BACKGROUNDER

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Ten Principles for U.S. Trade Negotiations with the European Union

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KEY TAKEAWAYS

The U.S. objectives for trade negotiations with the EU are based on a faulty vision of balanced and managed trade, rather than open and free trade.

The U.S. should prefer a good, principled agreement with the EU that can be negotiated rapidly to a wider agreement that will likely never be concluded.

The U.S. should avoid broad political declarations and regulatory harmonization, and only conclude an agreement with the EU that truly increases competition.

In 2016, United States–European Union negotiations for the Transatlantic Trade and Investment Partnership (TTIP) collapsed. TTIP would have been the world's largest bilateral trade initiative. It would not, however, have been a free trade agreement. Instead, TTIP was an ambitious effort to manage trade. It also attracted widespread opposition in Europe, and, to a lesser extent, in the United States. As a result, apart from becoming a source of animosity, TTIP negotiations achieved nothing.

The idea of liberalizing trade between the U.S. and the EU was, and remains, laudable, and the Trump Administration is committed to negotiating a trade agreement with the EU. This *Backgrounder* sets out 10 principles that the U.S. should follow when engaging in these negotiations. The U.S. and the EU should be leading the way for free trade and should aim to abolish tariffs and non-tariff barriers that diminish

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the freedom to trade. An agreement that genuinely promotes free trade between the U.S. and the EU would benefit not just the economies of the two parties, but of the world. TheT U.S. and the EU must learn from the failed TTIP negotiations, and strive for a principled agreement that increases market-based competition. It should be negotiated rapidly, and not fall into the trap of pursuing overly broad objectives that fail, thereby giving rise to further animosity.

Developments in U.S.–EU Trade Since December 2016

There have been few positive developments in U.S.–EU trade since 2016. After the collapse of the TTIP negotiations, the U.S. and the EU have engaged in a series of threats and tit-for-tat retaliations, many of which were begun by the United States. These events illustrate both the potential significance of a U.S.–EU trade deal, and the many barriers to such a deal. Above all, the rocky road that U.S.–EU trade has followed illustrates the potential for trade to breed transatlantic animosity. Of course, the trade tensions between the EU and the U.S. are only part of the story of U.S. trade policy.[1] But the story of those tensions is particularly relevant to the prospects for a U.S.–EU agreement going forward.

December 2016, TTIP Collapses. Trade negotiations are often difficult and contentious: TTIP was fundamentally undermined by declining public support for the negotiations on both sides of the Atlantic well before the election of President Donald Trump in November 2016.[2] As early as August 2016, the German Economics Minister declared the talks a failure.[3] Though the negotiations continued, and in January 2017 the U.S. and the EU released a joint progress report, the negotiations were, as the EU recognizes, effectively dead by the end of 2016.[4] TTIP's failure owed much to its ambition, which slowed the progress of the negotiations, allowing its opposition time to muster.

March 2018, U.S. Announces Steel and Aluminum Tariffs. On March 8, 2018, the U.S. imposed tariffs of 25 percent on imported steel and 10 percent on imported aluminum, affecting around $7.13 billion worth of EU goods.[5] This decision was widely criticized, in part because it raised prices on U.S. consumers and producers, and in part because it was justified on the spurious grounds of national security.[6] The U.S., Canada, and Mexico reached a deal to remove these tariffs in May 2019. The EU retaliated against the U.S. tariffs with proportionate measures on June 22, 2018, affecting around $3.12 billion worth of highly symbolic U.S. exports, including tobacco, bourbon whiskey, and peanut butter.

June 2018, U.S. Reiterates Zero/Zero/Zero Goal, with Provisos. One of the most disappointing, and revealing, episodes in the recent history of the trade dispute between the U.S. and the EU has been the sparring around the U.S. Administration's declared goal of zero tariffs, zero non-tariff barriers, and zero subsidies for all trade. At the G-7 Summit in Quebec in June 2018, President Trump reiterated his zero/zero/zero goal. When EU Trade Commissioner Cecilia Malmstrom responded in August 2018 that the EU is "willing to bring down even our car tariffs to zero, all tariffs to zero, if the U.S. does the same," the President said the offer was "not good enough," because EU "consumer habits are to buy their cars, not to buy our cars."[7] While there are elements of truth in this statement, it is beyond the power and scope of U.S. trade policy, or, for that matter, of European governments, to change the buying preferences of European consumers.

July 2018, U.S.–EU Agreement to Negotiate. On July 25, 2018, the U.S. and the EU appeared to draw a line under their looming trade war by announcing an agreement to negotiate a "deal to eliminate tariffs, nontariff barriers and subsidies on industrial goods, excluding autos," while holding off on further tariffs (including threatened U.S. tariffs on the EU auto exports) and working toward dropping those imposed during the dispute over the U.S.'s steel and aluminum tariffs. The EU also agreed to buy more U.S. soybeans and natural gas, though agreements to purchase specific goods is not free trade, and the latter requires the prior construction of additional export terminals in the U.S.[8]

August 2019, U.S.–EU Beef Access Agreement. On August 2, 2019, the U.S. and the EU reached an agreement on U.S. beef access to the EU market. Under the agreement, American ranchers will have an initial quota of 18,500 metric tons annually, valued at approximately $220 million. Over seven years, the quota will grow to 35,000 metric tons annually, valued at approximately $420 million.[9]

October 2019, U.S. Imposes Retaliatory Airbus Tariffs. On October 2, 2019, the U.S. won a $7.5 billion arbitration award from the World Trade Organization (WTO) against the EU's illegal subsidies to Airbus.[10] The EU also has a case pending in the WTO against U.S. subsidies to Boeing, so the U.S. victory does not automatically mean that the U.S. is in the clear. But the U.S. victory did allow the U.S. to impose retaliatory tariffs on EU exports to the U.S. The U.S. imposed 151 percent tariffs on Airbus jets and 25 percent tariffs on a range of other EU goods, somesome effective on March 5, 2020, and some on March 18, 2020.[11]

In December 2019, the U.S. won another case in the WTO against EU subsidies to Airbus, which led to U.S. threats of additional tariffs on imports from the EU.[12] But as one of the authors of this *Backgrounder,* Ted Bromund, has pointed out, while

> the United States is more sinned against than sinning in this particular tussle… that doesn't make imposing tariffs the right response. It's U.S. consumers, not the foreign exporters, who pay the price when the U.S. imposes tariffs. A tariff is nothing more than a sales tax on imports, and like all sales taxes, it's the buyer, not the seller, who pays.[13]

December 2019, U.S. Renews Threat to Impose Tariffs on Imports of Autos from EU. On December 3, 2019, U.S. Commerce Secretary Wilbur Ross noted that, while the U.S. had not so far imposed tariffs on EU auto exports under its section 232 authority—which investigated U.S. auto imports as a potential national security threat—it had not yet ruled out imposing such tariffs. According to Secretary Ross, "There has already has been [sic] a tariff war. The only thing is we haven't been defending ourselves. We've been accepting the lopsidedness of things."[14]

January 2020, U.S. and France Spar Over Digital Tax. In July 2019, France passed an intensely controversial tax on digital businesses. In theory, this tax—of 3 percent on revenue that companies make from providing digital services to users in France—does not discriminate based on the national origin of the companies paying the tax, but in practice, no one doubts that the tax is aimed primarily at the major U.S. firms that dominate the Internet.[15] The French tax plans led to threats of U.S. retaliation, including "duties of up to 100 percent on certain French products, as well as fees or restrictions on French services."[16] On January 23, 2020, French President Emmanuel Macron announced that France had agreed to postpone its tax to the end of 2020 while the U.S. postpones its tariffs.[17]

January 2020, Rumors of Progress in U.S.–EU Negotiations. In mid-January, after months of skepticism about the progress of the negotiations, centered on the EU's refusal to include agriculture in the negotiations, came rumors that the U.S. and the EU were making headway on a trade deal.[18] Speaking at a press conference, "the US president said he expected to negotiate a trade deal with the EU before November's presidential election. Shortly after, the EU commission chief said Brussels was 'expecting in a few weeks to have an agreement that we can sign together' with the US, covering trade, technology and energy."[19] But U.S. expectations are clearly limited: As the President commented, "They [the EU] have trade barriers where you cannot trade, they have tariffs all over the place. They make it impossible. They are frankly more difficult to do business with than China."[20]

The Implications of Recent U.S.–EU Trade Tensions. The implication of these events appears to be that a broad trade deal like TTIP is unsustainably unpopular in Europe, while a smaller deal is unacceptable in the U.S. because it omits agricultural products. The result of the potential unacceptability of both broader and narrower deals is that there may be no easy resolution of the U.S.–EU trade conflict. No matter which approach is tried, a deadlock is reached that ends up blocking progress and raising precisely the wider concerns about the systemic health of free trade that resulted from the collapse of TTIP, the U.S.'s 2018 tariffs, and more recent tensions.

