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European Union services liberalisation in CETA

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Abstract: The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada has been suggested as a template for a future UK-EU trade relationship. To inform the ongoing debate surrounding a ‘Canada plus’ deal post-Brexit, this paper assesses in detail the services and investment chapters of CETA. We have scored each of the EU’s detailed commitments in CETA according to their degree of liberalisation, and aggregated the scores across member states and sub-sectors to provide a broad comparison between sectors. We find that, while in some sectors the EU is relatively open in CETA, in other sectors important to the UK such as financial services and transport services it remains significantly restricted. Further, we evaluate the extent to which the EU’s commitments in CETA improve on its pre-CETA commitments under the General Agreement on Trade in Services (GATS). This shows that although CETA generally offers a bit more liberalisation than the EU’s GATS schedule, it nevertheless follows the latter closely, so that sectors that are relatively protected under GATS remain protected in CETA.

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Key words: services trade; CETA; GATS; Brexit

1. Introduction

In the search for a framework for a future UK-EU trade relationship the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada has fallen under the spotlight. ‘Canada plus’ is frequently cited as a model, but it is not entirely clear what this ‘plus’ should entail. CETA offers a range of appealing aspects, such as a near 99% removal of tariffs on goods and an aim of closer co-operation in areas such as regulation, conformity assessments and standards. At the same time Canada retains power over its laws and sovereignty over its external trade policy, satisfying two of the UK government’s ‘red lines’.¹

At the end of 2017, Brexit secretary David Davis argued the case for a “Canada plus plus plus” (CETA+++)² agreement with a vision to achieve “an overarching free trade deal, but including services, which Canada doesn’t” – Morales (2017). The statement that CETA does not include services has been repeated numerous times, yet a large part of the long document is devoted to just that. The European Commission (2017) praises CETA as the most comprehensive trade agreement on services that has ever been concluded by the EU, and, in fact, one of the most contentious parts of CETA, and most vocally criticised elements during the negotiation process, was CETA’s provisions on services and investment. The European Public Service Union (EPSU, 2016) listed five main concerns on CETA with the first two stating “The inclusion of public services in CETA” and “CETA’s ‘negative list’ approach for services commitments and the inclusion of ‘standstill’ and ‘ratchet’ mechanisms that lock-in liberalisation.” So how do these contrasting statements square up? The UK is a services-driven economy. About 80% of UK output comes from the services sector and 45% of UK total exports are cross-border flows of services (Harris 2017). Therefore, a deal on services seems a high priority. If CETA is to be used as a framework for a future UK-EU trade deal, then it must be understood to what degree, if any, investment and services are liberalised in the agreement.

This paper aims to inform the debate by providing an overview of the level of services trade liberalisation offered by the EU in CETA. Summarising the liberalisation commitments across a wide range of sectors, we compare the remaining level of restrictiveness between sectors. This in turn enables us to identify the sectors where ‘pluses’ may be needed. We find that some sectors are, in fact, relatively open in CETA, contrary to statements that CETA contains nothing on services. However, our research also reveals that some sectors important to the UK such as financial services and transport services remain very significantly restricted.

We analyse all four modes for the delivery of services trade, including the EU’s commitments on the temporary entry and stay of natural persons (mode 4). Finally, we compare the level of commitments already made by the EU in the General Agreement on Trade in Services (GATS) with those in CETA and we find that, although CETA generally provides a higher degree of liberalisation than GATS, it nevertheless closely follows it by which the relatively protected sectors in GATS remain largely restricted in CETA.

CETA is relevant for the UK in at least two ways: first, as an indication of what a future UK-EU trade relationship could look like. CETA is the most comprehensive trade agreement on services ever concluded by the EU, so it sets a precedent for what the EU has been willing to offer to third countries. The places where it offers incomplete liberalisation are presumably the ones for which the

¹ For further discussion on the UK government’s red lines, see Gasiorek (2018)

UK will wish to negotiate ‘pluses’ to improve access. It is true that because the EU and the UK are already closely aligned on services (although not completely because the Single Market is still incomplete), it should be easier for them to agree deep integration arrangements than for any other pair of countries. However, the EU’s strictures about ‘cherry-picking’ in the final Brexit agreement indicate that even when agreement is technically easy, the EU may not wish to commit to deep integration over a large set of sectors. Thus, the precedent of CETA may still be relevant for the UK.²

Second, once the UK exits the EU it will also be required to leave CETA, and the UK may wish to roll-over or extend CETA in developing its trade relations with Canada. In this paper we concentrate on the first issue - CETA as a potential framework for future UK-EU relations - but that is not to say that the second consideration is unimportant.

2. Structure of services liberalisation in CETA

The GATS was the first set of multilateral rules covering trade in services. In GATS, services trade is defined according to four modes of supply:

Mode 1: Cross-border supply; where services are supplied from one country to another without either consumer or supplier moving physical location. For example: a UK customer receives advice over the phone from a call-centre abroad.

Mode 2: Consumption by a resident abroad; e.g. tourism, or international students.

Mode 3: Commercial presence; where foreign companies set up subsidiaries or branches to sell services locally. For example, a foreign retailer such as Lidl sets up a shop in the UK.

Mode 4: Presence of natural persons; where a natural person resident in one country travels to a different country to provide services. For example, a US lawyer travelling to the UK to provide legal advice.

Like the GATS, CETA also covers all four modes of supply; modes 1 and 2 are covered in chapter 9 (Cross-Border trade in services), mode 3 is discussed in chapter 8 (Investment) and mode 4 is covered in chapter 10 (temporary entry and stay of natural persons for business purposes). There are also additional chapters on financial services, international maritime transport, telecommunications and e-commerce respectively.

Services liberalisation in CETA, like GATS, is achieved through a set of key obligations that both parties commit to. In particular, these prohibit quantitative restrictions and discriminatory treatment of services, service suppliers and investors from the other party. The central obligations are market access³ and national treatment⁴. Further obligations prohibiting performance requirements and nationality requirements for senior management and board of directors are incorporated into the investment and financial services chapter. Additional obligations also apply to maritime transport - for example, obligations to allow the supply of feeder services between ports.

² Magntorn and Winters (2018) discuss the ‘cherry-picking’ constraint in more detail.

³ The Market Access obligation prohibits limitations on for example the number of suppliers, value of transactions, quotas, economic needs tests or similar.

⁴ National Treatment ensures that service suppliers or investors of the other party receives treatment no less favourable than what is accorded to national suppliers.

Broadly speaking there are two approaches to services liberalisation in trade agreements. The first is through a 'positive list', where only the services sectors that a party wishes to liberalise are listed. Any sectors that the party does not want to liberalise are simply excluded from the schedule. The alternative is a 'negative list' whereby all sectors are liberalised according to the aforementioned obligations by default, and the parties list the sectors or sub-sectors that they wish to limit or exclude from the obligations. For modes 1, 2 and 3 CETA uses a negative list, something that has been used in previous Canadian Free-Trade Agreements (FTAs) such as NAFTA but has never previously been used in an EU FTA.

A negative listing is usually considered to provide a greater degree of transparency and predictability (Marchetti and Roy 2009). Reservations in negative lists often contain legal citations giving reference to the existing legislation in the relevant sector and such transparency is valuable for service suppliers. Further, negative lists provide benefits in the sector dimension since all sectors are liberalised by default, increasing the scope for sectoral coverage and providing valuable clarity on the sectors that contain restrictions.

A negative list is not a guarantee of liberal treatment, however, as a glance at the extent of the exclusions and reservations in CETA makes clear. First, as in most agreements, the chapters contain a number of broad explicit carve-outs: services supplied in the exercise of government authority (as long as not commercial or in competition with others) and most air services are excluded altogether from CETA. The EU also excludes audio-visual services. In addition, there are hundreds of pages of further reservations made by both parties listed in two annexes:

Annex I lists all reservations for existing measures that the parties wish to maintain. These reservations are subject to standstill and ratchet mechanisms. Standstill essentially binds the status quo by ensuring that any restrictions listed in the annex are no more restrictive than the prevailing conditions. Ratchet means that any potential liberalisation of these measures in the future is 'locked in' and cannot be withdrawn at a later date.⁵

Annex II contains reservations for future measures, by which the parties retain the right to adopt new or different (more restrictive) measures in the future. This annex provides scope for future policy space and could be seen as listing the sectors where the EU or Canada are unwilling to make a binding commitment.

