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Vers un droit international économique transatlantique
Towards a Transatlantic International Economic Law

Sous la direction d'Hervé Agbodjan Prince

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Services in Transatlantic Trade Deals: Potential for Progress after 2020?

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**Les services dans les accords transatlantiques:
quelles perspectives après 2020?**

**Servicios en acuerdos comerciales transatlánticos:
¿potencial de progreso después de 2020?**

**Serviços nos acordos comerciais transatlânticos:
potencial para progresso depois de 2020?**

跨大西洋贸易协定中的服务业：2020年后进展迅速？

Résumé

Les services constituent un élément important des économies et des sociétés modernes. En dépit d'être un vecteur de croissance économique, la libéralisation mondiale des services ne progresse cependant pas très rapidement. Cet article explore la contribution à la libéralisation du commerce des services apportée par la négociation d'accords transatlantiques d'intégration commerciale entre l'Europe et l'Amérique du Nord, ainsi que ses perspectives pour l'avenir immédiat dans le contexte du changement de pouvoir anticipé aux États-Unis et les nouveaux rapports entre le Royaume-Uni et l'Union

Abstract

Services constitute an important element of modern economies and societies. Despite being a vector of economic growth, the global liberalization of services is not proceeding as rapidly as expected. This article explores the contribution to services trade liberalization made through the negotiation of transatlantic deep trade agreements between Europe and North America, and the prospects for the immediate future in light of the new relations between the United Kingdom and the European Union, as well as the anticipated change of power in the United States. The author believes that opportunities for

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européenne. L'auteure prévoit que des ouvertures pour de nouvelles négociations transatlantiques sur les services resteront difficiles à trouver dans un proche avenir.

Resumen

Los servicios constituyen un elemento importante de las economías y las sociedades modernas. A pesar de ser un vector de crecimiento económico, la liberalización mundial de los servicios no avanza muy rápidamente. Este artículo explora la contribución a la liberalización del comercio de servicios obtenida por la negociación de acuerdos transatlánticos de integración comercial entre Europa y América del Norte, así como sus perspectivas para el futuro inmediato en el contexto del cambio de poder anticipado en los Estados Unidos y las nuevas relaciones entre el Reino Unido y la Unión Europea. El autor predice que las aperturas para nuevas negociaciones transatlánticas de servicios seguirán siendo difíciles de encontrar en un futuro próximo.

transatlantic negotiations on services will remain hard to come by in the near future.

Resumo

Os serviços constituem um importante elemento das economias e sociedades modernas. Apesar de serem um vetor de crescimento econômico, a liberalização global dos serviços não está ocorrendo rapidamente. Este artigo explora a contribuição para a liberalização do comércio de serviços proporcionadas pela negociação de acordos de integração comercial transatlânticos entre a Europa e a América do Norte, assim como suas perspectivas para o futuro imediato no contexto da mudança antecipada de poder nos Estados Unidos e as novas relações entre o Reino Unido e a União Europeia. Acreditamos que oportunidades para novas negociações transatlânticas sobre serviços continuarão difíceis de encontrar em futuro próximo.

摘要

服务业是现代经济和现代社会的重要组成部分。尽管它是经济增长的一个载体，服务业全面自由化进展并不迅速。本文考查了欧洲与北美之间的跨大西洋深度贸易协定谈判对服务业贸易自由化作出的贡献，并根据新的英欧关系对不远的将来做出了前景预估，同时对美国的实力变化进行了预测。作者认为，关于服务业的跨大西洋谈判在可预见的将来依然难以成行。

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Services constitute an important element of modern economies and societies. The European Union (EU) has long recognized the potential contribution of services to the generation of wealth and wellbeing of peoples and nations. For decades, it has advocated the elimination of obstacles to the cross-border provision of services, both in the context of its Internal Market, in the context of the World Trade Organization (WTO), and in the context of regional agreements with a growing number of non-member countries, including the (stalled) negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the United States (US) and the *Comprehensive Economic and Trade Agreement* (CETA) with Canada.

Despite being a vector of economic growth, the liberalization of services is not proceeding very rapidly. Protectionism, political sensitivity, social concerns and anti-globalization all play their part in this, as does the dispersion of power in the world and a relative loss of influence of the EU, as exemplified most recently by Brexit. The United Kingdom (UK) left the EU on 31 January 2020 and is now seeking to position itself as an independent trading partner vis-à-vis both the EU-27 and other nations. The UK has an important service industry, through its special relationship with North America, which is a force to be reckoned with.

What will Brexit mean for transatlantic trade agreements covering services? Will the UK's independent trade policy enhance services liberalization or will it provide the occasion for a return to protectionism? And how will the EU-27 fare in light of the new American administration scheduled to take office mid-January 2021? This article explores some of the reasons why it may be difficult to progress in transatlantic trade relations for the time being.

In Section I, the notion of services will be defined and an overview will be given of the current state of liberalization, the dynamics of which appear to have been shifting from the multilateral to the bilateral level. In Section II, the importance of establishing transatlantic standards on services will be explained from a European perspective. Section III will provide a brief overview of what has been achieved in this area in the relationship between the EU and North America and how the sensitivity of certain sectors of services has led to the exclusion of those sectors from the negotiations in transatlantic relations. Section IV will deal with the impact of Brexit on the UK's trade in services and for affected countries including Canada, taking into account the provisions affecting services of the

agreement between the UK and the EU on their future relationship. Section V will deal with the position of, respectively, Canada and the US concerning the conclusion of new transatlantic agreements covering services. A final section ties everything together by providing an evaluation. The author argues that further progress in the transatlantic liberalization of services is not expected any time soon.

I. The multilateral services liberalization *acquis* and the shift to bilateral treaties

Measured on a worldwide scale, services constitute the fastest growing sector of the economy, and they account for two-thirds of global economic output. Globally, they provide one-third of all employment, representing nearly 20 % of global trade.¹ The notion of services as used in international relations is very large, comprising all sectors that can be traded internationally such as transport, tourism, recreation, banking, insurance, education, health service, construction, maintenance, legal services, accounting, marketing, information technology (IT) and intellectual property. Traditionally, in accordance with the *General Agreement on Trade in Services* (GATS), one distinguishes four distinct modes of supply for services being covered by international negotiations:

Mode 1 – services being supplied from one country to another (e.g., telecommunications): ‘Cross-border supply’;

Mode 2 – consumers or firms using a service in another country (e.g., tourism): ‘Consumption abroad’;

Mode 3 – foreign companies setting up subsidiaries or branches to provide services in another country (e.g., foreign banks setting up operations in a country): ‘Commercial presence’;

Mode 4 – people travelling from their own country to supply services in another (e.g., fashion models or consultants): “Presence of natural persons”.