In short, the future of the U.S.–EU trade relationship is cloudy. In today's circumstances, the existing disagreements, coupled with emerging new disagreements in the defense sector and potentially in other areas of German or EU activity, mean that the U.S. would be well advised to stop imposing tariffs, but also to make sure that there is room for successful negotiations before committing itself to assurances of success.[21]

EU Restraints on Trade with the U.S.

The EU is an important trading partner for the U.S. In 2018, the EU was the U.S.'s fourth-largest export market.[22] The U.S. is also an important trading partner for the EU; in 2018[23] it was the EU's number one export market.[24] But the U.S. and EU have fundamental differences in trade policies. Each year, the Office of the United States Trade Representative (USTR) publishes the "National Trade Estimate Report on Foreign Trade Barriers," which lists the trade barriers that more than 60 countries and regions impose on the U.S.[25]

The barriers imposed by the EU include tariffs, non-tariff barriers, customs and trade facilitation barriers, technical barriers to trade, sanitary and phytosanitary barriers, subsidies, barriers to government procurement, intellectual property rights protection barriers, services barriers, barriers to digital trade and electronic commerce, and investment barriers. This *Backgrounder* does not endeavor to address all of these barriers. It focuses on the issues that are likely to be the most controversial during trade negotiations between the U.S. and the EU.

Agriculture. Agriculture is one of the most contentious sectors in trade negotiations. The USTR complains extensively about the barriers that the EU imposes on U.S. agricultural products. The average EU agricultural tariff rate on U.S. products is 10.8 percent,[26] compared to 4.2 percent for non-agricultural goods.[27] The EU imposes tariffs of up to 26 percent on fish and seafood from the U.S.[28] These tariffs make agricultural products, including fish and seafood, from the U.S. more expensive, which harms the competitiveness of U.S. businesses and, by increasing prices in the EU, reduces the options offered to European consumers.

EU Meursing Table Tariff Codes. The U.S. is also concerned about the EU's Meursing Table Tariff Codes. The Meursing Table refers to a special tariff code system that applies additional tariffs to many processed food products, known as "composite agrigoods." Tariffs are charged on these products based on their content of milk protein, milk fat, starch, and sugar.[29] The EU developed this complicated system[30] to protect EU producers of processed food products who, it is claimed, pay higher prices for flour, dairy, starch, and sugar.[31]

Since this tariff schedule is based on the components of a product—the recipe—exporters are faced with additional administrative burdens. Exporters have to find if their product's proportions of ingredients fall under the Meursing Table, which consists of 27 products subdivided into 504 recipes, which correspond to a tariff rate.[32]

Affecting Consumers' Choices. As with the aforementioned agricultural products, tariffs make products more expensive for consumers in the EU, as well as reducing opportunities for Americans to export to the EU. Certain food products might be taxed as a way of nudging European consumers to make healthier choices, but EU tariffs are barriers that harm both Americans and Europeans. The freedom of individuals to buy from, and sell to, each other provides them with more choices at different prices, which promotes general prosperity.

The idea of nudging European consumers to make healthier choices is also maintained in the EU's Common Market Organization under the Common Agricultural Policy. Both fresh and processed fruits and vegetables are subsidized. Payments in various forms are given to producers for goods including peaches, citrus fruits, and olives.[33] Subsidization of these products can create distortions in the market. Payments to European producers give them an unfair advantage, making trade more difficult for foreign producers, including American businesses. There is a lack of transparency not only about the amount of the subsidies, but about how the subsidies are distributed at the member state level, and whether the payments are decoupled from production. These decoupled payments were defined in the Uruguay Round Agreement on Agriculture, and are similar to an income support for farmers.[34] The lack of transparency means that American businesses and policymakers are unaware of the extent of the distortions, which makes the issue more difficult to address.

Under "technical barriers to trade," the United States has many complaints specific to agriculture, including country of origin labeling (COOL), agriculture quality schemes, certification requirements, rules on live cattle, and sanitary and phytosanitary (SPS) measures.

Agricultural Labeling. COOL is a requirement that the country of origin be indicated on labeling for specific ingredients and finished food products, and multiple EU countries have implemented it. The variation in how the member states developed COOL schemes has been inconsistent, creating burdens for businesses producing in, and exporting to, the European market. For example, each member state could have different requirements for the type of wording on labels.[35] If a business is exporting to France and Spain, which may have different requirements for the verbiage on labeling, that business will face logistical complications as it tries to ensure that the products with the correct labeling head to the right destination. Such obstacles make it costlier to reach consumers in different markets, hurting not only the businesses, but the consumers who otherwise would have more options.

In April 2020, the European Commission plans to implement a regulation that will replace the national labeling schemes. The regulation will set common rules for the indication of "the country of origin or place of provenance of the primary ingredients of a food where different to that given for that food."[36] This overarching regulation could potentially be less confusing but the requirement to have labels of origin remains burdensome for producers. While some European consumers may value origin labeling,[37] businesses will be better at providing the desired information than an inflexible mandated regulation. It is in the interest of the businesses to provide their customers with what they want and if their customers want origin labeling, the business will best know how to provide it.

Sanitary and Phytosanitary Measures. Sanitary and phytosanitary measures involve regulations addressing food safety and animal and plant health. The U.S. is concerned about a number of measures that the EU maintains. These measures are too extensive to all be covered in this *Backgrounder*. These measures include, but are not limited to, pathogen-reduction treatments, certification requirements on agricultural goods, and rules on live cattle.

Pathogen-reduction treatments are "antimicrobial rinses used to kill pathogens that commonly exist on meat after slaughter."[38] The EU generally prohibits pathogen-reduction treatments, as well as the use of anything other than water,[39] to remove contamination from animal products.[40] The U.S. believes that pathogen-reduction treatments are critical for ensuring the safety of meat, and these treatments have been used safely in the U.S. for decades. The United States Department of Agriculture (USDA) has evaluated these pathogen-reduction treatments using scientific evidence to establish safety for consumption. The U.S. has shared this data with the EU and believes that recognition of the safety of these treatments would help to promote trade in beef, pork, and poultry.[41]

Goods Certification. The EU requires that almost all imported goods have a certification. An exporter may be required to have one or a combination of the following: health certificates for plants, animals, food items, and animal-origin products;[42] phytosanitary certificates for plant products that could introduce pests; and quality certificates that can allow reduced import duties.[43] A product may be required to have one, or a combination, of these certificates. Exporters can also use other voluntary certificates that permit less-stringent import-control regimes.[44] The EU certification requirements, particularly for fish, meat, dairy, eggs, processed products, and animal byproducts appear to have been implemented without scientific evidence or risk assessments.[45]

Certification requirements can limit U.S. agricultural exports, as they add costs to the movement of exports in Europe.[46] Such requirements are not dependent on the commercial sale within the EU—they also apply when exports are simply transiting through the EU, and they apply to cruise ships and U.S. military installations in Europe.[47] The level of detail required for certificates necessitates a multitude of forms for each product.[48] These forms contain seemingly endless references to multiple levels of EU legislation that only cites more legislation. Such requirements and the effort to understand confusing legislation create burdens for manufacturers, exporters, U.S. regulatory agencies, authorities in individual EU member states, and importers to the EU.[49]

Live cattle cannot be exported to the EU or transited through the EU to third countries because of EU certification requirements for bovine diseases.[50] Health certificates are required for all live animal imports and must be signed by an official veterinarian in the exporting country guaranteeing that the conditions for EU importation have been met. Once the animal has arrived in the EU, official veterinarians at the designated Border Control Post verify the animals and certificates.[51] While the U.S. has resolved issues relating to some strains of bovine diseases, the EU continues to establish certification requirements that cannot always be met by U.S. exporters. The EU has amended its certification requirements for bovine spongiform encephalopathy (BSE or mad cow disease). While the U.S. and EU try to come to an agreement on the conditions and format of health certificates, U.S. exporters are blocked from access to the EU market.[52]

The U.S. generally maintains that barriers erected by the EU for agricultural trade are not based on scientific principles and evidence. These measures unnecessarily restrict trade without promoting safety objectives because they are not supported by scientific principles or proven with sufficient evidence.[53] The EU should recognize current U.S. food safety measures as equivalent to those upheld by the EU because they achieve the same level of protection.[54] This recognition could facilitate trade considerably, as traders would not be encumbered by administrative burdens.