The extent of services trade liberalisation in CETA is therefore conditioned on the restrictions contained in these annexes. While annexes I and II apply to most of the chapters relating to services and investment, the presence of natural persons (mode 4) is dealt with separately in CETA using both positive and negative lists, and for this reason mode 4 is also discussed separately in this paper.

The Most Favoured Nation clause

An important feature of CETA is the inclusion of a Most Favoured Nation (MFN) clause that applies both to investment and cross-border trade (articles 8.7 and 9.5 respectively) and is further incorporated into the chapters on temporary entry and stay of natural persons, financial services and international maritime transport. Article 9.5 states that,

⁵ For further on this, see discussion in European Parliamentary Research Service (2017)

“Each Party shall accord to service suppliers and services of the other Party treatment no less favourable than that it accords, in like situations, to service suppliers and services of a third country.”

The principle of an MFN clause is not new. It is a central part of the WTO’s framework, outlined in article II of GATS. However, GATS Article V permits two or more parties to have deeper liberalisation between them that does not extend to other WTO members (i.e to offer each other preferences), provided that they do so in the context of a broad trade agreement.⁶ The MFN clause in CETA, however, applies whether or not the preferences are governed by such a trade agreement, and so implies that, except as qualified below, any CETA+ commitments entered into in an EU trade agreement with a third country (e.g. the UK after Brexit) must be extended to Canada in the relevant dimensions. The qualification excludes from MFN any very deep agreement that the EU signs with other countries (such as extending to them the rights and obligations of the Single Market):

“The EU reserves the right to adopt or maintain any measure which accords differential treatment to a country pursuant to any existing or future bilateral or multilateral agreement which:

- a) creates an internal market in services and investment;*
- b) grants the right of establishment; or*
- c) requires the approximation of legislation in one or more economic sectors.”⁷*

In the reservation, found in Annex II, an internal market is defined as *“an area without internal frontiers in which the free movement of services, capital and persons is ensured”*. The right of establishment requires in substance all barriers to establishment to be eliminated between the parties and includes the right for nationals of the other party to set up and operate enterprises under the same conditions as provided for the nationals of the hosting party. Finally, the approximation of legislation requires the alignment of the legislation of one party with the legislation of the other party, or the incorporation of common legislation into the law of the parties. FTAs rarely mandate such deep levels of integration and alignment, thus meeting these conditions would require an agreement to go way beyond the provisions of most existing FTAs. However, unless at least one of these conditions are satisfied, a more favourable treatment provided by the EU to a third party, even if made through a comprehensive trade agreement, must also be made available to Canada.

Annex I and II contain a few reservations with respect to the MFN clause, giving the relevant party the right to provide differential treatment to a third party where such a reservation exists. Moreover, similar to other trade agreements, the MFN clause in CETA does not apply to measures providing for recognition (such as the recognition of accreditation of testing and analysis services).

The MFN clause poses a challenge in a UK-EU trade negotiation, as it may limit the EU’s willingness to offer more favourable terms to the UK if it then must also offer this treatment to Canada.⁸ Similar MFN clauses can also be found in other recent EU trade agreements, such as the EU-Korea agreement. We note in passing that the clause poses an even greater challenge for Canada and Korea extending favourable terms to the UK, because they would similarly be required to extend ‘for free’ the concessions to the EU, which is six times larger than the UK.

⁶ For further details, see Lydgate and Winters (2017)

⁷ See CETA Annex II, EU/CA/R/Annex II/ en 117

⁸ One wit has suggested that this is what the third ‘plus’ stands for ‘extra liberalisation for the UK *plus Canada*’.

3. Methodology

This section briefly outlines our approach to quantifying the degree of services liberalisation in CETA, more detailed information can be found in the Appendix. Quantifying trade agreements in services is notoriously difficult due to the way that commitments and restrictions are scheduled. It inevitably involves a level of subjectivity when evaluating the degree of restrictiveness of a commitment. Hoekman (1996) established a methodology for quantifying services commitments which has been widely used in these type of analyses since. Inspired by Hoekman’s methodology, each EU liberalisation or reservation is scored as 0, 50 or 100.

The majority of reservations in Annex I and II utilise the Provisional Central Product Classification (CPC) system from 1991 to reference which services sector(s) the reservation applies to.⁹ The CPC provisional contains 10 categories, of which categories 5 to 9 containing non-transportable goods and services are relevant to our analysis. At the most detailed level these five categories contain a total of 675 subclasses. We utilise these 675 CPC lines to map each reservation against the associated sector. Box 1 summarises the reasoning behind the three scoring thresholds.

Box 1: Scoring commitments in CETA

Commitment	Score
Full commitment is taken, no restrictions apply	100
Partial restrictions apply	50
Unbound restrictions apply: the EU reserves the right to adopt or maintain any limitations now or in future.	0

As seen, a value of 100 is assigned to the sectors where full commitment is taken by the EU. In the case of CETA this means the sectors which are excluded from the annexes (since these are liberalised by default following the negative list). All reservations considered ‘bound’, i.e. partially liberalised or subject to particular restrictions, are given a value of 50. In the cases where a reservation applies to only part of a sector or CPC code a score of 50 is also given to reflect the partial coverage. The overall exclusions of public utilities, audio-visual services and air services have been incorporated into the analysis as far as possible.

Ideally, each reservation should be analysed according to its restrictiveness. For example, a limit on foreign ownership of 50% is clearly less restrictive than a limit of 10%, and so the two should ideally be scored differently. However, despite its many advantages, such an approach requires sectoral expertise, is very labour intensive and is still inherently subjective. Our simpler approach avoids some of this subjectivity, but as a result estimates should be viewed as indicative rather than precise and also therefore not perfectly comparable across sectors.

There are reservations both at the EU wide level, as well as for individual EU member states. At the EU-wide level there are 44 reservations (Annex I and II combined) and there are a further 510 reservations applying to different EU member states (excluding the UK’s reservations). The country

⁹ There are several versions of the CPC, of which CETA uses the very first version, CPC provisional. United Nations, 1991, Statistical Papers series M, no 77. Downloaded from: <https://unstats.un.org/unsd/cr/registry/regdnld.asp?Lg=1>

with the most reservations is Bulgaria with 39 individual reservations, besides those that apply to the EU as a whole, and the country with the fewest is Luxembourg with only 3 country specific reservations.

The aim of our analysis is to evaluate the degree of services liberalisation granted by the EU in CETA, as an indication of where the UK would need to negotiate further concessions ('pluses'). We are therefore interested in the commitments made by the EU-27, and for this reason the UK's country specific reservations are excluded from the analysis.

Box 2 provides two examples of EU-wide Annex II reservations (the descriptive text has been omitted). As can be seen, each reservation lists several corresponding CPC codes and in some cases the same CPCs are listed in both reservations (highlighted in red). In some services categories up to 6 separate EU-wide reservations apply, adding to the complexity of the trading environment.

Box 2: Example of reservations

Annex II: EU/CA/R/Annex II/ en 137	Annex II: EU/CA/R/Annex II/ en 138
<p>Sector: Transport Sub-Sector: Water transport Industry Classification: ISIC rev 3.1 0501, ISIC rev 3.1 0502, CPC 5133, CPC 5223, CPC 722, CPC 74520, CPC 74540, CPC 74590, CPC 882 Type of Reservation: National treatment Market access Senior management and board of directors Description: Investment</p>	<p>Sector: Transport Sub-Sector: Water transport Industry Classification: CPC 5133, CPC 5223, CPC 721, CPC 722, CPC 74520, CPC 74540, CPC 74590, Any other commercial activity undertaken from a ship Type of Reservation: National treatment Market access Senior management and board of directors Obligations Description: Investment, Cross-Border Trade in Services and International Maritime Transport Services</p>

It is difficult to accurately assign a score that reflects the impact of a combination of restrictions in the same sector. Therefore, in our analysis, the presence of multiple reservations for the same CPC, such as the one highlighted above, does not impact the overall score. If all reservations are partial then the overall score will still be 50. If one reservation is considered unbound and others are partial, the overall score will be 0. As such, the most restrictive reservation is reflected instead of adding together the scores from multiple reservations. However, in reality, the more restrictions that apply in a sector the more difficult it is likely to be for the other party to trade in that sector.