A fifth mode of service supply has been proposed but has not (or not yet) translated into WTO law, regarding services that are incorporated in

¹ World Trade Organization, “Understanding the WTO: the agreements”, online: <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm>.

goods that are subsequently exported² (and that can be subject to customs duties), for instance, software included in a smartwatch, or IT allowing to 3D print parts of merchandise. The proportion of this mode of supply is rather substantial in EU exports to the rest of the world. It accounts for 34 % of the value of all manufacturing exports of the EU.

The different categories of services as described above are generally used for classification, economic analysis and statistics, which informs policy formulation by countries (as well as the division in service industries themselves). As we shall see, there is a relationship between these four or five categories, and each of them has its benefits and sensitivities.

Despite the economic importance of trade in services, the current framework provided for in GATS is outdated, giving rise to calls for improvement referred to in WTO language as ‘GATS+’ (or GATS 2.0) aspects.³ However, progress is hard to achieve in the current climate. There are a number of challenges to global negotiations on trade in general that apply equally to services. As a result of the achievement of past successes on tariffs, there are fewer concessions on offer in return for further services liberalization. Developing or newly emerging countries object to strictures seemingly dictated by the developed world. Mercosur, for example, wants to abolish agricultural subsidies in return for accepting further commitments including investment disciplines, public procurement, and services. Global negotiations are therefore exceedingly complex, as the failure of the Doha Round on July 24, 2006, has very well illustrated. Meanwhile, the disciplines, dispute settlement procedures and governance principles in the WTO suffer from weaknesses that make GATS a less than perfect instrument for international cooperation in its field.

These factors have combined to bring about a re-location of efforts of liberalization to a bilateral context, resulting in the transatlantic context in negotiations between the EU the US (TTIP), respectively, Canada (CETA), and Mercosur and Mexico. With the exception of TTIP, these negotiations have resulted in expansive transatlantic free trade agreements in the second decade of the twenty-first century. These cover services beyond what is

² Eurostat, “Services trade statistics by modes of supply”, online: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Services_trade_statistics_by_modes_of_supply#Trade_in_services_by_modes_of_supply>.

³ Panagiotis Delimatsis, “Trade in Services and Regulatory Flexibility – 20 years of GATS, 20 years of critique”, *TILEC Discussion Paper*, 2015 [*TILEC Discussion Paper*].

available under GATS, concretizing in bilateral relations what has been referred to above as ‘GATS+’. The halting of the TTIP negotiations was due both to a protectionist turn of the US under the Trump administration, pursuing an ‘America First’ policy over international trade liberalization, and to the EU threatening to exclude trade deals with countries that did not subscribe to the Paris accords on climate change.

Below, we shall consider how the legal *acquis* established so far might be affected, positively or negatively, by recent shifts in power, notably, the UK leaving the EU and the coming into office of the Biden administration in January 2021. But before we get there, it is expedient to consider the importance of transatlantic free trade agreements in this area for the EU as the largest trading block in the world.

II. The importance of establishing transatlantic principles and standards – an EU perspective

The EU has taken over the competence of its Member States for the negotiation and conclusion of international trade agreements, and its exclusive power in this field, which encompasses not only trade in goods, but also services and foreign direct investments (to the exclusion of portfolio investments). In its *Opinion 2/15* regarding the agreement with Singapore,⁴ the Court of Justice of the EU (CJEU) clarified the division of competence for the Common Commercial Policy and thus paved the way for the conclusion and provisional application by the EU of not just the Singapore agreement but also CETA and other deep trade agreements.

For the EU, the importance of transatlantic relations in this area flows from a number of factors.

Firstly, there is a healthy volume of transatlantic trade. The US and Canada rank especially high in the list of countries with which the EU trades, both as regards goods, services and investments. In 2015, the US accounted for close to 30 percent of total EU external trade in services, while for the US, the share of the EU in total trade in services was over

⁴ CJEU, *Opinion 2/15* of 16 May 2017. Opinion pursuant to Article 218(11) TFEU – Free Trade Agreement between the European Union and the Republic of Singapore. ECLI: EU: C: 2017: 376.

30 percent.⁵ As can be seen in the following table, EU service imports from the US totaled 223.700.000.000 euros in 2017, and its service exports to the US yielded 236.200.000.000 euros that same year.⁶

Table 1 – EU-US trade in services 2015-2017 (billion EUR)

Year	EU service imports from US	EU service exports to US	EU balance (services)
2015	215.1	227.7	+ 12.6
2016	229.1	226.3	- 2.8
2017	223.7	236.2	+ 12.5

Source: European Commission, DG TRADE

Moreover, the EU and the US are each other's largest investors in the sector, and trade between parent companies and affiliates in the EU and the US accounts for more than one-third of all transatlantic trade. Estimates indicate that EU and US companies operating on one another's territory provide jobs for more than 14 million people.⁷

And while Canada ranked 10th among the EU's international trading partners in 2018, the EU ranked second as Canada's trading partner after the US.⁸ The EU exported goods worth EUR 41.4 billion to Canada and absorbed Canadian goods valued at EUR 31 billion that year. In comparison to those figures, services trade between Canada and the EU is sizeable, as is demonstrated in Table 2.

Table 2 – EU-Canada trade in services 2015-2017 (billion EUR)

Year	EU service imports from Canada	EU service exports to Canada	EU balance (services)
2015	12.6	19.4	+ 6.8
2016	12.1	20.2	+ 8.1
2017	13.2	21.7	+ 8.5

Source: European Commission, DG TRADE

⁵ Eurostat, "Transatlantic trade in services", 2017, online: <<https://ec.europa.eu/eurostat/web/products-statistical-reports/-/ks-gq-17-016>>.

