SuperCanada and CETA compared: a skeleton UK/EU Trade Agreement

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This note is designed for illustration and debate only and does not constitute legal advice or guidance.

The note sets out the basic provisions that could be expected to be contained in a comprehensive UK/EU Trade Agreement. It uses the Comprehensive Economic and Trade Agreement of 2016 ("CETA") between Canada and the EU as a template, to illustrate that, whilst the successful negotiation of a 'SuperCanada' UK/EU Agreement will be an undoubtedly complicated process, a successful outcome is not only possible but much the same conclusions have already been reached.

The note sets out each Chapter in CETA and discusses how the equivalent provision in a 'SuperCanada' UK/EU Agreement which would be wider, deeper and better than CETA, especially in market access for services.

To illustrate the difference in content and scope, where the equivalent Chapter heading in the UK/EU column is highlighted in red, it indicates a topic where considerable difference can be anticipated. It is assumed throughout that the UK does not obtain "access to the Single Market" by the simple expedient of remaining within the EU Customs Union. Going down the CETA-style Agreement route leaves open the possibility, however marginal, of less than total access, though 100% access both ways is the objective, without tariffs or quotas as now.

In the section on Financial Services, page 8, reference is made to the report for the International Regulatory Study Group ("IRSG") by Hogan Lovells, *A New Basis for Access to EU/UK Financial Services Post-Brexit* (https://www.irsg.co.uk/resources-and-commentary/a-new-basis-for-access-to-eu-uk-financial-services-post-brexit/)

The issue of "regulatory divergence", and its implications for any UK/EU deal, has attracted a great deal of attention. Some commentators assume that the UK will only be able to trade with the EU after Brexit if it continues to adopt EU law. That is not true, as the CETA agreement itself demonstrates. Brexit will commence with the UK and the EU enjoying identical regulatory frameworks. All any agreement requires is a mechanism for the each side to assess any changes to the rules of the other to satisfy themselves that there remains sufficient regulatory compatibility, and a forum for the discussion of any proposed changes so that each side may make representations. There is no need for either the UK, or the EU, to forfeit its legislative sovereignty – although in key business sectors it would be helpful if the two sides committed to keep their regulations aligned and compatible.

The IRSG report points out that the trend in international regulation is towards this "outcomes-based" assessment philosophy, and away from a legalistic insistence on word-identical equivalence between regimes. Their recommendations principally concern financial services, but are equally applicable to any sector. The SuperCanada proposal envisages the creation of specialist technical committees to oversee each business sector as appropriate to study the practical substance of any changes to assess that the two regulatory regimes remain compatible.

CETA PROVISION		SUPERCANADA PROVISION
Preamble		**Preamble**
An introductory section which sets out the objectives and aspirations of the parties, and the basis on which each side enters the Agreement.		Essentially the same sentiments could be repeated: commitments to international security and human rights, trade and economic development whilst respecting each side's right to protect its cultural identity. There should probably be an additional clause which references the mutual commitment of the parties to uphold peace between Ireland and Northern Ireland and to avoid any hard border. This is unlikely to be controversial.
1. General Definitions and Initial Provisions		**1. General Definitions and Initial Provisions**
This Chapter contains the institutional and administrative framework by which CETA is interpreted, managed and implemented.		These provisions are largely of a "boiler-plate" standard wording and could be repeated verbatim, e.g. the UK/EU are unlikely to need a bespoke definition of "customs duty".
2. National Treatment and Market Access for Goods		**2. National Treatment and Market Access for Goods**
This Chapter provides comprehensive market access for goods from both sides by essentially treating imported products no less favorably than similar goods produced domestically ("National Treatment") once they have entered the domestic market. CETA does NOT provide for immediate free trade between the parties for all goods. That applies only to Category A commodities. A small number of commodities (Category E) are excluded altogether, and for agricultural products there is conceded an increased tariff-free quota rather than tariff abolition. In other cases the commitment is to progressively reduce tariffs over 3 years (Category B), 5 years (Category C) or 7 years (Category D). Therefore there are also provisions governing the suspension or termination of any conceded preference in cases of default, and ancillary provisions relating to treatment of non-party exports. A Committee on Trade in Goods and a		Given the context of Brexit, there is an arguable case for saying a UK/EU Agreement would be simpler than CETA: continue with the total abolition of tariffs and quotas as applies at present, without the Category A/B/C/D/E distinctions. However that would represent a major negotiating concession by both sides – and may not be possible in agricultural products, where domestic political pressure in the EU-27 means that a quota system could well be introduced. Forestry products are probably going to be a less material issue. A best-guess prediction is that non-agricultural products would be granted immediate tariff-free entry under Category A, and then there would be a series of quotas and/or reduced tariffs for the rest. A UK/EU Agreement will also require a Protocol governing Rules of Origin, and the establishment of Committees for Goods and Agriculture. The CETA wording could be more

CETA PROVISION		SUPERCANADA PROVISION
Committee on Agriculture are established to oversee implementation and act as forums for discussion. **Protocol I (Rules of Origin and Origin Procedures)** adjudicates the extent to which any product (given the nature of globalised supply chains) can be said to originate from either party. Two Annexes (2-A and 2-B) set out the line-by-line agreements and import mechanics.		or less copied over. A UK/EU Agreement would also include its own equivalents of Annexes 2-A and 2-B, because every trade treaty includes them. They follow a standard-form structure based on the WTO Harmonised System for classifying commodities (HS). However, access to fisheries between the UK/EU will be a more significant negotiating point than with CETA. The practical approach is to relegate this to be a bespoke Protocol 1A, which could be annexed to this section of the overall Agreement. Electricity is a good for these purposes (it is treated as if an extracted mineral fuel). The EU does not levy a tariff on imported electricity, and that is unlikely to change, but there are outstanding issues with electricity generation, and the other industrial processes caught by the current EU Emissions Trading Scheme, which are considered in Chapter 24, Trade & Environment (below, page 21). Chapter 2 of the UK/EU Agreement may require considerable negotiating time and effort and the detail would be different (but perhaps not all that much: the same products will be contested between the parties). Fisheries aside, the final text will nevertheless follow more or less the same structure.
3. Trade Remedies		**3. Trade Remedies**
This Chapter regulates the parties' recourse to anti-dumping duties, countervailing duties and safeguard measures in volatile markets.		This area is already highly circumscribed by the WTO framework. A UK/EU Agreement could copy over the identical wording.
4. Technical Barriers to Trade (TBT)		**4. Technical Barriers to Trade (TBT)**
This Chapter prevents the parties frustrating the value of concessions made by ensuring that the same technical standards apply to domestic goods and imports. In essence, this section merely repeats the WTO Agreement on TBTs, but doing so does streamline the process by making commitments enforceable bilaterally and strengthening transparent disclosure. The **Protocol II (Mutual Acceptance of the**		This area is already highly circumscribed (at least in theory) by the WTO framework and by international standard-setting bodies. Subject to one issue, a UK/EU Agreement could copy over the identical wording. The Annex on car registrations might require some revision to reflect current EU practice, and the fact that the UK already follows it. At present there are supposedly no TBTs between the UK/EU because both are

