

# **CAN FREE TRADE AGREEMENTS ENHANCE OPPORTUNITIES FOR UK HIGHER EDUCATION AFTER BREXIT?**



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## **FOREWORD BY UNIVERSITIES UK**

This report, prepared for Universities UK by the UK Trade Policy Observatory based at the University of Sussex, sets out issues for the UK government and higher education sector to consider as the UK prepares to negotiate a series of new free trade agreements with countries around the world following exit from the European Union. It is critical that higher education and research figure prominently as a consideration ahead of these discussions, and that they are afforded a high priority as part of any new international agreement which the UK government may consider post-Brexit.

The report explores the ways in which the inclusion of education and research commitments in future free trade agreements could strengthen the position of UK higher education internationally, and the ways in which other countries have approached this to date.

Free trade agreements can affect research and education either through the direct treatment of these sectors in dedicated chapters of an agreement, or by changing the general conditions for service trades. Areas of higher education and research policy of potential interest with reference to future UK FTAs, or in related agreements, may include the following:

- collaboration in science, research and innovation
- the provision of education as a service (eg through jointly-delivered degree programmes, double degree programmes, campuses, joint schools, distance education, or other forms of transnational education)
- recognition of degree qualifications
- mobility of academic staff and students
- the right to use university title in overseas locations
- other regulatory issues

Given the scale and complexity of these negotiations, and the range of issues for consideration, there is undoubtedly a need for further research and debate. Close engagement with the UK government, higher education institutions, and overseas higher education systems with prior experience of free trade agreements will support this.

Engagement is critical not only to unlock opportunities, but also to identify and address any potential concerns. Careful monitoring will be required to ensure that agreements do not – intentionally or inadvertently – close off opportunities, expose UK universities to unnecessary risk, or compromise the world-leading reputation of UK higher education.

A specific area of further research will be to better understand the outcomes of existing FTAs which reference higher education and research objectives from the point of view of the relevant higher education and research systems – to establish whether the commitments outlined on paper were fully translated into practice.

## **INTRODUCTION**

This study was carried out by the UK Trade Policy Observatory (UKTPO) for Universities UK (UUK) in April 2017.

The aim is to identify how future deep and comprehensive free trade agreements (FTAs) may best enhance the prospects for research and for higher education, both of which are major export sectors for the UK economy.<sup>1</sup> The paper starts by discussing the problems that we might look to an FTA to address and where FTAs fit into the hierarchy of international agreements that is necessary to achieve change on the ground. Next come sections on the sample of FTAs that we have considered and on the chapters and articles that they contain which deal explicitly with research and with education. We also include a section on the mobility of labour provisions in the same sample because such mobility is a key component of cooperation in both sectors. We conclude with brief sections covering the few evaluations of the research and education provisions of FTAs.

## **WHAT CAN WE EXPECT FROM A TRADE AGREEMENT?**

### **What is the Problem?**

Before we can ask how FTAs may help or hinder the international activities of the research and higher education sectors, we need to identify the problems that the latter face. A UK university or research institution operating, or potentially operating, with foreign nationals or in a foreign country might face any or all of three classes of problem:

1. That country's domestic regime may be uncondusive to the desired activity. Things that are normal or acceptable in the UK may not be so in the partner country – for example, completing a master's degree in one year, research on embryos or commentary on local policy. Conversely, the UK might not accept standards or activities that the foreign partner wishes to use – for example, quality assurance in the award of degrees.
2. The country's regime may be acceptable but the UK may be unable to access it because foreign suppliers are subject to restrictions that do not pertain to local producers – in the language of international trade, the UK providers do not receive 'national treatment'. For example, foreign entities may not be able to call themselves universities, certain activities may require formal partnership with a local supplier or there may be limits on the degree of foreign ownership.
3. The UK may receive less favourable treatment than other foreign suppliers; for example, UK degrees may not be recognised while equivalent ones from elsewhere are.

Concluding an FTA is more likely to be able to address class 3 problems than class 2 problems, which in turn will be easier to treat than class 1 problems.

Especially in developed countries, regulation has typically emerged from a deep historical process and reflects deeply held cultural values; hence inducing change from the outside is difficult and slow. Moreover, large trading partners such as the EU or the USA have more leverage than the UK with which to achieve change. Thus unless trading partners are looking

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<sup>1</sup> 'FTA' is used as a generic term to include any agreement with a substantial international trade component – for example, the EU's Association Agreements with its neighbours.

to introduce reforms and seek to bolster them by making external commitments, one should have modest expectations about what a hurried negotiation with the UK can achieve.

Class 2 and 3 problems do not challenge national regulation *per se*, because one party is just seeking access to the other's market as currently managed, but issues of the enforcement of regulation and the assurance that they have been enforced do arise. So too does the question of protecting entrenched interests – either domestic suppliers vis-à-vis all outsiders or protecting one foreign supplier relative to another. Particularly in the latter case it is useful in negotiations to be able to point to a concession granted by the partner country to one supplier and ask that it be extended to yourself, especially if you can prove some equivalence with the preferred supplier.

Moving from the general to the specific, the list of potential substantive challenges faced in providing research or education across borders is very long. Knight (2002) provides what she claims is an exhaustive list of potential frictions in higher education, listing 39 in all – reproduced in the Appendix. It is clear that the critical barriers will vary from case to case. A simplistic solution would appear to be that the UK should include in all of its FTA broad and liberal provisions that sweep all these barriers away. This is a fine objective, but, recognising that different partners will value different elements of the list differently, it becomes obvious that too general an approach is likely to encounter opposition from some quarter in nearly every case. A tailored approach, on the other hand, focussing in each case on the intersection of the sets of the desirable and the feasible is more likely to succeed and therefore more likely to be saleable to the UK government. The corollary of this is that each potential negotiation should be preceded by an attempt to learn from the sector what concerns them (both offensively – what they want – and defensively – what they fear) followed by a careful weighing of objectives. An example of the sort of analysis required is EUA (2017).

### **The General Agreement on Trade in Services (GATS) and the Hierarchy of Agreements**

Free trade agreements (FTAs) lie within a hierarchy of agreements that could facilitate trade and cooperation in research and education. The General Agreement on Trade in Services (GATS) lies at the apex, defining a general set of rules and recording, in the Schedules of Concessions that WTO members create at the end of a trade negotiation, specific commitments and limits on trade barriers. Then come FTAs between small subsets of WTO members which are typically somewhat more concrete and liberal in their commitments, but which in our areas of interest usually amount only to agreements in principle rather than commitments to action. Below the FTAs, and possibly deriving from them, are agreements between governments, some specifically referring to research and education; and below these there may be operating agreements which define how cooperation in these areas will be implemented. At the same level as FTAs there may be other high-level inter-governmental agreements on research or education, often pre-dating an FTA (or indeed even in the absence of one) and some of which have the same legislative status as FTAs<sup>2</sup>. The bottom line is that including research or education clauses in an FTA is neither necessary nor sufficient to guarantee cooperation and relatively free trade in these areas. It potentially helps, but it will need to be followed up at a more detailed level.

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<sup>2</sup> For example, the UK's *The European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009*, Statutory Instrument No. 1748, 2009.

The GATS is a broad agreement laying out the principles on which WTO members trade services with each other. It recognises four modes of supplying services by residents of one country to those of another: (1) cross-border trade (eg streaming a video from abroad); (2) consumption abroad (eg moving for medical treatment); (3) commercial presence (Foreign Direct Investment), and (4) the presence of natural persons providing services. The GATS imposes, *inter alia*, a so-called *most favoured nation* (MFN) commitment which requires that any service imported into a country must be subject to the same treatment regardless of its country of origin (among WTO members).<sup>3</sup> The one exception to this is if two or more members sign a free trade agreement (FTA) covering trade in services, in which case they can offer each other terms that are more favourable than MFN (the irony of the terminology is not lost on trade scholars!). The terms of the exception are governed by that GATS' Article V, which states that FTAs must have 'substantial sectoral coverage', which a footnote states is to be measured by reference to the number of sectors (implying that not all sectors need to be covered), volume of trade affected and modes of supply, and that there should not be *a priori* exclusion of any of the four modes of supply. Moreover, although the GATS requires that sectors and modes of trade covered in a services FTA should remove all barriers to trade, so that partner suppliers are treated the same as domestic ones – so-called national treatment – *de facto*, this is never achieved in all sectors (not even inside the EU).