⁶ European Parliament, "Transatlantic relations: the USA and Canada", online: <<https://www.europarl.europa.eu/factsheets/en/sheet/174/transatlantic-relations-the-usa-and-canada>>.

⁷ *Ibid.*

⁸ *Ibid.*

Secondly, the EU and its transatlantic partners are thinking alike, in principle, on the limits of the WTO framework for the settlement of disputes regarding such commerce and on the possibility of introducing improvements through the conclusion of bilateral treaties. For example, they realize that bilateral treaties can establish a permanent framework for regulatory cooperation. They can introduce new forms and improved ways for dispute settlement. They can establish mutual obligations of transparency. In the framework of services specifically, they can introduce a Most Favored Nation (MFN) obligation, which is currently not included in GATS. Regarding these aspects, CETA is a step beyond the multilateral framework. TTIP had the same aspirations until negotiations were halted after Donald Trump was elected in office.

Thirdly, ever since the Treaty of Lisbon in 2007, the EU has been equipped with a clear constitutional mandate to ‘promote peace, its values and the wellbeing of its peoples’ (Article 3(1) *Treaty on European Union* (TEU)). According to Article 21(1) TEU:

The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to promote in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems [...]

Fourthly, common principles which have been accepted in transatlantic treaties stand a greater chance of being accepted at the multilateral level in the framework of the WTO. Thus, the objective to get to a GATS+ comes more within reach. The establishment of an investor-State dispute settlement court is an example of how this might work. The legal politics of the EU includes resorting to transatlantic bilateralism, but not at the expense of multilateralism.

Fifthly, in general, the size of a market determines the chance of a trading nation or bloc to have its standards accepted beyond its borders. If the

so-called ‘Brussels effect’⁹ is a reality, a transatlantic free trade area is even more conducive to global standard setting, because the greater the market, the more the participating partners are able to jointly set standards and thus to ‘occupy the field.’¹⁰ The halted TiSA negotiations sought to do the same thing but, so far, in vain.¹¹

Meanwhile, it has been suggested that transatlantic treaties help the EU to develop common policies in the face of internal resistance.¹² To my knowledge, there is no compelling evidence today that this is effectively the case, however, it is an idea that merits further research.

In sum, there are a number of reasons why transatlantic free trade treaties covering services are high on the agenda of the EU-27.¹³ Nevertheless, this is not unconditional as the treaty partner concerned has to share the same values as the EU. Recently, this has been interpreted as honoring commitments made under the 2015 Paris Agreement on combating man-made climate change (more on this below).

III. The bilateral EU-North American *acquis* and the sensitivity of certain service sectors

After the beginning of the millennium, bilateral scoping exercises – administrative analyses based on economic and political considerations informing the negotiations between the EU and the US and Canada, respectively – have helped to detect and define the potential for bilateral trade liberalization in the area of services, next to goods trade.

Yet, although services appeared an important generator of wealth and well-being, capable of being promoted in bilateral relations on top of the GATS provisions on non-discrimination, it has also appeared notoriously more difficult to open services markets than goods markets to trade. Services are intangible, multifarious, and frequently sensitive for a variety of

⁹ Anu Bradford, *The Brussels Effect: How the European Union rules the world* (Oxford: Oxford University Press, 2020), DOI: <10.1093/oso/9780190088583.001.0001>.

¹⁰ *Ibid.*

¹¹ ITUC, “All about TiSA”, 2016, online: <<https://www.ituc-csi.org/all-about-tisa?lang=en>>.

¹² Panagiotis Delimatsis, “The Evolution of the EU External Trade Policy in Services – CETA, TTIP and TiSA”, 2017, DOI: <10.1093/JIEL/JGX024>.

¹³ The position of the UK is further dealt with in Section III.

reasons. Governments often reserve certain services (those of a general – or ‘public’ – interest) to the public domain. Other services are heavily regulated, usually with the stated objective of protecting the consumer. The cultural sector is normally not for sale and the audio-visual sector and other media are delicate as they stand for freedom of speech and have cultural implications. The freedom of movement of natural persons, which contributes significantly to the economy as it allows the temporary performance of services across borders, can be politically controversial. For various reasons, states require an establishment on their territory as a condition for doing business, thus making the provision of services more difficult and capital intense.

It is to the credit of transatlantic trade negotiations to have found ways to open up service trade, notably by encouraging (two-directional) inward investment and commercial presence, facilitating short-term movement of people, designing an institutionalized framework for regulatory cooperation,¹⁴ introducing MFN clauses and establishing more modern procedural disciplines. These are the innovations that have earned these negotiations their name as “deep trade negotiations”.

Importantly, the creative use of exclusions of particularly sensitive issues was instrumental in achieving the objectives of the negotiations with regards to services trade.

Transatlantic negotiations have thus played a pioneering role in the conception and design of ‘new-generation’ deep trade agreements covering services and investments, and the disciplines they propose have later been adapted and refined in bilateral relations with other countries such as Singapore, Japan, Mercosur and Mexico. The halting of the negotiations on TTIP did not originate in irreconcilable conflicts between the EU and the US, or overriding trade conflicts between the two parties, but rather in 1) the Trump administration’s choice of policies, including ‘America first’ (meaning, protectionism over compromise) and 2) the US’s withdrawal from the Paris agreements on climate change which did not go down well with the EU and led France to ask for the halting of the negotiations on

¹⁴ Ignacio Garcia Bercero, Geraldine Emberger & Jan Vandenberghe, “EU-US Engagement on Regulatory Issues: Lessons Learnt, Notably on the Context of the TTIP Negotiations” (2018) 23: 2 *European Foreign Affairs Review* 149.

the European side.¹⁵ CETA, however, was signed and is being provisionally applied since 2017 together with its counterpart, the *Strategic Partnership Agreement* (SPA).¹⁶

Before looking into the question of the impact of Brexit on transatlantic treaty-making, it is good to remember that there is a division of power in the EU in which the EU wields exclusive power for trade, obliging the Member States to implement EU policies as well as policies reserved to the Member States, such as for matters of third country immigration¹⁷ or for regulating lawful professional conduct within their borders. In addition, within the Single Market Member States have the privilege of being able to export, in principle, on the terms of their domestic rules – in relations among EU Member States, the laws of the country of origin are safeguarded in that a host Member State may not, in principle, prohibit activity that is lawfully provided in another Member State. In the absence of an explicit treaty provision, commerce from third countries cannot aspire to the same principle since under GATT rules merely a principle of ‘national treatment’ (or non-discrimination) applies.