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Results of Conformity Assessment) and **Protocol III (Good Manufacturing Practices for Pharmaceutical Products)** are designed to eliminate duplicative certification requirements. There is a specific Annex 4-A to cover cooperation in the field of motor vehicle registration. The Committee on Trade in Goods oversees this area.		governed by the same Single Market. The issue that arises is whether post-Brexit how much scope there is for divergence. If "access to the Single Market" means "UK domestic application of EU law", presumably as a quid pro quo for not imposing a Category A/B/C/D/E framework on goods (see above, Chapter 2, page 2), then no TBTs will ever arise – but that would represent a major concession by the UK and is not recommended here. Arguably, the interests of the UK are better served by copying the CETA provisions and pushing for stronger mutual recognition practices, i.e. NOT going beyond CETA. Since the 'acquis communautaire' and regulatory framework will be imported into UK domestic law under the Withdrawal Bill, the UK and EU should agree that assessment to determine regulatory equivalence is not necessary. Both Parties should instead consent to an 'assessment of compatibiity' approach in their version of Protocol II – see the relevant comments under Financial Services (below, page 8).
5. Sanitary and Phytosanitary (SPS) Measures		**5. Sanitary and Phytosanitary (SPS) Measures**
This Chapter regulates the parties' rights to protect against risks to food safety, animal or plant life or health, so as not to create unnecessary and unjustifiable trade restrictions. In essence, this section merely repeats the WTO Agreement on SPS, and a pre-existing Canada/EU agreement on veterinary standards, but doing so does streamline the process by making them enforceable bilaterally and strengthening transparent disclosure. There is a specific annex governing the recognition of regulatory equivalence between the parties. A specific Committee on SPS Measures oversees this area. Ten Annexes (5-A to 5-J) set out mechanisms and procedures.		As with TBTs, this area is already highly circumscribed (at least in theory) by the WTO framework and by international standard-setting bodies, and the UK starts from a position of being 100% compliant with EU rules. A UK/EU Agreement could copy the basic CETA provisions, but re-draft these to assess future regulatory divergence, rather than regulatory equivalence. See the relevant comments under Financial Services (below, page 8). The detailed content of the ten Annexes would doubtless differ, but the CETA structure covers the correct topics and it would not be too difficult to update/adjust them.

CETA PROVISION		SUPERCANADA PROVISION
6. Customs and Trade Facilitation		**6. Customs and Trade Facilitation**
This Chapter seeks to minimise the administrative burden of importing through the use of technology and greater transparency, and common procedures and approaches. These provisions complement the commitments which both Canada and the EU have already made through their membership of the WTO and the World Customs Organisation (WCO).		These measures can be copied over directly – assuming that the parties do not agree to even more relaxed provisions. Special arrangements for the Irish border issue would be incorporated as either an Annex, or more likely a Protocol.
7. Subsidies		**7. Subsidies**
This Chapter mainly repeats and reinforces the existing WTO Agreement on Subsidies and Countervailing Measures. It strengthens and improves the provisions for consultation and disclosure between the parties.		These provisions can be copied over into a UK/EU Agreement.
8. Investment		**8. Investment**
This Chapter governs investments by businesses of one party in businesses in the other party. It prohibits the parties from imposing market access limitations on investment (number of firms; value of services; number of transactions; capital employed; staff headcount; corporate structure). The parties are also prohibited from imposing "*performance requirements*", i.e. trade distorting conditions as to minimum export levels of goods/services; degree of local content of goods/services; local purchasing preferences; local sales restrictions; or similar conditions as a requirement of eligibility for any grant or subsidy. Subsidiary investments are to receive National Treatment and Most Favoured Nation treatment. Investments are to be treated fairly and equitably. Compensation is to be paid for losses caused by armed conflict or natural disaster etc. Expropriation may only be for a public purpose, under due process of		Following the recent European Court of Justice (ECJ) decision on the EU-Singapore Trade deal, any Free Trade Agreement negotiated by the EU containing Investment and Investor protection provisions is a mixed agreement, meaning it must be ratified by all Member State Parliaments including regional parliaments such as Wallonia, which at first vetoed CETA. It is now likely that investment will not be incorporated into future EU trade deals, in order to allow the EU's institutions of the Commission, Council and Parliament to agree such trade deals at EU level without the need for Member State ratification. This is likely to happen for the EU-New Zealand trade deal. Instead separate investment agreements may be used. Such a fast timetable would ironically benefit a Brexit deal even if the implications on sovereignty for other Member States is a genuine issue. There is also the issue of 'Forward MFNs' for Investment and Services, which requires any

