CETA, BREXIT AND BEYOND

The Canadian experience with the Comprehensive Economic and Trade Agreement and its usefulness as a model for Brexit

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EXECUTIVE SUMMARY

While the UK is preparing for a new relationship with the EU under the terms of Brexit, the question arises whether the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU might provide a blueprint for their future as trade partners. This study explores many areas of the CETA with that question in mind.

With the CETA as the foundation for a “Canada-plus” framework, it will be possible to negotiate an agreement that is tailored to the specific needs of the UK – a bespoke agreement that supports the desire of the UK for full self-determination while keeping it close to its greatest trade partner. Whereas it is acknowledged that the CETA in itself could not satisfy those needs, it is argued that an enhanced CETA is an excellent starting-point and template for achieving many of the benefits desired.

The report initially discusses the constitutional makeup of Canada and the nature of federations, and draws comparisons with the UK and its constituent devolved nations. It suggests that Canada’s experience in negotiating both internal and external agreements can be a useful point of reference for the UK as it approaches negotiations with an experienced and formidable EU team across the table.

The report then highlights a number of subject areas that are covered by the CETA, and relates them to the circumstances of the UK:

- reduction or elimination of tariffs
- expansion of access to government procurement
- enhancement of temporary access for professionals and business people
- creation of an independent dispute settlement body
- reduction of technical barriers to trade
- simplification of rules of origin
- market access for services
- reduction of administrative burden

Brexit will terminate many of the advantages of EU membership, some of which may be won back relatively easily, while others will require extensive and detailed negotiation to restore a semblance of what was once the norm. The potential impact of the changed circumstances is explored in comparisons regarding both the UK and Canada, between the present environments (EU membership for the former and CETA membership for the latter) and a hypothetical default to the WTO agreements.

Analysis of the CETA and of Canada’s experience in the process of achieving it will provide useful insights to the UK negotiating team. The CETA stands out as the most current and advanced trade accord in which the EU participates, and the UK can profit from using it in a number of ways, among them: as a basis for comparison, a blueprint for defining subject-matter, an indicator of the EU’s preferences and sticking points, and a guide to those areas that will require extra effort to achieve the desired results.
CETA, BREXIT AND BEYOND

INTRODUCTION

In the spring of 2017 the United Kingdom invoked Article 50 of the European Union’s Lisbon Treaty, declaring the beginning of the process that would lead to separation from the EU. Within months, Canada confirmed its closer ties with the European Union in the Comprehensive Economic and Trade Agreement (CETA), an accord that had been in the making since 2009.

Trade in goods and services accounts for over 60% of the GDP of both the UK and Canada. Both countries trade with the world, and each is in a trading bloc in which it does the majority of its trading, largely on preferential terms. The strengths of reciprocity and mutual trust within these associations are essential to their economic success. Yet both blocs are facing some degree of disruption as the NAFTA currently undergoes re-negotiation, and the European Union moves toward the withdrawal of the UK. In each case, the desire and need to conclude the most advantageous outcomes drive the negotiations for all parties involved.

But international trade is not a zero-sum game, with losses balancing off gains; if it were, attempts to establish trade agreements would be far less common than they are in actuality. On the contrary, they are intended to stimulate economic activity, and have been shown time and again to enhance the prosperity of both or all participants. Even when the reciprocal flow of goods and services already exists in some measure, it is natural to seek to enhance that flow with trade agreements that increasingly open the channels of trade and make them less onerous for the participants.

For Canada, that potential broadening and the possibility of seeing changes to economic activity are concerns in the re-negotiation of the North American Free Trade Agreement (NAFTA). As a preferential treaty for the three countries involved, it makes trade arrangements more open than the World Trade Organisation (WTO) agreements. As one of the original members in the 1947 General Agreement on Tariffs and Trade (GATT), Canada continues to be active in the WTO as a participant in agreements subsequent to the GATT, such as the Agreement on Government Procurement (GPA) and the General Agreement on Trade in Services (GATS). In general, it is reasonable for any trading nation to work to enhance all its markets, wherever they may be.

By far the broadest and deepest of Canada’s trade links is with the United States. Canada’s trade with NAFTA countries (U.S. and Mexico) represents by far the greatest portion of its total trade worldwide, with the U.S accounting for the lion’s share of trade in combined goods and services of CA$881 billion (£535 billion at current rates) in 2015, and total trade with Mexico in goods and services totalling CA$442 billion (£26 billion).1 Canada and the U.S. were until very recently each other’s largest trading partners;2 a natural state of affairs given their friendly relations in many spheres, their long shared border, and the similarity of the two economies. Over recent decades the volume of this trade has become strongly dominant over that with any other country or bloc. This has its great advantages, but over time some Canadians have come to see it as over-dependence on a single market.

With an eye to the broader world, Canada has negotiated not only NAFTA, but also a number of bilateral agreements that build regimes of preferential treatment beyond the general terms of the WTO with nations as diverse as Chile, Israel and South Korea. Nevertheless, as beneficial as such bilateral agreements have proven to be, the volume of trade with these countries has not done a great deal to increase the volume and value of non-NAFTA trade as a portion of total Canadian trade.

Depending on the basis for measurement, the EU is either the largest or second-largest trading bloc in the world,3 and it is Canada’s second-largest trading partner. It has been evident for some time that an agreement with the EU could be beneficial to Canada. This understanding was not one-sided: as in most arrangements between trading partners, the EU also saw benefits in gaining greater access to Canada’s market. After preliminary discussions that lasted the better part of three years, negotiations began in October 2009 and resulted in the Comprehensive Economic and Trade Agreement (CETA), which was finalised in October 2016, as further discussed below.

Like the U.S. in Canada’s trade world, the EU was, and is, the UK’s most important trading partner by a wide margin: the

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2 The U.S. remains Canada’s largest trading partner by a significant margin, whereas within the past year China has edged past Canada as the largest trading partner of the U.S., with Canada remaining very close behind.
3 Eurostat figures indicate that it accounts for approximately 15% of total world trade in goods, with 84.5% of its exports going to markets outside the EU.
UK’s dealings with the EU constitute 48.5% of its total trade with the world. Following the UK’s vote to leave the EU, it appeared to many – with the possible exception of some who pushed for a “hard Brexit” – that Britain would need to forge new arrangements for trade with the remaining members of the EU (EU27). It was also evident that the time available to make these adjustments as seamlessly as possible would be severely limited.

Among the organisations vitally interested in the future of the UK economy is ICAS, (the Institute of Chartered Accountants of Scotland), which watched the above-referenced developments and concluded that it would be a useful exercise to examine possible models for the new trade framework. As the first trade agreement concluded between the EU and a mature economy, the agreement with Canada seemed a likely candidate for study. ICAS went about this undertaking from a novel direction, engaging a consultant in Canada to review the CETA from a Canadian point of view – a point of view that is arguably analogous to that into which the UK is moving as it develops its new relationship with the EU.