One area in which this is particularly relevant is the recognition of diplomas and qualifications, an issue that is highly important for the temporary provision of services. The multilateral scene is not really equipped for progress in this context for reasons which Sam Lowe puts as follows:

[U]nlike goods, the quality and safety of services are difficult to assess at the border. This makes [facilitating service trade] harder to manage. If you are not sure whether the medical training offered in another country is equivalent to that required in [your own country], it is safer to ask a foreign doctor to retrain before practicing [here], rather than risk them killing someone. Similar logic applies to lawyers and other regulated professions. In the case of financial and insurance services, the risk to consumers – and the domestic financial system – attached to imports of many services is often too much for

¹⁵ “France demands end to TTIP talks”, *EURACTIV.fr* (30 August 2016), online: <<https://www.euractiv.com/section/trade-society/news/paris-to-demand-an-end-to-opaque-ttip-negotiations/>>

¹⁶ Nanette Neuwahl, « Canada et Union européenne – un partenariat innovateur et hors du commun » in *JurisClasseur Europe Traité*, (Paris: LexisNexis, 2018) at Fasc. 2212.

¹⁷ Sam Lowe, “Brexit and services. How deep can the UK-EU relationship go?”, Centre for European Reform, 2018, online: <https://www.cer.eu/sites/default/files/brexit_trade_sl_pbriief_6.12.18.pdf> at 7; *TILEC Discussion Paper*, *supra* note 3.

regulators and politicians, still reeling from the aftershocks of the financial crisis, to contemplate.¹⁸

On a bilateral level, there can be a greater scope for action than in a multilateral framework. Within CETA temporary movement of people has been expanded, and advances in sectoral recognition of diplomas and qualifications have been rendered possible through regulatory cooperation when deemed appropriate.

IV. Brexit and its consequences

The term Brexit refers to the fact of the UK leaving the EU. The UK is the first Member State that has ever left the Union. It did so on 31 January 2020. In the EU Withdrawal Agreement¹⁹, the EU27 and the UK had agreed on a transition period until 1 January 2021. The transition period was meant partly to stabilize and consolidate the immediate situation after Brexit when the UK and the EU would be negotiating on an agreement detailing their future relationship. In the EU Withdrawal Agreement, the UK has committed itself to remain in a customs union with the EU for the duration of the transition period and to abide by EU law (including international agreements concluded by the EU that had been specifically rolled over to cover the customs area), – without taking part in the EU decision-making procedures any longer. The UK government decided that it did not wish to prolong this period of transition beyond 2020 because it wanted to be able to conduct its own independent trade policy and conclude its own trade agreements as soon as possible, both with the EU and with the EU's most important trading partners.

At the very end of the transition period, a Trade and Cooperation Agreement²⁰ (TCA) was reached on some important aspects of the future

¹⁸ S. Lowe, "Brexit and services. How deep can the UK-EU relationship go?", *supra* note 17 at 4. Words between square brackets inserted for added contextual clarity.

¹⁹ *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, 2019/C 384 I/01. XT/21054/2019/INIT. OJ C 384I, 12.11.2019 at 1–177.

²⁰ *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part*, online: <https://ec.europa.eu/info/files/eu-uk-trade-and-cooperation-agreement_en> [TCA].

relationship between the UK and the EU. While this agreement has been ratified by the UK Parliament on 29 December 2020, the European Parliament (EP) still had not expressed itself on the day of writing. The agreement, which was concluded by the EU under Article 217 of the Treaty on the Functioning of the European Union (TFEU) and which has been brought into force provisionally for the period 1 January- 28 February 2021 – pending ratification by EP – contains a number of provisions affecting services which will be commented upon below.

A. Consequences of Brexit for the UK service industry

With regards to services, the UK stood and still stands to lose a lot from Brexit in the medium and long term. Services exports and imports represent a considerable part of the UK economy and beginning 1 January 2021, new obstacles are put in the way of service trade between the UK and the EU-27 as well as in the case of merchandise.²¹

In order to provide more detail on the effects for the UK, the British thinktank *Centre for European Reform* has provided a useful report which distinguishes between the different modes of service supply.²² Within the categories of service provision, the UK has profited from the Single Market most of all as regards Mode 1 and 4 (Cross-border supply and presence of natural persons). Mode 3 of service supply (Commercial presence) was much less important. The closeness of the UK to the European continent and the ease of connections meant that the establishment of a subsidiary or branch was often avoidable for doing business.²³ Under EU law, it is forbidden for its Member States to make the provision of services from other Member States conditional on having a branch or a subsidiary on its

²¹ The situation as regards Ireland is special. Northern Ireland is and will remain regulated in the Northern Ireland Protocol to the EU Withdrawal agreement. D. Phinnemore has called it a place ‘in between’: although it is legally part of the UK customs territory, it will largely remain subject to EU rules and regulations. David Phinnemore, “Northern Ireland: A ‘Place Between’ in UK–EU Relations?” in Jorg Monar & Nanette Neuwahl, eds, *From Membership to Partnership: The EU-UK Relations after Brexit* (2020) 25: 4 *European Foreign Affairs Review* 631.

²² S. Lowe, “Brexit and services. How deep can the UK-EU relationship go?”, *supra* note 17.

²³ As Sam Lowe points out, 68 % of British financial service exports are cross border, as compared to 28 % of such exports to the rest of the world.

territory (Case *Van Binsbergen*²⁴ and the so-called ‘Bolkestein directive’²⁵). By comparison, no less than 61 % of EU27 services exports consisted of Mode 3 service supply (2017), mostly by France, Germany and Sweden.²⁶ EU27 services imports accounted for 57 % of mode 3.²⁷

As a non-member country, the UK does not have the automatic right to provide services throughout the territory of the EU, and its businesses may consider establishing branches or even subsidiaries in a Member State. This of course takes resources away from the original place of incorporation and implies, furthermore, that such companies would not be able to operate under home country rules as they would under UK membership. As a result, the switch of the UK to becoming a third country carries a significant penalty for the British economy, both for the service industry in question located there and indirectly, for economic sectors that depend on it (e.g., transport, accommodation, catering). There are knock-on effects for UK tax reception too. The TCA, it was hoped, would overcome some of those inconveniences. We shall get to this below.

