

TAKING STOCK OF THE UK-EU TRADE AND COOPERATION AGREEMENT: TRADE IN SERVICES AND DIGITAL TRADE

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KEY POINTS

- The UK-EU Trade and Cooperation Agreement (TCA) sets out the conditions under which UK businesses may supply services according to rules prevailing in the receiving (host) country. This constitutes a major change compared to the economic freedom to provide or receive services through cross-border trade and/or establishment in the EU Single Market, which the UK has left with the end of the Brexit implementation period.
- The TCA appears to be ambitious in a few sectors such as telecommunications, international maritime transport and digital trade, where strong disciplines seemed uncontroversial.
- But the TCA is a major setback to services sectors that have hitherto relied on UK regulation being recognised in other EU economies, such as licenses or professional qualifications. This is particularly the case for financial services with the loss of passporting rights, and for air and road transportation services, both of which will see their mode of operations severely curtailed.
- The TCA provides for improved mobility of skilled workers between the UK and the EU compared to the default position under WTO GATS rules. Yet the temporary stay of business personnel, for limited categories of workers, is a far cry from the free movement of personnel within the EU. The absence of an agreement regarding mutual recognition of qualifications is also a major impediment to the movement of professionals.
- Some services sectors are going to rely more on having a commercial presence in EU markets, and large enterprises (potentially already multinationals) will find this change easier to make compared to smaller businesses.
- The TCA has a stand-alone section dedicated to digital trade, which supports digitally enabled and delivered services as well as certain parts of e-commerce. This section also includes free data flow obligations with some strong safeguard provisions. In practice, though, the ability of UK businesses to transfer personal data from the EU will depend on an adequacy decision to be taken by the European Commission.
- The TCA is an incomplete agreement in the sense that the precise conditions under which services can be traded with the EU still need to be worked out in a number of areas, including financial services, cross-border data flows, and mutual recognition of professional qualifications.

INTRODUCTION

There are few advanced economies in the world for which services trade is as important as for the UK. On a Balance of Payment basis, in 2019 services exports constituted 46% of total UK exports, i.e. goods and services combined.¹ For comparison, the same share for the EU-27 (excluding the UK) stands at about 25%. And this high share for the UK is even before considering investment flows, which are another important conduit for services trade. So the UK economy has a demonstrated comparative advantage in producing and exporting services. In 2019, services worth £123.7 billion went to the EU. This is a substantial figure and accounts for nearly 40% of all UK services exports. Hence, for a substantial part of the economy, it is vital to scrutinise the extent to which the TCA facilitates services trade and, relatedly, digital trade.

Policies that can facilitate or impede services trade come in many forms and shapes, partly because individual services sectors are very different (legal advice vs healthcare) and partly because services can be exchanged by *firms* moving abroad, by *consumers* moving abroad, by *service professionals* crossing borders or, indeed, the *service itself* crossing borders in digital form. Many of these transactions require some sort of permit, license or are otherwise subject to domestic regulations.

Prior to the end of the Brexit implementation period on December 31st 2020, the Single Market for services—albeit less complete than the Single Market for goods—had facilitated the international integration of EU services markets by the country-of-origin principle, which meant that, when a service was supplied cross-border into another Member State, the law and rules in the *sending* country would apply to this transaction. This regulatory approach in the EU Single Market is observed e.g. in broadcasting, and financial services (where it is called ‘passporting’). Another feature of the Single Market for services is the mutual recognition of qualifications for a range of professions.

This Briefing Paper aims at outlining the main changes to trading services brought about by the TCA, in terms of scope and depth. It is part of a comprehensive discussion of the Agreement in three parts, with two companion pieces that look at trade in goods (Briefing Papers 52) and the governance, subsidies and the level playing field provisions (Briefing Papers 54).

¹ ONS Pink Book 2020, Chapter 9.