The commitments that WTO members make on trade in services are recorded in their schedules. These are the outcome of negotiation – most recently the Uruguay Round of negotiations, which concluded in 1994 – plus any modifications made since then. Essentially these define the worst treatment that imports will receive.<sup>4</sup> In fact, however, most countries offer *de facto* more liberal treatment than they have committed to in the GATS – so that the actual treatment of service imports is not codified and recorded in one place. This makes identifying the regime applying to any particular service complex and time-consuming, which implies that any effective trade negotiation must rely heavily on consumers and producers in the sector concerned to identify burdensome arrangements. All modes of supply are potentially important for research and education. If countries are liberal in general, they may not need to make additional commitments in an FTA, although FTAs often seek to commit ('bind' in WTO-speak) members' actual policies, so enshrining the *de facto* treatment in an agreement and possibly in law. Equally, however, if there are restrictions in countries' GATS schedules – horizontal restrictions that apply across all sectors or sector-specific ones – these may limit the value of concessions granted on education, say, in an FTA.<sup>5</sup> Similarly, an agreement, say, to facilitate scholar-exchange may be thwarted by a visa regime that makes actual travel difficult. While some Schedules and FTAs make commitments on visas – eg the USA's GATS Schedule – countries do not compromise the visa authorities' right to reject particular applicants nor commit to specific procedures or

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<sup>3</sup> That is, every supplier faces the conditions imposed on the most favoured nation.

<sup>4</sup> GATS schedules are complex documents. They typically comprise both horizontal commitments applying to all sectors and sector-specific commitments. They report restrictions on the offer of national treatment and on markets access; where 'none' is recorded, access to foreign services is guaranteed to be unencumbered; where 'unbound' is recorded there is no commitment on such access at all, and where a commitment is described, the commitment is that treatment will be no worse than described. Schedules may report what trade they permit or what trade they restrict.

<sup>5</sup> Such restrictions can be very narrowly drawn – for example, the US GATS Schedule (GATT document GATS/SC/90, 15 April 1994) records that for adult education 'The number of licences for cosmetology schools in Kentucky is limited to 48 total licences, ....' Such restrictions are inserted, typically late in the day, to deal with particularly intractable domestic political issues. Such things can also slip into FTAs as well, so careful monitoring is required.

service standards, although it is conceivable that the latter might be covered by a political agreement signed in parallel with an FTA.

While the GATS and any general improvements thereon lie, in some sense, above any FTAs, research and education may be subject to policies and agreements that lie below them. Thus, general statements of cooperation in FTAs may need to be given substance by specific commitments negotiated at lower levels of government and agreements in these areas may be signed quite independently of any FTA. Thus an appropriate objective in FTA negotiations is not concrete agreements on research and education that lead to immediately actionable tasks, but rather to create a structure and atmosphere which supports and encourages subsequent cooperation and trade.

The conclusion of this section has to be that while the higher education sector might press the UK government to liberalise trade and cooperation in research and education in each of its prospective FTAs, each negotiation will be different because partners differ so much in their own regulation and commitments (and objectives in the UK, of course). There is no substitute for detailed research both on what UK universities see as the main challenges and on the partner's domestic regulation, commitments under the GATS and FTAs, and its openness to using FTAs as a means of advancing policy. This should be pursued at a country level more than at the general level used in this note.

## **THE SAMPLE AND THE STRUCTURE OF TRADE AGREEMENTS**

The following analysis is based on a sample of FTAs extracted from the dataset Content of Deep Trade Agreements elaborated by the World Bank , which provides information on the content of the 279 free trade agreements (FTAs) signed between 1958 and 2015 that have been notified to the World Trade Organisation (WTO).

The World Bank dataset classifies agreements according to two principles: the first separates FTAs that extend aspects of trade already subject to the mandate of the WTO (WTO+) from those that deal with aspects that are beyond the mandate (WTO-X). The second criterion, which applies to both WTO+ and WTO-X agreements, divides them into legally enforceable (LE) and non-legally enforceable (AC) agreements, although the mechanisms for legal enforcement differ considerably across agreements in both nature and effectiveness. The WTO does not currently contain any text dealing directly with research or education, so all FTAs explicitly covering these areas are classed as WTO-X FTAs. That said, however, the WTO does have a detailed agreement on trade in services (The General Agreement on Trade in Services - GATS), parts of which may impinge on trade in research and/or education services significantly.

This analysis does not cover all the agreements currently in place, but focuses instead on a selected sample that includes both legally enforceable and non-legally enforceable agreements. The selection of the sample is biased towards those FTAs (both LE and AC) that match the UK's possible future trade partners. Column 1 and 2 of Table 1 reports the agreement considered for research and education, respectively.

As noted above, trade agreements – both GATS and FTAs - affect research and education both through direct treatment in dedicated chapters and by changing the general conditions for services trade. In the latter class, all four modes of supply are relevant and might affect research and education, but within the confines of this small study we have limited our

coverage to the sections in our sampled FTAs that deal with mode 4 – the movement of natural persons.<sup>6</sup>

A further potentially interesting element of the research environment is the treatment of intellectual property. We do not include this in this paper either, for three reasons. First, countries' IP arrangements are *erga omnes* (apply to all) and it is unlikely that any party will alter its IP regime in an agreement with the UK when it has failed to do so with the EU or the USA. Second, the UK's IP regime offers good protection and is not likely to be put on the table in any negotiation; and, third, IP is a huge area that affects far more than just university-based research and so could not be adequately treated in a small study such as this.

Future research should consider all the horizontal commitments as well as the sector-specific ones in a potential partner's GATS schedules and FTAs.

### **PROVISIONS ON RESEARCH**

Among the 279 FTAs, 68 (24%) agreements include provisions about research, and of these 24 (9%) are legally enforceable. We examined twenty-two of them plus the EU-Canada Agreement (CETA) which is yet to be implemented, see Table 1.

There are no legally binding agreements between two developed countries that include a provision on research, apart from the ones among the members of the European Union (ie, European Community 1958 Treaty, the following enlargements and the European Economic Area agreement). Since the UK is now negotiating how to leave these agreements, it makes little sense to consider them in the analysis. The following analysis, therefore, is based on FTAs signed between developed and developing countries. Note, also, that the United States does not include provisions on research in any of its preferential trade agreements<sup>7</sup>.

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<sup>6</sup> Among the other modes, mode 3 – the delivery of services through commercial presence – is likely to be the most significant. Horizontal commitments might affect things like limits on the foreign ownership of service providers and sector-specific elements might include whether research or education is deemed outside the scope of trade agreements because it is publicly funded and/or owned. Attention must also be paid to Bilateral Investment Treaties which often substitute for mode 3 agreements in FTAs.

<sup>7</sup> The USA has signed research agreements outside trade agreements, however. For example, see the implementing agreement recently signed by the European Commission and the Government of the United States about cooperation between Horizon 2020 and US entities (see: Implementing Arrangement Between the European Commission and the Government of the United States of America for Cooperation Between Researchers Funded Separately by the European Union's and the United States Framework Programmes on Research and Innovation, signed at Brussels on 17 October 2016).

Table 1 – The Sample of Trade Agreements

<b>Research</b>	<b>Education</b>
ASEAN – Korea (2010)	ASEAN – Korea (2010) Australia – Singapore (2003) China – Singapore (2009)
Chile – Australia (2009)	
EC – CARIFORUM (2008)	
EC – Chile (2003)	EC – Chile (2003)
EC – Croatia (2001)	EC – Croatia (2001)
EC – Mexico (2000)	EC – Mexico (2000)
EC – South Africa (2000)	
EU – Canada*	
EU – Central America (2013)	EU – Central America (2013)
EU – Moldova (2014)	EU – Moldova (2014)
EU – Ukraine (2014)	EU – Ukraine (2014)
	Hong Kong, China – New Zealand (2011)
India – Singapore (2005)	India – Singapore (2005)
	Japan – ASEAN (2008)
Japan – Mexico (2005)	Japan – Mexico (2005)
Japan – Peru (2012)	Japan – Peru (2012)
Japan – Singapore (2002)	Japan – Singapore (2002)
Korea – Australia (2014)	Korea – Australia (2014)
Korea – Singapore (2006)	Korea – Singapore (2006)
Malaysia – Australia (2013)	Malaysia – Australia (2013)
Peru – Korea (2011)	

*Note:* where an agreement appears in both columns, it has provisions on both research and education. If one or other column is blank, the agreement on that row lacks the provisions referred to in the column.