B. Consequences for third states

Third countries too stand to suffer from Brexit in different ways. Third country nationals employed by British companies no longer have the same free movement rights inside the EU as they had before,²⁸ and goods and services from third country companies incorporated in British exports of goods may be at risk when it comes to tariff-free access to the EU-27 as rules of origin apply.²⁹

In addition, any FTAs that third countries may have concluded with the EU before Brexit no longer apply as regards the UK unless their con-

²⁴ ECJ, *Johannes Henricus Maria van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid*, C-33/74, [1974] ECR I-1299.

²⁵ EC, *Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market*, [2006] OJ, L 376/76 at 36-68.

²⁶ Eurostat, *supra* note 2 at Figure 1 and Figure 9.

²⁷ Eurostat, *supra* note 2 at Figure 2.

²⁸ ECJ, *Rush Portuguesa Lda v Office national d’immigration*, C-113/89, [1990] ECR I-1417; ECJ, *Raymond Vander Elst v Office des Migrations Internationales*, C-43/93, [1994] ECR I-3803.

²⁹ “Trade: rules of origin, Institute for Government”, 2016, online: <<https://www.instituteforgovernment.org.uk/explainers/trade-rules-origin>>.

tinuation is specifically agreed upon. Under international law, when a Member State leaves an international organization, this entails a contraction of the territorial scope of the international agreements to which that organization is a party.³⁰ Thus, agreements such as CETA cease to apply to the UK as of principle, so that the provisions on market access, regulatory cooperation, investment protection and others fall away. Brexit thus leads to obstacles for trade both in UK-EU relations and regarding third countries previously benefiting from the EU's free trade agreements, namely, as regards trade destined to or channeled via the UK. In the absence of new commitments between the UK and the EU, non-tariff obstacles for goods and services multiply and goods become dutiable both directly and through the application of rules of origin. In addition, CETA's chapter 10, which facilitates the transatlantic free movement of people in a significant way, especially regarding the short term stay of workers, no longer applies to the UK. The WTO context and, in particular, the International Mobility Program of GATS, is the fall-back position, but this is considerably less generous than the one provided by CETA.

By way of conclusion of this section, one can state that both the UK and third state partners such as Canada are looking to agree on new bilateral agreements to replace previously established bonds. As we shall see, however, the future connections between the UK and the EU may affect the profitability of such treaties.

C. The EU-UK Trade and Cooperation Agreement (TCA) and its implications for services trade

The EU-UK TCA has been agreed on 24 December 2020 and it is being provisionally applied by both sides as from 1 January 2021.³¹ For the purpose of this article, it is appropriate to describe in a summary way how the agreement affects services.

³⁰ *Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations* (1986) 25: 3 ILM 543-592 at Article 29, DOI: <10.1017/S0020782900025432>.

³¹ EC, "Questions & Answers: EU Trade and Cooperation Agreement", 2020, online: <https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2532>.

The agreement is definitely not a watershed in the liberalization of services trade³² – especially not in relation to financial services, one of the prime industries of the UK. It was the choice of the parties to relegate many areas to separate agreements, to future adequacy decisions taken unilaterally by both Parties, or to regulatory cooperation. However, as we shall see, the agreement restates and, in some areas, further refines public international law.

Generally speaking, each party is to treat service providers of the other party no less favorably than their own (‘equal treatment’, ‘non-discrimination’). There are rules to facilitate the cross-border provision of services in fields such as digital services (including rules on personal data protection), and public procurement (going somewhat further than commitments under the Government Procurement Agreement). But there is no longer any general right of access to each other’s services markets and “passporting” for financial service providers comes to an end. Mutual recognition of professional qualifications is discontinued. There is no arrangement for free movement of persons – except, notably, for intra-corporate transferees and business visitors for establishment purposes,³³ or contractual service suppliers or independent professionals (for up to a year).³⁴ UK nationals planning to visit for more than 90 days in any 180-day period need a visa³⁵ like most other third country nationals; those planning to work (other than routine business meetings and conferences) will need a Member State work visa.

In aviation, EU and UK carriers continue to enjoy access to point-to-point traffic between EU and UK airports, but otherwise, they no longer have access to each other’s markets. The UK may negotiate further rights for all-cargo flights with the EU Member States.³⁶ Likewise, in road trans-

³² David Collins, “A treaty for divergence, a treaty for a sovereign state” *Politeia*, 28 December 2020, online: <[https://www.politeia.co.uk/a-treaty-for-divergence-a-treaty-for-a-sovereign-state./](https://www.politeia.co.uk/a-treaty-for-divergence-a-treaty-for-a-sovereign-state/)>.

³³ TCA, *supra* note 20 at Article SERVIN 4.2: intra-corporate transferees and business, visitors for establishment purposes.

³⁴ *Ibid.* at Article SERVIN 4.4: contractual service suppliers and independent professionals.

³⁵ EC, “Questions & Answers: EU Trade and Cooperation Agreement”, *supra* note 31.

³⁶ TCA, *supra* note 20 at Article AIRTRN 3: Traffic rights, para 4 (b).

port, mutual market access is generally limited to point-to-point cross-border transports.³⁷

With regards to energy, the UK is no longer part of the EU energy market, nor the shared emissions trading scheme,³⁸ which is now the subject of regulatory and technical cooperation. There is a reconfirmation of the climate goals specified in the 2015 Paris Agreement³⁹ and a commitment to advocate the fight against climate change in international fora and agreements.⁴⁰ The UK has also concluded a separate agreement with Euratom on peaceful cooperation on nuclear technology.⁴¹

Certain existing (EU) intellectual property obligations exceeding TRIPS obligations, such as the 70-year copyright period, have been preserved in the TCA.⁴²

Legal services are dealt with at some length.⁴³ Here, as in other areas of business services (accountancy, engineering) – which represent the largest form of service exports from the UK to the EU – the future is uncertain because the EU Members individually can put into place a number of obstacles against the different modes of services and the UK will have to proceed sector by sector and Member State by Member State.⁴⁴

Where the TCA contributes to the *acquis* of GATS is by introducing MFN obligations asking the parties to apply any benefits bestowed to third

³⁷ See TCA, *supra* note 20 at Heading Three of Part 2.