TRADE IN SERVICES: OVERALL ASSESSMENT

The TCA sets out rules for cross-border services trade and investment in one chapter as part of Part Two, Heading One (Trade). Important exclusions from the scope of this Heading are audiovisual services and financial services. The former exclusion reflects the standard approach by the EU in all of its free trade agreements and is a hard blow for the UK given its strong position in such areas as broadcasting, media and some creative industries. Decisions on the future governance of financial services have been postponed and a terse joint declaration commits both sides to a Memorandum of Understanding regarding regulatory cooperation of financial services (more details on financial services below). This declaration emphasizes the significance of each party’s unilateral equivalence decisions, whereby either party will determine whether the other party’s regulatory and supervisory standards match its own standards. For the remaining services covered, the TCA offers standard market access and national treatment commitments for both cross-border services trade providers and investors.²

The agreement appears to be ambitious in the realm of telecommunications, international maritime trade and digital trade, including the protection of intellectual property rights, whereas aviation, road haulage, the financial sector and businesses in regulation-intensive parts of professional and business services will face substantial new barriers to trading their services with EU economies. These sectors constitute a quite substantial share of services trade.

As a general principle, UK service suppliers will have to comply with host-country rules in each EU Member State, in particular with regard to the recognition of professional qualifications but also in terms of licensing. The country-of-origin principle for regulating the cross-border trade of financial services, known as ‘passporting’, will also no longer apply.

Overall, therefore, considering the substantive changes in trading conditions as well as the fact that crucial decisions have been postponed in important areas such as financial services, cross-border data flows and recognition of professional qualifications, the TCA represents a major setback for services sectors, for some more so than for others. The increase in trade frictions may also hit smaller firms harder than large enterprises, which may have foreign

² In international law, market access refers to the conditions under which foreign services suppliers may enter the domestic market, whereas national treatment requires extending the same conditions to foreign and domestic services suppliers in like situations post-entry.

affiliates and could therefore more easily adapt by relocating activities across borders.

SOME PRINCIPAL CHANGES

Under the EU Single Market for services, businesses from EU Member States enjoy two core principles: freedom to establish and freedom to provide or receive services cross-border. These are supplemented by some EU directives, such as the Services Directive (2006/123/EC) or the Mutual Recognition of Professional Qualifications Directive (2005/36/EC), as well as sector-specific laws. This level of freedom no longer exists under the TCA. Instead, UK businesses may supply services only according to rules prevailing in the receiving (host) country, and even then they are subject to a plethora of reservations made by individual EU Member States.

One ramification of this change is that, since investment provisions are generally liberal in the TCA, service suppliers could fall back on the option of creating a commercial presence in one of the Member States to serve the EU market. That is, substituting commercial presence for cross-border supply of services is likely to be one of the consequences of the TCA in many service sectors, especially for airlines, banks and insurance, and providers of broadcasting and audio-visual services.

As for the liberalisation commitments on cross-border services supply and investment, the TCA in principle follows a negative list approach. This calls for complete liberalisation subject to a list of reservations (i.e. existing or future measures that do not conform to the liberalising obligations in the agreement) in two Annexes. These set out, respectively, existing and future non-conforming measures that are inconsistent with the TCA's obligations regarding market access, national treatment, and a range of other general obligations.³

Looking at the EU's reservations, UK service providers' access to the EU services market is quite similar to Canadian or Japanese services providers' access under the Comprehensive Economic and Trade Agreement (CETA) and Japan-EU Economic Partnership Agreement (JEEPA) respectively. It should be noted that disciplines against local presence requirements and commitments pertaining to legal services are included as general obligations under the TCA, which

is not the case under the CETA and the JEEPA. This means that the TCA's disciplines in this regard apply more broadly than in CETA and JEEPA, and in this sense, the TCA's obligations for market openness can be viewed as more far-reaching.

However, at the same time, an important caveat emerges from the reservations that have been lodged as part of the negative list approach. Looking at the EU's reservations for cross-border services trade, there are many non-conforming measures relating to local presence requirements at the level of individual EU-27 Member States. UK services providers have to carefully check the EU's commitments at the *Member State level* to determine the locally applicable conditions for providing services.