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law, non-discriminatory and receive full compensation. The parties are prohibited from placing restrictions on the ability to make capital or income transfers in or out of the territory, unless for a non-discriminatory reason e.g. bankruptcy proceedings. A Tribunal and an Appellate Tribunal are established to hear complaints by investors, together with a procedure which reflects existing international law. A Committee on Services and Investment is established as a forum for consultation and to oversee the code of conduct of the Tribunals. Mediation is encouraged and the parties are to exhaust the CETA process before seeking any other international redress. The Chapter does not apply to most airline services, which are already covered by a bespoke international agreement, or cultural industries or financial services. Parties are entitled to deny the benefits of this Chapter to a business which is ultimately controlled by a third country person and international sanctions are in operation. There are six Annexes (8-A to 8-F) covering the definition of "expropriation"; restructuring of public debt; the exclusion of certain Canadian regulatory acts from the dispute settlement process; and declarations on how the parties will implement their commitments.		liberalisation in these areas in a new agreement such a EU-UK deal to be offered to holders of other modern trade deals such as South Korea and Canada. This obligation would again be not mandatory if contained in a separate investment treaty. But if investment is contained in a UK/EU Agreement, then CETA contains all the provisions which you would expect to find in a trade treaty and has sensible measures for handling them. These provisions could be carried over more or less unchanged into a UK/EU Agreement. There is an important distinction between the ability to invest in an overseas subsidiary (which is what Chapter 8 effectively governs) and the more important issue of the conduct of investment business (which falls within Chapter 13, Financial services, below, page 8). Possibly, the parties might wish to extend protection to key domestic industries or activities. As with CETA, that is best addressed through Chapter 28, Exceptions (below, page 22).
9. Cross-Border Trade in Services		**9. Cross-Border Trade in Services**
This Chapter obliges the parties to extend National Treatment and Most Favoured Nation treatment to the service suppliers of the other party. They are prohibited from imposing limitations on market access (number of suppliers; quotas; value of transactions or assets; economic needs tests etc.). The Chapter does not apply to most airline services, which are already covered by a bespoke international agreement, or cultural		It is a matter of dispute whether there is actually a "single market in services" within the EU at present, as this is one of the least complete or developed parts of the Single Market. The CETA provisions could be strengthened by a specific commitment that no business will receive treatment post-Brexit that is less favourable than the treatment it would have received pre-Brexit.

CETA PROVISION		SUPERCANADA PROVISION
industries or financial services. Parties are entitled to deny the benefits of this Chapter to a business which is ultimately controlled by a third country person and international sanctions are in operation. There are three Annexes (9-A to 9-C) covering the interpretation of "National Treatment" for services; the handling of "new services" invented after CETA comes into force; and the treatment of courier services. *NB: General Annexes I and II contain further reservations, exceptions and clarifications. In particular, they list specific services (by reference to the UN Central Product Classification 1991) excluded from Chapter 9.*		On that basis, it would be unnecessary for a UK/EU Agreement to include equivalents of Annexes 9-A and 9-C. Annex 9-B merely states that where a new service is developed which is not included in the UN Central Product Classification 1991, then the parties will consult on how it is to be treated under CETA – which is hardly a great help. There is a strong case for considering an 'MFN-Forward' provision, i.e. any future concession granted by either the UK or the EU in a bilateral agreement with a third country will also be extended to the other party to the SuperCanada deal.
10. Temporary Entry and Stay of Natural Persons for Business Purposes		**10. Movement of Natural Persons**
This Chapter obliges the parties to admit individuals not otherwise ineligible under immigration law for the purposes of key personnel, contractual service suppliers, independent professionals and short-term visitors. That is part of the WTO's General Agreement on Services (GATS) and its 4 modes, including Mode 4 which covers temporary entry for natural persons for business purposes. Six Annexes (10-A to 10-F) set out the criteria for qualification, and for the spouses of eligible persons, and the procedures to be followed.		This is an area in which CETA is wholly inadequate to the Brexit scenario. A SuperCanada Agreement would undoubtedly include provisions to relax the admission of short-term business visitors, but be subject to Britain's new style immigration policy and control of its borders. It will have to go beyond CETA to cover the issue of the free movement of labour (assuming this is not carved out into a wholly standalone Treaty in its own right): (a) for existing expatriates who have migrated pre-Brexit; and (b) for post-Brexit migration. Whatever the resolution reached, the SuperCanada UK/EU Agreement will most likely require a series of agreed principles in the main text, of which short-term visitors would be only one of many topics, and a bespoke Protocol containing the full detail, with sub-sections covering the subject of the CETA Annexes for different categories of individuals.
11. Mutual Recognition of Professional Qualifications		**11. Mutual Recognition of Professional Qualifications**
This Chapter commits the parties to encourage their respective national authorities and professional bodies to enter		A UK/EU Agreement could supplement the CETA provisions with an additional Annex which specifies – and perhaps provides a

CETA PROVISION		SUPERCANADA PROVISION
into Mutual Recognition Agreements (MRAs) in regard to each other's qualifications. An MRA Committee is establish to monitor progress and make appropriate recommendations to professional bodies. Annex 11-A contains non-binding guidelines for judging professional equivalence and reaching MRAs.		minimum "grandfathering period" – those professional qualifications which are already recognised across the EU-28, or perhaps on a country-by-country basis, prior to Brexit. This again would be made subject to the UK Government's new post Brexit Immigration policy.
12. Domestic Regulation		**12. Domestic Regulation**
This Chapter governs the licensing requirements for businesses granted market access under Chapter 9, Cross-Border Services (above, page 6). The parties are obliged to operate licensing systems which are clear and transparent, objective and public, and not applied in an arbitrary manner. There should be reasonable time limits in which to make an application. Refusal should be accompanied with written justification and not preclude re-application by the same business. *NB: General Annexes I and II contain further reservations, exceptions and clarifications. In particular, they list specific services (by reference to the UN Central Product Classification 1991) excluded from Chapter 12.*		The CETA provisions are uncontroversial and could be incorporated into a UK/EU Agreement, but in the Brexit context they would be improved by the addition of: • A commitment to grandfather all pre-Brexit licenses and approvals, except in cases where conduct would have caused a license etc. to be forfeited under the pre-Brexit rules (perhaps for at least a fixed transitional period); • A commitment to ensure that no business would receive less favourable treatment post-Brexit than they would have done so beforehand, i.e. to continue pre-Brexit licensing criteria (perhaps for at least a fixed transitional period); • A commitment to not discriminate against applicants from either party. The extent to which the rules and conditions for eligibility might alter after Brexit, and that is best handled as part of Chapter 21, Regulatory Cooperation (below, page 20).
13. Financial Services		**13. Financial Services**
This Chapter commits the parties to concede National Treatment and Most Favoured Nation treatment for the other party's financial institutions and investments. They are prohibited from imposing market access limitations (number of firms; value of services; number of transactions; capital employed; staff headcount; corporate structure). They are obliged to provide access to payment and clearing systems. They cannot impose nationality requirements for		CETA contains extensive provisions for financial services and is quite good as most trade treaties go. However, given the strategic importance of this sector to the UK, and the pre-Brexit situation of significant overlap in regulation of the entire financial services field, although the CETA provisions are a useful starting point, they are not adequate. For example, whilst the headline market access rights under CETA are fairly generous, they are in places heavily

