

What a CETA (or CETA+) free trade agreement would mean



The UK seems to be aiming for a CETA or CETA+-type free trade agreement with the EU. **Steve Woolcock (LSE)** takes a detailed look at the European Commission's negotiating position and explains some of its implications for trade. Significantly, the inclusion of 'most favoured nation' clauses effectively limits the UK's scope to negotiate deals with other countries, and means the EU is unlikely to give the UK better access to the Single Market in future.

We have now seen the revised [draft negotiating position](#) from the European Commission, and heard the much-flagged [speech](#) by the Prime Minister. The EU negotiating position is that the UK will become a third country when it leaves the Union, and that given the UK's 'red lines' the only approach that is consistent with both EU and UK preferences and interests is a CETA – or perhaps CETA-type – agreement. This would mean that the regulatory recognition the UK now enjoys will cease. Goods and services produced in the UK will no longer be recognised as fulfilling the EU requirements. Presumably it would then be a question of negotiating.



Jaguar-Land Rover was the biggest exporter of cars in Britain in 2017. Photo: [Thomas Hawk](#) via a [CC-BY-NC 2.0 licence](#)

In her speech on March 2, Theresa May in effect made the case again for a bespoke agreement based on a three-tiered approach to regulatory engagement with the EU, but outside the Single Market and Customs Union. In terms of the terminology of trade agreements, the three tiers appear to be:

equivalence, meaning 'regulatory recognition', or the EU accepting the regulatory norms and standards of the UK;

mutual recognition of conformity assessment, meaning the EU would recognise UK testing of goods including food and food products that show these to be in conformity with EU regulatory requirements;

and *regulatory autonomy*, meaning presumably divergence.

So how does the CETA, with or without a 'plus', relate to the current debate?

Tariffs and border controls

First, CETA – like all FTAs between developed economies – offers nearly full tariff liberalisation, i.e. 99% for manufactured goods and 94% for agriculture on entry into force, reducing to zero between three and seven years later. So a CETA+ could be seen as tariff free trade. CETA is, of course, an FTA not a customs union, and the parties retain autonomy in trade policy. So there would be trade costs associated with showing compliance with (EU) rules of origin, but these could be reduced through producer certification. A CETA model would not remove the trade costs associated with border controls. Nor, importantly, would a customs union, because the need for border controls would remain in order to ensure goods imported into the EU (or the UK) complied with EU health, food safety standards etc.

In terms of border controls, CETA encourages the use of advanced electronic procedures to speed customs clearance. These are in line with the WTO's Trade Facilitation Agreement and WCO's (World Customs Organisation) protocols. But agreeing to these rules is not sufficient: there also has to be a mutual commitment to adopt them rapidly, and effectively apply them.

Trade costs due to regulatory divergence

Under a CETA model, divergence in regulatory norms and practices would be a far more important medium to long-term cost for business than tariffs or border controls. This point seems to have been accepted in the Prime Minister's speech, which argued the case for the UK to remain associated with a number of EU regulatory bodies. The Prime Minister also argued that all EU FTAs vary, which shows the EU can be flexible and need not hold to any particular model.

The CETA approach, building on long-established voluntary cooperation between the parties, provides the procedures for building confidence. Voluntary cooperation may then lead to more formal mutual recognition of conformity assessment, and finally perhaps equivalence. This was indeed how the EU brought about regulatory alignment in the Single Market and it is the approach it uses in FTAs, although in these mutual recognition and equivalence is very limited. Compared with the full regulatory recognition of the Single Market, CETA – which is the most advanced agreement the EU has signed – is much more limited.

A Regulatory Cooperation Forum (Chapter 21 of CETA) is established to promote voluntary joint cooperation activities. This would have no impact on regulatory autonomy, so would correspond to the third tier in the UK proposals.