Finally, it seems fair to assume that an EU-wide reservation should be given more weight than an individual reservation for only one Member State. Therefore, in most of our summary statistics, reservations for EU member states have been weighted according to their economic size.¹⁰ An EU-wide reservation is given a weight of 100% unless the reservation specifies that particular countries are excluded from it, in which case the weight has been adjusted to reflect this.

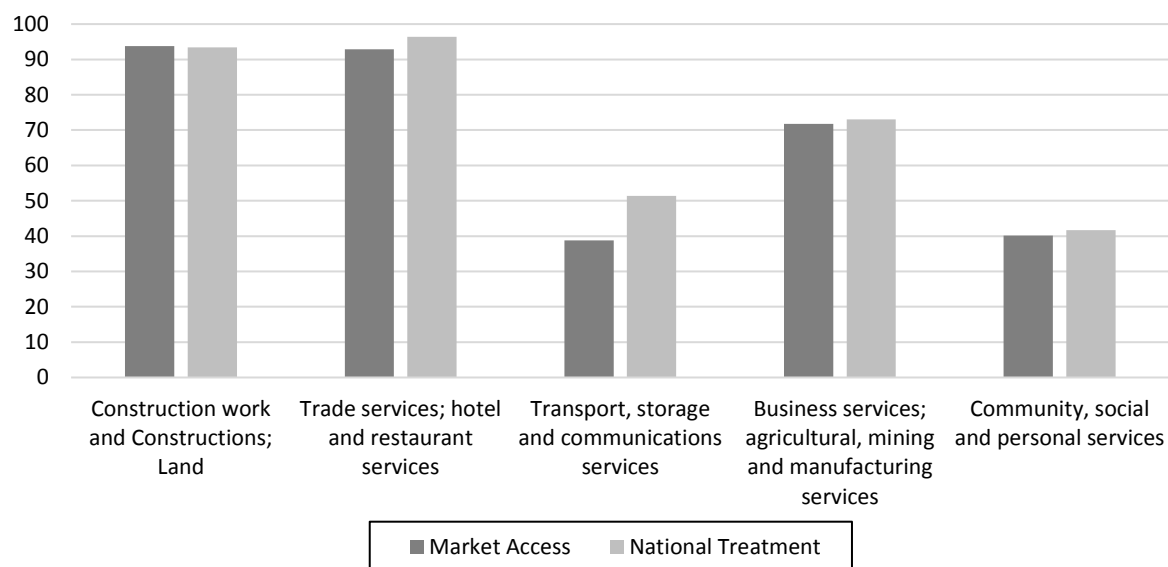
¹⁰ Economic size is approximated by each country's share of EU GDP as given by Eurostat, calculated for years 2016, 2015, 2014 and then averaged across the three years. The UK's contribution to EU GDP has been excluded since the UK's reservations are excluded from the analysis.

4. Services liberalisation in CETA

Market access and national treatment are CETA's two most central obligations and the data presented in figure 1 therefore focus on these. The scores combine reservations applying to cross-border trade (modes 1 & 2) and investment (mode 3) where the lowest overall value (most restricted) is reported. The lower the score, the lower the degree of liberalisation. As such, a value of 0 means that there is at least one unbound reservation applying to the EU as a whole, whereas a value of 100 indicates that no restrictions apply and the sector is fully liberalised according to the relevant obligation. The values should be read with a few caveats in mind; first, a value of 0 does not necessarily mean that the sector is entirely closed to trade. It simply denotes the fact that the EU reserves the right to maintain or adopt any restrictions now or in the future with respect to at least one mode of supply in the sector. Second, as discussed earlier, the estimates are not necessarily informative as to the depth of the commitments. Hence, two sectors having the same score does not necessarily mean that they have the same level of restrictiveness in practice.

An overall average across all sectors covered in the CPC list gives a score of 68 (out of 100) for market access and 72 for national treatment. This indicates that overall there is a decent level of liberalisation with regard to both obligations, but still far from complete. At the most aggregated level of the CPC there are five services sectors, and as seen in Figure 1 the level of restrictiveness varies quite considerably between them. Notably, no sector is fully liberalised (score of 100) but no sector is fully unbound either. Trade in construction work and hospitality services is relatively more liberal whereas that in transport, storage, communication services and community and social services faces a higher degree of protection. Overall, restrictions on market access and national treatment are fairly similar with the national treatment obligation generally slightly more liberal.

Figure 1: EU liberalisation in CETA for main services categories



N.B. The estimates combine reservations for mode 1, 2 and 3 where the lowest overall score is reported. The scores are weighted according to economic size and range between 0 and 100 where 100 indicates full commitment and 0 indicates unbound restriction.

This level of aggregation disguises significant differences within each sector. The level of restrictiveness is, for example, high for transport services, but relatively low for communication services. Similarly there are a number of restrictions for financial services but there are no restrictions to computer services in the same category. Table 1 therefore contains estimates at a more granular level. This table also includes scores for the MFN provision, estimated using the same methodology as outlined earlier.¹¹ The estimates in Table 1 again range between 0 and 100. For each of the three obligations (market access, national treatment and MFN) the top and bottom (most liberal and most restricted) quartiles are marked in green and orange respectively. To give a sense of the size of the sectors and the relative importance of the EU as an export market for the UK, the final two columns provide export data for a number of services categories defined in the ONS Pink Book (2017). The left-hand column gives each sector's share of total UK services exports in 2015, and the right-hand column has the corresponding share of these exports that went to the EU. These categories match reasonably well to the sectors defined in CETA, however, due to slight differences in classification, they are not perfectly comparable. One caveat is that for some sectors trade might predominantly take place through establishing a local presence (mode 3) or through mode 4, which would not be reflected in the ONS figures since they only account for cross-border trade flows.

¹¹ This means that an MFN score of 100 implies that the MFN provision applies fully whereas a score of 0 means that there is an unbound reservation with regard to the MFN obligation applying to at least one mode of supply in the sector.

Table 1: Degree of EU liberalisation in CETA

Most liberal and most restricted quartiles marked in green and orange respectively

Description	Market Access	National Treatment	MFN treatment	Share of total services exports*	Share to the EU*
				<i>Insurance, Pension & Financial services</i>	
Financial services, insurance and pension fund services	21	27	83	29.4%	41.2%
				<i>Other Business Services</i>	
Research and development services	68	68	100	28.1%	34.6%
Market research, management and consulting and related services	100	100	100		
Legal, accounting, auditing and book-keeping services	57	52	99		
Taxation services	83	82	100		
Architectural, engineering and other technical services	84	85	97		
Agricultural, mining and manufacturing services	88	89	97		
Other business services	72	72	98		
Real estate services	98	97	100		
Leasing or rental services without operator	92	91	96		
Sewage and refuse disposal, sanitation and other environmental protection services	92	100	100		
Retail trade, wholesale trade and repair services	93	96	100		
Other services not elsewhere included	99	99	100		
				<i>Travel</i>	
Hotel and restaurant services	100	100	100	13.0%	42.6%
				<i>Transportation</i>	
Land transport services	20	33	14	11.2%	45.0%
Water transport services	0	0	0		
Air transport services	14	21	43		
Supporting and auxiliary transport services	45	69	68		
Postal and courier services	50	100	100		
				<i>Telecoms, computer, information services</i>	
Telecommunications services	90	90	100	7.8%	42.9%
Computer and related services	100	100	100		
News agency services	91	91	100		
				<i>Intellectual Property</i>	
Intangible assets such as patents and copyrights	100	100	100	5.6%	35.2%
				<i>Personal, cultural and recreational</i>	
Recreational, cultural and sporting services	21	21	21	1.2%	23.8%
Education services	46	46	100		
Health and social services	32	39	86		
				<i>Government services</i>	
Public administration, services to the community as a whole	0	0	0	1.1%	22.4%
				<i>Construction services</i>	
Construction work; real estate and land acquisition	94	93	100	0.7%	44.8%
N.B. Scores range from 0 to 100; 0 indicates unbound restrictions and 100 shows full commitment. The scores combine reservations applying to cross-border trade (modes 1 & 2) and investment (mode 3) where the lowest overall value (most restricted) is reported.				Data from ONS Pink Book 2017 (authors' own calculations)	
* The sectors defined in the ONS Pink Book (in the grey rows) have as far as possible been matched with the sectors in CETA (in the first column), but due to some differences in classification the sectors are not perfectly comparable.					