Links to all these FTAs are given in Appendix 2.

\*The agreement has yet to be implemented.

From the extracted sample, it is possible to make some inference about the structure of research clauses. Immediately before chapters on institutional arrangements and dispute settlement, the sample agreements generally include a chapter on cooperation, in which the parties agree to establish a framework for cooperative activities. As explained in the free trade agreement between Australia and Chile (Chapter 18, Article 18.1), the aim of the cooperation is to expand the benefits of the treaty beyond the mere removal of trade barriers through the creation of a strategic economic partnership. Other agreements present a similar rationale for the establishment of a cooperative framework (eg, Peru – Korea FTA (KPFTA) Chapter 20, Art. 20.1; Japan – Singapore Economic Partnership Agreement (JSEPA) Chapter 15, Art. 115). After stating the motivation behind the engagement in cooperative activities, the chapters typically continue by highlighting the areas of interest in which cooperation should occur. For some FTAs the list of possible areas is closed, limiting cooperation to those enumerated, while for others the list is indicative and it is therefore open to new sectors on which the parties will agree.

## **Areas of cooperation**

Sectors of cooperation vary from one agreement to the other, according to mutual interests of the parties. Most of the agreements consider science and technology and energy as areas of cooperation (eg Peru – Korea Chapter 20, Art. 20.9; Japan – Peru Chapter 14, Art. 200; EU – CARIFORUM Chapter 2, Art. 136). Other sectors often mentioned are agriculture, fisheries and forestry and mining (eg, see Korea – Australia FTA Chapter 16, Art. 16.2; Chile – Australia FTA Chapter 18, Art. 18.2; Japan – Peru FTA Chapter 14, Art. 200). Note, however, that cooperation does not necessarily imply research. In this analysis, only those areas in which research is explicitly included under cooperation are considered.

## **Forms of cooperation**

Once the areas of cooperation have been highlighted, the agreements proceed to define the possible forms of cooperation. Unlike the choice of areas of cooperation, forms of cooperation seem to be pretty similar across the various agreements. They generally include:

- exchange of information and data
- visits and exchange of scientists, researchers, technicians, experts and students
- joint organization of seminars, symposia, conferences, meetings, workshops and technical activities
- promotion of joint research projects and programmes
- facilitation of research institutes and academia
- joint use of research facilities and scientific equipment

In addition, most agreements explicitly state that the parties may agree other forms of cooperation, leaving degrees of freedom for future deals (eg, see Peru – Korea Chapter 20, Art. 20.9; Australia-Chile Chapter 18, Art. 18.2). Even agreements that are quite specific in suggesting the areas of cooperation nonetheless leave room for possible extensions. For instance, article 6 in the Annex of the Framework Agreement of the ASEAN-Korea FTA shows a strong focus on technology (nanotechnology, biotechnology, material technology, electronic technology, space technology, technology management), but does not exclude other possible areas. Overall, therefore, research provisions generally first suggest some sectors in which cooperation might occur, and then state that the parties may collaborate in any other areas on which they will agree (see India – Singapore Art. 12.2; ASEAN-Korea Annex of the Framework Agreement, Art. 6; Korea – Australia Chapter 16, Art. 16.2; Chile – Australia Chapter 18, Art. 18.2; Peru – Korea Chapter 20).

A few agreements, on the other hand, narrow the possible areas to the presented list, as for example with the Japan – Singapore agreement. The text of this agreement states the willingness to cooperate in science and technology (Chapter 15, Art. 115). The areas of cooperation, highlighted in Chapter 8, Art. 31 of the Implementing Agreement, are life science, environment and advanced technology suitable for industrial development. From the analysis of the sample, we cannot identify any systematic reasons why the parties decide to leave areas of cooperation open or closed.

While most of the forms of cooperation on research appear to imply the involvement of academia, this is not always the case. In particular, the Australia – Malaysia agreement clearly shows that cooperation in research and development is conceived of as part of the industrial policy of the two parties. The Explanatory Memorandum of 2012 presented to the Australian Parliament explains that the automotive industries of Australia and Malaysia are

complementary, and that joint initiatives will have positive externalities for both the parties.<sup>8</sup> The cooperative activities considered in the agreement of 2013 (Implementing Arrangements For Economic and Technical Cooperation Activities in Agreed Areas Pursuant To Chapter 16) have a strong focus on the automotive sector and are very precise on the goals of cooperation (eg, reduction of vehicles' weight or the reduction of development time using visual engineering).

The EU – South Africa and EU – Canada FTAs have only a few lines about cooperation on science and technology, as they refer to previous agreements already in place. For South Africa, Title VI, Art. 83 refers to the 1997 Agreement on Scientific and Technological Cooperation between the European Community and the Republic of South Africa. This agreement was conceived as being supplementary to the trade agreement that was expected to be signed few years later<sup>9</sup>. Similarly, for Canada: because of the pre-existing agreement signed in Halifax on 17 June 1995 (see Agreement for Scientific and Technological Cooperation between the European Community and Canada), the CETA refers back to that in Article 25.5 – Enhanced cooperation on science, technology, research and innovation. There is an important policy implication of these cases: cooperation on science and technology does not need to wait until a trade agreement has been signed. While parties could not offer each other preferential trade terms in this area alone (because of the 'substantially all sectors' requirement of the GATS), cooperation in other domains such as mobility or exchange of information can proceed independently.

As is well known, the EU has various programmes and projects related to research (eg, the Framework Programmes for Research and Innovation such as FP6, FP7 and the current Horizon 2020). These constitute part of the offer of the EU to its partners when it comes to negotiate agreements on research and innovation. For instance, in the EU – CARIFORUM agreement, Article 136 states that one of the forms of cooperation on science and technology is the participation of the CARIFORUM states in the FP7 and possible successor programmes. Similarly, Article 376 of the EU – Ukraine agreement says that 'cooperation shall take place particularly through ... participation in the next EU Framework Programme for Research and Innovation Horizon 2020'. In the context of a potential UK-EU deep and comprehensive trade agreement such clauses are bound to be important, although note that at the high (Treaty) level of an FTA there are no details of implementation, so these would still remain to be determined.

The discussion in this section suggests that the UK should aim to include research as an explicit area of cooperation in its FTAs and in a way that allows the scope of the cooperation to develop in directions not foreseen at the time of signature. In addition to such general statements, however, the UK higher education sector should propose specific and concrete areas that might be included under them, either to be written into the FTA or, more likely, to be pursued under its auspices. There is no need to wait for the FTA negotiations to finish before the higher education sector makes contact with appropriate bodies in partner

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<sup>8</sup> 'Explanatory Memorandum of the Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012, <https://www.legislation.gov.au/Details/C2012B00205/Explanatory%20Memorandum/Text>

<sup>9</sup> The Summary of the Agreement on scientific and technological cooperation, available in Summaries of EU legislation, states: 'The European Union (EU) and South Africa have concluded an Agreement on scientific and technological cooperation which complements the Trade, Development and Cooperation Agreement (TDCA). Science and technology are crucial for economic and social development and this agreement thus contributes to South Africa's development.'

countries or, indeed, before signing a research agreement at governmental level. It should be recognised, however, that the UK government may be reluctant to pursue international research agreements outside the FTA discussions. Negotiating access and cooperation with EU research vehicles would seem to be an obvious objective, even though it may entail budgetary transfers to them.

## **PROVISIONS ON EDUCATION**

Of the 279 agreements in the World Bank dataset, 55 (20%) contain a provision on education, and of these 20 (7%) are legally enforceable. However, eight of the legally enforceable treaties refer to the EC Treaty and the subsequent enlargements, one is the European Economic Area and one the European Community-Overseas Territory agreement. Thus for our purposes there are ten candidate legally binding agreements to consider. Following the same rationale as for research provisions, we consider sixteen agreements – see Table 1.

