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Identifying Opportunities in EU-Australia Trade in Services

Steve Nerlich and Sihui Ong

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Acronyms

ANUCES	Australian National University Centre for European Studies
APEC	Asia-Pacific Economic Cooperation
ASR	Australian Services Roundtable
BoP	Balance of Payments (statistics)
CETA	EU-Canada Comprehensive and Economic Trade Agreement
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DFAT	Department of Foreign Affairs and Trade
EBOPS	Extended Balance of Payments Services
EFLIC	Eligible Foreign Life Insurance Company
ESF	European Services Forum
EU	European Union
EUJEPA	EU-Japan Economic Partnership Agreement
EUSFTA	EU-Singapore Free Trade Agreement
FATS	Foreign Affiliates Trade Statistics
FDI	foreign investment direct
FISM	financial intermediation services indirectly measured
GATS	General Agreement on Trade in Services
IMF	International Monetary Fund
IP	intellectual property
MSITS 2010	UN Department of Economic and Social Affairs (2011) *Manual on Statistics of International Trade in Services 2010*
OECD	Organisation for Economic Cooperation and Development
SMEs	small and medium sized establishments
SMS	text messages
STR	services trade restrictiveness (database)
STRI	Services Trade Restrictiveness Index
ROW	rest of the world
TPPA	Trans Pacific Partnership Agreement
VAT	value added tax
WTO	World Trade Organization

Note on currencies: $ refers to Australian dollars; US$ and C$ refer to US and Canadian dollars respectively.

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Chapter 1 Introduction

1.1 Background and objectives

With the announcement of a proposed Europe-Australia trade agreement,[1] the ANU's Centre for European Studies (ANUCES) has turned its attention to where it might add value to the forthcoming trade negotiations.

Due to the successful outcome of the Uruguay Round negotiations, most tariffs on merchandise trade (goods) are already low, both in Europe and in Australia. Nevertheless, there are pockets of relatively high tariffs such as in agriculture and automotive industries as well as other trade barriers. The issue of agricultural trade is intertwined with the issue of Geographical Indications, on which the ANUCES has already completed a substantial project.[2] The remaining, and increasingly important area in trade negotiations is international trade in services.

Services dominate most economies. The Organisation for Economic Cooperation and Development (OECD) advises that services generate more than two-thirds of global Gross Domestic Product (GDP) and employ most workers globally.[3] While Australia's export earnings were initially dominated by agricultural products and now by mining products, the services sector has always formed the largest share of the domestic economy.[4]

Prior to the Uruguay Round, trade negotiations focused exclusively on goods. A major breakthrough in that round of negotiations was the first multi-lateral agreement on services trade – the General Agreement on Trade in Services (GATS). All World Trade Organization (WTO) members are signatories to GATS. In principle, GATS covers all services, though there are exclusions for services largely provided by government and for certain air transport services.[5]

As a bloc, the European Union (EU) is the world's second largest exporter of services after the USA and is currently Australia's second largest services export market after China. EU member states include three of the world's top five services exporters (the UK, France and Germany).[6] As detailed in the next chapter, although 87 per cent of Australia's exports by value are goods, it is estimated that services directly and indirectly account for almost 50 per cent of overall value added in exports,[7] a further indication of the fundamental importance of services to the Australian economy.

Against this background in February 2018 ANUCES applied for funding from the Erasmus + Programme of the European Union for a Jean Monnet project "Identifying Opportunities in EU-Australia Trade in Services". The project received funding in late 2018 and commenced in early 2019.

The objective of the Project is to use the OECD's Services Trade Restrictiveness Index (STRI) framework to analyse barriers to services trade, particularly in Australia and the EU. Based on this evidence, the Project aims to identify key restrictions to important areas of services trade between the EU and Australia, and in so doing, contribute to more effective negotiations on the liberalisation of services

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[1] A Framework Agreement was signed on 7 August 2017 (https://dfat.gov.au/geo/europe/european-union/Pages/australia-european-union-eu-framework-agreement.aspx) and trade negotiations were launched in June 2018 (https://dfat.gov.au/trade/agreements/negotiations/aeufta/Pages/default.aspx). All URLs cited in this paper were visited during June 2019.

[2] https://politicsir.cass.anu.edu.au/centres/ces/research/projects/jean-monnet/understanding-geographical-indications

[3] http://www.oecd.org/trade/topics/services-trade/

[4] Approximately 67% of Australia's GDP is from the services sector (https://www.statista.com/statistics/375558/australia-gdp-distribution-across-economic-sectors/). The share is slightly higher, 72.2%, in value added terms (2017) (https://www.oecd.org/economy/surveys/Australia-2018-OECD-economic-survey-overview.pdf).

[5] https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm

[6] DFAT (2018) European Union brief: https://dfat.gov.au/geo/europe/european-union/Pages/european-union-brief.aspx

[7] ABS catalogue 5302.0 - Balance of Payments and International Investment Position, Australia, https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5302.0Mar%202019?OpenDocument, and OECD Balance of Payments BPM6 - goods and services exports data (https://stats.oecd.org/Index.aspx?DataSetCode=MEI_BOP6#).

trade. However, at around the time funding was received, the OECD launched a major report on Australian services trade (OECD, 2019). The details of the Project were adjusted to build on this major report.

This Briefing Paper presents the results from the Project. An initial analysis was subjected to intensive scrutiny through a workshop process involving academics, policy-makers, trade negotiators and industry representatives.

This Project demonstrates how the OECD's STRI can be used to identify services-trade negotiation priorities across different services sectors. By involving policy-makers, trade negotiators and industry representatives, in an intensive Workshop the project also built a new network of experts involved in analysing services. The Project also leaves a legacy identifying how the STRI can be used in practice; disseminate this evidence through local and European networks. It identifies key gaps in current knowledge about the impact of regulations on services trade and provides a basis for assessing the economic impacts of services trade liberalisation possibilities involving the EU and Australia (and New Zealand). Within the diverse service sectors there are many opportunities for win-win outcomes in these trade negotiations.

1.2 OECD Study on Australian services trade

The recent OECD report on Australian services trade (OECD, 2018) notes the negative impact STRIs have on bilateral trade. Australia's services exports are negatively affected by the regulatory impediments in the importing country. Tangible benefits for Australian exporters could be generated by strategically reducing behind-the-border regulatory barriers in key markets through bilateral agreements. Reducing a partner country's STRI by 0.1 points could increase Australia's services exports by up to 50%. This corresponds to around 50% of the average trade barriers in relatively liberal sectors in foreign markets such as distribution and sound recording services, but only 25% in more restrictive sectors like air transport and legal services (OECD, 2018: 62). This implies that (partner) countries that are more restrictive compared to the average have a higher potential for liberalisation and can generate greater opportunities for Australian firms exporting services.

The OECD report identified that smaller firms have more to gain from services trade liberalisation than larger firms: reducing a partner country's STRI by 0.1 was associated with an increase of 80% in exports for small firms, 51% for medium-sized firms, and 28% for large firms.[8] This is supported by other OECD analysis (2019), which highlights that regulatory services reforms benefit small and medium establishments (SMEs) more than large firms. The OECD estimates that, given an average STRI for the partner country, the trade costs borne by a small exporting firm engaging in cross-border supply are 7% higher than for a large firm. For small domestic firms with a commercial presence in foreign markets, trade costs are estimated to be 12% higher than for large firms (in partner countries with an average STRI).

Finally, the OECD report notes that the heterogeneity of regulations between Australia and its trading partner also has a negative impact on bilateral trade. The greater the difference in the regulatory environments of both countries, the less they trade with each other (OECD, 2018: 62).

1.3 Caveats

One of the problems in respect of the drive to reduce regulatory impediments to trade is that, especially with regard to services, it impacts on a multitude of domestic regulations. Such regulations have built up over many years to achieve a range of social, political and economic outcomes. So while, for example, public regulation or provision of some postal services may be seen as a trade impediment,

[8] Small-sized firms are defined as those with an annual turnover of around $10 million, medium-sized firms are defined as those with an annual turnover of around A$100 million and large firms are defined as those with an annual turnover of around $1 billion. See OECD: 2018: 71 for more details.

it may also be seen as an appropriate response to the provision of community service obligations to ensure that surface mail services are available to the whole population. Similarly, the regulation of educational and medical service provision is heavily influenced by the need to maintain a quality standard relevant to local conditions and social objectives.

There can therefore be good reasons to maintain a range of domestic regulations that affect international competition in both goods and services trade. Nevertheless, trade negotiations create an opportunity for a government to review such regulations to ensure that they due do not unduly restrict trade and are as competition friendly as possible, while still achieving their social and community objectives.

Here it is useful to point out that regulations can take many forms. One important dimension of assessing regulations is whether they properly focus on the desired outcomes, or whether they simply specify input parameters. The example of the ban in Australia on tungsten lightbulbs provides an interesting example. The goal was to reduce unnecessary use of electricity. But by specifying the input conditions (no tungsten lightbulbs), the opportunity for continuous improvement and innovation in that medium was missed. If the regulation had been specified as a ban on lightbulbs that took more than *x* units of energy to produce *y* units of light, then that standard could not only have encouraged innovation in how to achieve it, but also could have been readily modified as societal energy goals changed.

Much of the public debate and concern over “unnecessary” regulation could be dealt with by ensuring regulations were drafted in terms of outcome-oriented requirements not as input-focused or technically prescriptive regulation.[9]

While the focus of this report is on services trade barriers, both Australia and the EU subscribe to the over-arching importance of returning to a multi-lateral environment for negotiating trading rules. This makes it essential that any provisions adopted be aligned with globally agreed principles. Issues or positions which are contentious between trading nations would be best avoided.

1.4 Structure

The structure of the report is as follows. Chapter 2 presents an analysis of available data on services trade as well as introducing and exploring the OECD’s Services Trade Restrictiveness Index (STRI). Chapter 3 considers the outcomes for services liberalisation from two recent EU treaties – those with Canada and Japan. Chapter 4 brings together views expressed by service industries in both Australia and Europe.

Chapter 5 investigates further the value of the STRI for identifying services trade negotiation priorities, but focusing in detail on financial services. Following the STRI, financial services are here defined as commercial banking and insurance. This chapter also looks briefly at the financial services outcomes in the EU’s treaties with Canada and Japan.

As yet, the OECD’s STRI does not cover educational services. But for many countries, including Australia, these are a major export. Chapter 6 discusses international commerce in education in terms of the GATS modes of supply, before turning to look at a number of issues which are critical to the successful supply of education services internationally. These include recognition of qualifications, different education sectors and delivery via multiple supply modes. The chapter then considers how the STRI could be extended to the education sector, drawing on work by Australia’s Productivity

[9] Dr Ted Emmett, head of the then National Occupational Health and Safety Commission (now Safe Work Australia) in the early 1990s showed considerable leadership in such modern light-handed regulation. He was reviewing all health and safety regulations to ensure they focussed on the desired outcomes rather than specifying input conditions. The goal was to encourage innovation in achieving best practice in achieving safe and healthy working environments.

Commission. The chapter concludes with a brief review of education services issues in EU trade agreements.

Chapter 7 summarises the findings of the project, and draws out priorities for trade negotiations, domestic reform and further research.

Chapter 2 Services Trade Measurement: Data and restrictiveness indicators

2.1 Introduction

This chapter investigates the current trade in services relationship between Australia and the EU using the OECD's Services Trade Restrictiveness Index (STRI), to identify key areas where trade negotiations between Australia and the EU might usefully focus. The STRI provides metrics for 22 services sectors in 45 countries, including Australia and 23 of the current 28 EU member states.[10] The STRI is an overall measure of the extent to which regulatory and other policy barriers impede international trade in services. It is built from extensive consultations in the 45 countries covered. Investigation of the detailed regulations in the STRI database allows the identification of opportunities to relax existing trade restrictions to the mutual benefit of Australia and the EU.

The impending departure of the UK from the EU represents a somewhat unpredictable element in this analysis and deserves particular attention. As services trade negotiations with the EU are usually specific to member states, we focus in much of this analysis on specific member states. Those we have chosen to focus on are the larger economies and those with special features to a particular sector, such as financial services. The UK is included as one of these countries so the reader can identify possible issues post-Brexit.

This Chapter proceeds as follows. In Section 2.2 some key concepts that underlie services trade measurement and data are outlined and in Section 2.3 trade in services between the EU and Australia is described using available data sources. Section 2.4 then details the STRI with respect to how values for the restrictiveness index in different services sectors are calculated for different countries. That section then ends in a discussion of how the STRI could be used to guide trade negotiations between Australia and the EU.

2.2 Services trade – context, complexities and data gaps

Both the Australian Bureau of Statistics (ABS) and the OECD produce annual statistics on services exports and imports between Australia and other countries. These data show a total value cross border services trade between Australia and the EU of over $33 billion — incorporating $11.7 billion in Australian services exports to the EU and $21.6 billion in services imports from the EU in 2017.[11] Available data include Australia's trade with the EU as a current bloc of 28 member states, as well as trade with each of those member states.

2.2.1 Services trade modes of supply

The General Agreement of Trade in Services (GATS) defines four modes for the international supply of services. These are illustrated in Figure 2.1 and are defined (with examples) below:

1: Cross-border. Services delivered within the territory of an importing country, from the territory of an exporting country. For example, an Australian university delivers an on-line education course which is purchased by an EU resident.

2: Consumption abroad. Services delivered in the territory of an exporting country, to a visiting services consumer from an importing country. For example, a European tourist travels to Australia and buys accommodation, food, tours and souvenirs (i.e. a mixture of goods and services).

3: Commercial presence. Services delivered within the territory of an importing country, through the commercial presence of a supplier from an exporting country. For example, an Australian financial services provider may establish a commercial presence in the EU. A bank or other financial services provider could also engage in joint ventures to provide financial products to the EU through its European affiliates.