Services are a dynamic area and technological progress is constantly creating new business models and service propositions, in particular with regard to digitally enabled services in finance (often called 'FinTech'). The UK agreed a clause (Article SERVIN.5.42) that opens the door for the future exchange of new financial services. When offered by providers from one party, these shall be permitted by the other party if it would permit such new financial services, in like situations, from its own financial service suppliers without adopting or modifying a law. A similar clause is found in the UK-Japan CEPA (Article 8.60) but does not exist in JEEPA; hence, this is an important development that may facilitate trade in innovative financial services between the UK and both the EU and Japan. Compared to CEPA, though, the EU insisted on establishment as a precondition, which renders this article not applicable to the cross-border supply of new financial services.

Open-mindedness towards new services does not extend beyond financial services in the TCA. The EU and the UK have both scheduled a wide-ranging general derogation⁴ for any measures with respect to the provision of *new services* other than those already classified in the United Nations Provisional Central Product Classification 1991.⁵ This means that both parties retain full regulatory flexibility in areas affected by emerging technologies.

³ Such as Most Favored Nation (MFN) treatment, the prohibition of local presence requirements (for cross-border services), the prohibition of restrictions on senior management and boards of directors (for investment), the prohibition of performance requirements (for investment), and obligations for legal services (for cross-border services).

⁴ Covering investment liberalisation – market access, national treatment, senior management and boards of directors, performance requirements and cross-border trade in services – market access, national treatment, local presence.

⁵ Annex SERVIN-2, Reservation No. 23 for EU and Reservation No. 15 for the UK.

SELECTED SERVICES SECTORS

a. Transportation Services

The TCA hits air and road transport providers particularly hard. Air traffic rights are reduced to bilateral point-to-point flights between airports in the UK and the EU, respectively (what are referred to as the 3rd and 4th freedom of the air). Hence, onward journeys are no longer possible, neither to/from additional destinations outside of the UK and the EU nor, of course, flights between two EU airports. For comparison, the EU-US Open Skies agreement does provide for 5th freedom rights (i.e. onward legs) for qualifying carriers. As these air traffic rights are hardly compatible with airlines' business model these days, some UK airlines have established, at no small cost, separate legal entities in the EU. This was necessary in order to meet the requirements under the Substantial Ownership and Effective Control (SOEC) framework which, based upon the Chicago Convention of 1944 and the International Air Transport Agreement, is followed globally by the airline industry to allocate air traffic rights. Some airlines with a mixed ownership structure have taken steps to ensure that they remain EU community carriers (and continue to benefit from the European Common Aviation Area) by stripping UK investors of their voting rights.

The situation with respect to the reduced scope for freely configuring journeys is similar in the realm of road haulage. In contrast to airlines, UK road hauliers may add one additional stop within the EU to take on cargo for the return journey; nonetheless, international road transportation is in principle limited to point-to-point routes.

Unlike aviation and road transport, which are separate Headings in the TCA within Part Two, international maritime transport services are included within the 'services and investment' chapter in Heading One (Trade). The provisions are liberal, stipulating the principle of non-discriminatory, unrestricted access to international maritime markets, i.e. ports, port infrastructure and maritime auxiliary services including vital ancillary activities such as feeder traffic and container re-positioning. These provisions are valuable as the overwhelming majority of international merchandise trade, in volume terms, is moved by seaborne transport. That said, domestic maritime cabotage (i.e. transporting goods/people within a country's territory by a provider from another country) is excluded from the scope of the TCA, which is not surprising as it is a sensitive area for many countries.

b. Financial Services

There is little by way of agreement on financial services except for non-discrimination (Most Favoured Nation treatment), free movement of capital and co-operation on cybersecurity. Many of the decisions that would determine the actual conditions for trading certain services have been postponed, especially in regard to the ability of financial services firms to provide financial products and services cross-border.

Passporting rights are lost. The sector is hoping that the EU will grant 'equivalence' status in a number of areas, which would enable financial businesses to continue their current activities in many parts of the sector. However, equivalence is not as good as passporting as it is normally granted for a limited duration and can be revoked at 30 days' notice. As such, equivalence provides firms with much less certainty. The EU is currently in the process of reviewing equivalence decisions in 28 areas but, according to EU documents, the European Commission is currently awaiting further clarifications regarding UK regulations, before decisions can be finalised.

