriers for U.S. SME pharmaceutical exports.⁴⁷⁵ An SME representative mentioned that the EU's "good distribution practice" requires companies to have licenses to sell in individual member countries.⁴⁷⁶ The representative added that licensing requirements vary by member country, with some being stricter than others and/or requiring more licenses than others.⁴⁷⁷

Clinical Trials Directive

Compared to larger firms, SMEs in the pharmaceutical industry are more heavily burdened by the requirements of the Clinical Trials Directive (Directive 2001/20/EC) which increase costs because SMEs are obligated to comply with additional regulations before exporting to the UK.⁴⁷⁸ The Clinical Trials Directive will be replaced once the EU Clinical Trials Regulation (536/2014) is implemented, currently expected in late 2019. Both the Directive and the Regulation require a legal representative acting for the sponsor of the clinical trials. SMEs have noted that one impact for firms with an existing UK subsidiary/representative is that they will need to add an EU entity, either by duplicating their UK presence in another EU country or by establishing a new EU presence, to be able to access the EU market, increasing costs.⁴⁷⁹

Medical Devices and Products

The medical device industry⁴⁸⁰ manufactures medical equipment and supplies such as surgical and medical instruments, surgical appliances and supplies, dental equipment and supplies, orthodontic

⁴⁷² Converted on March 15, 2019, using an exchange rate of 1 Euro = 1.13426 U.S. dollar from XE Currency Converter, <https://www.xe.com/currencyconverter/convert/?Amount=10%2C000&From=EUR&To=USD>.

⁴⁷³ Industry representative, interview by USITC staff, January 30, 2019.

⁴⁷⁴ Industry representative, interview by USITC staff, January 30, 2019.

⁴⁷⁵ Industry representative, interview by USITC staff, December 20, 2018.

⁴⁷⁶ Two directives (2001/83/EC and 2001/82/EC) and two guidelines address the distribution of medicines in the EU. European Medicines Agency, "Good Distribution Practice" (accessed March 15, 2019).

⁴⁷⁷ European Medicines Agency, "Good Distribution Practice" (accessed March 15, 2019).

⁴⁷⁸ Industry representative, interview by USITC staff, December 20, 2018.

⁴⁷⁹ Industry representative, interview by USITC staff, December 20, 2018. Although this section addresses the Clinical Trials Directive, companies in other segments of the chemical industry made similar comments.

⁴⁸⁰ For the purposes of this report, medical devices are covered in NAICS 3391, 3345, and 3254. The majority of medical devices fall in the 3391 NAICS code category; some additional codes, 3345 and 3245, overlap somewhat with the products in tables 5.4 (computer and electronic product manufacturing, NAICS 334) and 5.5 (chemical manufacturing, NAICS 325).

products, ophthalmic products, dentures, and orthodontic appliances.⁴⁸¹ The U.S. medical device industry is the world’s largest.⁴⁸² It employed 390,153 U.S. workers in 2016, and SMEs employed 46 percent of these workers.⁴⁸³ Very small enterprises make up most of the U.S. medical device industry; 73 percent of companies had less than 20 employees, and 88 percent had less than 100.⁴⁸⁴

The EU market, including the UK, is a key destination for U.S. medical devices. U.S. exports of medical devices to the EU (which includes the UK) accounted for 38 percent of total global U.S. exports in 2016;⁴⁸⁵ U.S. exports to the UK accounted for 2.6 percent of global U.S. exports in 2016.⁴⁸⁶ The United States is a leading supplier of diagnostic, dental, orthopedic equipment, and high-quality wound care products to the UK.⁴⁸⁷

Specific SME data are not available for the medical equipment industry. However, they are available for the broader NAICS subsector, “miscellaneous manufacturing” under NAICS 339, which may serve as a useful reference point. In 2016, known SME exporters comprised 81 percent of all exporters of miscellaneous manufacturing (NAICS 339) to the UK, and accounted for 52 percent of exports (by value) (table 5.6).

Table 5.6 Known value of U.S. exports and identified exporters of miscellaneous manufacturing (NAICS 339), by company size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	68,447	18,089	2,597	3.8	14.4
U.S. SME exports, known value (million \$)	27,877	6,198	1,353	4.9	21.8
SME share (%)	40.7	34.3	52.1	-	-
Number of identified exporters	55,429	17,698	7,321	13.2	41.4
Number of identified SME exporters	46,914	14,445	5,961	12.7	41.3
SME share (%)	84.6	81.6	81.4	-	-

Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 7, 2019 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from the U.S. Census’s official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level, which encompasses a broader NAICS subsector than the medical equipment industry. See appendix E, tables E.1 and E.2, for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

Trade-related Barriers

U.S. representatives in the medical products industry identified several specific trade-related barriers that disproportionately affect SMEs. These included the lack of recognition of U.S. certifications in the UK and the cost associated with acquiring UK specific certifications. For example, one U.S. Food and

⁴⁸¹ U.S. Census, NAICS (accessed February 13, 2019).

⁴⁸² Herman, Horowitz, and Torsekar, “Competitive Conditions Affecting U.S. Exports of Medical Technology to Key Emerging Markets,” August 2018, 7.

⁴⁸³ U.S. Census, Statistics on U.S. Businesses (accessed February 13, 2019).

⁴⁸⁴ MedPAC, *Report to the Congress: Medicare and the Health Care Delivery System*, June 2017, 209.

⁴⁸⁵ USITC DataWeb/USDOC, NAICS 3391 (accessed February 14, 2019).

⁴⁸⁶ USITC DataWeb/USDOC, NAICS 3391 (accessed February 14, 2019).

⁴⁸⁷ USDOC, ITA, Export.gov, *United Kingdom—Medical Equipment*, September 8, 2018.

Drug Administration regulation could cost an SME millions in U.S. dollars to comply, but the same SME would have additional costs needed to comply with UK regulations if they want to export to the UK.

Duplicative Certifications

Similar to producers of aerospace products, boats, and ocean technology equipment, U.S. SMEs that produce and export medical goods are disproportionately affected by the added time and costs needed to duplicate certifications on certain medical devices and products. There is no reciprocal agreement for the UK and U.S. governments' regulations governing medical devices, despite similarities in the regulations of both countries. The costs for SMEs to get different regulatory tests certifying that their product meets the requirements of both the U.S. FDA's Medical Device Reporting (MDR) and the EU's In Vitro Diagnostic Device Regulation (IVDR) are a significant trade-related barrier.⁴⁸⁸ One estimate on the cost for an SME to bring a medical device—for example, magnetic resonance imaging (MRI) devices—to market under a pre-market authorization system was \$18.9 million.⁴⁸⁹

The need to obtain a CE mark is a significant trade-related barrier that negatively affects SMEs exporting medical products to the UK because the process is time-consuming and expensive. The UK Government requires SMEs to conduct an internal conformity assessment for their medical products, or, if necessary, have a conformity assessment done by a third-party organization.⁴⁹⁰ If an SME uses a third-party organization, the SME is responsible for travel and accommodation expenses for the certifiers.⁴⁹¹ Further, SMEs must buy additional packaging units that have the CE mark in order to sell in the UK market.⁴⁹²

REACH

Similar to the effects on SMEs exporting chemicals to the UK, the costs of compliance for the REACH requirement to establish EU presence or have an “only representative” (OR) are a trade-related barrier that disproportionately affects U.S. SMEs that export medical products.⁴⁹³ Larger companies can physically move their manufacturing to an EU member country to ease compliance with the regulations. Smaller businesses, however, are unlikely to locate their production location outside of the United States because of the added costs.⁴⁹⁴

⁴⁸⁸ Under both the in vitro diagnostic medical device regulation (IVDR) and medical devices regulation (MDR), medical device manufacturers must ensure their devices meet specific criteria including: (1) the device is correctly classified; (2) the medical device meets general safety and performance requirements; (3) increased requirements for clinical evidence are met for the medical device; (4) manufacturers have a person responsible for regulatory compliance; (5) suppliers are compliant with regulations; (6) manufacturers have sufficient financial coverage for liability; (7) vigilance reporting timescales are met and annual safety update reports are created for the medical device. Government of UK, “Medical Devices: EU regulations for MDR and IVDR,” October 2018.

⁴⁸⁹ EY, “How the New EU Medical Device Regulation Will Disrupt and Transform the Industry”, 2016, 8.

⁴⁹⁰ EC, “Conformity Assessment” (accessed February 13, 2019).

⁴⁹¹ Industry representative, listening session, Chicago, IL, December 4, 2018, 43.

⁴⁹² Industry representative, listening session, Boston, MA, December 7, 2018, 49.

⁴⁹³ For more information on REACH, see the section above on Chemicals and Pharmaceuticals.

⁴⁹⁴ Industry representative, listening session, Chicago, IL, December 4, 2018, 22–24.

Ways to Enhance SME Participation in U.S.-UK Trade

U.S. manufacturing sector SMEs provided several suggestions for enhancing their exports to the UK. The most significant of these was to provide for reciprocal certifications for products that have closely harmonized standards. A number of mutual recognition agreements (MRAs) have been signed that are considered a key step in maintaining commercial continuity for U.S. SMEs that export to the UK. Establishing free trade zones in the UK would allow supply chain and assembly flexibility. Finally, SMEs stress the importance of ongoing collaboration and dialogue between the U.S. and UK to maintain a positive relationship and policy consistency.

Mutual Recognition of Certifications for Aerospace, Cosmetics, and Medical Product Industries⁴⁹⁵

SMEs state that mutual recognition of certifications between the U.S. and UK would increase trade by eliminating the cost of dual certification.⁴⁹⁶ The United States and EU (including the UK) have largely similar standards and regulations in many industries, as is the case in the boating industry.⁴⁹⁷

In the aerospace industry, SMEs would benefit from a harmonization between FAA and EASA certification regulations.⁴⁹⁸ In general, any policy that would streamline the safety certification processes covering aircraft and aircraft parts for U.S. SMEs could boost U.S. exports in this industry.⁴⁹⁹ Increasing reciprocity in certification acceptance could also be beneficial in lowering trade-related barriers.⁵⁰⁰ For example, SME firms noted they could be more competitive if regulations impeding U.S. exports of defense-related aerospace products were similar to those that UK-based firms face when exporting to the United States.⁵⁰¹ Furthermore, reciprocity for certain technical certifications between the United States and the UK, or the elimination of certifications altogether, would clarify business dealings with UK customers.⁵⁰²

SME representatives also contended that the regulatory processes governing medical products trade would benefit from mutual recognition. Industry representatives noted that the regulation governing

⁴⁹⁵ For a discussion on standards and regulations for manufactured goods, see chap. 3: “Standards and Regulations.”

⁴⁹⁶ Industry representative, interview by USITC staff, Washington, DC, October 5, 2018; U.S. industry representative, listening session, Salt Lake City, UT, December 10, 2018, 46–47.

⁴⁹⁷ U.S. industry representative, listening session, Salt Lake City, UT, December 10, 2018, 15.

⁴⁹⁸ U.S. industry representative, listening session, Salt Lake City, UT, December 10, 2018, 15.

⁴⁹⁹ U.S. government representative, listening session, Salt Lake City, UT, December 10, 2018, 46–47; Bellamy III, “EASA, FAA Further Reduce Certification Duplication,” October 20, 2017.

⁵⁰⁰ U.S. industry representative, listening session, Salt Lake City, UT, December 10, 2018, 27–28.

⁵⁰¹ U.S. exports of certain defense-related aerospace products must conform to the International Traffic in Arms Regulation (ITAR), whereas U.S. imports of similar products are not restricted by ITAR. U.S. industry representative, listening session, Salt Lake City, UT, December 10, 2018, 27–28.

⁵⁰² U.S. industry representative, listening session, Salt Lake City, UT, December 10, 2018, 29–30, 35.

MDR and IVDR devices in the United States are similar to those in the UK in terms of safety.⁵⁰³ For example, if a device is certified by the U.S. Food and Drug Administration⁵⁰⁴ as meeting the safety requirements to be sold in the U.S. market, then it would be helpful for that certification to be recognized in the UK market.

EU REACH Program with Certain Allowances for U.S. SMEs

SMEs representatives in the chemicals industry anticipate that the UK will set up a UK REACH program similar to that used by the EU to encourage SME exports to the UK.⁵⁰⁵ The representatives suggested that the UK REACH program should (1) accept EU REACH registered chemicals and documentation; (2) exempt certain products from registration (e.g., products imported into the UK for processing for export and certain polymers, as well as the polymer inputs); and (3) allow SMEs with UK ORs to retain the OR (as noted by one SME, switching to a new and/or unaffiliated OR could compromise their information security and disclose their confidential business information).

Granting International Traffic in Arms Regulations Exemptions for Defense-related Equipment Exports

In the defense-related industry, SMEs suggest they would benefit if the United States granted certain exceptions to International Traffic in Arms Regulations when exporting to the UK, similar to exceptions granted for Canada.⁵⁰⁶ SME firms also pointed to previous U.S. free trade agreements, such as that with Australia, as examples of lowering trade-related barriers. The agreement with Australia streamlined some of the certification procedures.⁵⁰⁷

⁵⁰³ Industry representative, listening session, Boston, MA, December 7, 2018, 27–28.

⁵⁰⁴ Medical device manufacturers and sellers must meet several rigorous regulatory requirements before a medical device can enter into the U.S. market: (1) each establishment(s) must be registered with the Federal Drug Administration (FDA); (2) manufacturers must list their devices with the FDA; (3) commercial device distributors must submit a Premarket Notification 510(k); (4) the medical device manufacturer must acquire a Premarket Approval if the device is classified as high risk; (5) the medical device manufacturer must acquire an investigational device exemption which allows their device to be used in a clinical study in order to collect safety and effectiveness data required to support a Premarket Approval; (6) the medical device must meet quality system regulation requirements; (7) the medical device manufacturer must ensure that the device labeling is descriptive and informational literature is provided with the device; and (8) the medical device manufacturer must adhere to medical device reporting requirements. FDA, “Overview of Device Regulation” (accessed February 22, 2019).

⁵⁰⁵ Industry representative, email message to USITC staff, March 21, 2019.

⁵⁰⁶ U.S. companies are able to export certain defense-related goods to Canadian government authorities and Canadian businesses that are registered with the Canadian Defence Production Act without needing ITAR licenses. 22 C.F.R. § 126.5(b) (2001), https://www.ecfr.gov/cgi-bin/text-idx?SID=1c99b88590d8ba1a140edd5967be6cd9&mc=true&node=se22.1.126_15&rgn=div8; industry representative, listening session, Washington DC, November 9, 2018, 16, 38, 55.

⁵⁰⁷ SME firms also pointed to previous U.S. free trade agreements as examples of lowering trade-related barriers. Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 29.

Mutual Recognition Agreements (MRAs)

In February 2019, the United States and the UK signed a set of MRAs that replicate substantive provisions of existing MRAs between the United States and the EU. The USTR said that the agreements are to “replicate substantive provisions of existing MRAs between the U.S. and the EU for these sectors and will ensure that U.S.-UK trade in these product sectors is not disrupted when the UK leaves the European Union.”⁵⁰⁸ These agreements included provisions for telecommunications and electromagnetic components, pharmaceuticals, and marine equipment, which are all a part of the current MRA between the United States and the EU.⁵⁰⁹ Experts in the information and communications technologies industry have noted that MRAs will be particularly important in maintaining continuity for the consumer devices, telecommunications, and electronics sectors.⁵¹⁰

The MRA pertaining to pharmaceuticals addresses good manufacturing practice (GMP) inspections.⁵¹¹ For SMEs in the industry, this will both enhance continuity of operations and reduce paperwork costs.⁵¹² The European Medicines Agency also said that the MRAs are expected to reduce costs for manufacturers of any size because the MRAs would reduce the number of inspections companies undergo and eliminate additional testing as products cross borders.⁵¹³

Although an MRA was concluded in February 2019 for the marine equipment industry, it does not include standards discussed by industry representatives for the boating industry. The marine equipment MRA’s scope is limited, including products in only three main categories: lifesaving equipment (e.g., visual distress signals, marine evacuation systems); fire protection equipment (e.g., fire doors, insulation); and navigational equipment (e.g., compasses, Global Positioning System [GPS] equipment, echo-sounding equipment).⁵¹⁴ Industry representatives expressed the view that an MRA that covers the boating industry would benefit SMEs.

Creating Free Trade Zones

Establishing free trade zones would allow U.S. exporters the flexibility to incorporate the sensitive technological aspects of their products in the UK, rather than shipping a complete product to the UK. This change could lower trade barriers, particularly for defense-related products involving technology transfers that could be potentially be subject to ITAR.⁵¹⁵ For example, a “dumb” product (before the sensitive technology is incorporated) is bound by fewer export regulations. Being able to add the “smart” components or proprietary technology of the product in a free trade zone in the UK would allow

⁵⁰⁸ USTR, “USTR Signs Mutual Recognition Agreements with the United Kingdom,” February 14, 2019.

⁵⁰⁹ USTR, “Agreement on Mutual Recognition,” February 4, 2019.

⁵¹⁰ Government of the UK, DIT, “UK and USA Agree to Continue,” February 4, 2019.

⁵¹¹ The good manufacturing practice (GMP) system specifies practices needed to maintain consistent quality standards during manufacturing. ISPE, “GMP Resources” (accessed March 15, 2019).

⁵¹² Industry representative, interview by USITC staff, March 21, 2019.

⁵¹³ European Medicines Agency, “Mutual Recognition Agreements (MRA)” (accessed March 21, 2019).

⁵¹⁴ USTR, “USTR Signs Mutual Recognition Agreements,” February 14, 2019.

⁵¹⁵ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 2018, 41–42.

U.S. SME exporters to benefit from faster shipping times and lower costs, because the completed product with the technology incorporated faces more barriers and delays in shipping.⁵¹⁶

⁵¹⁶ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 2018, 41–42.

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Chapter 6

Food and Agricultural Goods

Overview

The UK is a small but receptive market for U.S. exports of agricultural and food (agrifood) products.⁵¹⁷ In 2018, U.S. exported \$2 billion of agrifood products to the UK, accounting for 13 percent of total U.S. agrifood exports to the EU.⁵¹⁸ The UK is heavily reliant on agrifood imports. While the UK primarily imports agrifood products from the EU, the United States is the UK's largest agrifood product trading partner outside the EU and an important supplier of consumer-oriented foods in the UK.⁵¹⁹ Both the United States and the UK share similar consumer trends in the retail and food service markets. Demand for U.S. consumer-oriented food products also differentiates the UK from other EU country markets. The UK has been the ninth-largest market for U.S. consumer-oriented products for several years.⁵²⁰

The focus of this chapter is on the specific products that were the leading U.S. agrifood exports by value to the UK in 2016 for which SME representatives testified that there were trade-related barriers. This chapter includes a discussion about these barriers for alcoholic beverages, certain processed foods, fish and seafood products, fresh produce, and edible nuts.⁵²¹ While total U.S. agricultural exports are much smaller than total U.S. exports of manufactured goods to the UK, agricultural exports face a disproportionately higher number of trade barriers, in part because of the EU's protective agricultural policies. SMEs generally supply a limited portion of direct U.S. exports of agricultural products. However, many small- and medium-sized farms and ranches typically act as indirect exporters by participating in the supply chain of larger firms' exports.⁵²² Thus, the burden of these trade barriers affect the prices and returns to agricultural SMEs whether they directly or indirectly supply agricultural and food products to the UK market. SMEs are direct exporters in certain sectors, such as consumer-oriented or processed agrifoods, which are among the leading U.S. food and agricultural exports to the UK.⁵²³ SMEs directly exported \$852 million of agrifoods to the UK in 2016 and accounted for 45 percent of total U.S. exports of these agrifoods to the UK (figure 6.1).⁵²⁴ In 2016, SMEs dominated known U.S. exports of certain

⁵¹⁷ USDA, *United Kingdom Exporter Guide*, December 21, 2017.

⁵¹⁸ U.S. agrifood exports reported are based on total U.S. exports defined by NAICS 111 (crop production), 112 (livestock and livestock products), 114 (fish and marine products), 311 (food and kindred products), and 312 (beverage and tobacco products). USITC DataWeb/USDOC (accessed June 24, 2019).

⁵¹⁹ USDA, *United Kingdom: Retail Foods Report*, June 15, 2018.

⁵²⁰ USDA, *United Kingdom: Retail Foods Report*, June 15, 2018.

⁵²¹ Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level. These select, consumer-oriented agricultural food products are a subset of products that are included in broader U.S. NAICS codes representing agricultural products, including produce and peanuts in NAICS 111, fish and seafood products included in NAICS 114, food manufacturing including processed foods and nuts in NAICS 311, and beverage and tobacco products including alcoholic beverages in NAICS 312, as reported in appendix E, tables E.1 and E.2.

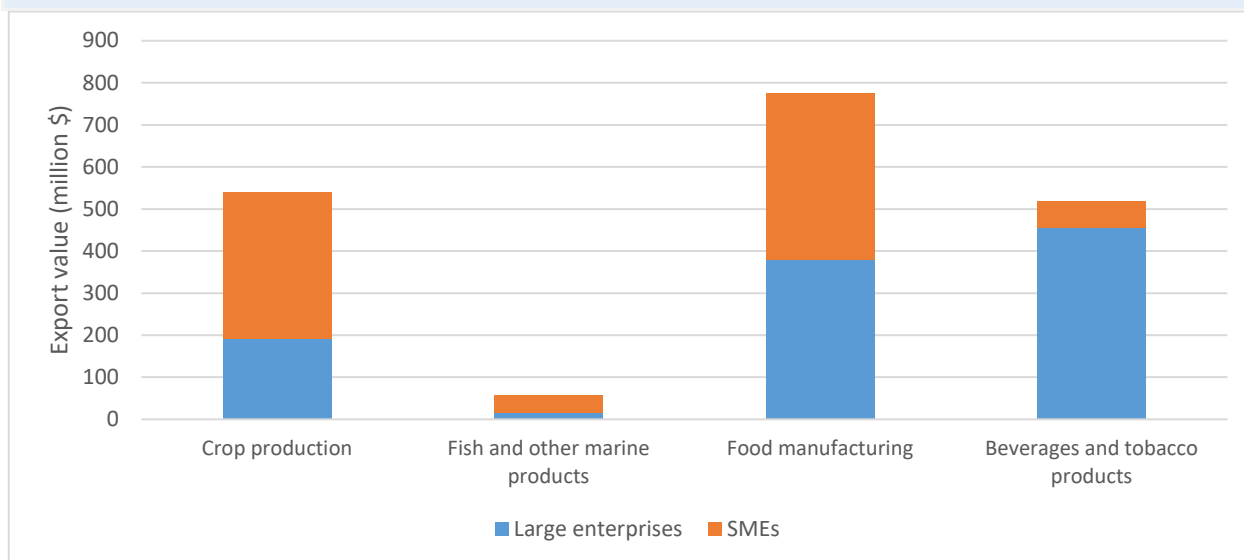
⁵²² USITC, *Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 5-1.

⁵²³ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 5-1.

⁵²⁴ U.S. agrifood exports reported are based on total U.S. exports defined by NAICS 111 (crop production), 112 (livestock and livestock products), 114 (fish and marine products), 311 (food and kindred products), and 312 (beverage and tobacco products). Compiled from official statistics of the U.S. Census (accessed March 26, 2019).

agrifood products to the UK, particularly in certain agricultural products (including produce and raw edible nuts in NAICS 111), fish and other marine products (including wild-caught fish and seafood in NAICS 114), and food manufacturing products (including processed foods in NAICS 311) (figure 6.1). SMEs accounted for 73 percent of known U.S. fish and seafood exports to the UK, 65 percent of known U.S. exports of agricultural goods (including produce and raw edible nuts), and over 50 percent of known exports of food manufacturing (including processed foods) in 2016. SMEs represented a smaller but still significant share of U.S. exports of beverage and tobacco products, including alcoholic beverages (in NAICS 312), accounting for 12 percent of known U.S. exports of these goods to the UK.

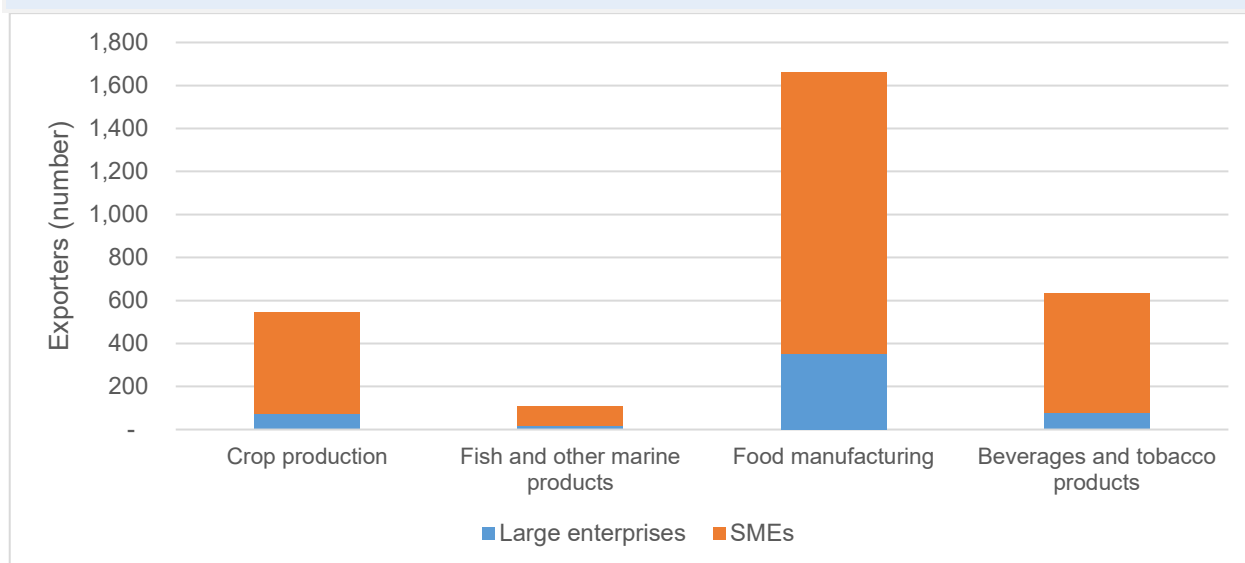
Figure 6.1 Known U.S. exports of food and agricultural products to the UK, by value (million \$) and company size, 2016.



Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 26, 2019).

Notes: Known export values are defined by NAICS 111 (crop production), 114 (fish and other marine products), 311 (food manufacturing), and 312 (beverage and tobacco products). Due to confidentiality issues, U.S. Census data were only available at the 3-digit NAICS code level, which encompasses broader NAICS subsectors than the industries discussed in this chapter. Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census’s official published data. See appendix E, table E.1, for a detailed breakdown of known U.S. export values.

In 2016, 2,426 SME agrifood firms categorized under NAICS codes 111, 114, 311, and 312 exported to the UK, accounting for 82 percent of total U.S. agrifood enterprises exporting to the UK (figure 6.2). Of the total number of identified SMEs exporting to the UK, the food manufacturing subsector had the greatest share (54 percent) of SME exporters, followed by beverages and tobacco products (23 percent), agricultural products (19 percent), and fish and other marine products (4 percent) in 2016. In terms of total identified exporters by sector, including both large companies and SMEs, SMEs represented over 85 percent of the share of exporters in NAICS codes 111, 114, and 312, and represented almost 80 percent of the share of exporters in NAICS code 311.

Figure 6.2 Identified exporters of food and agricultural products to the UK, by company size, 2016

Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 7, 2019).

Notes: Identified U.S. exporters are defined by NAICS 111 (crop production), 114 (fish and other marine products), 311 (food manufacturing), and 312 (beverage and tobacco products). Due to confidentiality issues, U.S. Census data were only available at the 3-digit NAICS code level, which encompasses broader NAICS subsectors than the industries discussed in this chapter. Identified enterprises are those to which one or more transactions can be matched. See appendix E, table E.2, for a detailed breakdown of identified U.S. exporters.