Chartered accountants are involved in many aspects of economic activity, in both private and public worlds. As ICAS counts among its members chartered accountants who are engaged in the full range of specialisations, it approaches this examination in a way that reflects that breadth. But modern trade agreements are very complex, and it is therefore difficult if not impossible for any single organisation to encompass in its strategic thinking all areas at issue. ICAS is no exception to this general rule. A short list of its particular interests might include trade in services as well as goods, government procurement, investment, and the mobility of professionals. While the following review is general in scope, it nevertheless focuses on areas where the views of ICAS are most likely to make a contribution to the ongoing discussion of Brexit and of the trade agreements that must necessarily follow for the UK to take its appropriate place in tomorrow’s world economy.

This report outlines some of the strengths of the CETA, as well as certain areas where Canada wished for outcomes that were more liberal, and sets these as a backdrop to a discussion of how the Canadian experience might shed light on Brexit and future trade agreements between the UK and the EU, as well as the UK’s trade relations with the broader world. The study concludes that the “Canada-plus” option offers an excellent base for an arrangement with the EU27, as it is a tested approach with the same partner and offers the flexibility to tailor an eventual agreement to the UK’s particular needs.

4 Brexit Bulletin, Bloomberg, 5 September 2017
Complexity of trade negotiations

Modern trade negotiations do not occur on a single front that encompasses all subjects and all areas at issue, and the resulting agreements are usually the product of negotiations that have proceeded on many fronts simultaneously. In this regard, it is well to keep in mind the term “Comprehensive” in the CETA’s title, as the agreement covers a full range of subject matters encountered in potential trade activities. This includes trade in goods and services, as well as the movement of human resources.

In preparing for CETA negotiations, Canada fielded a team that numbered in the hundreds, a total that included delegations from each province and territory. The team was organised into over twenty individual “tables” where negotiation took place in specific fields: agriculture, investment, alcoholic beverages, government procurement and labour mobility, to name only a few. Also of critical importance was the table negotiating the framework for dispute resolution, which would have broad application to the agreement as a whole. The team at each table had desired outcomes in mind, which would involve a process of seeking a balance between gains and concessions, always striving toward the greatest advantage possible to achieve in that particular field.

Distribution of Powers and Devolution

Canada is a federation in which many powers are held by the provinces and territories. Federated states exist along a continuum, from Switzerland, with perhaps the greatest dispersion of powers to its constituent cantons, to Germany, where government is largely centralised. Canada, Australia and the U.S. take their places along this line near the middle, with more or less clearly delineated power-sharing between the central government and sub-central (i.e., state or provincial) governments. Canada is not dissimilar to many federations, where laws regulating intraprovincial commerce, social organisation and taxation are within the mandate of the provincial governments, while matters with an interprovincial or national impact fall to the federal government.

CETA negotiations were unusual in that they marked the first occasion on which Canadian provinces and territories were “in the room” for international treaty negotiations. As is typical for a federation, within the framework for sharing powers between levels of government, Canada’s federal (national) government holds the treaty-making power. At the same time, treaties – in this instance a trade agreement – may have an impact on sub-national laws and areas of authority, as well as on the economy at all levels. In Canada, provincial governments have sole responsibility and powers in some areas (e.g., property and civil rights, elementary and secondary education, natural resources and health services delivery), and share the responsibility and powers with the federal government in others (e.g., environmental protection and agriculture).

The Canadian distribution of powers is Constitutional. It is in the very fabric of the country, from its beginnings in Confederation (1867) onward. This relationship is laid out in the Constitution Acts, 1867-1982, Part V, where Section 91 sets out the areas of exclusive jurisdiction of the federal Parliament, and Sections 92 and 93 those of exclusive jurisdiction of the provinces. When the federal government makes international commitments that fall into areas of provincial jurisdiction, as is increasingly true of trade agreements, each subnational government affected is to respond with appropriate new legislation or legislative amendments.

In contrast, devolution in the UK, despite important similarities with Canada’s distribution of powers, is of a different order. The devolved administrations of Scotland, Northern Ireland and Wales have responsibility over certain areas of governance. The arrangements are not based on a codified constitution and, technically, Parliament could still create or amend legislation even in those areas that have been devolved. Further, the frameworks differ from one region to another: for example, there are different levels and areas of jurisdiction over taxation measures. The grants of authority were made by the central government in Westminster for each region individually, and the terms for the interaction of the regions with the UK government and with each other are not statutory, but rather are set out in a memorandum of understanding.

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5 See below for discussion of the Agreement on Internal Trade and the Canadian Free Trade Agreement.

6 ‘The territories are not included here because, under the Constitution, they are considered to be under federal jurisdiction and to have only those powers that are delegated to them. In practice, as for example in the CETA negotiations, they often take on a role that is much like that of the provinces.

7 In the absence of a codified constitution, Robert Blackburn writes that the Scottish, Welsh and Northern Ireland Devolution Acts of 1998 (as amended) could be included among those Acts of Parliament “on major constitutional subjects that, taken together, could be viewed as creating a tier of constitutional legislation.” “Britain’s unwritten constitution,” British Library, 2015. [https://www.bl.uk/magna-carta/articles/britains-unwritten-constitution](https://www.bl.uk/magna-carta/articles/britains-unwritten-constitution)


9 The differences between Canada’s federal government and the sub-national governments, on the one hand, and the UK government and the devolved administrations on the other, are of significant importance in understanding the nature of the relationship between levels of government in Canada and the UK. In Canada, the federal government holds the treaty-making power, while in the UK, the power to negotiate treaties lies with the central government, subject to the consent of the devolved administrations.
Thus, the UK is not a federation in a formal sense, and it may therefore be technically true that the regions are not entitled to places in the negotiating room. However, they are very significant constituents of the UK, culturally, politically and, most importantly to a trade agreement, economically. Given that the regions are subject to different levels and natures of devolution from one region to another, unlike the Canadian provinces, the distinctive status of each one may therefore warrant somewhat different treatment during negotiations with the EU. In fact, these distinctions constitute one of the significant arguments for “bespoke” arrangements with the EU. In order to work from a position of strength in the negotiation of made-to-measure arrangements, UK negotiators must not only be aware of the essential interests of the regions in the overall architecture of the UK, but also have a global view of where the UK wants to go with the negotiations to best serve the interests of all the United Kingdom. While relations with the regions in negotiations may not take the same form as those between the Canadian federal, provincial and territorial governments, consultation can only be beneficial. This is not merely to establish needs and wishes, but also to avoid the potential pitfalls that might appear after the fact if a one-size-fits-all approach is adopted.

Such pitfalls may be low-risk during negotiations, but there is a chance of their becoming more troublesome during the implementation and enforcement phases. The risk should therefore be mitigated in prospect, rather than after the fact. Canada significantly reduced the chance of such fallout from the negotiated agreement by including the governments of the provinces and territories in the ongoing process, beginning in the early stages. The sub-national governments were able to bring their expertise to the negotiating team and are now moving into the implementation phase without facing awkward surprises. This may not be the particular approach the UK favours, but taking regular temperature readings can go a long way toward efforts to tailor the agreement to the UK’s genuine needs, reducing the risk of later surprises, and rendering the transition to the new relations with the EU smoother externally and more palatable internally.