³⁸ EC, “EU-UK Trade and Cooperation Agreement: A new relationship, with big changes – Brochure”, 24 December 2020, online: <https://ec.europa.eu/info/publications/eu-uk-trade-and-cooperation-agreement-new-relationship-big-changes-brochure_en>.

³⁹ TCA, *supra* note 20 at Title IX, LPFS, Article 8.5: Trade and climate change.

⁴⁰ *Ibid.* at Article COMPROV. 5.

⁴¹ EC, “The EU-UK Agreement for cooperation on the safe and peaceful uses of nuclear energy”, online: <https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/eu-uk-agreement-cooperation-safe-and-peaceful-uses-nuclear-energy_en>.

⁴² TCA, *supra* note 20 at Article IP.12: Term of Protection.

⁴³ Mickaël Laurans, “Legal Services in the EU-UK Trade and Cooperation Agreement: an initial assessment” *The Law Society*, 29 December 2020, online: <<https://www.lawsociety.org.uk/en/topics/brexit/legal-services-in-the-eu-uk-trade-and-cooperation-agreement-an-initial-analysis>>.

⁴⁴ Sarah Hall, “The Brexit deal and services sector. UK in a changing Europe”, 28 December 2020, online: <<https://ukandeu.ac.uk/the-brexit-deal-and-services/>>.

States, notably under a subsequent bilateral treaty also to each other. An example is Article SERVIN 2.4(2)) in Chapter 2, Investment liberalization:

Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a third country and to their enterprises, with respect to operation in its territory.

The EU-UK TCA also ‘expands’ on the ‘*acquis*’ of both GATS and CETA by a very intricate and expansive list of reservations and exceptions. These explicitly cover both existing and future measures taken by the parties. The provisions concerning market access, national treatment and most favored nation treatment contained in Articles 2.2-2.5, for instance, do not apply to the sector and country-specific reservations, conditions and qualifications specified in Annex SERVIN 2 regarding future measures, nor to those specified in Annex SERVIN 1 regarding existing measures.⁴⁵ Public services and services of general interest; some transport services; as well as audiovisual services are generally excluded. Conventional exceptions, largely copying WTO terminology also exist; they cover issues like the environment and public safety.⁴⁶

In many instances, the agreement allows ‘nonconforming’ measures. According to Article SERVIN 2.7(1) on investment liberalization, the provisions on market access, national treatment and MFN treatment do not apply to non-conform measures existing at the time of entry into force of the TCA or to their continuation or prompt renewal, nor even their modification provided this ‘does not decrease the conformity of the measure’. A similar provision is included regarding cross-border services in Article SERVIN 3.6(1) sub 2(c).

Interestingly, where MFN treatment does apply, the application of that obligation is to be interpreted rather narrowly, as becomes apparent in Article SERVIN 2.4(5):

For greater certainty, the existence of substantive provisions in other international agreements concluded by a party with a third country, or the mere formal transposition of those provisions into domestic law to the extent that it is necessary in order to incorporate them into the domestic legal order, do not in themselves constitute the [unequal] “treatment” referred to in para-

⁴⁵ TCA, *supra* note 20 at Articles SERVIN 2.7 (2) and 3.6 (2).

⁴⁶ Cf. TCA, *supra* note 20 at the headnotes to annex SERVIN 1 and 2.

graphs 1 and 2. Measures of a Party pursuant to those provisions may constitute such treatments and this gives rise to breach of this article.

It shall be clear that the interpretative clause in Article SERVIN 2.4(5) above takes away quite a bit of the effect of the MFN provision because the mere existence of legislation favoring other third country businesses can deter EU businesses from claiming any access rights, and the TCA is not invocable in the courts of Great Britain. If indeed application is the criterion – instead of legislation and treaty provisions – then in a common-law country such as the UK, equal treatment may not come to the test simply because companies might not request market access in the first place. Similar provisions can be found in Chapter 3: Cross-border trade in services, Article SERVIN 3.5 (1) and (3).

On the whole, the services part of the TCA is rather light, offering much less than what the UK enjoyed in the Single Market and bringing little benefit beyond what is already in GATS. The agreement prohibits states from requiring performance requirements⁴⁷ as a condition of investment and from requiring a commercial presence (branch, subsidiary) for cross-border trade in services.⁴⁸ The latter is important because most of the UK service trade was always conducted cross-border. It is therefore expedient to minimize such new restrictions, both on cross-border trade and on two-way investments. There is no comprehensive protection for investors, nor is there any investor-state dispute settlement mechanism, probably because that would have meant concluding a mixed agreement, involving ratification by the EU Member States as well as the EU.⁴⁹ Thus, in case of disputes, investors will have to bring claims in – possibly tedious – national court proceedings.

Importantly, the agreement provides for “level playing field” principles that aim to prevent distortion of trade as a result of subsidies, labor, social policy, climate or environmental policy measures. In case of infringement, each party may take countermeasures, subject to arbitration. The ‘level playing field’ and its enforcement were among the most controversial part during the negotiations on the TCA. The purpose was to prevent that parties undercut each other’s markets through social dumping after the end

⁴⁷ TCA, *supra* note 20 at Article SERVIN 2.6.

⁴⁸ *Ibid.* at Article SERVIN 3.3.

⁴⁹ Cf. TCA, *supra* note 20 at Art. SERVIN 2.4 (4).

of the transition period on 1 January 2021. In the system finally agreed upon, a party may retaliate by removing tariff preferences when the other party lowers its standards in the areas of labor, the environment or state aid, but only under strict conditions. Article 6.2 (2) within the Title of LPFS merely states that a Party shall not weaken its labor and social levels of protection ‘in a manner affecting trade or investment between the Parties’. The TCA does not contain any strict obligations of dynamic alignment or ratchet clauses forbidding the parties to regress.