Summary of Trade-related Barriers

U.S. SME exporters of agrifood to the UK are negatively affected by tariffs and tariff-related policies. Several SMEs noted that they perceived EU tariffs as significant barriers to their UK exports, specifically in sectors such as fishery products, fruits, and prepared foods.⁵²⁵ The USITC's 2014 SME report previously found that the U.S. agricultural sector faces some of the most significant trade-related barriers of any U.S. industry sector exporting to the EU.⁵²⁶ The EU's average agricultural tariff (10.9 percent) is more than double its average non-agricultural tariff (3.9 percent).⁵²⁷ Moreover, the EU's tariffs are especially high on certain consumer-oriented U.S. agrifood exports like fish and seafood (up to 26 percent).⁵²⁸ In addition, SMEs noted that preferential tariff treatment granted to competing suppliers (in relation to third-party trade agreements and EU tariff-rate quotas), as well as the EU's tariff escalation system, act as trade-related barriers.

U.S. SME agrifood exporters also identified a variety of nontariff barriers to trade that stem from both EU- and UK-specific requirements. Among these are (1) regulatory requirements for labeling, (2) sanitary and phytosanitary (SPS) requirements, (3) geographical indications and wine names, (4) packaging

⁵²⁵ Industry representatives, interviews with USITC staff, September 21, November 29, and December 1, 2018.

⁵²⁶ USITC, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive*, March 2014, 5–2.

⁵²⁷ USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, 157.

⁵²⁸ USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, 157.

requirements, and (5) food safety rules.⁵²⁹ SMEs identified the EU’s organic regulations and the EU’s farm support programs as two additional trade-related barriers that affect multiple industries.⁵³⁰ Table 6.1 summarizes the information and views that SME representatives and other interested parties provided during the listening sessions and industry interviews.

Table 6.1 Summary of trade- and market-related barriers that U.S. SMEs face when exporting food and agricultural products to the UK

Industry sector	Trade- and market-related barrier	Summary of SME concerns
Alcoholic beverages	Tariffs and preferential access	<ul style="list-style-type: none"> • EU tariff increases cost of U.S. wine exports relative to intra-EU suppliers or free trade agreement (FTA) partners. • Additional customs duties (retaliatory tariffs) impose high costs on U.S. whiskey exports to the EU.
	Labeling requirements	<ul style="list-style-type: none"> • EU label requirements impose additional costs and compliance burdens for U.S. wine, distilled spirits, and beer exporters. • EU alcohol production definitions in conjunction with labeling requirements restrict the exports of certain U.S. distilled spirits and wine.
	Geographical indications (GIs) and wine names	<ul style="list-style-type: none"> • EU GI requirements restrict the exports of U.S. wines.
	Maximum residue levels (MRLs) on crop protection substances	<ul style="list-style-type: none"> • EU MRL administration system, the EU’s hazard-based approach to MRLs, and low EU MRLs negatively affect U.S. wine exports.
	Packaging standards	<ul style="list-style-type: none"> • EU bottle size requirements impose additional costs on U.S. distillers.
Seafood products	Tariffs, tariff-rate quotas (TRQs), and preferential tariff treatment	<ul style="list-style-type: none"> • EU tariff increases the cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU TRQ limits market access for U.S. exports, and quota administration introduces uncertainty.
	Traceability standards and labeling requirements	<ul style="list-style-type: none"> • EU labeling standards for seafood impose burdensome reporting requirements/constrain U.S. exports.
	Live mollusk ban under sanitary and phytosanitary (SPS) measures	<ul style="list-style-type: none"> • EU protocol prevents U.S. exports of live molluscan shellfish.
Fresh fruits and vegetables	Tariffs and tariff-rate quotas (TRQs)	<ul style="list-style-type: none"> • EU tariff increases the cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU TRQs limit market access for U.S. exports.
	Maximum residue levels	<ul style="list-style-type: none"> • EU MRL administration system, the EU’s hazard-based approach to MRLs, and low EU MRLs inhibit U.S. fruit exports.

⁵²⁹ Specific trade-related barriers affecting U.S. exporters of agrifoods to the UK include regulations on sanitary and phytosanitary measures (SPS), certification requirements, differences in standards and definitions, and other regulatory requirements. These standards and regulations that apply to the agrifood industry are discussed in detail in chapter 3, “Standards and Regulations.” USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, 139–61.

⁵³⁰ USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, 139–61.

Industry sector	Trade- and market-related barrier	Summary of SME concerns
	Sanitary and phytosanitary (SPS) protocols Food additives (wax)	<ul style="list-style-type: none"> • EU SPS protocols inhibit U.S. citrus exports, particularly of grapefruit. • EU food additive protocols increase the costs of exporting grapefruit.
Edible nuts	Tariffs and TRQs Maximum levels (MLs) on contaminants Administration of MRLs	<ul style="list-style-type: none"> • EU tariff increases the cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU TRQs limit market access for U.S. exports. • EU's hazard-based approach to MLs and EU MLs on aflatoxins limit U.S. nut exports. • There is a lack of regulatory transparency in the process of setting MRLs for chemicals. • Insufficient time is allowed between adoption and implementation of MRL limits.
Processed foods	Tariffs Food additive restrictions and labeling	<ul style="list-style-type: none"> • EU tariff increases cost of U.S. exports relative to intra-EU suppliers or FTA partners; EU system of tariff escalation especially affects processed food exports. • EU food additive protocols result in extra costs due to U.S. product reformulation, additional costs imposed by ordering new labels, and limit overall U.S. product export potential.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMES.

The trade-related barriers that SMEs in the agrifood industry face include tariff-related measures that both impose customs duties on consumer goods, such as processed foods and alcoholic beverages, and allow preferential tariff treatment for EU suppliers. Although both large and SME producers are affected by additional customs duties, depending on how many units are shipped, SMEs are more prone to limit or cease their exports because of these duties.⁵³¹ SMEs in the agrifood industry also face multiple sanitary and phytosanitary measures (SPS) measures and labeling rules, as well as certification requirements. SPS measures and technical barriers are particularly costly for SMEs and make them more likely to exit a foreign export market if they cannot comply.⁵³² Fixed costs associated with SPS measures impact SMEs more than larger firms because these costs represent a higher share of SME trade revenues, whereas larger firms are better able to absorb them.⁵³³

Tariff-related Policies

U.S. SME exporters of food and agricultural goods are affected by a number of EU tariff-related policies that favor imports from competing suppliers, including high tariffs, tariff-rate quotas, and the EU's tariff escalation system. First, the EU extends tariff preferences to some trade partners that allow unlimited imports of some agricultural products at lower duty rates than those from the United States.⁵³⁴ In

⁵³¹ WTO, World Trade Report, *Levelling the Trading Field for SMEs*, 2016, 83.

⁵³² WTO, World Trade Report, *Levelling the Trading Field for SMEs*, 2016, 86.

⁵³³ WTO, World Trade Report, *Levelling the Trading Field for SMEs*, 2016, 86–87.

⁵³⁴ Some of the EU's tariff preferences and TRQs are only available to historical suppliers of goods or are the result of bilateral agreements between the EU and supplying countries.

addition, many U.S. agricultural products are subject to TRQs that allow imports of a certain volume of products at a lower duty rate while over-quota volumes incur a higher duty rate.⁵³⁵

U.S. SMEs exporting edible nuts, fruit, and fishery products perceive that they are negatively affected by the EU's TRQs in a variety of ways. Preferential duty rates for some trading partners as well as TRQs have acted as a trade-related barrier for some products, as some industry representatives noted that they put U.S. exports at a competitive disadvantage to those of the preferential trading partner.⁵³⁶ Representatives of domestic cherry and citrus fruit industries also noted that EU TRQs on these fruits act as trade barriers for their industries.⁵³⁷ Specifically, U.S. cherries entering the EU are subject to a complex TRQ with an in-quota tariff of 6–12 percent, which varies seasonally.⁵³⁸ Since the cherry season in the United States and EU overlap, the high in-quota tariff increases the delivered price for U.S. cherries in the EU market, which compete directly with domestic product; the higher price results in very low export volumes of U.S. cherries to the EU.⁵³⁹ Similarly, the EU has a complex TRQ for citrus fruits, with tariffs ranging from 3.2–16 percent, depending on the time of year.⁵⁴⁰ In addition, some fishery products are included in the EU's autonomous tariff quota (ATQ) system, which is designed to stimulate competition among EU processors by improving access to raw material inputs.⁵⁴¹ Industry representatives noted that the unpredictability in the administration of ATQs is problematic, given that both supply and demand for these fishery products can vary substantially from year to year.⁵⁴²

Finally, the EU's tariff escalation system acts as an impediment to U.S. exports, particularly to SME exports of processed foods. Industry representatives in the edible nuts and processed food industries noted that the EU's tariff escalation system puts them at disadvantage, and an industry representative

⁵³⁵ See, for instance, World Trade Organization (WTO) notification G/AG/N/EU/50, February 22, 2019, reporting 2018 imports under those EU TRQs that are applied on a calendar year basis. Following Brexit, the administration of EU TRQs is likely to become more complicated. The UK and the EU have proposed that post-Brexit, over 100 quotas be simply split between the UK and the EU-27 based on historical trade volumes over 2013–15. Seven major supplying countries, including the United States, have objected to this proposal. Supplying countries note that they would lose the flexibility to shift exports between the UK and EU-27 in response to changes in demand, thus making them worse off than before. GATT article 28 requires that any such change between WTO members leave each country “no worse off” than before. WTO, “Letter from WTO Representatives from Argentina, Brazil, Canada, New Zealand, Thailand, the United States, and Uruguay to the WTO Representatives of the United Kingdom and the European Union,” September 26, 2017.

⁵³⁶ ABC, written submission to USTR, December 10, 2018.

⁵³⁷ Industry representative, interview by USITC staff, April 5, 2019; industry representative, interview by USITC staff, April 9, 2019.

⁵³⁸ Official Journal of the EU, “Commission Implementing Regulation (EU) 2018/1602 of 11 October 2018,” L273/739–742.

⁵³⁹ Industry representative, interview by USITC staff, April 5, 2019.

⁵⁴⁰ Official Journal of the EU, “Commission Implementing Regulation (EU) 2018/1602 of 11 October 2018,” L273/717–730.

⁵⁴¹ EC, “Trade Helpdesk” (accessed May 8, 2019).

⁵⁴² Since the EU fish processing industry is dependent on imports, the EU's ATQs allow a limited volume of some fishery products to enter at a reduced or suspended duty rate. Notably, tariff quotas are only granted to those products that are imported for further processing in the EU. EU, Council of the EU, “Import of Fishery Products,” November 12, 2018.

suggested that this system supports the EU's processing industry.⁵⁴³ Under the tariff escalation system, for example, potato chips and frozen French fries face higher duty rates than potatoes do. While U.S. raw pistachios face low tariff rates of 1.6 percent, roasted pistachios face a 9.0 percent tariff. Similarly, raw peanuts enter the UK duty free, while processed products like peanut butter face tariffs of 12.8 percent.⁵⁴⁴ The EU's tariff escalation system is reportedly particularly challenging for SMEs because larger food manufacturers have the scale and resources to build production facilities in the EU, thereby avoiding import duties in a way that SMEs often cannot.⁵⁴⁵

EU Farm Support Programs

Although the EU's Common Agricultural Policy (CAP) has been reformed multiple times, the EU maintains numerous farm policies that are disadvantageous to agricultural exports to the EU.⁵⁴⁶ SMEs in several agricultural sectors report that they are negatively affected by EU agricultural farm support programs because these programs result in lower EU prices, making U.S. products uncompetitive in terms of price. U.S. exporters of fresh citrus fruits and tree nuts highlighted the EU's farm support policies as a trade-related barrier that limits the competitiveness of U.S. products in the UK market.⁵⁴⁷ The U.S. fresh citrus industry believes that the citrus industry in Spain, the EU's largest citrus producer, benefits from multiple farm support programs, including the CAP Pillar I. These programs affect the competitiveness of U.S. citrus in EU (and hence UK) markets by allowing EU producers to sell fresh fruits at lower prices.⁵⁴⁸

Organic Agrifood Trade-related Barriers

The United States and the EU are the world's leading organic markets, and both have organic regulations that determine whether foods and beverages can bear an organic seal. The EU is the second-largest market (\$35 billion in 2016) for organic food worldwide, and the UK is the third-largest organic market in the EU.⁵⁴⁹ Overall, the UK, which imports a significant volume of its food supply, is the sixth-largest organic market in the world, with yearly organic food and beverage sales of around \$2 billion.⁵⁵⁰ The UK is a growing export market for U.S. organic products, and in 2018, U.S. exports of a subset of organic products to the UK exceeded \$14.5 million.⁵⁵¹ In addition to high demand for organic fresh produce,

⁵⁴³ Industry representative, interview by USITC staff, May 1, 2019; USDA, *EU Market Protection Suppresses Agricultural Imports*, January 11, 2017.

⁵⁴⁴ EC, EU Market Access Database, <https://madb.europa.eu/madb/euTariffs.htm> (accessed May 2, 2019).

⁵⁴⁵ USDA, *EU Market Protection Suppresses Agricultural Imports*, January 11, 2017.

⁵⁴⁶ USDA, *EU Market Protection Suppresses Agricultural Imports*, January 11, 2017.

⁵⁴⁷ Industry representative, interview by USITC staff, April 9, 2019; industry representative, interview by USITC staff, May 21, 2019.

⁵⁴⁸ Industry representative, interview by USITC staff, April 9, 2019.

⁵⁴⁹ USDA, *EU Organic Boom Brings Opportunities for U.S. Exporters*, February 2018.

⁵⁵⁰ OTA, "Go to Market Report: United Kingdom," 2015; USDA, *EU Organic Boom Brings Opportunities for U.S. Exporters*, February 2018.

⁵⁵¹ Trade statistics represent only a fraction of total actual U.S. organic exports because trade flows in most organic products are not currently tracked. For example, the recent increase in U.S. organic exports to the UK (from \$3.3 million in 2016) was driven in large part by the addition of organic vinegar to the group of products for which trade

demand for U.S. organic processed products is particularly high in the UK as consumers seek out organic confectionery, snack, and beverage items.⁵⁵²

In order to sell their products with an organic seal (both in the EU and in the United States), organic producers must follow specific production processes and keep extensive records. Since this is time-consuming and costly, particularly for small farms, U.S. SMEs benefit from the current U.S.-EU bilateral organic equivalency arrangement that allows most organic products certified to the U.S. Department of Agriculture (USDA) organic standard to be labeled and sold as organic in the EU market.⁵⁵³ This eliminates the need for most U.S. organic producers to meet separate EU certification standards and allows most U.S.-certified organic exports to use the EU organic logo, the U.S. organic seal, or both.

Recently, however, the EU adopted new legislation for organic products which introduced changes that SMEs believe will negatively impact U.S. organic exports. Specifically, some SME industry representatives are concerned about the EU's announcement that its equivalence arrangements will expire and be renegotiated as bilateral agreements.⁵⁵⁴ U.S. organic industry representatives support a proposed U.S.-UK bilateral organic equivalence arrangement that would mirror the current U.S.-EU arrangement and would help ensure continuity in organic trade between the United States and the UK in the event of Brexit.⁵⁵⁵

SMEs in the organic industry, particularly those dealing with processed foods, also expressed dissatisfaction with EU requirements that all parties involved in production and handling, including importers, be certified as organic.⁵⁵⁶ SMEs believe that EU regulations requiring organic certification of the entire supply chain (including freight providers) add additional costs that are particularly onerous for U.S. SMEs. In the United States, handlers (wholesale distributors, brokers, traders) that do not process agricultural products (e.g., only sell sealed or boxed containers of certified organic products) do not need to be certified as organic.⁵⁵⁷ As a result, in order to comply with the EU handler/freight provider organic certification requirement, U.S. exporters must arrange for an additional logistical process the added cost of which they must absorb.⁵⁵⁸

Alcoholic Beverages

The U.S. is a leading global producer and exporter of wine, beer, and distilled spirits, which are the main market segments for the U.S. alcoholic beverage manufacturing industry (NAICS 312, beverage and

data are collected. USDA, GATS database (accessed various dates); OTA, "Go to Market Report: United Kingdom," 2015.

⁵⁵² USDA, *EU Organic Boom Brings Opportunities for U.S. Exporters*, February 2018.

⁵⁵³ Starting on June 1, 2012, the EC amended its EC 1235/2008, to include the United States as an equivalent third country program. USDA, "US-EU Organic Equivalency Arrangement," December 13, 2017; EC, "Organic Farming" (accessed June 26, 2019).

⁵⁵⁴ Interview by industry representative, May 9, 2019; industry representative, interview by USITC staff, May 21, 2019; EU Regulation 2018/848.

⁵⁵⁵ Industry representative, interview by USITC staff, May 9, 2019.

⁵⁵⁶ Legal Information Institute, 7 CFR § 205.101, "Exemptions and Exclusions from Certification" (accessed July 9, 2019).

⁵⁵⁷ USDA, "Organic Integrity in the Supply Chain," January 31, 2017.

⁵⁵⁸ Industry representative, interview by USITC staff, October 16, 2018.

tobacco products).⁵⁵⁹ In 2016, U.S. alcoholic beverage production totaled \$66.3 billion.⁵⁶⁰ The domestic wine, beer, and distilled spirits industries include thousands of SME producers throughout the United States. Commercial production is concentrated in a small number of non-SME companies within each of these segments such that a small number of wineries, breweries, and distilleries account for a large portion of U.S. production of alcoholic beverages.⁵⁶¹ In recent years, however, the number of craft distilleries, craft breweries, and small wineries in the United States has grown substantially, in part because of increased consumer demand.⁵⁶² SMEs in each of these segments can range from micro-producers to some of the largest producers in their sectors.

Wine is the leading U.S. alcoholic beverage export to the UK, and the UK is the largest export market for the U.S. wine industry by volume (the second largest by value).⁵⁶³ In 2016, U.S. exports of wines (and brandy and brandy spirits) totaled \$348 million and accounted for 67 percent of total U.S. alcoholic beverage exports to the UK.⁵⁶⁴ That year, the UK was also the leading export market for U.S. whiskey exports and the fourth-largest export market for U.S. beer by value.⁵⁶⁵ U.S. exports of beer have increased significantly in the past few years, partly driven by the growing popularity of craft beers in Europe.⁵⁶⁶

SMEs producing alcoholic beverages are often active exporters, and in 2016, 556 known SME exporters accounted for \$64 million (12.3 percent) of all U.S. exports of beverage and tobacco products (including alcoholic beverages) under NAICS 312 to the UK. Because there are so many domestic SMEs active in the alcoholic beverage industry, SMEs accounted for 88 percent of all identified U.S. exporters to the UK (table 6.2). Moreover, some domestic craft alcoholic beverage producers, such as breweries, reported that they are increasingly relying on export markets to offset growing market saturation of craft alcohol products in the United States.⁵⁶⁷

⁵⁵⁹ Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level. Generally, breweries are classified in NAICS 312120, which also includes nonalcoholic beer; wineries are classified in NAICS 312130, which also includes brandy; and distilleries are classified in NAICS 312140. NAICS 312120 and 312140 include some waste products that are not included in this chapter.

⁵⁶⁰ In 2016, domestic breweries produced \$31 billion of beer and other malt beverages, domestic wineries produced \$20 billion of wine and brandy, and domestic distilleries produced \$15 billion of distilled liquors. U.S. Census Bureau, Annual Survey of Manufacturers (accessed April 2, 2019).

⁵⁶¹ National Beer Wholesaler Association, "The U.S. Beer Industry 2018," September 2018; Todorov, "Number of Wineries in U.S. Surpasses 10,000," February 2019; Wine Business Monthly, "Review of the Industry: Largest Wineries," February 2019, 32–79.

⁵⁶² Fox, "In the Future, There Will Be a Distillery on Every Corner," March 16, 2018; Thompson, "Craft Beer Is the Strangest, Happiest Success Story in America," January 19, 2018.

⁵⁶³ IHS Markit, Global Trade Atlas database, based on value of U.S. exports of wine (2204), beer (2203), and spirits (2208) (accessed various dates).

⁵⁶⁴ In 2016, U.S. exports of distilled spirits totaled \$117 million and accounted for 23 percent of U.S. alcohol exports to the UK; beer and malt exports totaled \$54 million and accounted for the remainder. Exports to the UK based on NAICS commodities 312120 (beer), 31230 (wine, brandy, brandy spirits), and 312140 (distilled liquors). USITC DataWeb/USDOC (accessed February 14, 2019).

⁵⁶⁵ IHS Markit, Global Trade Atlas database (accessed various dates). U.S. whiskey exports based on Schedule B number 2208.30 and U.S. beer exports based on Schedule B number 2203.00.

⁵⁶⁶ The craft beer market in Europe is expected to grow by 11 percent from 2017 to 2021. Craft Brewing Business, "World of Beer Craft: Craft Beer Market in Europe to Grow 11%" (accessed April 2, 2019).

⁵⁶⁷ Industry representative, interview by USITC staff, October 10, 2018.

Table 6.2 Known value of U.S. exports and identified exporters of beverage and tobacco product manufacturing (NAICS 312), by company size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	7,498	1,170	519	6.9	44.4
U.S. SME exports, known value (million \$)	3,077	384	64	2.1	16.7
SME share (%)	41.0	32.8	12.3	-	-
Number of identified exporters	5,438	1,581	633	11.6	40.0
Number of identified SME exporters	4,603	1,409	556	12.1	39.5
SME share (%)	84.6	89.1	87.8	-	-

Source: Compiled from official statistics of the USDOC, Census Bureau (U.S. Census) (accessed March 7 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. Identified enterprises are those to which one or more transaction can be matched. Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level, which encompasses a broader NAICS subsector than the alcoholic beverage industry. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

Trade-related Barriers

Tariffs and preferential tariff access, labeling requirements, geographical indications and restrictions on wine names, EU standards related to maximum residue levels (MRLs) on crop-protective substances, and packaging requirements are among the primary factors identified by SMEs as inhibiting SMEs' exports of U.S. wine, distilled spirits, and beer to the UK. SMEs state that complying with these regulatory trade-related barriers increases their fixed costs, limits their choices in agricultural practices, creates uncertainty, and reduces their competitiveness in the UK market relative to competing suppliers.

Tariffs and Preferential Tariff Access

EU tariffs on wine adversely affect U.S. SME wineries exporting to the UK by increasing the cost of wine imported from the United States relative to other EU suppliers. The UK imports wine primarily from other EU producers (which accounted for 66 percent of UK wine imports in 2016).⁵⁶⁸ These intra-EU suppliers do not incur the common external tariff, making their wine less expensive relative to U.S. wine.⁵⁶⁹ In addition, the EU has preferential trade agreements with two major non-EU wine-producing competitors, Chile and South Africa, providing them with duty-free access to the UK market. SME representatives noted that these third-party trade agreements are another factor lowering the relative competitiveness of their products in the UK market.⁵⁷⁰ SME exporters also noted the negative impact of

⁵⁶⁸ UK wine imports based on HS 2204. IHS Markit, Global Trade Atlas database (accessed various dates).

⁵⁶⁹ The common EU external tariff (CET) applied to non-EU sparkling wine is 32 euro per hectoliter (USD 36) while the CET rate for bottled still wines varies by alcohol content and generally ranges between 9.90 to 20.90 euro (USD 11 to USD 24) per hectoliter on still wines not exceeding 22 percent ABV. Government of the UK, "Trade Tariffs: Look Up, Commodity Codes, Duty and VAT Rates" (accessed March 18, 2019); GBP and euro conversion to USD were based on daily exchange rate on February 20, 2019, from <https://www.x-rates.com/calculator>.

⁵⁷⁰ Industry representative, interview by USITC staff, May 9, 2019; industry representative, interview by USITC staff, May 8, 2019.

the EU's additional customs duties (also referred to as retaliatory tariffs) on imports of U.S. whiskey, including bourbon.⁵⁷¹

Labeling Requirements

Compliance with EU/UK labeling requirements is a frequently cited trade-related barrier that disproportionately impacts SMEs engaged in alcoholic beverage production relative to large wineries, breweries, or distilleries.⁵⁷² Some SME wineries and distilleries reported creating country-specific UK labels, while other U.S. SMEs that export to additional countries in the EU created a more broadly applicable export label for the EU market.⁵⁷³ Still other SME wine representatives noted that instead they have created an additional bottle sticker that met the EU labeling requirements and used it to cover their U.S. back label.⁵⁷⁴ Customizing labels and then ordering them in smaller quantities is more expensive for SMEs than for large producers that can attain economies of scale in their order volumes. The per-unit printing cost of custom labels is also higher for low-volume SMEs because they are not eligible to receive price discounts available for bulk orders. In addition to the cost of the labels, some SME distilleries incur labor charges, especially those that hand-label bottles for export, which represents an additional unit-cost disadvantage relative to large producers that mechanically apply labels.⁵⁷⁵ Some SME distillers also noted that they incur additional labor costs to open cases in the UK and affix UK duty stamps to individual bottles by hand.⁵⁷⁶ In addition, a domestic craft brewer reported that the firm typically only exports beers that are produced year round because the cost to create additional labels for seasonal beers is a disincentive to export such beers, which typically have shorter production runs and lower volumes.⁵⁷⁷

Some examples of EU labeling requirements include provisions for reporting the presence of possible allergens and additional wine-specific label requirements.⁵⁷⁸ In addition, duty stamps are required in the UK for both imported and domestically produced alcoholic beverages that have a high alcohol volume; they indicate the payment of an excise tax on such goods.⁵⁷⁹

⁵⁷¹ For a discussion on the EU's additional customs duties (retaliatory tariffs) on whiskey and bourbon, see chap. 2, "Crosscutting Trade-Related Barriers."

⁵⁷² Industry representative, listening session, Washington, DC, November 9, 2018, 14; industry representative, listening session, Washington, DC, November 9, 2018, 28-29.

⁵⁷³ Before being sold in the UK, alcoholic beverages must be labeled in accordance with EU regulations. Pregnancy- and driving-related pictograms may also be included on alcoholic beverage labels. Government of the UK, "Food Labelling and Packaging" (accessed July 16, 2019); industry representative, interview by USITC staff, November 14, 2018, November 19, 2018, and November 27, 2018.

⁵⁷⁴ Industry representative, interview by USITC staff, November 27, 2018.

⁵⁷⁵ Industry representative, interview by USITC staff, October 16, 2018.

⁵⁷⁶ Industry representative, interview by USITC staff, October 16, 2018.

⁵⁷⁷ Industry representative, interview by USITC staff, October 10, 2018.

⁵⁷⁸ Government of the UK, Food and Standards Agency, "Labelling Still Wine from Third Countries," April 2016; Government of the UK, Food and Standards Agency, "Labelling Wine," updated December 28, 2017; U.S. Department of Treasury, U.S. Alcohol and Tobacco Tax and Trade Bureau, "United Kingdom," March 21, 2017.