Canada’s Internal Trade Agreements

Canada’s internal trade agreements are important manifestations of Canada’s experience in bringing federal, provincial and territorial governments together on trade. While it may seem unusual to have a trade agreement within a single sovereign country, this has been the response by Canadian governments to the growing demand for a more open internal market.

As a by-product of the distribution of powers under Canada’s Constitution, the provinces and territories have been able to exert a significant degree of control over their internal economies. Though tariffs have never been an option, over time this exercise of jurisdiction appeared in non-tariff barriers such as different licensing requirements for trucks, province-specific certification of professions and trades, local preference in procurement, residency requirements for professional practice and other forms of preferential treatment. Although these controls made sense when economies were smaller and largely local, the increasing desire for more fluid conditions led in the early 1990s to the negotiation of a domestic agreement among the federal, provincial and territorial governments. The Agreement on Internal Trade (AIT), which came into effect in 1995, was Canada’s domestic, inter-jurisdictional blueprint for the free movement of goods, services, investments and persons within the country.

Over time, the provisions of the AIT became outdated and the dispute resolution framework was seldom used. Recognition of the shortcomings of the AIT over its first 20 years led to the negotiation of the successor accord, the Canadian Free Trade Agreement (CFTA), which came into effect on 1 July 2017.

The earlier agreement, despite the progress it represented, had demonstrated numerous weaknesses: for example, it did not resolve problems with the reciprocal recognition of professional and semi-professional certification; ongoing efforts to establish the free flow of electrical energy never bore fruit; and in some subject or sector areas, rather than resolving issues within the agreement, it established working committees to continue the work toward openness. Over the years these committees operated with mixed, and usually little, success in resolving the issues within their competence.

Building on the base established by the AIT, the CFTA brings stricter disciplines in a number of areas. It applies automatically to most areas of the economy unless they are specifically excluded, or reserved. This means, first, that the

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10 Between 1998 and 2017, only 14 complaints went to panels under the AIT – an average of 0.7 cases per year. Internal Trade Secretariat, Dispute Resolution Archive, https://www.cfta-alec.ca/dispute-resolution/. There is anecdotal evidence of some disputes being resolved at the consultation stage of the dispute settlement process, but these instances were not formally collected or, in most cases, recorded as statistics related to the agreement.
CFTA is more comprehensive than its predecessor with respect to the present-day economy and, second, that it is better suited to accommodating future changes in the economy, since new technologies, professional categories and the like will automatically – unless explicitly excluded – fall under the agreement as they are developed.

Further, the subject-matter covered by the CFTA has broadened, as it now includes most services, and for the first time it covers significant portions of the energy industry, notably the transmission of electricity. Government procurement has become more open to competing firms across the country, and there is new access under the agreement to suppliers seeking contracts with electrical utilities.

Dispute resolution has been tweaked to provide greater penalties for governments found to be in violation of the agreement. The CFTA is so new that no jurisprudence exists; it will be necessary to wait for cases to proceed in order to have measurable tests of its efficacy. Nevertheless, the shape and content of the agreement bode well for a more open trade regime within Canada.

There is still work to be done. For example, the new CFTA does not establish a single national securities commission, thus allowing ambiguities and unnecessary expense to remain in the investment arena; its reservation lists are rather long (though most exclusions on those lists are narrow); and some regulatory barriers remain unreconciled and are subject to review by the Regulatory Cooperation and Reconciliation Table, a new body created by the CFTA.

One distinct benefit of the AIT experience was that, when it came time to bring provincial and territorial governments into the process of negotiating the Canada-EU CETA, the formula for their participation was already familiar. Provinces and territories had developed trade sections in their intergovernmental or economic development departments, and had accumulated a good knowledge base of international, as well as internal, trade frameworks.

The internal negotiations and the resulting agreements were based on international models, and provided an opportunity to experiment with modes of discourse. During negotiation of the CETA, the presence of Canada’s subnational governments had an impact that was perhaps unanticipated, as it facilitated the exchange of information between orders of government in a way that was much more efficient than external briefings and strategy meetings. While there was no question that the federal government was in charge of negotiations, there was nevertheless a well-used channel for the communication of factual information and ideas among all governments with a stake in their outcome. Further, the representatives of the sub-national governments had become well versed in the conduct of negotiations, and a number of them had become very skilled and knowledgeable in the process. When the opportunity to negotiate the CETA appeared, the Canadian team was well-equipped to proceed.

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11 These are significant, as the service economy accounts for 70%, and the energy sector 9%, of Canadian GDP. See https://www.cfta-alec.ca/canadian-free-trade-agreement/.
12 One case is currently underway, but it was filed in April 2017 and will therefore be heard under the AIT rather than the CFTA.
13 The AIT rather than the CFTA is emphasised here because CFTA negotiations began only in December 2014, following, rather than preceding, the bulk of Canada-EU negotiations on the CETA.
COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA)

Background

Although it comes a distant second to the United States in the volume and value of trade, the EU has been Canada’s second largest trading partner in recent years, accounting for 9.8% of Canada’s international trade in 2013.\(^{14}\) Therefore, when considering the dominance of the U.S. as a trading partner, it made good sense for Canada to seek to expand trade opportunities in the EU. The view was that success in this area could do much to expand Canada’s total economic activity related to trade and help to address the large gap between the trading partners in first and second places.

For its part, the EU saw Canada as a potential partner for improved access and increased market activity. A side benefit for the EU, given that this was the first such negotiation that it had undertaken with a developed economy, was that the CETA would serve as a test case for future negotiations with the U.S. and other large partners. Under present circumstances, with the talks between the EU and the U.S on the Transatlantic Trade and Investment Partnership in jeopardy, the UK may be the first large partner that the EU meets in post-CETA negotiations.

The scope of the CETA is broad and ambitious. A half-century ago, an agreement between nations would likely have focused on tariffs. But over time, tariffs have become less important as obstacles to trade, for two reasons: first, as trade agreements (particularly those administered by the World Trade Organisation) progressively reduced tariffs, these became less obstructive to trade; and second, with services taking an increasingly important place in national economies, recognition grew that what was happening between nations with respect to services was indeed a form of trade. In addition, the movement of capital was recognised as inextricably linked to trade, and the movement of people in support of one or more of these areas became entwined with the idea of trade as well. Many modern trade agreements, such as the CETA, therefore encompass trade in goods and services as well as investment and labour mobility.

For the present exercise, one of the values of looking into the CETA and the circumstances of its development is that Canada’s experience can give insight into the preferences and preoccupations of the EU. The agreement can provide examples of areas where the EU was willing to open its markets wide, others where it was prepared to make some adjustment to allow improved access, and yet others where it stood firm against increased access. No final outcomes from any trade talks that are underway should be assumed. While all of the UK’s negotiations will be arduous by their very nature, the UK will want to have a sense of these relative successes as part of the information that is available to develop points where it needs to exert more or less effort in the negotiations.