As with research, none of the non-European legally binding agreements covering education is signed between developed countries, and none of the agreements signed by Canada or the United States includes a provision directly on education.

### **Forms and Areas of Cooperation**

As with research, education is included in FTAs in recognition of the importance of human resources (HR) development for sustainable economic growth and prosperity (eg, see ASEAN – Korea Annex of the Framework Agreement art. 4; Japan – Mexico, Chapter 14 art. 143; India – Singapore, Chapter 13 art. 13.2).

The forms of collaboration explicitly identified in the texts of the sample FTAs tend to be expressed in general terms and are quite similar across agreements. The provision generally encourages cooperation between educational institutions, while offering rather few practical details. Thus, for example:

**Launching double degree programmes or jointly delivered programmes** (see Korea – Singapore, Chapter 18 art. 18.10; Australia – Singapore, Chapter 15 art. 3; New Zealand – Hong Kong, China, Annex IV to Chapter 13). The Singapore – Australia FTA is ambitious but not very detailed in this respect. It states that the parties ‘shall encourage and facilitate, as appropriate, the development of contacts and cooperation between their respective ... educational institutions ... and the conclusion of arrangements between such bodies to cooperate ...’ in the fields highlighted in the chapter. Art. 3 continues saying that the development of contacts and cooperation ‘... may be achieved through:

- (a) joint planning and implementation of programs and projects, and joint coordination of targeted activities in agreed fields
- (b) development of collaborative training, joint research and development, technology transfer and joint ventures between appropriate authorities and institutions
- (c) development of programs which can be jointly delivered by institutions ...’

The details of such programmes are presumably left to agreements at lower hierarchical levels.

**Fostering the mobility of students, researchers and teachers** also figures in several FTAs but in general terms (see Australia – Singapore, Chapter 15 art. 4; China – Singapore, Chapter 11 art. 88; Japan – Singapore, Chapter 17 art. 122). For example,

**Fostering the mobility of students, researchers and teachers** also figures in several FTAs but in general terms (see Australia – Singapore, Chapter 15 art. 4; China – Singapore, Chapter 11 art. 88; Japan – Singapore, Chapter 17 art. 122). For example,

- The Japan – Singapore agreement merely states that: ‘The Parties shall encourage exchanges of their scholars, teachers, students, members of educational institutions and other persons engaging in scientific or educational activities.’
- The Australia – Singapore FTA is somewhat more specific, stating that:
  1. ‘Both Parties shall foster the mobility of students.
  2. ‘A Party shall, subject to any qualification requirements for professional practice in its territory, allow its scholarships for overseas studies to be tenable at universities in the territory of the other Party.
  3. ‘Both Parties shall encourage their government scholarship nominees to consider the other Party as one of the countries for their overseas study.’

**The harmonisation of the academic credit system and the recognition of foreign degrees** in order to foster student mobility is far from universally included, but examples, ranging from vague intention to apparently binding commitment, include:

- The Australia – Singapore agreement, Chapter 15, art. 3, says that ‘Both Parties shall encourage and facilitate, as appropriate ... cooperation between educational institutions. This may be achieved through: ... academic credit transfer and mutual recognition of academic and vocational qualifications, between recognised institutions of higher learning ...’. Subsequently, however, in the third review of the FTA in 2016 (not yet in force), ANNEX 4-III (Additional commitments to chapter 7 – Cross border trade in services), stated that Singapore will recognise the Doctor of Jurisprudence degree issued by (some) Australian Universities and ANNEX 4-I(B) – SINGAPORE offers some extension of recognition of medical degrees (see Higher education services in relation to the training of doctors).
- The India – Singapore FTA, article 13.2, states that ‘degrees specified by the University Grants Commission of India and awarded by an approved university or an institute deemed to be a university under the University Grants Commission (UGC) or an Institution of National Importance of India and similarly, degrees awarded by the universities in Singapore shall be recognised for the purposes of qualifying the holder to be considered for admission to the universities of both countries. This does not exempt the holder of a degree from India or Singapore from complying with other admission conditions or requirements as may be imposed by the educational institutes in India or Singapore respectively.’ Moreover, the agreement lists the recognised institutions in the text of the article.

Such recognition of qualifications is not restricted to trade agreements, however: China and Singapore achieve this – although only for certain degrees – in the side letter from Minister of Commerce Chen Deming to Minister Lim Hng Kiang on Qualification Recognition<sup>10</sup>.

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<sup>10</sup> The letter expresses China’s commitment to recognise degrees of medicine granted by two Singaporean medical schools, and Singapore’s commitment to recognise degrees of Traditional Chinese Medicine granted by two Chinese universities.

**The exchange of information** is another form of cooperation considered. Such information might be about best practices (Japan – Mexico, Chapter 14 art. 143) or about study and research opportunities, educational systems and standards in the counterpart's territory (Australia – Singapore, Chapter 15 art. 3). Although it is not part of our sample, the Australia – China FTA lists 77 Australian universities on an official website on study overseas.

**Distance Education:** some FTAs articulate a willingness to facilitate distance education (Japan – Mexico, Chapter 14 art. 143; Australia – Singapore, Chapter 15 art. 2).

### **The EU's agreements**

The provisions on education negotiated by the European Community appear to follow a different structure from those presented above, and so shall be analysed separately. As noted above, only European Union FTAs with developing countries include provisions on education. Unlike in the other developed-developing countries deals considered above, these are explicitly developmental in intent. This is evident in article 431 of the EU – Ukraine agreement, where the parties state their objective of 'reforming and modernising the higher education system' and 'building up the capacity of higher education institutions'. In the agreement with Central America, article 43 declares the aim, *inter alia*, to 'improve completion of primary education and reduce early school leaving in compulsory secondary education', 'promote education for the indigenous peoples, including intercultural bilingual education' and 'promote higher education as well as vocational training and lifelong learning'. Similar forms are present in the EU agreements with Chile, Moldova and Croatia.

Another peculiarity of the EU agreements is the involvement of programmes that are already in place. For the Latin American Countries (LAC), the EU developed the ALFA<sup>11</sup> and ALBAN<sup>12</sup> programmes, the EU – LAC Knowledge Area<sup>13</sup> and the EU – LAC Higher Education Area<sup>14</sup>. These programmes aim to modernise the higher education sector in Latin America and promote cooperation among European and Latin American higher education institutions. That is, they provide a base for further interaction of the educational systems. Indeed, the EC – Mexico agreement refers to the facilities of the ALFA programme as a means of creating permanent links between the two parties (see EC – Mexico, Title IV art. 30), and the EU – Central America one recalls the importance of the EU – LAC areas for 'the pooling and exchange of experience and technical resources' (see EU – Central America, Part III art. 43). For Croatia, the agreement states that cooperation will occur through the Tempus programme and through the use of the European Training Foundation for upgrading Croatian educational facilities (see EC – Croatia, Title VIII art. 94).

Finally, the negotiating power of the EU relative to its counterparts should be considered. Because of its size and relevance, when it comes to harmonising educational systems such as

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<sup>11</sup>The ALFA programme took place in three phases from 1994 to 2013. See:

[http://ec.europa.eu/europeaid/regions/latin-america/alfa\\_en](http://ec.europa.eu/europeaid/regions/latin-america/alfa_en)

<sup>12</sup> The ALBAN was implemented from 2002 to 2010. See: [https://ec.europa.eu/europeaid/regions/latin-america/erasmus-mundus\\_en](https://ec.europa.eu/europeaid/regions/latin-america/erasmus-mundus_en)

<sup>13</sup> The EU-LAC Knowledge Area is part of the EU-LAC Action Plan originally agreed on at the 2010 EU-LAC Summit in Madrid and expanded at the 2013 Santiago EU-CELAC Summit. See:

<http://ec.europa.eu/research/iscp/index.cfm?pg=latin-america-carib>; and

[http://www.eeas.europa.eu/archives/docs/la/summits/docs/2013\\_santiago\\_summit\\_eu-celac\\_action\\_plan\\_en.pdf](http://www.eeas.europa.eu/archives/docs/la/summits/docs/2013_santiago_summit_eu-celac_action_plan_en.pdf)

<sup>14</sup> The EU-LAC Common Area of Higher Education was firstly mentioned at the Heads of State and Government in the context of the EU-LAC Guadalajara Declaration in 2004, paragraph 89. See:

[http://www.europarl.europa.eu/intcoop/eurolat/key\\_documents/summits\\_eu\\_alc/iii\\_2\\_5\\_2004\\_guadalajara\\_en.pdf](http://www.europarl.europa.eu/intcoop/eurolat/key_documents/summits_eu_alc/iii_2_5_2004_guadalajara_en.pdf)

academic credit or degree structures, the intention is that other countries will converge to the European standards. This is evident in both the EU – Ukraine and EU – Moldova Association Agreements, where it is stated that the parties will promote convergence to the Bologna process.