4: Movement of natural persons. Services delivered within the territory of an importing country through the presence of natural persons from an exporting country. For example, an Australian

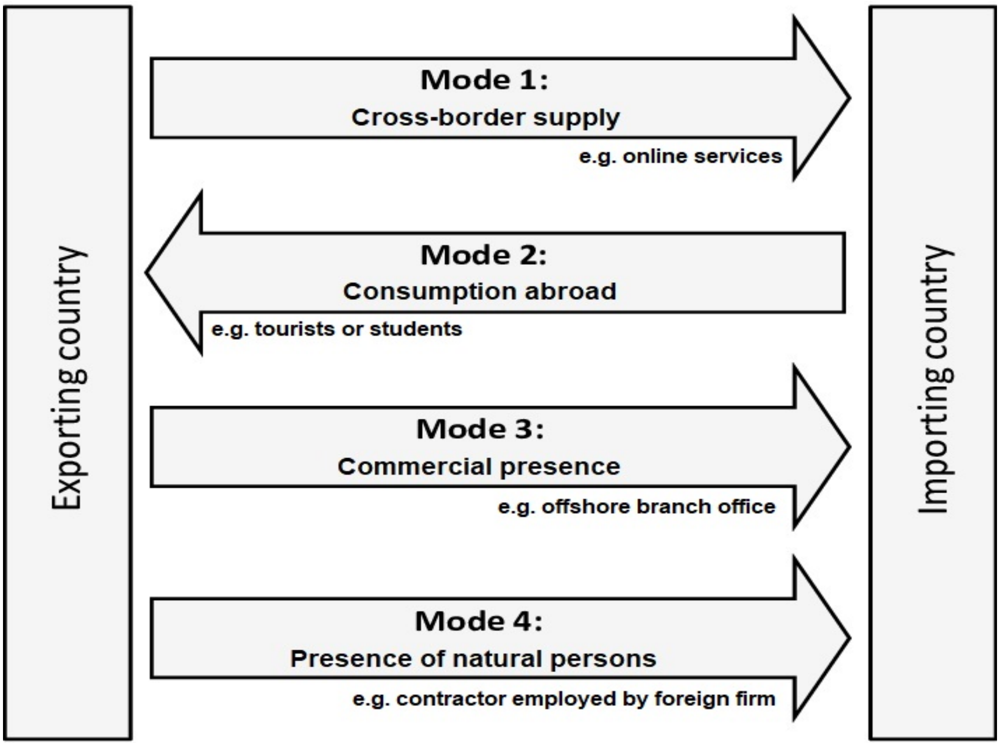
[10] Excepting Malta, Romania, Cyprus, Bulgaria and Croatia.

[11] All $ figures are Australian dollars unless specified as US or Canadian dollars (US$ and C$ respectively).

lawyer works as a contractor or an internal employee of an EU firm within the EU. Permanent employment is excluded, but other no specific length of stay is specified within the GATS. A number of existing trade agreements specify that intra-corporate transferee arrangements are for 2-5 years (Neilsen & Taglione, 2003).

Because of the differences in the nature of services delivery under each mode of supply, not all modes of supply are captured in balance of payments data. For example, while education is commonly referred to as Australia's largest services export and its fourth largest overall export (after iron ore, coal and natural gas), the item being counted in the official balance of payments statistics ('education-related travel') is only consumption abroad, involving international students coming to study in Australia.[12]

Figure 2.1 The four modes of services trade supply



2.2.2 The value-adding role of services in overall trade

Standard trade statistics, also known as balance of payment statistics, underestimate the full value of services embodied in trade by only counting cross-border purchases without considering the full value of services embodied in the supply chains involved in delivering both goods and services to consumers. For example, the export of Australia's mining and agricultural products embodies transport and logistics services, communication and computer services, as well as financial, accounting and legal services.

The contribution of these services can be quantified as 'trade in value added'.[13] For example, a foreign trading partner may only be purchasing goods delivered to it and standard trade statistics will capture that transaction, but trade in value added statistics can estimate the contribution that various services made to enable such a transaction.

Table 2.1 compares balance of payments trade data with trade in value added data for 2016 for the EU, UK and Australia. The total value of exports (goods and services) is always lower when measured

[12] Other elements of education services trade are captured elsewhere. For example, online education services are captured in International Trade in Services data under 'Other, personal, cultural, and recreational services'.
[13] https://www.oecd.org/sti/ind/measuring-trade-in-value-added.htm.

in value added terms because supply chain transactions represent small costs to the exporting country or bloc. Value added trade data also indicates the greater contribution of services to the net value of export income for each country (49.6% for Australia) or bloc (58.9% for the EU). Again this is because balance of payments data only captures cross-border purchases. In contrast, trade in value added data captures all supply chain transactions leading to that final purchase, where those supply chain transactions may involve goods and services supply. In trade in value added data, it is also possible to identify which services were sourced domestically and which were sourced from a foreign partner. Table 2.1 demonstrates that Australia is a relatively low user of foreign supplied services (4.4%) while the EU is a relatively high user (14.3%).[14]

Table 2.1 Comparison of balance of payment and trade in value added data, 2016

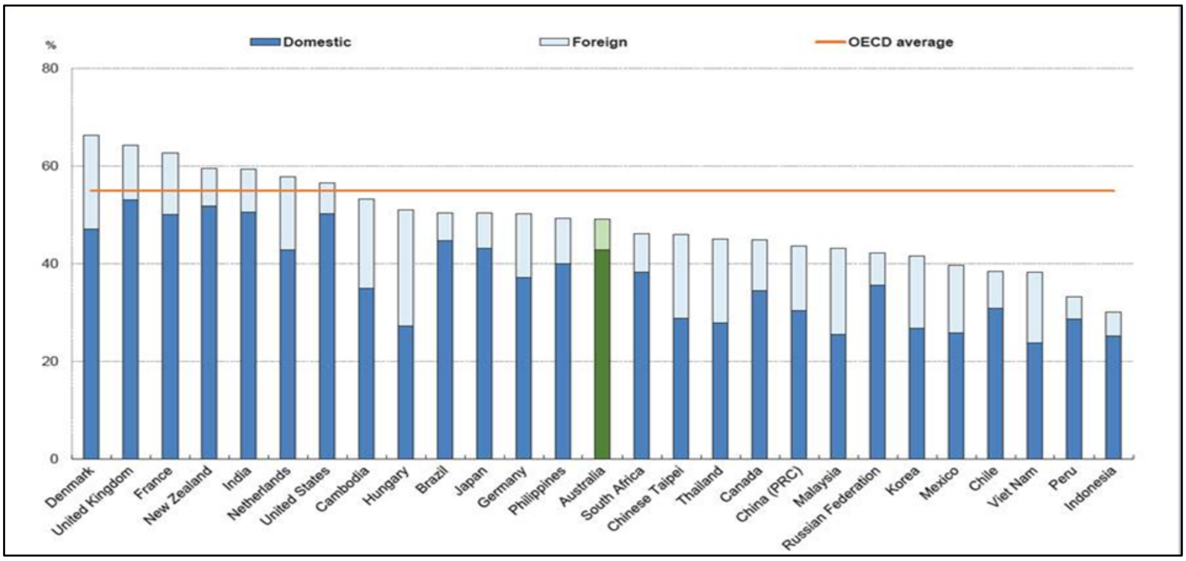
	Balance of payments data			trade in value added data		Sourcing of embedded services component	
	Total exports $US m	**% services**		**Total exports** $US m	**% services**	**% domestically sourced**	**% foreign sourced***
EU	2,932,232	32.4%		2,785,859	58.9%	44.6%	14.3%
UK	781,674	48.4%		691,843	70.9%	62.9%	8.0%
Australia	250,023	23.2%		244,776	49.6%	45.2%	4.4%

Sources: OECD Balance of Payments BPM6 - goods and services exports data (https://stats.oecd.org/Index.aspx?DataSetCode=MEI_BOP6#); OECD Trade in Value Added data - https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C1.

Notes: * For EU member states foreign sources may include other EU member states.

Australia's services contribution to total exports can also be considered in comparison to a wider range of countries. Such data are shown in Figure 2.2. These data show that, in terms of the share of services in gross exports, Australia falls towards the middle of this group of countries. A substantial share of embodied services in Australian gross exports is domestically sourced.

Figure 2.2 Services embodied in gross exports, by country, value added terms, 2014



Source: OECD, Australian Services Trade in the Global Economy, Trade Policy Brief, October 2018

Note: OECD average was calculated from all OECD members, although not all are represented in this chart.

Australia's greater dependence on domestically-sourced services in supply chain transactions is partly due to its geographical isolation (Productivity Commission, 2015; OECD, 2017). An important exception

[14] Partly due to the fact that for EU member states foreign sources may include other member states.

is foreign transport services which play a major role in shipping Australia's exported goods by sea and air.

The EU figure of 14.3% foreign-sourced value added services is an average across all EU member states. But this varies from 63% for Luxembourg to 8% for Greece and the UK. The greater reliance of EU member states on foreign-sourced services to facilitate trade is to be expected in the context of the European Single Market, where countries are geographically close and the regulatory environment favours cross-border services provision. A good example is the passporting of financial services.[15] Passporting allows a firm registered in the European Economic Area (EEA) to do business in any other EEA state without the need for further authorisation from each country. Often companies based outside of the EEA will get authorisation in just one EEA state. The company will then use the passporting rights it receives from that country to establish a commercial presence elsewhere in the EEA or to provide cross-border services across the EEA. Passporting is discussed in more detail in Chapter 5 (see Box 5.1). This is a key issue in Brexit, as foreign firms currently registered in the UK and operating across the EU from their UK base, will lose their passporting rights from their UK base after Brexit.

2.2.3 The special case of commercial presence (supply mode 3)

Generally the supply of services through commercial presence abroad is outside the scope of trade statistics. The UN Manual on International Trade in Services (UN Department of Economic and Social Affairs, 2011: 24) states:

> *… because foreign affiliates are resident entities in their host country, their sales/output in those countries are not recorded in the balance of payments, which are concerned only with transactions between residents and non-residents. Transactions in services that are taking place between the foreign affiliate and the parent entity, however, are recorded as trade between residents and non-residents (this may also include trade through the movement of persons such as intra-corporate transferees).*

The establishment and continuing investment in foreign affiliates is captured in foreign investment direct (FDI) statistics (see Appendix 2.1) that are compiled in accordance with the International Monetary Fund (IMF) Balance of Payments Manual.

Firms with a commercial presence in another country can play a key role in facilitating imports and exports and foreign direct investment activity with that country. This can include supply chain transactions discussed in the earlier section on trade in value added. Such foreign affiliates may or may not repatriate funds to their home country, but nonetheless may play a key role in facilitating cross-border trade. Hence, the treatment of commercial presence of foreign affiliates can be expected to be a substantial issue for both parties in Australia-EU trade negotiations.

Thus, there are several different perspectives to consider in a trade in services negotiation. At the bilateral level, Australia and the EU will attempt to negotiate bilateral reductions in Australian and EU services trade restrictions and barriers to foreign direct investment activity to enable growth in Australia-EU commerce across all forms of supply. But Australia and the EU may also benefit from unilaterally modifying their own regulatory restrictions on trade in services to lower impediments to increased domestic competition. Similarly, lower impediments to efficient foreign investment in the form of the commercial presence of firms in the other trading partner might benefit both the Australia and the EU. Therefore, while bilateral trade negotiations are a complex bargain where 'concessions' to the other party may be an essential *quid pro quo* for preferential access to each other's markets, negotiations for bilateral preferences should not inhibit more broadly-based regional or multi-lateral liberalisation of trade in services. It is important, therefore, to keep an eye on two major goals:

- changes to policies and regulations should lead to increased competition in partner economies to realise benefits from freer trade between partners and afford net national benefit; and

[15] https://www.investopedia.com/terms/p/passporting.asp

- bilateral treaties should be formulated so that they encourage the adoption of common multilateral principles and do not impede worthwhile domestic reform based on those principles.

2.3 Australia's current trade in services relationship with the EU.

According to balance of payment statistics, Australia's major trade in services with the EU is travel, incorporating personal, business and education related travel (Table 2.2). This only involves consumption abroad (mode 2 supply), where European visitors to Australia generate export income for Australia and Australian visitors to the EU represent an import of travel services (and an export from the EU's perspective). The category travel just captures expenditure on goods and services by a traveller in a host economy, while the category transportation captures the costs of transporting both passengers and freight by air, land or sea (incorporating airfares and freight transport costs, as well as baggage and cargo handling). Transportation is Australia's fifth largest services export to the EU and its second largest services import from the EU.

Australia's second and third largest services exports to the EU are other business services, followed by financial services. Other business services primarily comprises professional services ranging from legal, research and development services and accounting, to more technical services such as architecture and engineering. Financial services incorporate explicitly charged services, as well as intermediation service charges embodied within interest rates or other financing margins. Nonetheless, despite the prominence of other business and financial services in standard services trade statistics, those published figures underestimate the full picture as they do not capture supply through commercial presence (mode 3).

The largest services sector identified in Australian foreign affiliates' data was the category financial and insurance services, representing nearly 40 per cent of total services sales of Australian affiliated entities globally (see Appendix 2.1).

2.4 Services trade restrictions

Services trade is most often restricted by behind-the-border regulatory barriers within a host economy rather than by border restrictions. In contrast, goods trade is affected both by border restrictions (e.g. tariffs and quotas), non-tariff barriers to entry (such as quarantine arrangements) and by domestic regulatory impediments (such as consumer safety standards). Different restrictions may also have different impacts on the different modes of supply in services trade.

For example, cross border-supply (mode 1) may be affected by discriminatory measures that restrict supply or favour domestic producers. Consumption abroad (mode 2) would be affected by restrictions to the movement of people, such as visa conditions and charges, as would the movement of natural persons (mode 4). Commercial presence in the foreign country (mode 3) would be affected by regulations affecting the establishment of branches or subsidiaries and by the transfer of funds between affiliated enterprises. It would also be affected by domestic regulations that discriminate between firms on the basis of ultimate ownership including through, but not limited to, regulations affecting cross border supply of services (mode 1) and movement of people (mode 4).

A number of initiatives have been undertaken to both measure and compare services trade restrictions between different countries, including development of a services trade restrictiveness database by the World Bank[16] and indicators for the education sector developed by Australia's Productivity Commission (Nguyen-Hong & Wells, 2003). Since 2014, the OECD has produced an annual set of indices for OECD member countries, providing not only a measure of services trade restrictiveness across different countries, but also trend changes in each country's restrictiveness over time.

[16] https://datacatalog.worldbank.org/dataset/services-trade-Restrictivenesss-database.