Clearly, there are some sectors for which the EU is fully or close to fully open; hotel and restaurant services, market research, management and consulting services, computer services and real estate services, to name a few. In these sectors no EU-wide reservation exist, but in some cases a few

individual member states have taken reservations against the sector. This highlights the complex environment that surrounds trade in services. Unlike trade in goods, the EU has no common external policy with regards to trade in services. This means that, in most sectors, a trading partner faces different restrictions in different member states, and must negotiate at that level if it wishes to relax them. For example, in real estate services, most EU members are fully open, but Czech Republic, Hungary, Croatia, Portugal, Slovenia and Denmark have made reservations with varying degree of restrictiveness. Nevertheless, the low level of restriction signals that these sectors are relatively open to Canadian investors and service suppliers.

Unsurprisingly, the sectors most commonly associated with public funding, such as public administration, health, education and social services all have a high degree of restrictiveness. Indeed, where a service is supplied in the exercise of government authority it is not subject to the agreement's obligations. The EU also has a horizontal market access reservation regarding the right to impose public monopolies or grant exclusive rights to private operators in services considered to be public utilities (more details in Table 2). There are further reservations relating specifically to education, health and social services both at the EU wide level and for individual member states, some of which are considered unbound.

The transport sector also exhibits a relatively high degree of protection. Air services are largely excluded in CETA, except for services related to repair and maintenance, selling and marketing of air transport services, computer reservation systems, ground handling services and airport operation services. There are limitations applicable to these services as well, such as establishment requirements and restrictions on ownership of capital and control of aircraft. For water transport there are a number of restrictions both at the EU wide level and for individual member states relating, for example, to the registration of vessels, establishment requirements, nationality conditions of crew and restrictions on the supply of national cabotage transport services. Further, under business services, the legal, accounting, auditing and book-keeping sector also has a relatively high degree of protection. Many EU member states have taken at least one reservation against legal services particularly with regards to domestic and EU law where admission to the Bar and residency is often required.

One caveat that should be noted is that some sectors, such as air transport, are governed by bilateral agreements separate from CETA: that is, in some sectors access and regulatory matters will be handled at sectoral level outside of CETA and in such cases Table 1 may overstate the restrictiveness.

In some regards Table 1 provides good news for the UK. Telecommunication, computer and information services accounted for 7.8% of UK's total cross-border services exports in 2015, and 42.9% of these exports went to the EU. These services are relatively liberal in CETA and thus while UK services trade will still suffer post-Brexit from the absence of the 'architectural' aspects of the Single Market – access to a common court, the free mobility of labour and a common data regime – at least there will not be many additional sectoral restrictions.¹²

More problematic, however, are the restrictions on insurance, pension and financial services and transport services; combined, these sectors accounted for 40.5% (£93 billion) of total UK cross-border services exports in 2015, of which 42% (£39 billion) went to the EU. If Brexit reduced access to the EU in these sectors this would likely have a negative impact on exporters in the UK.

¹² In Magntorn and Winters (2018) we expand further on these 'architectural' aspects not included in CETA.

One glimmer of light could come from the restrictions on the MFN clause in transport services (see Table 1) where, in some sectors, the EU has reserved the right to accord differential treatment to a third country pursuant to existing or future agreements. As a result, in these sectors, the EU could offer preferential treatment to the UK without having to extend it to Canada, which might make the EU more likely to agree concessions to the UK in these sectors. Elsewhere, however, MFN applies almost completely which will discourage deep EU concessionality.

Financial Services

Chapter 13 in CETA is dedicated to financial services. It encompasses both cross-border service suppliers under modes 1 and 2, as well as financial institutions establishing a commercial presence under mode 3. The obligations of market access, national treatment and Most Favoured Nation treatment are incorporated and apply to all modes of supply. Further, nationality requirements of senior management and board of directors are prohibited and performance requirements are to be negotiated between the parties.¹³

Article 13.1 defines a long list of financial services for the purposes of the agreement, ranging from insurance services to banking services such as lending and deposit taking, money transmission services, trading, asset management and money broking. However, with respect to cross-border trade, market access and national treatment obligations apply only to a fraction of these services, as outlined in Annex 13-A in CETA. Only a narrow range of insurance services are included relating mainly to insurance of certain forms of transport and freight, insurance intermediation with respect to these services, reinsurance and retrocession, and services auxiliary to insurance. With respect to banking services only three activities are included;

- “the provision and transfer of financial information, and financial data processing and related software”,
- “advisory and other auxiliary financial services relating to banking and other financial services”,¹⁴ and
- Portfolio management services not including custodial services, trustee services or execution services.

Thus, overall, CETA considerably limits the scope for cross-border trade in financial services. In addition, annexes I and II contain further reservations with regards to both cross-border trade and investment in financial services, both at the EU-wide level and for individual member states. These range from requirements to take specific legal forms, establishment requirements, licensing and authorisation requirements and residency requirements for senior managers or board members.

Like all trade agreements, CETA contains a prudential carve-out (article 13.16) giving each party the right to take ‘reasonable’ measures for prudential reasons – to protect investors and depositors, maintain safety and ensure integrity and stability of the financial system. Article 13.17 contains a public entity exception which excludes financial services supplied by a government, central bank or

¹³ The disciplines on performance requirements relating to financial services are to be negotiated within three years of the entry into force of the agreement. If no agreement is reached after three years the provisions on performance requirements according to the investment chapter, article 8.5, will apply.

¹⁴ The full list of qualifying services is found in Annex 13-A of CETA and apply to all EU members except Belgium, Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Romania and Slovenia who all committed slightly different bundles of sectors.

monetary authority. Most importantly for the UK, CETA does not provide anything similar to the current passporting rights that the UK benefits from as a member of the single market because a local license is still needed for the provision of services in CETA (Hill and Kent 2017).

Horizontal reservations

Some reservations are horizontal in nature and apply to most or all sectors. Such reservations have not been included in the analysis because they would simply have to be applied across all CPCs and would thus obscure the sectoral differences shown in Table 1. Table 2 summarises all EU-wide horizontal reservations. There are further horizontal reservations applying to individual member states, often with regards to conditions for establishment, operation of branches and requirements to take a specific legal form, but these are not detailed in the table below.

Table 2: Horizontal reservations applying to the EU as a whole

Annex	Sectors	Obligations	Modes of supply	Summary description
I	All Sectors	National treatment	Investment	Confirms that companies or firms formed in accordance with the law of a Member State of the EU with their registered office, central administration or principal place of business in the EU, including those established in the Member States of the EU by Canadian investors, are entitled to receive the treatment accorded by Article 54 of the Treaty on the Functioning of the European Union.
II	All Sectors (except telecommunications and computer and related services.)	Market Access	Investment	In all Member States of the EU, services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators.
II	All Sectors	Most favoured nation	Investment, Cross-Border Trade in Services	Outlines the conditions by which the MFN rule no longer applies, as discussed earlier.
II	All Sectors	Most favoured nation	Investment	Enables the EU to accord differential treatment through existing or future bilateral agreements between the following Member States of the EU: BE, DE, DK, EL, ES, FR, IE, IT, LU, NL, PT, UK, and any of the following countries or principalities: San Marino, Monaco, Andorra, and the Vatican City State.

5. Mode 4 (Presence of Natural Persons)

The General Agreement on Trade in Services' (GATS) fourth mode of service delivery is mode 4 – the Movement of Natural Persons – which covers cases where the service provider moves to the purchaser's location to deliver the service. This is the most sensitive of the modes and the one which achieved the least liberalisation in the Uruguay Round and subsequently. The relevant part of CETA is Chapter 10 - Temporary entry and stay of natural persons for business purposes.

In terms of a possible UK-EU trade agreement, it is important to recognise that even the most liberal mode 4 agreement is no substitute for the freedom of movement of workers guaranteed by the European Single Market. Mode 4 grants the right to travel to a country to provide a service, subject to

a number of conditions, whereas freedom of movement grants access to the labour market: in the former, entry is defined in terms of the service (usually restricted to a specific contract negotiated prior to arrival) whereas the latter allows a worker to take any job open to locals. All mode 4 obligations are over-ridden by a country's regulations governing the issue of visas which are not considered trade restrictions, so long as these are not obviously operated to nullify those obligations.