Apart from these considerations, agreements between the EU and other parties reference similar cooperative forms to those in other agreements, such as encouraging cooperation of higher education institutions and students mobility, either directly mentioning these in the provision or by recalling a pre-existing cooperative agreement.

### **EU – Korea 2013 joint declaration**

Although we observed that agreements on research and education can precede an FTA (as was the case for EU – South Africa and EU – Canada), the contrary can also be true. Such is the case of the EU – Korea FTA of 2011, which did not include provisions on education and research, but was supplemented in 2013 with the joint declaration of the European Commission and the Government of the Republic of Korea<sup>15</sup>. Recalling the importance given to ‘fostering contacts between peoples’ of the two parties in the previously signed Framework Agreement, the declaration states the interest of Korea in the Bologna process and in participation in the EU education programmes. Thus, the vague and general statement in the Framework Agreement evolved into a concrete and solid partnership on education just few years later. A sensible suggestion would be to include paragraphs that leave the door open to further such evolution in any future FTAs for the UK.

Educational cooperation should be a major goal for UK policy. As with research, it is likely to be best pursued by means of a general commitment in an FTA followed by specific actions at a lower level, but FTA partners may be willing to countenance specific commitments in the FTA. Moreover, although education chapters should be written in a very permissive way to allow for future evolution, it will be easier to influence negotiations if the higher education sector has clear and realistic goals in each of the partner countries with which the UK government engages.

The UK has strong interests in education services trade in both directions and must recognise that it will have to make concessions in order to win them. Prominent among partner demands are likely to be access to the UK for students and the post-qualification conditions they face and access to the UK professions, which may depend on recognition of qualifications (as, for example, India has made clear already). The political difficulty these pose for the UK government should not be under-estimated, but we would recommend that it become a high-level objective for the higher education sector. Given that the UK and EU are already fairly well integrated in education and qualifications, serious thought should be given to preserving those links and aligning other FTAs with them.

### **THE MOVEMENT OF NATURAL PERSONS**

16 out of our total sample of 23 agreements include a section on the temporary entry and stay of natural persons for business purposes. These all follow the broad structure of mode 4 of the General Agreement on Trade in Services of 1994 (GATS), confirming or extending commitments made in the GATS Schedules from the Uruguay Round which finished in 1994.

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<sup>15</sup> See Joint Declaration of Ms Androulla Vassiliou, Commissioner of Education, Culture, Multilingualism and Youth, European Commission, and Honourable Namsoo Seo, Minister of Education, Government of the Republic of Korea, signed in Brussels on 11 November 2013.

As noted above, the GATS covers mobility to provide services, not access to the labour market of the host country, which is defined as migration and thus basically lies beyond the purview of trade agreements.

### **Movement to provide services**

The entry and stay of natural persons for business purposes is regulated according to the nature of the business activity. The categories typically considered are short-term business visitors<sup>16</sup>, investors, intra-corporate transferees, contractual services suppliers (CSS – sometimes referred to as ‘Professionals’) and, less frequently, graduate trainees. (see, for example, Peru – Korea Annex 11A; Japan – Mexico Annex 10 referred to in Chapter 10; India – Singapore Chapter 9, Art. 9.4 and Art. 9.5 and for ‘graduate trainees’, see EU – CARIFORUM Chapter 4, Art. 80; EU – Ukraine Section 4, Art. 99).

Setting aside conferences and short research visits, researchers and university teachers, will most commonly operate as part of the local labour market rather than as direct service suppliers. However, subject to a series of conditions, they may be able to fit into the CSS category, and thus potentially be covered by an FTA:

- A typical definition of contractual service supplier (CSS) is a ‘natural person employed by a juridical person of one of the Party which has no establishment within the territory of the other Party which has ... to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide the service’ – see Chapter 4, Art. 173 of the EU – Central America agreement, and similar wording in EU – Moldova Section 4, Art. 214; China – Singapore Chapter 9, Art. 77. A key requirement is that the CSS remain employed by their home institution and remunerated by it rather than directly by their host institution.
- There may be limitations on CSSs in research and education services, such as having a hosting agreement with an approved research organisation, or meeting an economic needs test or a residency requirement (see EU – Ukraine Annex XVI-C; EU – CARIFORUM Annex IV-D). Furthermore, it is generally necessary for a CSS to have advanced skills and experience (eg, see Korea – Australia Annex 10-A; EU – Ukraine Section 4, Art. 101), although academics can always meet these criteria easily.
- The movement of CSS might also be limited according to the nature of the service supplied. Some agreements specify a so-called ‘positive list’ – an exclusive list of services sectors covered by the agreement – see for example, EU – CARIFORUM, EU – Ukraine, China-Singapore, India – Singapore and Peru – Korea all of which explicitly include teaching and/or research activities. Where there is no such positive list (as for Singapore in the China-Singapore FTA), research and teaching activities are permissible by default, but if there is a list which does not include these activities, they do not qualify.
- The lists of acceptable services and the terms of entry provided for CSS may be asymmetrical for the two parties to an FTA. For instance, comparing Part A and Part

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<sup>16</sup> Some agreements split ‘service sellers’ out from business visitors – see, for example, EU – Central America Chapter 4, Art. 173. The category is defined as natural persons who enter the host party to negotiate or conclude an agreement to sell services (e.g., see Korea – Singapore Chapter 13, Art. 13.1), and it may be relevant for cooperative activities between institutions of higher education.

B of Annex 6 of the China-Singapore agreement, shows that Singaporean CSSs entering China are limited to certain sectors, while no such constraint on the nature of the service provided exists for Chinese CSSs in Singapore. On the other hand, Singapore admits CSSs for 90 days, extendable to 180 days, while China admits approved CSSs for up to a year.

One suggestion for future negotiation is, therefore, to pay attention to the mode 4 provisions regarding contractual service suppliers. If the type of services allowed is not specified, there should be no barrier for academic exchange, but if this is not the case, it is important to try to include research and educational services and, if a list of professions is specified, to include researchers and academics. Clearly, the duration of visits will also be important.

A further important element is intra-corporate transferees (ICTs). Under this category, executives, managers and specialists can be relocated to a branch, subsidiary or affiliate lawfully and actively operating in the other party (eg, see Korea – Australia Annex 10A; Peru – Korea Annex 11A, Section C). Moreover, ICTs usually qualify for significantly longer stays than other categories of service suppliers: for Australia-Korea, for example, it can be up to four years with the possibility of extension (see Annex 10-A), while for Peru – Korea, the requirement is not to have an intent of establishing permanent residence (see Chapter 11, Art. 11.9 and Annex 11A, Section C)<sup>17</sup>. ICTs are expected to have worked for the transferring business for at least a year before transfer can occur (eg, see EU – Central America Chapter 4, Art. 173; EU – Moldova Section 4, Art. 214). The obvious application of this facility in higher education is transfers between home and overseas campuses of the same university. The UK has an interest in this application both as a home and a host country, often with the same (developed country) partner. It might also be relevant for joint research facilities, provided that they have been established and employing the potential transferee long enough.

### **Visas: A further hurdle**

Even when an FTA provides for liberal mode 4 flows, the movement of natural persons is subject to the issuance of visas. These are the responsibility of the Home Office or Ministry of the Interior, which do not surrender or share their oversight of the suitability of entrants. Thus as well as reaching agreement in the trade sphere, potential partners need to check the visa regulations for research and higher education personnel; unfortunately, these change frequently and usually have limited recourse to appeal if decisions are unfavourable.