Table 2.2 Trade in Services between Australia and the EU (Exports and Imports)

A. International Trade in Services, Exports from Australia, Calendar Year by Country & Service, $A million

Service sectors	**2015**	**2016**	**2017**	**2018**	**% change, 2017 - 2018**
Travel	7,662	7,377	7,248	7,394	**2%**
Sub-total of education-related travel	*1,511*	*1,434*	*1,534*	*1,569*	***2%***
Sub-total of business-related travel	*715*	*547*	*568*	*588*	***4%***
Sub-total of other (personal) travel	*5,437*	*5,396*	*5,146*	*5,237*	***2%***
Other Business services	1,359	1,505	1,436	2,051	**43%**
Financial services	985	752	907	923	**2%**
Telecommunications, Computer and Information services	558	747	820	1046	**28%**
Transportation	709	715	589	515	**-13%**
Charges for the use of Intellectual Property	198	178	251	235	**-6%**
Personal, Cultural and Recreational services	118	138	178	187	**5%**
Government goods and services	141	148	158	166	**5%**
Insurance and Pension services	18	20	15	17	**13%**
Construction	21	3	5	13	**160%**
Maintenance and Repair services	4	4	4	1	**-75%**
Manufacturing Services on Physical Inputs owned by Others	-	-	-	-	**-**
TOTAL Services Credits	11,771	11,589	11,610	12,549	**8%**
	%	%	%	%	**Average over the period %**
EU as % of Australia's total services exports	**16**	**15**	**14**	**14**	**15**
Australia's total services exports year-on-year growth	**11**	**7**	**9**	**9**	**9**
Australia's services exports to the EU year-on-year growth	**6**	**-2**	**0**	**8**	**3**

Source: Australian Bureau of Statistics, Catalogue No. 5368.0.55.004 - International Trade: Supplementary Information, Calendar Year, 2017.
http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5368.0.55.0042017?OpenDocument

Table 2.2 (continued) Trade in Services between Australia and the EU (Exports and Imports)

B. International Trade in Services, Imports to Australia, Calendar Year by Country & Service, $m

Service sectors	2015	2016	2017	2018	% change, 2017 - 2018
Travel	10,174	9,632	9,860	10,585	7%
Transportation	4,302	3,512	3,457	3,984	15%
Other Business services	2,540	2,743	2,735	2,961	8%
Charges for the use of Intellectual Property	1,715	1,833	2,198	2,500	14%
Telecommunications, Computer and Information services	677	866	1,200	1,338	12%
Financial services	857	532	810	590	-27%
Personal, Cultural and Recreational services	653	532	653	652	0%
Insurance and Pension services	537	477	477	491	3%
Maintenance and Repair services	51	170	253	221	-13%
Government goods and services	197	224	245	271	11%
Manufacturing services on Physical Inputs owned by Others	-	-	-	-	-
Construction	-	-	-	-	-
Total Services Debits	21,703	20,522	21,888	23,592	8%
	%	%	%	%	Average over the period %
EU as % of Australia's total imports of services	26	24	25	24	25
Australia's total imports of services year-on year-growth	10	-6	7	10	5
Australia's services imports from the EU year-on-year growth	8	-1	6	8	5

Source: Australian Bureau of Statistics, Catalogue No. 5368.0.55.004 - International Trade: Supplementary Information, Calendar Year, 2017. http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5368.0.55.0042017?OpenDocument. Only Travel sector exports are split into sub-sectors.

2.5 The OECD Services Trade Restrictiveness Index (STRI)

The OECD's STRI seeks to quantify the degree of Restrictiveness that is imposed on services trade by various policies and regulations in a particular country. The database comprises 22 service sectors (shown in Appendix 2.2) ranging from legal services to cargo handling logistics and 45 countries (the 34 OECD member countries and key partner countries such as China, Brazil, Russia and India). The database includes Australia and 23 of the current 28 EU member states.

Each measure in the database reflects potential impediments to services trade. The database was developed in close consultation with country and sector experts. The measures identified are categorised into five different types of regulatory impediment to trade, sometimes referred to as policy areas:

- Restrictions on foreign entry
- Restrictions to movement of people
- Other discriminatory measures
- Barriers to competition
- Regulatory transparency.

For each type of impediment specific potential regulatory barriers are identified. There are commonalties to these, but also tailoring to be relevant to each of the 22 identified service industries. Where the identified impediments/policy measures are broad-based regulations that affect all services sectors, they are referred to as horizontal measures. But as noted, there are also sector-specific measures that only target a particular service sector.

The scores for each measure are converted into binary – that is, there is a score of 0 or 1, depending on the actual situation. For example, for the number of days it takes to get a business visa, where this is 10 days or less the score is 0 (indicating it is not an impediment) and if it is 11 or more days it is scored 1, indicating an impediment to trade.[17] The different regulatory impediments are weighted before being cumulated to give an overall score.

The STRI methodology is carefully structured to ensure the sum of values calculated across these five areas will always give a value between 0 (no Restrictiveness) and 1 (total Restrictiveness). The scores and weighting for each measure with each policy area vary depending on the nature of the underlying issues needing consideration as well as the number of those issues.

The component issues, scores and weighting are determined by expert judgement made within the policy context of each sector. The OECD has developed a set of sector papers which indicate how the services sectors and their different modes of supply are impacted by different policy interventions.[18] It is important to note that, because of the complex way in which they are constructed, the STRI values can only be interpreted as ordinal values, not as cardinal values. That is, while a value of 0.4 shows greater trade restrictiveness than a value of 0.2, this does not mean that trade restrictions are twice as severe.

One last caveat concerns federal states. As regulations can vary between constituent parts of a federation, the OECD takes a representative state. In the case of Australia this is New South Wales. In the case of Canada it is Ontario (Grosso et al., 2015: 39).

[17] Some measures are hierarchical – one or more measures would close a market segment or a mode of supply to foreign suppliers. In other cases a restriction on one measure makes others irrelevant. In other cases measures are complementary so are bundled together. The scoring methodology therefore conditions the scoring to take account of these practical realities (Grosso et al, 2015).

[18] Sector notes and papers are listed at http://www.oecd.org/trade/topics/services-trade/

The OECD provides a policy simulator[19] which allows comparisons between countries for any given services sector or examination of the variation in trade restrictions between services sectors for any one country. Data for Australia are shown in Figure 2.3.

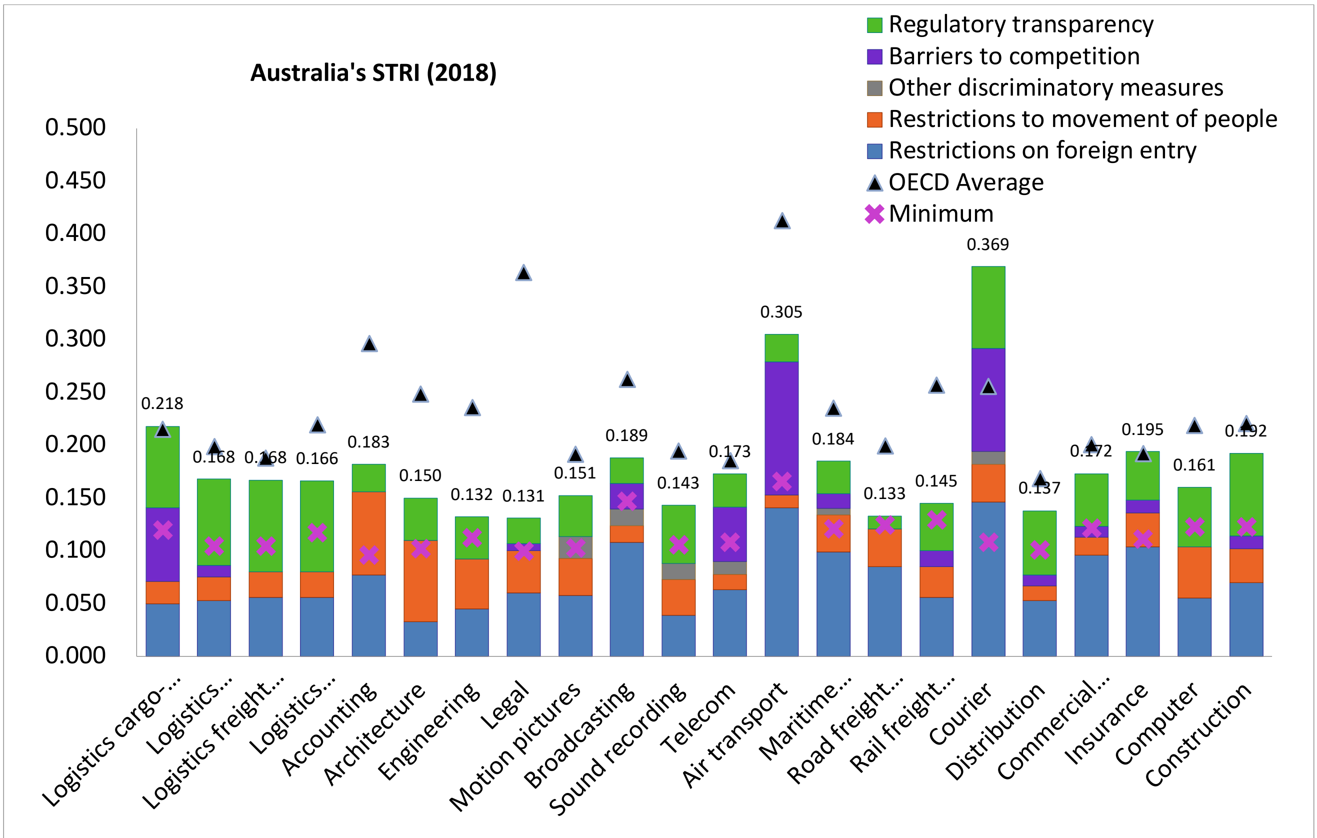
These data show that, in all but three service sectors (courier, insurance and logistics cargo-handling), Australia has a lower restrictiveness score than the OECD average. However, the Australian scores are always above the minimum achieved across OECD countries, indicating that Australia could take action to increase its competitiveness in almost every sector.

2.5.1 A worked example of using the STRI: legal services

At a more detailed level, the STR database can also be used to investigate (for example) the relative restrictions to trade in legal services for some select countries, as shown in Table 2.3.

These scores offer some guide to the relative restrictiveness of regulations governing a given service sector across countries. Remembering that STRI values lie between 0 (no Restrictiveness) and 1 (maximum Restrictiveness), these data show that legal services trade is not substantially restricted in Australia, Germany, Italy or the UK. In marked contrast, France has a much higher STRI score for legal services indicating the likelihood of many more barriers to trade in legal services. The relatively high overall score stems from a relatively high score on the index component relating to 'restrictions to movement of people'. An assessment of the economic effects of regulations governing legal services in France in absolute terms and relative to other economies might therefore usefully focus on regulations affecting the movement of people within and to the legal services industry.

Figure 2.3 Australia's SRTI values by services sectors



Source: OECD STRI, own calculations.

[19] https://sim.oecd.org/

Table 2.3 Legal services: STRI values, selected countries, 2018

	Australia	Germany	Italy	UK	France
STRI Indicator (total)	0.131	0.245	0.194	0.182	0.580
Policy areas					
Restrictions on foreign entry	0.060	0.080	0.040	0.050	0.191
Restrictions to movement of people	0.040	0.121	0.094	0.094	0.322
Other discriminatory measures	0.000	0.000	0.022	0.022	0.022
Barriers to competition	0.007	0.020	0.007	0.000	0.013
Regulatory transparency	0.024	0.024	0.032	0.016	0.032

Source OECD Services Trade Restrictiveness (STRI) Index: https://stats.oecd.org/Index.aspx?DataSetCode=STRI

2.5.2 A worked example: Commercial banking services

Table 2.4 is an extract from the OECD working paper on commercial banking services (Rouzet et al, 2014). It shows some of the policy interventions underlying one of the five policy areas (*Regulatory Transparency*) for commercial banking. Looking at the column titled Mode, it is apparent that some interventions impact on all modes of supply, while others are specific to commercial presence (supply mode 3) and at least one to movement of natural persons (supply mode 4).

Table 2.4 Policy settings underlying regulatory transparency in commercial banking

Regulatory transparency				
Measure	**MA&NT / DR&Other**	**Mode**	**Establishment / Operations**	**Discr. / Non-discr.**
Regulations are communicated to the public prior to entry into force	DR&Other	All	O	ND
Public comment procedure open to interested persons, including foreign suppliers	DR&Other	All	O	ND
Range of visa processing time (business days)	DR&Other	4	O	ND
Time to complete all official procedures to register a company (days)	DR&Other	3	O	ND
Cost to complete all official procedures for registering a company (% of income per capita)	DR&Other	3	O	ND
Number of official procedures for registering a company	DR&Other	3	O	ND
Licences are allocated according to publicly available criteria	DR&Other	3	E	ND
There is a maximum time allowed to the regulator for decisions on applications	DR&Other	3	E	ND
Time of resolving insolvency (in years)	DR&Other	All	O	ND
Cost of resolving insolvency (in % of the estate's value)	DR&Other	All	O	ND
Other restrictions in regulatory transparency	DR&Other	All	O	ND

Source: Rouzet, Nordås, Gonzales, Grosso, Lejárraga, Miroudot & Ueno, 2014: 43-44.

The other columns in Table 2.4 describe whether:

- policy interventions are market access and national treatment (MA & NT) policies established under a trade agreement or are simply matters of domestic regulation (DR);
- they are barriers to establishment (E) or ongoing operations (O); or
- they differentially apply to some parties but not others (discriminatory) or whether they apply equally to all parties (non-discriminatory).

Having established these key features of the policy framework underlying the area of *Regulatory Transparency* in commercial banking, a set of criteria are then developed to generate a quantitative value for a particular country's policy restrictiveness in this area. Figure 2.4 shows the particular settings for these criteria that generate Australia's *Regulatory Transparency* policy area score for commercial banking. Values for the other four policy areas are calculated in a similar fashion and the sum of all five values then provides the total STRI value for Australia's commercial banking services.

Australia's STRI of 0.172 for commercial banking is highlighted in Figure 2.5, in comparison to all 45 countries for which STRIs are calculated. Australia lies between the UK and Portugal (PT), and well towards the lower end of the restrictiveness scale. Further, the STRI score for Australia has fallen slightly from 2014. In contrast India, on the far right of Figure 2.5, with the highest restrictiveness value of all these countries, has experienced a slight increase in its STRI score since 2014.

In most, but not all, countries shown in Figure 2.5 the most significant policy area that influenced a country's overall commercial banking services trade restrictiveness was restrictions *on foreign entry*. Barriers to trade in financial services are discussed further in Chapter 5.

2.6 How the STRIs can guide Australia-EU trade negotiations

The STRI methodology provides a quantitative measure of how different countries' domestic policies may impact on services trade. To better understand their context and applicability, a concordance between STRI sectors and services trade categories has been developed (see Appendix 2.3). The STRI policy simulator offers a useful tool to model the potential impact of changes to existing policy and regulatory constraints at a granular level.