⁵⁷⁹ Duty stamps are required for beverages with an alcohol content by volume of 30 percent or more. Duty stamps must be applied to bottles or other retail containers with a capacity of 35 centiliters (cl) or more and must be affixed to bottles or retail containers of alcoholic beverages or appear on the label. Government of the UK, "Duty

Geographical Indications (GI) and Restrictions for Wine Names

U.S. wine exports to the EU are regulated under the bilateral Agreement between the United States of America and the European Community on Trade in Wine (U.S.-EC Wine Agreement), signed in 2006, which addressed certain wine production, labeling, and import requirements. However, U.S. exports are impeded by EU restrictions on geographical indications (semi-generic names⁵⁸⁰) and descriptive terms.⁵⁸¹ Restrictions on those terms create trade-related barriers for U.S. SME wine producers. Except for a few grandfathered U.S. wineries, no U.S. winemakers can use 16 semi-generic wine terms (such as champagne, burgundy, or port) on their wine labels. For example, U.S. winemakers have historically used the word “port” to describe a style of fortified wines blended with brandy or wine spirits. The majority of domestic wineries producing fortified wine are small businesses. Because many SMEs are prohibited from using “port” or any term describing “port” on their labels, if they want to enter the fortified wine market (domestically or abroad), they do so at a significant competitive disadvantage.⁵⁸²

U.S. SME wine exports are also negatively impacted by the EU regulations restricting the use of certain descriptive terms (such as fine, clos, ruby, or tawny) that are protected in the EU.⁵⁸³ SME wineries entering the wine market are disproportionately affected by the EU’s regulations stipulating that some of these terms can be used only on wine labels of certain established, grandfathered U.S. wineries. Recently, U.S. wines imported into the EU received approval to use the two terms “cream” and “classic.” However, while other countries have been approved to use the term “Chateau,” the EU has still not granted the U.S. wine industry approval to use this descriptive term.⁵⁸⁴

Maximum Residue Levels on Crop Protection Substances

U.S. winemakers, the majority of which are SMEs, face additional obstacles with the EU’s restrictions on crop protection substances used in the United States to control pests and wine grape diseases.⁵⁸⁵ The EU market is important to U.S. wine producers, and EU policy decisions constrain U.S. producers’ ability

Stamps: How to Register,” November 9, 2009; Government of the UK, “Excise Notice DS5: UK Duty Stamps Scheme,” September 7, 2017.

⁵⁸⁰ The semi-generic names and the place of origin indicated by each name under the U.S.-EU 2006 Wine Agreement include Burgundy (France), Champagne (France), Sherry (Spain), Chianti (Italy), Port (Portugal), Chablis (France), Claret (France), Malaga (Spain), Marsala (Italy), Rhine (Germany), Haut Sauterne (France), Hock (Germany), Sauterne (France), Moselle (France), Madeira (Portugal), Tokay (Hungary), and Retsina. Only U.S. industry brands whose labels were in use and approved in 2006 can use these semi-generic terms. U.S. Treasury, TTB, “Impact of the U.S. /EU Wine Agreement,” March 10, 2006.

⁵⁸¹ Geographical indications are used to identify a product by the name of the place where it was produced. U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, “U.S./EC Wine Agreement,” (October 19, 2018); U.S. Wine Institute, *International Trade Barriers Report 2017–2018*, 10; USTR, *2018 National Trade Estimate Report on Foreign Trade Barriers*, March 30, 2018, 165.

⁵⁸² Industry representative, interview by USITC staff, May 17, 2019; U.S. Sweet & Fortified Wine Association, “Letter to USTR,” June 10, 2015.

⁵⁸³ U.S. Wine Institute, written submission to USTR, October 26, 2018. EU regulation 607/2009 contains regulations on the use of descriptive terms that are protected in the EU. USDA, “EU Wine Policy Report,” December 13, 2016.

⁵⁸⁴ USDA, FAS, *EU Wine Policy Report*, December 13, 2016.

⁵⁸⁵ U.S. Wine Institute, written submission to USTR, October 26, 2018.

to select crop protection substances, forcing them to purchase alternate products that may be more costly or less effective.⁵⁸⁶

Wine made with grapes that do not meet the EU's MRL requirements cannot be sold in the EU. For example, the EU recently changed its MRL for an important fungicide (iprodione) used on wine grapes (and other U.S. export crops like almonds), creating uncertainty for U.S. winemakers. Although it had previously allowed the use of iprodione, in 2017, the EU announced it would no longer allow iprodione to be registered in the EU and that it was reviewing a new maximum residue level (MRL) for this substance.⁵⁸⁷ Ultimately, the EU lowered the MRL for iprodione to a level that effectively precludes U.S. producers from using this crop management tool.⁵⁸⁸ Uncertainty as to when EU officials would reset the MRL, and to what level, was reportedly problematic for U.S. producers who did not know whether the timing of the new MRL levels would affect the 2018 wine grape harvest and whether or not they should restrict its use in that year.⁵⁸⁹

The effect of the MRL on U.S. wines is further compounded by the practice of blending wines. Tracking and segregating wine that is compliant with EU MRLs but may be blended with wine that is not MRL-compliant is difficult and costly.⁵⁹⁰ In addition, the EU applies this MRL differently for domestic and imported wines, to the detriment of U.S. wine; this rule also negatively impacts wine produced from grapes harvested in prior years.⁵⁹¹ The EU applies its iprodione MRL for EU wine based on the date of production, while for U.S. wine, the MRL is applied based on the date of importation. Since higher-quality wines typically age for years before being exported to the EU, the import date criteria makes some U.S. wines ineligible for sale in the EU while comparably produced EU wines produced can still be sold in the EU market.⁵⁹²

Packaging Standards

The most frequently reported trade-related barrier by U.S. SME ("craft") distillers concerns differences in packaging standards, namely bottle size requirements for distilled beverages (spirits).⁵⁹³ While in the United States (and most of the world), spirits are sold in 750 ml bottles, the comparable standard bottle

⁵⁸⁶ Industry representative, interview by USITC staff, May 8, 2019.

⁵⁸⁷ The EU defines a maximum residue level (MRL) as the highest level of a pesticide residue that is legally tolerated in or on food or feed. The European Commission fixes MRLs for all food. EC, "Pesticides: Maximum Residue Levels" (accessed April 2, 2019).

⁵⁸⁸ EU Publication Regulation (EU) 2019/38, "Modification of MRLs Iprodione," January 14, 2019; EU, "U.S. Comments on the EU's Draft Commission Implementing Regulation Concerning the Non-renewal of the Active Substance Iprodione," notified to the WTO as GTBT/N/EU/495 on July 25, 2017.

⁵⁸⁹ ABC, "Regulatory Landscape Deals Changes" (accessed April 12, 2019).

⁵⁹⁰ Industry representative, interview by USITC staff, May 8, 2019.

⁵⁹¹ U.S. Wine Institute, written submission to the USTR, October 26, 2018.

⁵⁹² Industry representative, interview by USITC staff, May 17, 2019; World Wine Trade Group, "Letter to Anne Bucher, EU Directorate-General SANTE," March 1, 2019.

⁵⁹³ Industry representative, interviews by USITC staff, October 11, 2018, October 12, 2018, and October 16, 2018; industry representative, email message to USITC staff, October 23, 2018.

size in the EU is 700 ml.⁵⁹⁴ SME representatives cited this technical difference as a trade-related barrier for multiple reasons. First, U.S. spirit exporters claimed that it obligates them to purchase smaller bottles for spirits destined for the EU.⁵⁹⁵ SMES are negatively impacted because, due to their lower volumes of production and sales, they do not have the economies of scale to order large volumes of smaller bottles. As a result, smaller producers cannot buy at the discounted prices available to large producers that can buy EU-size bottles in bulk.⁵⁹⁶ In addition, after craft distillers have bottled spirits in the EU-specific bottle sizes, they can no longer sell them domestically.⁵⁹⁷ U.S. SMEs also stated that dual standards for packaging have another negative effect, which is the increased storage cost to inventory different bottle sizes for the EU market.

In addition, U.S. SME craft distillers reported that two factors compound the problem of procuring bottles that meet the EU size requirement: (1) limited U.S. glass bottle production for minimum orders and (2) U.S. import duties on certain imported glass products. Some SME firms import 700 ml glass bottles from EU producers because the domestic glass industry is not a feasible supply source.⁵⁹⁸ Some firms reported that custom-ordering the 700 ml bottles is expensive because the U.S. glass industry is structured to produce standard orders of one million bottles annually—not 100,000 bottles, which would suit the needs of a craft distiller—so SMEs face both a supply and a cost disadvantage.⁵⁹⁹

Fish and Seafood Products

Fish and seafood products include edible items produced by wild capture or aquaculture (fish farming).⁶⁰⁰ The industry includes aquatic species that live in freshwater or oceans, as well as species (such as salmon) that can live in both types of aquatic environments. Seafood products include finfish (e.g., salmon, cod, and Alaska pollock), mollusks (e.g., oysters and clams), crustaceans (e.g., shrimp and lobster), and other aquatic species (e.g., squid and octopus). In 2016, about 47 percent of global seafood products for human consumption were produced by aquaculture and 53 percent through harvest from wild sources.⁶⁰¹ In 2016, U.S. total production of aquaculture products was valued at \$1.4 billion, while commercial landings of wild seafood were valued at \$5.3 billion, according to annual data from the National Oceanic and Atmospheric Administration (NOAA).⁶⁰² Although the United States is a net

⁵⁹⁴ In the EU, spirits may be bottled only in one of nine nominal quantities: 100 ml, 200 ml, 350 ml, 500 ml, 700 ml, 1,000 ml, 1500 ml, 1750 ml, or 2000 ml. EC, EC Directive 2007/45, “Annex Range of Nominal Quantities of Contents of Prepackages, Products Sold by Volume,” September 5, 2007.

⁵⁹⁵ Industry representative, interviews by USITC staff, October 11, 2018, and October 16, 2018; industry representative, email message to USITC staff, October 23, 2018.

⁵⁹⁶ Industry representative, interviews by USITC staff, October 11, 2018, and October 16, 2018.

⁵⁹⁷ Industry representative, interview by USITC staff, October 11, 2018.

⁵⁹⁸ Industry representative, interview by USITC staff, October 16, 2018.

⁵⁹⁹ Industry interview, interview by USITC staff, October 16, 2018.

⁶⁰⁰ The industry harvesting fish and seafood from the wild is included in NAICS 112, while the aquaculture industry is included as part of NAICS 114.

⁶⁰¹ Aquaculture accounts for an increasing share of world seafood supplies as many wild stocks dwindle or remain stagnant. However, the U.S. industry produces much more from wild capture than from aquaculture, largely due to the cost of producing aquaculture products. FAO, *State of World Fisheries and Aquaculture, 2018*, 2018, 2.

⁶⁰² NOAA, *Fisheries of the United States, 2016, 2017, 21, 29.*

importer of seafood,⁶⁰³ export markets are important to domestic seafood producers, particularly for certain products.

In 2016, the UK was the fifth-largest EU market for U.S. seafood, after Germany, the Netherlands, Spain, and France. In 2016, the value of U.S. edible seafood exports to the UK was approximately \$106 million: about \$57 million was fresh or frozen seafood, and \$49 million was of processed seafood products. Salmon filets, Alaska pollock filets, frozen scallops, and live lobsters were among the most heavily exported products in the fresh and frozen seafood category. The UK is the second-largest export market after Canada for U.S. preserved salmon, and prepared or preserved salmon accounted for well over 90 percent of processed seafood products exports.⁶⁰⁴ The UK has a long history of producing and consuming seafood, and imports are an important part of the UK seafood market.⁶⁰⁵

SMEs play a very important role in the U.S. seafood industry. Nearly all U.S. exports of wild-caught seafood involve an SME as a primary producer, since most harvesters (i.e., fishing boats) are staffed by only a few employees. While seafood processing involves some larger producers, most processing plants are small, with an average of 35 employees in 2016. Seafood wholesalers are also typically SMEs, averaging 11 employees per firm.⁶⁰⁶ Many aquaculture producers are also small operations. The number of U.S. employees involved in aquaculture is unknown, but likely relatively small given the small size of the overall U.S. aquaculture sector. In 2016, there were 91 known U.S. SME exporters to the UK in the fish and other marine products industry (NAICS 114, a broad category that includes mostly seafood products but does not include aquaculture) (table 6.3).

Table 6.3 Known value of U.S. exports and identified exporters of fish and other marine products (NAICS 114), by company size and destination, 2016^a

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	4,768	1,054	59	1.2	5.6
U.S. SME exports, known value (million \$)	3,445	735	42.9	1.2	5.8
SME share (%)	72.3	69.7	73.2	-	-
Number of identified exporters	2,616	389	107	4.1	27.5
Number of identified SME exporters	2,302	327	91	4.0	27.8
SME share (%)	88.0	84.1	85.0	-	-

Source: Compiled from official statistics of the USDOC, Census Bureau (U.S. Census) (accessed March 7, 2019 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census data are only available at the three-digit NAICS code level, which encompasses a broad subsector that does not include all of the seafood product industry. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values export values and numbers of identified U.S. exporters.

^a NAICS 114 does not include aquaculture. The NAICS code that includes aquaculture, NAICS 112, includes other types of animal production, such as cattle and poultry producers, and is therefore less useful for identifying trends for seafood products.

⁶⁰³ NOAA, *Fisheries of the United States, 2016, 2017*.

⁶⁰⁴ IHS Markit, Global Trade Atlas database (accessed February 25, 2019) for HS chapter 03 and headings 1604 and 1605.

⁶⁰⁵ Seafish, "UK Seafood Industry Overview" (accessed June 24, 2019).

⁶⁰⁶ NOAA, *Fisheries of the United States, 2016, 2017, 127*; NOAA, U.S. National Marine Fisheries Service, *2017 Annual Report* (accessed July 12, 2019).

Trade-related Barriers

U.S. SME seafood representatives noted five main barriers when exporting their products to the UK: (1) tariffs, (2) tariff-rate quotas, (3) increased market competition because of the EU's preferential trade agreements with other countries, (4) traceability standards and labeling requirements, and (5) the live mollusk ban. EU tariffs on seafood products—particularly on processed seafood products—are high. SMEs frequently identified tariffs, as well as competing suppliers' preferential market access to the EU, as issues affecting their price competitiveness in the EU. Moreover, certain domestic SMEs cannot sell their fishery products to the EU at all due to sanitary and phytosanitary (SPS) regulations (e.g., the live mollusk ban), while others lose market access due to the lack of recognition of U.S. traceability standards and certifications.

Tariffs

The EU maintains tariffs on many seafood products, and these duty rates are burdensome for U.S. SMEs engaged in exporting seafood products. For fresh and frozen seafood, most EU duty rates are between 2 and 18 percent ad valorem, with many tariffs in the 9 to 15 percent range. Rates for processed seafood products are often slightly higher, ranging from 5 to 26 percent with many rates at 20 percent. U.S. SME seafood producers generally consider these rates high, and high tariffs were the most often cited barrier in interviews with seafood industry representatives.⁶⁰⁷ Similarly, the U.S. Commercial Service reports that EU seafood tariffs are among the highest in the world.⁶⁰⁸

Tariff-rate Quotas

In addition to EU tariffs, SMEs are concerned about the tariff-rate quotas (TRQs) that the EU maintains on a number of products imported for processing in the EU, such as various types of whitefish, shrimp, anchovies, and herring. These TRQs are part of the EU's Autonomous Tariff Quota system, which is designed to stimulate competition among EU processors by improving access to imported raw material inputs.⁶⁰⁹ The list of products covered by these TRQs includes over 60 seafood products at the 8-digit tariff code level.⁶¹⁰ Included on the list are several items produced by the U.S. fishing industry, most notably two whitefish species—Alaska pollock and hake.⁶¹¹ According to one SME industry representative, the main problem with the fish TRQs is the unpredictability in their administration.⁶¹² This representative stated that the quota volume for hake is set too low, and the Alaska pollock volume is sufficient for U.S. producers in some years but not in others.⁶¹³ As a result, Alaska pollock producers

⁶⁰⁷ Industry representatives, interviews by USITC, December 12, 2018, and February 22, 2019; industry representative, interview by USITC staff, Washington, DC, September 25, 2018.

⁶⁰⁸ USCS, "Exporting Seafood to the EU," December 2017, 17.

⁶⁰⁹ EC, "Trade Helpdesk" (accessed May 8, 2019).

⁶¹⁰ EC, "Council Regulation (EU) 2015/2265 of 7 December 2015" (accessed March 19, 2019).

⁶¹¹ Both of these fish species are members of the cod family. Industry representative, interview by USITC staff, February 22, 2019.

⁶¹² Industry representative, interview by USITC staff, February 22, 2019.

⁶¹³ Industry representative, interview by USITC staff, February 22, 2019.

do not know from year to year whether their product will be imported at the duty-free in-quota rate or at the much higher most-favored-nation (MFN) rate.⁶¹⁴

Preferential Tariff Treatment

The EU has preferential trade agreements with a number of countries that are major seafood producers competing with the United States in the EU market, and SME representatives note that these trade agreements lower the relative competitiveness of their products in the UK market. Since the partners in these agreements may receive lower tariff rates or duty-free access to the EU market and often are not subject to the volume limits on duty-free access imposed by the quotas, it can be difficult to match these countries' producers on price. For example, the EU's agreement with the European Economic Area lowers tariffs on fish for major producers from Iceland and Norway, and its agreement with Chile lowers tariffs for Chilean producers.⁶¹⁵ More recently, segments of the U.S. fishing industry—lobster producers in particular—have expressed concern that the Comprehensive Economic and Trade Agreement between the European Union and Canada (CETA) creates a new competitive disadvantage. U.S. producers face a tariff rate of 8 percent on live lobsters when exporting to the EU and UK; this is a relatively high rate compared to other lobster export markets, according to industry representatives.⁶¹⁶

Traceability Standards and Labeling Requirements

Industry representatives report that EU requirements related to certification of a fish's origin and the associated labeling procedures can be burdensome for U.S. SMEs when exporting to the UK.⁶¹⁷ According to EU standards adopted in 2014, labels on seafood sold in the EU must contain certain specific information about how and where fish were caught or farmed. In part, the intent of the regulation is to curb illegal, unreported, and unregulated (IUU) fishing by improving traceability.⁶¹⁸ The label provides both the common and scientific name of the species, production method (where it was caught or farmed and the type of fishing gear used), and handling instructions (storage instructions and use-by date).⁶¹⁹ For an exporter to be eligible to export products and apply these labels, the EU also needs to recognize the exporter's certification that a seafood item is not a product of IUU fishing.

One U.S. SME seafood exporter stated that he had looked into bringing a new product to the EU (and UK) market but was prevented from doing so because the EU did not recognize the U.S. government's certification that that fish was not a product of IUU fishing.⁶²⁰ The SME exporter stated that mutual

⁶¹⁴ Industry representative, interview by USITC staff, February 22, 2019.

⁶¹⁵ Seafish, "Tariffs on Seafood Imported into the EU," March 2017.

⁶¹⁶ Industry representative, interview by USITC staff, Washington, DC, September 25, 2018.

⁶¹⁷ Industry representative, interview by USITC staff, December 12, 2018.

⁶¹⁸ IUU fishing accounts for up to 30 percent of global fishing activity, and many countries have measures in place to address the problem and/or assure consumers that their seafood is not a product of IUU fishing. Agriculture and Agri-Food Canada, "Exporting Fish and Seafood to the European Union" (accessed February 22, 2019).

⁶¹⁹ Agriculture and Agri-Food Canada, "Exporting Fish and Seafood to the European Union" (accessed February 22, 2019).

⁶²⁰ Industry representative, interview by USITC staff, December 12, 2018.

recognition of traceability standards and certification would be helpful in bringing additional products to the UK market.⁶²¹

Live Mollusk Ban Due to SPS Concerns

According to an industry representative, a barrier that remains to be fully resolved and that limits exports of seafood from the United States to the UK is the ban on live mollusk trade;⁶²² this barrier is particularly relevant to SMEs, since most mollusk producers are small operations. Since July 1, 2010, the United States and the EU have not traded any live molluscan shellfish (such as oysters and mussels). In that year, the United States and the EU each determined that the other party's food safety systems for shellfish were not equivalent. Since that time, negotiations have continued with the aim of determining the systems' equivalency and resuming trade. As of November 2018, a deal was being finalized that would have the United States recognize the equivalency of safety systems in the Netherlands and Spain in exchange for the EU recognition of the U.S. systems in Washington and Massachusetts.⁶²³ The live market is a major segment for molluscan shellfish—particularly oysters, where live product accounted for 92 percent of all U.S. oyster exports to the world in 2016—and the U.S. is a major producer of live mollusks.⁶²⁴

Fresh Fruits and Vegetables

The fresh fruits and vegetables discussed below include fresh produce intended for fresh market consumption for eating raw or prepared, or for use as inputs in the preparation of foodservice products.⁶²⁵ Fruits and vegetables, combined, are the third-largest agricultural sector in the United States by value, and in 2016 domestic production totaled \$30.4 billion.⁶²⁶ Although fresh produce is grown on farms across the United States, fruit and vegetable production varies by state due to geographical and climate conditions, with most commercial production of fresh produce concentrated in California.⁶²⁷

⁶²¹ Industry representative, interview by USITC staff, December 12, 2018.

⁶²² Industry representative, interviews by USITC staff, February 22, 2019.

⁶²³ Ewing and Thrush, "Could Oysters Ease Trade Tensions with U.S.?" November 12, 2018.

⁶²⁴ IHS Markit, Global Trade Atlas database (accessed March 15, 2019).

⁶²⁵ Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level. The fresh produce industry covered in this section is classified in NAICS code 111 (crop production), which includes farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, trees and their seeds (excluding forestry operations). Specifically, NAICS 1112 includes establishments primarily engaged in growing vegetables and melons, while NAICS 1113 includes establishments primarily engaged in growing fruits and nuts (however, nuts are discussed separately in a following section). To the extent possible, data in this section on U.S. production and exports of fresh fruits and vegetables are summarized by these NAICS codes. Data for fruits includes data for nuts, and data for vegetables includes data for melons. USDA, ERS, Annual Cash Receipts by Commodity Database, November 2018; USDA, NASS, Quick Stats database (accessed April 6, 2019).

⁶²⁶ Data for fruits includes data for nuts, and data for vegetables includes data for melons. USDA, ERS, Annual Cash Receipts by Commodity Database, November 2018; USDA, NASS, Quick Stats database (accessed April 6, 2019).

⁶²⁷ California was the largest producer of fresh vegetables, accounting for 57 percent of the utilized production of vegetables in 2017, followed by Washington (6 percent), Arizona (5 percent), and Florida (5 percent). California is

The UK is heavily reliant on imports of fruits and vegetables and primarily depends on other EU member states for its fresh produce. The majority of the fruits and vegetables imported into the UK come from EU partners, which due to their proximity to the UK have lower transportation costs and fast delivery times; as members of the EU common market, they also have zero import duties.⁶²⁸ Despite this, exports of U.S. fresh fruits and vegetables, combined, to the UK increased by 69 percent from 2012 to 2016.⁶²⁹ Together, fruits (including nuts) and vegetables account for 35 percent of the total U.S. agricultural exports to the UK, making it the fifth-largest agricultural export sector.⁶³⁰ Moreover, the USDA's Foreign Agricultural Service (FAS) has identified commodities within this sector, such as apples, grapefruits, pears, sweet potatoes, and table grapes, as fresh fruits and vegetables currently being sold in the UK retail markets that have "good sales potential" in the country.⁶³¹

Although the U.S. fresh fruits and vegetables sector has experienced increased consolidation in the last decades, expanding the presence of large farm operations, small fruit and vegetable growers still represent about 10 percent of total U.S. production of specialty crops.⁶³² According to the USDA's National Agricultural Statistics Service (NASS), small farms accounted for 86 percent of farms dedicated to fruit and tree nut farming (NAICS 1113) and 87 percent of farms dedicated to vegetable and melon farming (NAICS 1112).⁶³³ Small farm operations and packers have an important presence in export markets. In 2016, there were 470 U.S. SME producers exporting agricultural products under NAICS 111 (crop production, a category larger than fresh fruits and vegetables) to the UK. SME firms under NAICS 111 exported \$350 million (out of a total known value of \$541 million) of exports to the UK in 2016 (table 6.4).

also the largest producer of fresh fruits in the United States, growing 66 percent of the total U.S. domestic fruit supply. Monsanto, "The United Crops of America," May 1, 2018.

⁶²⁸ USDA, FAS, *United Kingdom: Retail Foods*, June 15, 2018. SMEs representatives also noted that, as a result of the Russian embargo on EU agricultural products, fresh fruit and vegetable availability has increased; produce previously destined for Russia is instead absorbed within the EU, thereby decreasing domestic prices and in turn, reducing the competitiveness of third-country suppliers in the EU market. Industry representative, interview by USITC staff, September 21, 2018.

⁶²⁹ USDOC, ITA, Export.gov, "United Kingdom—Agricultural Sectors," September 8, 2018.

⁶³⁰ USDOC, ITA, Export.gov, "United Kingdom—Agricultural Sectors," September 8, 2018.

⁶³¹ USDA, FAS, *United Kingdom: Retail Foods*, June 15, 2018.

⁶³² The USDA ERS defines specialty crops producers as those growing vegetables/melons, fruits/tree nuts, or nursery/greenhouse/floriculture products. USDA, ERS, *Three Decades of Consolidation in U.S. Agriculture*, March 2018, 15.

⁶³³ The USDA defines small farms as those with gross cash farm income (GCFI) of less than \$350,000. USDA, NASS, 2012 Census of Agriculture, 2014, 174.

Table 6.4 Known value of U.S. exports and identified exporters of crop production (NAICS 111), by company size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	58,175	5,369	541	0.9	10.1
U.S. SME exports, known value (million \$)	26,515	2,773	350	1.3	12.6
SME share (%)	45.6	51.7	64.6	-	-
Number of identified exporters	12,111	1,619	543	4.5	33.5
Number of identified SME exporters	10,569	1,404	470	4.4	33.5
SME share (%)	87.3	86.7	86.6	-	-

Source: Compiled from official statistics of the USDOC, Census Bureau (U.S. Census) (accessed March 7, 2019 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level, which encompasses a broader NAICS subsector than the fresh fruit and vegetable industry. See appendix E, tables E.1 and E.2 for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

Trade-related Barriers

The primary challenge facing U.S. SMEs exporting fresh produce to the UK are discrepancies in SPS regulations between the EU and the United States, particularly those related to pesticide MRLs.⁶³⁴ SMEs cited specific examples of MRL-related barriers affecting apples, blueberries, citrus, and other fruits. SME representatives also cited the EU's farm support policies as a factor in reducing competitiveness for U.S. fresh produce entering the EU, and hence the UK, market.⁶³⁵ U.S. SMEs engaged in the production of fresh fruits and vegetables also mentioned agricultural tariffs and TRQs as trade-related barriers that affect exports to the UK.

Maximum Residue Levels (MRLs)

Diphenylamine (DPA) on Apples

U.S. SMEs are adversely affected by the EU's MRL regulations on certain pesticides used in U.S. apple production. The U.S. apple industry identified the EU's MRL on diphenylamine (DPA) as a technical barrier to U.S. exports of apples, particularly the Empire variety grown in the state of New York, which is very popular among UK consumers.⁶³⁶ Moreover, the USDA FAS identified U.S. apples as one of the products currently sold at UK retail markets with good sales potential.⁶³⁷ However, U.S. exports of apples to the UK have fallen 52 percent from 2012, when the EU officially reduced the MRL for DPA,⁶³⁸

⁶³⁴ Currently, the EU has specified MRLs for 315 fresh products, including fresh fruits and vegetables, and the regulation covers pesticides used in or outside the EU. If an MRL for a pesticide is not specified, a "default" MRL of 0.01mg/kg is applied. EC, "Legislation on Maximum Residue Levels–2018" (accessed April 30, 2019).

⁶³⁵ Industry representative, interview by USITC staff, April 9, 2019.

⁶³⁶ Industry representative, interview by USITC staff, September 21, 2018.

⁶³⁷ USDA, FAS, *United Kingdom: Retail Foods*, June 15, 2018.

⁶³⁸ Lunder, "Behind Europe's Apple Chemical Ban," April 24, 2014.

to 2018.⁶³⁹ DPA is widely used in the United States to coat apples after harvesting to prevent bruising or browning of the fruit during cold storage.⁶⁴⁰ Since cross-contamination of product with DPA is common, U.S. apple producers exporting to the UK need to change production practices, such as designating a production line for apples that are not coated with DPA or opening a new production facility, in order to be able to ship DPA-free apples to the UK.