Under Brexit, the UK will soon find itself in the position of a trading partner on the outside of the EU, negotiating to retain an insider’s privileges and benefits. In these circumstances, the UK is currently doing well to build its negotiating team with the greatest alacrity and, one hopes, with the strongest support possible. Even under the best circumstances, it will be a relatively inexperienced, almost \textit{ad hoc} group that engages in the bargaining process\(^{15}\) to sit across the table from a well-seasoned and focused EU negotiating team that is fully familiar with the processes and its own objectives, and confident of its targets. Intelligence and a cool head are not enough: experience is critical, and the UK team will be gaining that on the job. UK negotiators must become accustomed to seeking the advantage for the UK while demonstrating to their counterparts across the table that a market that is as open as possible is in the interests of all parties. One can anticipate some difficult moments both at the table and behind the scenes.

Outcomes of the CETA negotiations

The following notes highlight both strengths and shortcomings of the Canada-EU agreement. These have sometimes been reported as win, lose or draw from the perspective of one party or the other. However, the truth is more neutral. It was noted above that well-balanced trade agreements bring benefits to all parties. With this in mind, the outcomes of the agreement will be discussed simply in terms of success in achieving the objective of a more open market.\(^{16}\)

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15 On September 5, 2017, International Trade Secretary Liam Fox acknowledged that the UK “does not have the ‘capacity’ to strike international free-trade deals” and has had to turn down countries seeking them. According to Fox, the UK’s aim is twofold: “to provide continuity as we leave the EU but then to move to more bespoke and more liberal agreements when we are able to do so.” \url{http://www.businessinsider.com/liam-fox-admits-uk-doesnt-have-capacity-strike-trade-deals-2017-9}

16 See Matthew Kronby, “Hedging our Bets with CETA,” \textit{Lawyers Weekly}, 30 March 2017. This outlook has been fairly typical of summaries covering the CETA in that, unlike the choice made in the present report, Kronby organises his list with “pros” and “cons” for Canada.
a. Tariffs are reduced or eliminated (Chapter 2)

Tariff regimes have been important throughout the world as a means of protecting home markets and domestic industries from imported goods. Early efforts to open up markets focused on goods, which were seen as what could be imported and exported.

One of the CETA’s significant achievements is the progressive elimination of tariffs on almost all goods to which customs duties would otherwise apply. They dropped to 0% on all manufactured goods and on approximately 95% of agricultural goods. To look at it in another way, 98% of tariff lines in the Harmonised System were reduced to 0%. Beyond that, the elimination of tariffs on almost all remaining tariff lines will be subject to relatively short phase-in periods. The CETA therefore provides a useful model for the reduction and even elimination of tariffs on the great majority of goods.

Even before the CETA, tariffs were no longer the major obstacle to trade that they had been in the past. Under the WTO agreements and others, Canada enjoyed relatively low tariff rates with much of the world. However, the elimination across the board of even those tariffs that are already low will have a significant cumulative effect – not only in the actual amounts no longer levied in duties, but also in the relief of certain aspects of administrative burdens to exporters and importers, as well as to the various border authorities.

At the same time, it should be noted that where preferential treatment under a bilateral free trade agreement supersedes the treatment under a plurilateral or multilateral agreement, it will involve an increase in one type of administrative burden, that of ensuring compliance with the applicable rules of origin. Under the CETA this impact will be felt in Canada on both government and businesses.

➢ This is an area where full success can be claimed for the CETA. It is a good indicator of how far the EU is prepared to go with respect to the treatment of goods, and the UK can hold this up as a gauge of what the EU has already been prepared to do with another trading partner.

For the UK, a similar provision would not likely be a new gain – after all, it has benefited in this respect from EU membership – but it will be an important area in which to maintain the ground once held in the EU. The UK has enjoyed preferential treatment of goods moving within the EU, and maintaining this special privilege will require focused negotiation. Although such an outcome cannot be a foregone conclusion, the EU demonstrated in CETA that it is willing to take such action, and the UK can refer to the CETA as a strong example of the desired outcome.

A CETA-style agreement cannot, however, lighten the administrative burden on the UK in relation to rules of origin. Notwithstanding the greatest possible success of a bilateral agreement with the EU to eliminate tariffs, the requirement to apply rules of origin will greatly increase the burden in comparison to the status quo under the single EU market. This will affect both businesses and government customs authorities. While the UK should look into ways to reduce such burdens by employing streamlined systems and programs, it should nevertheless anticipate this new, unavoidable element of cross-border trade with the EU.

b. Technical barriers are reduced (Chapter 4)

With or without tariffs, other forms of impediments to trade can exist, and a wide variety of non-tariff barriers can apply to both goods and services. These may take the form of requirements for specific suppliers, increased certification standards for trades and professionals, the application of sanitary or phytosanitary measures, or other measures that have the effect of impeding the flow of goods and services.

Non-tariff barriers often appear in the form of technical requirements: technical regulations, standards and conformity assessment procedures may have the effect of impeding access to a trading partner’s market. The CETA deals with technical barriers to trade in large part by incorporating Articles 2 through 9 as well as related Annexes of the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

However, under the CETA those provisions are significantly strengthened at the subnational level: whereas the TBT Agreement requires “best efforts” by member (i.e., national) governments to bring subnational governments into line with the agreement, the CETA makes its own dispute settlement provisions available to a party for use in instances where it believes the results of such persuasive efforts by another party have...
not been satisfactory. The results are then applicable to the sub-national government in question.

➢ As with the Agreement on Government Procurement (see comments on government procurement below), it appears unlikely that the UK will need to re-negotiate its way back into the WTO TBT Agreement. Since all WTO members are bound by that agreement, both the UK and the remaining EU27 will continue to have an obligation to abide by its terms. With continuing membership in the TBT Agreement as its base, and the CETA as a model for the future regime, the UK may wish to push toward bringing sub-national governments and non-governmental bodies under the disciplines of its bilateral agreement with the EU.

c. Access to government procurement is expanded (Chapter 19)

The value of procurement

Though excluded from the original GATT in 1947, in the intervening years government procurement has become a very important part of modern trade negotiations, representing as it does an estimated US$1.7 trillion (£1.26 trillion) annually among parties to the WTO Agreement on Government Procurement (GPA) alone, and representing a large portion of most member nations’ GDP. As a member state of the EU, the UK has been subject to the terms of the GPA since January 1996, when Canada also became a member.

Procurement of goods and services by governments is a market that is coveted by the suppliers of one party who wish to compete in the other party’s public procurement competitions. It can also be of benefit to governments and other procuring entities, as it gives them greater scope to search for savings that result from more broadly-based competition among suppliers. The CETA opens this market further and improves on the terms of the GPA, providing greater access than the GPA to the valuable market it represents.

➢ If it wishes to use WTO agreements as a baseline or fallback regime, the UK will need to establish its continuing membership in the GPA, as in other WTO agreements to which it has been subject by virtue of its inclusion in the EU. Opinion differs as to whether this will be automatically accepted by EU27 members. The UK should examine its legal status as a signatory and take a strong negotiating stance under the new conditions of Brexit, as it will be approaching the EU27 as a bargaining “other” party.

Further, given the size of the total GPA market and the possible accession of the Russian Federation and China to the GPA, the UK must be ready to negotiate vigorously in this area or risk losing a great deal of its access both to the EU and to the rest of the world.