For goods (Chapter 4), food and food products (Chapter 5) and professional services (Chapter 11) the CETA model offers a route to negotiate mutual recognition. There is a specific Protocol on the mutual acceptance of results of conformity assessment. In other words, this would be roughly what the UK proposal has in mind for the second tier. But the CETA model provides only the procedural framework. Formal mutual recognition agreements would need to be negotiated. There is scope for the accreditation of conformity assessment bodies (i.e. UK bodies would be accredited to conduct tests). Some priority sectors are also identified, such as machinery, radio and telecoms and measuring equipment.

Past cooperation has resulted in the adoption of an agreement on Veterinary Equivalence, but there is nothing on equivalence of financial services in the chapter about them (Chapter 13).

So on the regulatory question, the CETA model would mean starting again from the bottom up to negotiate mutual recognition or regulatory recognition/equivalence. The UK wishes to start from the top, and negotiate a de-recognition. For trading companies, the absence of mutual recognition or equivalence would not mean they could not trade, but that there would be additional costs.

Establishment

Another way to avoid the costs of doing business in another market is to supply the market by means of branches or affiliates, in other words through investment. The CETA model includes comprehensive coverage of investment or the right to establish an operation in the other market. Unlike the WTO, which only covers establishment in the service sector, there is a separate chapter in the CETA-type agreement. This is now common in all recent FTAs. Coverage of investment is based on a two-schedule model that binds the parties to liberalisation in some sectors, but leaves them freedom to reintroduce regulation or restrictions in others. This is relevant when the state wishes to re-regulate certain sectors. Thus social, health and education services can be excluded, as can the utilities in which universal service provision is seen as important.

The CETA model also offers a 'modernised' investment policy that rebalances investor protection and the right to regulate in favour of the latter, and introduces an investment court system, which effectively brings public control back into the area of investment dispute settlement

One important point to note in the CETA is that it includes a 'most favoured nation' (MFN) clause in chapter 8 on investment, as well as chapter 9 on cross-border provision of services and chapter 13 on financial services. This means that any offer the EU makes to the UK that is better, in terms of market access, than what the EU has granted to Canada, must automatically be extended to Canada. Other EU FTAs also include MFN clauses. If the CETA model were followed, it would also mean that for the chapters covered, any better access granted by the UK to a third country would also be automatically extended to the EU. In other words the inclusion of MFN clauses in chapters of FTAs already negotiated by the EU reduces the willingness of the EU to make concessions to the UK. An EU–UK FTA based on CETA would also effectively reduce the UK's autonomy in trade policy, because it would be constrained in any preferences it could offer, for example to the US or Australia in an FTA.

Horizontal chapters

In her speech, the Prime Minister appeared to accept the need for close cooperation between the EU and UK authorities on topics such as competition policy and public contracts in order to ensure a level playing field. In these fields CETA provides only weak measures for cooperation on restrictive business practices and relies essentially on (weak) WTO disciplines on state subsidies. On the important topic of public contracts, CETA has provided the EU with enhanced access to Canadian markets in that it has extended the rules to the provincial level public procurement markets.

Dispute settlement

On the resolution of disputes, the CETA model essentially uses the WTO model in terms of the procedures – in other words, it is a quasi-judicial approach based on arbitration in a panel of experts. But there is no supra-national legal body and there is no direct effect.

Summing up

The CETA model therefore preserves the UK's red lines except for no border controls, and offers tariff free or near tariff free trade. It would mean negotiating access commitments from the 'bottom up' with the UK treated as a third country when it leaves the EU, rather than the 'top down' – as is the UK's preference.

A CETA+ type agreement could add key areas of interest to both parties, probably based on reciprocity. As more people are realising, the closer the UK is to the EU, the more it will be a rule taker.

How effective any CETA+ type arrangements will be depends not on the text of any negotiated agreement, but how effectively the parties adopt the appropriate measures and how effectively these are implemented. In other words the text of the agreement is likely to provide less than full security of market access.

The scope of FTAs is heavily shaped by precedent. The EU will be reluctant to offer more to the UK than it does to other third parties because these will then demand the same. The inclusion of MFN clauses in FTAs also limits the scope of any EU–UK FTA and the autonomy of a UK trade policy.

This post represents the views of the author and not those of the Brexit blog, nor the LSE.

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