The EU failed to approve DPA as an authorized plant protection product in 2012.⁶⁴¹ In that same year, the EU banned the use of DPA on EU apples and pears, and set a temporary MRL of 0.1 part per million (or 0.1mg/kg) for the product.⁶⁴² In 2018, the EU established a permanent MRL of 0.05 mg/kg, which is still much lower than the U.S. MRL on DPA of 10mg/kg.⁶⁴³ Currently, only two SME apple producers in the United States have built a separate facility to process apples without DPA, and as a result, only these two are able to export to the UK.⁶⁴⁴

Fosetyl-aluminum on Blueberries

The EU's MRL on fosetyl-aluminum (fosetyl-al), though it has recently been raised, had been a trade-related barrier for SMEs that export blueberries to the UK and continues to be an example of industry concerns about the EU's process for setting MRLs. In 2016, the EU's temporary MRL for fosetyl-al⁶⁴⁵ for blueberries expired and was replaced with a significantly lower default MRL of 2mg/kg.⁶⁴⁶ While U.S. exports of blueberries were able to continue at the default MRL, a further reduction in the MRL would have created a significant barrier for U.S. blueberries entering the EU.⁶⁴⁷ The U.S. blueberry industry suggested that an increase in the MRL would allow for an increase in exports of blueberries to the EU and particularly the UK, where the industry has identified potential for growth in exports.⁶⁴⁸ As a result,

⁶³⁹ IHS Markit, Global Trade Atlas, HTS 0808.10.00 (accessed July 17, 2019). The harmonized standard for DPA for the United States and Codex is 10 ppm for apples, 100 times higher than the EU. The average amount of DPA in U.S. apples is 0.42 parts per million, which prevents most of the U.S. fruits from entering the EU, and hence the UK, market. USTR, *2018 National Trade Estimate Report on Foreign Trade Barriers*, March 30, 2018; EWG, "Most U.S. Apples Coated with Chemical Banned in Europe," April 24, 2014.

⁶⁴⁰ Industry representative, interview by USITC staff, September 21, 2018.

⁶⁴¹ Official Journal of the EU, "Commission Implementing Regulation (EU) 2012/578 of 29 June 2012," L171/2.

⁶⁴² Lunder, "Behind Europe's Apple Chemical Ban," April 24, 2014.

⁶⁴³ In 2014, the EU established a temporary MRL of 0.1 mg/kg, the default MRL, which was reviewed in 2018. This change took effect on May 1, 2019. Commission Regulation No. 2018/1515/EU, 2018 O.J. L256/33; industry representative, interview by USITC staff, September 21, 2018.

⁶⁴⁴ Industry representative, email message to USITC staff, March 12, 2019.

⁶⁴⁵ Although the phosphonate fosetyl-aluminum, or fosetyl-al (sum of fosetyl, phosphonic acid and their salts, expressed as fosetyl) is not authorized for use in the United States, a number of fertilizers that can result in low-toxicity phosphonate residues are commonly used for certain crops, such as blueberries. The EU changed the designation of these phosphonates from fertilizer and pesticide to only a pesticide, but did not create an MRL for them. Instead, these were included under the fosetyl-al MRL. USDA, FAS, "New EU MRL for Fosetyl Takes Effect," April 1, 2016; Landschoot, "Understanding the Phosphonate Products," November 10, 2016.

⁶⁴⁶ USTR, *2018 National Trade Estimate Report on Foreign Trade Barriers*, March 30, 2018. The EU had temporarily increased the MRL for fosetyl-al in blueberries to 75 mg/kg, but this MRL expired on December 31, 2015, and then reverted back to the default MRL of 2 mg/kg. EC, "Pesticides Database: Fosetyl-Al" (accessed July 19, 2019).

⁶⁴⁷ Industry representative, interview by USITC staff, February 12, 2019.

⁶⁴⁸ Industry representative, interview by USITC staff, February 12, 2019.

the industry actively worked with the EU in order to increase the MRL for fosetyl-al for blueberries and in 2019, the EU increased it to 80 mg/kg.⁶⁴⁹

According to USTR's *2018 National Trade Estimate Report on Foreign Barriers*, other fresh and dried fruits, such as apricots, cherries, plums, figs, and papayas, are subject to the default MRL and could face a similar trade barrier if the MRL is further reduced.⁶⁵⁰ As discussed below in regard to edible nuts, the EU's administration of MRLs, as well as its timeline for implementation, continue to be concerns for U.S. exporters.

Neonicotinoids and Chlorpyrifos on Citrus

The EU's MRLs on neonicotinoids constitute a trade-related barrier for SMEs that export citrus fruits to the UK. U.S. citrus fruits, particularly oranges, mandarins, and lemons, have a limited presence in the UK market. However, the U.S. citrus industry noted that, due to the high quality and unique characteristics of U.S. fresh citrus products, the UK in the absence of trade barriers has the potential to be a good market for U.S. fresh citrus fruits.⁶⁵¹ One of the main barriers for U.S. exports of citrus fruits to the UK are low MRLs for certain pesticides such as neonicotinoids.

In 2013, the EU restricted the use of neonicotinoid pesticides.⁶⁵² In 2018, after reviewing data on the environmental effects of the pesticide, the EU banned the pesticides for all bee-attractive crops, including citrus.⁶⁵³ Additionally, the EU has extended the review period for the insecticide chlorpyrifos⁶⁵⁴ (an organophosphate) until January 31, 2020.⁶⁵⁵ However, the acute reference dose (ARfD), which is used to determine the toxicity of the substance and the level of protection to consumers provided by the MRL, was reevaluated and established at a lower level in 2014.⁶⁵⁶ According to the U.S. citrus industry, a reduction in the MRL for chlorpyrifos may further limit the presence of U.S. citrus in the UK market.⁶⁵⁷

Citrus Canker Protocols

The EU's regulations on citrus canker act as a barrier that limit U.S. SME exports of citrus fruits, particularly grapefruits, to the UK.⁶⁵⁸ Citrus canker is a bacterial disease that affects citrus plants and

⁶⁴⁹ Official Journal of the EU, "Commission Regulation 2019/552 of 4 April 2019," L96/6.

⁶⁵⁰ USTR, *2018 National Trade Estimate Report on Foreign Trade Barriers*, March 30, 2018.

⁶⁵¹ Industry representative, interview by USITC staff, April 9, 2019.

⁶⁵² Neonicotinoids are a family of insecticides used to protect plants from harmful insects. Three substances used for plant protection products have been determined by the EU to pose a risk for bees and other pollinators: clothianidin, thiamethoxam, and imidacloprid. Imidacloprid is widely used by the U.S. citrus industry to control pests. EC, "Neonicotinoids" (accessed April 2, 2019); industry representative, interview by USITC staff, April 9, 2019.

⁶⁵³ EC, "Neonicotinoids" (accessed April 2, 2019); industry representative, interview by USITC staff, April 9, 2019.

⁶⁵⁴ Chlorpyrifos is an organophosphate insecticide, acaricide, and miticide used mainly for controlling foliage and soil-borne insect pests on multiple crops, including citrus. EPA, "Chlorpyrifos" (accessed July 16, 2019).

⁶⁵⁵ EU, Official Journal of the EU, Commission Implementing Regulation (EU) 2018/1796, November 20, 2018.

⁶⁵⁶ Lampe et al., "Distribution of Chlorpyrifos Residues in Citrus Fruits," February/March 2016.

⁶⁵⁷ Industry representative, interview by USITC staff, April 9, 2019.

⁶⁵⁸ Despite a series of efforts, full eradication of citrus canker in the United States is no longer possible. USDA, APHIS, "Citrus Canker," November 2, 2017; Industry representative, interview by USITC staff, April 10, 2019.

causes lesions on the leaves, stems, and fruit. While infected fruit is safe for human consumption, due to its appearance, it is less marketable than noninfected fruit. Although U.S. red grapefruit is increasingly popular in the UK, U.S. exports of the product to the country are limited partly due to this barrier.⁶⁵⁹

In 2009, the USDA Animal and Plant Health Inspection Service (APHIS) determined that commercially packed citrus fruits treated with disinfectant are highly unlikely to spread the citrus canker disease to other citrus trees and eliminated a previous regulation that required citrus fruit to be free of citrus canker, and inspected by APHIS, before entering interstate commerce.⁶⁶⁰ Similarly, some U.S. trading partners, such as Japan and South Korea, do not require citrus fruits to be free of citrus canker.⁶⁶¹ The EU, in contrast, maintained a regulation in place until 2017 requiring inspection of U.S. groves for citrus canker.⁶⁶² This regulation, which was removed in May 2017, was estimated to cost U.S. producers \$5.6 million per year.⁶⁶³

Despite some regulatory changes, the EU continues to require that imported fruits be inspected and deemed free of citrus canker at domestic packinghouses before entering the EU market. The U.S. industry noted that the inspection requirement is costly for U.S. citrus packers, who, when an infected fruit is found, have to re-pack and re-inspect the product destined for the EU market.⁶⁶⁴ U.S. packers incur additional labor costs, as well as the cost for inspecting the product. According to one U.S. SME, packers might make the decision to ship product to alternative markets, rather than sell otherwise safe, high-quality fruits as discounted products in the EU market.⁶⁶⁵

Food Additives (Wax)

The EU ban on morpholine—a substance added to the wax used to coat fruits, including grapefruits, and protect them from damage, as well as give them a shiny coating—is reportedly a barrier for SMEs exporting fruit to the UK.⁶⁶⁶ Reconfiguring the packing line to alternate between morpholine-containing waxes and morpholine-free wax results in additional processing costs. Therefore, U.S. packers often opt for using the more expensive, morpholine-free wax to coat all their fruits, including those destined for markets that allow the use of the substance,⁶⁶⁷ such as Canada and Japan.⁶⁶⁸

Edible Nuts

Edible nuts are a category that includes tree nuts and peanuts (while nutlike, peanuts are actually legumes that grow underground). The United States is a major global producer of a variety of tree nuts,

⁶⁵⁹ Industry representative, interview by USITC staff, April 10, 2019.

⁶⁶⁰ USDA, APHIS, “Citrus Canker,” November 2, 2017.

⁶⁶¹ Industry representative, interview by USITC staff, April 10, 2019.

⁶⁶² Farm Progress, “EU Drops Citrus Canker Requirement for US Citrus Imports,” May 3, 2017.

⁶⁶³ Farm Progress, “EU Drops Citrus Canker Requirement for US Citrus Imports,” May 3, 2017.

⁶⁶⁴ Industry representative, interview by USITC staff, April 10, 2019.

⁶⁶⁵ Industry representative, interview by USITC staff, April 10, 2019.

⁶⁶⁶ The EU classifies morpholine as an unapproved fruit additive, which needs to undergo a safety assessment and approval from the member states and the European Parliament. Wired.gov, “Update on Fruit Glazed with Wax Containing Morpholine,” October 8, 2010.

⁶⁶⁷ Industry representative, interview by USITC staff, April 10, 2019.

⁶⁶⁸ Warner, “European Rule Takes the Shine Off Apples,” August 1, 2011.

including almonds, pecans, pistachios, and walnuts.⁶⁶⁹ The EU is the largest export market for U.S. tree nuts, accounting for 32 percent (\$2.7 billion) of U.S. tree nut exports in 2017, and exports continue to grow as a result of increasing European demand for healthy snacks.⁶⁷⁰ Total U.S. edible nut exports to the UK in 2016 were valued at over \$225 million, making up about 10 percent of total U.S. edible nut exports to the EU.⁶⁷¹ The top three U.S. tree nut exports to the UK were almonds, pecans, and walnuts.⁶⁷²

In 2016, there were 470 U.S. SME producers exporting to the UK under NAICS 111—a category that covers crop production, which includes peanut and tree nut farming. These farmers accounted for about \$350 million in exports (table 6.4).⁶⁷³ Most U.S. farms that produce tree nuts are small operations. Over 90 percent of the farms engaged in commercial production of almonds, pecans, and walnuts are family farms (this is also true of peanuts), with at least 75 percent of almond, walnut, and pecan farms being under 100 acres.⁶⁷⁴ The majority of U.S. exports of nuts are fresh or dried, and are typically exported by a processor or handler rather than by the producer. Most of these processors or handlers are also SMEs.⁶⁷⁵

Trade-related Barriers

U.S. representatives of industries that produce and export edible nuts stated that they face trade-related barriers such as high tariffs, tariff-rate quotas (TRQs), the implementation of MRLs, and maximum levels (MLs) for contaminants and toxins in food, including aflatoxins. These issues are cited as problematic for most edible nuts exports, but the impacts of these barriers vary across types of nut. Tariff rates and TRQs impact U.S. exports by raising their prices in the EU market, and the EU's process

⁶⁶⁹ USDA, NASS, "Non-citrus Fruits and Nuts 2017 Summary," June 2018, 90.

⁶⁷⁰ USDA, FAS, *EU-28: Tree Nuts Annual*, 2018, 1.

⁶⁷¹ USITC DataWeb/USDOC (accessed February 14, 2019). This category includes both fresh and processed tree nuts, peanuts, and peanut butter. It is likely that the share of U.S. edible nuts is higher than recorded, because the free movement of products throughout the EU makes it difficult to determine exact shares of U.S. products exported to the UK. INC, "World Nut and Dried Fruit Trade Maps" (accessed February 27, 2019).

⁶⁷² U.S. almonds account for over half of UK almond imports (includes HTS 0802.11 and 0802.12.); U.S. walnuts (HTS 0802.31 and 0802.32) accounted for about one-quarter of UK imports of walnuts on average during the period 2012–16; and U.S. pistachios accounted for one-third, on average. Information on the share of U.S. pecans as a share of UK imports is not available. IHS Markit, *Global Trade Atlas* (accessed March 1, 2019); USITC DataWeb/USDOC (accessed February 14, 2019).

⁶⁷³ Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level. NAICS 111 encompasses all crop production, including peanuts and tree nuts, but does not include the processing of edible nuts, such as roasting (which is classified in NAICS 311). The majority of U.S. exports of edible nuts are raw or dried and would fall under NAICS 111.

⁶⁷⁴ USDA measures farm size by gross cash farm income (GCFI), and categorizes farms with GCFI of less than \$350,000 as small farms. Nearly all U.S. commercial production of walnuts occurs in California, with more than 5,500 growers. About 93 percent of walnut farms in California are family farms. USDA, NASS, 2012 Census of Agriculture, Quick Stats database (accessed March 13, 2019). Moreover, there are 6,800 almond farms in California, the only U.S. state with commercial almond production, and about 90 percent of these are family farms. USDA, ERS, "America's Diverse Family Farms," December 2018, 3.

⁶⁷⁵ Industry representative, interview by USITC staff, March 1, 2019.

for setting MRLs and MLs on these products creates uncertainty for producers and exporters, increasing overall delivered costs for U.S. producers.

Tariffs and Tariff-rate Quotas

Tariff rates and TRQs have varying impacts on U.S. exports of edible nuts. According to SMEs, the impacts of tariff rates are more significant when EU members or third countries that have a trade agreement with the EU produce those nuts. For example, U.S. walnuts entering the EU face a tariff of 4 or 5.1 percent (for in-shell or shelled, respectively), while walnuts from Chile (a growing global supplier), South Korea, and Turkey enter the EU duty free.⁶⁷⁶ Similarly, EU tariffs on U.S. peanut products range from 10.2 percent to 12.8 percent, but there is preferential treatment of peanut products from some other EU import suppliers, including South Africa.⁶⁷⁷ U.S. almonds face a TRQ in the EU that has been cited by SMEs as a trade barrier; it limits export growth due to higher tariff costs not faced by many competitors.⁶⁷⁸ Up to 90,000 tons of almonds from all non-preferential trading partners enter at a 2 percent rate, while the remainder enter at 3.5 percent. The quota is usually filled within the first four months of the year.⁶⁷⁹

EU's Maximum Levels on Contaminants, such as Aflatoxins

U.S. edible nut SMEs have argued that EU regulations on the maximum levels (MLs) for aflatoxin are highly problematic. Aflatoxin is a type of mycotoxin produced by certain types of fungi, which in large quantities can be toxic to humans and animals but are also considered to be an “unavoidable contaminant” whose risk is mitigated by limiting its presence in food.⁶⁸⁰ Many countries, including the United States, impose MLs for aflatoxin and test food and feed products to detect its presence.⁶⁸¹ However, U.S. industry representatives report that the EU has placed aflatoxin limits on tree nuts and peanuts that are lower than 10–15 parts per billion (ppb), the global standard set by the Codex Alimentarius Commission (Codex).⁶⁸² U.S. industry representatives note that the EU MLs result in delays in exporting and unnecessary rejections of shipments, increasing the costs of exporting nuts to the EU without making EU consumers safer.⁶⁸³ Moreover, the Joint FAO/WHO Expert Committee on Food Additives (JECFA) found that increasing the ML would significantly lower rejection rates of traded

⁶⁷⁶ IHS Markit, Global Trade Atlas database (accessed April 29, 2019); INC, “Nutfruit,” November 2018, 74; CWC, written submission to USTR, January 14, 2019; CWC, written submission to USTR, November 21, 2018; industry representative, interview by USITC staff, March 25, 2019.

⁶⁷⁷ APPMI, written submission to the USITC, February 1, 2019, 2.

⁶⁷⁸ ABC, written submission to USTR, December 10, 2018.

⁶⁷⁹ Industry representative, interview by USITC staff, March 1, 2019.

⁶⁸⁰ MedlinePlus, “Aflatoxin” (accessed May 1, 2019).

⁶⁸¹ WHO, “Aflatoxins,” February 2018.

⁶⁸² Joint FAO/WHO Codex Alimentarius Commission, *Codex Alimentarius: General Standards for Contaminants*, amended 2018, 13–14; EC, “Guidance Document for Competent Authorities for the Control of Compliance with EU Legislation on Aflatoxins,” November 2010. The Codex ML for aflatoxin for “ready-to-eat” nuts is set at the lower end of this range, at 10 ppb. While the ML for the sum of all types of aflatoxins in the EU and Codex regulations are the same, the EU places a lower limit on the B₁ strain of aflatoxin (at 8 or 12 ppb), which is the most common strain. The Codex Alimentarius Commission is the central part of a joint program of the United Nations Food and Agriculture Organization (FAO) and the World Health Organization (WHO).

⁶⁸³ Industry representatives, interview by USITC staff, March 1 and May 1, 2019.

shipments: an ML of 15 ppb would lead to 10 percent of EU imports of peanuts being rejected, as compared to 20 percent at the 4 ppb rate. They further found that the lower EU levels would have little impact on the risk of exposure to aflatoxin for the general population when compared to the higher Codex levels.⁶⁸⁴

The American Pistachio Growers noted that the EU's aflatoxin import program is arguably the greatest obstacle their industry faces in trading with Europe.⁶⁸⁵ As a result of an increase in notifications to the EU's Rapid Alert System for Food and Feed (RASFF), U.S. pistachios are tested for aflatoxin in the EU at a 20 percent rate, whereas they were previously inspected at a rate of 10 percent.⁶⁸⁶ Further, industry representatives have highlighted inconsistencies across member states in implementing requirements. They have suggested that at least some of the rejections are a result of issues with the testing program in certain member states, as well as the testing of U.S. products that were imported from outside the EU.⁶⁸⁷

The EU does have pre-export certification programs for aflatoxin, which allow for testing at a lower rate once the product arrives in the EU. While these programs are intended to facilitate U.S. exports to the UK, industry representatives suggest that the MLs are too low for them to be beneficial. Both peanuts and almonds used to receive pre-export certification for aflatoxin. However, because of an increase in aflatoxin notifications, U.S. peanuts are no longer eligible for pre-export checks.⁶⁸⁸

Administration of Maximum Residue Levels for Edible Nuts

SMEs note two major concerns with the development of MRLs in the EU: a lack of regulatory transparency in the process of setting MRLs for chemicals, and the brief time between adoption and implementation of these limits. The industry cites their experiences with the MRL on fosetyl-al, now resolved, as an example that has created concern about future regulations. The fosetyl-al MRL on U.S. blueberry exports to the UK, described above, also applied to U.S. exports of tree nuts. Because the fosetyl-al designation was changed from a product that was both a fertilizer and pesticide to only a pesticide, the European Commission did not submit a formal WTO notification that would have allowed for comments from other countries and required a longer timeframe for implementation.⁶⁸⁹ The MRL was permanently raised to 500 ppm in June 2018, but industry representatives continue to have concerns about the process by which this change was made and the potential for other MRLs to be adopted in a similar way. More recently, in January 2019, the MRL for iprodione was lowered for edible nuts from 0.2 ppm to 0.01 ppm, a change that was scheduled to take effect on July 30, 2019.⁶⁹⁰ While

⁶⁸⁴ FAO, JECFA, "Eighty-Third Meeting: Summary and Conclusions," November 23, 2016, 3.

⁶⁸⁵ APG, USTR written testimony, December 14, 2018, 2.

⁶⁸⁶ The EU's Rapid Alert System for Food and Feed (RASFF) communicates information about the detection of any potential food safety risks across the EU. EC, "RASFF—Food and Feed Safety Alerts" (accessed April 26, 2019); EU, Official Journal of the EU, "Commission Implementing Regulation (EU) 2015/525 of 27 March 2015," L84/28; Whitworth, "Audit Finds Gaps in US Aflatoxin Controls," April 9, 2018.

⁶⁸⁷ APG, written submission to USTR, December 14, 2018, 2–3; industry representative, interview by USITC staff, March 1, 2019.

⁶⁸⁸ EU, Official Journal of the EU, "Commission Implementing Regulation (EU) 2017/1269 of 13 July 2017," L 183/9.

⁶⁸⁹ USDA, FAS, "EU Establishes Trade-Facilitative MRL for Fosetyl-Al," June 19, 2018.

⁶⁹⁰ EU, Official Journal of the EU, Commission Regulation (EU) 2019/38, January 11, 2019, L 9/96, L 9/101; INC, Legal Update, "EU: Iprodione," August 1, 2018.

the Almond Board of California has noted that few samples test over the 0.01 ppm limit, they have notified members that they do not yet have advice on how to best reduce any residues.⁶⁹¹

One industry representative contended that a six-month period from adoption of a regulation to implementation is too short for edible nuts. Because of the long shelf life of edible nuts, the EU's brief transition period when imposing MRLs can have an additional impact on the U.S. exports of nuts that were in the process of production and trade when the MRLs are adopted.⁶⁹²

Processed Foods

The processed foods industry is a large sector encompassing a wide range of products. For the purposes of this report, "processed foods" refers to manufactured food products that have been packaged for retail sale, such as pasta, baked goods, confectionery products, sauces and condiments, multi-ingredient snack foods (e.g., granola bars or chips), and prepared meals (e.g., frozen entrees).⁶⁹³ The total value of domestic production of these goods in 2016 was over \$250 billion.⁶⁹⁴ In 2016, the United States exported \$1.7 billion in processed food products to the EU, of which the UK accounted for \$499 million.⁶⁹⁵ Among EU member countries, the UK is the second-largest single-country market for U.S. processed food exports after the Netherlands.⁶⁹⁶

The United States is a leading producer of processed foods, and SMEs play an important role in the industry. Considering only firms in the processed foods industry that produce the types of products listed above, there were about 15,000 U.S. firms making processed foods in 2016, and over 97 percent of them were SMEs.⁶⁹⁷ Under the broader definition of food manufacturing (NAICS 311) that, in addition to the industries above, also includes producers of animal feed, meat, and dairy products, SMEs account for about 39 percent of all U.S. manufactured food exports and over one-half of manufactured food exports to the UK (table 6.5). There were 1,309 known U.S. SME exporters of this category to the UK in 2016.

⁶⁹¹ ABC, "ABC Global Update," February 2019, 2.

⁶⁹² Industry representative, interview by USITC staff, March 1, 2019. ABC, "Ripple Effects of EU Pesticide Regulations" (accessed July 17, 2019).

⁶⁹³ While some of these foods, such as prepared entrees, may incorporate meat or dairy ingredients, the meat and dairy sectors are generally excluded from this section except where otherwise indicated.

⁶⁹⁴ Among the largest contributors to this total were commercial bakeries, fruit and vegetable canneries (which includes makers of jams, jellies, ketchup, and pasta sauce), snack food manufacturers, and frozen specialty food manufacturers. U.S. Census, "Annual Survey of Manufactures: Value of Products Shipments: Value of Shipments for Product Classes: 2016 and 2015," data table (accessed February 27, 2019).

⁶⁹⁵ USITC DataWeb/USDOC (accessed July 18, 2019) for total U.S. exports of product groups prepared/preserved vegetables (AG019); prepared/preserved fruit (AG027); pastas, cereals, and baked goods (AG034); sauces, condiments, and soups (AG035); infant formulas, malt extracts, and other edible preparations (AG036); and cocoa, chocolate, and confectionery (AG037), as specified in USITC, *Shifts in U.S. Merchandise Trade, 2017*, October 2, 2018.

⁶⁹⁶ Together, the UK and the Netherlands accounted for 61 percent of U.S. exports of these products. USITC DataWeb/USDOC (accessed July 19, 2019).

⁶⁹⁷ U.S. Census, "Annual Survey of Manufactures: Value of Products Shipments: Value of Shipments for Product Classes: 2016 and 2015," data table (accessed February 27, 2019).

Table 6.5 Known value of U.S. exports and identified exporters of food manufacturing (NAICS 311), by company size and destination, 2016

	All export destinations	EU	UK	UK share of all export destinations	UK share of exports to the EU
All U.S. exports, known value (million \$)	55,806	2,713	775	1.4	28.6
U.S. SME exports, known value (million \$)	21,621	1,313	395	1.8	30.1
SME share (%)	38.7	48.4	51.0	-	-
Number of identified exporters	24,825	4,238	1,663	6.7	39.2
Number of identified SME exporters	20,079	3,295	1,309	6.4	39.7
SME share (%)	80.9	77.7	78.7	-	-

Source: Compiled from official statistics of the U.S. Census Bureau (U.S. Census) (accessed March 7, 2019 and March 26, 2019).

Note: Known values exclude transactions that cannot be attributed to specific exporting companies and may vary from U.S. Census's official published data. Identified enterprises are those to which one or more transactions can be matched. Due to confidentiality issues, U.S. Census data are only available at the 3-digit NAICS code level, which encompasses a broader NAICS subsector than the processed foods industry. See appendix E, tables E.1 and E.2, for a detailed breakdown of known U.S. export values and numbers of identified U.S. exporters.

Trade-related Barriers

U.S. SME representatives in the processed food industry noted that when exporting to the UK, the two biggest challenges that they face are tariffs and the relatively high cost of sugar in the United States under the U.S. sugar program. Both reduce the competitiveness of U.S. processed food exports to the UK. The EU also has restrictions on certain food additives that may be contained in processed foods, which differ from restrictions in the United States, thereby limiting the goods SMEs can export for sale in the UK market.

Tariffs

Tariffs were cited as the most restrictive trade-related barrier to exporting processed foods to the UK, especially given that the EU has preferential trade relationships with other major processed food producers and has a large processed foods industry of its own.⁶⁹⁸ This places a particular burden on SMEs because larger food manufacturers often have the scale and resources to build production facilities in the EU or its trade agreement partners, thereby avoiding duties.⁶⁹⁹ The EU's MFN tariff rates on processed foods vary, but many are between 5 and 20 percent, and very few of the products in this industry are duty free.⁷⁰⁰ The average tariff rate on processed foods is about 14 percent.⁷⁰¹ A particularly challenging aspect of EU tariff rates for U.S. processed food exporters is the EU's use of a tariff escalation system that imposes higher duties on processed products than on inputs, as described above.

⁶⁹⁸ Industry representative, interview by USITC staff, November 29, 2018; industry representative, listening session, Los Angeles, CA, December 6, 2018, 57.