Priorities for Australia and EU services trade negotiations can be established by:

a) reviewing the value of current services imports and exports (Table 2.1) and considering where the opportunities for expanded trade might be greatest;
b) reviewing each party's commercial presence footprint (Australian majority-owned and other foreign affiliated businesses in the EU and vice versa; see Appendix 2.1);
c) reviewing movement of people with respect to both easy of gaining entry visas and work rights;
d) identifying sectors with significant domestic and cross-border impediments to services trade using the STRI measures; and
e) consultation with experts (including identification of exemplars and possible case studies).

The STRI policy simulator enables the impact of potential changes to existing policy and regulatory constraints to be considered at a very granular level. Having been only recently launched by the OECD, it remains to be seen how useful it can be in a real-world trade negotiation setting. A major objective of this project is to use the STRI to explore priorities for Australia-EU trade negotiations. As a by-product we might identify areas where the STRI could be expanded to improve its practical utility. For example, Australia's largest cross border services export, education, is not specifically addressed within the current STRI framework.

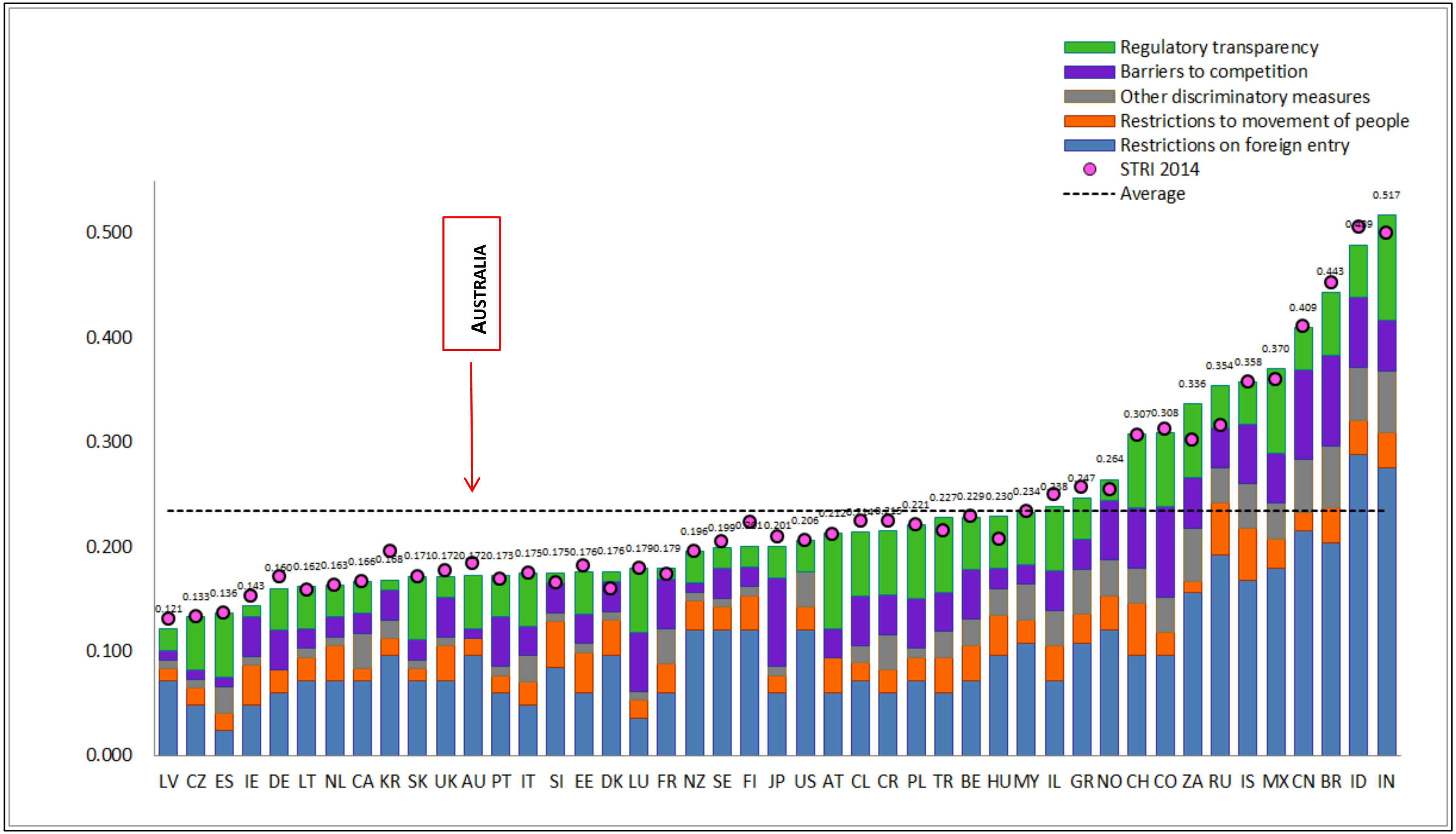
Although merchandise trade, including agricultural trade, is negotiated for the EU as a bloc, this does not apply to services trade negotiations. STRIs are calculated at the level of individual countries and are available for 23 of the 28 member states. The STRI analysis in this Briefing Paper is generally limited to the larger EU economies. A key issue within these considerations is that the UK is currently Australia's largest trading partner amongst EU member states. Its pending departure from the EU is likely to create a number of impediments as well as opportunities in services-trade relations with the remaining EU bloc (the EU 27).

Figure 2.4 An SRTI example - how the value of *Regulatory Transparency* in commercial banking services is calculated for Australia, 2018

Commercial banking measures	Answers	Scores	Values
Restrictions on foreign entry		8	0.096
Restrictions to movement of people		3	0.017
Other discriminatory measures		0	0
Barriers to competition		1	0.01
Regulatory transparency		5	0.05
5.1.1 There is a legal obligation to communicate regulations to the public within a reasonable time prior to entry into force	Yes / **No** (selected)	0	0
5.2.1 There is an adequate public comment procedure open to interested persons, including foreign suppliers	**Yes** (selected) / No	0	0
5.3.1 Range of visa processing time (days)	Above 10 days	1	0.01
5.3.2 Multiple entry visa for business visitors	**Yes** (selected) / No	0	0
5.3.3 Cost to obtain a business visa (USD)	Above 94 USD	1	0.01
5.3.4 Number of documents needed to obtain a business visa	Above 8	1	0.01
5.4.1 Number of working days to complete all mandatory procedures to register a company	Less than 9 days	0	0
5.5.1 Total cost to complete all official procedures required to register a company (in % of income per capita)	Less than 2.4	0	0
5.6.1 Number of mandatory procedures to register a company	Less than 5	0	0
5.9.1 Licences are allocated according to publicly available criteria	**Yes/na** (selected) / No	0	0
5.9.2 Applicants must be informed of the reasons for denial of Licences	Yes/na / **No** (selected)	1	0.01
5.9.3 There is a maximum time allowed to the regulator for decisions on applications	Yes/na / **No** (selected)	1	0.01
5.10.21 Time of resolving insolvency (in years)	Less than 2	0	0
5.10.22 Cost of resolving insolvency (in % of the estate's value)	Less than 9	0	0
5.50.1 Other restrictions in regulatory transparency	Yes / **No** (selected)	0	0

Note: The five policy areas (coloured bars) are common to all STRI sectors, but the underlying component issues (shown here for *Regulatory Transparency* only) may differ substantially. For each component, a score is generally binary (1 or 0) with each score then given a weighting, which has been determined by expert judgement on the significance of each component to total restrictiveness and to also ensure the total STRI value cannot exceed 1 (representing maximum restrictiveness). In this example, the value assigned to Regulatory Transparency is 0.05 and the total services trade restrictiveness index value for Australia's commercial banking services sector in 2018 is 0.172 (equalling 0.096+0.017+0+0.01+0.05).

Figure 2.5 STRI vales for commercial banking, OECD + 9 other countries, 2018



Source: OECD Services Trade Restrictiveness (STRI) Index: https://stats.oecd.org/Index.aspx?DataSetCode=STRI
STRI score data shown in the bars are for 2018; the 2014 score value is shown in the pink dots.

Appendix 2.1 Australian direct investment abroad

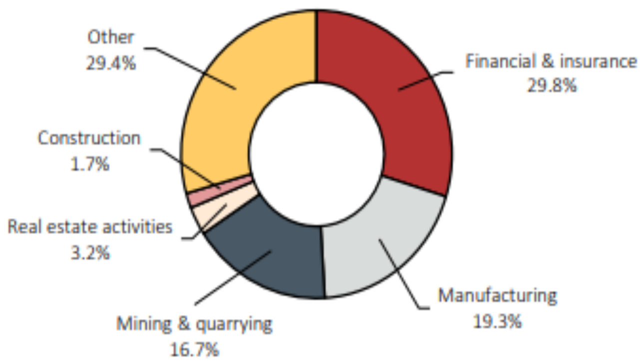
AUSTRALIAN DIRECT INVESTMENT ABROAD
LEVEL OF INVESTMENT BY INDUSTRY DIVISION (a)
(A$ million)

	2015	2016	2017	% share of total	% growth 2016 to 2017
Agriculture, forestry & fishing	np	np	np	..	..
Mining & quarrying	81,189	93,331	98,690	16.7	5.7
Manufacturing	96,182	95,316	113,834	19.3	19.4
Electricity, gas & water	4,803	4,663	4,807	0.8	3.1
Construction	8,796	8,977	9,894	1.7	10.2
Wholesale & retail trade	6,153	7,364	6,057	1.0	-17.7
Accommodation & food service activities	86	81	165	0.0	103.7
Transport & storage	4,089	4,041	3,674	0.6	-9.1
Information & communication	3,194	1,593	2,335	0.4	46.6
Financial & insurance activities	165,449	170,411	175,700	29.8	3.1
Real estate activities	16,071	16,562	18,918	3.2	14.2
Professional, scientific & technical activities	2,909	2,864	2,482	0.4	-13.3
Administrative & support service activities	np	np	np	..	..
Public administration	0	0	0	0.0	..
Education	np	np	np	..	..
Human health & social work activities	5,868	6,346	6,003	1.0	-5.4
Arts, entertainment & recreation	np	np	np	..	..
Other service activities	0	0	0	0.0	..
Unallocated & confidential items	np	np	np	..	..
Total	**532,387**	**554,580**	**590,566**		**6.5**
of which service industries (b)	***217,418***	***222,902***	***230,035***	***39.0***	***3.2***

(a) Level of investment as at 31 December, based on the ANZSIC industry classification. (b) Excludes confidential industries.

Based on ABS catalogue 5352.0.

Stock of direct Australian investment abroad, 2017



Appendix 2.1 (continued): Foreign direct investment in Australia

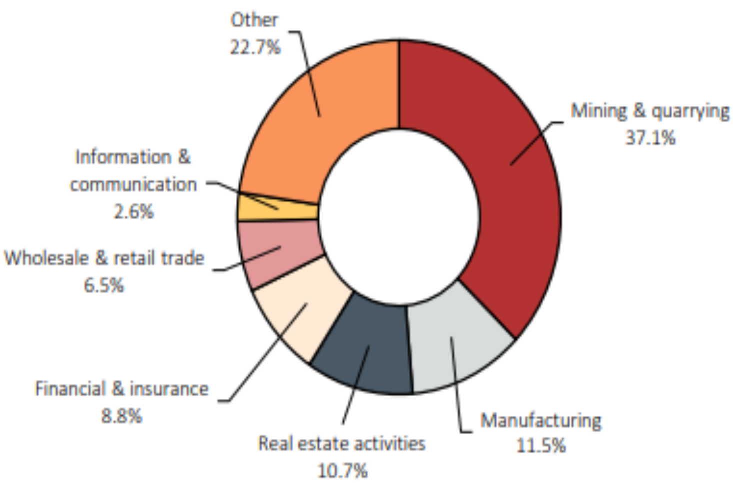
FOREIGN DIRECT INVESTMENT IN AUSTRALIA
LEVEL OF INVESTMENT BY INDUSTRY DIVISION (a)
(A$ million)

	2015	2016	2017	% share of total	% growth 2016 to 2017
Agriculture, forestry & fishing	2,106	2,184	2,467	0.3	13.0
Mining & quarrying	292,996	311,932	315,334	37.1	1.1
Manufacturing	90,532	94,696	97,742	11.5	3.2
Electricity, gas & water	15,926	15,832	22,049	2.6	39.3
Construction	17,510	20,185	24,852	2.9	23.1
Wholesale & retail trade	52,857	53,775	54,951	6.5	2.2
Accommodation & food service activities	7,242	7,278	7,350	0.9	1.0
Transport & storage	20,928	21,491	16,786	2.0	-21.9
Information & communication	24,942	22,679	22,093	2.6	-2.6
Financial & insurance activities	63,713	66,058	74,849	8.8	13.3
Real estate activities	58,105	75,626	90,987	10.7	20.3
Professional, scientific & technical activities	4,523	5,402	5,672	0.7	5.0
Administrative & support service activities	1,555	3,772	4,074	0.5	8.0
Public administration	np	np	np	..	..
Education	0	np	np	..	..
Human health & social work activities	1,778	3,657	4,642	0.5	26.9
Arts, entertainment & recreation	np	np	np	..	..
Other service activities	np	303	np	..	..
Unallocated & confidential items	80,489	84,999	97,678	11.5	14.9
Total	**736,028**	**797,094**	**849,098**		**6.5**
of which service industries	***269,905***	***303,283***	***335,877***	***39.6***	***10.7***

(a) Level of investment as at 31 December, based on the ANZSIC industry classification.

Based on ABS catalogue 5352.0.