Geographical Indications. The EU also has strict regulations on a type of intellectual property right known as geographical indications. These are protections given to certain products to identify quality and other characteristics related to their geographical origin. Recently, the EU gave Asiago cheese protected status with a geographical indication. Asiago is a town in northern Italy, where Asiago cheese originates. Now that it is a geographical indication, only cheese from Asiago can be sold as Asiago cheese under EU rules. In North America, Asiago tends to be a term that describes the type of cheese not its origin or quality. When Asiago became a geographical indication and businesses had to change the name of the cheese they were selling, revenues began to fall.[55] When consumers write down types of cheese on their shopping lists, like brie, cheddar, or Asiago,[56] and find that the brand they buy no longer says "asiago" on the label, they either forgo that type of cheese or decide to pay more for "real" Asiago, which could cost between 20 percent and 50 percent more.[57]

Currently, EU law harmonizes the protection of wines, spirits, foodstuffs, and agricultural products in the EU. However, the EU is considering expanding the scope of protection of geographical indications to include non-agricultural products.[58] The United States does not believe that when negotiating trade agreements, the EU should bargain for specific recognition of geographical indications in exchange for market access, especially when a geographical indication in the EU is considered a common name elsewhere.[59] When a product is considered a common name, its geography communicates little value and is instead understood as a type of product. Instead of forcing geographical indication recognition, a better approach may be to allow interested parties to object or support the protection of a geographical indication in a suitable forum.

Customs and Trade Facilitation. The customs process for trade can overwhelm even the most seasoned traders. The EU has customs legislation that governs all of the member states but does not have a single institution to administer the laws. Instead, each member state has a separate agency for administering EU customs law.[60] This has resulted in inefficiencies and confusion, creating additional burden for traders. One example concerns the Binding Tariff Information (BTI).

The BTI is a system that helps traders identify the correct tariff classification.[61] The BTI should give legal certainty with respect to the tariff classification of the product, which is necessary to determine customs duties and whether a certificate is needed. The BTI is valid for three years, and the trader must apply for it through the customs authority of the member state to which a trader wants to export.[62] The BTI is supposed to be valid throughout the EU, but there are instances of disagreement. In some cases, the member state customs agency will administer EU law differently or disagree with the BTI issued by another member state. The EU does not require the customs agency in each member state to carry over the decision of a customs agency in another member state even when the issue is identical.[63]

However, there is a forum available for reconciling differences in order to achieve uniformity of administration of EU law. Matters can be referred to the Customs Code Committee (CCC), which consists of representatives from member states and a chairperson from the European Commission.[64] This process has had limited success because it is not transparent and does not provide opportunities to traders to participate. The Commission has attempted to simplify the rules and processes through the Union Customs Code (UCC), which contained procedural changes but has not yet finished implementing a harmonized information technology infrastructure that will be key for streamlining the customs process.[65]

Digital Trade. Digital trade has transformed the trading system, and the free flow of data is integral for continued growth in trade and, therefore, economies. Digital trade is broader than e-commerce and includes the sale of goods and services, data flows that facilitate global supply chains, services that power smart manufacturing, and other digital platforms and applications.[66] Digital trade encompasses transactions that are digitally processed and digitally or physically delivered. As supply chains become more integrated and efficient, digital trade will become increasingly important for the competitiveness of businesses.

Yet policymakers, including in the EU, are threatening to hamper the benefits realized by digital trade. Restrictions on data flows and digital taxation are becoming increasingly popular. Data localization is a type of regulation that requires a business operating in a territory to store the data it collects in a computing facility in the same territory. Less extreme regulations limit the movement of data across borders. Digital taxation is a system of taxation that is not based on physical location, and taxes the revenues of particular digital services, such as online advertising.

The EU has a regulation, the General Data Protection Regulation (GDPR), which restricts the transfer of EU citizens' personal data outside the EU. There are exceptions for certain countries that the EU has deemed provide adequate data protection. While the U.S. has received a determination of "partial adequacy," the U.S. continues to be concerned about the barriers to trade posed by regulations such as the GDPR.[67] Gathering data gives businesses better information more quickly so that production at all levels of the supply chain becomes more efficient. Another facet of the increased efficiency of supply chains is integration. As the EU has restrictions on data flows, burdens and uncertainty are placed on businesses integrated in any supply chains with businesses located in countries that do not have an "adequate" or "partially adequate" determination. If these businesses cannot access the data needed to streamline the production process, they must rely on other costlier arrangements to transfer data with suppliers in the EU.

Another tool being used is the taxation of digital services. Initially, the European Commission proposed a directive that would impose a tax on several digital services:

> (1) placing advertising on a digital interface, where the advertising appears on a user's device in the EU; (2) making available a multi-sided digital interface that allows users to find and interact with other users, and which may facilitate the provision of underlying supplies of goods or services directly between users, where a user is located or based in the EU; and (3) the transmission (e.g., sale) of data collected about users and generated from users' activities on digital interfaces, where the user is in the EU.[68]

The tax would be applied to companies that have "annual worldwide revenues exceeding €750 million ($849 million) and revenues within the EU exceeding €50 million ($57 million)."[69] While several member states disagreed with an EU-wide digital services tax, individual states have, or are considering, a digital services tax. The tax is based on worldwide revenues, which is economically inefficient because a firm that has no net income in the jurisdiction could still be required to pay the tax.[70] Physical location matters for tax purposes because local governments are better equipped with cultural knowledge to estimate the impact of a tax on an industry. Destination-based taxes give distant politicians the ability to involve themselves in local affairs, threatening individual liberties and thereby reducing economic freedom.[71]

Based on the thresholds, these taxes seem to be targeting U.S. companies almost exclusively. To discriminate against U.S. suppliers in the EU market would be protectionist and could harm not only those American businesses, but also European consumers. Digital services benefit Europeans because they allow companies to tailor products to their customers. The digital tax would likely cause companies to increase prices so that the cost falls on their customers. This adds risk and administrative burdens to doing business in a foreign market, as well as expense, thus reducing trade freedom and competition in the digital sector.

Standardization and Conformity Assessment Measures Procedures. The EU's standards-related measures, including its conformity assessment framework, poses challenges for U.S. exporters and impedes market access for products that do not meet European regional standards even if they meet international standards.[72]

The "New Approach" directives were adopted by the EU in 1985 and lay out requirements that are considered essential for products placed in the EU market. Products must conform to European harmonized standards (ENs), which can only be developed through the three European Standardization Organizations: the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI).[73] In order to demonstrate the producers' compliance with European conformity (CE), these products must bear a "CE mark" in order to be sold throughout the EU. The costs associated with not using these standards are prohibitive, and non-EU nationals are excluded from the CEN and CENELEC technical committees that draft the standards. There are occasions where non-EU nationals are allowed to participate in the process of drafting but are not granted a vote. Therefore, when a U.S. producer is allowed to use an EN, it has been developed through a process in which the U.S. producer did not have a meaningful opportunity to participate. This excludes small and medium-sized enterprises and other firms that do not have a presence in the EU.[74]

Moreover, the U.S. has complained about the EU's conformity assessment framework, in which each member state has an appointed national accreditation body, with no competition among the member states' national accreditation bodies.[75] This regulation prohibits the use of trade facilitative international accreditation schemes, thus preventing "U.S. accreditation bodies from offering their services in the EU with respect to any mandatory third party conformity assessment requirements."[76]

Finally, there are provisions used in the EU directives that require "that any mandatory third party conformity assessment be performed by a body that has been designated as a 'Notified Body,'" and permit only bodies "established under national law" to become Notified Bodies."[77] However, the EU interprets "established under national law" as a condition that a Notified Body is established in the EU and in the member state in which it is seeking designation. The U.S. has raised concerns about how this impedes market access for U.S. producers whose products have been tested or certified by conformity-assessment bodies located outside the EU. The lack of reciprocity between U.S. and EU conformity assessment bodies increases time to market and costs for manufacturers, and forces firms to establish operations of U.S. testing and certification bodies in the EU in order to remain competitive.[78] The adoption of European regional standards and elimination of non-EU standards in other markets can give preference to EU manufacturers. These impediments result in American businesses having to choose between the cost of redesigning their product, reconfiguring it, or exiting the market.[79]

While the U.S. and the EU have made progress in some areas, much work is still needed. The U.S. is also guilty of imposing distortive barriers, but the U.S. and the EU should work together to set an example for free trade that will optimize market competition.