Akin to the situation in civil aviation, many financial services providers have shifted substantial parts of their business to affiliates established inside the Single Market, located typically in Frankfurt. Advocates in Germany who promote Frankfurt as a financial centre claim that under the terms of the TCA, around 40% of the business that banks transact out of London with EU partners will need to relocate, and the fate of another 20% will depend on the outcomes of the pending equivalence decisions.⁶

c. Entry and temporary stay of business persons and Mutual Recognition of Professional Qualifications

The TCA brings the free movement of citizens between the EU and the UK, including participation in national labour markets, to an end. This is likely to have a substantial impact on UK and EU businesses. For as long as the UK had been part of the EU Single Market, the UK economy has benefitted from an influx of workers with wide-ranging skills. In particular, many skill-intensive services sectors have come to rely crucially on hiring talent from other EU countries, and many low-skill-intensive sectors also relied on workers from other EU countries. What was agreed under the TCA was to revert to the level of commitments on the temporary movement of personnel for business purposes, provisions that can also be found in other

⁶ Hubertus Vāth quoted in Frankfurter Allgemeine Zeitung on 28 December 2010: <https://www.faz.net/aktuell/finanzen/brexit-bleibt-fuer-die-banken-trotz-handelsabkommen-hart-17121588.html>

Free Trade Agreements (FTAs) the EU has signed. Under such provisions, non-EU workers and their dependents are allowed to enter and stay inside the EU only under specified conditions such as limited permissible business category and limited duration of stay.

The temporary stay of personnel for business purposes is categorized into five types: business visitors for establishment purposes, intra-corporate transferees, short-term business visitors, contractual services suppliers and independent professionals. The permissible length of stay may differ across these five categories. There are also additional requirements such as visas, work permits and potentially economic needs tests. These requirements, which again may differ depending on the type of business personnel and the sector, need to be met and will depend on the reservations (i.e. the excluded or restricted categories) which are made in the agreement (TCA Annexes SERVIN-3, SERVIN-4, and SERVIN-5). The reservations vary across Member States and will need to be met for every jurisdiction in which the worker hoped to discharge the service.

Thus the temporary movement of business people is subject to new restrictions that curtail mobility and render it more costly compared to the Single Market; at the same time, however, the TCA provisions are a clear improvement relative to MFN treatment that would have been the default in a 'No Deal' scenario under the WTO/GATS framework; for example, the categories of independent professionals, short-term business visitors and graduate trainees do not exist under the WTO/GATS. Also, the TCA facilitates short-term business trips and includes liberal provisions for intra-corporate transferees (and their dependents) as well as other classes of temporary movers. This is going to be useful for large businesses, especially for multinational enterprises, and for high-skilled professionals. Small and medium-sized enterprises, however, are much less likely to benefit from these rules, partly because of the bureaucratic fixed costs of compliance with rules is more difficult to shoulder for them, and partly because they do not typically have affiliate enterprises abroad to which staff could be posted as intra-corporate transferees.

As for the EU's reservations, UK services suppliers will need to carefully check both reservations made both at the EU-wide level as well as at the EU member states level. There are different regulatory regimes across the 27 member states, and thus the rules for temporary movement will be country-specific. For example, even though the TCA stipulates a 90-day visa-free presence for short-term business visitors in any six-month period (Article SERVIN.4.3.4), a number of EU Member States have included reservations requiring work permits in many sectors. In addition,

economic needs tests, which make market access conditional on certain economic criteria defining the host country's need for foreign workers, are required in many sectors with regard to contractual services suppliers and independent professionals. For instance, 14 of the 27 EU Member States apply economic needs tests to foreign independent service professionals for legal advisory services in public international law and home jurisdiction law.

The current provisions in the TCA effectively appear to favour the exchange and inflow of high-skilled professionals. In turn, this may make it harder to realise the gains from trade with partner economies wishing to send lower-skilled people to the UK. While the exchange of high-skilled professionals, and the local discharge of their services, is clearly beneficial for the UK, there is a bias against the movement of lower-skilled workers, which may adversely impact on the competitiveness and supply of services internally in the UK by domestic firms.