Some countries have ‘GATS’ or ‘service seller’ visas for business visitors (see Statistics Division of the UN Department of Economics and Social Affairs in the Background Note on GATS Mode 4 and Its Information Needs Part III.2) and some in the OECD have particular visas for intra-corporate transferees. For instance, depending on the nationality of the applicant, Australia freely provides the eVisitor visa (subclass 651), which allows multiple entries for period of 3 months each in a 12 months horizon, and allows business visitors activities such as negotiations and participating in conferences, among other things<sup>18</sup>. Similarly, the USA has the B-1 visa, and depending on the citizenship of the applicant, it is possible to apply for a Visa Waiver Programme, which allows visits for business purposes

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<sup>17</sup> It was not possible to find detailed information on the allowed period of stay. The Korean visa regime divides stays into three classes: 90 days or fewer, 91 days or more, and permanent. Intra-corporate transferees are subject to the D-7 visa, and unofficial sources suggest that the maximum length of stay is two years: <http://www.koreanvisaguide.com/the-sojourn-guide-d-7/> ; <http://www.englishspectrum.com/d-7-visa-intra-company-transferee/>

<sup>18</sup> See: <https://www.border.gov.au/Trav/Visa-1/651->

such as the ones mentioned for Australia above<sup>19</sup>. The UK offers a specific visa to intra-company transferees (Tier 2), distinguishing between long- and short-term staff and graduate trainees<sup>20</sup>. These categories differ in length of stay: 5 to 9 years for long-term staff (depending on the salary), and 12 months for short-term staff and graduate trainees.

The UK, US and Australian Academic Visa provisions all fall into a more general Visa category (ie, J-1 Visa for USA, Standard Visitor Visa for UK<sup>21</sup> and the Temporary activity visa (subclass 408) for Australia). For the USA, the short-term scholar programme allows professors and research scholars to stay for a period of six months (non-extendable) under the J-1 visa<sup>22 23</sup>. To apply, an applicant requires the approval of a programme sponsor from a list of designated institutions<sup>24</sup>, which, among other duties, have to screen and select qualified applicants, monitor their stay, and ensure that they are successfully carrying out their responsibilities and engaging in cross-cultural programmes. The designated sponsors are authorized to issue the DS-2019 ‘Certificate of Eligibility for Exchange Visitor (J-1) Status’, which is the basic document needed to seek an interview at a US consulate or embassy to obtain the J visa. Academics and researchers seeking longer stays fall under the high-skill H1-B visa in the USA, which also has sponsorship requirements and is subject to tightly binding caps on overall numbers. Note that in all these cases, being accepted as an exchange visitor by a designated sponsor is a necessary but not sufficient condition to obtain a visa, as issuance is at the discretion of the Consular Officers<sup>25</sup>.

In the UK, academics have slightly better conditions under the standard visitor visa than do other visitors. Indeed, if the usual length of stay is 6 months, an academic on sabbatical leave can stay up to 12 months, although a stay of more than 6 months requires the visitor to apply for a biometric residence permit<sup>26</sup>.

Australia used to have a specific visa for visiting academics (subclass 419), but the process was closed in 2012 and visiting scholars shall now apply for the Temporary Activity visa (subclass 408). This is a broader visa class, which allows a stay of three months for participating in or observing a research project on invitation, or to undertake research activity at tertiary or research institutions, among other activities<sup>27</sup>. For periods of longer than three months, the visitor is required to have a sponsor. In this case, the maximum stay periods are three months for an invited participant, up to four years for government-endorsed events and up to two years for any other activity.

A further important area of visa policy is student visas – their availability, their cost and their conditions for work during and after study. This is not covered here, because it not generally included within trade agreements.

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<sup>19</sup> See: <https://uk.usembassy.gov/visas/business-visa/overview/>; and <https://uk.usembassy.gov/visas/visa-waiver-program/non-immigrant-visa-waiver-program-vwp/>

<sup>20</sup> See: <https://www.gov.uk/tier-2-intracompany-transfer-worker-visa/overview>

<sup>21</sup> Note however that academic on sabbatical can stay up to 12 months, while the standard period is 6 months (see <https://www.gov.uk/standard-visitor-visa/overview>)

<sup>22</sup> See <https://j1visa.state.gov/programs/short-term-scholar>

<sup>23</sup> Short-term academic visitors do not appear to have a cap. Under the J-1 visa, only summer work travel programme has a cap since 2011. See <https://www.federalregister.gov/documents/2011/11/07/2011-28810/exchange-visitor-program-cap-on-current-participant-levels-and-moratorium-on-new-sponsor>

<sup>24</sup> The list of acceptable sponsors (universities and institutes) is available at:

<https://j1visa.state.gov/participants/how-to-apply/sponsor-search/?program=Professor%20and%20Research%20Scholar>

<sup>25</sup> See: <https://j1visa.state.gov/participants/how-to-apply/about-ds-2019/>

<sup>26</sup> See: <https://www.gov.uk/standard-visitor-visa/overview>

<sup>27</sup> See: <https://www.border.gov.au/Trav/Visa-1/408->

The movement of natural persons is frequently included as a horizontal commitment in the GATS schedule and in FTAs as well as sometimes specifically within education and research chapters. The UK higher education sector should prepare notes on the regimes of potential partner countries and any relaxations that their FTAs offer to other partners, or, indeed, to the UK at present under the aegis of the EU. In general, including contractual services suppliers and intra-corporate transferees among the beneficiaries of mode 4 agreements is not too hard, but attention should be paid to the conditions and that they be appropriate to academic endeavours. The visa regime is bound to come up in this context, and, as noted above, this should be pursued with the UK government.

## **EVALUATION**

Specific analysis of FTAs' impacts on cooperative activities under research and education are not readily available<sup>28</sup>. Furthermore, given the lack of obvious metrics, they are mostly qualitative studies.

One quantitative, although not empirical, analysis is Jean et al.'s (2014) Computable General Equilibrium (CGE) modelling exercise to assess the impact of the EU – Chile FTA. Like most CGE exercises, the focus was on the effects of removing tariffs on goods. However, because a CGE model requires comprehensive coverage of the economy (it is concerned mainly with how resources move between sectors of the economy), it has to include education and in this case it is identified as a separate sector. But given that all levels of education are combined, the poor data and the lack of analytical focus on the sector, the results are not informative. They are not implausible qualitatively (for the school sector) but there are no discernible conclusions to be drawn about higher education. A qualitative study of the same agreement by CONICYT (n.d.) noted an increase in Chile's approved projects under the EU's FP7 programme after the agreement entered into force in 2002 and noted that the increases were concentrated in those areas where Chile shows potential.

The executive summary of a similar qualitative study on EU – Mexico relations on higher education, points to the importance of the 2000 FTA in strengthening the bilateral relationship in education and science and technology, among other areas. Although recognising that data are neither complete nor fully reliable, the report indicates that, in 2006–07, mobility of Mexican students to the EU<sup>32</sup> increased by 44% compared to 4 years earlier. Drawing on a series of interviews with participants of the mobility programmes, the study notes that certain problems hindered cooperation. Mexican students moving to Europe faced difficulties with obtaining academic credit from their home universities for courses taken abroad, particularly when they enrolled in modules that are not available in Mexico. On the other hand, European students returning from Mexico commented that their home institutions tended to scale down the number of credits or grades obtained in Mexico as Mexican institutions are considered 'more generous'. At staff level, European universities complain about the 'high level of "instability" and a lack of professional staff' on the Mexican side.

The evaluation report of the EU – CARIFORUM FTA (European Commission, 2014) highlights the difficulties that emerge in measuring the implementation of the cooperative activities stated in the agreement. The researchers could not access data on the amount of resources or the timing of projects and it was quite impossible to separate the effects of the

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<sup>28</sup> Note that the EU provides evaluations on its programmes, which are multilateral. Therefore, they are not informative on specific FTAs.

trade agreement from the crushing Caribbean recession that followed the financial crisis. One comment that they heard clearly was that good intentions and an ambitious FTA agreement on Mode 4 mobility was vitiated by the difficulties that Caribbean citizens face in getting European (including UK) visas.