⁶⁹⁹ USDA, FAS, "EU Market Protection Suppresses Agricultural Imports," January 11, 2017.

⁷⁰⁰ EU tariff schedule as provided to the WTO (accessed February 25, 2019). These tariff rates do not include retaliatory duties that the EU has imposed in response to U.S. Section 232 tariffs on steel and aluminum. Several processed foods, including peanut butter, some processed grain products, prepared corn, and some juices, are subject to retaliatory duties (WTO document no. G/L/1237).

⁷⁰¹ GMA, written submission to USTR, January 15, 2019, 2.

Food Additive Restrictions

The EU maintains restrictions on certain food additives that differ from those in the United States and can be burdensome for U.S. SME exporters. One of the most notable restrictions is that foods containing one of six food colors must be labeled with the phrase “may have an adverse effect on activity and attention in children.”⁷⁰² According to FAS, this regulation has had an effect on the UK market, with some U.S. exporters reformulating their products to avoid having to use this label.⁷⁰³ However, reformulation is not an option for every product and may be less feasible for SMEs. The National Confectioners Association, which represents a large number of SME candy manufacturers, reports that the regulation has effectively served as a ban on U.S. exports of candy containing those colors, particularly for smaller companies.⁷⁰⁴ However, one SME industry representative who was in the process of entering the UK market with a product containing one of these food colors stated that his company was keeping the formula the same for the UK, labeling the product, and hoping the label would not be a deterrent to UK consumers.⁷⁰⁵

Ways to Enhance SME Participation in U.S.-UK Trade

SMEs suggested a variety of ways to enhance trade in agrifood products between the United States and the UK. At a minimum, SMEs suggested ensuring the continuity of trade between the two countries by maintaining the status quo of United States and EU trade relations, preserving distinctive product recognition for distilled spirit exports, and simplifying certification requirements for wine producers. Other, more proactive measures included advocating for lower tariffs on agrifood products (mainly processed foods, seafood, and distilled spirits) and for using a risk- or science-based approach to establishing MRLs, as well as lengthening the time period in which products subject to new MRLs are accepted in the UK. Lastly, SMEs suggested that mutual recognition of standards, and reciprocity of sanitary and phytosanitary (SPS) and food safety regulations, would help to facilitate more exports to the UK market.

Ensuring Continuity of Agrifood Trade

The U.S. alcoholic beverage industry and the domestic organic industry’s primary trade concerns are possible disruptions of trade flows following Brexit. The domestic wine industry believes that ensuring continuity of trade with the UK is the most significant priority. The domestic wine industry, including numerous SME winemakers, support the agreement on trade in wine signed on January 31, 2019, by the United States and the UK. If adopted by both parties, the agreement would essentially continue the U.S.-European Community wine agreement of 2006 and would ensure market continuity for bilateral wine

⁷⁰² USDA, FAS, *United Kingdom: Food and Agricultural Import Regulations and Standards*, December 14, 2017, 5.

⁷⁰³ USDA, FAS, *United Kingdom: Food and Agricultural Import Regulations and Standards*, December 14, 2017, 5.

⁷⁰⁴ NCA, written submission to the USITC in connection with Inv. Nos. TA-131-045 and TPA-105-006, March 15, 2019, 2.

⁷⁰⁵ Industry representative, interview by USITC staff, November 29, 2018.

trade.⁷⁰⁶ The U.S. organic industry likewise believes that maintaining recognition of the U.S. organic standards in the UK is the most significant policy measure at this time and supports the steps that USDA is taking toward ensuring that trade flows of organic products would continue unimpeded in the event of Brexit.

Reducing Tariffs and Foregoing TRQs

Many industry sources likewise emphasized that lowering tariffs is one of the best ways to enhance trade, specifically for processed foods.⁷⁰⁷ EU tariff rates on processed foods are higher than in many other developed-country markets, and the structure of the EU tariff system, which involves tariff escalation, variable rates for some products, and preferential arrangements with a number of other countries, creates challenges for SME exporters in particular. In interviews with USITC staff, U.S. SME representatives in the seafood industry were unanimous in calling for lower tariffs on seafood products when the UK officially leaves the EU. The continuation of tariff-free trade was also a key concern raised by U.S. SME distilled spirits representatives, particularly in light of the UK's impending withdrawal from the EU.⁷⁰⁸

Relative to larger firms, SMEs have fewer resources available to address the administrative hurdles related to TRQ administration. SMEs generally believe that the TRQ system is cumbersome, and hope that the UK will choose to forego TRQs on produce and fish products once it sets its own trade policy. U.S. produce industry representatives suggested the elimination of TRQs for certain fresh fruits, since these reduce the competitiveness of U.S. products in the UK market.⁷⁰⁹ A fishery industry representative stated that the U.S. industry would likely accept requirements that fish inputs be processed in the EU in exchange for predictable, duty-free access to the EU market.⁷¹⁰ During the UK's transition process for leaving the UK, parties have agreed to the general principle that shares of the total TRQ volume would be split between the EU and the UK based on past usage.⁷¹¹ However, in practice, it is not clear whether or for how long the UK would continue to apply produce and fish TRQs under a system similar to that of the EU.

⁷⁰⁶ The agreement will only enter into force following an exchange of written notifications between the parties. USTR, "USTR Signs Wine and Distilled Spirits Continuity Agreements," February 4, 2019; USTR, "U.S. UK Wine Agreement on Trade in Wine," February 2019.

⁷⁰⁷ NCA, written submission to the USITC in connection with Inv. Nos. TA-131-045 and TPA-105-006, March 15, 2019; industry representative, interview by USITC staff, November 29, 2018; GMA, written submission to USTR, January 15, 2019.

⁷⁰⁸ Due to the "zero for zero" tariff elimination commitments secured for distilled spirits in the Uruguay Round in 1995, the Common External Tariff applied by all EU members is zero for almost all distilled spirits. DISCUS, written submission to USTR, "Comment Regarding Foreign Trade Barriers to U.S. Exports," October 25, 2017, 2.

⁷⁰⁹ Industry representative, interview by USITC staff, April 9, 2019.

⁷¹⁰ Industry representative, interview by USITC staff, February 22, 2019.

⁷¹¹ Council of the EU, press release, July 12, 2018.

Mutual Recognition of Standards and Regulatory Approvals

Other ways to enhance SME exports of processed foods to the UK, as described by SMEs and other industry representatives, are mutual recognition of standards and improved regulatory cooperation. In particular, the Grocery Manufacturers of America highlighted the lack of mutual recognition between the United States and the EU on regulatory approvals of food flavorings, despite the two parties' use of "almost identical protocols," and expressed a hope that the United States and the UK could agree on mutual recognition.

One request from the seafood industry was to enhance mutual recognition of fisheries-related standards between the United States and the UK, whether on certification that fish are not from IUU sources or on food safety systems for mollusk production and handling.⁷¹² One SME in the alcoholic beverage industry reported that it is preferable to comply with a single set of regulatory policies and processes, and would prefer it if the UK continued to follow EU policies or to recognize U.S. standards.⁷¹³

Reciprocity of Sanitary and Phytosanitary (SPS) Measures and Food Safety Regulations

SPS measures are the most frequently cited trade barriers affecting the fresh produce and edible nut product industries. U.S. industry representatives suggested reciprocity of SPS/food safety regulations between the United States and the UK as a way to enhance trade with the UK.⁷¹⁴ U.S. industry representatives suggested that having reciprocal SPS/food safety standards with the UK would allow American companies approved to sell food products in the United States to sell the same products in the UK.⁷¹⁵ The representatives mentioned the reciprocity between the U.S. food safety system and that of Canada, Australia, and New Zealand as an example, and emphasized that this would also benefit the UK.⁷¹⁶ A representative from the U.S. fresh produce industry also recommended greater regulatory harmonization for SPS standards between the United States and the UK. The representative suggested the SPS agreement under the United States-Mexico-Canada Agreement as an example of a free trade agreement with greater harmonization.⁷¹⁷ Additionally, the representative suggested increased transparency in the regulatory process to make the rules transparent and easily accessible to potential exporters.⁷¹⁸

⁷¹² Industry representatives, interviews by USITC staff, December 12, 2018, and February 22, 2019; industry representative, interview by USITC staff, Washington, DC, September 25, 2018.

⁷¹³ Industry representative, interview by USITC staff, October 16, 2018.

⁷¹⁴ Industry representative, interview by USITC staff, April 5, 2019; industry representative, interview by USITC staff, April 9, 2019.

⁷¹⁵ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 41.

⁷¹⁶ Industry representative, listening session, Los Angeles, CA, December 6, 2018, 59–60.

⁷¹⁷ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 48–49.

⁷¹⁸ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 53.

Using a Risk-based Approach or Science-based Approach to Establishing MRLs

Edible nut representatives note the difference in approaches to setting MRLs in the EU and the United States as having a negative impact on U.S. exports of edible nuts. As noted in chapter 3, the EU maintains a hazard-based approach that limits residue levels regardless of the type of product and the quantity generally consumed. Industry representatives argue that a risk-based approach, which is the approach used in the United States, is more appropriate in that the maximum residue limit is set based on how much of the product is consumed, on average. Complying with changes in MRLs or banning the use of certain crop protection substances increases costs for the U.S. SMEs producing edible nuts, leads to increased losses due to rejections, and decreases foreign consumers' confidence in U.S. products. Industry representatives note that some EU MRLs are more restrictive than Codex Alimentarius standards without increasing food safety.⁷¹⁹ Industry representatives therefore recommend adopting a science-based approach to establishing MRLs in fresh fruits and vegetables instead of using the "precautionary principle."⁷²⁰

Establishing and Applying MRLs

One industry representative noted that allowing only six months from adopting a regulation to implementing it is too little time for edible nuts producers. Because of the time needed to produce and shell nuts, as well as their long shelf life, the EU's short transition period when imposing MRLs has an impact on U.S. exports of nuts. The representative suggested that if the EU trade provisions provided for better channels to accept products that were already in the process of production before the regulation went into effect, this would improve the ability of U.S. exports to enter the market and decrease rejections of products that were being harvested or processed during the change in regulations.⁷²¹

To address aflatoxin issues, the American Pistachio Growers suggest the UK adopt measures similar to those in the United States. In the EU, if some exporters fail a chemical test and the total of failed tests exceeds a certain amount, all U.S. exporters of the product are subject to increased testing. By contrast, in the United States, the Food and Drug Association (FDA) will increase testing for the shippers that failed and not all foreign shippers. Additionally, in the United States, if a product is above the U.S. aflatoxin limits, the importer may request permission from the FDA to bring the product into

⁷¹⁹ APG, written submission to USTR, January 15, 2019, 3; APC, written submission to USTR, December 3, 2018; ABC, written submission to USTR, December 10, 2018.

⁷²⁰ Industry representative, interview by USITC staff, April 9, 2019. In 2000, the EU adopted a Communication on the precautionary principle and its use. The EU noted where there are reasonable grounds for concern that potential hazards may affect the environment or human, animal or plant health, and when at the same time the lack of scientific information precludes a detailed scientific evaluation, the precautionary principle has been the politically accepted risk management strategy. Although the precautionary principle is not explicitly mentioned in the EC Treaty except in the environment field, the European Commission considers that this principle has a scope far wider than the environment field and that it also covers the protection of human, animal, and plant health. EC, "Commission Adopts Communication on Precautionary Principle," February 2, 2000.

⁷²¹ Industry representative, interview by USITC staff, March 1, 2019; ABC, "Ripple Effects of EU Pesticide Regulations" (accessed July 17, 2019).

compliance. The industry suggests that similar policies in the UK would have a positive impact on U.S. exports of pistachios to the UK.⁷²²

Simplified EU Wine Export Certificate

Several wine-producing SMEs praised the simplified EU wine export certificate and hoped that it would remain in place in the event of Britain's withdrawal from the EU.⁷²³ An industry representative noted that the certificate is useful in providing continuity for U.S. wine exporters.

Preservation of Distinctive Product Recognition

The preservation of distinctive product recognition is a leading concern raised by U.S. SME distilled spirit producers in light of the UK's impending withdrawal from the EU.⁷²⁴ Many SME representatives noted that it was advantageous to them that distinctive product recognition for "Bourbon" and "Tennessee whiskey" was secured in the EU through bilateral agreements. The recently signed U.S.-UK agreement on the mutual recognition of certain names would extend protection for "Bourbon," "Bourbon whiskey," and "Tennessee whiskey" in bilateral trade in the event of the UK's withdrawal from the EU, allowing SMEs to continue exporting these distinctive products without disruption.

⁷²² APG, written submission to USTR, January 15, 2019, 3; FDA, "CPG Sec. 570.500 Pistachio Nuts—Aflatoxin Adulteration," November 29, 2005.

⁷²³ Industry representative, interview by USITC staff, November 19, 2018, and November 27, 2019.

⁷²⁴ Due to the "zero for zero" tariff elimination commitments secured for distilled spirits in the Uruguay Round in 1995, the Common External Tariff applied by all EU members is zero for almost all distilled spirits. DISCUS, written submission to USTR, "Comment Regarding Foreign Trade Barriers to U.S. Exports," October 25, 2017, 2.

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Chapter 7

Services

Overview

SMEs are important contributors to U.S. services trade. More than 95 percent of all U.S. firms that exported services in 2015 had less than 250 employees, and such firms accounted for almost half of the total value of U.S. services exports in that year (latest data available).⁷²⁵ Firms with less than 10 employees make a particularly substantial contribution to such trade, having accounted for more than 70 percent of U.S. services-exporting firms and almost a quarter of the total value of U.S. services exports in 2015.⁷²⁶ Exporting reportedly has a positive impact on the survival rate of SMEs in all economic sectors, and the survival rates of service sector SMEs that successfully navigate trade barriers are higher than those of SMEs in the manufacturing sector.⁷²⁷ Further, digital technology and the internet have expanded SMEs' access to global consumers, helping them circumvent traditional obstacles to trade and find new opportunities to connect to world markets.⁷²⁸

Nonetheless, only a very small share of all U.S. services firms export, and SMEs are less likely to engage in trade than larger firms.⁷²⁹ While recent developments such as the rise of global value chains, technological advances, and widespread adoption of the internet have increased trade opportunities for service sector SMEs, there is no evidence of increased cross-border trade by these firms.⁷³⁰ Further, only a relatively small share of SMEs in the services sector maintain websites that allow customers to place orders and make payments online.⁷³¹

A recent paper that analyzes data on trade, affiliate transactions, and services restrictions for eight OECD countries (including the UK) finds that barriers to trade in services have a greater impact on small firms than on larger firms, which typically have more resources to address regulatory issues. The authors

⁷²⁵ For the purposes of this calculation, “services” includes the following sectors in the UN’s International Standard Industrial Classification of All Economic Activities (ISIC), rev. 4: wholesale trade and repair; construction; transportation and storage; accommodation and food service activities; information and communication; financial and insurance activities; real estate activities; professional, scientific, and technical activities; administrative and support service activities; education; human health and social work activities; arts, entertainment and recreation; and other service activities.

⁷²⁶ OECD, I-TEC by Sector and Size Class, database, https://stats.oecd.org/Index.aspx?DataSetCode=TEC1_REV4# (accessed March 19, 2019).

⁷²⁷ Meltzer, “Using the Internet to Promote Services Exports,” February 2015, 4; WTO, *Levelling the Trading Field for SMEs*, 2016, 35.

⁷²⁸ WTO, *Levelling the Trading Field for SMEs*, 2016, 14.

⁷²⁹ Meltzer, “Using the Internet to Promote Services Exports,” February 2015, 4; WTO, *Levelling the Trading Field for SMEs*, 2016, 21.

⁷³⁰ The WTO reports that a scarcity of adequate and comparable data may contribute to the inability to detect growth in SME trade activity. Meltzer, “Using the Internet to Promote Services Exports,” February 2015, 5–6; WTO, *Levelling the Trading Field for SMEs*, 2016, 20–21.

⁷³¹ Meltzer, “Using the Internet to Promote Services Exports,” February 2015, 7. For more information on how e-commerce platforms facilitate trade by SMEs, see USITC, *Global Digital Trade 1*, August 2017, 149.

suggest that services trade liberalization would disproportionately benefit SMEs and lead to increased cross-border exports and affiliate sales among such firms.⁷³²

The UK is the largest single-country export market for U.S. service exports.⁷³³ In 2016, U.S. exports of private services to the UK totaled \$66.7 billion, comprising 9 percent of total U.S. exports of private services.⁷³⁴ Financial services accounted for the largest share of U.S. exports of private services to the UK (22 percent) in 2016, followed by travel (19 percent) and professional services (19 percent).⁷³⁵ The United States is also a key services trading partner of the UK, accounting for almost 22 percent of the UK's service exports and nearly 19 percent of the UK's service imports.⁷³⁶ Table 7.1 presents the cross-border export data for the services industries discussed below.

Table 7.1 U.S. cross-border exports of private services^a to the UK, by industry, 2012–16 (billion dollars)

	2012	2013	2014	2015	2016
Computer services ^b	2.2	2.1	2.1	2.4	2.8
Professional services ^c	10.4	10.6	11.5	12.6	12.8
Legal services	1.3	1.5	1.6	1.6	1.5
Accounting, auditing, and bookkeeping services	0.2	0.2	0.2	0.2	0.2
Architectural and engineering services	1.0	0.8	(^d)	0.9	(^d)
Other professional services	7.9	8.1	(^d)	9.8	(^d)
All other private services	46.7	46.9	50.6	52.6	51.1
Total private services	59.3	59.6	64.2	67.6	66.7

Source: USDOC, BEA, table 2.3, "U.S. Trade in Services, by Country or Affiliation and by Type of Service" (accessed March 18, 2019).

Note: For information on BEA services categories, see BEA, "U.S. International Economic Accounts: Concepts and Methods," September 22, 2014, <https://www.bea.gov/resources/methodologies/us-international-economic-accounts-concepts-methods>, 10-14 to 10-24.

^a Exports of "private services" reflects total cross-border services exports less exports of government goods and services n.i.e. (not included elsewhere). Data on cross-border services exports by U.S. SMEs are not available.

^b "Computer services" is a subsector of the BEA category "telecommunications, computer and information services" and does not include "computer software," which is a subsector of the BEA category "charges for the use of intellectual property n.i.e."

^c "Professional services" as presented in this table corresponds to the BEA category "other business services" and includes professional and management consulting; technical, trade-related, and other business services; and research and development services.

^d Data are missing or suppressed, or value cannot be calculated due to missing or suppressed data. BEA suppresses certain statistics to avoid disclosing proprietary information of individual companies.

Summary of Trade Barriers

Compared to SMEs in other market sectors, SMEs in the services sector identified few barriers to U.S. SMEs' provision of services in the UK (table 7.2). Representatives of only two services industries—architectural services and computer services—provided information on UK barriers. According to these individuals, architectural services SMEs face licensing and credentials issues, a requirement to partner with UK architects, and temporary entry provisions. Computer services SMEs reportedly encounter issues related to data protection and privacy laws, cybersecurity, and customs requirements. As a

⁷³² Benz, Rouzet, and Spinelli, "Firm Heterogeneity in Services Trade," April 2019, 4, 23.

⁷³³ USDOC, ITA, Export.gov, "UK Market Overview," August 18, 2018.

⁷³⁴ Exports of private services reflects total cross-border services exports less exports of government goods and services n.i.e.

⁷³⁵ Exports of private services reflects total cross-border services exports less exports of government goods and services n.i.e. USDOC, BEA, table 2.3, "U.S. Trade in Services, by Country or Affiliation and by Type of Service," accessed March 18, 2019.

⁷³⁶ Busch et al., "The Future of US-UK Trade," July 2018, 3.

digitally intense industry, computer services are also impacted by barriers identified by other digitally intense industries, including a tax on diverted profits and measures regulating temporary entry, among others.

Table 7.2 Summary of trade-related barriers that U.S. SMEs face when providing services to the UK

Industry sector	Trade-related barrier	Summary of SME concerns
Architectural services	Licensing and credential issues/ finding UK partners	<ul style="list-style-type: none"> UK licensure process forces unregistered foreign firms/architects to work as consultants or to partner with local firms that have licenses.
	Temporary entry restrictions	<ul style="list-style-type: none"> These provisions may affect the length of time that a foreign professional may stay in the country.
Computer services	Data protection and privacy laws, particularly the EU's General Data Protection Regulation (GDPR)	<ul style="list-style-type: none"> Compliance with GDPR poses a significant additional cost and administrative burden for U.S.-based SMEs exporting to the UK. These laws create ongoing direct costs (particularly staffing). Regulations limit potential client outreach. Perceived absence of clarity in data privacy laws make it difficult to send information across borders.
	Cybersecurity	<ul style="list-style-type: none"> There is potential for business disruption if the UK does not uphold the same cybersecurity policies following Brexit.
	UK diverted profits tax	<ul style="list-style-type: none"> This tax creates an impediment to cross-border investments into the UK. SMEs may spend more time and resources complying with this new tax policy requirement.
	Customs requirements	<ul style="list-style-type: none"> Firms must complete U.S. customs and excise paperwork to export or re-export the equipment needed to provide services at a client site.
	Temporary entry restrictions	<ul style="list-style-type: none"> These provisions affect SMEs' ability to attract talent for U.S.-based digital trade firms operating in the UK.

Source: Compiled by USITC from listening sessions, hearing testimony, written submissions, email messages, and interviews with SMEs.

Professional Services

Professional services contributed \$1.3 trillion to U.S. GDP in 2016 and employed 8.8 million workers in that year.⁷³⁷ Professional services are primarily provided by SMEs, which made up over 99 percent of all

⁷³⁷ USDOC, BEA, "Real Value Added by Industry," November 1, 2018; U.S. Census, 2016 SUSB Annual Data Tables by Establishment Industry, "Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016," December 18, 2018. The reported numbers refer to North American Industry Classification System (NAICS) code 54 (professional, scientific, and technical services).

professional services firms in 2016.⁷³⁸ “Professional services” typically encompasses the broad category of activities or industries that require the expertise of practitioners with specialized skills, certifications, or licenses. For the purposes of the following discussion, professional services comprise those industries categorized under North American Industry Classification System (NAICS) sector 54—professional, scientific, and technical services.⁷³⁹ These industries include accounting, advertising, architecture, engineering, legal services, and management consulting, among many others.⁷⁴⁰

Professional services are exported through cross-border trade (when suppliers in one country sell services to consumers in another country, with people, information, or money crossing national borders) and through foreign affiliate sales (when a firm establishes a commercial presence in a foreign market). Professional services SMEs that export to overseas markets are more likely to engage in cross-border trade through one or more channels than in trade through a foreign affiliate. For example, SMEs that provide architecture services abroad generally do so by sending workers back and forth between their home and foreign markets to provide services, as many of these firms do not have capacity to establish a presence in foreign markets.⁷⁴¹ Firms may also provide services abroad by sending designs or advice to foreign clients via phone, email, or other channels. While U.S. SMEs accounted for only 2 percent of total U.S. foreign affiliate sales of professional, scientific, and technical services in 2007 (latest available data),⁷⁴² they accounted for almost half of total U.S. cross-border services exports of such services in that year.⁷⁴³

U.S. cross-border exports of professional services to the UK were valued at \$12.8 billion in 2016, accounting for 19.1 percent of total U.S. private services exports to the UK by value.⁷⁴⁴ These exports largely comprised business and management consulting and public relations services (52.3 percent);

⁷³⁸ U.S. Census, 2016 SUSB Annual Data Tables by Establishment Industry, “Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016,” December 18, 2018. The reported numbers refer to NAICS code 54 (professional, scientific, and technical services). In this instance, SMEs are defined as firms with less than 500 employees at the enterprise level.

⁷³⁹ As noted in table 7.1, cross-border services exports of professional services as presented in the table corresponds to the BEA category “other business services.” This category includes professional and management consulting (legal; accounting, auditing, and bookkeeping services; business and management consulting and public relations services; and advertising), technical, trade-related and other business services (architectural and engineering services; construction; industrial engineering; and operating leasing services), and research and development services.

⁷⁴⁰ For a complete listing and description of professional services, see U.S. Census, “North American Industry Classification System (NAICS)” (accessed February 19, 2019). These professional services do not include medical services.

⁷⁴¹ As a result, these architects and firms often work as subcontractors and are not typically leads on projects in foreign markets. Industry representative, interview by USITC staff, October 4, 2018.

⁷⁴² USITC, *Small and Medium-sized Enterprises*, November 2010, 3-19 to 3-20. Foreign affiliate sales data tabulated by BEA. SMEs are defined by a U.S. parent company having less than 500 employees.

⁷⁴³ USITC, *Small and Medium-sized Enterprises*, November 2010, 3-12. Cross-border services export data tabulated by Census. SMEs are defined as establishments with less than 500 employees.

⁷⁴⁴ Cross-border trade is largely composed of trade conducted through modes 1, 2, and 4 as classified under the General Agreement on Trade in Services (GATS). Cross-border services trade data are collected and published by the type of service provided, rather than by industry of the firm. As a result, a firm’s main industry classification and their exported services may not be the same. USDOC, BEA, table 2.3, “U.S. Trade in Services, by Country or Affiliation and by Type of Service,” October 19, 2018.

technical, trade-related, and other business services (17.9 percent); legal services (12.1 percent); advertising (8.4 percent); and research and development services (7.4 percent).⁷⁴⁵ While specific data on U.S. SMEs' exports of professional services to the UK are not available, the UK is likely an important market for such firms. According to one legal services industry representative, the UK is the foreign location in which a U.S. law firm is most likely to have an established presence outside its home market.⁷⁴⁶

Trade-related Barriers

SMEs primarily noted trade barriers in the provision of architectural services. The biggest challenges faced by U.S. SMEs engaged in the architecture industry when exporting services to the UK include temporary entry restrictions (provisions affecting the movement of people across borders), licensing and credential issues, and finding business partners in the UK market.⁷⁴⁷ An industry representative indicated that the UK licensure process forces unregistered foreign firms/architects to work as consultants or partner with local firms that have licenses. These requirements reportedly put SMEs at a disadvantage because small firms have a harder time finding partners than larger firms, which may have name recognition and extensive networks.⁷⁴⁸

The OECD Services Trade Restrictiveness Index (STRI) identifies several UK barriers to the foreign provision of architectural services, although it does not differentiate by size of firm. The barriers listed in the STRI are not specific to SMEs but provide some indication of the type of measures that may affect any foreign firm in the UK architecture services market. According to the OECD STRI, UK policies that may affect the foreign provision of architecture services in that country include labor market tests and limitations on length of time that a foreign professional may stay in the country.⁷⁴⁹ Additionally, architects without EU qualifications must take assessment examinations and are required to practice

⁷⁴⁵ The share of exports is provided for subcategories when available. Data are suppressed for a few subcategories in 2016, including architectural and engineering services exports to the UK. In 2015, architectural and engineering services exports to the UK were valued at \$944 million.

⁷⁴⁶ While staff interviewed a number of representatives of the legal services industry, none of these individuals identified barriers that affected SMEs providing legal services in the UK. The UK legal services market is viewed as one of the most open in the world, and one U.S. SME exporter of legal services specifically stated that they have not encountered any issues with UK clients. Additionally, small law practices are less likely to export by establishing offices overseas than large firms; as a result, it is difficult to find SMEs that supply legal services to UK clients via the other three modes of trade. Industry representative, interview by USITC staff, October 9, 2018; industry representative, listening session, Cleveland, OH, December 5, 2018, 15.

⁷⁴⁷ Industry representative, interview by USITC staff, October 4, 2018; OECD, Services Trade Restrictiveness Index Simulator (accessed February 21, 2019). Temporary entry restrictions are likely to impact SME exporters of professional services, since as discussed above and noted by the industry representative, SMEs exporting architecture services generally send workers back and forth between their home and foreign markets to provide services.