The USTR's Objectives for U.S.–EU Trade Negotiations Are Based on Faulty Assumptions

On October 16, 2018, U.S. Trade Representative Robert Lighthizer officially notified Congress of the Administration's intention to begin trade negotiations with the European Union.[80] This began a congressionally mandated 90-day pre-negotiation consultation period under Trade Promotion Authority. In January 2019, after the conclusion of these consultations, including a public hearing held on December 14, 2018, the Office of the USTR published its "Summary of Specific Negotiating Objectives" for the U.S.–EU trade negotiations.[81]

Flawed Objectives of the U.S. Although this "Summary" is purportedly specific to the U.S. goals for its negotiations with the EU, it is in fact almost identical to the U.S. "Summary" for its trade negotiations with the United Kingdom, published a month later in February 2019.[82] In fact, though the negotiating objectives for the EU and the U.K. are prefaced by strikingly different introductions, the actual objectives differ in only two substantive ways. First, the section on "Intellectual Property" is significantly more detailed in the U.K. version of the objectives. Second, while the U.K. objectives call on the U.S. to "ensure fair, balanced, and reciprocal trade with the UK," the EU objectives strike a different and darker note by noting that the U.S. will seek to "improve the U.S. trade balance and reduce the trade deficit with the EU."

In short, what the U.S. seeks in its negotiations with the EU is, in substance, not very different from what it seeks in negotiations with other advanced economies, such as the U.K.: a range of improvements in market access, guarantees of fairness and transparency, commitments to avoid discrimination and—regrettably—the ability to continue non-conforming (protectionist) U.S. measures in various sectors. What is striking is that, even though the official introduction to the EU version of the negotiating objectives complains that "U.S. exporters [to the EU] in key sectors have been challenged by multiple tariff and non-tariff barriers for decades, leading to chronic U.S. trade imbalances with the EU," and even though the USTR has exhaustively documented the existence of these barriers, the actual U.S. negotiating objectives with the EU are devoid of objectives aimed specifically at the EU's trade barriers. What is different about the U.S. approach to trade with the EU is its attitude, not its aims.

The U.S.'s negotiating objectives with the EU are based on the assumption that, because the U.S. has a trade deficit with the EU, the trading relationship between the U.S. and the EU is defective, and that the point of U.S. negotiations with the EU is to remedy those defects and thereby reduce that deficit. Thus, as the U.S.—according to U.S. statistics—has a modest trade surplus with the U.K., the U.S. negotiating objectives for the U.K. only call for the U.S. to "ensure" that the bilateral trade relationship is "balanced." For the EU, the U.S. assumes that the July 25, 2018, intention to "strengthen" the U.S.–EU trade relationship declared by President Trump and European Commission President Jean-Claude Juncker should be achieved by "address[ing] both tariff and non-tariff barriers and...achiev[ing] fairer, more balanced trade." The U.S. negotiating objectives therefore imply—correctly—that the U.S.–U.K. trade relationship is already a constructive one and needs to remain as such, while the U.S.–EU trade relationship is imbalanced and needs to be made "fairer."

The U.S.'s negotiating objectives with the EU, in other words, are based on a vision of international trade in which the health of a trading relationship can be judged both by the "balance" of the trade and its overall size, with any lack of "balance" presumed to be the result of protectionism by the party enjoying the trade surplus. While U.S. trade with the EU certainly does suffer from EU protectionism—just as EU trade with the U.S. suffers from U.S. protectionism, as the official negotiating objectives tacitly admit—there is no guarantee whatsoever that eliminating all EU protectionism would bring "balance" to trade between the U.S. and the EU. The assumptions behind the U.S. negotiating objectives, while correct in their emphasis on EU protectionism, are otherwise fundamentally flawed, and could lead the U.S. to negotiate on the incorrect basis that "balanced" trade—instead of genuinely free trade—should be the U.S. goal.

U.S. Negotiating Objectives Seek "Balance" in Trade. The U.S. negotiating objectives have two more points of interest. First, in keeping with its generally dour tone, the "Introduction" is backward looking. While the introduction rightly notes that the exit of the U.K. from the EU "creates a new opportunity to expand and deepen the U.S.–U.K. trade relationship" and that it could "provide an opportunity to develop new approaches to emerging trade areas where the United States and the UK share common interests and are global leaders," the U.S.–EU negotiating objectives are entirely focused on America's "chronic…trade imbalances with the EU." While there are indeed many reasons to be cautious about trade negotiations with the EU, it is important that the U.S. not enter these negotiations with a defensive, backward-looking attitude.

Second, the "Introduction" warns that the U.S. "may seek to pursue negotiations with the EU in stages, as appropriate." This warning appears to presage deals like the U.S.–EU Beef Access Agreement, which was signed in August 2019, seven months after the negotiating objectives were announced. These sectoral deals may be good for the particular sectors that benefit from them, but in the end, even if they do increase U.S. exports, they amount to efforts to manage trade, not to free it. As such, the warning in the "Introduction" ties into the broader emphasis in the negotiating objectives that the purpose of U.S.–EU trade negotiations should be to manage this trade so as to bring "balance" to it, not to free it from government restraints and allow it to find its own, genuine level through the free market.

Principles of U.S. Negotiating Objectives. In short, the U.S. negotiating objectives for its trade negotiations with the EU are predicated on three principles of dubious merit. First, the "Objectives," as noted, are based on a vision of transatlantic trade that is to be managed—perhaps by sector agreements—into "balance." This is not a vision of free trade: It is a vision of managed trade. True, almost all governments suffer from the delusion that exports are good and imports are bad, instead of recognizing the reality that imports result from the free choices made by consumers. But this vision of managed trade is particularly ill-suited to negotiations with the EU, which has powerful protectionist lobbies of its own and which is far from averse to managing trade in ways that suit its own interests. The result is that both the U.S. and the EU risk entering trade negotiations with a defensive, managerial mentality that will encourage them to collude with each other's worst instincts and reduce the gains to be had from an agreement that promotes genuinely free trade.

Second, because of its emphasis on "balance" in trade, the "Objectives" take a dismissive tone toward the existing U.S.–EU trade, describing the $1.1 trillion in annual two-way trade as merely "significant" and following up this grudging acknowledgment with its complaint about the EU's trade barriers. A fairer perspective would be to state that trade between the U.S.

and the EU, while it has its problems, is vastly freer than it was in decades past, and that the current problems—no matter how vexing and deserving of attention—should not distract from the fact that much U.S.–EU trade is completely or nearly free, to the benefit of both parties. The point of U.S.–EU negotiations should be to build on what is already good in the trading relationship, not to worsen it or to create animosity between the parties. If an agreement cannot do this, it would be better not to negotiate at all.

Third, these objectives are excessively generic. While it is customary for U.S. negotiating objectives to mirror the Trade Promotion Authority, the generally downbeat U.S.–EU objectives are almost identical in verbiage to the U.S.–U.K. objectives, which rightly proclaim the transformative potential of a U.S.–U.K. agreement. While there are, of course, negotiating advantages to not tipping the U.S. hand, the fact remains that, even at the high level at which they are dealing, the U.S. objectives for the EU are not specific enough. The U.S. objectives are right to note that exporting to the EU poses particular issues and challenges for U.S. traders, but because the objectives are so generic, the principles the U.S. will use in confronting these issues remain obscure. If the U.S. is to make a success of any trade negotiations with the EU, it must begin with clear principles to guide those negotiations.