In the eyes of Collins, the ‘rebalancing mechanism’ is unprecedented since it permits rather than rules out divergence:

Since the remedy for the transgression of the level playing field requirements is the imposition of tariffs (rather than the removal of the unbalanced measure), the mechanism permits legislative divergence to continue indefinitely, preserving regulatory sovereignty. Additionally, overuse of rebalancing tariffs can trigger a review of the level playing field commitments entirely, enabling a future relationship which consists of regulatory uncoupling between the UK and the EU over the longer term.⁵⁰

Equally important to note is that the mechanism is rather permissive in that it foresees a high threshold for allowing retaliation against regulatory divergence. The divergence must be ‘significant’ and the impact ‘material’⁵¹ while the imposition of any rebalancing duties is contingent on ‘reliable evidence’, not ‘mere conjecture or remote possibility.’⁵² Rebalancing through tariffs must be proportionate and time-limited, allowing only what is ‘strictly necessary.’⁵³ Most importantly, the rebalancing system is only available subject to the determination of an independent arbitral tribunal.⁵⁴ LPFS Article 6.4 TCA provides special dispute settlement procedures for disputes on labor and social standards.

V. Prospects for transatlantic service trade deals

Given that some of the future trade relations between the UK and the EU have now gained clarity, what are the prospects, today, of new trans-

⁵⁰ D. Collins, “A treaty for divergence, a treaty for a sovereign state”, *supra* note 32.

⁵¹ TCA, *supra* note 20 at Title IX, LPFS, Article 9.4: Rebalancing.

⁵² *Ibid.* at Title IX, LPFS, Article 9.4(2).

⁵³ *Ibid.* at Title IX, LPFS, Article 3.12(8).

⁵⁴ *Ibid.* at Title IX, LPFS, Article 3.12(9).

atlantic service trade deals? We need to consider separately the position of the UK and that of the EU.

A. The UK's prospects for concluding new transatlantic service trade deals

It will not come as a surprise that Canada and the UK are considering the possibility of concluding a deep trade agreement with each other, simply because their economies are so intertwined:

If the UK does badly, the effects will be felt for Canada as well. There will be loss of investments through business closures, which also affects the Canadian pension funds, a weaker Pound sterling will mean a higher American Dollar, and so on.⁵⁵

Hence the conclusion of one or more transatlantic treaties on deep trading relations between the UK and Canada at some point seems very likely, even though conducting relations with the UK and the EU-27 separately is not quite equivalent to dealing with the EU-28, and even if, for the UK, a treaty with Canada cannot replace the advantages granted by CETA.

On 21 November 2020⁵⁶, Canada and the UK signed the so-called “UK-Canada Trade Continuity Agreement”,⁵⁷ but this is a provisional measure. It is a roll-over of CETA with very few changes,⁵⁸ meant to temporarily overcome the inconvenience of reverting to WTO terms while the parties

⁵⁵ Nanette Neuwahl, “Brexit and Canada – Stopgap Solutions for the EU–Canada Comprehensive Economic and Trade Agreement (CETA) or a New Beginning?”, (2021) 58: 2 *International Studies* 248.

⁵⁶ Kate Holton & Amran Abocar, “Britain and Canada agree post-Brexit roll-over trade deal” *Reuters*, 21 November 2020, online: <<https://www.reuters.com/article/us-britain-eu-canada/britain-and-canada-sign-post-brexit-rollover-trade-deal-idUSKBN2810IQ?il=0>>.

⁵⁷ *Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada*, 9 December 2020, Can TS 2020 No. 1, online: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cukta-accru/agreement_trade_continuity-accord_continuite_commerciale.aspx?lang=eng>.

⁵⁸ Government of United Kingdom, “Trade with Canada from 1 January 2021”, 10 and 23 December 2020, online: <<https://www.gov.uk/guidance/summary-of-the-uk-canada-trade-continuity-agreement>>.

look into the possibility of concluding a new agreement. The Trade Continuity Agreement is thus kicking the can down the road.

Arguably, Canada is not ready to conclude a purpose-built treaty with the UK just yet. This is mostly for the following reasons. First, since the British government has not really sat down to outlining its socio-economic policies even for the medium term, it is difficult to determine what the priorities for the negotiations should be. Although it is clear that services play a big part in the UK's foreign trade vision of the future, there ought to be a scoping exercise first, whereby both parties indicate in some detail all the areas that should be included in the agreement. Such a scoping exercise typically takes years.

In addition, because of CETAs MFN clauses and similar clauses included in the TCA, any new concessions made in UK-Canada relations would have to be offered to the EU as well.

The US for its part does not have a deep trade agreement with the EU, and so has no roll-over to consider and no MFN provisions to respect with regards to services. Nevertheless, the relationships between the UK and the US are not evolving very quickly. The Obama administration had been in favor of agreeing but had warned the UK that in case of Brexit, it would not be on top of the list for the conclusion of a trade deal. The president-elect, Joe Biden, who takes up office on 19 January 2021, has already indicated that he will not contemplate agreeing with the UK if there is a possibility that the Good Friday Agreement will be infringed and security on the island of Ireland is endangered. The infamous Internal Market Bill of 9 September 2020 was casting doubts over UK compliance with the Northern Ireland Protocol of the Withdrawal Agreement. After intensive discussions in the EU-UK joint committee and concessions by the UK to various specialized committees, the matter has been resolved with a commitment of the UK to withdraw any offending provisions.⁵⁹ However, the question will remain under surveillance. Incidentally, the participation of the UK in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is subject to the same considerations.

⁵⁹ EC, Press Release, "Brexit: Withdrawal Agreement to be fully operational on 1 January 2021" (17 December 2020), online: <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2478>.