Stock of foreign direct investment in Australia, 2017



Appendix 2.1 (continued) The transactional value of Australian direct investment abroad and foreign direct investment in Australia

INCOME EARNED ON AUSTRALIAN DIRECT INVESTMENT ABROAD BY INDUSTRY DIVISION (a) (A$ million)

	2015	2016	2017	% share of total	% growth 2016 to 2017
Agriculture, forestry & fishing	0	0	0	0.0	..
Mining & quarrying	-628	5,347	2,617	13.9	-51.1
Manufacturing	3,984	4,027	4,319	23.0	7.3
Electricity, gas & water	258	np	np	..	..
Construction	550	np	551	2.9	..
Wholesale & retail trade	821	265	-114	..	..
Accommodation & food service activities	np	np	np	..	..
Transport & storage	162	27	141	0.7	422.2
Information & communication	117	111	-106	..	..
Financial & insurance activities	7,270	6,292	5,895	31.3	-6.3
Real estate activities	719	np	np	..	..
Professional, scientific & technical activities	np	np	np	..	..
Administrative & support service activities	np	np	np	..	..
Public administration	np	0	0	0.0	..
Education	np	np	np	..	..
Human health & social work activities	581	np	np	..	..
Arts, entertainment & recreation	np	np	np	..	..
Other service activities	0	0	0	0.0	..
Confidential items	np	np	np	..	..
Total	**17,784**	**19,869**	**18,814**		**-5.3**
of which service industries (b)	***14,428***	***10,495***	***11,878***	***63.1***	***13.2***

INCOME PAYABLE ON FOREIGN DIRECT INVESTMENT IN AUSTRALIA BY INDUSTRY DIVISION (a) (A$ million)

	2015	2016	2017	% share of total	% growth 2016 to 2017
Agriculture, forestry & fishing	65	145	138	0.3	-4.8
Mining & quarrying	6,859	5,681	15,136	31.7	166.4
Manufacturing	5,124	6,283	5,855	12.2	-6.8
Electricity, gas & water	676	1,097	1,742	3.6	58.8
Construction	1,219	1,046	1,591	3.3	52.1
Wholesale & retail trade	2,920	3,540	2,954	6.2	-16.6
Accommodation & food service activities	760	1,044	1,018	2.1	-2.5
Transport & storage	448	979	634	1.3	-35.2
Information & communication	1,315	1,445	1,705	3.6	18.0
Financial & insurance activities	4,561	5,026	6,605	13.8	31.4
Real estate activities	np	np	np	..	..
Professional, scientific & technical activities	186	217	-17	..	..
Administrative & support service activities	143	188	200	0.4	6.4
Public administration	96	np	np	..	..
Education	0	np	np	..	..
Human health & social work activities	283	257	245	0.5	-4.7
Arts, entertainment & recreation	np	np	np	..	..
Other service activities	np	np	np	..	..
Confidential items	np	np	np	..	..
Total	**31,946**	**35,651**	**47,819**		**34.1**
of which service industries	***19,898***	***23,542***	***26,690***	***55.8***	***13.4***

(a) Level of investment as at 31 Dec, based on the ANZSIC industry classification. (b) Excludes confidential industries.
Based on ABS catalogue 5352.0.

Appendix 2.2 The 22 Services Trade Restrictiveness Index (STRI) sectors

1. Logistics cargo-handling
2. Logistics customs brokerage
3. Logistics freight forwarding
4. Logistics storage and warehouse
5. Accounting
6. Architecture
7. Engineering
8. Legal
9. Motion pictures
10. Broadcasting
11. Sound recording
12. Telecom
13. Air transport
14. Maritime transport
15. Road freight transport
16. Rail freight transport
17. Courier
18. Distribution
19. Commercial banking
20. Insurance
21. Computer
22. Construction

Appendix 2.3 A possible concordance of Trade-in-Services categories and STRI sectors

22 STRIs	12 services trade categories (OECD & ABS)
1. Logistics cargo-handling 2. Logistics customs brokerage 3. Logistics freight forwarding 4. Logistics storage and warehouse	3. Transportation 3.1 Transportation - Passenger 3.2 Transportation - Freight 3.3 Transportation - Other
5. Accounting	10.2.1.2 Accounting, auditing, bookkeeping and tax consulting services
6. Architecture 7. Engineering	10.3 Technical, trade-related and other business services 10.3.1 Architectural, engineering, scientific and other technical services 10.3.1.1 Architectural services 10.3.1.2 Engineering services 10.3.1.3 Surveying services 10.3.1.4 Scientific and other technical services
8. Legal	10.2.1.1 Legal
9. Motion pictures 10. Broadcasting 11. Sound recording	11.1 Audiovisual and related services 11.1.1 Royalties on film, television, home entertainment and other audiovisual 11.1.1.1Film Royalties 11.1.1.2 Television Royalties 11.1.1.3 Home Entertainment Royalties 11.1.1.4 Other Audiovisual related royalties 11.1.1.5 Other Film, TV and Multimedia Royalties
12. Telecom	9.1 Telecommunication services
13. Air transport 14. Maritime transport	3.1 Transportation – Passenger 3.2 Transportation – Freight 3.3 Transportation - Other
15. Road freight transport*	3.2 Transportation - Freight
16. Rail freight transport*	3.2 Transportation - Freight
17. Courier	3.4 Postal and Courier services
19. Commercial banking	7. Financial Services
20. Insurance	6. Insurance and Pension services
21. Computer	9.2 Computer and Information services
22. Construction	5. Construction

* Note that rail and road freight transport are not captured in ABS Trade in Services data.

The following services categories did not readily align with the existing 22 sectors defined for STRI calculations:
1. Manufacturing services on physical inputs owned by others
2. Maintenance and repair
4. Travel Services
12. Government services
18. Distribution

Chapter 3 EU trade treaties: services outcomes

3.1 Introduction

This chapter looks at two recently concluded EU trade treaties to assess whether trade negotiation outcomes for services focus on areas with the greatest regulatory impediments. The two agreements examined are the EU-Canada agreement and the EU-Japan agreement. Originally the intention had been to look at the agreements for Singapore and Canada, but STRI data are not available for Singapore. As a result we replaced Singapore with Japan for which STRI information is available. The EU-Canada Comprehensive and Economic Trade Agreement (CETA) has been provisionally in force since September 2017. The EU-Japan Economic Partnership Agreement (EUJEPA) entered into force on 1 February 2019. In fact, even the EU-Singapore Free Trade Agreement (EUSFTA) is too recent for us to be able to cross-check the treaty outcomes with a further important dimension – real-world change in liberalising services markets.

Nonetheless reviewing these two recent EU treaties, and comparing outcomes with the STRIs, does allow a useful analysis which might be of benefit in current negotiations between the EU and Australia and the EU and New Zealand.

3.2 Canada

3.2.1 CETA

CETA includes chapters on investment, cross-border trade in services, temporary entry and stay of natural persons for business purposes, mutual recognition of professional qualifications, domestic regulation, financial services, international maritime transport services, telecommunications, electronic commerce, and government procurement.

In CETA cross-border trade in services is defined in terms of the GATS as the supply of a service: (i) from the territory of a Party into the territory of the other Party (mode 1); or (ii) in the territory of a Party to the service consumer of the other Party (mode 2), but does not include the supply of a service in the territory of a party by a person of the other party (mode 4). Due to the sensitive nature of some air services, these are excluded from CETA (Article 9.2.2(e)). In addition, imports of cultural industry services to Canada, and imports of audio-visual services to the EU are excluded. The EUSFTA and EUJEPA have similar exceptions for audio-visual services. CETA has separate chapters on financial services and government procurement.

Following GATS, trade in services outcomes in CETA are based on national treatment, market access, and most-favoured-nation (MFN) treatment principles (Box 3.1). Notably, while the GATS has a MFN obligation, not all EU trade agreements do. For example, there are no generally applicable MFN clauses in the services and investment chapters of EUSFTA.[20]

Box 3.1 Market access, national treatment, MFN[21]

Market Access: The commitment to let each other's services suppliers or investors have access to the domestic services market.
National Treatment: The commitment to treat foreign services suppliers or investors no less favourably than one's own service suppliers or investors.
MFN treatment: Each time a party offers a more beneficial treatment to a Trade Partner in a future bilateral or regional agreement, it has to extend the same treatment to all its current trading partners. In the case of CETA, if preference is given to a third party by either the EU or Canada, it is hypothecated to the EU-Canada relationship.

[20] However, according to a report to the European Parliament (European Commission Directorate-General for External Policies, 2018), there is a partial MFN clause in relation to banking licences.
[21] See http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154427.pdf for more information.

Additionally, a negative listing approach is used (see Box 3.2).

Box 3.2 Positive and negative lists and exemptions

EU trade deals for services and investment typically cover commitments made under the principles of national treatment and market access. Each Party can then include exceptions to its commitments. These commitments and exceptions are included in the agreement text according to a positive or negative listing.

With a positive list, each Party explicitly lists the sectors and subsectors in which market access and national treatment commitments apply. Next, it lists all exceptions to these commitments, with the market access and/or national treatment limitations it wants to apply.

With a negative list, a Party can skip the first step. Sectors and sub-sectors not listed are open to foreign service providers under the same conditions as for domestic suppliers. This means that, in principle, all service sectors are liberalised - existing exemptions that derogate from national treatment and market access principles are enumerated by each party in specific Annexes. Two annexes are typically used for negative lists: Annex I covers all existing legislation that runs counter to market access and national treatment principles. Annex II contains sectors for which a party retains their right to deviate from market access and/or national treatment commitments in the future.[22]

3.2.2 Canada's STRI – based on regulations in Ontario

The STRI for Canada is calculated based on regulations in Ontario. The same approach is taken in other federal nations such as Australia (where NSW is chosen as the representative state).[23] The reason given is that "in federal states, some of the regulations recorded by the measures included in the STRI database are under the jurisdiction of states, provinces or regions (hereafter referred to as states). Furthermore, the sub-federal level may have regulatory autonomy and regulation may therefore differ between states. In such cases one representative state has been selected" (Grosso et al., 2015: 39).

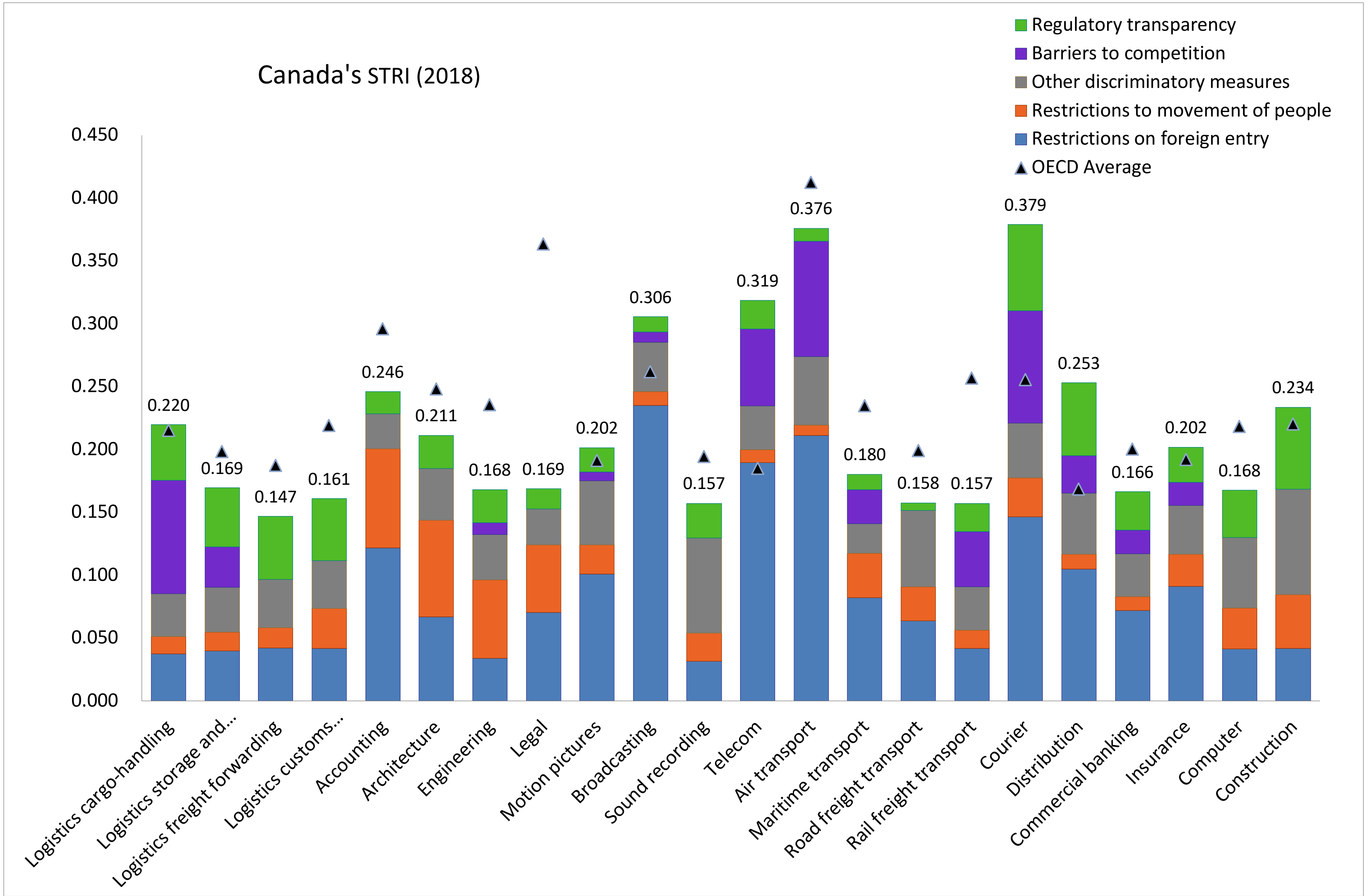
Looking at the time series data for the STRIs from 2014 to 2018, the only changes in the indices are for telecommunications and air transport, though these two changes are small.[24] Therefore, we choose to focus our discussion on the STRIs in 2018. The STRIs across the 22 service sectors for Canada in 2018 are depicted below in Figure 3.1, along with the average STRI among the 36 OECD countries.

3.2.3 Canada's composite STRI: Identifying the most restrictive sectors

We first describe how to interpret the STRI results for Canada using courier services – the sector with the highest STRI score – as an example. The composite STRI in 2018 for courier services is 0.379. It is composed of the sum of five areas of trade impediments: Restrictions on foreign entry corresponding to the blue part of the bar, contributed the most (0.146) to the index, followed by barriers to competition (purple; 0.089), regulatory transparency (green; 0.068), other discriminatory measures (grey; 0.043), and finally, restrictions to movement of people (orange; 0.031). The sum of the different coloured parts of the bar for each sector) gives us the composite STRI.

[22] See http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154427.pdf for more information.
[23] Countries in the OECD STRI database with federal states: Australia, Brazil, Canada, China, Germany, India, Russia, Switzerland, USA. See Table B.1 in Grosso et al., 2015: 39 for the representative states.
[24] In particular, the STRI for telecommunications increased by less than 0.01 overall, from 0.31 to 0.32 between 2014 and 2018, and the STRI for air transport decreased from 0.4 to 0.38 between 2017 and 2018.

Figure 3.1 STRIs by services sector and type of trade impediment, Canada, 2018



Source: OECD STRI database, own calculations.