10 Principles for U.S. Trade Negotiations with the EU

In any trade negotiations with the EU, the U.S. should be guided by the following 10 principles:

1. **Do Not Fight Protectionism with Protectionism.** It is clear that the U.S. has significant causes for complaint about EU protectionism, just as the EU does about U.S. protectionism. The wrong way for the U.S. to fight the EU's protectionism is to engage in more protectionism of its own in the name of reducing the U.S. trade deficit, which is both an irrelevant and ineffective guidepost. In other words, the U.S. should not—as it has both done and threatened to do—impose more tariffs on EU trade with the U.S. as a way to oppose the EU's protectionism. This only raises costs in the U.S., as the costs of new tariffs on EU goods will be passed on to U.S. consumers and producers.[83] The right way to fight EU protectionism is to negotiate good agreements with the EU that uphold U.S. interests, and then to use agreed-upon dispute mechanisms to enforce those agreements.

2. **Do Not Allow Trade Negotiations to Become a Source of Animosity.** The U.S.—as well as the EU—should not lose sight of a simple fact: The trade relationship between the U.S. and the EU is already good. Of course, there is tension over matters such as the EU's airplane subsidies, EU agricultural policy, and Europe's digital taxes, to name three legitimate sources of U.S. grievance. But the fact remains that both the United States' and, even more so, the EU's, tariffs are generally low, that transatlantic trade is freer today than it has been at any point since World War II, and that the value of the trade between the U.S. and the EU is well over $1 trillion. Any trade negotiations between the U.S. and the EU should build on these achievements, not make the relationship worse. In other words, if it appears that no good trade agreement can be concluded between the U.S. and the EU, it would be better not to negotiate at all. Unsuccessful negotiations will only create animosity.

3. **Stick to Trade.** One of the EU's favorite ploys is to couple its trade negotiations with the negotiation of a wide-ranging political relationship that is then linked to the eventual trade agreement. For example, the EU's free trade agreement with South Korea was accompanied by a framework agreement that, in the EU's words, "provides a basis for strengthened cooperation on major political and global issues such as human rights, non-proliferation of weapons of mass destruction, counter-terrorism, climate change and energy security. This is an overarching political cooperation agreement with a legal link to the EU-South Korea Free Trade Agreement."[84] In any trade negotiations with the EU, the U.S. should flatly refuse to discuss any comparable political agreement, and should insist that the negotiations stick strictly to trade issues as conventionally understood. By the same token, the U.S. should avoid using the labor and environment chapters of the U.S.–Mexico–Canada Agreement (USMCA) as a template in its negotiations with the EU, as these chapters also go well beyond the issues that are relevant to trade.

4. **Avoid Sectoral Agreements that Manage Trade.** The USTR has already warned that the U.S. "may seek to pursue negotiations with the EU in stages, as appropriate," a warning that presaged the 2019 U.S.–EU Beef Access Agreement. The problem with agreements such as this is that, even if they expand trade in a particular sector, they are fundamentally efforts to manage trade in that sector for the benefit of

a particular set of producers. The purpose of free trade, by contrast, is to benefit the consumer, because in trade, the general interest of the consumer is always more important than the interest of a particular producer. As a result, the U.S. should generally avoid seeking sectoral deals, which also, on a practical level, detract from efforts to negotiate free trade agreements that cut tariffs and improve market access across the board. Of course, the best should not be the enemy of the good, and a sectoral agreement that ends the transatlantic squabble over airplane subsidies, for example, would be welcome. But the U.S. should avoid negotiating sectoral agreements that manage trade, even if the agreement manages trade by expanding it.

5. **Promote Market-Based Competition.** The ultimate goal of any U.S.–EU trade agreement should be to increase the amount of competition in the transatlantic market. The U.S. negotiating objectives are based on a vision of transatlantic trade that is to be managed—perhaps by sectoral agreements—into "balance." This is not a vision of free trade: It is a vision of managed trade that will reduce competition, not increase it. By the same token, the U.S. should firmly resist European efforts to promote an "almost obsessive research focus on international tax avoidance and evasion" in the Organization for Economic Co-operation and Development.[85] If the EU wants higher taxes, that is its concern. The U.S. should promote competition in the marketplace of public policy, just as it should in the market for goods and services.[86] A trade agreement that does not increase competition is not worthy of the description "free trade." If the U.S. and the EU cannot agree on this, then there is no basis for a worthwhile U.S.–EU trade agreement.

6. **Avoid Regulatory Harmonization.** Between advanced economies, such as the U.S. and the EU, the most significant restrictions on trade are not tariffs and quotas, but differing regulations and other non-tariff barriers to trade. The U.S. must resolutely oppose any agreement with the EU that is based on the principle of harmonizing these regulations. Regulatory harmonization is unacceptable for two reasons. First, the EU views regulatory harmonization as a way to spread the EU's low-growth economic model to its trading partners, so as to reduce the pressure their higher growth rates and regulations competition put on the EU.

   Second, in practice, regulations cannot be harmonized without taking on board the interests of today's large firms, which risks turning the entire process of harmonization into one shaped by current vested interests in a way that is bad for the freedom of the market as a whole. Any negotiations on regulations between the U.S. and the EU must be based on the principle of mutual recognition, which leaves each party free to regulate as it sees fit provided that its regulations seek to achieve similar purposes.[87]

7. **Seek Principled but Rapid Progress.** The TTIP negotiations have two lessons for future U.S.–EU trade negotiations. First, a correct decision on the scale of the negotiations needs to be made at the start. TTIP began as an effort to reach a comprehensive agreement, but it eventually became apparent that it was not possible to reach such an agreement. Second, negotiations should be concluded as rapidly as possible, while upholding U.S. principles. The longer the TTIP negotiations dragged on, the stronger the opposition to any agreement became, in part because the U.S. wrongly accepted regulatory harmonization.[88]

   In short, the U.S. should prefer a good, principled agreement that can be negotiated rapidly to a comprehensive agreement like TTIP that will take so much time to finish it might never be concluded at all. If that means that the best viable agreement is one that merely eliminates tariffs and quotas in U.S.–EU trade, then that is the agreement the U.S. should seek to negotiate.

8. **Avoid "Sphere of Influence" Diplomacy.** While U.S.–EU trade is valuable, the U.S. relationship with the EU is not the be-all and end-all of U.S. trade diplomacy. The U.S. has many other valuable trade partners, such as Britain, Japan, and, India. The EU is increasingly of the opinion that the world is being divided, or already is divided, into three major spheres of influence: the U.S. sphere, the Chinese sphere, and the EU sphere.[89] This is a dangerous point of view that risks becoming a self-fulfilling prophecy. It threatens to misunderstand trade as a zero-sum game, it ignores all of the world's middle powers, such as India and Britain, it posits a division between the U.S. and Europe that bodes ill for NATO, and it wrongly treats the EU—which has no hard power of note, low economic growth, and limited cultural capital—as an equal of the U.S. In any trade negotiations with the EU, the U.S. should avoid any implication that the U.S. views the EU as a separate "sphere of influence" that can prosper economically or defend itself militarily without close ties with the United States.

9. **Bring in Britain.** Trade negotiations between the U.S. and the EU do not exist in a vacuum. The U.K. will shortly begin negotiations with the EU to shape the post-Brexit trade relationship, while the U.S. and the U.K. have signaled their determination to negotiate a free trade area in 2020. If the EU successfully ties the U.K. into its regulatory area, the U.K. will not be able to negotiate a meaningful U.S.–U.K. free trade area, and Britain will in practice have lost its ability to have an independent trade policy. It is not in the interests of the U.S. to allow this to happen. Progress in the U.S.–EU negotiations should therefore depend on satisfactory conclusions being reached in both the U.K.–EU and the U.K.–U.S. negotiations, so that the U.S. does not commit to a new trade relationship with the EU until it is certain that both Anglo-American trade and the future of Britain's trade policy are secured.