A different issue is that the UK has not made any commitments on contractual services suppliers and independent professionals working in medical services (e.g. medical and dental services, mid-wives services, nurses, physiotherapists and paramedical services). Given the known shortages of medical staff in the UK, this lack of commitment constitutes a missed opportunity. It means that filling the vacancies for medical professionals in the UK will have to be undertaken using the standard immigration rules applying to all third countries, and there is no provision via the TCA for enhanced access for such professionals from the EU.

One of the significant shortfalls of the TCA is the arrangements for the mutual recognition of professional qualifications (MRPQ), as set out in Annex SERVIN-6. MRPQ allows people with professional qualifications obtained in one country to have these qualifications recognised in another. These rules are extremely important to allow professionals qualified in one country to work or provide a service in another country. At the end of the transition period, access to the EU's simplified or automatic recognition of professional qualifications in a range of professions such as midwives, doctors, or architects falls away.

Under the TCA, qualifications will need to be regained in individual EU member states on the terms of locally applicable rules like the MRPQ scheme under CETA (Chapter 11 and Annex 11-A: Guideline for MRA). The TCA leaves open the possibility of future agreements on the mutual recognition of qualifications with individual member states; however, this process is optional and on a profession-by-profession basis, and is therefore resource-intensive, uncertain and piece-

meal. The lack of mutual recognition of professional qualification may have a significant impact on the ability of both manufacturing and services firms to offer their services in the EU market. It may also affect the ability of UK firms to source professional services from the EU or EU residents.

DIGITAL TRADE AND DATA FLOWS

The rise of the digital economy raises a range of complex issues for trade relations and agreements between countries. Digital trade can refer not only to digitally-enabled transactions of goods and services that can either be digitally or physically delivered, but also data-based services (e.g. the Internet of Things, cloud computing, social platforms) where data itself may be treated as an asset. Digital trade involves consumers, firms and governments in complex ways. Digitisation affects goods and services in terms of how they may be produced, delivered, as well as the cost of delivery/transport (such as route planning, cargo and shipment tracking, drones, intelligent storage and inventory management), how they can be sourced / purchased, and the monitoring of supply chains.

The TCA conceives of digital trade as “trade enabled by electronic means” (Article DIGIT.2). The substantive provisions on digital trade included in the TCA range from a prohibition of customs duties on electronic transmissions to allowing for electronic authentication and contracts. These suggest that both digitally enabled and delivered services can benefit from these disciplines as well as certain parts of e-commerce.

Underpinning digital trade is the movement of data across borders, which needs to be regulated as it raises issues around privacy, consumer protection, cybersecurity and potentially, competition. This raises the challenge of balancing the need for cross-border data flows, which may facilitate the provision of goods and services, with safeguarding the aforementioned public policy objectives. Given that 11.5% of global cross-border data flows go through the UK, of which 75% is with the EU⁷, the economic and social impact of the regulatory arrangements regarding the free flow of data and data protection between the EU and UK cannot be underestimated.

The UK claims that, for the first time in an EU FTA, data flow provisions have been included as part of the FTA. This is true insofar as Article DIGIT.6.1.1 includes disciplines against such measures as

those requiring data localization or local computing facilities. However, the pursuit of public policy objectives can override these disciplines, provided that policy interventions do not constitute arbitrary discrimination. More important in practice, and independent from the TCA, is the ability of UK businesses to transfer personal data to/from the EU, which will depend on an adequacy decision to be taken by the European Commission. Whilst the assessment by the Commission is still ongoing, a six month ‘bridging’ period currently allows for the continued flow of data. It is estimated that failure to secure a data adequacy decision from the EU at the end of the bridging period would cost UK businesses approximately £1-1.6 billion.⁸

The disciplines against measures that could impede cross-border flows are subject to a review mechanism within three years (Article DIGIT.6.2). This article mirrors the EU’s draft text, proposed by the EU to retain policy flexibility. Either party may request a review of the list of disciplines and request changes; however, it is important to recall that decisions to change TCA provisions can only be taken by mutual consent by the Partnership Council.⁹