CETA PROVISION		SUPERCANADA PROVISION
senior staff. Chapter 13 overrides the provisions of Chapter 8, Investment, (above, page 5) and Chapter 9, Cross-Border Services, (above, page 6). There is a 3 year window in which the parties will further negotiate on "*performance requirements*", i.e. conditions as to local purchases or exports etc., and in default the provisions of Chapter 9 (Cross-Border Services) will apply, i.e. complete prohibition. Specific exclusions apply to government action in pursuit of monetary or exchange rate policy, or for the prudential regulation of financial service providers. A Financial Services Committee will supervise the implementation of this Chapter and act as a forum for consultation and negotiation. There is a special financial procedure for dispute settlement between the parties and for investor/state disputes over investments in financial services. But the ECJ Singapore decision may lead to the removal of any form of Investor State Dispute Procedure (ISDP) from this agreement to allow its faster progress, with investment and its protection going to a new specific investment agreement. It should be noted that major disputes over ISDS and its public perception caused the EU-US TTIP free trade agreement to fail. Annex 13-A specifies the financial services which each party recognises for the purpose of cross-border service provision. In some cases this is dependent upon reaching future agreement on regulatory equivalence. Annex 13-B sets out principles by which the Financial Services Committee will adjudicate that the prudential regulation carve-out is being legitimately applied by one of the parties. Annex 13-C is a statement of principle as to how the parties intend to conduct dialogue on financial services regulation. *NB: General Annexes I, II and III contain further reservations, exceptions and*		circumscribed by reservations and exceptions in the Annexes. The EU may try to argue that there is already a single coherent EU-wide financial services market and therefore the UK should cede regulatory power to the EU or establish a joint regulator which amounts to much the same thing. The UK will rightly seek to resist this (although some business elements may claim to find either option attractive). This section of SuperCanada draws heavily from the excellent report by the International Regulatory Strategy Group (IRSG) chaired by former Minister Mark Hogan and produced with the support of the City of London Corporation, City UK and Hogan Lovells. Exactly how far the SuperCanada UK/EU Agreement will extend is a matter of challenging negotiation, but by adopting CETA as a template much time is saved to devote to such negotiations. It is possible though to draw up a "wish list": 1. The definition of "financial services" should be taken from existing EU law. Trade treaties usually follow a WTO definition which is somewhat wider in its scope, but they then tend to qualify and confine its application through reservations and exceptions. It makes more sense to start from an agreed EU-wide definition. *(IRSG flag this as a key issue to consider but do not advance a specific recommendation.)* 2. The UK/EU already share the same financial services regime. There is a strong case for 'grandfathering' – i.e. rights to exempt, so that any firm or product which was recognised or licensed pre-Brexit to remain recognised or licensed afterwards, unless an operator does something which would have caused recognition or approval to be forfeited – at least for a substantial transitional period. This would be confined to the position as at Brexit. Firms could voluntarily waive grandfather status, e.g. if they wished to introduce a new product or service and they qualified under the

CETA PROVISION		SUPERCANADA PROVISION
clarifications. In particular, there is a key distinction between financial services operated at the time that CETA comes into force and any new products or services developed afterwards.		local post-Brexit rules. *(IRSG also recommend a form of grandfathering, but not as explicitly.)* 3. At present the EU operates a passporting system: any firm licensed in one member state can (a) establish a branch in any other member state; and (b) sell services into another member state without having to establish a branch there. Trade treaties follow a different format, based on the structure of the WTO GATS treaty where countries make commitments and reservations against market access under four headings: • Mode 1: cross-border trade – supply from country X into country Y • Mode 2: consumption abroad – supply in country X to a customer from country Y • Mode 3: commercial presence – a firm from country X permitted to establish a branch in country Y • Mode 4: presence of natural persons – a frim from country X permitted to send staff into country Y 4. Mode 1 and Mode 2 access (selling and buying across borders) should be handled by mutual recognition of authorisations by both sides. Starting from the premise that UK/EU regimes already have regulatory alignment, then for so long as the two regimes do not substantially diverge, a financial service provider authorised from one side may sell services into the other, and customers can buy services from providers in the other. *(This is how IRSG would achieve grandfathering.)* 5. The EU currently has a system for recognising authorisations by third countries demonstrating regulatory equivalence between their authorisation and EU law. IRSG reject this as too legalistic and burdensome. Instead they advocate following the recommendations of the International Organisation of Securities Commissions (IOSCO) to focus on regulatory alignment using five

CETA PROVISION		SUPERCANADA PROVISION
		"outcome tests": • Domestic investor protection; • Maintenance of market integrity; • Reduction of scope for regulatory arbitrage (i.e. jurisdiction shopping); • Reduction of systemic risk, crime and misconduct; • Protection against money laundering and financial crime. Comparing the outcomes in practice rather than the precise legal process for authorisation will provide greater flexibility and certainty. IOSCO already provides a template for how this would work. 6. In some situations regulatory divergence is quite acceptable, e.g. if the UK and the EU decide to implement the same global standard in different ways; if the EU further develops its Banking Union. There are some areas where the EU does not presently regulate, and in others EU regulation sets only minimum standards which member states may exceed. IRSG recommend that the UK/EU Agreement should explicitly state the areas where regulatory alignment is not required. 7. IRSG recommend that market access for certain financial services should be enabled to continue without any requirement for regulatory alignment: • Mode 1/Mode 2 provision of banking, investment services within the MiFID directive , fund and asset management, insurance and reinsurance; • By a firm regulated in country X, i.e. one already supervised by its home authority; • To a qualifying counterparty in country Y: a firm regulated in country Y, or a large corporation (to be defined), or a government/public body, i.e. a sophisticate customer who can be assumed to be able to look after their own interests. Firms eligible for such market access would be exempt from country Y rules on