From Figure 3.1, we observe that courier, air transport, telecommunication, and broadcasting recorded the highest index values for Canada, with these four most restrictive sectors recording values over 0.3. STRIs are largely ordinal rather than cardinal, i.e., a higher STRI indicates higher restrictiveness, but an index that is twice as large does not necessarily imply policies that are twice as restrictive. Comparing STRIs across sectors can thus be tricky. Therefore, we will compare Canada's STRI to the average across all OECD countries (black triangles in Figure 3.1).

Comparing Canada's STRI to the OECD averages across sectors, Canada is less restrictive than the OECD average in 14 out of the 22 sectors. Turning to the remaining eight sectors where Canada's overall level of restrictiveness is above or equal to the average, Canada is only marginally more restrictive than the average in the logistics, motion pictures, insurance, and construction sectors. However Canada's STRI significantly exceeds the OECD averages, in decreasing order, in the following sectors: telecommunication, distribution, courier, and broadcasting.

Therefore, for Canada, we have identified four sectors with the largest deviations from their OECD averages. Setting aside the politically sensitive area of broadcasting, we are left with the telecommunications, courier, and distribution services sectors. We will delve into the composition of the STRI, and identify some impediments to services trade in the telecommunications and courier services sectors later below. Before doing this we note that some of the identified policy measures are broad-based regulations that affect all services sectors – these are referred to as horizontal policy measures. There are also sector-specific measures that only target a particular service sector.

3.2.4 Disaggregation by policy area of regulatory impediments

When the regulations in the STRI database are disaggregated by types of regulatory intervention (policy areas), as depicted in Figure 3.1, restrictions on foreign entry (blue part of bar) form 25% or more of the total STRI value for 16 out of the 22 sectors. restrictions on the movement of people (orange) are evident in all sectors, but are substantial only in the four professions. Barriers to competition (purple) are most evident in transport and communications sectors.

<u>Telecommunications services</u>

The telecommunication sector — wired and wireless telecommunications — is of strategic importance to an economy, to the extent that many countries impose strict limitations on foreign investment and operations in the sector.[25] As we noted in Chapter 1, there are often important domestic goals achieved through regulation. In attempting to minimise impediments to international commerce, it is important to ensure that this is done in a way that still allows sovereign nations flexibility in achieving social, political and economic goals.

The STRI results in Figure 3.1 show that the STRI for telecommunications is driven by two types of interventions: restrictions on foreign entry and barriers to competition. According to the OECD database, there are 14 regulations identified as restrictive for foreign entry, seven for barriers to competition six for other discriminatory measures, three measures on regulatory transparency and two relating to the movement of people.

Restrictions on foreign entry mainly relate to foreign equity restrictions to both fixed and mobile lines, residency requirements for directors, screening, and local presence requirements. In particular, according to its Telecommunications Act, Canada imposes a foreign equity limit of 20% in large telecom operators, and requires at least 80% of the board members to be Canadian. Screening requirements are horizontal policy measures under the Investment Canada Act. Investments in telecommunication are subject to screening — foreign investors acquiring Canadian businesses valued above a certain threshold need to show that the acquisition is of net economic benefit to Canada. Barriers to competition are mainly due to: contracts for universal services obligations not being assigned on a competitive basis, and the regulation of mobile call origination rates. The regulation of mobile call origination rates is a trade impediment (scored one) because the Canadian mobile market has no

[25] See http://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-telecommunications.pdf

dominant supplier. This falls into "Case A" of the scoring system[26] for the barriers to competition policy area. In case A, the measures considered are scored zero if the regulator has assessed the market, found it to be competitive and decided not to impose ex-ante regulation or to forbear from regulation. The measures considered are scored one in case A if the regulator has found the market to be competitive but still does not roll back or forbear from price regulation, which is the case for Canada.

We note here that, in general, the regulation of mobile call origination rates has clear social policy goals domestically. If this does not discriminate between domestic and foreign suppliers, it is unclear that it would be a trade impediment. It was a lack of competition between domestic and foreign suppliers which led the EU Commissioner for Competition to require EU mobile phone companies not to charge higher rates in one Member State than in another. A price cap of 19 cents per minute (+VAT) and 6 cents per SMS (+VAT) was applied for all international calls and SMS within the EU, effective 15 May 2019.[27] This has led to a significant fall in call rates for consumers travelling in another Member State.

If similar provisions were extended, in the proposed EU-Australia treaty, to calls/texts from Australian mobile numbers while users were in Europe, this would generate very broad-based support for the treaty.

Transparency impediments mainly relate to the cost and time taken to obtain visas. On movement of people, two types of labour market tests are listed for contractual and independent service suppliers.

Courier services

There are four regulations identified as restrictive for each of foreign entry, other discriminatory measures, and barriers to competition, three measures on regulatory transparency, and two restrictions to movement of people (labour market tests on contractual and independent suppliers). They are each given a score of one.

Restrictions on foreign entry mainly relate to the postal monopoly, residency requirements on directors, and screening requirements. On other discriminatory measures, they mainly concern more favourable tax treatment at the federal level for small Canadian-controlled private corporations (CCPCs), and explicit preferences for local suppliers for procurement. Barriers to competition are due to the government ownership of Canada Post, regulation of some postal prices (e.g., the basic letter rate), and preferential access to the postal network for the national postal service provider. Sections 14 and 15 of the Canada Post Corporation Act, give Canada Post the sole and exclusive privilege of collecting, transmitting and delivering letters weighing up to 500g, with the exception of outbound international mail.[28] Restrictions to regulatory transparency mainly concern time and number of documents needed to process visas.

3.2.5 The Financial Services Chapter in CETA

CETA: Financial services definition

Chapter 13 of CETA is dedicated to financial services. Article 13.1 classifies financial services broadly into two categories: insurance and insurance-related services; and banking and other financial services (excluding insurance). A list of financial services, drawn from the CETA definition is provided in Appendix 3.1.

[26] The scoring of the telecommunications sector is complex due to sector-specific regulation, following complete or partial privatisation from the 1980s. The OECD STRI's methodology paper notes that competition issues related to the presence of a dominant supplier are central to the way the telecommunications sector is regulated (Grosso et al., 2015: 6). Regulation is necessary to promote competition in the market in cases where there are high/non-transitional barriers to entry. However, unnecessary regulation could be cut back when markets are sufficiently competitive. As a result, there are two scoring regimes: facilities-based competition (Case A) or dominant supplier (Case B) (see Grosso et al., 2015: 18-24 for details).

[27] See http://europa.eu/rapid/press-release_MEX-19-2491_en.htm.

[28] See https://www.canadapost.ca/tools/pg/glossary-e.asp.

STRI: Financial services definition and analysis

Following the WTO services sectoral classification, the STRI classifies financial services into two similar categories, insurance and commercial banking (Table 3.1). However, in contrast to the CETA definition, the scope for each sector in the STRI is narrower. This is due to practical constraints such as varying social policy choices across countries, as well as rapidly changing regulatory provisions in activities such as trading, securitisation, underwriting and asset management (Rouzet et al., 2014).

The STRI insurance services definition encompasses direct insurance (life, property and casualty), reinsurance, and auxiliary insurance services. This corresponds to the definition in CETA, reproduced in 1(a), (b), and (d) in Appendix 3.1 A. The STRI for commercial banking covers deposit taking, lending and payment services, and is consistent with CETA categories 2(a) – (e) (Appendix 3.1).

Table 3.1 Definition of the financial services sector

W/120 / STRI	
Commercial banking*	
7.B.a	Acceptance of deposits and other repayable funds from the public
7.B.b	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction
7.B.c	Financial leasing
7.B.d	All payment and money transmission services
7.B.e	Guarantees and commitments
Insurance**	
7.A.a	Life insurance
7.A.b	Non-life insurance services
7.A.c	Reinsurance and retrocession
7.A.d	Services auxiliary to insurance (including broking and agency services)

Source: Rouzet et al., 2014: 7.

Notes: * *The STRI for commercial banking does not include investment banking services, trading activities, and non-bank investment.*

** *The STRI for insurance does not include health insurance and pension services, which are part of W/120 code 7.A.a.*

This paper focuses on the STRI's definitions to keep the analysis manageable.

In the commercial banking sector (Figure 3.1) Canada's STRI is driven by three types of interventions: restrictions on foreign entry (43.2%); other discriminatory measures (20.5%); and barriers relating to regulatory transparency (18.2%). This reflects the nature of the banking sector, as well as different policy objectives with respect to banking regulation.

It can be difficult for a host country's supervisory authorities to oversee and control operations of foreign financial service providers. Restricting foreign entry allows regulators to retain control over domestic economy operations and better shield the domestic system from external shocks in cases where prudential regulation is inadequate or not well established (OECD, 2000).

On restrictions on foreign entry, although Canada does not limit the foreign equity share in local banks, it imposes residency requirements on the board of directors and managers of branches of foreign banks. Under the Bank Act, at least half the directors of a bank that is a subsidiary of a foreign bank, and managers of branches of foreign banks, must be Canadian residents. Commercial presence is also required in order to provide deposit taking, lending, and payment services. In CETA, the range of financial services allowed for cross-border supply of services is limited for both parties.[29]

Other discriminatory measures reflect horizontal policy measures. In particular, Canada accords more favourable tax treatment in the form of lower federal tax rates, to the active business income of small Canadian companies (CCPCs) under the Income Tax Act. In addition, Canada imposes restrictions on public procurement – The Agreement on Internal Trade prohibits discrimination in sub-federal procurement contracts against other Canadian provinces, but allows for (i) tenders limited to Canadian goods or suppliers; or (ii) a price preference of up to 10% for Canadian value added.[30]

Regarding transparency, under the Bank Act: (i) there is no maximum time specified for decisions on banking licence applications; (ii) more than eight documents are required to obtain a business visa; and (iii) a relatively long processing time (more than ten days) is required for a business visa.

Regarding barriers to competition, Canada imposes regulations on contractual interest rates on loans: the maximum annual interest rate enforced at the federal level is 60%. Also, the supervisor does not have full authority over licensing and the enforcement of prudential measures. However, in the current and foreseeable future, it is hard to see how restricting maximum interest rates to 60% can act as a trade impediment.

In the insurance sector, Canada's STRI score is similarly driven by measures relating to restrictions on foreign entry (45.3%) and other discriminatory measures (19.3%). On restrictions to foreign entry, the majority on the board of directors must be residents for life, non-life, and reinsurance. Additionally, the CEO of a Canadian insurance company or the chief agent of a foreign branch must be a Canadian resident. Commercial presence is also required for life insurance. Lastly, local presence is not required for cross-border supply of services.[31]

For the category 'other discriminatory measures', there are no mandatory cessions[32] to domestic reinsurers in the non-life insurance sub-sector, and there are discriminatory financial requirements on foreign reinsurance suppliers. In particular, a federally regulated insurance company is eligible for a capital or asset credit in respect of unregistered reinsurance, if it benefits from collateral held in Canada. The assets pledged to secure the payment of the potential liabilities of the reinsurer must be held in Canada and must normally amount to 115% of the outstanding losses recoverable. The Office of the Superintendent of Financial Institutions (OSFI)[33] considers that these rules are based on prudential considerations.[34]

3.3 Japan

3.3.1 The EUJEPA

The EU-Japan Economic Partnership Agreement (EUJEPA) entered into force on 1 February 2019.[35] The chapters of the agreement are organised slightly differently from CETA – instead of having separate chapters for: investment (Chapter 8 in CETA), cross-border trade in services (Chapter 9 in CETA), entry

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[29] See Annex 13-A of the CETA, Schedule of Canada and Schedule of the EU.
[30] Canada is a signatory to the optional WTO Government Procurement Agreement (GPA), but this only applies to federal purchases.
[31] Insurance Companies Act (S.C. 1991, c. 47, Sections 573,579),
[32] Cession refers to the portions of the obligations in an insurance company's policy portfolio that are transferred to a reinsurer (https://www.investopedia.com/terms/c/cession.asp).
[33] The OSFI is an independent federal government agency that regulates and supervises banks, insurance companies, trust and loan companies, and private pension plans in Canada (see http://www.osfi-bsif.gc.ca/Eng/osfi-bsif/Pages/default.aspx).
[34] See also http://www.osfi-bsif.gc.ca/Eng/fi-if/rai-eri/sp-ps/Pages/RSAQA.aspx
[35] See http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157228.pdf#page=185 for the full text of the agreement.

and temporary stay of natural persons (Chapter 10 in CETA),[36] domestic regulation (Chapter 12 in CETA), electronic commerce (Chapter 16 in CETA), financial services (Chapter 13 in CETA), international maritime transport services (Chapter 14 in CETA), telecommunications services (Chapter 15 in CETA), EUJEPA Chapter 8 'Trade in services, investment liberalisation and electronic commerce' covers all the above, as well as postal and courier services.

EUJEPA Chapter 8 has six sections: general provisions (A), investment liberalisation (B), cross-border trade in services (C), entry and temporary stay of natural persons (D), regulatory framework (E) and electronic commerce (F). Section E has six sub-sections: (1) domestic regulation; (2) general provisions; (3) postal and courier services; (4) telecommunications; (5) financial services; and (6) international maritime transport.

Similarly Chapter 9 in the EUJEPA covers a range of matters addressed in separate chapters in CETA. These are capital movements (Chapter 30 on final provisions in CETA), payments and transfers (Chapter 30 in CETA) and temporary safeguard measures (Chapter 28 on Exceptions in CETA).

Due to the sensitive nature of some services sectors, they are excluded from the scope of the EUJEPA. In particular, commitments listed in the investment liberalisation section do not apply to maritime cabotage services[37] and air services (other than four auxiliary air services) (Article 8.6). For commitments listed in the cross-border trade in services section, the aforementioned areas along with audio-visual services, government procurement, and subsidies are excluded (Article 8.14).

Like CETA (and following GATS), the text on cross-border trade in services contains articles on national treatment, market access, and MFN treatment principles. Also, a negative list approach is used in the EUJEPA (as in CETA).

Chapter 8.E(5) on financial services contains articles on definitions, new financial services, payment and clearing systems, self-regulatory organisations, transfers and processing of information, transparency, and a prudential carve-out (as in CETA).

The European Commission Directorate-General for Trade's report on the EUJEPA (2018) notes that many of the provisions in the financial services sub-section are based on rules that have been developed in the framework of the WTO. They are necessary to address specificities of the financial services sector, as well as to complement the market access and national treatment disciplines.

The text on financial services also includes specific rules on the supply of insurance services by postal insurance entities (not in CETA) (Article 8.66). Article 8.67, Annex 8-A, calls for deeper regulatory cooperation in financial services, and establishes a Joint EU-Japan financial regulatory forum for this purpose.