Since the digital trade provisions in the TCA are largely based upon the EU’s draft agreement, the TCA often mirrors the EU’s digital trade policy. In comparison, under CEPA, which is notionally the UK’s first bespoke FTA, the UK departed from EU-style e-commerce provisions, which tend to put more emphasis on achieving public policy objectives. Instead, CEPA shifts its policy stance towards an Asia-Pacific style (or US style) digital trade policy, which focuses more on market forces and innovation (see Table 1). For example, CEPA introduced provisions against restrictions on free data flow and data localization that did not exist under JEEPA. CEPA also expanded the scope of disciplines so as to cover encryption and products using cryptography and open government data initiatives, akin to the Japan-US Digital Trade Agreement. In summary, the scope of digital trade provisions is broader and more business-oriented in CEPA relative to the TCA, which in turn reflects more strongly public policy objectives.

A broader synopsis of e-commerce provisions across three major agreements, covering every bilateral pair in the triad formed by the UK, the EU and Japan, is provided in Table 1. The Table compares the TCA (middle column) against provisions in JEEPA (first

⁷ TechUK website, UK and EU agree a path forward to achieve the free flow of personal data <https://www.techuk.org/resource/uk-and-eu-agree-a-path-forward-to-achieve-the-free-flow-of-personal-data.html>

⁸ Patel, O and McCann, D. (2020). The Cost of Data Inadequacy: The economic impacts of the UK failing to secure an EU data adequacy decision: https://www.ucl.ac.uk/european-institute/sites/european-institute/files/ucl_nef_data-inadequacy.pdf

⁹ See our companion Briefing Paper 54, which describes in greater detail the governance structures in the TCA.

column) and the UK-Japan CEPA (third column), respectively. Table 1 elucidates in particular the different weight that these agreements accord to public policy considerations. JEEPA adopts a strong notion of public policy objectives reflecting the EU's digital trade policy, compared to the other two agreements with UK involvement. The coverage of digital trade provisions in JEEPA is narrower compared to the TCA and CEPA. The TCA takes a slightly softer approach, as is evident, for example, from the provisions on source code (DIGIT. 12) in comparison with JEEPA (Article 8.73). CEPA, in turn, reflects an even lighter approach on public policy objectives than the TCA.

Table 1: A Comparison of the major e-commerce provisions under TCA, the JEEPA and the CEPA

	JEEPA	EU-UK Trade and Cooperation Agreement	CEPA
Non-discrimination against digital products	No	No	No
Free data flow	No *EU's adequate decision of Data privacy as a condition of free data flow	Yes Article DIGIT.6. Cross-border data flows (6.1) *Free data flow based on right to regulate (DIGIT 3) and exceptions (DIGIT 4). *The review clause (6.2) *Primacy of protection of personal data and privacy over free data flow (DIGIT 7)	Yes Article 8.84: Cross-border transfer of information by electronic means *Some limited exceptions for public policy measures, same as CPTPP and US-Japan
Data protection and privacy, consumer protection	Yes Article: 8.88: Consumer protection *Plus the EU-Japan data adequacy agreement (January 2019)	Yes -Article DIGIT13: Consumer trust -Article DIGIT 14: Unsolicited direct marketing communications -Article DIGIT7: Protection of personal data and privacy *Plus an adequacy agreement (EU's adequacy decision still on the process)	Yes -Article 8.79: Consumer protection -Article 8.80: Personal information protection *Plus adequacy agreements between the UK and Japan?
Data localisation	No	Yes Article DIGIT.6: Cross-border data flows (6.1) *Ban on data localisation requirements based on right to regulate (DIGIT 3) and exceptions (DIGIT 4). *The review clause (6.2) *Primacy of protection of personal data and privacy over free data flow (DIGIT 7)	Yes Article 8.85: *Ban on data localisation requirements with safeguarding measures necessary for a legitimate public policy.
Source code	Yes Article 8.73: Source Code *Ban on forced disclosure of source code and software with safeguarding exceptions.	Yes DIGIT. 12: Transfer of or access to source code *Ban on transfer of or access to source code of software (the scope is narrower than CEPA) with safeguarding exceptions.	Yes Article 8.73: Source Code *Ban on mandatory disclosure of source code, software and related algorithms with safeguarding exceptions. The scope is wider to algorithms.
Encryption / products using cryptography	No	No	Yes Article 8.86: Commercial information and communication technology products that use cryptography
Open government data initiatives	No	Yes	Yes Article 8.82: Open government data *Replicate Japan-US