⁷⁴⁸ Neither U.S. architects nor architecture firms may use the term "architect" in the UK unless they are licensed in that country. Industry representative, interview by USITC staff, October 4, 2018.

⁷⁴⁹ OECD, Services Trade Restrictiveness Index Simulator (accessed February 21, 2019).

locally in order to join the Architects Registration Board, which is necessary for foreign architects to register and gain local equivalence.⁷⁵⁰

Ways to Enhance SME Participation in the Professional Services Industry

According to the Confederation of British Industries, two regulatory areas are central to the provision of professional services across borders: (1) mutual recognition of professional qualifications and harmonization of regulatory frameworks, and (2) the ability of service providers to travel temporarily to foreign jurisdictions.⁷⁵¹ One industry representative reports that mutual recognition could have a positive impact on U.S. SMEs' willingness to supply architecture services in the UK, particularly among those SMEs that provide niche services. However, this impact would likely be small; for one thing, the UK already has a well-established domestic industry supplying architectural services. Moreover, as noted by the industry representative, the United States has not seen a huge increase of activity in countries with which it has already established mutual recognition.⁷⁵²

Computer Services

In 2016, the U.S. computer services industry generated \$559.2 billion in real value added, and employed about 2.8 million people.⁷⁵³ The U.S. computer services sector is primarily composed of SMEs. In 2016, firms with less than 500 employees accounted for 99 percent of firms in the computer services sector and 44 percent of all employment in that sector.⁷⁵⁴ Computer services, as discussed in this section, comprises those industries classified in NAICS 5112, 5182, and 5415, which include computer-related consulting, data processing and hosting services, cloud computing, and software development, among other related services.⁷⁵⁵

⁷⁵⁰ OECD, Services Trade Restrictiveness Index Simulator (accessed February 21, 2019). For more information, see <http://www.arb.org.uk/architect-information/applying-for-registration-for-the-first-time/i-hold-overseas-non-recognised-uk-qualifications/>.

⁷⁵¹ Confederation of British Industry, "Smooth Operations," April 2018, 12, 88–92.

⁷⁵² Industry representative, interview by USITC staff, October 4, 2018. As reported by the industry representative, these countries include Australia, New Zealand, Canada, and Mexico.

⁷⁵³ Figures for real value added include output from data processing, internet publishing, and other information services, and computer systems design and related services. Employment figures include NAICS 5112, 5182, and 5415. BEA, "Real Value Added by Industry," November 1, 2018; U.S. Census, 2016 SUSB Annual Data Tables by Establishment Industry, "Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016," December 2018.

⁷⁵⁴ Includes total number of firms and total employment for NAICS 5112, 5182 and 5415. Data from BEA were not available at this level of disaggregation. U.S. Census, 2016 SUSB Annual Data Tables by Establishment Industry, "Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016," December 2018.

⁷⁵⁵ "Software publishers" (NAICS 5112) includes firms that design, document, install, and provide support services for software. "Data processing, hosting, and related services" (NAICS 5182) includes activities such as web hosting, streaming services, and application hosting, as well as all cloud-based activities. "Computer systems design and related services" (NAICS 5415) includes custom software design, testing, and support, computer systems design,

The computer services industry is, by nature, the most digitally intense services sector and a key participant in digital trade. Therefore this section focuses both on trade-related barriers that are specific to computer services and on barriers that apply more broadly to all digital trade activities. The United States and the UK are two of the largest markets for digital trade.⁷⁵⁶ A recent McKinsey report ranked the United States as the third most internet-connected economy, after Singapore and the Netherlands, while the UK was ranked sixth (after Germany and Ireland).⁷⁵⁷ The United States is also a substantial digital exporter,⁷⁵⁸ maintaining a net surplus in digitally enabled services trade for at least the past decade.⁷⁵⁹

The UK is a major consumer of digital services provided by U.S. firms. This pattern is especially noteworthy in certain sectors: U.S. firms have leading positions in the UK markets for online search (U.S. firms accounted for more than 90 percent of UK market share in 2016), social media (over 90 percent market share), and operating system use (86 percent market share).⁷⁶⁰

In 2016, U.S. cross-border exports of computer services totaled \$19.6 billion, and sales by U.S.-owned computer services affiliates in overseas markets totaled \$119.2 billion.⁷⁶¹ The UK was the largest destination for U.S. cross-border exports of computer services in 2016, accounting for 14.2 percent all cross-border exports in the sector. The UK was also the largest source of sales by U.S.-owned computer service affiliates overseas, with \$18.9 billion or 15.8 percent of all sales in 2016. Figure 7.1 compares U.S. cross-border exports to the UK and foreign affiliate sales in the UK from 2012 to 2016 for the

and computer-related consulting. Software distributed via physical copies (NAICS 3346) are not included in this analysis. USDOC, BEA, *Guide to Industry Classifications for International Surveys*, 2012, 37, 43.

⁷⁵⁶ For purposes of this investigation, digital trade is defined as “the delivery of products and services over the Internet by firms in any industry sector, and of associated products such as smartphones and Internet-connected sensors. While it includes provision of e-commerce platforms and related services, it excludes the value of sales of physical goods ordered online, as well as physical goods that have a digital counterpart (such as books, movies, music, and software sold on CDs or DVDs).” USITC, *Global Digital Trade 1*, 2017, 33. According to BEA, the size of the digital economy in the United States was estimated in 2017 to be \$1.4 trillion, or 7 percent of current-dollar U.S. GDP. USDOC, BEA, “Measuring the Digital Economy,” April 2019, 1–2.

⁷⁵⁷ Specifically, the McKinsey study found that the United States ranked 1st among nations in the connectedness of its people, while ranking 3rd in financial connectedness and 7th in data, goods, and services connectedness. The UK was ranked 5th in services and finance, 6th in people, 3rd in data, and 13th in goods connectedness. McKinsey Global Institute, “Digital Globalization: the New Era of Global Flows,” March 2016, 12.

⁷⁵⁸ In 2016, the Organisation for Economic Co-operation and Development (OECD) estimated that the United States was the fourth-largest exporter of ICT services (though these services do not encompass all digital trade, they represent a significant core component), after Ireland, India, and the Netherlands. OECD, “OECD Digital Economy Outlook 2017,” 2017.

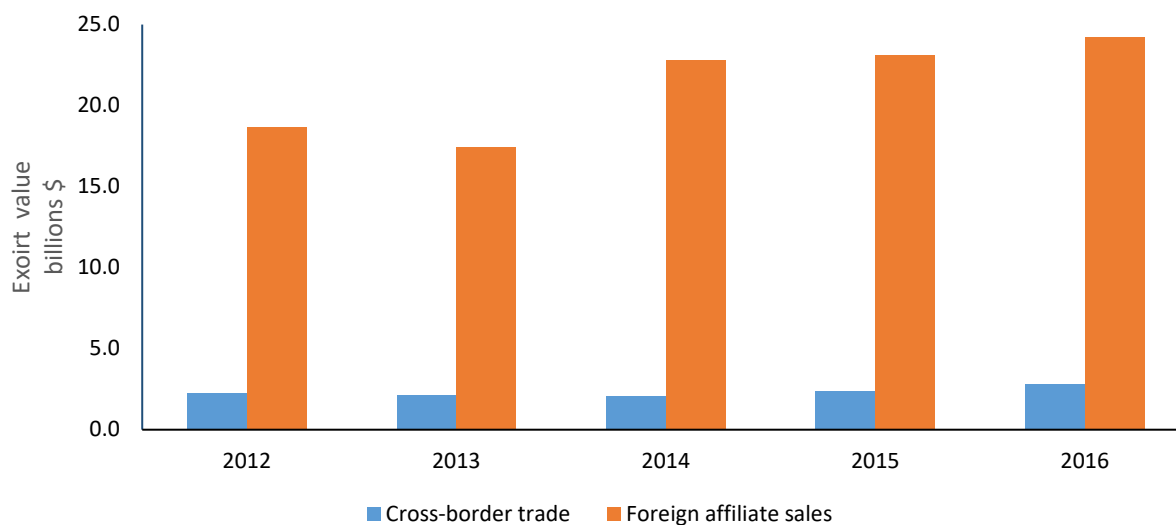
⁷⁵⁹ Suominen, “Where the Money Is,” October 12, 2017.

⁷⁶⁰ StatCounter, “Search Market Share United Kingdom,” “Social Media Market Share United Kingdom,” “Operating System Market Share United Kingdom,” all 2016.

⁷⁶¹ In cross-border trade statistics, computer services include hardware- and software-related services, data processing services, sales of customized software and related use licenses, and noncustomized software downloaded or otherwise electronically delivered or with a periodic license fee. USDOC, BEA, International Data, International Services, table 2.2, “U.S. Trade in Services, by Type of Services and Country or Affiliation” (accessed January 27, 2019). USDOC, BEA, table 3.1, “Services Supplied to Foreign Persons by U.S. MNEs through Their MOFAs, by Industry of Affiliate and by Country of Affiliate” (accessed January 27, 2019). USDOC, ITA, Export.gov, “1.2 Trade in Services,” July 21, 2016, <https://www.export.gov/article?id=Trade-in-Services>.

computer services sector. While cross-border exports are smaller than foreign affiliate sales, both have grown over the five-year period.

Figure 7.1 U.S. cross-border exports and foreign affiliate sales of computer services to the UK, by value (billion \$), 2012–16



Sources: USDOC, BEA, International Data, International Services, “Table 2.2. U.S. Trade in Services, by Type of Services and Country or Affiliation” (accessed January 27, 2019); USDOC, BEA, table 3.1, “Services Supplied to Foreign Persons by U.S. MNEs through Their MOFAs, by Industry of Affiliate and by Country of Affiliate” (accessed January 27, 2019).

SMEs in the computer services sector tend to access global consumers via the internet. For example, one subset of computer service SMEs, mobile application (or app) developers, develop software for mobile devices.⁷⁶² Centralized platforms (such as the Apple App store) provide a single trusted avenue for app developers to access both domestic and global consumers, and eliminate many of the trade costs that companies face when exporting to new markets.⁷⁶³ Specifically, the Apple App store distributes apps globally, handles payments in different currencies, provides standardized marketing tools, and makes coding resources available to help developers customize apps to specific markets.⁷⁶⁴ As these computer services SMEs grow, they may also begin to access consumers by opening offices in key export destinations. For example, U.S. healthcare app developer Dogtown Media, which employs 34 workers, has recently opened a London office to support its exports to the UK.⁷⁶⁵

⁷⁶² Since mobile applications are both downloaded from the internet to individual devices and hosted on and updated through cloud-based networks, it is not clear what share of app developers fall under NAICS code 5112 (which includes downloaded software) versus NAICS code 5182 (which includes cloud-based activities). Additionally, some app developers also create custom apps for other businesses, which falls under NAICS code 5415. All of these activities are captured in cross-border computer service trade statistics.

⁷⁶³ App Association, “The Symbiotic Relationship between App Developers and Platforms,” July 25, 2018, 4; USITC, hearing transcript, April 11, 2019, 12–13 (testimony of Brian Scarpelli, ACT | The App Association).

⁷⁶⁴ Apple Developer, “Build Apps for the World” (accessed June 18, 2019).

⁷⁶⁵ USITC, hearing transcript, April 11, 2019, 12–13 (testimony of Brian Scarpelli, ACT | The App Association).

Trade-related Barriers

Computer services SMEs report that they face four primary trade-related barriers in exporting to the UK and the EU. These barriers are related to concerns about data protection and privacy (particularly the EU General Data Privacy Regulation, or GDPR, which entered into force in May 2018), cybersecurity regulations, taxation (particularly the UK diverted profits tax), and customs requirements. These barriers affect firms in all digitally intense and intellectual property-intensive industries, and computer services in particular, due to the nature of their operations as software and app developers, cloud service providers, and computer systems developers. Firms that provide e-commerce platforms and related services are also affected by these digital services barriers, as well as other barriers that have a substantial impact on digitally enabled goods trade, such as e-commerce measures and de minimis levels. These specific e-commerce barriers, as well as barriers affecting all goods and services industries (such as temporary entry measures), are discussed in chapter 2 of this report.

The OECD STRI suggests that both restrictions on temporary entry and barriers related to compliance with GDPR limit the provision of computer services by foreign firms.⁷⁶⁶ While this characterization is not specific to SMEs, it is consistent with the U.S. SME experiences relayed to the Commission; computer services SMEs identified restrictions on temporary entry and barriers related to GDPR compliance, among other issues, as concerns in the UK market.

Data Protection and Privacy Laws

Some U.S. SMEs providing both digital and traditional services in the UK market have expressed concern that data protection and privacy regulations (often EU-wide measures applied to the UK as a member state) have effectively become a trade barrier that disproportionately affects them.⁷⁶⁷ Specifically, the GDPR⁷⁶⁸ limits communication with potential or new customers and imposes significant additional costs and administrative burdens on U.S.-based SMEs exporting to the UK.⁷⁶⁹ U.S. SMEs noted that complying with GDPR has increased the time and recordkeeping required for processing information on individuals, and limited their ability to create and maintain integrated distribution lists. Because customers' personal

⁷⁶⁶ In particular, the index indicates that computer service firms face limits on cross-border transfer of personal data, and quotas and labor market tests for temporary foreign entry of computer services sector employees. OECD, Services Trade Restrictiveness Index Simulator (accessed March 26, 2019).

⁷⁶⁷ While the UK will no longer be subject to EU regulations directly when it leaves the EU, there are several EU regulations that will be transposed directly into UK law following the UK's withdrawal from the EU. The EU GDPR is one of these regulations. This will come about following implementation of the 2018 UK Data Protection Act (which transposes the EU GDPR regulation to the UK) and the European Union (Withdrawal) Act 2018, which will trigger the UK Data Protection Act to apply GDPR standards directly to the UK when it formally departs the EU. DLA Piper, "UK: Regulations Published," January 14, 2019.

⁷⁶⁸ The EU GDPR is a regulation that governs the protection of the personal data of EU data subjects, with particular obligations for the controllers and processors of personal data, a regulatory framework for data breaches, and sanctions for noncompliance. EU GDPR, "GDPR Key Changes," 2018.

⁷⁶⁹ Industry representative, interview by USITC staff, October 1, 2018; industry representative, listening session, Louisville, KY, December 6, 2018, 31; industry representative, listening session, San Diego, CA, December 4, 2018, 17; industry representative, listening session, Los Angeles, CA, December 6, 2018, 44; *National Journal*, "Tech Startups Frustrated by Fixation on Facebook, Google," April 28, 2019.

data are treated differently in the UK than in the United States, firms cannot assume that personal data gathered before GDPR went into effect are not subject to the regulation.⁷⁷⁰

Given the overlapping GDPR obligations of controllers and processors of personal data, SMEs are required to verify GDPR compliance along their entire value chains in order to avoid regulatory censure, creating substantial costs.⁷⁷¹ Some SMEs have changed customer contracts with EU clients to account for GDPR regulations, creating a substantial legal compliance cost.⁷⁷² Testimony from the App Association indicated that one of its members, an SME with under 30 employees, had to hire three people to establish a GDPR compliance regime.⁷⁷³ In addition to the GDPR standards themselves, U.S. SME computer service representatives expressed concern that UK privacy standards could change after the UK leaves the EU, requiring additional expenditures on compliance for SMEs who are currently compliant with existing GDPR requirements.⁷⁷⁴

The complexity of GDPR rules also creates uncertainty for U.S. firms about the proper handling of UK citizens' personal information. U.S. computer services SMEs reported difficulty in assessing whether their practices complied with GDPR requirements.⁷⁷⁵ However, one SME industry representative noted that, relative to other EU members, the language in the UK implementation guidelines for GDPR is clear and straightforward.⁷⁷⁶

Aside from the GDPR implementation issues, SME firms indicated that data privacy barriers limit their operations in the UK because they are uncertain whether they can transmit certain personal data to their head office in the United States, or whether they can even collect certain types of personal data at all. One SME firm noted that the absence of clarity in EU data privacy laws creates difficulty sending information across borders, particularly sensitive personal information like healthcare data and information about the nationality of their employees.⁷⁷⁷ Other SME representatives indicated that the inability of their firm to determine the citizenship of clients due to data privacy regulations creates uncertainty because the firm is unable to determine which set of regulatory requirements apply to each client. For example, because of the International Traffic in Arms Regulations (ITAR), U.S. firms cannot export certain technologies to citizens of particular countries, but may not be able to determine whether particular individuals are subject to ITAR regulations because of EU data privacy laws.⁷⁷⁸

⁷⁷⁰ Industry representatives, listening session, Louisville, KY, December 6, 2018, 31–32; industry representative, listening session, Boston, MA, December 7, 2018, 57; industry representative, listening session, Belfast, Northern Ireland, UK, April 26, 2019, 27–8, 29.

⁷⁷¹ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 32–33.

⁷⁷² Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 32–33.

⁷⁷³ USITC, hearing transcript, April 11, 2019, 54 (testimony of Brian Scarpelli, APP Association).

⁷⁷⁴ Industry representative, listening session, San Diego, CA, December 4, 2018, 17–18.

⁷⁷⁵ Industry representative, listening session, Louisville, KY, December 6, 2018, 31–32.

⁷⁷⁶ Industry representative, interview by USITC staff, October 1, 2018.

⁷⁷⁷ Industry representative, listening session, Seattle, WA, December 3, 2018, 15.

⁷⁷⁸ Industry representative, listening session, Salt Lake City, UT, December 10, 2018, 21, 27; industry representative, listening session, Belfast, Northern Ireland, UK, April 26, 2019, 27–29.

Cybersecurity Regulations

SMEs in computer services expressed concern about future consistency between UK and EU cybersecurity regulations. One industry representative indicated that the EU overall cybersecurity policy helps facilitate trade for technology and platform-focused U.S. firms in the EU. However, this representative expressed concern that the UK would not necessarily abide by the same cybersecurity policies following Brexit, potentially disrupting existing business arrangements that span the UK and other EU countries.⁷⁷⁹

UK Diverted Profits Tax

One trade association representing U.S. SMEs in the technology sector noted that the UK's diverted profit tax could hinder the export of digital services to the United Kingdom. This tax was introduced in 2015 in order to “counteract contrived arrangements used by large groups (typically multinational enterprises)” that result in the companies paying less tax in the UK.”⁷⁸⁰ The diverted profits tax allows UK government to levy taxes on payments not related to UK activities.⁷⁸¹ Industry sources claim that this tax was initially targeted at large multinationals that shift high-value assets (such as intellectual property, or IP) to countries with lower tax regimes; however, due to its breadth, it may also affect medium-sized SMEs with more than 250 U.S.-based employees.⁷⁸² According to an industry representative, the diverted profits tax represented a “major step outside of the multilateral tax system, designed to privilege the UK over its trading partners.”⁷⁸³ The industry representative contend that this tax has created an impediment to cross-border investments and introduced regulatory uncertainty and burdensome compliance requirements for U.S. SME firms that offer the UK market digitally enabled services, which are particularly IP-intensive.⁷⁸⁴

Customs Requirements and Temporary Entry Restrictions

Finally, U.S. computer services SMEs can also face increased costs when traveling to a client's location abroad in order to export and re-export their services. One industry representative mentioned that when they are unable to provide services remotely, they face customs and excise paperwork to export the equipment needed (such as servers) to provide services at a client site.⁷⁸⁵ Further, temporary entry provisions (see chapter 2) reportedly impact SMEs' ability to attract talent for U.S.-based firms operating in the UK.

⁷⁷⁹ For example, cybersecurity measures include firewalls, antivirus software, intrusion detection and prevention systems, encryption and log-in passwords. Industry representative, listening session, Seattle, WA, December 3, 2018, 19.

⁷⁸⁰ Government of the UK, “Diverted Profits Tax Amendments,” October 29, 2018.

⁷⁸¹ Internet Association, prehearing brief, April 1, 2019, 3.

⁷⁸² Fay, “The UK Diverted Profits Tax—Is It Working?” October 18, 2018.

⁷⁸³ Internet Association, prehearing brief, April 1, 2019, 3.

⁷⁸⁴ Internet Association, prehearing brief, April 1, 2019, 3.

⁷⁸⁵ Industry representative, listening session transcript, Belfast, Northern Ireland, UK, April 26, 2019, 40.

Ways to Enhance SME Participation in the Computer Services Industry

One of the most important factors impacting computer services trade between the United States and UK is the free flow of privacy-related (or personal) data across borders according to U.S. SME representatives. Currently, the free flow of U.S.-EU data is governed in part by the 2016 U.S.-EU Privacy Shield Agreement, which was negotiated by the EU and the United States in 2016 and replaced the previous Safe Harbor Agreement.⁷⁸⁶ In order for a U.S. company to use the Privacy Shield, it must self-certify to the U.S. Department of Commerce that it complies with the Privacy Shield Principles.⁷⁸⁷ According to one report, a similar agreement governing the flow of personal data between the United States and the UK following the UK's departure from the EU (and U.S.-EU Privacy Shield) will be important to maintaining the current free flow of personally identifiable information between U.S. SMEs and UK firms, affiliates, clients, and customers.⁷⁸⁸ One SME representative indicated that the current U.S.-EU Privacy Shield framework could potentially be a useful model to replicate in a U.S.-UK data transfer agreement, given the Privacy Shield's ease of compliance and low implementation cost.⁷⁸⁹

Computer services SMEs have expressed interest in regulatory cooperation and common privacy standards across the UK and United States as a way to facilitate trade.⁷⁹⁰ These are especially important because the absence of mutual recognition of shared standards on data not covered by a personal data transfer agreement could hinder growth for firms involved in data-intensive industries.⁷⁹¹

SME representatives have also suggested that changes to U.S. regulation may boost their ability to compete in overseas markets, including the UK. One representative expressed interest in establishing national-level data protection rules in the United States, so that all U.S. companies' operations would be based on the same privacy standard.⁷⁹² SMEs also indicated that it would be easier for SMEs to comply

⁷⁸⁶ Privacy Shield, "Privacy Shield Program Overview," 2016.

⁷⁸⁷ According to the Federal Trade Commission (FTC) website, a company's "failure to comply with the Privacy Shield Principles is enforceable under Section 5 of the FTC Act prohibiting unfair and deceptive acts." The FTC has jurisdiction over U.S. companies to enforce the Privacy Shield, and works with EU privacy authorities to protect consumer privacy for the United States and EU. Federal Trade Commission, "Privacy Shield" (accessed March 11, 2019).

⁷⁸⁸ Akhtar, "U.S.-UK Free Trade Agreement: Prospects and Issues," April 14, 2017, 15.

⁷⁸⁹ Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 50.

⁷⁹⁰ Another field where a mutual recognition agreement to facilitate the free flow of data would be particularly important is in medical services and medical devices; several firms in these sectors indicated that the inability to share personally identifiable information across borders on patients and customers hinders growth opportunities. Industry representative, listening session, Pittsburgh, PA, December 6, 2018, 53–54; industry representative, listening session, Seattle, WA, December 3, 2018, 15–17, 25. Similar concerns have been shared regarding the transfer of firm-level and financial data across the United States and the UK. The United Kingdom has indicated its intent to extend the Privacy Shield protections on a transitional basis with the United States, as well as all other countries with which the EU currently maintains data flow agreements. However, this data flow policy does not extend to financial services data or personal data. Ralph and Wint, "No Deal Brexit and the Impact on Cross-Border Data Flows," January 16, 2019.

⁷⁹¹ Financier Worldwide, "The Impact of Brexit on Transfers of Data," November 17, 2017.

⁷⁹² Industry representative, listening session, Seattle, WA, December 3, 2018, 60.

with GDPR if there were more U.S.-based and institutional support to help companies understand their responsibilities under GDPR.⁷⁹³

One industry representative indicated that digital trade measures identified as priorities in the United States-Mexico-Canada Agreement should be emulated as much as possible in any future U.S.-UK FTA concerning digital trade. These measures include enabling cross-border data flows, prohibiting data localization policies as well as customs duties on digital content, ensuring that market entry is not contingent on source code transfer, maintaining strong encryption techniques, and securing intellectual property protections.⁷⁹⁴

Despite the barriers presented by U.S. SMEs and industry associations, many industry observers agree that the UK government has an interest in responding to these concerns.⁷⁹⁵ One industry representative noted that, while GDPR was an issue for the digital trade SMEs in his organization, the UK government is generally supportive of dialogue with U.S. firms to explore ways to address or ameliorate digital trade challenges and facilitate trade with the UK.⁷⁹⁶ Ongoing, direct dialogue between U.S. SMEs facing digital trade barriers, including computer services SMEs, and the relevant UK regulatory bodies—with the aim of reducing or eliminating these barriers—was supported as a useful step by several U.S. industry groups and SMEs.⁷⁹⁷

⁷⁹³ Industry representative, listening session, Belfast, Northern Ireland, UK, April 26, 2019, 31; industry representative, listening session, Seattle, WA, December 3, 2018, 17-18, 26.

⁷⁹⁴ ACT | The App Association, written submission to the USITC, “Comments RE: U.S. SME Exports (Investigation No. 332-569),” February 13, 2019.

⁷⁹⁵ Balls et al., “Prospects for a US-UK Free Trade Agreement,” May 2018, 6–7, 29–30.

⁷⁹⁶ Industry representative, interview by USITC staff, October 1, 2018.

⁷⁹⁷ Industry representative, listening session, Seattle, WA, December 3, 2018, 61–62; industry representative, listening session, Washington, DC, November 9, 2018, 37; industry representative, listening session, Boston, MA, December 7, 2018, 36, 54–55; industry representative, listening session, Houston, TX, December 3, 2018, 26.

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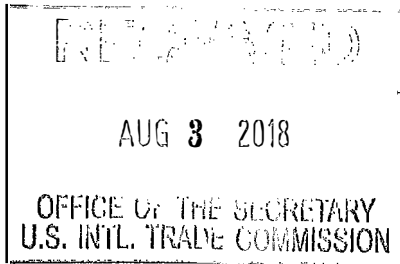
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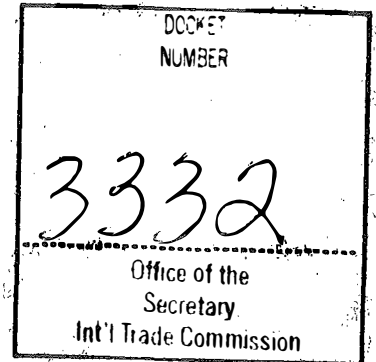
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Appendix A Request Letter



THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

August 2, 2018



The Honorable David S. Johanson
Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, DC 20436

Dear Chairman Johanson:

U.S. small businesses are key engines for economic growth, jobs, and innovation. The Office of the U.S. Trade Representative (USTR) continues to pursue efforts to ensure that the specific export challenges and priorities of small- and medium-sized enterprises (SMEs) and their workers are addressed in our trade policy and enforcement activities and has expanded cooperation with trading partners on small business issues. As previous studies by the U.S. International Trade Commission (USITC) have shown, small businesses benefit from trade policies that expand their export opportunities. As indicated in those reports, trade policies can particularly help SMEs boost exports by tackling tariff barriers, burdensome customs procedures and low *de minimis* thresholds for duties and VAT, discriminatory or arbitrary standards, and lack of transparency relating to relevant regulations in foreign markets. Such policies can also enhance trade facilitation work, help strengthen and enforce intellectual property rights, facilitate digital trade and thereby expand the global customer base for SMEs, and target services barriers that present difficult challenges for SMEs.

The United States-United Kingdom Trade and Investment Working Group was launched in 2017 to explore ways to strengthen trade and investment ties and provide commercial continuity for U.S. and United Kingdom (UK) businesses, workers and consumers as the UK prepares to leave the European Union. The Trade and Investment Working Group covers a range of topics including SMEs. Tens of thousands of U.S. SMEs export to the UK, making the UK the third largest destination for U.S. SME exports ranked by number of SME exporters and the fourth largest destination by SME export value. Given the significance of small businesses to both economies, the United States and UK agreed to establish a Small and Medium Enterprise Dialogue to promote closer collaboration and the sharing of best practices on policies and programs to support SME businesses and export opportunities in each country's market, as well as to identify trade barriers that disproportionately burden SME exports. Building on previous USITC reports that investigated the role of U.S. SMEs in trade and generally identified trade barriers that may significantly impact U.S. SME export performance, I believe that the USITC can also be helpful to us in identifying such barriers in the UK.