It is also worth noting that the UK is notably restrictive in terms of mode 4 regulations. It has been widely reported that UK resistance to inward mobility was a barrier to concluding an EU-India agreement (Boffey, 2017, and Boffey and Doshi, 2016), and, when we record different EU members' restrictions on specific categories of mode 4 mobility below, the UK government registers restrictions in every single class that we distinguish. Thus, the policy constraint in this area, is less likely to be the EU's restrictions than the UK's.

CETA describes access rules in terms of key personnel, short-term business visitors, contractual service suppliers and independent professionals. It uses a combination of positive and negative lists. In this section we summarise CETA's provisions and related reservations in each of these categories, using the same approach as earlier. All temporary visitors are subject to local employment and social security laws (including minimum wages regulations)

All provisions in Chapter 10 – i.e. pertaining to movement of natural persons – are subject to the MFN clause. This would imply that if the EU were to grant the UK more favourable access to its services sectors through mode 4, it would be obliged to extend that treatment to Canada.¹⁵

Key Personnel

Key personnel are covered by Article 10.7. They are managed by a negative list, and the default treatment

- prohibits quantitative restrictions, economic needs tests and prior approval regimes for visitors for business purposes,
- permits investors and intra-corporate transferees (ICTs) to take temporary employment, and
- records time limits on visits, most of which are the same as EU MFN limits, but with somewhat more generous extension facilities.¹⁶

Key personnel covers four categories; business visitors for investment purposes, investors, intra-corporate transferees (specialists and senior personnel) and intra-corporate transferees (graduate trainees). Overall, movement in these categories is pretty liberal. Twelve EU member states have no reservations against any category, while three countries (plus the UK) have non-conforming measures in every category. The investor category has the most reservations, with eleven members recording them. However, weighting countries by their economic size, suggests that the most restricted category, with a weighted score of 70 out of 100, is graduate ICTs. Business visitors for investment purposes and specialists and senior personnel ICTs have weighted scores of 98 and 96 respectively, indicating a high degree of commitment across the member states in these categories.

Short-Term Business Visitors

¹⁵ This is certainly true for the sectors and issues governed by negative lists and for the sectors included in the various positive lists we refer to below; it is not clear to us, however, whether it applies to extensions to those positive lists.

¹⁶ For example, in the EU's Intra Corporate Transfer Directive (2014/66/EU) which applies to third countries, the maximum ICT duration is 3 years for managers and specialists and 1 year for graduate trainees, see EY (2016). This is similar to CETA, but CETA offers a possible extension of up to 18 months for senior personnel and specialists.

Article 10.9 applies to Short-Term Business Visitors and a positive list in Annex 10-D defines the qualifying activities for this category:

- Meetings & Consultations
- Research & Design
- Marketing research
- Training seminars
- Trade fairs and exhibitions
- Sales
- Purchasing
- After-sales or after-lease service
- Commercial transactions
- Tourism personnel
- Translation and interpretation

Four member states (Denmark, Croatia, Latvia and Slovakia) have made bound reservations applicable to all activities, mainly relating to work permits and economic needs test. But as with key personnel, the overall position is fairly liberal with weighted scores above 90 in most categories.

Contractual Service Suppliers (CSSs) and Independent Professionals (IPs)

CSSs and IPs are governed by Article 10.8 and Annex 10-E which contains a positive list of the sectors where obligations relating to contractual service suppliers and independent professionals apply, and also reservations to those obligations. For contractual service suppliers, the positive list implies full or partial coverage in 47% of the services categories included in the CPC provisional list, while for independent professionals this drops to 31%; in addition, there are quite extensive lists of reservations.

For some member states (Austria, Belgium, Czech Republic, Lithuania, Malta and Portugal) horizontal reservations apply to all sectors. These relate to the maximum length of stay for CSS and IPs where this is different from the general obligation in CETA. For example, Austria limits the maximum stay for CSS and IPs to a cumulative period of not more than six months in any 12 month period, compared to the 12 months in any 24 month period that is the general obligation. Many of the sector specific reservations relate to economic needs tests, and there are also a number of unbound reservations applicable to specific member states and sectors. The most restricted sector is higher education services where all member states have made reservations both for CSS and IPs. In five countries, every eligible sector for CSS has at least one non-conforming measure, and for IPs this increases to 10 countries. Overall, IPs are more restricted than CSS both because a smaller number of sectors qualify and also because, generally, more countries have made reservations.

For the more than half of service sectors not included in the CETA positive list for CSSs and IPs, the EU's MFN obligations will apply, which may or may not be restrictive. However, in these sectors CETA confers no special advantage on the parties.

6. Adding it all together

So far we have shown the restrictiveness in CETA from the view of the relevant obligations. Our analysis also allows us to summarise the restrictiveness across the four modes of supply as seen in Table 3. Overall, investment and cross-border trade show similar levels of restrictiveness, with

investment marginally more liberal. The one exception is in financial services where the treatment of cross-border trade is significantly more restricted, mainly for prudential reasons and the need felt by regulators to have full jurisdiction over the financial firms they supervise. For mode 4 only CSS and IPs are presented in the table as the provisions for key personnel and short-term business visitors are horizontal in nature. Since the conditions applying to CSS and IPs are different from those applicable for modes 1 to 3, a direct comparison between scores is not possible. Specifically, for mode 4 a score of 100 merely means that the relatively limited commitments made in chapter 10 are not further curtailed.

Table 3: Level of liberalisation in CETA according to modes of supply

Sector	Mode 1+2	Mode 3	Mode 4 (part of)*	
	Cross-Border Trade in Services	Investment	CSS	IP
Financial services, insurance and pension fund services	26	46	45	45
Research and development services	68	68	51	48
Market research, management and consulting and related services	100	100	95	81
Legal, accounting, auditing and book-keeping services	52	57	56	25
Taxation services	82	82	93	0
Architectural, engineering and other technical services	85	89	82	55
Agricultural, mining and manufacturing services	90	89	49	32
Other business services	73	77	9	1
Real estate services	97	99	0	0
Leasing or rental services without operator	91	95	0	0
Sewage and refuse disposal, sanitation and other environmental protection services	93	93	77	0
Retail trade, wholesale trade and repair services	96	93	5	0
Other services not elsewhere included	99	99	0	0
Hotel and restaurant services	100	100	0	0
Land transport services	8	9	48	48
Water transport services	0	0	48	48
Air transport services	14	14	48	48
Supporting and auxiliary transport services	40	41	50	44
Postal and courier services	50	50	50	50
Telecommunications services	90	90	8	4
Computer and related services	100	100	94	81
News agency services	100	91	0	0
Intangible assets such as patents and copyrights	100	100	0	0
Recreational, cultural and sporting services	21	31	0	0
Education services	46	46	0	0
Health and social services	46	47	16	0
Public administration and other services to the community as a whole; compulsory social security services	0	0	0	0
Construction work; real estate and land acquisition	94	93	21	0

N.B. For modes 1, 2 and 3 the scores combine restrictions against all obligations applying in the relevant chapter. For mode 4 the scores reflect reservations taken against the commitments in chapter 10. Scores are averages across the aggregated sectors.

* It is important to note that as with modes 1-3, scores for mode 4 do not take into account any horizontal reservations that apply to certain countries. Also, as already stated, the scores for mode 4 should only be evaluated with respect to the relatively limited provisions contained in chapter 10 and the scores can therefore not be directly compared with scores for mode 1-3.

7. CETA in the context of pre-existing regimes

From Table 1 we saw that a number of sectors have a high degree of liberalisation. Can this level of liberalisation be attributed to CETA? Perhaps unsurprisingly the answer is ‘not necessarily’.

In 2016, before CETA entered into force, the EU’s services imports from Canada amounted to €11.5 billion (European Commission 2017). Clearly, the EU was not altogether closed to Canadian service exporters before CETA. Whether or not CETA actually constitutes a liberalisation depends on the policies that were in place before CETA. Unfortunately, records of applied policies in services trade are not readily available in the same way that, for example, data on applied tariffs for goods are. Significant efforts have been made to shed light on applied policies within services trade, for example the World Bank’s Services Trade Restrictions Database (STRD)¹⁷ and the OECD’s Services Trade Restrictiveness Index.¹⁸ Although these estimates are very valuable, they have different sector ranges and use different sector classifications and methodologies from our study. It is therefore difficult to compare our scores in CETA with these indexes to a sufficient degree of precision.