10. **Engage with the WTO.** By blocking the appointment of new judges to the WTO's Appellate Body, which ultimately decides trade complaints between nations, the U.S. is carrying through on its argument that the Appellate Body has routinely exceeded its mandate and imposed new obligations on WTO member nations. As Robert Holleyman, Deputy U.S. Trade Representative in the Obama Administration, has put it, "The U.S. has consciously forced a crisis within the WTO around the Appellate Body because we believed that it had strayed over the years from its mandate and that the crisis was necessary to try to get a role change."[90]

The problem with the U.S. strategy is that it cedes the case for free trade in the WTO by default to EU ideas about managed trade, allows the EU to come up with de facto discriminatory measures such as France's digital tax while preventing an effective U.S. appeal to the WTO, and encourages the EU to create alternative institutions to the WTO in which the EU will enjoy a strong position.[91] It is not in the interests of the U.S. to allow the stalemate around the Appellate Body to persist: While any U.S.–EU agreement is likely to have dispute resolution procedures, an effective WTO is a necessary backstop to any U.S.–EU trade agreement.

What the U.S. Should Do

The U.S. faces a number of dilemmas in its trade relations with the EU. Two of these dilemmas are of its own making. First, the U.S. has a substantial trade deficit with the EU, but the Administration's efforts to reduce this deficit by imposing tariffs on EU trade with the U.S. are completely misguided and doomed only to raise costs on U.S. consumers and producers. The second dilemma is that, as the U.S.'s own negotiating objectives show, the U.S. has its own protectionist measures in various sectors, measures that it plans to exempt from any concession during its negotiations with the EU. This is a faulty vision for trade negotiations, as U.S. protectionism is just as wrong in principle as EU protectionism. The point of such negotiations should not be for each side to focus on extracting concessions from the other; it should be to reduce the overall level of protection on both sides of the Atlantic. But even if the U.S. abandoned its effort to manage U.S.–EU trade into balance and gave up its own non-conforming measures, other dilemmas would remain.

First, the example of TTIP demonstrates that failed trade negotiations can create significant animosity, and that overly ambitious negotiations take too long and are disproportionally likely to fail. In spite of the many vexing issues in U.S.–EU trade, it remains true that this trade is both very valuable and, by historical standards, remarkably free. Thus, while it is important to aim high enough to negotiate an agreement that makes a difference, the goal of the U.S. and the EU in trade negotiations should be, first of all, to do no harm. In other words, any agreement must be both good on its merits and sized appropriately to be negotiable. The U.S. should conduct careful exploratory discussions with the EU in order to be sure that it does not embark on the kind of damaging fool's errand into which the TTIP negotiations devolved.

Second, unless the U.S. and the EU simply stick to an agreement that eliminates tariffs, it will not be easy to arrive at a good, principled agreement. The problem with moving beyond such an agreement is that, in different ways, both the U.S. and the EU seek to manage trade, not to free it. The U.S. favors sectoral deals that will bring what it describes as balance to the U.S.–EU trade relationship, while the EU favors regulatory harmonization that will bring what it describes as a level playing field to trade in general, and which can only have a damaging effect on economic growth. Both of these goals are antithetical to the only kind of U.S.–EU trade agreement that is worth supporting: one that genuinely increases the freedom of trade by reducing the level of government involvement and increasing market-based competition in transatlantic trade. The U.S. should abandon its own obsession with managed trade, and categorically refuse to indulge the EU in its efforts to harmonize economic growth down to the EU's substandard levels.

Third, and finally, the U.S. and the EU will find it difficult to engage constructively on trade because of the number of knotty grievances—both old and new—that would have to be addressed in any ambitious agreement. For example, it is impossible to envisage an ambitious agreement that did not address the EU's agricultural protectionism, yet extremely difficult to imagine that the EU would be willing to negotiate constructively on agriculture. The EU likes to accompany its trade agreements with political declarations; the U.S. should categorically refuse to take its trade negotiations beyond the field of trade, strictly defined. The EU will seek to lock the U.K. into its rule-making orbit by demanding a so-called level playing field in its negotiations with Britain. The U.S. must organize its negotiating schedule with the EU so that both U.S.–U.K. and U.K.–EU negotiations are concluded satisfactorily before the U.S.–EU negotiations conclude. Finally, the EU's—and in particular France's—enthusiasm for digital taxes that are de facto discriminatory against U.S. businesses is a damaging new blow that will make ambitious negotiations even harder to conclude. In all of this, the U.S. should avoid fighting the EU's protectionism with protectionism of its own, should seek multilateral remedies when such remedies are available, and should work to expand the circle of nations outside the EU—especially Britain—that do not share the EU's damaging fixations that make an ambitious trade agreement difficult to envisage.

Conclusion

In the short run, many—though by no means all—of the bumps on the road of U.S.–EU trade have been created by the U.S. The fundamental problem from this short-term perspective is that the Trump Administration does not like the fact that the EU sells more to the U.S. than it buys from the U.S., believes that this fact is substantially the result of EU protectionism, and is determined to redress that balance. The result of this determination are the tariffs the U.S. has imposed, or threatened to impose, on EU trade with the U.S. The problem with this perspective is that there is no inherent reason why trade between the U.S. and the EU should be perfectly balanced, there is no reason to believe that EU protectionism is responsible for an overwhelming share of the U.S.'s deficit, and there is no reason to believe that U.S. tariffs will do anything more than punish U.S. consumers and producers for the EU's effrontery in selling more than it buys.

In the long run, however, the bumps on the road of U.S.–EU trade already stem disproportionately from the EU. The EU's enthusiasm for trade that is managed through the mechanism of regulatory harmonization, its refusal to negotiate seriously—or indeed at all—on agriculture, and the substantial public and political hostility to TTIP in the EU all demonstrate that the political basis for an ambitious trade agreement with the U.S. is weak, if not lacking entirely. To put simply, the kind of ambitious agreement that would make the heaviest political and economic impact is precisely the kind of agreement that the EU, in particular, will have genuine trouble negotiating and accepting. The EU's record demonstrates that it is good at negotiating trade agreements with smaller partners, but when it comes to the U.S., the EU is trapped between its ideological conviction that it has a sphere of influence on par with the U.S., and its reluctant recognition that it has no such thing. The result is that, as the TTIP negotiations illustrate, the EU is at best a reluctant negotiating partner for the U.S., a reluctance that the current U.S. infatuation with bringing "balance" to transatlantic trade does little to dispel.

In the end, both the U.S. and the EU may find that they have little political space for ambitious engagement on trade with each other. If so, they should negotiate with each other in good faith, and to the best of their ability, pocket the most worthwhile agreement that can be achieved, and move on. It would be unwise of the U.S. to fixate on redoing satisfactory agreements (as with the exchange of the North American Free Trade Agreement for the USMCA) and negotiating with the EU when the EU is sprinting ahead in negotiating new deals with new trading partners.[92] It is heartening to see the U.S. turning to serious negotiations with the United Kingdom, but it is impossible to escape the sense that the U.S. is being outpaced by the EU. Of course, trade is fundamentally a voluntary endeavor, and the EU cannot enrich itself at the expense of the U.S. by negotiating faster than the U.S. has chosen to do. But what the EU can do is spread its vision of managed and harmonized trade, a vision that is profoundly antithetical to the U.S.'s interests. In that sense, the wisest way to engage with the EU on trade is to have a broad and active U.S. free trade agenda, so that when the EU seeks to advance its vision, the U.S. has allies that are firmly committed to an agenda of genuinely free trade that can successfully push back against EU protectionism.