The rest of the chapters in the EUJEPA, such as those covering competition policy and intellectual property (IP), are organised in a similar manner to CETA. For example, on IP, the commitments made under Chapter 14 in the EUJEPA are for a higher level of 'protection' than in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. It also includes a high level of mutual protection of GIs – the EU recognises 56 Japanese products, and Japan recognises 74 EU food GI names.

Notably, on mutual recognition, Japan already has a Mutual Recognition Agreement (MRA) in place with the European Community, which entered into force on 1 January 2002. However, the EC-Japan

[36] The text for this section covers the four traditional categories (intra-corporate transferees, business visitors for investment purposes, contractual service suppliers, and independent professionals), and two new categories of short-term business visitors and investors that were committed to in CETA. The EUJEPA also includes a commitment to allow spouses and families to accompany service professionals on their temporary postings (as in CETA).

[37] Maritime cabotage refers to sea transport between two ports in the same country (https://stats.oecd.org/glossary/detail.asp?ID=4278). Countries define maritime cabotage differently. They are generally excluded from trade liberalisation commitments due to the home country wanting national capacity in shipping to meet domestic policy objectives (UNCTAD, 2017: 6).

MRA only allows for conformity assessments of technical specifications for four product areas[38] and does not cover services. In common with other differences to CETA, there is no specific chapter on the mutual recognition of professional qualifications in the EUJEPA. Instead, mutual recognition commitments (in particular for professional services) are listed in Article 8.35. This Article sets out a two-tier track for mutual recognition of professional qualifications. In the first stage, relevant professional bodies from both sides give joint recommendations for a MRA. In the second stage, the EU and Japan assess the recommendations against set criteria, negotiate a final text, and then formally adopt a MRA. This approach is broadly similar to that in CETA.[39] While this provides a pathway towards greater mutual recognition, the pace of change will not necessarily be fast.

3.3.2 Japan's STRI

The STRI across Japan's service sectors from 2014-2017 generally decreased or stayed the same. Only the legal, broadcasting, and telecommunication sectors showed an increase in their STRIs (becoming more restrictive). Between 2017 and 2018, the only changes in the STRIs were for telecommunications, which increased from 0.20 to 0.25. Figure 3.2 depicts the STRIs for Japan by sector and type of regulatory impediment, using 2018 data.

3.3.3 Japan's composite STRI: Identifying the most restrictive sectors

From Figure 3.2, the most striking feature is the very high index for legal services (0.538). The STRI for air transport is also high and is one of two areas partially excluded from the GATS.

Again, noting that the interpretation of STRIs is largely ordinal, we compare Japan's STRI to the OECD averages (black triangles in Figure 3.2). We find that Japan is less restrictive than the average in 17 out of the 22 sectors. This seems to imply that Japan is a relatively open country in terms of services, when compared to the OECD countries (and to Canada). Turning to the remaining five sectors where Japan scores above or equal to the OECD average, Japan is scored as only marginally more restrictive than the OECD average in the logistics freight forwarding (+0.013), courier (+0.006) and commercial banking (+0.001) sectors. However Japan's STRI significantly exceeds the OECD average, in the legal (+0.175) and telecommunications (+0.067) sectors (Figure 3.2).

Clearly it is informative to look in more depth at the legal services for Japan.

When it comes to telecommunications, Canada has the highest STRI (0.319), followed by Japan (0.253), and then Australia (0.173). For the courier services sector, Canada and Australia have similar STRIs, both being higher than in Japan. Because courier services have the highest STRI in Australia – the only sector with an above-average level of restrictiveness – it is interesting to understand more about the impediments underlying trade in this sector. Therefore, we will delve into the composition of the STRI for the legal and courier services sectors, identifying some impediments to services trade below.

3.3.4 Disaggregation by type of regulatory impediment

The regulations in the STRI database are disaggregated by types of interventions, as depicted in Figure 3.2. Eight of the 22 sectors were identified as having restrictions on foreign entry (blue part of bar) as the major contribution to their composite STRIs. The eight sectors are: accounting (44.8%); legal (54.2%); broadcasting (77.3%); telecommunications (41.2%); air transport (46.3%); maritime transport (51.9%); road freight (33.8%); and distribution services (42.4%).

Four sectors – were identified as having restrictions to movement of people (red) as the major contribution to their composite STRIs. They are architecture (52.0%), engineering (39.7%), motion pictures (34.1%), and construction services (35.1%). No sectors were found to have other discriminatory measures (green) as the main contributing Restrictiveness to the overall STRIs.

[38] Telecommunications terminal and radio equipment, electrical products, laboratory practices for chemicals and manufacturing practices for medical products (see https://www.mofa.go.jp/region/europe/eu/agreement.html).

[39] See https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/11.aspx?lang=eng, in particular, Article 11.3.

Another four sectors – rail freight transport (36.9%), courier (46.9%), commercial banking (42.8%), and insurance services (40.3%) – were identified as having barriers to competition (purple) as the major contribution to their composite STRIs.

Finally, for six sectors regulatory transparency (orange) is the major contribution to the composite STRI score. They are the four logistics sectors – logistics cargo handling (41.9%); logistics storage and warehouse (54.4%), logistics freight forwarding (49.7%) and logistics customs brokerage (61.9%) – as well as sound recording (38.7%) and computer services (34.4%) sectors.

Legal services

Legal services stand out as the service sector where Japan is scored as most closed to foreign competition, with a relative high index value of 0.538 on the STRI (Figure 3.2). It has many more restrictive practices than even the politically sensitive air transport sector.

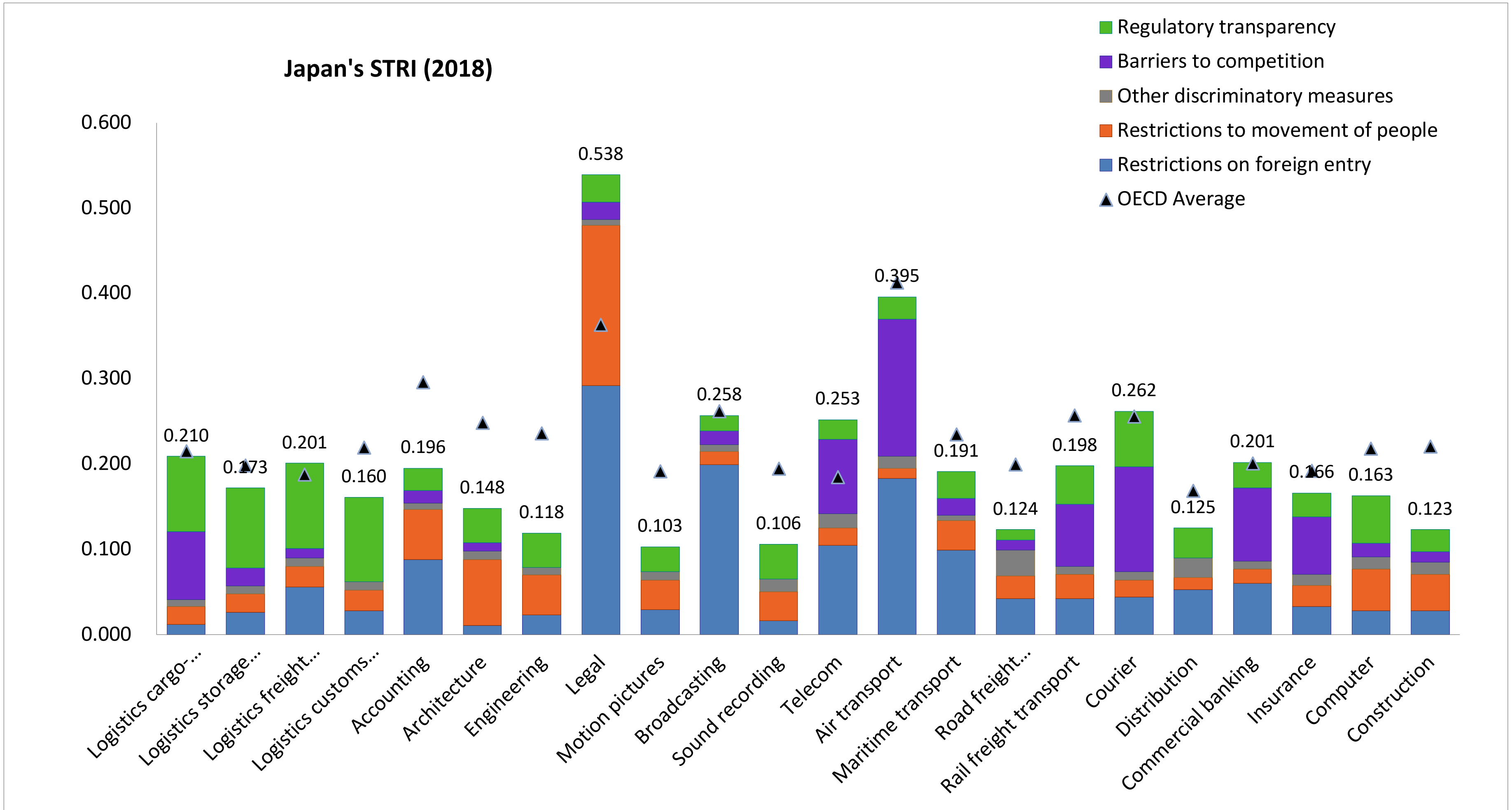
The legal services sector covers the practice of both domestic and international law. According to the OECD database, there are 27 measures identified as restrictive for foreign entry and 13 for movement of people. Four measures on regulatory transparency (bureaucracy in setting up a company), three for barriers to competition (restrictions on advertising, no minimum capital requirements) and one other discriminatory measure (procurement) were each scored one. The overall STRI of 0.538 is mainly driven by limits to foreign entry. For domestic law, the only legal form allowed is unlimited liability entities (all members and owners must be locally licenced lawyers). For international law, only sole proprietorships and unlimited liability partnerships are permitted.

On restrictions to the movement of people, these mainly relate to two labour market tests, a domicile requirement for licence to practice (domestic and international law)[40] and other licensing requirements, such as requiring registered foreign lawyers to take examinations to obtain a local licence before they can practice domestic law. In addition, non-locally licenced lawyers must principally stay in Japan more than 180 days per year to operate legal services.

Two of these restrictions again raise questions about the balance between regulations when viewed from a trade liberalisation perspective and when viewed from the perspective of national social and political goals. For both medical and legal services advertising is a problematic issue, raising many complex questions about national balancing of consumer and producer interests. These services have high levels of information asymmetry between consumers and producers, yet quality is an essential attribute. So a simple ban on advertising of legal services is not necessarily a barrier to competition which should be a priority in terms of trade negotiations. Competence in domestic law as a requirement for practicing as a lawyer is common to all high-income countries, so it is surprising to see it listed as a potential trade impediment. The issue is not about the demonstration of competence, but about whether the means of proving such competence unnecessarily discriminate against non-nationals.

[40] A domestic address is required to register with the Japan Federation of Bar Association.

Figure 3.2 STRIs by services sector and type of trade impediment, Japan, 2018



Source: OECD STRI database, own calculations.

Courier services

The STRI for courier services (0.262) is composed of 11 barriers to competition, six restrictions on regulatory transparency, three measures each for restrictions on foreign entry and restrictions to movement of people, and one other discriminatory measure (procurement). Each of these measures was scored one. Barriers to competition have the most substantial impact on the STRI value, followed by restrictions on regulatory transparency. The former mainly relate to the Japanese government being required to own more than one-third of shares of Japan Post, minimum capital requirements for consigned freight forwarding operators, preferential tax treatment (fixed property tax, city planning tax, and business office tax), parking regulation exemptions, and quality or performance standards requirements for courier services outside universal services.[41] Regulatory transparency restrictions mainly relate to the cost and bureaucracy of registering a company and obtaining a licence (such as to operate as a consigned freight forwarding operator). Foreign entry restrictions relate to the requirement for the Japanese government to maintain at least one third of the total number of shares in Japan Post, local presence requirements, and cross-border data flows. restrictions to movement of people are due to labour market tests on intra-corporate transferees and contractual service suppliers, and not permitting unskilled workers to work in Japan.

Some elements of these identified restrictions show the value of the painstaking approach used by the OECD in compiling the STRI database. As soon as it is mentioned, it is clear that parking Restrictiveness exemptions can be a significant competitive advantage for courier firms. But it is not an issue that readily springs to mind when considering trade negotiations.

Comparing restrictions in courier services: Canada, Japan and Australia

Using the OECD STRI database, we compared the measures that were scored as restrictive (i.e., scored one) in courier services across Canada, Japan, and Australia. Table 3.2 shows the specific regulations in courier services that are common to two or more of these countries.

We first note that the STRIs for Canada and Australia are higher than Japan mainly because of the existence of a postal monopoly in some market segments in these two countries. The STRI methodology deals with monopolies by giving them a score of 1 on all measures. This is because a market segment under a monopoly is completely closed to foreign suppliers. In the case of courier services in Canada, 23% of the market is covered by the postal monopoly so the score is 1 multiplied by the weight of the measure times 0.23 plus the actual score of the measure times the weight of the measure times (1 - 0.23). Intuitively, the STRI index value starts at 0.23 and then adds the restrictions that apply to the not monopolised part of the market.[42] Similarly, the STRI for Australian courier services also starts with a score for the Australia Post monopoly.

In most countries there is domestic sensitivity about ensuring an adequate mail service to all residents. In Australia, the government uses Australia Post to meet its social objective of providing all residents in Australia with reasonable access to a letter service at a uniform rate of postage. This is achieved through legislation: under the Australian Postal Corporation Act 1989, letters up to 250 grams are reserved to Australia Post. This restricts competition in the letter service, Australia Post's core business. Other areas are, however, open to competition, especially express delivery services and parcel post. These are the areas most relevant to emerging services such as electronic retailing. From the viewpoint of services trade negotiations it is these latter areas that are of most interest, and it would be useful to have an alternate version for the courier services STRI that excludes standard letter delivery.

The other common foreign entry Restrictiveness relates to foreign equity restrictions, residency requirements, and FDI screening regimes. Finally, labour market tests and general bureaucracy in obtaining a business visas also seem to be common features that contribute to the STRI index for courier services for at least two out of the three countries.

[41] See 1.3 in the Questionnaire for the definition/scope of universal postal services in Japan (http://www.upu.int/fileadmin/documentsFiles/activities/regulatoryIssues/jpnEn.pdf).
[42] See https://doi.org/10.1787/5jxt4nd187r6-en for more information on the scoring methodology for this sector.