CETA PROVISION		SUPERCANADA PROVISION
		licensing, capital/prudential conduct and internal management, but not from the local rules on market integrity and market structure. No existing trade treaty allows such market access (although CETA comes close) but that reflects the unique circumstances of Brexit. 8. IRSG do not appear to specifically mention the point, but – in contrast to CETA – the UK/EU Agreement should contain no "*performance requirements*" attached to market access at all. 9. Mode 3 access (freedom of establishment) could create a problem – IRSG flag that regulators may be wary of granting market access to third country firms authorised by the other party without undergoing a prior licensing application. IRSG recommend a mixture of solutions, to be written into the UK/EU Agreement on a case by case basis, and which could be used to handle situations where there is no regulatory alignment: • "consent to jurisdiction": a firm is granted market access by voluntarily accepting host country regulation (which is how many non-US firms gain access to some US financial markets); • "standstill arrangements": both UK and EU agree to continue their existing exemptions/approvals and not alter their regulatory framework in ways which reduce third country access (i.e. continue the status quo ante, which currently is accepted by all sides); • Specific rights of access for dealing with qualifying UK or EU central counterparties without the need for licensing or demonstrating regulatory alignment. 10. Investment exchanges and market infrastructure operators have a slightly different passporting system across the EU. IRSG recommend that the UK/EU Agreement immediately grants fresh licenses to any authorised business (i.e. in effect grandfathering). However they flag up that the EU is currently considering a

CETA PROVISION		SUPERCANADA PROVISION
		proposal that any third country central counterparty which is "systemically significant" be required to establish a licensed branch in a member state. This will clearly affect UK entities post-Brexit and it appears to be aimed at euro dealings. IRSG suggest that this issue could be handled through the range of measures mentioned in point 9 (voluntary consent/grandfathering/case-by-case) but the UK may have to concede o the matter. 11. The UK/EU Agreement should go beyond the IRSG recommendations. There should be a prohibition on either party attempting extra-territorial regulation of transactions denominated in its currency/currencies, e.g. the EU should not be able to try to confine all euro dealings within the Eurozone. 12. The conduct of business is slightly complicated by the fact that at present there is no uniform EU-wide approach as to whether firms are obliged to follow their home country rules or those of the host country where the service is provided. IRSG make the sensible recommendation that the UK/EU Agreement simply provide that in each area of business the current position under EU law will apply post-Brexit. 13. Mode 4 access (freedom of movement) is already covered by EU law and likely to be a contentious negotiating point (see comments on Chapter 10 above, page 6). One party's immigration law could effectively impose a requirement to hire local staff if foreign staff are not eligible for entry, so there would have to be further consideration of how the two areas dovetail. The strategic significance of financial services and their globalised nature means that the UK/EU Agreement will have to refer to immigration rights for personnel somewhere. 14. All trade treaties covering financial services contain a "prudential carve out", i.e. a reservation to override access under the treaty for prudential reasons. This creates scope for discriminatory

CETA PROVISION		SUPERCANADA PROVISION
		restrictions on access. CETA has provisions governing this, but they are quite basic. IRSG recommend that the provisions be tightly circumscribed, and that different prudential carve outs should apply to different financial services. 15. IRSG recommend that whether possible, adherence to relevant codes issued by international standard-setting bodies for financial services should be written into the UK/EU Agreement. 16. There should be an explicit commitment to use reasonable efforts to align regulatory treatment, perhaps in the framework of global regulation. IRSG recommend that the UK/EU Agreement should pro-actively encourage regulatory alignment to continue post-Brexit by: • Clear and comprehensive arrangements for sharing information and for co-operation between regulators • Each side formally involving the other in the development of new laws and regulations, with a duty to notify the other party of proposed changes and a right for them to make representations (i.e. like the EEA structure, but more robust) • Memorandum of Understanding between the parties as to their mutually agreed approaches towards regulatory enforcement. 17. IRSG recommend that the UK/EU Agreement should regulate how the parties are entitled to respond to any regulatory divergence once it occurs. The EU/Turkey Customs Union agreement provides a template for this: • "protective measures": protect country X from the effects of country Y's divergence • "safeguard measures": to counteract any serious economic or market disturbance caused in country X by country Y's divergence • "rebalancing measures": responses by

CETA PROVISION		SUPERCANADA PROVISION
		country Y to any protective or safeguarding measures taken by country X The processes and constraints on each of these should be set out in advance, with rights of consultation between the parties at every stage. This should be linked to the dispute resolution terms. 18. Supervision creates a practical problem, because although there is an EU-wide financial services law, it is largely left to each member state to supervise its own firms. There is no EU-wide practice and hence it is difficult to assess whether there is de facto post-Brexit divergence. IRSG consider that simply carrying over pre-Brexit EU law (point 12 above) should resolve most of these issues by ensuring the status quo ante. However IRSG recommend that the principles currently followed by the UK Prudential Regulation Authority for risk-based recognition of third country firms offers a useful template to be followed: • Does the home country supervisor follow sufficiently equivalent conditions for granting authorisation? • Does the home country supervisor oversee the UK branch? • Does the home country have adequate insolvency resolution processes? • Are the UK branch's activities economically significant? 19. As with CETA there should be a committee to oversee the operation of the UK/EU Agreement. IRSG call this a Forum and suggest it should have the explicit role of encouraging continuing co-operation and acting as a first port of call for assessing divergence, resolving disputes about mutual compatibility, and ruling on the validity of counter-measures. The processes should be set out in greater detail than in CETA and there should be specialist sub-committees for each area of financial services. Industry should be represented.