Source: authors' elaboration. The information for JEEPA and CEPA is taken from Table 4 of UKTPO Briefing Paper 50 "The UK-Japan Comprehensive Economic Partnership Agreement: Lessons for the UK's Future Trade Agreements": <https://blogs.sussex.ac.uk/uktpo/publications/cepa-lessons-for-the-uks-future-trade-agreements/>, which also covers CPTPP and the Japan-US Digital Trade Agreement.

Note 1: "Yes" indicates that there are provisions for the issue at hand. As the shades of grey in cells containing 'Yes' becomes lighter, reflection of public policy objective (e.g. inclusion of provisions to retain government interventions to safeguard safety, security and privacy) becomes weaker: **Yes** (No restriction with clear and strong safeguard provisions); **Yes** (No restriction with safeguard provisions in detail); **Yes** (No restriction with limited safeguard provisions); **Yes** (No restriction with no/very limited safeguard provisions).

Note 2: "No" indicates that there is no provision for that issue.

CONCLUSION

The services sector constitutes a substantial part of the UK economy. The UKTPO has for a long time been documenting the significance of services trade for the UK and the associated benefits of an ambitious deal for services trade.¹⁰ Despite the fact that the UK enjoys a comparative advantage in producing and exporting services and that EU economies are key markets for the UK, services never seemed to be a priority for the UK Government during the entire process of the negotiations. Yet beauty is in the eye of the beholder, and many will be glad that, on Christmas Eve, a deal could be agreed at all. But all told, the services provisions in the TCA are thin. In a few areas where it seems uncontroversial, such as telecommunications and digital trade, the agreement is ambitious; but at the same time, for many important services sectors, the TCA rules are a far cry from the trading conditions under the EU Single Market for services.

The conceptual switch to trading services under host country rules has severe implications for air transportation, financial services and, because of reduced mutual recognition of qualifications, many professional and business services. A general ramification is that services trade with the EU may have to rely increasingly on commercial presence rather than cross-border supply. This shift, though by no means costless, will be relatively easier for large businesses that may already have affiliate enterprises within the EU-27.

Yet, the conclusion of the TCA only marks the beginning of the next negotiation. One feature of the services provisions in the TCA is their incompleteness in many areas. Financial services still need to be worked out, data adequacy is pending, and there is a regulator-led process for the mutual recognition of qualifications in the future. Once the dust has settled, there are opportunities over the coming months and years to fill these gaps in a constructive way. Given the state of the economy after COVID-19, any boost from trade in services should be welcome.

¹⁰ See for example: “What about the remaining 80 percent – services?” UKTPO blog, 05 July 2018: <https://blogs.sussex.ac.uk/uktpo/2018/07/06/what-about-the-remaining-80-percent-services-the-customs-union-and-unilateral-free-trade-share-the-same-flaw/> and “The curious absence of services trade” UKTPO blog, 14 December 2016: <https://blogs.sussex.ac.uk/uktpo/2016/12/14/services-trade-the-curious-absence-of-services-trade/>

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FURTHER INFORMATION

The UK Trade Policy Observatory (UKTPO), a partnership between the University of Sussex and Chatham House, is an independent expert group that:

- 1) initiates, comments on and analyses trade policy proposals for the UK; and
- 2) trains British policy makers, negotiators and other interested parties through tailored training packages.

The UKTPO is committed to engaging with a wide variety of stakeholders to ensure that the UK's international trading environment is reconstructed in a manner that benefits all in Britain and is fair to Britain, the EU and the world. The Observatory offers a wide range of expertise and services to help support government departments, international organisations and businesses to strategise and develop new trade policies in the post-Brexit era.

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