Extension to sub-national governments

Each Canadian government, federal, provincial or territorial, is responsible for its own procurement and related practices. Government procurement is a major force in the economy, and affects all levels of government and businesses in all jurisdictions. Canadian provincial and territorial government entities are covered to a significant extent in the GPA through inclusion in Canada’s Annex 2 list (see the discussion of positive and negative lists below).

In Canada, the total value of provincial/territorial procurement is roughly equal to that of federal procurement, a fact that was not lost on the EU. In pre-negotiation discussions the EU made it clear that open access to government procurement at all levels was a sine qua non for proceeding to serious

18 Article III.8(a): “The provisions of this Article [National Treatment] shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purchases and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.” Note also that the original GATT dealt with goods, not services.

19 The GPA sits apart from other WTO agreements in that it is currently plurilateral: there are only 19 parties representing 47 WTO members (28 of them in the EU, which signed as a single party on behalf of all members). Among the current observers applying for accession to the GPA are some major trading partners: Australia, China and the Russian Federation, along with 6 smaller hopefuls. Saudi Arabia and 4 other nations are at earlier stages in the process. www.wto.org

20 “The position of the UK in relation to the GPA post-Brexit is not clear. One view is that the UK needs to rejoin the GPA after Brexit if it is to undertake commitments and receive benefits under the agreement. Another view is that succession to the agreement by the UK is possible, with no new application required. The approach that is taken to the UK’s position in practice seems likely to depend on the legal interpretations that are acceptable to the current GPA Parties as a whole, and the extent of consensus on this matter. Whatever the approach taken, however, if the Parties agree that it is desirable for the UK to continue with the rights and obligations that it has under the GPA as an EU Member State, it may be possible for this to be arranged very swiftly, and even for this to take/remain in effect at the time of Brexit.” Sue Arrowsmith, “Consequences of Brexit in the area of public procurement,” a study for the European Parliament, Directorate General for Internal Policies, April 2017 http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602028/IPOL_STU(2017)602028_EN.pdf
engagement toward an agreement. The EU’s insistence that procurement conducted at subnational levels be explicitly included under the disciplines of the new agreement, along with other matters of sole or shared provincial-territorial responsibility, was instrumental in bringing those governments into the room for negotiations.

The coverage of provincial/territorial and municipal procurement represents a shift for Canada beyond the NAFTA and other previous international agreements. Whereas these earlier accords depended on “best efforts” by the federal government to have the other orders of government adhere to pertinent provisions, the CETA now incorporates the subnational governments in both Canada and the EU into its procurement obligations. This opens up a significantly larger market to Canadian suppliers than they have enjoyed in the past.

➢ The single internal market, unlike that of Canada, is a given within the UK, where goods and services flow freely from one region to another. At the international interface, the GPA reaches to the subnational level in respect of a limited number of UK entities through their inclusion in the EU’s Annex 2 listing. But beyond that, the CETA serves well as a model for establishing reciprocal access to this market. In order to enjoy the benefits of larger subnational procurement opportunities in the EU27 member states, the UK may find it necessary to make a formal commitment to allow EU27 suppliers to have access to more subnational entities in the UK. With devolution reaching the municipal level, negotiators should be prepared to receive a possible demand for an undertaking that those markets will remain open to EU27 suppliers of goods and services.

Adoption of a negative list
Trade agreements can take an approach involving either a “positive list” or a “negative list.” The positive list names those specific items or entities that will be covered by the agreement (as in the Annexes to the GPA), whereas the negative list names those matters that are reserved, or excluded from the disciplines of the agreement. Under the latter approach, all items are subject to the agreement except those that are listed. Even those agreements that adopt the negative list approach are likely to be hybrids, combining the two approaches in different parts of the agreement – the direction taken in the CETA as a whole. The negative list in the Government Procurement chapter is progressive in nature, in that it does not freeze the agreement in time: by adopting the CETA, and specifically its incorporated negative list, the parties have undertaken to ensure that all future procurement measures will be designed to comply with the principles of the Agreement.

➢ Whatever the eventual contents of a particular list may be, the decision on whether to choose the negative or positive framework must be made first. Once the parties have made this choice, the list can be populated with its specific items, in an understanding of the implications that will follow. If the UK opts for the negative list to the greatest extent possible, its adoption will be the best assurance of broad access both immediately and in the future. Canada found the process to be demanding and rather difficult, but the result is a forward-looking agreement that avoids the rigidity and potential anachronism of a positive list.

d. Rules of origin have been simplified (Protocol)
Parts and partly-finished goods move from point to point within the EU before the final manufactured good is completed, and it can be difficult to determine the origin of the finished goods. Byzantine rules of origin have appeared in some international agreements, adding to the complexity of importing and exporting. The CETA has gone some distance to simplify these rules, and that will prove advantageous to both parties, both at the enforcement level and in a number of industries, such as the automotive and aerospace sectors. If properly implemented, this will relieve some of the administrative burden both on governments and on exporters and importers.

➢ For the UK, highly-integrated sectors such as the automotive industry will be particularly sensitive to any increase in the complexity of rules of origin. This is especially true where just-in-time delivery of parts or components is an element of current operating practices, as delays caused by increased administration or vigilance at the border will place an additional burden on the supply
It should be remembered that the higher the complexity of the rules of origin, the higher the administrative burden on both government and business. The UK should therefore be prepared to negotiate vigorously to reach the simplest possible rules of origin and thereby to restore to the greatest extent possible the freedom of movement enjoyed under the EU rules. The CETA is a good starting-point with the EU27, as this is an area in which Canada and the EU agreed on the benefits of simplification.

e. Temporary access is enhanced for professionals and business people (Chapter 10)

Businesses are becoming more and more intertwined, not only in the home country but across international borders. It is therefore increasingly important to have freedom of movement for professionals and business people. The CETA provides reciprocal privileges between Canada and the EU for these groups on a temporary, and in some instances visa-free, basis.

➢ The CETA establishes new forward-looking rules that are suitable for Canada, as a trading partner at a geographic distance and with limited interconnection with the EU market. However, the UK, as a beneficiary of the EU’s liberal policies on mobility within its borders, may find that the terms set out in the CETA are less than it wants to achieve. Westminster is already making proposals to grandfather the rights of British citizens in the continental EU, and those of continental citizens in the UK, but the terms being discussed so far provide for those protections to taper off over time, and not to apply to new entries after the phase-in period.

The UK would be well advised to study the provisions in the CETA, particularly those in Articles 10.7 (applying to key personnel), 10.8 (contractual services suppliers and independent professionals) and 10.9 (short-term business visitors) to see if these provisions are sufficient. If not, the provisions will require significant negotiation to achieve more open conditions closer to what the UK currently enjoys within the EU.

f. Access for services is (somewhat) improved (Chapter 9)

The financial services chapter awaits ratification (Chapter 13)

Services are a critical part of the economies of both Canada and the EU, valued in 2013 at approximately 69% of GDP in Canada and 74% of GDP in the EU. It therefore makes eminent sense to make it easier for service providers to gain benefits from the agreement. The CETA opens up both markets to the reciprocal provision of services, and it explicitly includes subnational governments in its coverage. Once again, the agreement adopts the negative list approach, so that all services are covered by non-discrimination and market access provisions, with the exception of those reserved in an annex.