CETA PROVISION		SUPERCANADA PROVISION
		20. Should investor protection be included in the Brexit deal, which may seem unlikely, the IRSG are recommending that the dispute settlement procedures should be stronger than in CETA. IRSG recommend: • Disputes should be adjudicated by a formal standing judicial court, not a diplomatic political body (and not one-off arbitrators as per CETA) • Recourse to the court should be a last resort after prior rights of consultation have been extinguished • The court should be empowered to make findings or assessments on alleged breaches of the UK/EU Agreement, continued regulatory compatibility and the validity of any use of the prudential carve out • The court should be able to make binding determinations on the parties, but without infringing UK sovereign rights or ousting the authority of the ECJ over EU law • The consequences of an adverse finding should be strictly set out (and with more detail than in CETA) • The consequences of one party refusing to accept the rulings of the court should be set out • The dispute settlement provisions should also regulate the right of the parties to withdraw market access. IRSG believe that their recommended approach towards regulatory divergence is applicable to other areas of the UK/EU Agreement.
14. International Maritime Transport Services		**14. International Transport Services**
This Chapter confirms that the commitments in Chapter 8, Investment, (above, page 5) and Chapter 9, Cross-Border Services, (above, page 6) apply to maritime services, particularly the obligations to ensure National Treatment and Most Favoured Nation treatment in regard to access and use of port facilities. Parties are prohibited from placing obstacles to the competitive access of		Air services are excluded from CETA and covered by their own agreement. Since Canada and the EU are separated by wide oceans, shipping is the only transport connection left to be considered, and it is only dealt with for the avoidance of doubt. In contrast, the UK and the EU share a land border (Ireland), a rail link under the Channel and the closeness of the continent means that

CETA PROVISION		SUPERCANADA PROVISION
maritime transport suppliers. *NB: General Annexes I and II contain further reservations, exceptions and clarifications. In particular, they list specific government measures excluded from Chapter 14.*		there is a considerable volume of road traffic carried by ferry and Shuttle. A UK/EU Agreement would therefore most likely contain far more provisions than CETA to set out the principles on which these links would be maintained (and not just be confined to the narrower question of access to port facilities). It is unclear whether a UK/EU Agreement would also embrace air services, as these may well be handled through other international mechanisms based on pre-existing non-EU agreements.
15. Telecommunications		**15. Telecommunications**
This Chapter commits the parties to provide each other's firms with non-discriminatory access to public telecommunications networks and services in their territory and across international borders. It reserves their right to take action to protect security and confidentiality of telecommunications services and the privacy of telecommunications users.		The UK/EU already share a common regime for telecommunications access. Those rules could simply be recited in the UK/EU Agreement, supplemented by general principles for the future of the nature as in CETA (perhaps strengthened, e.g. a commitment to maintain harmonised and liberalised arrangements?). This would be a means of, e.g. grandfathering the abolition of roaming charges for mobile phones – a benefit attributed to the EU but originating in the international mobile phone organisation the UN's ITU and its Telecommunication Standardisation Sector (ITU-T). There would have to be a provision for the notification and consultation of new regulatory changes which diverged from the pre-Brexit arrangements. The UK might even wish to concede a prohibition on reversing the pre-Brexit access rights for the EU, in return for a quid pro quo concession by the other side.
16. Electronic Commerce		**16. Electronic Communications and Data Protection**
This Chapter commits the parties to promote e-commerce by not levying a customs duty, fee or charge on any delivery transmitted by electronic means, and to maintain an on-going dialogue on issues such as fraud, verification etc.		This is an area in which CETA is wholly inadequate to the Brexit scenario. Indeed a separate Data agreement may be most preferable. The CETA provisions are very worthy but do not greatly amount to much in comparison.

CETA PROVISION		SUPERCANADA PROVISION
		The UK starts Brexit already operating the same data protection and e-commerce arrangements as the EU. The UK/EU Agreement would therefore be able to include far more detailed and constructive provisions than CETA governing mutual acceptance of data protection, marketing etc. As with Chapter 4, TBTs, (above, page 3) and other areas these would be framed on the presumption that each party's standards were compatible with those of the other, and the Agreement would instead assess the extent of unacceptable divergence.
17. Competition Policy		**17. Competition Policy**
This Chapter reserves the right of each party to enforce its domestic competition legislation in the ways it sees fit, whilst committing them to operate transparent, non-discriminatory and fair enforcement regimes to counter anti-competitive practices. The Chapter reaffirms a prior 1999 Agreement between the parties and expressly excludes competition matters from the general dispute resolution procedure under CETA.		The UK and EU already start with the same competition policy regime, and there is a greater cross-border integration of business groups than is the case between Canada and the EU. This is an area in which post-Brexit divergence could rapidly emerge, especially if there is a change of UK governing party. There is also a distinct threat of post-Brexit retaliation, with competition policy being used as a mechanism for "punishing" the other party by levying fines upon its businesses. For example, could either side argue that there exist single markets embracing 28 national territories which continue notwithstanding Brexit? An ideal UK/EU Agreement would therefore include far more detailed and far more robust provisions than CETA, in particular (a) a binding dispute resolution procedure; (b) safeguards against post-Brexit retaliation; and (c) strict definitions of the "market" in which anti-competitive practices are assessed. In the case of (b) and (c) these might only apply for a transitional post-Brexit adjustment period. Whether or not it is actually possible to agree such provisions may well depend on the extent of progress reached in regard to specific business sectors elsewhere in the UK/EU Agreement.