A different measure of comparison, albeit far from perfect, is to look at the EU’s commitments in the GATS which applies on an MFN basis to all third party countries, and therefore applied to Canada pre-CETA. Previous studies such as Hoekman (1996) and Roy (2011) have mapped GATS schedules in similar ways to us but with slight variations in methodology. To maximise the potential for comparability we have conducted our own analysis of the GATS schedule to ensure that the methodology is constant across both GATS and CETA. The GATS binds the minimum level of commitment afforded by a country; there is nothing to prevent a country from applying more liberal policies on a non-discriminatory basis, and many countries do. This gives rise to a ‘commitment overhang’ where the applied MFN policies often afford significantly better treatment than the commitments in the GATS (Borchert 2016). The GATS is therefore the upper bound of the restrictiveness of EU policies before CETA, but the reality is likely to be less restrictive. Thus, a necessary condition for CETA to achieve any substantive liberalisation is that it must go beyond the EU’s GATS commitments.

The only fully ratified GATS schedule for the EU is from 1994 and applies only to the 12 members at that time. Some slightly more updated sections on financial services and telecoms (applying to EU-15) exist, but even these are almost 20 years old. There is, however, a slightly newer schedule from 2006 which applies to the EU-25.¹⁹ This schedule was certified by the WTO, but is still awaiting ratification by a few EU member states and has therefore not yet entered into force. Since more members have joined the EU since this date it is doubtful whether this schedule will enter into force or whether a new schedule encompassing all current members will be submitted instead. Nevertheless, the certification of the schedule at the WTO means that it has been approved by the entire membership and is technically and legally an ‘adopted’ document, pending entry into force, and therefore indicates that there is a degree of reliability in the text despite it not yet being ratified. The benefit of using this text as a comparison is two-fold; it is more recent and therefore more likely to reflect the developments in trade policy since the initial GATS schedule was published. It also

¹⁷ See Borchert (2016) for a discussion, and <http://iresearch.worldbank.org/servicetrade/> for full information about the STRD.

¹⁸ For full information about the OECD’s STRI, see <http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>

¹⁹ The draft can be accessed here: http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150087.pdf, a clean version is available from page 307 onwards

includes more EU-members, again making it likely to be closer to the current applied policies than the 1994 schedule. For this reason the 2006 schedule has been used as a comparison to CETA.

GATS uses a hybrid of positive and negative lists combining the positive selection of sectors, subsectors and modes of supply with the negative maintenance of existing non-conforming measures. To match the scoring method used for CETA, modes 1 to 3 of the GATS schedule are scored but mode 4 is excluded. For sectoral coverage, GATS uses a comprehensive list created by the WTO, the services sectoral classification list (W/120),²⁰ which constitutes 160 services sub-sectors. This list is based on the same CPC codes as used in CETA and it is therefore relatively straightforward to convert our CPC codes into this classification system. It uses twelve broad classes of services, which is how the data are summarised below.

Figure 2: EU scores for Market Access in CETA and GATS

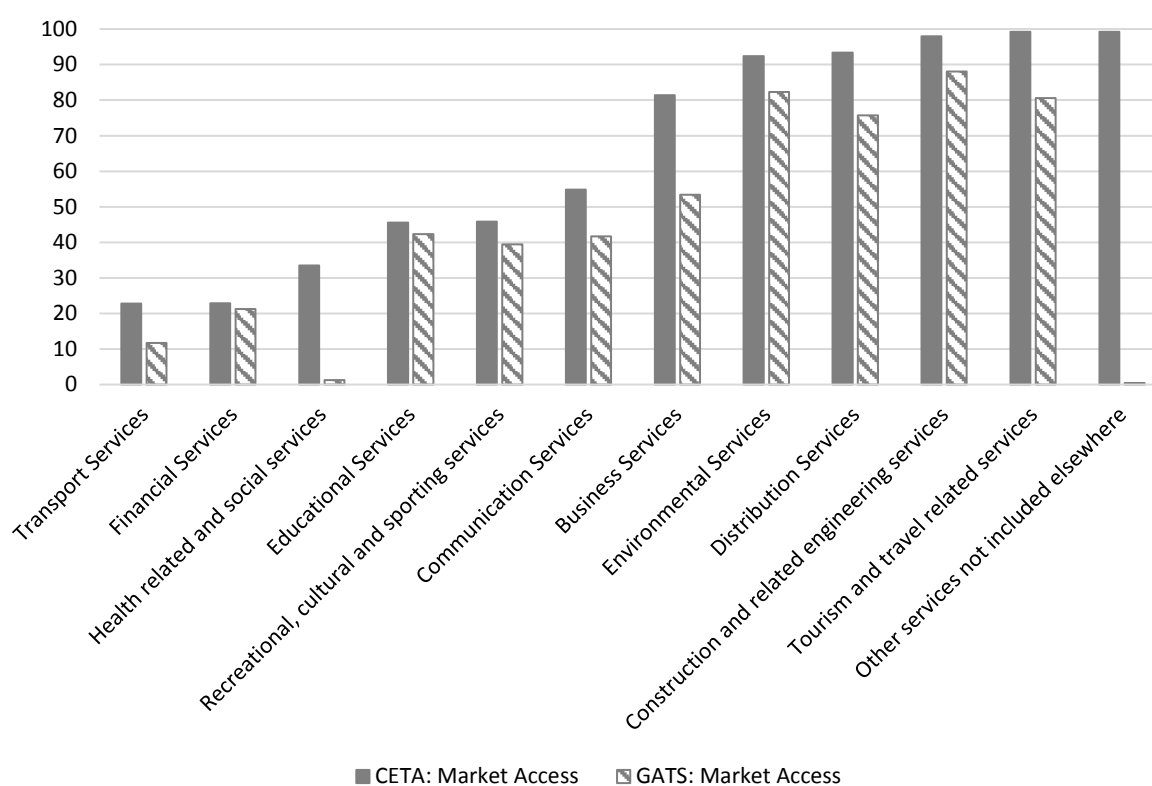


Figure 2 summarises scores for market access in CETA and GATS for the 12 main sectors of the WTO list, starting from the left with the most restricted sector in CETA. As can be seen, CETA has a higher level of commitment with regards to market access in all sectors.²¹

Table 4, sorted by the largest improvement in market access, shows that the largest step towards liberalisation in CETA is for the residual category ‘other services not included elsewhere’ which has

²⁰ The list can be downloaded from the WTO’s website: <http://i-tip.wto.org/services/default.aspx>

²¹ For Environmental Services, there are, curiously, a number of sub-sectors where CETA appears more restricted than the GATS, particularly with respect to the three sectors specified in the WTO’s W/120 list for this category. This is because, in these sectors, Germany made a market access restriction in CETA which it did not do in the GATS. However, averaging the scores across all sub-sectors committed by the EU in this category still gives CETA a higher (more liberal) score than GATS.

gone from unbound in GATS to close to fully committed in CETA. This is a category where the negative list seems to have made a difference. Most services in this category were not included in the GATS schedule, thus being unbound by default. Similarly most categories were not mentioned in CETA, hence being fully committed by default. However, judging from the narrow range of services in this category such as services of membership organisations, hair dressing, dry cleaning services and funeral services, compared with other services categories it seems unlikely that this category will have a significant impact on the overall trade volume between the parties.

Table 4: Comparison of EU scores in CETA and GATS

Sector	GATS: Market Access	CETA: Market Access	Difference CETA - GATS	GATS: National Treatment	CETA: National Treatment	Difference CETA- GATS
Other services not included elsewhere	0	99	99	0	99	99
Health related and social services	1	33	32	1	33	32
Business Services	53	81	28	54	82	28
Tourism and travel related services	81	99	19	92	99	6
Distribution Services	76	93	18	77	97	20
Communication Services	42	55	13	46	65	19
Transport Services	12	23	11	11	36	25
Construction and related engineering services	88	98	10	95	98	3
Environmental Services	82	92	10	83	100	17
Recreational, cultural and sporting services	39	46	6	43	46	3
Educational Services	42	46	3	42	46	3
Financial Services	21	23	2	85	29	-56
Correlation	0.72			0.43		
Rank correlation	0.71			0.52		
N.B. Scores range from 0 to 100 and combine reservations applying to cross-border trade (modes 1 & 2) and investment (mode 3) where the lowest overall value (most restricted) is reported. The one-third most restricted and least restricted sectors are marked in orange and green respectively. Numbers may not sum due to rounding.						