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Endnotes

1. For a history of these tensions, see Brock R. Williams and Keigh E. Hammond, "Escalating U.S. Tariffs: Timeline," Congressional Research Service, January 29, 2020, https://crsreports.congress.gov/product/pdf/IN/IN10943 (accessed February 4, 2020).
2. "Survey Shows Plunging Public Support for TTIP in U.S. and Germany," Reuters, April 21, 2016, https://www.reuters.com/article/us-europe-usa-trade/survey-shows-plunging-public-support-for-ttip-in-u-s-and-germany-idUSKCN0XI0AT (accessed February 4, 2020).
3. Andrew Walker, "TTIP: Are US–Europe Trade Talks Tanking?" BBC News, https://www.bbc.com/news/business-37212746 (accessed February 4, 2020).
4. European Commission, "U.S.–EU Joint Report on TTIP Progress to Date," January 17, 2017, http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155242.pdf (accessed March 1, 2020), and European Commission, "The Transatlantic Trade and Investment Partnership (TTIP)," April 15, 2019, https://ec.europa.eu/trade/policy/in-focus/ttip/ (accessed February 4, 2020).
5. Ana Swanson, "Trump to Impose Sweeping Steel and Aluminum Tariffs," *The New York Times*, March 1, 2018, https://www.nytimes.com/2018/03/01/business/trump-tariffs.html (accessed February 4, 2020).
6. Stephen Moore, Larry Kudlow, and Arthur Laffer, "Trump Must Think Twice About Tariffs," Heritage Foundation *Commentary*, May 2, 2018, https://www.heritage.org/trade/commentary/trump-must-think-twice-about-tariffs.
7. David Reid, "EU Trade Boss Says Brussels Is Ready to Scrap Car Tariffs If U.S. Does the Same," CNBC, August 30, 2018, https://www.cnbc.com/2018/08/30/eus-malmstrom-says-brussels-ready-to-scrap-car-tariffs-if-us-does.html (accessed March 4, 2020), and Philip Blenkinsop, "EU Deeply Disagrees with U.S. on Trade Despite Détente," Reuters, August 30, 2018, https://www.reuters.com/article/us-usa-trade-eu/eu-deeply-disagrees-with-u-s-on-trade-despite-detente-idUSKCN1LF1E0 (accessed February 4, 2020).
8. Mark Landler and Ana Swanson, "U.S. and Europe Outline Deal to Ease Trade Feud," *The New York Times*, July 25, 2018, https://www.nytimes.com/2018/07/25/us/politics/trump-europe-trade.html (accessed February 4, 2020).
9. News release, "United States and European Union Sign Breakthrough Agreement on U.S. Beef Access to EU," Office of the United States Trade Representative, August 2, 2018, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/united-states-and-european-union (accessed February 4, 2020).
10. "Notice of Modification of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute," Office of the United States Trade Representative, February 21, 2020, https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Modification_of_Section_301_Action_Enforcement_of_U.S._WTO_Rights_in_Large_Civil_Aircraft_Dispute.pdf (accessed March 24, 2020), and Yen Nee Lee, "U.S.–EU Trade Fight Could Drag on After 'Big Victory' at the WTO, Says Ex-Trump Official," CNBC, October 3, 2019, https://www.cnbc.com/2019/10/03/us-eu-trade-fight-could-drag-on-after-victory-at-wto-clete-willems.html (accessed February 4, 2020).
11. "US Airbus Row: European Goods Hit By New US Tariffs," BBC News, October 18, 2019, https://www.bbc.com/news/world-europe-50095338 (accessed February 4, 2020).
12. Tim Hepher and Philip Blenkinsop, "U.S. May Increase Tariffs After WTO Rejects EU Claims Over Airbus," Reuters, December 2, 2019, https://www.reuters.com/article/us-wto-aircraft/u-s-may-increase-tariffs-after-wto-rejects-eu-claims-over-airbus-idUSKBN1Y60YJ (accessed March 5, 2020), and Thomas Franck, "US Weighing 100% Tariffs on More EU Products Including Whiskies and Cognac, According to Documents," CNBC, December 15, 2019, https://www.cnbc.com/2019/12/13/ustr-weighing-100percent-tariffs-on-new-eu-products-including-whiskies.html (accessed February 4, 2020).
13. Ted R. Bromund, "U.S. Fighting An Old Trade Tussle," Heritage Foundation *Commentary*, July 16, 2019, https://www.heritage.org/trade/commentary/us-fighting-old-trade-tussle.
14. David Shepardson, "U.S. Has Not Ruled Out Tariffs On Imported Cars, Commerce Chief Says," *Automotive News Europe*, December 4, 2019, https://europe.autonews.com/automakers/us-has-not-ruled-out-tariffs-imported-cars-commerce-chief-says (accessed February 4, 2020).
15. United States Trade Representative, "Section 301 Investigation: Report on France's Digital Services Tax," December 2, 2019, https://ustr.gov/sites/default/files/Report_On_France%27s_Digital_Services_Tax.pdf (accessed March 5, 2020), and Dan Mitchell, "European Tax Greed and American Tech Companies," Center for Freedom and Prosperity, January 24, 2020, http://freedomandprosperity.org/2020/blog/european-tax-greed-and-american-tech-companies/ (accessed February 4, 2020).
16. Ana Swanson and Alan Rappeport, "U.S. and France Race to Conclude Digital Tax Talks as Tariff Threat Looms," *The News York Times*, January 7, 2020, https://www.nytimes.com/2020/01/07/business/economy/us-france-digital-tax.html (accessed February 4, 2020).
17. Bojan Pancevski and Sam Schechner, "France's Macron Pauses Tech Tax After U.S. Pressure," *The Wall Street Journal*, January 20, 2020, https://www.wsj.com/articles/frances-macron-pauses-tech-tax-after-u-s-pressure-11579564974 (accessed February 4, 2020).
18. For an example of this skepticism, see Ana Swanson and Jack Ewing, "U.S. and E.U. Are Headed for a Food Fight Over Trade," *New York Times*, March 6, 2019, https://www.nytimes.com/2019/03/06/us/politics/trade-deal-europe-usa.html (accessed March 5, 2020), and Bart Oosterveid, "US-European Trade Talks Stall," Atlantic Council *New Atlanticist*, June 7, 2019, https://www.atlanticcouncil.org/blogs/new-atlanticist/us-european-trade-talks-stall/ (accessed February 4, 2020).

19. James Politi, Chris Giles, Phil Georgiadis, and Jim Brunsden, "Trump and EU Promise to Press on to Reach Trade Deal," *Financial Times*, January 22, 2020, https://www.ft.com/content/988d8b3e-3d0f-11ea-b232-000f4477fbca (accessed February 4, 2020).
20. Ibid.
21. For the wider and historical issues raised by the current U.S.–EU trade tensions, see Ted R. Bromund, "Transatlantic Policy Impacts of the U.S.–EU Trade Conflict," testimony before the Subcommittee on Europe, Eurasia, Energy, and the Environment, Foreign Affairs Committee, U.S. House of Representatives, June 26, 2019, https://docs.house.gov/meetings/FA/FA14/20190626/109716/HHRG-116-FA14-Wstate-BromundT-20190626.pdf (accessed January 4, 2020).
22. U.S. Census Bureau, "Country and Product Trade Data," Trade in Goods by Country, Exports, Imports, and Trade Balance by Country, Monthly Totals, 1985–Present, Full Dataset, https://www.census.gov/foreign-trade/Press-Release/2018pr/12/index.html (accessed February 5, 2020).
23. Complete 2019 data is not yet available for both the U.S. and EU. For trade in goods only, recent data for trade in services is not available for both the U.S. and EU.
24. European Commission, "Client and Supplier Countries of the EU28 in Merchandise Trade (value %) (2018, excluding intra-EU trade)," https://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.pdf (accessed February 5, 2020).
25. United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 1, https://ustr.gov/sites/default/files/2019_National_Trade_Estimate_Report.pdf (accessed February 5, 2020).
26. The average U.S. tariff rate is 5.2 percent on agricultural products and 2 percent on non-agricultural goods. Megan Nelson and Veronica Nigh, "U.S. Tariffs in the Global Landscape," Farm Bureau, August 22, 2018, https://www.fb.org/market-intel/u.s.-tariffs-in-the-global-landscape (accessed February 12, 2020), and United States Trade Representative, "Industrial Tariffs," https://ustr.gov/issue-areas/industry-manufacturing/industrial-tariffs (accessed February 12, 2020).
27. In addition to agricultural products, U.S. consumer products and industrial products and materials were targeted in retaliation to the President's implementation of tariffs under Section 232 of the Trade Expansion Act of 1962. United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 167.
28. Additionally, in June 2018 the EU imposed retaliatory tariffs on agricultural products ranging from 10 percent to 50 percent in response to the President's imposition of tariffs on steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 167, https://ustr.gov/sites/default/files/2019_National_Trade_Estimate_Report.pdf (accessed February 5, 2020).
29. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 172, https://ustr.gov/sites/default/files/2019_National_Trade_Estimate_Report.pdf (accessed February 5, 2020).
30. The Meursing Table is covered under the EU's WTO commitments. Peter Unghphakorn, "This EU Tariff Takes The Biscuit: Annex 1—A Really Nerdy Look," Trade Beta Blog, August 18, 2016, https://tradebetablog.wordpress.com/2016/08/18/eu-tariff-biscuit-annex1/ (accessed February 12, 2020).
31. United States International Trade Commission, "Processed Foods and Beverages: A Description of Tariff and Non-Tariff Barriers for Major Products and Their Impact on Trade," Publication 3455, October 2001, https://www.usitc.gov/publications/docs/pubs/332/PUB3455.PDF (accessed February 12, 2020).
32. For more information on how to calculate the tariff rate of these goods, see Unghphakorn, "This EU Tariff Takes The Biscuit: Annex 1—A Really Nerdy Look," and United State International Trade Commission, "Processed Foods and Beverages: A Description of Tariff and Non-Tariff Barriers for Major Products and Their Impact on Trade," Publication 3455, October 2001, p. 4-10, https://www.usitc.gov/publications/docs/pubs/332/PUB3455.PDF (accessed February 12, 2020).
33. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 172, https://ustr.gov/sites/default/files/2019_National_Trade_Estimate_Report.pdf (accessed February 5, 2020).
34. United States Department of Agriculture, "Decoupled Payments, Household Income Transfers in Contemporary U.S. Agriculture," Economic Research Service, https://www.ers.usda.gov/webdocs/publications/41549/28469_aer822a_1_.pdf?v=0 (accessed March 11, 2020).
35. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 180, https://ustr.gov/sites/default/files/2019_National_Trade_Estimate_Report.pdf (accessed February 5, 2020).
36. Ibid.
37. Carol D. Miller, "Local Economies on Their Minds: Explaining European Preferences for Geographic Origin Food Labels," *International Social Science Review*, Vol. 94 (2018), p. 11, https://digitalcommons.northgeorgia.edu/cgi/viewcontent.cgi?article=1278&context=issr (accessed February 5, 2020).
38. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 187.
39. The European Commission must specifically grant exceptions.
40. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 187.
41. Ibid., p. 188.