CETA PROVISION		SUPERCANADA PROVISION
18. State Enterprises, Monopolies and Enterprises Granted Special Rights or Privileges		**18. State Enterprises, Monopolies and Enterprises Granted Special Rights or Privileges**
This Chapter reaffirms the obligations of the parties under the WTO regime. They commit themselves to ensure that nationalised entities will operate according to strict commercial considerations where not being used to procure goods and services for government purposes.		These provisions could be more or less copied over. The WTO regime (The General Agreement of Tariffs and Trade, GATT, 1994; and GATS) already overrides this area.
19. Government Procurement		**19. Government Procurement**
This Chapter reaffirms the obligations of the parties as WTO members to provide access to each other's government procurement activities on a non-discriminatory, transparent and impartial basis. A centralised process for tendering is established and thresholds agreed for outside access to specific activities for specific public bodies. There are exclusions for defence; national security; protection of public morals, order or safety; protection of human, animal or plant life or health; protection of intellectual property; and goods or services of persons with disabilities, of philanthropic institutions or of prison labour. There are two substantial Annexes (19-A and 19-B) applying to Canada and the EU respectively, each containing 8 sub-annexes specifying the public entities, procured goods and services and publication media covered by the provisions.		The UK/EU already share a common regime for government procurement based again on a WTO Agreement: this being the Agreement on Government Procurement (GPA). Those rules could simply be recited in the SuperCanada Agreement. To the extent that the UK wanted to amend or revise those rules, it would presumably have to concede equal and opposite terms for the EU. Items of particular political sensitivity – which, in the case of the UK, will almost certainly include the NHS and resistance to private operation by EU companies – could be specified here, but it is likely to be more convenient to handle them as part of Chapter 28, Exceptions (below, page 22).
20. Intellectual Property		**20. Intellectual Property**
This Chapter aims to achieve regulatory consistency for IP between Canada and the EU. The parties agree to use reasonable efforts to comply with their existing international obligations in regard to copyright, trademarks, designs, patents and plant varieties and establish mechanisms for their registration, enforcement and fee collection. There are also safeguards for the protection of confidential information submitted to the		At the very least these provisions can be copied over, although it should not be difficult to extend them if required to reflect the pre-Brexit relationship between the UK and the EU. The two Annexes could be compiled very simply by carrying over anything already recognised by the EU as a 'Geographical Indication' (GIs). The UK/EU Agreement could include a presumption that any new recognitions by either party would be

CETA PROVISION		SUPERCANADA PROVISION
authorities as part of the approval for e.g. pharmaceuticals. Three Annexes (20-A to 20-C) list the "geographical indications" (e.g. Parma ham) to be protected, and a process for revising this list. (At present there are no protected Canadian products.)		accepted by the other, unless specifically challenged. GIs are a particular concern for EU Member States in any Brexit deal, and it is noted that the Canadians initially resisted GIs but came round to accepting the concept. This maybe where the UK can generate goodwill through accepting as well as securing continued protection for UK sectors protected such as Stilton cheese. The European Patent Organisation is not an EU agency. It is governed by a separate convention to which some (but not all) EU members are signatories, as well as some non-member states.
21. Regulatory Cooperation		**21. Regulatory Cooperation**
This Chapter provides some principles and objectives for regulatory cooperation between the parties. The existing Regulatory Cooperation Council is reconstituted as a Regulatory Cooperation Forum for discussion and consultation of regulatory initiatives by either party.		There is an obvious need for a forum through which the UK and EU can discuss regulatory issues, and the CETA principles/objectives are unobjectionable. However, what form that forum should take, and the powers it should possess, will depend on what is meant by "access to the Single Market". If it is a condition of access that the UK is bound by all future domestic regulation of single market competences, then the CETA framework is clearly inadequate because the UK will require much stronger rights of engagement and protection against unilateral changes by the EU (and arguably vice versa). In a UK/EU Agreement, therefore, this Chapter may have to be completely replaced and renegotiated. In CETA the matter of regulatory cooperation is a subsidiary issue, and so the provisions are placed towards the end of the document. If in a UK/EU Agreement it is expanded to embrace the wider issue of regulatory coordination, then it arguably deserves a more prominent position in the final text. In particular the Agreement should be explicit that the assessment of continued regulatory compatibility (see the comments above, pages 8-15) would involve specialist sub-committees drawn from businesses in each

CETA PROVISION		SUPERCANADA PROVISION
		sector, and have a facility to add new sub-committees from time to time as appropriate.
22. Trade and Sustainable Development		**22. Trade and Sustainable Development**
This Chapter contains mutual commitments to ensure trade and investment are not pursued at the expense of sustainable development and social objectives. The Parties reaffirm their existing international commitments and commit to cooperate on promoting sustainable development. A Committee for Trade & Sustainable Development is established for consultation, co-operation and dispute resolution, with obligations to publicise the findings. A Civil Society Forum is established to assist its operation.		These provisions are seen to be reasonable in principle but the provision of 'sanctions' to enforce the provision on the environment and sustainable development are controversial and a potential attack on UK sovereignty where tariffs could be reapplied or other punishments levied should the EU decide the UK contravenes its responsibilities – in the opinion of the EU. This would require careful and robust negotiation to find an acceptable text.
23. Trade and Labour		**23. Trade and Labour**
This Chapter contains mutual commitments to ensure trade and investment are not pursued at the expense of employment rights. Each party reserves the right to pursue its own employment practices, but commit to high standards, reaffirm existing ILO standards. The Parties commit to cooperate on employment-related issues and share information. A mechanism is set out for consultation, co-operation and dispute resolution, with obligations to publicise the findings. The Committee on Trade & Sustainable Development oversees this area.		These provisions can be more or less copied over. The UK/EU are already bound by the same international agreements in Trade and Labour – such as from the International Labour Organisation (ILO) - as Canada, and between themselves share highly similar pre-Brexit employment legislation. The wider question of the free movement of people between UK/EU would have been addressed elsewhere – see comments under Chapter 10 (above, page 6).
24. Trade and Environment		**24. Trade and Environment**
This Chapter contains mutual commitments to ensure trade and environmental protection are mutually reinforcing, and that one is not pursued at the expense of the other. Each party reserves the right to pursue its own environmental protection practice, but commits to high standards, reaffirm existing international treaties and the ability to use domestic law to enforce environmental		As they stand, and subject to one caveat, these provisions can be more or less copied over. The UK/EU are already bound by the same international agreements in Trade and Environment as Canada. In practice, ensuring sustainable fisheries (and access to them) is likely to be a more significant issue, and sustainable forestry less so, for a UK/EU Agreement than with CETA. However, the contentious issues would be