Further improvements are made particularly in health related services, business services, tourism and travel and distribution services. In other sectors the estimates are almost identical, such as in educational services where the difference between GATS and CETA is marginal. With respect to financial services, many of the restrictions on mode 3 in the GATS remain the same in CETA. Similarly, the narrow range of cross-border financial services committed in CETA in Annex 13-A are largely identical to those committed in the GATS, with the exception of insurance intermediation and portfolio management services where CETA goes further than the GATS. In CETA, both national treatment and market access are limited to the services listed in Annex 13-A. Surprisingly though, in GATS only the market access condition appears limited to its similar list of qualifying services, whereas the national treatment obligation seems to apply to a wider range of services. This means that national treatment for financial services appears significantly more restricted under CETA than GATS. It is unclear to us whether this restriction vis-à-vis GATS is inadvertent or a genuine case of GATS-minus commitment of the sort analysed by Adlung (2015).

For both market access and national treatment, three out of the four most restricted sectors in GATS are still the most restricted in CETA, the difference being ‘other services’ as discussed. This also holds true with respect to the most liberal sectors, both for market access and national treatment; three

out of the four most liberal sectors in CETA were already the most liberal in GATS. Across all the 160 sub-categories of the WTO list there is a strong positive correlation and rank correlation between GATS and CETA scores for market access. The correlation is weaker for national treatment, owing in part to the significantly lower score in CETA for financial services.

Applied policies tend to be substantially less restrictive than commitments in GATS. Although the gap between GATS and applied policies tend to be larger for poorer countries, it still holds true for OECD countries.²² It is therefore not surprising that CETA overall achieves a higher degree of liberalisation than the GATS. By simply binding the already applied policies, and thus squeezing ‘water’ out of the GATS commitments, CETA would achieve a higher degree of liberalisation on paper but achieve little change in actual policies. Creating such certainty is valuable for countries (like Canada) that would otherwise be vulnerable to the EU unilaterally scaling back its openness to GATS levels.²³ However, it is a poor substitute for the security provided by the Single Market, which is based in law and backed by the Court of Justice of the European Union. As has been observed in previous studies of trade agreements in relation to GATS, it seems that the EU has been unwilling to make commitments to open up the sectors where protection really matters to it (Francois et al. 2015).

8. Additional features of CETA

Quantitative restrictions and discriminatory policies are not the only barriers to trade in services. Licensing procedures, qualification requirements and regulations can all be obstacles to trade even if they are applied in a non-discriminatory fashion to both domestic and international suppliers. The EU Single Market has made significant progress in this field by aligning regulation across the member states in an attempt to minimise the administrative burden for suppliers. Further, within the EU, the European Court of Justice’s rulings on necessity and proportionality is key for challenging unduly restrictive or disguised barriers to trade arising from non-discriminatory measures. CETA’s chapter 12 deals with domestic regulation, such as licensing and qualification requirements, with the aim to make regulation easily understandable, reasonable and publicly available to prevent unfair barriers to trade between the parties. The provisions of this chapter do not apply where a party has listed a non-conforming measure in Annex I or II, and there is nothing in this chapter that requires the parties to align or remove licensing or qualification requirements, a further shortcoming of trade agreements in comparison to the EU Single Market.

In addition, chapter 21 deals with regulatory cooperation. Article 21.2.4 states

“Without limiting the ability of each Party to carry out its regulatory, legislative and policy activities, the Parties are committed to further develop regulatory cooperation in light of their mutual interest in order to:

- (a) prevent and eliminate unnecessary barriers to trade and investment;*
- (b) enhance the climate for competitiveness and innovation, including by pursuing regulatory compatibility, recognition of equivalence, and convergence; and*
- (c) promote transparent, efficient and effective regulatory processes that support public policy*

²² For a detailed comparison of applied policies and GATS commitments, see Borchert et al. (2011)

²³ On the benefits of binding existing policies in a trade agreement, see Handley and Limao (2015).

objectives and fulfil the mandates of regulatory bodies, including through the promotion of information exchange and enhanced use of best practices.”

A Regulatory Cooperation Forum is created aimed at facilitating and promoting regulatory cooperation between the parties. However, article 21.2.6 confirms that regulatory cooperation is done purely on a voluntary basis where both parties retain the right to refuse or withdraw from cooperation. As CETA has no requirements for regulatory alignment it satisfies the UK government’s red line to control its own laws, but risks preserving or even creating barriers for suppliers. Since the UK and the EU start from a baseline of regulatory convergence, the key issue is not engineering convergence but avoiding significant divergence over time. One approach is for the UK to seek equivalence status so that costly case-by-case certification processes are avoided. This will require periodic renewal as EU regulations are changed and recognition that the UK is a standards-taker. Such equivalence requires a good deal of trust at political levels, and then a large amount of technical work at the level of the regulators, a precondition for which is that regulators have access to full and transparent information. It is also important to note that equivalence can be withdrawn at very short notice and so offers much less stability than membership of the Single Market.²⁴

Further relevant chapters in CETA are chapter 11 on mutual recognition of professional qualifications which establishes a framework for the recognition of qualifications. Article 11.3.1 states that the parties shall “*encourage its relevant authorities or professional bodies, as appropriate, to develop and provide (...) joint recommendations on proposed MRAs.*” However, because it leaves this to be negotiated in the future it provides little of immediate value. CETA also contains a chapter on government procurement which eliminates an asymmetry between Canada and the EU since the EU market was de facto open to Canadians even before CETA (European Commission 2016).

CETA also has a brief chapter on e-commerce dealing with the handling of personal information as well as rules preventing parties from imposing customs duties or other fees on electronic transmissions. Cross-border data flows is a potentially problematic area for the UK post-Brexit. All countries within the EEA are governed by the same regulations, previously the Data Protection Directive (DPD) which will be fully replaced by the new General Data Protection Regulation (GDPR) later this year. This ensures that data can flow freely within the EEA. This is significant for the UK since three-quarters of the UK’s cross-border data flows are with the EU (House of Lords, 2017). As identified in the House of Lords report, leaving the EU and EEA without a transitional deal on data protection risks creating a cliff-edge post-Brexit. The EU can still allow cross-border data flows with a third country (country outside the EEA) if this country’s data protection is considered adequate. An adequacy decision, which lies entirely within the gift of the European Union, follows a set procedure and once achieved allows the free flow of data between the EU and the third country.

CETA seems to contribute nothing to Canada’s standing on data adequacy within the EU. Chapter 16 on E-commerce states that the EU and Canada should adopt or maintain laws or regulations to protect personal information of users and take into consideration international standards of data protection. On financial services, in article 13.15, both parties agree to allow the transfer of electronic information into and out of their territories by financial institutions if required, on the basis that both parties maintain adequate safeguards protecting privacy and that personal information transfers are made in accordance with the domestic legislation of the country where the transfer originated. There is also a related article with regards to telecommunications, article 15.3.4, stating that each party shall take appropriate measures to protect the privacy of users. Finally, article 28.3.2 in the chapter of general exceptions confirms that CETA does not prevent the adoption or enforcement of measures

²⁴ For further on regulatory equivalence, see Hoekman (2017)

necessary to protect the privacy of individuals and their personal data, as long as these measures are “not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination”. Overall, CETA does not seem to break any significant new ground with regards to cross-border data flows. It should be noted that Canada currently has a partial adequacy status granted by the EU, ensuring free cross-border data flows in certain sectors. This decision may be reviewed in light of the more stringent requirements in the GDPR, but until then the decision remains in force.