The lists of reservations cover a great many services, so that the practical effect of the Services Chapter is diminished. The chapter essentially cements the current status of market access pre-CETA, but the future is perhaps somewhat brighter: the agreement incorporates a “ratchet” that applies to future trade-liberalising measures in services, and it thereby guards against backsliding.

The separate chapter devoted to financial services supports some improvement of market access. However, that chapter was not included in the provisional coming into force of the agreement on 21 September 2017, so it has no immediate effect. Its adoption awaits ratification of the full agreement by all EU member states, a process that is ongoing.

➢ The service sector is even more prominent in the UK than in Canada, valued as it is at approximately 80% of GDP, with London’s service sector accounting for 91% of that city’s economy. With the threat of service providers, including financial institutions, relocating fully or partially to the EU27, this is an area that demands concentrated attention.

The CETA may be of assistance to UK negotiators in defining the issues and in demonstrating the approach to the negative list that was acceptable to the EU, However, the actual results it offers at present are not likely to be sufficient to the needs of the UK. The mere fact that the gains were so meagre suggests that the UK, with its high dependence on trade in general services as well as in

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24 To date (17 October 2017), 7 member states had ratified the agreement.
financial services, will want to be extremely ambitious in negotiations in order to preserve as much as possible of the position it now enjoys within the EU.

g. Dispute settlement (general) follows traditional path (Chapter 29)

Dispute settlement (investor-state) is to have its own tribunal (Chapter 8)

General dispute settlement provisions in Chapter 29 of the CETA proceed along lines that are fairly typical for trade agreements: notification, consultation, the option of mediation, and ultimately the appeal to a panel constituted from an existing roster. There is some degree of specificity in the requirements for panellists, such as specialised knowledge of international trade law (it is obligatory), and their non-affiliation with the government of any party (the WTO rules allow for government affiliation, but panels are then chosen from members which are not parties to the dispute). Otherwise, the conditions for panellists are unexceptional.

It is in the matter of investment disputes, specifically investor-state complaints, that the CETA has broken ground. This chapter was not included when the CETA came into force provisionally on 21 September 2017, but it is nevertheless worthwhile to refer to the dispute settlement process here as it represents a refinement that both Canada and the EU are prepared to adopt.

The chapter would create a new tribunal to deal exclusively with investor-state dispute settlement (ISDS). The strength of the tribunal rests in part in its makeup: members of the roster from which panel members are to be chosen must be qualified as jurists in their own jurisdictions, with expertise in public international law and preferably a capability in international investment law. They are subject to a code of conduct and other provisions that provide assurance of competence and independence.26

A second strength of the ISDS tribunal lies in its permanence. Dispute settlement tribunals created by other agreements frequently operate under ad hoc arrangements. Panel members are chosen by parties, case by case and, although they may be experts in, for example, environmental law, import-export regimes, and the like, they may not possess specialised knowledge of the pertinent agreements or of the processes and decision-making standards appropriate to a quasi-judicial body. In contrast, the CETA creates a tribunal with a permanent roster made up of a limited number of jurists from among whom panel members are drawn. This will ensure that cases are heard by panels whose members have a firm grasp of the applicable legal frameworks and will, over time, establish consistency in a growing body of jurisprudence.

In effect, the CETA creates a new court, one that is independent and served by those with appropriate expertise. Beyond this level, the CETA also creates an appellate court, with even stricter conditions for its members. The conditions established for these tribunals are desirable elements in a dispute settlement process, and they represent a step forward from existing formats.

➢ Given that this approach is one that has been embraced by the EU, the UK would do well to explore the structure in some detail and use it as a model to pursue a similar arrangement, either within the scope of Brexit or in a future trade agreement with the EU.27 The UK is on record as objecting to submitting its claims to the European Court of Justice and being bound by its decisions, and this would offer an alternative that could be palatable to both the UK and the EU. Under the CETA, this body is intended to deal only with ISDS issues. However, depending on the terms of upcoming agreements with the EU, the UK could negotiate, not only for jointly-supported courts to adhere to these standards of expertise and independence, but also to expand the mandates of such courts to include matters other than investor-state disputes. This could be the beginning of a new, broadly based and widely accepted international trade court.

h. Various measures take administrative burden into account

In the adoption of trade regimes, there are always the realities of implementation to deal with. These may include the imposition of tariffs on goods or the application of regulations to services, for example. But they also include the by-products of the provisions of an agreement: for manufacturers, exporters and importers


\[27\] This paragraph assumes a straightforward bilateral agreement on the CETA model. However, the reformed dispute settlement mechanism contemplated in the CETA is part of an EU mandate to establish a permanent ISDS body similar to the WTO dispute settlement body. The EU might very well seek to have the UK agree to grant jurisdiction to this body. In that case, this would not be a dispute settlement body similar to that set out in CETA, but a common one, as it would make the most economic sense if supported by many countries.
of goods, time-consuming lineups at border crossing points and potential warehousing requirements to hold goods temporarily if inspections are increased. There may be licensing or visa costs for service providers. For governments, there are increased expenses related to documentation, regulatory compliance, and so on. As noted above, the requirement to deal with rules of origin, as streamlined as they may be, is bound to add complexity and administrative burden to importing and exporting goods.

The CETA eases to some extent the difficulties of entering each other’s market for both Canada and the EU. For example, in Chapter 6, Customs and Trade Facilitation, the parties undertake to keep complexity to a minimum and expedite steps such as the release of goods, using electronic tools as appropriate. Chapter 19, Government Procurement, establishes a single electronic point for each party (serving both national and subnational governments) to publish notices of intended procurements. In both cases, these should reduce the burden for both importers-exporters and government officials. On the other hand, chapters such as Regulatory Cooperation, which set out desirable principles and refer to ongoing discussion, do not offer much concrete advancement over existing circumstances.

Overall, however, the parties to the CETA will benefit now from obligations they have undertaken to implement immediately or with phase-in periods, and potentially in future from the outcome of discussions in various committees and working groups created by the Agreement.

➢ Brexit will introduce new administrative burdens (or reinstate old ones) for the private sector in the form of increased documentation, longer border transfer times, potentially higher tariffs and a variety of non-tariff barriers that have not been so obtrusive under the EU. The public sector will also be affected, with the need for increased inspections at border points, the establishment and maintenance of licensing and certification processes, and the constant challenge of maintaining equivalency in regulatory regimes. That is, unless these potential burdens can be negotiated away. This is no easy task, and even where it does not offer solutions, the CETA can serve as a checklist of those matters that require attention and need to be prioritised.
TIMEFRAMES AND RELATED MATTERS

The creation of trade agreements can consume little time or a great deal of time. In the case of the current process to “renew” NAFTA, negotiations began in August 2017. All three parties appear to want to conclude talks in short order, and agreed initially to try to rough out a text by December of the same year – a matter of less than five months. There are always contentious issues to be worked out, and they require time. The December 2017 goal has proven to be overly optimistic, and the current plan is to meet for the next round of negotiations in the new year. If negotiations should succeed, it will be in large part because an agreement already exists; despite the U.S. President’s declarations that it will be an entirely new document, the reality is that those portions of the existing NAFTA that are not contentious will almost certainly be incorporated into any new version.