Therefore, under authority delegated by the President to the United States Trade Representative and pursuant to Section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), I request that the Commission conduct an investigation and prepare a report that catalogues trade-related barriers that SMEs perceive as disproportionately affecting U.S. SMEs exporting to the UK, compared to larger U.S. exporters to the UK.

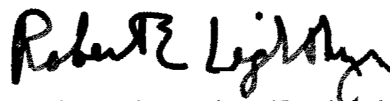
In identifying these barriers to exporting, the Commission may consider information and definitions contained in the three Commission reports on SMEs released in 2010, the Commission report on *Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union* released in 2014, any relevant literature, and information gathered from SMEs and others throughout the investigation. The report should cover barriers faced by U.S. SMEs exporting manufactured products, agricultural goods, and services, focusing primarily on barriers identified by U.S. SMEs that have experience in exporting to the UK either directly or through supply chains. To the degree practicable, the investigation should identify barriers by economic sector and should focus on sectors with high concentrations of SMEs.

The report should be based on available information, including information furnished by SMEs and interested parties following the Commission's notice of investigation. To the extent applicable, the Commission should provide qualitative distinctions among the identified trade-related barriers. Additionally, the report may include suggestions gathered from SMEs or the relevant literature for actions that would help address some of the identified barriers and enhance the participation of U.S. SMEs in U.S.-UK trade.

I request that the report be delivered by July 31, 2019. As we intend to make the Commission's report available to the public, the report should not include confidential business or national security classified information.

I appreciate the Commission's assistance and cooperation in this matter.

Sincerely yours,



Ambassador Robert E. Lighthizer
United States Trade Representative

Appendix B

***Federal Register* Notices**

impose a bond during the 60-day review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the article is potentially subject to the requested remedial orders are used in the United States;
- (ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) Indicate whether complainant, its licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) Explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines

stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3335) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

Issued: August 30, 2018.

Katherine Hiner,
Supervisory Attorney.

[FR Doc. 2018-19281 Filed 9-5-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-569]

U.S. SME Exports: Trade-Related Barriers Affecting Exports of U.S. Small- and Medium-Sized Enterprises to the United Kingdom; Institution of Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request from the U.S. Trade Representative (USTR) on August 3, 2018, under section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission has instituted investigation No. 332-569, *U.S. SME Exports: Trade-Related Barriers Affecting Exports of U.S. Small and Medium-Sized Enterprises to the United Kingdom*, for the purpose of providing a report that catalogs trade-related barriers that small and medium-sized enterprises (SMEs) perceive as disproportionately affecting U.S. SMEs exporting to the United Kingdom (UK), compared to larger U.S. exporters to the UK.

DATES:

- February 8, 2019: Deadline for filing requests to appear at the public hearing
- February 13, 2019: Deadline for filing prehearing briefs and statements
- February 26, 2019: Public hearing
- March 8, 2019: Deadline for filing posthearing briefs
- March 15, 2019: Deadline for filing all other written submissions
- July 31, 2019: Transmittal of Commission report to the USTR

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov/edis3-internal/app>.

FOR FURTHER INFORMATION CONTACT: Project Leader Mahnaz Khan (202-205-

2046 or mahnaz.khan@usitc.gov) or Deputy Project Leader Sarah Scott (202-708-1397 or sarah.scott@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact Katherine Linton (202-205-3393 or katherine.linton@usitc.gov) or William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its website (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2002.

SUPPLEMENTARY INFORMATION:

Background: As requested by the USTR, the Commission will conduct an investigation and prepare a report that catalogs trade-related barriers that SMEs perceive as disproportionately affecting U.S. SMEs exporting to the UK, compared to larger U.S. exporters to the UK. In identifying these barriers to exporting, the USTR indicated in his letter that the Commission may consider information and definitions contained in the three Commission reports on SMEs released in 2010, the Commission report on *Trade Barriers that U.S. Small- and Medium-sized Enterprises Perceive as Affecting Exports to the European Union* released in 2014, any relevant literature, and information gathered from SMEs and others throughout the investigation. The letter also said that the report should cover barriers faced by U.S. SMEs exporting manufactured products, agricultural goods, and services, focusing primarily on barriers identified by U.S. SMEs that have experience in exporting to the UK either directly or through supply chains. The letter said that the investigation, to the degree practicable, should identify barriers by economic sector and should focus on sectors with high concentrations of SMEs.

In addition, USTR asked that the Commission base its report on available information, including information furnished by SMEs and interested parties following the Commission's notice of investigation. The USTR said that the Commission, to the extent applicable, should provide qualitative distinctions among the identified trade-related barriers. Additionally, the letter

said that the report may include suggestions gathered from SMEs or the relevant literature for actions that would help address some of the identified barriers and enhance the participation of U.S. SMEs in U.S.-UK trade. As requested, the Commission expects to transmit its report to the USTR by July 31, 2019.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on February 26, 2019. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., February 8, 2019, in accordance with the requirements in the "Submissions" section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., February 13, 2019; and all post-hearing briefs should be filed no later than 5:15 p.m., March 8, 2019 and all other statements responding to matters raised at the hearing should be filed no later than 5:15 p.m., March 15, 2019. In the event that, as of the close of business on February 8, 2019, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202-205-2000 after February 8, 2019, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, the Commission invites interested parties to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary, and should be received no later than 5:15 p.m., March 15, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's *Handbook on Filing Procedures* require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. Eastern Time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information or "CBI"). Persons with questions regarding electronic filing should contact the Office of the Secretary,

Docket Services Division (202-205-1802).

Confidential Business Information (CBI): Any submissions that contain CBI must also conform to the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the CBI is clearly identified using brackets. All written submissions, except for those containing CBI, will be made available for inspection by interested parties.

In his request letter, the USTR stated that his office intends to make the Commission's report available to the public in its entirety, and asked that the Commission not include any CBI or national security classified information in the report that it delivers to the USTR. All information, including CBI, submitted in this investigation may be disclosed to and used (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission, including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any CBI in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the written submissions filed by interested persons. Persons wishing to have a summary of their submission included in the report should include a summary with their written submission and should mark the summary as having been provided for that purpose. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any CBI. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: August 30, 2018.

Katherine Hiner,
Supervisory Attorney.

[FR Doc. 2018-19279 Filed 9-5-18; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2012-0005]

The Cadmium in General Industry Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend OMB approval of the information collection requirements contained in the Cadmium in General Industry Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by November 5, 2018.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2012-0005, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA-2012-0005) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting

comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the above address. All documents in the docket (including this Federal Register notice) are listed in the <http://www.regulations.gov/index>; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Christie Garner at (202) 693-2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Thomas Mockler or Christie Garner, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (see 29 U.S.C. 657).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary

for the proper performance of the agency's functions, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

The information collection requirements specified in the Cadmium in General Industry Standard protect workers from the adverse health effects that may result from their exposure to cadmium. The major information collection requirements of the standard include: conducting worker exposure monitoring, notifying workers of their cadmium exposures, implementing a written compliance program, implementing medical surveillance of workers, providing examining physicians with specific information, ensuring that workers receive a copy of their medical surveillance results, maintaining workers' exposure monitoring and medical surveillance records for specific periods, and providing access to these records to the workers who are the subject of the records, the worker's representative, and other designated parties.

The agency is requesting a burden hour adjustment decrease of 2,636 (from 75,998 to 73,362 hours). The agency estimates a decrease of exposed workers in the cross-industry sectors as well as in the specific-industry sectors. On the other hand, the number of plants is estimated to increase slightly in both sectors. As a result, the operation and maintenance costs have increased from \$4,799,475 to \$5,453,858, a total increase of \$654,383, due to increased costs for exposure monitoring sampling and medical exams.

III. Proposed Actions

Type of Review: Extension of currently approved collection.

Title: Cadmium in General Industry (29 CFR 1910.1027).

OMB Control Number: 1218-0185.

Affected Public: Business or other for-profits.

Number of Respondents: 50,679.

Frequency: On occasion; Quarterly; Biennially; Semi-annually; Annually.

Average Time per Response: Varies.

Estimated Number of Responses: 208,899.

Estimated Total Burden Hours: 73,362.

the President and Congress no later than 105 days after the President entered into the agreement plus an additional 35 days. All other dates pertaining to this investigation remain the same as in the notice published in the **Federal Register** on October 16, 2018.

By order of the Commission.

Issued: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-02603 Filed 2-15-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-569]

U.S. SME Exports: Trade-Related Barriers Affecting Exports of U.S. Small- and Medium-Sized Enterprises to the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice, change in dates.

SUMMARY: Due to the lapse of appropriation between December 22, 2018 and January 25, 2019, the Commission has changed certain dates announced in its notice of investigation and hearing for these investigations: (i) It has extended the deadline for filing requests to appear at the public hearing from February 8, 2019 to March 28, 2019; (ii) it has extended the deadline for filing prehearing briefs and statements from February 13, 2019 to April 1, 2019; (iii) it has rescheduled the public hearing from February 26, 2019 to April 11, 2019; (iv) it has extended the deadline for filing post-hearing briefs from March 8, 2019 to April 18, 2019; (v) it has extended the deadline for filing all other written submissions from March 15, 2019 to April 30, 2019; and (vi) it will transmit its report to the USTR by September 4, 2019 instead of by July 31, 2019.

DATES: February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Project Leader Mahnaz Khan (202-205-2046 or Mahnaz.khan@usitc.gov) or Deputy Project Leader Sarah Scott (202-708-1397 or sarah.scott@usitc.gov) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or margaret.olaughlin@usitc.gov). Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the above referenced investigations in the **Federal Register** on September 6, 2018 (83 FR 45281, September 6, 2018). Due to the lapse in appropriation (December 22, 2018 to January 25, 2019), the Commission has changed certain dates announced in that notice regarding these investigations: (i) It has extended the deadline for filing requests to appear at the public hearing from February 8, 2019 to March 28, 2019; (ii) it has extended the deadline for filing prehearing briefs and statements from February 13, 2019 to April 1, 2019; (iii) it has rescheduled a public hearing from February 26, 2019 to April 11 2019; (iv) it has extended the deadline for filing post-hearing briefs from March 8, 2019 to April 18, 2019; (v) it has extended the deadline for filing all other written submissions from March 15, 2019 to April 30, 2019 and (vi) it will transmit its report to the USTR by September 4, 2019 instead of by July 31, 2019.

By order of the Commission.

Issued: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-02601 Filed 2-15-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigative No. 337-TA-1063]

Certain X-Ray Breast Imaging Devices and Components Thereof; Notice of Commission Decision To Terminate the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the private parties' joint motion to terminate

the investigation based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2017, based on a complaint and supplement, filed on behalf of Hologic, Inc. of Marlborough, Massachusetts. 82 FR 35823-24 (Aug. 1, 2017). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain x-ray breast imaging devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,831,296; U.S. Patent No. 8,452,379 ("the '379 patent"); U.S. Patent No. 7,688,940; U.S. Patent No. 7,986,765 ("the '765 patent"); and U.S. Patent No. 7,123,684. The complaint further alleges that an industry in the United States exists as required by section 337. The notice of investigation named FUJIFILM Corporation of Tokyo, Japan; FUJIFILM Medical Systems USA, Inc. of Stamford, Connecticut; and FUJIFILM Techno Products Co., Ltd. of Hanamaki-Shi Iwate, Japan (collectively "Fujifilm") as respondents. The Office of Unfair Import Investigations ("OUII") was named as a party. On January 18, 2018, the '765 patent was terminated in its entirety from the investigation. See Order No. 18 (Jan. 18, 2018) (unreviewed). On February 27, 2018, claims 6-10 of the '379 patent were terminated from the investigation. See Order No. 21 (Feb. 27, 2018) (unreviewed).

On July 26, 2018, the administrative law judge ("ALJ") issued the final initial

Appendix C

Calendar of Hearing Witnesses

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject: U.S. SME Exports: Trade-Related Barriers Affecting Exports of U.S. Small- and Medium-Sized Enterprises to the United Kingdom

Inv. No.: 332-569

Date and Time: April 11, 2019 - 9:30 a.m.

A session was held in connection with this investigation in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, DC.

PANEL 1:

ORGANIZATION AND WITNESS:

Internet Association
Washington, DC

Jordan Haas, Director, Trade Policy

ACT | The App Association
Washington, DC

Brian Scarpelli, Senior Global Policy Counsel

-END-

Appendix D

Summary of Positions of Interested Parties

Views of Interested Parties

Interested parties had the opportunity to file written submissions to the Commission in the course of this investigation and to provide summaries of the positions expressed in the submissions for inclusion in this report. This appendix contains these written summaries, provided that they meet certain requirements set out in the notice of investigation. The Commission has not edited these summaries. This appendix also contains the names of other interested parties who filed written submissions during investigation but did not provide written summaries. A copy of each written submission is available in the Commission's Electronic Docket Information System (EDIS), <https://www.edis.usitc.gov>. The Commission also held a public hearing in connection with this investigation on April 11, 2019. The full text of the transcript of the Commission's hearing is also available on EDIS.

Written Submissions

ACT | The App Association

The App Association represents thousands of small business software application development companies and technology firms that create the software apps used on mobile devices and in enterprise systems around the globe. Today, the ecosystem the App Association represents—which we call the app economy—is valued at approximately \$950 billion and is responsible for 4.7 million American jobs.⁷⁹⁸ Alongside the world's rapid embrace of mobile technology, our members have been creating innovative solutions that power the internet of things (IoT) across modalities and segments of the economy.

While the global digital economy holds great promise for App Association member companies, our members face a diverse array of challenges when entering new markets. These trade barriers are reflected in the laws, regulations, policies, or practices that protect domestic goods and services from foreign competition, artificially stimulate exports of particular domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights. These barriers take many forms but have the same net effect: impeding U.S. exports and investment.

The UK is a key market for App Association members looking to grow their customer base abroad because of the UK's generally business-friendly environment as well as common language and culture. While we do not identify any UK-specific trade barriers for the USITC at this time, we generally support USITC's efforts to address barriers to U.S. export of goods and services. With respect to digital trade, the small business innovators we represent prioritize (1) enabling Cross-Border Data Flows; (2) prohibiting data localization policies; prohibiting customs duties on digital content; (3) ensuring that market entry is not contingent on source code transfer; (4) preserving the ability to utilize strong encryption techniques to protect end user security and privacy; and (5) securing intellectual property protections.

We also note that the completed United States-Mexico-Canada Agreement (USMCA) contains numerous provisions in its digital trade chapter and others that will provide the app economy to expand and create

⁷⁹⁸ ACT | The App Association, *State of the App Economy (6th Edition)* (Apr. 2018), available at <https://actonline.org/2018/04/16/state-of-the-app-economy-report-highlights-american-leadership-in-the-950-billion-app-economy/>.

jobs across North America. To the extent possible, the future U.S.-UK FTA should leverage such provisions in order to advance harmonized policies across U.S. trading partners, enabling the U.S. app economy to grow and create more jobs. In other key markets, policies are being proposed and finalized that would erect barriers to the flow of data through applying physical good customs approaches to the digital economy. Now, more than ever, it is imperative that the United States set an example to the world on the best ways to cooperate in facilitating digital trade and the growth of the digital economy and to enhance business environments through trade agreements with key trading partners like the UK.

Computer & Communications Industry Association

The Computer & Communications Industry Association (CCIA) is an international, nonprofit association representing a broad cross section of large, medium, and small companies in the high technology products and services sectors, including Internet products and services, electronic commerce, computer hardware and software, and telecommunications. CCIA's submission to the ITC documents a number of digital trade barriers that pose threats to Internet exporters of all sizes in the United Kingdom, including SMEs.

The U.S.-UK trade relationship comprises services enabled by, and products that utilize, Internet services and information and communications technology (ICT) services that are essential for companies with global value chains. SMEs are strong contributors to these digital trade flows. The Internet economy has low barriers to entry, which empowers startups to reach new markets and users around the world. However, digital trade gains are threatened or diminished by rising barriers in the UK posed by proposed or existing regulatory frameworks. The following barriers face SMEs and startups when exporting goods and services to the UK market: (1) content regulation that threatens innovation and free expression online; (2) intellectual property laws with broad penalties that harm innovation; (3) proposed digital taxation that will ultimately be passed on to consumers and small firms; (4) market access barriers for communications providers; (5) disruptions to cross-border data transfers and uncertainty regarding transatlantic data flows; and (6) *de minimis* levels that do not reflect the needs of the current e-commerce market. As the United States evaluates its trading relationship with the UK post-Brexit, trade barriers to digital services should be identified and discouraged in order to facilitate a vibrant startup and SME market.

Confederation of British Industry

No written summary. Please see EDIS for full submission.

Internet Association

No written summary. Please see EDIS for full submission.

News Media Alliance

The News Media Alliance is a nonprofit organization that represents the interests of approximately 2,000 news media organizations in the United States and around the world. News organizations are important contributors to the U.S. economy, and due to the proliferation of online news, news

publishers now reach readers far beyond their local communities. The Alliance represents news organizations both with operations in the United Kingdom and whose content is read across Europe. A shared language and the strength of our cultural and societal relations make the United Kingdom a logical partner and audience for American news publishers.

Considering the global reach of news content, it is of vital importance that U.S. trade policy, including any potential trade agreement with the U.K., supports strong intellectual property protections as well as efforts to tackle societal harms and to ensure the sustainability of high-quality news.

The European Union's recently adopted Copyright Directive is a landmark regulation that provides noticeable and enforceable rights to copyright owners in the online ecosystem, with Article 15 of the Directive allowing news publishers to protect their content online against unauthorized uses. The Directive is a recognition that news publishers should receive equitable compensation for the use of their content and creates legal certainty for both news publishers and those wanting to use news content online.

Regulations such as the Copyright Directive are not trade barriers but rather the kind of strong intellectual property protections that the United States has historically incentivized other countries to adopt. Strong intellectual property protections incentivize U.S. businesses, particularly small- and medium-sized enterprises, to expand their operations and engage in international trade. The Copyright Directive extends to news publishers neighboring rights that various other content producers in Europe already hold. These rights have not disrupted the internet nor transatlantic trade.

The United States trade policy should encourage, not discourage, efforts to both harmonize and strengthen intellectual property protections in the EU and the UK. Considering the rapidly expanding digital audience for news publications, the Copyright Directive has the potential to have a considerable positive effect on U.S. news publishers big and small, and even in the event of a no-deal Brexit, it is important that the UK remains closely aligned with the EU's intellectual property framework.

In addition to supporting stronger intellectual property protections, the United States should not undermine efforts to evaluate and revisit the online liability regime in the UK. These efforts come following multiple serious data breaches, election interference, and other concerning instances where online conduct and content has harmed democratic societies around the world. The policies being considered in the UK address serious issues, are non-discriminatory, and level the playing field online. These proposed policies do not present a trade barrier for small- and medium-sized enterprises, and the United States should not try to undermine these efforts through its trade policy.

Appendix E

Data Tables

Table E.1 Known value of U.S. exports for all exporters and SME exporters, by company type and destination (million \$)

NAICS category (NAICS code)	All identified exports				
	2012	2013	2014	2015	2016
	All exporters				
Crop production (111)	62,454	60,373	62,970	53,994	58,175
Fishing, hunting and trapping (114)	4,486	4,738	4,991	4,847	4,768
Food manufacturing (311)	59,026	62,467	64,612	57,649	55,806
Beverage and tobacco product manufacturing (312)	6,403	7,448	7,493	7,596	7,498
Chemical manufacturing (325)	179,497	183,362	183,387	175,690	167,009
Fabricated metal product manufacturing (332)	35,340	37,960	40,511	38,760	36,706
Computer and electronic product manufacturing (334)	185,307	186,283	190,797	187,005	187,645
Transportation equipment manufacturing (336)	214,243	223,353	232,774	233,766	232,867
Miscellaneous manufacturing (339)	62,240	67,068	71,061	67,919	68,447
All other NAICS	519,493	524,046	533,808	455,498	419,443
Total known value	1,328,490	1,357,098	1,392,404	1,282,724	1,238,364
	SME exporters				
Crop production (111)	29,537	29,645	28,859	25,481	26,515
Fishing, hunting and trapping (114)	3,086	3,252	3,566	3,412	3,445
Food manufacturing (311)	24,315	25,877	25,968	22,115	21,621
Beverage and tobacco product manufacturing (312)	2,689	3,141	3,009	2,691	3,077
Chemical manufacturing (325)	44,118	45,998	48,225	48,488	49,157
Fabricated metal product manufacturing (332)	12,816	12,901	13,589	12,811	11,739
Computer and electronic product manufacturing (334)	52,261	61,901	64,119	64,696	61,491
Transportation equipment manufacturing (336)	40,970	41,719	38,470	37,666	38,854
Miscellaneous manufacturing (339)	26,963	28,703	29,959	29,348	27,877
All other NAICS	195,058	201,745	206,341	173,389	165,089
Total known value	431,813	454,884	462,107	420,097	408,866
	All exporters to the EU				
Crop production (111)	4,242	5,072	5,818	5,830	5,369
Fishing, hunting and trapping (114)	959	995	1,069	978	1,054
Food manufacturing (311)	3,074	3,619	3,468	3,096	2,713
Beverage and tobacco product manufacturing (312)	928	1,136	1,129	1,137	1,170
Chemical manufacturing (325)	44,408	46,294	47,204	50,067	48,302
Fabricated metal product manufacturing (332)	3,937	4,327	4,869	4,716	4,794
Computer and electronic product manufacturing (334)	26,268	25,861	27,144	26,322	26,240
Transportation equipment manufacturing (336)	32,064	31,450	33,305	35,640	37,883
Miscellaneous manufacturing (339)	16,052	16,359	18,255	17,827	18,089
All other NAICS	66,773	67,568	67,143	58,635	56,814
Total known value	198,706	202,680	209,404	204,248	202,427
	SME exporters to the EU				
Crop production (111)	2,312	2,818	3,233	3,059	2,773
Fishing, hunting and trapping (114)	590	595	720	654	735
Food manufacturing (311)	1,602	1,472	1,480	1,436	1,313
Beverage and tobacco product manufacturing (312)	354	357	385	393	384
Chemical manufacturing (325)	7,293	7,701	10,630	12,756	13,786
Fabricated metal product manufacturing (332)	1,313	1,327	1,439	1,402	1,407

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

NAICS category (NAICS code)	All identified exports				
	2012	2013	2014	2015	2016
Computer and electronic product manufacturing (334)	7,164	7,230	7,954	7,673	6,780
Transportation equipment manufacturing (336)	4,889	5,164	5,297	5,213	8,308
Miscellaneous manufacturing (339)	6,204	5,488	6,413	6,343	6,198
All other NAICS	21,980	25,425	25,045	21,192	21,708
Total known value	53,700	57,578	62,597	60,120	63,393
	All exporters to the UK				
Crop production (111)	444	453	521	495	541
Fishing, hunting and trapping (114)	49	60	72	56	59
Food manufacturing (311)	663	726	729	777	775
Beverage and tobacco product manufacturing (312)	387	461	457	570	519
Chemical manufacturing (325)	7,973	5,910	6,338	7,869	6,764
Fabricated metal product manufacturing (332)	1,660	1,484	1,697	1,654	1,630
Computer and electronic product manufacturing (334)	5,439	5,098	5,496	5,384	5,028
Transportation equipment manufacturing (336)	8,585	10,135	11,085	12,578	14,047
Miscellaneous manufacturing (339)	2,622	2,616	2,570	2,835	2,597
All other NAICS	23,373	16,914	20,546	20,173	19,889
Total known value	51,194	43,857	49,510	52,391	51,849
	SME exporters to the UK				
Crop production (111)	269	287	316	342	350
Fishing, hunting and trapping (114)	38	43	43	40	43
Food manufacturing (311)	290	328	375	361	395
Beverage and tobacco product manufacturing (312)	58	60	65	69	64
Chemical manufacturing (325)	3,133	2,023	2,124	2,192	2,083
Fabricated metal product manufacturing (332)	445	465	510	479	565
Computer and electronic product manufacturing (334)	1,895	1,850	2,068	1,990	1,752
Transportation equipment manufacturing (336)	2,465	2,519	2,790	2,734	3,250
Miscellaneous manufacturing (339)	1,580	1,465	1,528	1,589	1,353
All other NAICS	7,414	7,145	10,109	9,974	10,531
Total known value	17,587	16,185	19,928	19,769	20,387

Source: Compiled by USITC from official statistics of the Department of Commerce, Census Bureau (accessed March 26, 2019).

Table E.2 Identified exporters for all and SME exporters, by company type and destination

NAICS (NAICS code)	Identified number of U.S. exporters				
	2012	2013	2014	2015	2016
	All exporters				
Crop production (111)	11,645	12,105	12,254	12,134	12,111
Fishing, hunting and trapping (114)	2,693	2,673	2,670	2,561	2,616
Food manufacturing (311)	22,330	23,092	23,756	24,037	24,825
Beverage and tobacco product manufacturing (312)	4,429	4,781	5,279	5,408	5,438
Chemical manufacturing (325)	54,291	54,627	56,040	56,156	57,272
Fabricated metal product manufacturing (332)	65,995	65,969	68,036	67,883	65,493
Computer and electronic product manufacturing (334)	96,787	95,248	95,549	91,621	89,662
Transportation equipment manufacturing (336)	78,126	77,521	63,983	60,218	58,552
Miscellaneous manufacturing (339)	57,733	57,749	58,481	56,630	55,429
All other NAICS	436,823	434,578	457,357	444,939	433,864
All identified companies	830,852	828,343	843,405	821,587	805,262

NAICS (NAICS code)	Identified number of U.S. exporters				
	2012	2013	2014	2015	2016
SME exporters					
Crop production (111)	10,231	10,645	10,675	10,563	10,569
Fishing, hunting and trapping (114)	2,449	2,429	2,398	2,300	2,302
Food manufacturing (311)	18,106	18,714	19,131	19,339	20,079
Beverage and tobacco product manufacturing (312)	3,791	4,068	4,484	4,623	4,603
Chemical manufacturing (325)	43,595	43,952	44,890	44,780	45,887
Fabricated metal product manufacturing (332)	53,225	53,011	54,423	54,115	51,848
Computer and electronic product manufacturing (334)	80,254	78,824	78,983	75,167	73,258
Transportation equipment manufacturing (336)	67,117	66,696	53,618	49,764	47,766
Miscellaneous manufacturing (339)	49,476	49,452	49,956	48,172	46,914
All other NAICS	352,371	349,599	370,603	357,935	347,038
All identified companies	680,615	677,390	689,161	666,758	650,264
All exporters to the EU					
Crop production (111)	1,631	1,683	1,695	1,652	1,619
Fishing, hunting and trapping (114)	401	394	416	425	389
Food manufacturing (311)	3,709	3,895	3,984	4,097	4,238
Beverage and tobacco product manufacturing (312)	1,063	1,269	1,482	1,566	1,581
Chemical manufacturing (325)	14,847	14,974	15,487	15,644	15,988
Fabricated metal product manufacturing (332)	14,907	14,950	15,596	15,504	15,376
Computer and electronic product manufacturing (334)	30,868	30,693	30,523	29,433	29,032
Transportation equipment manufacturing (336)	17,045	16,858	14,938	14,459	14,645
Miscellaneous manufacturing (339)	17,721	17,767	18,178	17,700	17,698
All other NAICS	99,130	99,289	104,789	102,087	101,834
All identified companies	201,322	201,772	207,088	202,567	202,400
SME exporters to the EU					
Crop production (111)	1,426	1,473	1,453	1,432	1,404
Fishing, hunting and trapping (114)	356	348	366	373	327
Food manufacturing (311)	2,912	3,087	3,133	3,228	3,295
Beverage and tobacco product manufacturing (312)	922	1,125	1,333	1,414	1,409
Chemical manufacturing (325)	11,363	11,397	11,780	11,795	12,087
Fabricated metal product manufacturing (332)	10,910	10,886	11,289	11,027	10,794
Computer and electronic product manufacturing (334)	24,151	23,919	23,633	22,561	22,183
Transportation equipment manufacturing (336)	13,790	13,651	11,570	10,873	10,927
Miscellaneous manufacturing (339)	14,715	14,698	15,041	14,515	14,445
All other NAICS	74,348	74,268	78,934	75,874	75,000
All identified companies	154,893	154,852	158,532	153,092	151,871
All exporters to the UK					
Crop production (111)	540	545	569	559	543
Fishing, hunting and trapping (114)	97	97	101	108	107
Food manufacturing (311)	1,357	1,440	1,522	1,646	1,663
Beverage and tobacco product manufacturing (312)	414	475	590	658	633
Chemical manufacturing (325)	6,038	6,164	6,402	6,517	6,628
Fabricated metal product manufacturing (332)	5,590	5,619	5,863	5,890	5,679
Computer and electronic product manufacturing (334)	13,819	13,666	13,658	13,376	12,971
Transportation equipment manufacturing (336)	5,138	5,237	5,116	5,210	5,242
Miscellaneous manufacturing (339)	7,226	7,373	7,550	7,483	7,321

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

NAICS (NAICS code)	Identified number of U.S. exporters				
	2012	2013	2014	2015	2016
All other NAICS	37,097	37,062	38,954	38,666	37,656
All identified companies	77,316	77,678	80,325	80,113	78,443
	SME exporters to the UK				
Crop production (111)	460	470	490	487	470
Fishing, hunting and trapping (114)	84	85	85	90	91
Food manufacturing (311)	1,028	1,107	1,162	1,279	1,309
Beverage and tobacco product manufacturing (312)	345	408	517	583	556
Chemical manufacturing (325)	4,584	4,702	4,886	4,973	5,083
Fabricated metal product manufacturing (332)	3,924	3,903	4,041	4,048	3,866
Computer and electronic product manufacturing (334)	10,368	10,204	10,202	9,879	9,517
Transportation equipment manufacturing (336)	3,818	3,930	3,731	3,702	3,760
Miscellaneous manufacturing (339)	5,947	6,082	6,214	6,128	5,961
All other NAICS	27,130	27,064	28,503	28,237	27,220
All identified companies	57,688	57,955	59,831	59,406	57,833

Source: Compiled by USITC from official statistics of the Department of Commerce, Census Bureau (accessed March 7, 2019).