42. U.S. Department of Agriculture, "Food and Agricultural Import Regulations and Standards Export Certificate Report," Foreign Agricultural Service, February 6, 2020, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Food%20and%20Agricultural%20Import%20Regulations%20and%20Standards%20Export%20Certificate%20Report_Brussels%20USEU_European%20Union_12-31-2019 (accessed February 12, 2020).
43. U.S. Department of Agriculture, "Certification," United States Mission to the European Union, last modified November 6, 2018, https://www.usda-eu.org/trade-with-the-eu/eu-import-rules/certification/ (accessed February 12, 2020)
44. Ibid.
45. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 188.
46. Ibid.
47. Ibid.
48. Ibid.
49. Ibid.
50. Ibid., p. 189.
51. European Commission, "Live Animals–Trade & Imports," https://ec.europa.eu/food/animals/live_animals_en (accessed February 12, 2020).
52. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 189.
53. Ibid., p. 184.
54. Ibid.
55. "The Indicator from Planet Money: Tariffs, Now with Extra Cheese," National Public Radio, August 6, 2018, https://www.npr.org/transcripts/636098132 (accessed February 12, 2020).
56. Ibid.
57. Ibid.
58. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 197.
59. Ibid., p. 198.
60. Ibid., p. 173.
61. European Commission, "Legal Certainty About Your Tariff Classification," last updated January 9, 2020, https://trade.ec.europa.eu/tradehelp/binding-tariff-information (accessed February 5, 2020).
62. Ibid.
63. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 173.
64. Ibid.
65. Ibid.
66. Office of the United States Trade Representative, "Key Barriers to Digital Trade," March 2017, https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2017/march/key-barriers-digital-trade (accessed February 5, 2020).
67. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 207.
68. Ibid., p. 211.
69. Ibid.
70. Adam Michel, "When It Comes to Taxation, Borders Matter—Europe and the U.S. Should Act Accordingly," Heritage Foundation *Issue Brief* No. 4855, May 29, 2018, https://www.heritage.org/taxes/report/when-it-comes-taxation-borders-matter-europe-and-the-us-should-act-accordingly.
71. Ibid.
72. Office of the United States Trade Representative, "2019 National Trade Estimate Report on Foreign Trade Barriers," p. 174.
73. Ibid., p. 174 and 175.
74. Ibid., p. 175.
75. Ibid.
76. Ibid.
77. Ibid., p. 176.
78. Ibid.
79. Ibid.

80. U.S. Trade Representative Robert E. Lighthizer to Speaker of the House Paul Ryan, October 16, 2018, https://ustr.gov/sites/default/files/20181017004903138_2.pdf (accessed January 29, 2020).

81. Office of the United States Trade Representative, "United States–European Union Negotiations: Summary of Specific Negotiating Objectives," January 2019, https://ustr.gov/sites/default/files/01.11.2019_Summary_of_U.S.-EU_Negotiating_Objectives.pdf (accessed January 29, 2020).

82. Office of the United States Trade Representative, "United States–United Kingdom Negotiations: Summary of Specific Negotiating Objectives," February 2019, https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf (accessed January 29, 2020).

83. Mary Amiti, Stephen J. Redding, David E. Weinstein, "Who's Paying for the US Tariffs? A Longer-Term Perspective," The National Bureau of Economic Research *Working Paper* No. 26610, January 2020, https://www.nber.org/papers/w26610 (accessed January 28, 2019).

84. European Commission, "South Korea," 2020, https://ec.europa.eu/trade/policy/countries-and-regions/countries/south-korea/ (accessed January 27, 2020).

85. James M. Roberts and Adam N. Michel, "Trump Cut America's Taxes: Now He Should Defund OECD Efforts to Raise Them," Heritage Foundation *Issue Brief* No. 4861, May 29, 2018, https://www.heritage.org/taxes/report/trump-cut-americas-taxes-now-he-should-defund-oecd-efforts-raise-them.

86. Ibid.

87. For more on the EU's "behind the border" protectionism and its implications for the composition of U.S.–EU trade, see James Roberts and Ivan Benovic, "The Prospects for U.S.–EU Trade in 2019," Heritage Foundation *Backgrounder* No. 3389, February 26, 2019, https://www.heritage.org/sites/default/files/2019-02/BG3389.pdf. For evidence of the growing concentration of—and declining competition in—the European market, see Oscar Guinea and Fredrik Erixon, "Standing Up For Competition: Market Concentration, Regulation, and Europe's Quest for a New Industrial Policy," European Centre for International Political Economy, March 2019, https://ecipe.org/publications/standing-up-for-competition/ (accessed February 4, 2020).

88. Ted R. Bromund, Luke Coffey, and Bryan Riley, "The Transatlantic Trade and Investment Partnership (TTIP): Economic Benefits and Potential Risks," Heritage Foundation *Backgrounder* No. 2952, September 17, 2014, https://www.heritage.org/trade/report/the-transatlantic-trade-and-investment-partnership-ttip-economic-benefits-and.

89. Colin Dueck, "Eastern Promises: Our German Problem," Foreign Policy Research Institute, January 10, 2020, https://www.fpri.org/article/2020/01/eastern-promises-our-german-problem/ (accessed February 4, 2020).

90. Adam Behsudi and Finbarr Bermingham, "The End of World Trade As We Know It," *Politico*, November 20, 2019, https://www.politico.com/news/2019/11/20/world-trade-end-donald-trump-072257 (accessed January 29, 2020).

91. Bryce Baschuk, "EU, China, 15 Others Form Alliance to Settle Trade Disputes," Bloomberg, January 24, 2020, https://www.bloomberg.com/news/articles/2020-01-24/eu-china-15-others-form-alliance-to-settle-trade-disputes (accessed February 4, 2020).

92. Note the lengthy list of EU trade agreements partially in force, pending, or being negotiated: European Commission, "Negotiations and Agreements," 2020, https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/ (accessed January 30, 2020).