A similar statement could be made about Canada’s new internal agreement, the CFTA. The original AIT, though it was widely criticised for falling short in creating the desired openness, was nevertheless a starting-point for the new accord, which meant that negotiators did not need to begin with a clean page. The earlier AIT was negotiated between March 1993 and July 1994, a period of 16 months. It then came into effect a year later, in July 1995 – a total elapsed time of 28 months. Negotiations for its successor, the CFTA, began in December 2014 and were completed with little fanfare in 24 months. It came into effect on 1 July 2017, having consumed a total of 30 months.

The CETA, on the other hand, took significantly longer. Negotiation is only part of the process for any agreement. Particularly where no trade agreement has existed previously, significant time may be required for pre-negotiation talks to set the stage for negotiation, and also for post-negotiation adoption, ratification and implementation. After Canada and the EU started testing the waters in 2006, it took three more years for actual negotiations to start. The negotiation stage alone required seven years from the beginning of formal engagement at the first round in October 2009 to signing in October 2016. Early in this period, both parties needed time to bring their constituent members into the process: Canada its provinces and territories, and the EU its member states. After signing, the parties needed almost another year to reach the point at which the agreement came into effect provisionally on 21 September 2017. The formal process therefore took approximately eight years, but even so it remains incomplete: ratification and implementation across governments will need to continue before the “provisional” tag can be dropped.

These examples illustrate the fact that, while negotiation may consume relatively little time, especially when it takes place in a hothouse atmosphere and with a compressed timeline, other processes required to bring a trade agreement into force may extend the required time and be counted in years. In the case of the CETA, as in many other agreements, a compressed timeline for negotiations was originally established by mutual consent and, as it turned out, it was extended significantly, again by agreement between the parties.

Brexit is an anomaly, in that its timeline is established by an external agency – existing rules to which both parties are subject – and mutual consent to extend the ultimate deadline may be difficult to achieve. It would appear that the compression of time is increasingly severe as the deadline for exiting the EU approaches. Beyond that date, it is imperative to find a new trade equilibrium as quickly as possible in order both to minimise damage to the economies concerned and to allow the UK the freedom to set the course for its future.

The Canadian experience of the CETA is instructive, in that it took several years to reach accord on an agreement that explored some familiar territory and some new territory. But Canada and the EU had the luxury of time to achieve the goal, which was to enhance a trade regime that already existed under WTO agreements. In the case of the UK leaving the EU, on the other hand, an existing regime that is more advantageous in many ways than the WTO agreements is being set aside in favour of the uncertainty of what might be accomplished in a new trade arrangement. The thrust of the exercise is to find new ground that retains the desirable elements of the old, while doing the utmost to avoid the risks of falling short in the quest.

The compression of time highlights another challenge, this one affecting personnel. When it approached the negotiations for the CETA, Canada, as signatory to many bilateral, plurilateral and multilateral trade agreements, had an established cadre of negotiators with deep experience in the international arena. As noted, this even reached to the subnational level, as provinces and territories were veterans of internal agreements that were made to resemble international models.

➢ In Brexit and subsequent trade talks, the UK is working at a disadvantage. This arises not only directly from the time pressures but, in a related matter, also because, for two generations, international negotiations have been conducted on its behalf by the EU – the very party across the table in current and future talks. The UK team so far lacks the experience and coordination of the well-seasoned EU team and will perform be gaining that experience on the job.28

Mistakes are potentially costly. The UK should do the utmost to establish terms for negotiation that provide its team with adequate breathing room and, where there is the freedom to do so, should guard against easy acceptance of suggestions to compress the timeline for negotiations to an unreasonable degree. It is a fine balance: time is a luxury; nevertheless, its ostensibly desirable attenuation should be set against the hazards of allowing too much time to elapse before a new accord is reached.
THE CETA AS A MODEL FOR THE UK

The CETA is an important step forward for Canada, in creating a post-WTO partnership with the world's largest trading bloc. It goes beyond WTO disciplines in significant areas, reducing or eliminating tariffs, improving access for professionals and businesses, establishing a dedicated dispute settlement mechanism, and so on. But would a CETA-like agreement tailored to the particular circumstances of the relationship between the UK and the EU serve the UK's needs adequately?

In our view, the answer is no. The UK has enjoyed major benefits from its membership in the EU, not least of which is the free flow of investment and goods within the bloc. That has permitted just-in-time delivery of auto and aircraft parts, for instance, which is a freedom that, if accomplished at all under the new regime, will be hard-won.

That having been said, it is also our view that the CETA is in several ways a good model and starting-point for an eventual "Canada-plus" agreement, as outlined in various ways above.

Both the UK and Canada are subject to the WTO agreements. Each has gained greater benefits than the WTO offers by entering into more favourable agreements with particular trade partners. In the present instance, they have both entered accords with a common partner, the EU. It is difficult to quantify the relative economic benefits of EU membership versus the adoption of an agreement similar to the CETA. Although various positions have been taken on the benefits or deficiencies of Brexit itself, little work of a comparative nature has been undertaken. However, using the WTO as a reference point, it is informative to draw broad-stroke comparisons between bare WTO coverage and the benefits that have accrued in the special arrangements with the EU. The following notes touch on this question.

WTO vs EU membership vs CETA model

**Implications of dropping out of the EU**

Art.226 of the Union Customs Code refers to various situations in which goods sourced from outside the Union may move within the Union without the usual costs. That is a benefit that the UK has enjoyed as a member of the EU. But once out of the EU, British goods will have to make their way into the Union from outside before they can take advantage of this treatment. This refers only to goods, but the situation for services and the mobility of professionals and business persons is similar.

Under a hard Brexit, the UK would leave the Union without the promise of any special treatment in its dealings with the EU27. Assuming that it remained a signatory to various WTO Agreements, it would become a third-party trading partner, subject only to WTO rules. It is therefore essential for the UK to develop trade arrangements with the EU that provide it with the greatest possible benefits to substitute for those of EU membership in order to reduce “Brexit shock.”

To illustrate the relative seriousness of that state of affairs, we have looked at studies that contrast the current benefits to the UK within the EU with the circumstances that would prevail in a WTO-only world. We then look at Canada’s arrangement and the adequacy of the CETA as a model to substitute for the benefits that the UK previously enjoyed. In both comparisons we use the WTO agreements as the baseline.

1) The UK: EU vs. WTO

The default to the WTO regime is another way of referring to a “hard Brexit”. For the sake of clarity, the following notes refer to a hypothetical situation in which the UK has not established an alternative to its membership in the EU, and then automatically falls under the terms of the various WTO agreements to which it is a signatory. In very general terms, reversion to WTO rules would immediately lead to WTO tariff levels and WTO levels of access for the movement of goods, people and investments, as well as new border controls resulting from the UK’s becoming a “third country” relative to the member states of the EU27.