Table E.3 Known value of U.S. exports to the UK for SME and all exporters, by NAICS and state of origin (million \$), 2016

NAICS code	NAICS description	State	SME known value (million \$)	Known value (million \$)
111	Crop production	California	170	197
		North Carolina	61	D
		Washington	28	D
		All other unsuppressed states	58	49
		Total excluding suppressed states	317	245
		States with suppressed data (count)	22	31
		Share of states suppressed (percent)	50	70
112	Animal production and aquaculture	Kentucky	46	46
		California	4	D
		Florida	1	1
		All other unsuppressed states	1	0
		Total excluding suppressed states	52	47
		States with suppressed data (count)	20	28
113	Forestry and logging	New Jersey	6	D
		Tennessee	2	2
		Indiana	1	1
		All other unsuppressed states	7	9
		Total excluding suppressed states	16	13
		States with suppressed data (count)	15	21
114	Fishing, hunting and trapping	Massachusetts	23	D
		Washington	4	D
		New York	2	D
		All other unsuppressed states	4	17
		Total excluding suppressed states	32	17
		States with suppressed data (count)	16	23

NAICS code	NAICS description	State	SME known value (million \$)	Known value (million \$)
		Share of states suppressed (percent)	62	88
		Pennsylvania		
212	Mining (except oil and gas)	West Virginia	19	D
		New York	2	D
		Georgia	2	D
		All other unsuppressed states	3	13
		Total excluding suppressed states	25	13
		States with suppressed data (count)	23	32
		Share of states suppressed (percent)	56	78
312	Beverage and tobacco product manufacturing	California	31	D
		New York	10	D
		New Jersey	5	D
		All other unsuppressed states	12	24
		Total excluding suppressed states	59	24
		States with suppressed data (count)	19	30
		Share of states suppressed (percent)	49	77
314	Textile product mills	California	5	6
		New York	5	6
		Georgia	4	15
		All other unsuppressed states	18	27
		Total excluding suppressed states	32	54
		States with suppressed data (count)	12	25
		Share of states suppressed (percent)	27	56
			80	94
		New York	31	37
		New Jersey	28	39
		All other unsuppressed states	46	71
		Total excluding suppressed states	184	241

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

NAICS code	NAICS description	State	SME known value (million \$)	Known value (million \$)
		States with suppressed data (count)	14	24
		Share of states suppressed (percent)	28	48
316	Leather and allied product manufacturing	California	12	13
		New York	7	8
		New Jersey	4	6
		All other unsuppressed states	21	18
		Total excluding suppressed states	43	45
		States with suppressed data (count)	11	24
		Share of states suppressed (percent)	23	51
321	Wood product manufacturing	Alabama	50	D
		Kentucky	18	40
		North Carolina	10	D
		All other unsuppressed states	54	58
		Total excluding suppressed states	132	98
		States with suppressed data (count)	18	31
		Share of states suppressed (percent)	39	67
322	Paper manufacturing	Ohio	22	27
		New Jersey	10	11
		Georgia	8	76
		All other unsuppressed states	57	165
		Total excluding suppressed states	97	278
		States with suppressed data (count)	10	20
		Share of states suppressed (percent)	21	43
323	Printing and related support activities	New Jersey	65	100
		New York	56	79
		Illinois	28	33
		All other unsuppressed states	84	248
		Total excluding suppressed states	234	461
		States with suppressed data (count)	14	24
		Share of states suppressed (percent)	29	49
324	Petroleum and coal products manufacturing	Texas	80	D
		California	4	D
		Ohio	2	D
		All other unsuppressed states	4	3
		Total excluding suppressed states	89	3
		States with suppressed data (count)	22	27
		Share of states suppressed (percent)	65	79
325	Chemical manufacturing	New York	306	424
		California	205	468
		Puerto Rico	185	338
		All other unsuppressed states	1,366	4,071
		Total excluding suppressed states	2,062	5,300
		States with suppressed data (count)	9	10
		Share of states suppressed (percent)	17	19
326	Plastics and rubber products manufacturing	California	34	79
		Florida	28	34
		Pennsylvania	26	86
		All other unsuppressed states	211	555

NAICS code	NAICS description	State	SME known value (million \$)	Known value (million \$)
		Total excluding suppressed states	298	755
		States with suppressed data (count)	7	14
		Share of states suppressed (percent)	14	27
		California		
331	Primary metal manufacturing	California	145	175
		Texas	33	71
		Ohio	18	138
		All other unsuppressed states	63	1,122
		Total excluding suppressed states	258	1,505
		States with suppressed data (count)	16	26
		Share of states suppressed (percent)	33	53
			48	
333	Machinery manufacturing	California	115	275
		Texas	94	403
		Ohio	72	195
		All other unsuppressed states	735	2,542
		Total excluding suppressed states	1,016	3,415
		States with suppressed data (count)	3	7
		Share of states suppressed (percent)	6	13
				15
335	Electrical equipment, appliance, and component manufacturing	California	106	246
		Texas	46	151
		New Jersey	38	71
		All other unsuppressed states	317	1,238
		Total excluding suppressed states	507	1,706
		States with suppressed data (count)	8	10
		Share of states suppressed (percent)	15	19
336	Transportation equipment manufacturing	Florida	189	272
		Texas	181	618
		California	126	736

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

NAICS code	NAICS description	State	SME known value (million \$)	Known value (million \$)
		All other unsuppressed states	615	6,706
		Total excluding suppressed states	1,110	8,332
		States with suppressed data (count)	12	16
		Share of states suppressed (percent)	23	31
337	Furniture and related product manufacturing	New York	18	21
		California	7	34
		Ohio	5	10
		All other unsuppressed states	33	59
		Total excluding suppressed states	64	123
		States with suppressed data (count)	15	26
		Share of states suppressed (percent)	33	57
339	Miscellaneous manufacturing	New York	669	1,008
		California	202	284
		Florida	59	D
		All other unsuppressed states	393	1,041
		Total excluding suppressed states	1,323	2,333
		States with suppressed data (count)	5	17
		Share of states suppressed (percent)	10	33
910	Waste and scrap	Florida	14	D
		New York	13	D
		North Carolina	8	D
		All other unsuppressed states	10	14
		Total excluding suppressed states	45	14
		States with suppressed data (count)	22	32
		Share of states suppressed (percent)	59	86
930	Used or second-hand merchandise	New York	1,507	2,054
		California	268	336
		Florida	104	134
		All other unsuppressed states	337	174
		Total excluding suppressed states	2,217	2,698
		States with suppressed data (count)	16	30
		Share of states suppressed (percent)	31	59
990	Special classification provisions, n.e.s.o.i.	Florida	30	51
		Ohio	14	D
		Georgia	10	D
		All other unsuppressed states	26	298
		Total excluding suppressed states	80	349
		States with suppressed data (count)	20	27
		Share of states suppressed (percent)	43	59

Source: Compiled by USITC from official statistics of the Department of Commerce, Census Bureau (accessed March 21, 2019).
 Note: "D" indicates that data in this cell were suppressed to avoid disclosing the export value reported by a particular company.
 n.e.s.o.i. = not elsewhere specified or included.

Table E.4 Identified exporters to the UK for all and SME exporters, by NAICS and state, 2016

NAICS code	NAICS description	State	SME exporting companies (count)	Total exporting companies (count)
111	Crop production	California	205	221
		Washington	32	35
		North Carolina	27	32
		All other states	279	182
		Total	543	470
112	Animal production and aquaculture	Kentucky	21	21
		California	16	18
		Florida	15	15
		All other states	62	90
		Total	114	144
113	Forestry and logging	New York	30	38
		California	10	14
		Pennsylvania	9	9
		All other states	81	94
		Total	130	155
114	Fishing, hunting and trapping	New York	13	16
		Massachusetts	13	13
		California	11	13
		All other states	54	65
		Total	91	107
211	Oil and gas extraction	Texas	7	9
		Wisconsin	1	2
		Pennsylvania	1	2
		All other states	3	6
		Total	12	19
212	Mining (except oil and gas)	California	21	27
		New York	17	22
		Florida	13	13
		All other states	115	170
		Total	166	232
311	Food manufacturing	California	242	296
		New York	215	249
		Florida	93	99
		All other states	759	1,019
		Total	1,309	1,663
312	Beverage and tobacco product manufacturing	California	299	329
		Pennsylvania	61	69
		Washington	35	35
		All other states	161	200
		Total	556	633
313	Textile mills	New York	121	143
		California	85	105
		North Carolina	49	75
		All other states	417	597
		Total	672	920
314	Textile product mills	New York	160	187
		California	150	170

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

NAICS code	NAICS description	State	SME exporting companies (count)	Total exporting companies (count)
		Georgia	41	69
		All other states	401	566
		Total	752	992
			1,906	
316	Leather and allied product manufacturing	California	270	308
		New York	223	253
		Florida	40	53
		All other states	435	586
		Total	968	1,200
322	Paper manufacturing	New York	127	167
		California	102	143
		Pennsylvania	48	78
		All other states	495	824
		Total	772	1,212
324	Petroleum and coal products manufacturing	Pennsylvania	25	46
		Texas	21	26
		California	21	28
		All other states	90	149
		Total	157	249
326	Plastics and rubber products manufacturing	California	469	595
		New York	326	414
		Ohio	174	283
		All other states	1,817	2,829
		Total	2,786	4,121
	manufacturing			276
		New York	196	240
		Ohio	77	125
		All other states	696	1,043
		Total	1,193	1,684

NAICS code	NAICS description	State	SME exporting companies (count)	Total exporting companies (count)
331	Primary metal manufacturing	California	193	251
		New York	146	192
		Texas	135	190
		All other states	805	1,269
		Total	1,279	1,902
333	Machinery manufacturing	California	1,039	1,318
		Texas	635	878
		New York	558	717
		All other states	4,805	6,881
		Total	7,037	9,794
335	Electrical equipment, appliance, and component manufacturing	California	702	967
		New York	450	570
		Texas	317	517
		All other states	2,284	3,692
		Total	3,753	5,746
337	Furniture and related product manufacturing	California	224	280
		New York	180	214
		Texas	62	90
		All other states	528	764
		Total	994	1,348
		Total	5,961	4,198
910	Waste and scrap	New York	23	24
		Ohio	11	14
		California	10	14
		All other states	92	120
		Total	136	172
930	Used or second-hand merchandise	New York	583	605
		California	440	461
		Florida	190	200

U.S.-SME Exports: Trade-related Barriers Affecting Exports of U.S. SME to UK

NAICS code	NAICS description	State	SME exporting companies (count)	Total exporting companies (count)
		All other states	874	
		Total	2,087	
990	Special classification provisions, n.e.s.o.i.	California	92	155
		Florida	54	86
		New York	49	80
		All other states	276	554
		Total	471	875
		New York	7,974	9,478
		Texas	3,775	5,439
		All other states	34,467	49,427
		Total	57,833	78,443

Source: Compiled by USITC staff from official statistics of the Department of Commerce, Census Bureau, accessed March 21, 2019.

Note: n.e.s.o.i. = not elsewhere specified or included.

Appendix F

Trade Resources for SMEs

U.S. Government and Private Sector Programs for U.S. E-commerce Exporters

The following discussion briefly describes U.S. government and private sector programs that may assist U.S. SME exporters who sell products online internationally, including to UK consumers. Although these programs also help U.S. business-to-business (B2B) SMEs, the primary focus of this section will be business-to-consumers (B2C) retail sales to the UK.

U.S. Government Resources for U.S. SME E-commerce Exporters

The U.S. Department of Commerce (USDOC) offers an extensive array of information and assistance for online U.S. SMEs that focus on the UK, as well as on other foreign markets. The main USDOC gateway for exporters is [Export.gov](https://www.export.gov), which provides information on promising UK export sectors, popular social media platforms, the e-commerce market, and online payments. [Export.gov](https://www.export.gov) also contains information on UK e-commerce regulations and online advertising regulations. [Export.gov](https://www.export.gov)'s E-commerce Innovation Lab has informational video presentations on such topics as best practices for online retailers. It also offers lists of and information on firms that provide support services for e-commerce in areas such as digital marketing, cybersecurity, logistics, legal and regulatory measures, third party marketplaces, and e-commerce sales channel management.⁷⁹⁹ The [Export.gov](https://www.export.gov) website also features regular webinars for online SME exporters that cover such topics as market profiles, e-commerce trends, and digital strategies.⁸⁰⁰

The Small Business Administration (SBA) has several ways to help U.S. online exporters. The SBA's website contains a "Beginners guide to exporting," which links to an online training course with information on developing an e-commerce presence in foreign markets.⁸⁰¹ SBA's website also hosts a comprehensive business planner for SME exporters that includes a section specifically focused on e-commerce, including online tools such as electronic banking and shipment tracking.⁸⁰²

Private Sector Resources for U.S. SME E-commerce Exporters

Private entities provide resources for U.S. SMEs exporting to the UK that are similar to those offered by the U.S. government. However, the focus is more on specific services that enhance actual SME cross-border transactions, including matching buyers and sellers, processing orders, payments, logistics, and delivery. The leading global e-commerce and e-payments platforms, logistics companies, and express delivery firms support U.S.-based SMEs with specific services for exporting to the UK. SMEs can tap into existing online marketplaces (platforms) and payments networks through these private sector resources

⁷⁹⁹ USDOC, ITA, [Export.gov](https://www.export.gov), E-commerce Innovation Lab, "E-commerce Business Services Providers Directory" (accessed February 15, 2019).

⁸⁰⁰ USDOC, ITA, [Export.gov](https://www.export.gov), "eCommerce Webinars and Events" (February 23, 2019).

⁸⁰¹ SBA, "Export Products," (accessed April 18, 2019).

⁸⁰² SBA, "Export Business Planner for Your Small Business" (accessed April 18, 2019).

in order to sell and process payments for their goods. Many of these services cover all aspects of the export process. These global platforms are key facilitators of U.S. SMEs exports to the UK and other global markets.

Leading global e-commerce platforms have programs to support export processing for U.S.-based SMEs, including information and help with calculating fees and taxes associated with exporting to the UK.⁸⁰³ Some programs cover all aspects of the export process. This includes helping U.S. SMEs to identify foreign buyers, fulfill international orders (including exports to the UK), handle import duties and customs clearances, and ship products directly to the buyers.⁸⁰⁴

Other platforms provide services that allow sellers to ship their goods to a processing center located in the United States, where a third-party firm handles the export processing from that point to delivery.⁸⁰⁵ The third-party firm inspects and prepares the packages; handles all customs procedures, including forms, duties, and other import charges; and organizes shipping logistics, tracking, and final delivery to many international markets, including the UK.⁸⁰⁶ This program also helps with cross-border returns.⁸⁰⁷ Some platforms include seller protection for transactions through their payments services, and information on UK (EU) policies such as the EU Consumer Rights Directive, which allows consumers to return products purchased through e-commerce.⁸⁰⁸

Online Payment Services Resources

Payment websites make it easier for U.S. SMEs to export to the UK and other foreign markets by providing financial fraud protection for sellers and buyers, which is a critical barrier for cross-border e-commerce.⁸⁰⁹ This is especially important to U.S. SME firms that make small-scale transactions. These services provide secure transactions, fraud protection, and dispute resolution, which removes transaction risk for both parties.⁸¹⁰ E-payment firms also assist U.S. SME exporters with data analysis⁸¹¹ and with reporting, invoicing, and gathering data through mobile apps that allow SMEs to manage their cross-border invoices electronically.⁸¹² Some payments services allow U.S. SMEs to use a currency converter and payment processing so they do not have to set up a bank account in the UK.⁸¹³

⁸⁰³ Etsy, "Selling to UK Buyers from Overseas" (accessed February 14, 2019).

⁸⁰⁴ Pitney Bowes, "Complete Cross-Border" (accessed February 14, 2019).

⁸⁰⁵ eBay, "Global Shipping Program" (accessed February 19, 2019).

⁸⁰⁶ eBay, "Global Shipping Program" (accessed February 19, 2019).

⁸⁰⁷ eBay, "Global Shipping Program" (accessed February 19, 2019).

⁸⁰⁸ Etsy, "Seller Protection on Etsy" (accessed February 14, 2019); Etsy, "EU Directive on Consumer Rights" (accessed February 14, 2019).

⁸⁰⁹ Sellers are protected from unauthorized payment (e.g., from a hacked account) and from buyer claims that they did not receive a delivery. PayPal, "All in One Safe Place" (accessed March 1, 2019).

⁸¹⁰ PayPal, "Security for Buyers" (accessed February 15, 2019).

⁸¹¹ PYMNTS.com, "PayPal Gives SMBs a Big Leg-Up," February 8, 2017.

⁸¹² Paypal, "An App as Devoted to Your Business as You Are" (accessed March 15, 2019); Pitney Bowes, "Complete Cross-Border" (accessed February 14, 2019).

⁸¹³ Paypal, "An App as Devoted to Your Business as You Are" (accessed March 15, 2019); Pitney Bowes, "Complete Cross-Border" (accessed February 14, 2019).

U.S. Government Assistance for U.S. SMEs: Government Finance and Funding Programs

Certain government agencies, including the U.S. Small Business Administration, Export-Import Bank, and the Department of Agriculture’s Foreign Agricultural Services, have financial assistance programs that can aid SMEs exporting to the UK.

The U.S. Small Business Administration (SBA)

The U.S. Small Business Administration (SBA) facilitates “Export Express” loans under \$500,000 with quick approval (typically within 36 hours), along with larger Export Working Capital and International Trade loans. From 2009 to 2017, export loans to SMEs guaranteed by the SBA grew from \$600 million to \$1.9 billion. Additionally, SBA provides State Trade and Export Promotion (STEP) matching-fund grants to state governments to raise the number of U.S. SMEs exporting and increase the value of SME exports made by firms that are already exporting to foreign markets. The STEP program was designed so that the federal government provides 75 percent of the funding and, in most cases, the state where the firm is headquartered provides the other 25 percent; however, the top three states in value of exports are responsible for 35 percent of the funding.⁸¹⁴

The Export-Import (EXIM) Bank

The U.S. Export-Import (EXIM) Bank offers export credit insurance to protect exporters from nonpayment by foreign buyers; guarantees loans for working capital; and provides access to finance managers located at any of its regional export finance centers. Export credit insurance supports SMEs by adding an extra layer of protection from default on payment by a foreign buyer; the program covers up to 95 percent of an SME’s sales invoice. EXIM’s working capital loan guarantee program allows SMEs to apply for a loan through a traditional bank for materials and equipment to be used for increasing sales volume, and EXIM provides a 90 percent guarantee of repayment. Finally, educating SMEs about the financial resources they can draw on to expand their business is an important function of EXIM, and this assistance is available through financial managers located in EXIM’s regional export centers. Like the SBA development centers, these centers function as a resource to help SMEs learn about all of the EXIM Bank’s programs.⁸¹⁵

U.S. Department of Agriculture (USDA) Foreign Agricultural Services (FAS)

Resources to help SME agricultural exporters access financial assistance are available through the U.S. Department of Agriculture’s Foreign Agricultural Service (FAS). FAS’s export credit guarantee program works like similar government programs to provide credit guarantees that limit the risk of loan default

⁸¹⁴ SBA, “Export Business Planner for Your Small Business” (accessed February 5, 2019); SBA, “Export Products” (accessed March 6, 2019).

⁸¹⁵ EXIM Bank, “What We Do” (accessed February 5, 2019).

to lenders. FAS's program is available to exporters of three types of agricultural goods. These include high-value, consumer-oriented food products such as frozen foods, fresh produce, meats, condiments, wine and beer; intermediate products such as hides, flour, and paper products; and bulk products such as grains, oilseeds, and rice.⁸¹⁶

U.S. Government Assistance for U.S. SMEs: Entering the UK Market

The U.S. government has several resources for U.S. SMEs seeking to export their products to the UK. Activities include counseling exporters, educating them about export opportunities, matching firms with UK partners, and marketing and promoting U.S. exports. The main agencies aiding U.S. SMEs with market entry are SBA, the U.S. Commercial Service (USCS), the U.S. Export Assistance Centers (USEACs), FAS, and the U.S. Trade Representative (USTR).

A number of UK entities also assist U.S.-based SMEs, including the UK's Department of International Trade and economic development agencies in the UK, such as Invest Northern Ireland. There are also 51 local chambers of commerce in the UK that provide resources for U.S.-based SMEs that want to establish a presence in a particular UK city. SMEs that are searching for ways to connect with potential partners or sales opportunities in the UK can rely on associations that connect its U.S. and UK members. For example, the BritishAmerican Business (BAB) association promotes its ability to connect its members with their counterparts in the United States or the UK through BAB's extensive networks.⁸¹⁷

The U.S. Small Business Administration (SBA)

SBA has Small Business Development Centers (SBDCs) that promote several different programs to help SMEs export their products abroad. In particular, its Export Business Planner guides SMEs in developing a plan of action, exploring foreign markets, developing marketing plans, exploring financing, and costing products. SBA's planner also provides information for locally accessible agencies that counsel SMEs, including Small Business Development Centers, Women's Business Centers (WBC), State-Level Exporting Offices, and the Service Corps of Retired Executives (SCORE). These programs provide several different services to help start a business or grow an existing business. For example, WBCs provide training and education in finance, management, marketing, and the internet. The SCORE association is a free service that partners working or retired executives with startups or existing businesses in a mentorship program.⁸¹⁸

U.S. Commercial Services (USCS)

Part of USDOC's International Trade Administration (ITA), the U.S. Commercial and Foreign Service has trade specialists throughout the United States and at U.S. embassies and consulates in over 75 countries worldwide. Each specialist can provide an SME with resources to establish its businesses in a foreign

⁸¹⁶ U.S. Department of Agriculture, Foreign Agriculture Service (accessed February 5, 2019).

⁸¹⁷ BritishAmerican Business, "About Us," (accessed May 8, 2019).

⁸¹⁸ SBA, "Export Business Planner for Your Small Business" (accessed February 5, 2019); USDOC, ITA, "A Basic Guide to Exporting" (accessed February 5, 2019).

market and maintain a presence there. The U.S. Commercial Service UK has an office at the U.S. Embassy in London.

During the preliminary stages, the agency works with the SME to assess its export readiness and develop a plan of action. This program's cost ranges from \$350 to \$900, based on the size of the SME. The agency also provides SMEs a partial or full assessment of international companies that are potential customers for a fee ranging from \$150 to \$1,200, again depending on the size of the SME. Finally, the agency carries out market research services for SMEs for \$30 to \$70 an hour. These programs are designed for SMEs that are not yet export ready but are seeking help in expanding their market base.

Once an SME is export ready, the U.S. Commercial Service also has programs designed to promote and expand its market base. Through the agency's International Partner Search and Virtual Introduction program, the specialist prepares a list of five partners or distributors that are potentially interested in the SME's goods or services. The fee for this program is also based on the size of the SME and ranges from \$750 to \$1,750. An SME that wants to be matched with international companies can use the Gold Key service. Depending on the size of the SME and the extent of the service, the cost ranges from \$950 to \$3,300.⁸¹⁹

U.S. Export Assistance Centers (USEAC)

U.S. Export Assistance Centers (USEACs) are located in major metropolitan areas throughout the United States. They are staffed by the SBA, USDOC, EXIM Bank, and other organizations to provide SMEs assistance and resources when entering the global marketplace.⁸²⁰ USEACS can help exporters develop a plan of action, locate target markets, set up face-to-face meetings with potential international clients, and analyze an SME's potential for success.⁸²¹

U.S. Department of Agriculture (USDA) Foreign Agricultural Service (FAS)

The Foreign Agricultural Service (FAS) connects U.S. agriculture with export opportunities in other countries. FAS's Office of Agricultural Affairs, located at the U.S. Embassy in London, covers the UK and the Republic of Ireland. Examples of FAS programs that help SMEs to export their products are the Market Access Program (MAP) and the Export Credit Guarantee. The MAP helps SMEs by sharing the costs associated with marketing and promoting their agricultural products. When MAP funds are used, a participant must contribute a minimum 10 percent match if MAP funds are used for generic marketing and promotion, or a dollar-for-dollar match if branded. Other examples of FAS programs include the Agricultural Trade Promotion program, Foreign Market Development Program, and Emerging Markets program.⁸²²

⁸¹⁹ USDOC, ITA, "A Basic Guide to Exporting" (accessed February 5, 2019).

⁸²⁰ SBA, "US Export Assistance Centers" (accessed August 22, 2019).

⁸²¹ EXIM Bank, "USEACs: A Powerful Portal for Small Business Exporters" (accessed August 22, 2019).

⁸²² U.S. Department of Agriculture, Foreign Agricultural Service, <https://www.fas.usda.gov/> (accessed February 5, 2019).

Office of the U.S. Trade Representative (USTR)

The Office of the U.S. Trade Representative (USTR) also provides information specifically for U.S. SMEs exporting to the UK. Its “Doing Business in the U.S. and UK: Resources for Small Businesses” includes a section on developing an e-commerce presence in the UK.⁸²³

⁸²³ USTR, “Doing Business in the U.S. and UK,” (accessed February 15, 2019).

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