Meanwhile, the Trump administration had started considering a US-UK ‘mini-trade deal’. As a matter of goodwill, the UK has dropped EU-ordered anti-subsidy measures against airplane manufacturer Boeing, which were ruled illegal by a WTO panel. However, the prospects for a comprehensive FTA are slim or nonexistent. The US trade representative Robert Lighthizer has indicated that the US requires more access to the UK agricultural market in return for lowering tariffs punitively inflicted on Scottish whisky.⁶⁰ Earlier, the former UK ambassador to Washington, Kim Darroch had already indicated that the National Health Service (NHS) might also be affected by a trade deal. The UK independent National Health Institute currently caps the price of pharmaceuticals, thus rendering exports by US pharma less profitable.⁶¹

There is thus no talk of a comprehensive free trade deal at this stage. In particular, financial services or services in general are not mentioned.⁶² The trade representative further points to the impact of the relationship between the EU and the UK on the relations between the US and the UK, hinting at the issue of the “Brussels effect” and at any rate indicating that the volume of cross-Channel trade will result in a comprehensive regulation of that trade.⁶³ As pointed out in the previous section, the TCA confirms this in part. However, many aspects are long-term issues and financial services are not really included in it.

B. The EU’s prospects for concluding new transatlantic service trade deals

We have seen that the UK will face some difficulties concluding bespoke transatlantic treaties, but how will the EU be faring? In particular, will the negotiations for the TTIP be revived? This is unlikely to happen in the

⁶⁰ Joanna Partridge, “UK and US close to deal on cutting tariffs, says White House trade chief”, *The Guardian*, 17 December 2020, online: <<https://www.theguardian.com/business/2020/dec/17/uk-and-us-close-to-deal-on-cutting-tariffs-says-white-house-trade-chief>>.

⁶¹ Kim Darroch, “Trump will insist that UK pays more for drugs in trade deal, says ambassador”, *The Guardian*, 31 January 2020., online: <<https://www.theguardian.com/politics/2020/jan/31/trump-will-put-us-interests-first-in-trade-talks-says-kim-darroch-ambassador>>.

⁶² Partridge, *supra* note 60.

⁶³ Faisal Islam, “UK and US in talks over mini trade deal”, *BBC News*, 17 December 2020, online: <<https://www.bbc.com/news/business-55341970>>.

immediate future. Should the US be wanting to conclude a trade deal with the EU, the latter risks refusing to negotiate one as long as the country does not subscribe to similar climate change policies as it is itself practicing. Additional obstacles include the digital service taxes implemented throughout the EU, and the European Commission's carbon border tax, as well as a focus of the Biden administration on domestic problems.⁶⁴ The EU too, therefore, faces the prospect of trading with the US entirely or mostly on WTO terms. No comprehensive free trade agreement is currently being envisaged and it is expected that issues will be settled case-by-case.

With Canada, CETA and the SPA, with their institutional frameworks are up and running. But as I have argued elsewhere,⁶⁵ Canada may at some point propose a renegotiation of CETA in the relations with the EU and its remaining Member States or could terminate or suspend its provisional application should the overall situation so require.

VI. Evaluation

Although the UK is considered a world leader in services, it has not yet been able to profile itself (yet) as a major innovator in this area by the conclusion of bilateral trade agreements. Given the short time frame and the animosity, it is already short of a miracle that there is a TCA and that it is going beyond goods, but it is thin on services and excludes financial services altogether.

Still, the TCA has brought several innovations in the area of services. This includes, notably, the MFN clauses which require both parties to grant any advantages agreed with third States also to each other. This feature, which exists also in CETA, is potentially a way to enhance services trade in an exponential manner, even though as we saw, the interpretation the TCA gives to MFN "treatment" is relatively narrow.

⁶⁴ Evan Fallor, "US-EU trade deal seen remote even if Biden occupies White House in 2021", *SPGlobal*, 2020, online: <<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-eu-trade-deal-seen-remote-even-if-biden-occupies-white-house-in-2021-60606405>>.

⁶⁵ N. Neuwahl, « Canada et Union européenne – un partenariat innovateur et hors du commun », *supra* note 16.

Importantly, we have discovered that the TCA contains a flurry of derogations and exceptions, and many issues impacting on services have been relegated to future agreements and regulatory cooperation. This is not necessarily to be evaluated negatively. Given the delicate nature of many areas, the complexity, and the number of actors involved, no quick advances are expected to happen on the multilateral level either. Among the question relegated to future agreements or decisions, are financial services, recognition of professional diplomas, and data protection adequacy findings.

Incidentally, the TCA does have modern provisions on digital trade, aimed at facilitating cross-border data flows, including the prohibition of data localization requirements⁶⁶ and rules ensuring the authenticity of digital signatures.⁶⁷ However, there is nothing much on the adequacy of personal data protection rules and policies. A decision of the European Commission on this matter is thought to be forthcoming in 2021 and a bridging solution is included in the agreement.⁶⁸

In the WTO context, where services are mostly traded through the commercial presence of businesses, free movement rules are much less generous than what has now been achieved in a bilateral framework as regards business travel.

Because the WTO framework does not provide an institutionalized framework for periodical cooperation on regulatory issues, and because the WTO dispute settlement mechanism is outdated and inadequate, this leaves room for unilateral action and disputes between countries. The TCA is at least a contribution to such cooperation in the relations between the UK and the EU. No doubt it is inspirational for the negotiation of further bilateral treaties.

So far, however, Brexit is not exactly helping the transatlantic trade agenda for services much. This is to some extent due to the fact that Canada and the US are both waiting and looking to see how the relations between

⁶⁶ TCA, *supra* note 20 at Article DIGIT.6: Cross-border data-flows.

⁶⁷ *Ibid.* at Article DIGIT.11: Electronic authentication and electronic trust services.

⁶⁸ The adoption of such adequacy decisions requires an opinion from the European Data Protection Board (EDPB) and approval from Member States in a comitology procedure. See EC, “Questions & Answers: EU Trade and Cooperation Agreement”, *supra* note 31.

the EU and the UK play out before taking further action. As we saw, the TCA is just as much an instrument for allowing divergence as it is the opposite. One can therefore understand that the partners of the EU and the UK maintain a wait-and-see attitude. This comes on top of the fact that the Biden administration will likely prioritize domestic issues over FTA's. Political obstacles to the conclusion of new treaties also play a role, notably the conditionality for the EU on climate change commitments and the insistence by the US on the implementation of the Northern Ireland Protocol.

For all those reasons, services may well remain, for now, the Cinderella of bilateral transatlantic trade.