In a review of various analyses of the net effect of Brexit, the Institute for Fiscal Studies reports that “The vast majority [of studies] suggest a negative effect substantially in excess of 0.6% of national income.”

This takes into account the elimination of the UK’s annual £8 billion net contribution to the EU, and points out that the loss to the UK economy would more than offset that gain. As one might expect, estimates for the impact on GDP vary considerably, with a mid-range in the neighbourhood of a 3% drop.

The National Institute for Economic and Social Research (NIESR), while providing a range of 2.1% to 3.5% loss of GDP, suggests that any error found in this estimated range would likely imply a correction toward the negative side. In looking at longer-term changes, NIESR models suggest a reduction in annual income ranging from 1.8% to 7.8%.

In his study on the effects of a hard Brexit, Andrew Black looks at 55 sectors of the economy. In his view, while some sectors would be minimally affected, several that are very important to the UK economy would be vulnerable to the point of nullifying their profitability in foreign trade transactions. These include motor vehicles, fishing and textiles.

In addition to tariffs, Black turns his attention to non-tariff barriers (NTBs), such as product safety standards and specific processing requirements. While acknowledging the great differences among economists on the value to be assigned to NTBs, he indicates that “it would be reasonable to add at least 2 to 3% further reductions in output, in addition to those already mentioned...” Though basing his analysis largely on the goods economy, he notes that the effect of NTBs on the service sector, which is not subject to tariffs, would be “powerful.” Overall, he estimates a drop of almost 3% in GDP that would be attributable to the combination of NTBs and new border controls, all of which might affect goods, services and the mobility of professionals.

Black acknowledges that most studies see NTBs as being less of a problem than tariffs, but differs from this view, at least for the medium term, during which he believes that NTBs are likely to have a much larger effect than tariffs.

Both tariffs and NTBs can have a significant effect on industries that are integrated between the UK and the EU, either in branch plant arrangements or in supplier-assembler links. In some industries, such as the automotive sector, constituent parts may flow back and forth repeatedly at different stages of production. Every crossing of a border between the EU and the UK is a potential occasion for the application of tariffs, as well as for delays in movement arising from documentation and warehousing requirements.

The impact on services is more difficult to quantify than that on goods. Although the EU and the UK are signatories to the General Agreement on Trade in Services (the UK by virtue of its status under the EU, as with other WTO agreements), the rules of the GATS are not as open as those prevailing within the EU. This is an area where NTBs are permitted to be more obtrusive than they are within the EU, in matters such as reciprocal recognition of professional certification and the flow of investment. For this reason, without a special agreement in place, UK service providers are likely to have more difficulty in gaining access to the EU27 market than they currently experience within the EU.

In summary, in order to see the impact on the UK of reverting to the baseline established by the WTO agreements, one needs to reduce the economic advantages that the UK currently enjoys from its membership in the EU by several percentage points. In addition, the strictly economic impact of falling back to the WTO agreements would likely be exacerbated by the irritants of additional documentation and border scrutiny on goods, as well as new constraints on the mobility of persons and investment.

2) Canada: CETA vs WTO

Projections for the changes that Canada expects to experience through the adoption of the CETA are measured in the opposite direction. What is already known is the baseline, the status of current WTO membership, as Canada has traded with the EU for decades under the provisions of WTO agreements. What needs to be estimated is the impact of future benefits set against that existing benchmark. Any conclusions are necessarily tentative, given that the CETA has only now come into force.

As noted above in qualitative terms, the CETA’s benefits are uneven from one part of the economy to another. On the positive side of the ledger, success in lowering most tariff rates to zero means that the flow of goods will be considerably eased. Terms for temporary entry of professionals and business people have improved considerably. The opening of government procurement of goods and services will be beneficial to both partners.

There was less success in other areas, such as services, where the CETA currently matches the GATS but with provisions allowing it to liberalise beyond the GATS in future. Further, the agreed investor-state dispute settlement mechanism is not included in the provisional application of the Agreement. However, those gaps at the outset do not alter the fact that the CETA is an improvement on the WTO framework. Because the WTO agreements would have remained in place even if the CETA negotiations had failed, a successfully concluded CETA could only bring improvement.

The anticipated effect of the CETA on the Canadian economy has been studied by Canada’s Parliamentary Budget Officer\(^\text{31}\) who, perhaps surprisingly, anticipates a slight deterioration in the balance of trade from Canada’s perspective. However, that is offset by increased economic output and investment.

Although under the CETA the export of goods to the EU is expected to rise by 9.3%, the export of services by 14% and investment by 0.6%, the base amounts on which these percentages are calculated are relatively small, so the increments are correspondingly small. In the case of goods, for example, only 12.6% of Canada’s exports went to the EU in 2015. (In the same year, 11% of EU exports in goods went to Canada.) Taken overall, the increase in Canada’s GDP resulting from the adoption of the CETA is expected to be CA$7.9 billion (£4.8 billion), using 2015 as the base for comparison. As a result of these changes, the cumulative impact of the CETA on Canada’s GDP, taking goods, services and investment into account\(^\text{32}\) is anticipated to be 0.4% or less.

These amounts of gain are small compared to the projections for loss to the UK’s economy should it revert to the WTO agreements. The CETA, although it improves Canada’s economic relationship with the EU, clearly falls short of the benefits that the UK enjoys with EU membership.


\(^{32}\) Although the report includes reference to foreign direct investment in its calculations, FDI changes are expected to be very small in comparison with those related to goods and services.
CONCLUSION

The foregoing review highlights a number of the areas in which the EU showed itself to be amenable to opening its market and strengthening trade links with Canada. Each of these areas is of potential interest to the UK, which can use the CETA as an example of what can be accomplished in a new trade regime. However, it should be remembered that the CETA represents a significant step forward for Canada: not only does it improve on the prevailing disciplines of WTO agreements, but it was accomplished with a trading partner at a significant geographic remove. Even its successes must be measured against the privileges and obligations that the UK holds today within the EU, with an eye to determining whether the CETA regime is adequate to the UK’s needs on any given point.

But whether or not the CETA as it stands falls short of UK aspirations, the UK can still profit from using the Canada-EU agreement in many ways: as a basis for comparison, a blueprint for defining subject-matter, an indicator of the EU’s preferences, and a guide to those areas that will require extra effort to achieve the desired results. The UK can build on the CETA’s successes to press for greater reciprocal market access across its range of coverage.
ABOUT THE AUTHOR

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James Ogilvy provides consulting services on a wide range of matters relating to trade and administrative justice. As a Member of the quasi-judicial Canadian International Trade Tribunal (CITT) from 1999 to 2009, he heard hundreds of cases in all areas of the CITT mandate within the frameworks of international trade agreements. For a number of years he has been active in designing and delivering seminars and workshops on vital aspects of administrative justice, such as decision-writing, agency governance, best practices and ethics. During negotiation of the Comprehensive Economic and Trade Agreement with the EU, Dr. Ogilvy was an advisor to the Government of Alberta’s team. He recently served for three years as Executive Director and CEO of the Council of Canadian Administrative Tribunals, a national organization promoting high standards in administrative justice.

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