9. Conclusion

If CETA is to be used as a framework for a UK-EU trade relationship it is important to have awareness of where limitations exist. We have shown that claims stating that CETA has nothing on services are not correct; in fact, CETA covers services in some detail. The question is rather to what degree liberalisation has taken place for services trade in CETA. We have shown that some services sectors are pretty open to trade under CETA, but to a large extent these sectors were relatively open pre-CETA, as seen in the EU’s 2006 GATS schedule. CETA does generally seem to go further than the commitments made by the EU in the GATS, but this does not necessarily mean it goes further than the policies already applied before CETA. Most importantly, significant limitations still exist in sectors that are important for the UK, such as financial services and transport services. If the UK is unable to negotiate additional concessions (‘pluses’) in these sectors, UK exporters are likely to be negatively effected.

The trade relationship currently enjoyed by the UK and EU is considerably closer than that of EU and Canada pre-CETA. This could enable trade negotiations to go further than CETA, further than any trade agreement with a third country that the EU has signed before. Nevertheless, the liberalisation offered in CETA should not be dismissed since it constitutes the most liberal position the EU has ever granted in a free trade agreement and hence the furthest that it has yet gone in terms of services access for countries not within the Single Market or the EU’s immediate neighbourhood. As such, CETA is not an implausible baseline from which the UK should expect to start in its quest to negotiate a post-Brexit agreement for services trade.

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Appendix: Methodology expanded

The box below gives an example of an Annex II reservation for the EU. As seen, each reservation sets out the general sector and sub-sector it applies to. Most reservations also provide the standard classification code for the sector as well as specifying the obligation for which a reservation is made, for example Market Access, National Treatment. Reservations also state which chapter(s) they apply to (hence which mode of supply), and then outline the details of the restrictions.

Box A.1: Example of EU reservation in CETA

Annex II: EU/CA/R/Annex II/ en 137
Sector: Transport
Sub-Sector: Water transport
Industry Classification: ISIC rev 3.1 0501, ISIC rev 3.1 0502, CPC 5133, CPC 5223, CPC 722, CPC 74520, CPC 74540, CPC 74590, CPC 882
Type of Reservation: National treatment Market access Senior management and board of directors
Description: Investment

We utilise the 675 CPC lines to map each reservation against the associated sector. Following Hoekman we use three thresholds when scoring each reservation; 0, 50 or 100 as summarised in the table below.

Table A.1: Scoring methodology in CETA

CETA terminology	Weights used	Reasoning
Sector not mentioned in annex	100	Committed by default (negative list)
EU-wide reservations listed in Annex II in the format "The EU reserves the right to adopt or maintain any measure .." and applying to the given sector as a whole	0	Textual analysis is used to determine whether a reservation should be considered unbound or bound. In these cases the reservation is considered unbound.
Reservations listed in Annex I	50	All reservations in Annex I are considered bound due to the ratchet and standstill mechanism
EU-wide reservations in Annex II specifying particular restrictions	50	Reservations considered bound
Member state reservations listed in Annex I and II	50	Reservations considered bound

Unlike the GATS where reservations are explicitly listed as ‘unbound’, this terminology is not used in Annex I or II in CETA. Since Annex I lists only existing reservations that are subject to standstill and ratchet mechanisms these are by default assumed to be ‘bound’. However in Annex II there are reservations at the EU wide level that have the characteristics of unbound restriction even if this exact wording is not used. For example, a reservation against market access and national treatment for the collection, purification and distribution of water applicable to both investment and cross-border trade reads:

“The EU reserves the right to adopt or maintain any measure with respect to activities, including services relating to the collection, purification and distribution of water to household, industrial, commercial or other users, including the supply of drinking water, and water management.”²⁵

For reservations listed in Annex II that apply at the EU-wide level, reservations using the wording “right to adopt or maintain any measure” and that applies to the sector as a whole have been considered unbound for the purposes of this analysis. Ideally all individual member state reservations in Annex II should also be evaluated in this way, but this would be a big task and in the aggregate when each member state’s score is weighted according to economic size it is unlikely to have a significant impact on the final score. Therefore, for simplicity, individual member state reservations are all assumed to have a weight of 50 in both Annex I and II. This approach may however, in some cases, underestimate the true degree of restrictiveness.

Further, despite most reservations stating a classification code, there are some that only specify a sector and sub-sector but not a specific CPC. These reservations have as far as possible been incorporated by word matching the text in the reservation with the existing CPC sectors. In some cases, as seen in Box A.1 above, an ISIC rev 3.1 classification is given instead of, or in conjunction with, a CPC code. In these cases the ISIC code has, to the extent possible, been converted into a corresponding CPC code. There is no direct conversion between ISIC rev 3.1 and CPC provisional. Therefore, the ISIC code has first been converted into a newer version of CPC (CPC 1.1), and then from CPC 1.1 to CPC provisional. Because the CPC defines sectors on a product basis whereas ISIC defines categories on an industry basis the conversion is only partial in many cases.

Financial services reservations sometimes only refer to “financial services” without specifying the mode of supply. As a general rule it has been assumed that such reservations apply to all modes of supply (modes 1-3 since mode 4 is dealt with separately), unless the description of the reservation makes it clear which mode of supply is restricted. Further, subject to the information in the accompanying headnotes to the annexes, a reservation requiring that a service supplier be a natural person, citizen or resident of its territory taken with respect to cross-border trade in services also operates as a reservation with respect to investment.

The sectors explicitly excluded from the agreement (audio-visual services, services supplied in the exercise of government authority and most air services) have as far as possible also been mapped to corresponding CPC codes. No CPC codes are given for these sectors in CETA, but using GATS W 120 list as a guide these have been incorporated to the furthest extent possible and scored as 0. For example, motion picture, radio and television services are assumed to be covered by the audio-visual exclusion.

Further, it seems reasonable to assume that a German reservation has a larger impact on potential trade compared to a reservation for Malta. To incorporate this in the analysis reservations for EU member states have been weighted by their economic size.²⁶ An EU-wide reservation is given a

²⁵ CETA, Annex II, EU/CA/R/Annex II/ en 120

²⁶ Economic size is approximated by each country’s share of EU GDP. Each country’s share of GDP has been calculated for years 2016, 2015, 2014 and then averaged across the three years. GDP data from Eurostat was used, <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00001>, accessed 07/12/2017. The UK’s contribution to EU GDP has been excluded since the UK’s reservations are excluded from the analysis.

weight of 100% unless the reservation specifies that particular countries are excluded, in which case the weight has been adjusted to reflect this.

For each service activity in the CPC list the scores combine reservations for mode 1-3 where the most restricted score is displayed. This means that if there is an unbound restriction for mode 1 but mode 3 is fully committed the score will nevertheless be 0 for the sector. Once every line has a score this is then averaged across the detailed CPC lines to arrive at the more aggregated estimates presented in this paper.

Scoring the GATS

When scoring the GATS largely the same methodology is used but with some additional assumptions. Unbound restrictions, or a sector not committed at all, are given a score of 0 whereas a full commitment (listed as 'none' in GATS) without limitations is given a score of 100. Any partial limitation or partial commitment is weighted as 50. Equally any commitment relating only to part of a sector or CPC code is weighted as 50, unless a country has stated an unbound restriction in which case the weight has been given as 0 since the excluded part of the sector is also unbound by default. To reflect the methodology used when scoring commitments in CETA, only modes 1 to 3 of the GATS schedule are scored, leaving out mode 4.

In some sectors an unbound reservation is made for mode 1 due to the service being technically infeasible to trade within mode 1. In the original GATS schedule these sectors were flagged as Unbound*. In the 2006 version this flagging is no longer used, the reservations are simply stated as 'unbound' with no further explanatory text. One explanation for this could be that 10 years on from the original schedule, technological advances have enabled cross-border trade in sectors which were previously not feasible. However, looking at the impacted sectors such as cleaning services, packaging services, construction services (see full list in footnote) it seems unlikely that cross-border trade has been made possible to any significant extent. So as not to overstate the liberalisation efforts in CETA's negative list we have therefore excluded the reservations for mode 1 in GATS for the affected sectors.²⁷

²⁷ The relevant sectors are: Building-Cleaning Services, Photographic Services (except aerial), Packaging Services, Construction and related engineering services, Sewage Disposal Services, Refuse Disposal Services, Sanitation and Similar Services, Cleaning Services of Exhaust Gases, Nature and Landscape Protection Services, Hotels, Restaurants, Maintenance and Repair of Aircraft and parts thereof, Maintenance and Repair of Rail Transport Equipment and Storage and Warehouse Services.