CETA PROVISION		SUPERCANADA PROVISION
protection. The Parties commit to cooperate on trade-related environmental issues, such as facilitating and promoting trade and investment in environmental goods and services, climate change, and biodiversity. They agree to encourage trade in products from sustainably managed forests and to promote the sustainable and responsible management of fisheries and aquaculture. A mechanism is set out for consultation, co-operation and dispute resolution, with obligations to publicise the findings. The Committee on Trade & Sustainable Development oversees this area.		addressed through a specific Fisheries Protocol (see above, comments on Chapter 2, page 2) so the basic commitments of principle would be unaffected. The major sticking point is likely to be the EU Emissions Trading Scheme (ETS). Canada has only recently launched its own domestic ETS (although something has been running in Quebec for some years) and there is no reason why CETA would include any mention of it. The UK is in a completely different situation, as an existing member of the EU ETS. Furthermore, whilst globally the cross-border trade in electricity is comparatively minor, one region where it is more developed is between the EU-28. The EU could well seek to demand that the UK continue its participation or at the very least impose an equivalent domestic scheme, to avoid a perceived competitive advantage for UK exporters. That has significant implications for the ultimate control of post-Brexit UK energy policy and on sovereignty and is unlikely to be acceptable. Whatever the resolution arrived at, the UK/EU Agreement will most likely require a bespoke Protocol to cover the topic, and which goes beyond the scope of the contents of CETA.
25. Bilateral Cooperation and Dialogues		**25. Bilateral Cooperation and Dialogues**
This Chapter extends and codify existing contacts between Canada and the EU in regard to the areas of: • Biotechnology • Science, Technology, Research and Innovation • Forestry • Raw Materials		The CETA provisions are specific to the Canada/EU relationship and existing partnerships. There will be an equivalent section in the UK/EU Agreement, depending on which current EU programmes or EU agencies the UK wishes to continue its participation, such as, for example, the Horizon 2020 Research Programme and the Erasmus student Programme, which we would seek to remain in, and agencies such as the European Space Agency. In practice the UK/EU Agreement is likely to be much more extensive than CETA and will probably cover this in far more detail, such as the vexed issue of financing

CETA PROVISION		SUPERCANADA PROVISION
26. Administrative and Institutional Provisions		**26. Administrative and Institutional Provisions**
This Chapter sets out the working procedures for the various Committees.		These provisions can be copied over, with appropriate adjustments and amendments.
27. Transparency		**27. Transparency**
This Chapter sets out the requirements for notification and disclosure between the parties.		These provisions can be copied over.
28. Exceptions		**28. Exceptions**
CETA does not override the ability of the parties to legislate or pursue policies: • Covered by General and Security Exceptions in the WTO agreements (to protect public morals; protect human, animal or plant life/health; law enforcement; conserve natural resources; national security etc.); • Pursue existing or future tax policies (although investors may challenge new taxes as contrary to CETA); • Promote national culture through subsidies and restrictions on cross-border services; investment in cultural industries; government procurement of cultural products; and licensing requirements in cultural industries.		The UK/EU Agreement will have to include near-identical provisions, certainly in regard to the WTO General and Security Exceptions and taxation. In practice the EU will almost certainly insist on near-identical exceptions for the promotion of cultural industries, especially in the audio-visual field (i.e. French language films). UK domestic political pressure may force an extension to CETA so that the NHS is covered by similar exceptions as EU cultural industries, particularly as the rest of the EU does not have equivalent healthcare systems to the NHS but uses far more private provision. Carbon taxes or equivalent measures could be a potential issue, but it is likely these would be settled under Chapter 24, Trade & Environment (above, page 21).
29. Dispute Settlement		**29. Dispute Settlement**
This Chapter sets out a mechanism for resolving disputes under CETA, as an alternative to taking the matter through the WTO. The same dispute cannot be settled through both mechanisms at the same time. Three Annexes (29-A to 29-C) set out the principles and procedures for arbitrators and mediators.		These provisions together with the Annexes are subject again to whether investment and dispute settlement are contained at all in this Agreement, but if so this is a good basis though the exact model of settlement cannot be the ECJ and may not use the Canadian International Court Settlement model.
30. Final Provisions		**30. Final Provisions**
This Chapter governs the mechanisms for bringing CETA into force, for amending it and		The main provisions can be copied over – although some might argue for a longer

CETA PROVISION		SUPERCANADA PROVISION
for terminating it (six months' written notice by either side). There are also information-sharing provisions. It also provides that CETA applies to any subsequent new member of the EU from its date of accession, and entitles Canada to request information or present concerns with regard to the accession as it relates to any matter covered under CETA. Four Annexes (30-A to 30-D) contain miscellaneous material in regard to other Canada/EU agreements; alcoholic beverages; and non-EU participants in the EU Customs Area.		notice period. There is a strong case for a much longer notice period for financial services, and perhaps a provision for different parts of the UK/EU Agreement to fall away after different transition period, such as a year minimum. The Annexes would be revised or replaced as applicable.
General Annex I		**General Annex I**
Reservations by both Canada and the EU against their commitments to liberalise their treatment of existing services and investments.		A UK/EU Agreement would include an equivalent provision.
General Annex II		**General Annex II**
Reservations by both Canada and the EU against their commitments in regard to future measures governing services and investments.		A UK/EU Agreement would include an equivalent provision.
General Annex III		**General Annex III**
Explanatory notes supplementing Canada's offer in regard to financial services.		A UK/EU Agreement might well include something of this nature on behalf of one or other of the parties, on this or other topics.
		Additional Protocols
		As noted previously, a SuperCanada agreement would most probably contain additional protocols covering: • The UK/Irish Border • Immigration/Movement of Natural Persons • Fisheries • Emissions Trading Schemes

Note: Other Chapters, such as on E-Commerce, may be added to SuperCanada as required if new areas are added or redefined.