Finally, the Singapore – Australia FTA represents a good example of how a bilateral relationship can improve over time. Indeed, a 2016 press statement reports that whilst the 2003 FTA was one of the earliest bilateral agreements for both the countries, the positive experiences it generated led the parties to agree on deepening the cooperative matching funding facility for collaborative activities of research institutions in both the parties (\$50 million over five years), See Ministry of Foreign Affairs (2016). In addition in the third review of the agreement, dated in 2016, ANNEX 4-III (Additional commitments to chapter 7 – Cross border trade in services) explicitly extends the recognition of degrees to Singapore recognising the Doctor of Jurisprudence degree issued by (some) Australian universities.

The lack of specific studies makes it difficult to evaluate the effectiveness of clauses on research and education in FTAs. Furthermore, the presence of previous agreements on education (for instance, the EU – Canada and EU – South Africa examples above, and one between Australia and Chile<sup>29</sup>) make it very difficult to distinguish the impact of the FTA from other pre-existing agreements. The firmest conclusion that can be drawn is that it appears that academic system harmonisation or clear agreements on mutual recognition of modules/degrees are important for student mobility. Given this paucity of data, the higher education sector may wish to consider commissioning evaluation studies of past agreements and should arguably gear up to put in place serious evaluations of the future FTAs that the UK government will (presumably) sign.

## **CONCLUSIONS**

The main conclusion of the contextual section has to be that while the higher education sector might press the UK government to liberalise trade and cooperation in research and education in each of its prospective FTAs, each negotiation will be different because partners differ so much in their own regulation and commitments (and objectives in the UK, of course). There is no substitute for detailed information collection both on what UK universities see as the main challenges and on the partner's domestic regulation, commitments under the GATS and FTAs, and openness to using FTAs as a means of advancing policy. This should be pursued at a country level more than at the general level used in this note.

On the material that needs to be examined, it is clear that future research should consider all of the horizontal commitments in a potential partner's GATS schedules and FTAs as well as the sector-specific ones. This was beyond the capacity of the present small project.

The discussion of research provisions suggests that the UK should aim to include research as an explicit area of cooperation in its FTAs and in a way that allows the scope of the cooperation to develop in directions not foreseen at the time of signature. In addition to such general statements, however, the UK higher education sector should propose specific and concrete areas that might be included under them, either to be written into the FTA or, more likely, to be pursued under its auspices. There is no need to wait for the FTA negotiations to finish before the higher education sector makes contact with appropriate bodies in partner

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<sup>29</sup> see <http://chile.gob.cl/australia/en/relacion-bilateral/acuerdos-y-tratados-bilaterales/>

countries or, indeed, before signing a research agreement at governmental level. It should be recognised, however, that the UK government may be reluctant to pursue international research agreements outside the FTA discussions. Negotiating access and cooperation with EU research vehicles would seem to be an obvious objective, even though it may entail budgetary transfers to them.

Turning to education, cooperation in this area should be a major goal for UK policy. As with research, it is likely to be best pursued by means of a general commitment in an FTA followed by specific actions at a lower level, but FTA partners may be willing to countenance specific commitments in the FTA. Moreover, although education chapters should be written in a very permissive way to allow for future evolution, it will be easier to influence negotiations if the higher education sector has clear and realistic goals in each of the partner countries with which the UK government engages.

The UK has strong interests in education services trade in both directions and must recognise that it will have to make concessions in order to win them. Prominent among partner demands are likely to be access to the UK for students and the post-qualification conditions they face and access to the UK professions, which may depend on recognition of qualifications (as, for example, India has made clear already). The political difficulty these pose for the UK government should not be under-estimated, but we would recommend that it become a high-level objective for the higher education sector. Given that the UK and EU are already fairly well integrated in education and qualifications, serious thought should be given to preserving those links and aligning other FTAs with them.

The section on the movement of natural persons shows that this subject is universally included as a horizontal commitment in countries' GATS schedule and frequently in their FTAs as well. It is also sometimes specifically alluded to within education and research chapters. The UK higher education sector should prepare notes on the regimes of potential partner countries and any relaxations that their FTAs offer to other partners, or, indeed, to the UK at present under the aegis of the EU. In general, including contractual services suppliers and intra-corporate transferees among the beneficiaries of Mode 4 agreements is not too hard, but attention should be paid to the conditions and that they be appropriate to academic endeavours. The visa regime is bound to come up in this context, and, as noted above, this should be pursued with the UK government.

The least flimsy conclusion that can be drawn from the evaluation literature is that academic system harmonisation and/or clear agreements on mutual recognition of modules/degrees appear to be important for student mobility. Given the paucity of studies, however, UUK may wish to consider commissioning evaluation studies of past agreements. It would also be good practice if it were to put in place, *ab initio*, serious evaluations of the future FTAs and sectoral agreements that the UK government will sign.

The recommendations above are positive and active. They entail engaging strongly with the UK government to pursue the research and education agenda. There is an inevitable risk that this invites the government into an area on which it may not have focussed on until now. It is also true that pursuing these issues in a negotiation alerts partner governments to issues that are sensitive for them and the resulting risk that when the negotiation has to be closed and concessions made, universities may be a politically easier sacrifice to make than some other sector. The alternative is to lie low and rely on the generally liberal intentions of the UK government and trend towards reducing trade frictions to provide a space in which UK

universities can operate as they wish. We have not researched this trade-off and can make no unambiguous recommendation, but several factors seem to us to favour the more active route:

It is not clear that staying beneath the horizon removes the risk of the government accepting proposals from the other side that are unwelcome to the UK sector; in the absence of information UK officials may not appreciate the sector's needs;

Only the sector itself has the detailed knowledge necessary to identify desirable outcomes; even in the absence of demands from across the negotiating table, the government may not identify the best of the alternatives that are actually available;

The UK university sector is a prominent export sector and we anticipate that before long boosting exports will become a very high priority; explaining how to do this will have advantages;

One cannot rely on partners having liberal objectives or intentions, especially given the mercantilist approach to trade (that exports are good and imports are bad) adopted by the USA.

## APPENDIX: 1 POTENTIAL BARRIERS TO TRADE IN EDUCATIONAL SERVICES

From Knight (2002), Chart 5

Modes of delivery	Barriers
<p><b>1. Cross border supply</b></p> <p>Examples -distance delivery or e-education -virtual universities</p>	<ul style="list-style-type: none"> <li>-inappropriate restrictions on electronic transmission of course materials</li> <li>-economic needs test on suppliers of these services</li> <li>-lack of opportunity to qualify as degree granting institution</li> <li>-required to use local partners</li> <li>-denial of permission to enter into and exit from joint ventures with local or non-local partners on voluntary basis</li> <li>-excessive fees/ taxes imposed on licensing or royalty payments</li> <li>-new barriers, electronic or legal for use of Internet to deliver education services</li> <li>-restrictions on use/import of educational materials</li> </ul>
<p><b>2. Consumption abroad</b></p> <p>Example -students studying in another country</p>	<ul style="list-style-type: none"> <li>-visa requirements and costs</li> <li>-foreign currency and exchange requirements</li> <li>- recognition of prior qualifications from other countries</li> <li>-quotas on numbers of international students in total and at a particular institution</li> <li>-restrictions on employment while studying</li> <li>- recognition of new qualification by other countries</li> </ul>
<p><b>3. Commercial presence</b></p> <p>Examples -branch or satellite campus -franchises -twinning arrangements</p>	<ul style="list-style-type: none"> <li>- inability to obtain national licenses to grant a qualification</li> <li>- limit on direct investment by education providers (equity ceilings)</li> <li>- nationality requirements</li> <li>- restrictions on recruitment of foreign teachers</li> <li>- government monopolies</li> <li>- high subsidization of local institutions</li> <li>- difficulty in obtaining authorization to establish facilities</li> <li>-economic needs test on suppliers of these services</li> <li>-prohibition of higher education, adult education and training services offered by foreign entities</li> <li>-measures requiring the use of a local partner</li> <li>-difficulty to gain permission to enter into and exit from joint ventures with local or non-local partners on voluntary basis</li> <li>-tax treatment that discriminates against foreign suppliers</li> <li>-foreign partners are treated less favourably than other organizations</li> <li>-excessive fees/ taxes are imposed on licensing or royalty payments</li> <li>-rules for twinning arrangements</li> </ul>
<p><b>4. Presence of natural persons</b></p> <p>Examples - Teachers travelling to foreign country to teach</p>	<ul style="list-style-type: none"> <li>-immigration requirements</li> <li>-nationality or residence requirements</li> <li>-needs test</li> <li>-recognition of credentials</li> <li>-minimum requirements for local hiring are disproportionately high</li> <li>-personnel have difficulty obtaining authorization to enter and leave the country</li> <li>-quotas on number of temporary staff</li> <li>-repatriation of earnings is subject to excessively costly fees and/or taxes for currency conversion</li> <li>-employment rules</li> <li>-restrictions on use/import of educational materials to be used by foreign teacher/scholar</li> </ul>

## APPENDIX 2: LINKS TO THE SAMPLE FTAS

Research	Education
ASEAN – Korea (2010) <sup>30</sup>	ASEAN – Korea (2010)
	Australia – Singapore (2003) <sup>31</sup>
	China – Singapore (2009) <sup>32</sup>
Chile – Australia (2009) <sup>33</sup>	
EC – CARIFORUM (2008) <sup>34</sup>	
EC – Chile (2003) <sup>35</sup>	EC – Chile (2003)
EC – Croatia (2001) <sup>36</sup>	EC – Croatia (2001)
EC – Mexico (2000) <sup>37</sup>	EC – Mexico (2000)
EC – South Africa (2000) <sup>38</sup>	
EU – Canada <sup>39</sup>	
EU – Central America (2013) <sup>40</sup>	EU – Central America (2013)
EU – Moldova (2014) <sup>41</sup>	EU – Moldova (2014)
EU – Ukraine (2014) <sup>42 43</sup>	EU – Ukraine (2014)
	Hon Kong, China – New Zealand (2011) <sup>44</sup>
India – Singapore (2005) <sup>45</sup>	India – Singapore (2005)
	Japan – ASEAN (2008) <sup>46</sup>
Japan – Mexico (2005) <sup>47</sup>	Japan – Mexico (2005)
Japan – Peru (2012) <sup>48</sup>	Japan – Peru (2012)
Japan – Singapore (2002) <sup>49</sup>	Japan – Singapore (2002)
Korea – Australia (2014) <sup>50</sup>	Korea – Australia (2014)
Korea – Singapore (2006) <sup>51</sup>	Korea – Singapore (2006)

<sup>30</sup> ASEAN – Korea: <http://akfta.asean.org/index.php?page=legal-text>

<sup>31</sup> Australia – Singapore: <http://dfat.gov.au/trade/agreements/safta/official-documents/Pages/default.aspx>

<sup>32</sup> China – Singapore:

<https://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/FTA/Existing%20FTA/China%20Singapore%20FTA/Legal%20Text/China20Singapore20FTA20Legal20Text.pdf>

<sup>33</sup> Chile – Australia: <http://dfat.gov.au/trade/agreements/acfta/Documents/Australia-Chile-Free-Trade-Agreement.pdf>

<sup>34</sup> EC- CARIFORUM: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:289:0003:1955:EN:PDF>

<sup>35</sup> EC- Chile: [http://eur-lex.europa.eu/resource.html?uri=cellar:1f641ed4-e709-43cc-a112-d75455ab3ecb.0016.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:1f641ed4-e709-43cc-a112-d75455ab3ecb.0016.02/DOC_1&format=PDF)

<sup>36</sup> EC- Croatia: <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=584>

<sup>37</sup> EC – Mexico: [http://eur-lex.europa.eu/resource.html?uri=cellar:f95ad1a3-795e-4fbo-84e1-28351b99415c.0004.02/DOC\\_2&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:f95ad1a3-795e-4fbo-84e1-28351b99415c.0004.02/DOC_2&format=PDF)

<sup>38</sup> EU – South Africa: [http://eur-lex.europa.eu/resource.html?uri=cellar:af85d83e-1912-4f60-be9c-287ce3743f90.0008.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:af85d83e-1912-4f60-be9c-287ce3743f90.0008.02/DOC_1&format=PDF)

<sup>39</sup> EU – Canada: <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>

<sup>40</sup> EU – Central America: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>

<sup>41</sup> EU – Moldova: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0830\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0830(01)&from=EN)

<sup>42</sup> EU – Ukraine Association Agreement:

[http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc\\_155103.pdf](http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf)

<sup>43</sup> EU – Ukraine Deep and Comprehensive FTA: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1425>

<sup>44</sup> Hong Kong – New Zealand: <https://www.mfat.govt.nz/assets/securedfiles/FTAs-agreements-in-force/Hong-Kong-FTA/NZ-HK-CEP.pdf>

<sup>45</sup> India – Singapore:

<https://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/FTA/Existing%20FTA/CECA%20India/Legal%20Text/India20CECA20FTA20Legal20Text.pdf>

<sup>46</sup> Japan – ASEAN: <http://www.mofa.go.jp/policy/economy/fta/asean/agreement.pdf>

<sup>47</sup> Japan – Mexico: <http://www.mofa.go.jp/region/latin/mexico/agreement/agreement.pdf>

<sup>48</sup> Japan – Peru: <http://www.mofa.go.jp/region/latin/peru/epa201105/index.html>

<sup>49</sup> Japan – Singapore:

<https://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/FTA/Existing%20FTA/Japan%20Singapore%20EPA/Legal%20Text/Japan20Singapore20EPA20Legal20Text.pdf>

<sup>50</sup> Korea – Australia: <http://dfat.gov.au/trade/agreements/kafta/official-documents/Pages/default.aspx>

<sup>51</sup> Korea – Singapore:

<https://www.iesingapore.gov.sg/~media/IE%20Singapore/Files/FTA/Existing%20FTA/Korea%20Singapore%20FTA/Legal%20Text/KSFTA20Legal20Text1.pdf>

## REFERENCES

- Jean, Sébastien, Nanno Mulder, and Maria Priscila Ramos. 'A general equilibrium, ex-post evaluation of the EU–Chile Free Trade Agreement.' *Economic Modelling* 41 (2014): 33-45.
- CONICYT (n.d.) *Report on Chilean Participation in FP7 and the First Year of Horizon 2020 (part two)*, available at: [http://www.sti-cooperation.cl/jdownloads/Documentos%20de%20anlisis%20%20Analysis%20Documents/chilean\\_participation\\_in\\_fp7\\_and\\_first\\_year\\_of\\_horizon\\_2020.pdf](http://www.sti-cooperation.cl/jdownloads/Documentos%20de%20anlisis%20%20Analysis%20Documents/chilean_participation_in_fp7_and_first_year_of_horizon_2020.pdf)
- ESMU (2012) *Comparative Study between the EU and Mexico on the challenges brought about by the Internationalisation of higher education and the transparency tools developed on both sides to facilitate mobility and academic cooperation*, [http://ec.europa.eu/dgs/education\\_culture/repository/education/library/study/2012/eu-mexico-report\\_en.pdf](http://ec.europa.eu/dgs/education_culture/repository/education/library/study/2012/eu-mexico-report_en.pdf)
- European Commission (2014) 'Monitoring the Implementation & Results of the CARIFORUM EU EPA', available online at <http://ec.europa.eu/trade/policy/countries-and-regions/regions/caribbean>
- Ministry of Foreign Affairs of Singapore (2016) 'Press Statement: Singapore-Australia Comprehensive Strategic Partnership Package, 6 May 2016,' available at: [https://www.mfa.gov.sg/content/mfa/media\\_centre/press\\_room/pr/2016/201605/press\\_20160506.html](https://www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2016/201605/press_20160506.html)
- EUA (2017) 'EUA Special Update on the EU's Comprehensive Economic and Trade Agreement (CETA) with Canada', EUA, Belgium.

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<sup>52</sup> Malaysia – Australia: <http://dfat.gov.au/trade/agreements/mafta/Pages/malaysia-australia-free-trade-agreement.aspx>

<sup>53</sup> Peru – Korea: [http://www.sice.oas.org/TPD/PER\\_KOR/PER\\_KOR\\_Texts\\_e/PER\\_KOR\\_ToC\\_e.asp](http://www.sice.oas.org/TPD/PER_KOR/PER_KOR_Texts_e/PER_KOR_ToC_e.asp)

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