Table 3.2 Courier services restrictions in 2+ countries

Indicator	Value given in answer to indicator question			# of countries with high score (=1)
	AU	CA	JP	
Limits to the proportion of shares that can be acquired by foreign investors in publicly-controlled firms	No	Yes	Yes	2
Board of directors: at least one must be resident	Yes	Yes	No	2
Screening exists without exclusion of economic interests	Yes	No	No	2*
Cross-border data flows: cross-border transfer of personal data is possible to countries with substantially similar privacy protection laws	Yes	No	Yes	2
Labour market tests: intra-corporate transferees	Yes	No	Yes	2
Labour market tests: contractual services suppliers	Yes	Yes	Yes	3
Labour market tests: independent services suppliers	Yes	Yes	No	2
Public procurement: Procurement regulation explicitly prohibits discrimination of foreign suppliers	Yes	No	No	2
National, state or provincial government control at least one major firm in the sector	Yes	Yes	Yes	3
The government can overrule the decision of the regulator	No	Yes	Yes	2
The designated postal operator obtains preferential tax or subsidy treatment	Yes	No	Yes	2
The designated postal operator obtains exemptions from transport bans	Yes	No	Yes	2
Access to the postal network is granted on a non-discriminatory basis	No	Yes	No	3**
Range of visa processing time (days)	15	32	1	2
Number of documents needed to obtain a business visa	13	10	7	2
Time taken for customs clearance (days)	1.73	0.13	1.42	2
A *de minimis* regime is in place: Import duties (US$)[43]	190.00	15.30	91.50	2

Source: constructed from data from OECD STRI policy simulator, 2018, https://sim.oecd.org/.

Notes: * The Australian government reviews foreign investment proposals against the "national interest" on a case-by-case basis and the relevant Canadian Act requires foreign investments to bring net benefits. For foreign investments that could be injurious to national security, there may be a national security review.

** Canada scored one for this measure because despite the answer yes: i.e., access is granted to competitors (such as mail consolidators wishing to engage in outbound international mail), Canada Post, being the national postal service provider, still has an exclusive privilege on mail, with the exception of outbound international mail.

[43] With regard to the scores for a *de minimis* regime, the score is one if there is no such regime in place or *de minimis* thresholds are less than US$ 100.

3.5 Treaty outcomes and STRI insights

From the analysis of Canada and Japan's STRIs, we find that each country is less restrictive than the OECD's average in 14 out of the 22 sectors. For Canada, there is a higher level of restrictiveness in the telecommunications, distribution, courier, and broadcasting services. For Japan there is a higher level of restrictiveness in the legal and telecommunications sectors. Australia also is less restrictive than the OECD's average – Figure 2.3 shows only courier services as more restrictive.

The CETA and EUJEPA texts explicitly cover telecommunications services, and provide for mutual recognition for professional services. This seems to indicate that the respective treaties are at least partly targeted at liberalising services sectors in which there is currently a relatively high level of restrictiveness. However, only the EUJEPA has a subsection dedicated to postal and courier services. This seems to run contrary to our expectations, given that our analysis of Canada's STRI indicates a higher than average level of restrictiveness in the courier services sector in Canada. Perhaps our analysis here is inhibited by the inclusion of the standard letter service elements.

The financial services sector was explicitly covered in both the CETA and EUJEPA although it is not found to be very restrictive in terms of STRI scores in either country. This is likely because the financial services sector is a significant sector in any developed country's economy and its efficient operation is of strategic importance to the allocation of capital to its most productive uses. For the EU, the strategic importance of the sector is reflected by the fact that it is collectively the world's largest exporter of financial services (European Commission Directorate-General for Internal Policies, 2014). Restrictions on trade in financial services are discussed further in Chapter 5.

Appendix 3.1 Service sector definitions in CETA and in trade statistics

A. CETA

1. Insurance and insurance-related services
   (a) Direct insurance (including co-insurance):
      i. Life.
      ii. Non-life.
   (b) Reinsurance and retrocession.
   (c) Insurance intermediation, such as brokerage and agency.
   (d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

2. Banking and other financial services (excluding insurance)
   (a) Acceptance of deposits and other repayable funds from the public.
   (b) Lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions.
   (c) Financial leasing.
   (d) All payment and money transmission services, including credit, charge and debit cards, travelers' cheques and banking drafts.
   (e) Guarantees and commitments.
   (f) Trading for own account or for customers' account, whether on an exchange, or an OTC market, the following:
      (i) money market instruments (including cheques, bills, or deposit certificates);
      (ii) foreign exchange;
      (iii) derivative products including futures and options;
      (iv) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
      (v) transferable securities;
      (vi) other negotiable instruments and financial assets including bullion.
   (g) Participation in issues of all kinds of securities, including underwriting and placement as agent.
   (h) Money broking.
   (i) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services.
   (j) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments.
   (k) Provision and transfer of financial information, and financial data processing and related software.
   (l) Advisory, intermediation and other auxiliary financial services on all activities listed in sub-subparagraphs 2(a) to 2(k), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy.

B. Definition of Insurance and pension services in trade statistics[44]

Pension services (item 6.4.1 in the EBOPS2010 classification) cover the services provided by funds established to provide income on retirement and benefits for death or disability, for specific groups of employees. These funds may be organised by the employers, by the government or by insurance corporations on behalf of the employees. In some cases, special units may be established to hold and manage the assets to be used to meet the obligations of the pension fund (MSITS 2010).

[44] For other definitions of financial services used in trade statistics, please refer to https://unstats.un.org/unsd/tradeserv/tfsits/msits2010/ebops2cpc_detailed.htm#bops6.

Chapter 4 Views from the service industries

4.1 Introduction

This chapter looks at the available evidence provided by service industries as to impediments to services trade, and priorities for services trade negotiations. This information is considered both from an Australian perspective (Section 4.2) and from a European perspective (Section 4.3). We conclude by assessing where these perspectives suggest similar concerns from both sides and those where the concerns differ (Section 4.4)

4.2 Perspectives from the Australian services industries

The peak body for service industries in Australia is the Australian Services Roundtable (ASR). The ASR has recently made a major submission to DFAT on issues it considers a priority for services exports (ASR, 2019). The recent OECD report on Australian services (OECD, 2018a) also summarises Australian business perceptions about barriers to services exports. These two sources are the basis for the discussion in this section.

The OECD report on Australia (2018) presents a concise summary of a survey of Australian business perceptions on the main obstacles faced by Australian services providers in foreign markets (OECD, 2018a: 75-76). Regulatory heterogeneity and the difficulty in recruiting qualified personnel are reported as important or very important barriers for 80% of respondent firms. The ASR considered these findings in its 2019 report. It considers that regulatory heterogeneity needs action both domestically (in instances where Australia is not judged to be at a "best practice" benchmark) and in trading partners (through regulatory cooperation, mutual recognition and equivalence or harmonisation of regulatory regimes). Difficulties in recruiting qualified personnel raise purely domestic issues. Recommendations to deal with both concerns are included in a proposed early action plan.

The ASR report is extremely detailed in identifying issues impacting on Australian services trade. Eight broad areas of general barriers to services trade are identified – 'horizontal' barriers that impact across all service industries. These include four types of barriers: to the movement of people; to data flows;[45] to capital movement and investment; and behind the border (BTB) domestic regulatory barriers. The other four horizontal issues identified are diverse, covering intellectual property and innovation support,[46] trade negotiations, services trade data and export promotion and business support.

In terms of barriers to the movement of people – a type of barrier that aligns closely with aspects of the STRI – the identified issues relate to visas (four issues) and the recognition of qualifications (three issues). In terms of barriers to capital movements and investment, the ASR identifies four issues requiring international action: repatriation of offshore profits to Australia, foreign equity limits, local partnership requirements and mandatory commercial presence requirements. The ASR also recommends that Australia take stronger action in calling for a WTO agreement on investment facilitation.

In terms of BTB domestic regulatory barriers that have horizontal impact, the ASR identifies one purely domestic issue – the need to improve processes for business name registration. Other issues, which require joint action with trading partners, include the cost of doing export business, regulatory provisions in the GATS schedules, transparency, predictability, the scope of regulatory discretion, consultation with business and the need for more one-stop shops. As regards issues which could be important in EU-Australia trade negotiations, increased recognition of Australian/international standards, qualifications and quality assessment

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[45] Trade in digital services is beyond the scope of this paper. However, digital services are pervasive and important. The OECD has recently introduced a digital STRI, a new tool that identifies, catalogues, and quantifies barriers affecting digital services (OECD 2018b).

[46] These issues are also outside the scope of this paper.

processes and harmonisation or equivalence for Australian regulatory approaches are seen as priorities.

The ASR identifies six trade negotiation issues that require greater domestic action. All involve reviewing processes for enhancing services trade. Their scope covers better market access, national treatment, prioritisation of service sectors with real export potential, diplomacy mechanisms for promoting regulatory reform and border liberalisation and international disciplines on services trade subsidies.

Good policy requires good data. The ASR identifies several areas where the availability of data on services exports needs to be improved to support the development of good services export policy. These mainly call for greater disaggregation of the data available – which in turn means, if the data are survey-based, the need for larger samples. One interesting ask is better trade data by mode of supply. We have already noted (Section 2.2.3) that, for the commercial presence mode, one needs to switch from trade flow data to foreign investment data. The ASR also calls for a regular Foreign Affiliates Trade Statistics (FATS) data collection for Australia. We note in Chapter 5 (financial services) the limitations imposed on our analysis by absence of FATS data for Australia. Looking beyond trade, the ASR also calls for improved ABS data on services innovation and services productivity.

In terms of enhancing export promotion and business support, the ASR notes the need to simplify the steps required to set up an online export business, suggesting a single government website showing how to do this. The ASR also suggests improved co-ordination of export promotion activities among relevant agencies and the need for greater support, especially for SMEs, to attend major services trade fairs.

Turning to sector-specific issues, the ASR report covers nine services sectors: information and communication technology (ICT) services; professional and technical services; financial services; logistics; medical tourism; tourism; higher education (including vocational education and R&D services); transport; and health services.

For ICT services the ASR identifies seven issues. These are: a national awards programs for ICT providers; ensuring all ICT firms address cyber security; building a cybersecurity skills base in Australia; providing greater (financial) support for ICT and cyber trade events; hosting events to showcase Australian cyber capabilities; ensuring that all end-to-end business can be done online with full e-authentication for both the domestic and international market export; and promoting Australia as a lead provider of cyber security services in the Asia Pacific region and beyond.

As regards professional and technical services the ASR sees the need for greater inter-State co-operation to achieve better mutual recognition of Australian qualifications, and a genuinely national system for recognising foreign qualifications. The ASR also points to the need for improved recognition of Australian qualifications overseas as well as best practice processes for licensing and registration. Recognition of qualifications is identified in the STRI as a key potential barrier and it is well known as a critical issue for the export of business and professional services. The ASR also makes a number of recommendations regarding public infrastructure processes in Australia – implementing best practice selection processes; reviewing development approval, regional planning and zoning processes. One educational services issue identified is support for professional and technical services providers in partnering with technical institutes and universities in countries where they have a commercial presence. A highly specific issue identified is improved market access for technical mining and field services. Finally the ASR would like to see more facilitation of cross-sectoral cooperation and joint export promotion including the provision of bundles of related services.

For financial services, there are three sub-sectors: funds management, banking and insurance.

For funds management, there are four issues requiring domestic action and five that require international action. On the domestic front, the ASR recommends: reviewing prudential and licensing capital requirements (ASIC, 2017) from the perspective of their impact on the ability of Australian providers to offer competitively priced services offshore; removing extra-territorial application of Australian capital requirements for funds management business run offshore; streamlining the tax regime for foreign investors in Australian investment funds; and reviewing the rate of corporate taxation or retaining the offshore banking unit tax regime to provide a level playing field for taxation of revenue generated from offshore activities in lower taxed jurisdictions.[47]

In terms of issues that are relevant to trade negotiations on funds management the ASR asks for improved consultation processes with business to ensure that trade agreements work at a practical level. Related to this, the ASR asks for regulatory cooperation arrangements to be established to enable business to take advantage of market access provisions for cross-border supply of portfolio administration and insurance services in the existing trade agreements with Japan, Korea and China. Similarly, the ASR notes the need to follow-up negotiation of mutual recognition agreements between Australian tax and regulatory authorities and their North East Asian counterparts, thereby allowing a wider range of business-to-business activities. Negotiation of an international privacy regime, applied consistently across offshore markets, would significantly facilitate financial services exports. Finally the ASR suggests prioritising financial services trade negotiations with markets with large savings pools, such as the UK, the USA and Canada.

For banking, domestic action is needed on three issues: a loss absorbing and re-capitalisation framework to reduce implicit government guarantees; an independent assessment of mergers and acquisitions among the Big Four banks, considering competition, stability and efficiency in the banking system; and increased scope for foreign offshore banks to engage with domestic clients.

In terms of insurance services, the ASR asks for a maximum duration for APRA consideration of insurance licence applications, a process for recognising foreign actuarial qualifications and an increased number of countries where established branches of foreign life insurance providers are authorised to offer life insurance services in Australia.

High quality logistics services are fundamental to merchandise trade as well as trade in agricultural products and minerals. The ASR points to a need to reduce licence fees for customs brokerage and bonded warehouses so they reflect only the costs of the licensing procedure; transparent rules for recognition of customs brokerage qualifications; and streamlined licence and registration requirements for cargo-handling providers.

Like education, medical services are not covered by the STRI. The ASR report considers issues related to both medical tourism and health services. In respect of medical tourism, the ASR suggests a number of actions that could be considered to promote inbound medical tourism. In terms of health services the ASR suggests several reforms focused on promoting the private health care sector and using price signals to promote quality health care outcomes. These recommendations would be highly contentious domestically and, as medical services are not covered by the STRI, are considered beyond the scope of the current Project.

The recommendations in respect of the tourism industry cover improved government-industry co-ordination, streamlined visa processing, enhanced workforce skills and improved infrastructure.

Although education services are not currently within the scope of the OECD's STRI, this is a major services export sector. As a consequence we have devoted a separate chapter to educational services (Chapter 6). The OECD is considering extending the STRI to cover education services and

[47] This recommendation, of course, raises broader social issues and consideration would need to be given as to whether this would encourage the proliferation on cross-national competition in possibly moving to tax levels that do not adequately support important social and economic infrastructure.

the Productivity Commission has undertaken some useful work exploring development on an education services STRI. The ASR raises 20 issues regarding the export of education services, one of which is a recommendation to extend the OECD's STRI to education services.

The recommendations regarding domestic action cover visa issues, review of policies which impact differentially on foreign compared to domestic students (concessional transport fares) and taxation and regulatory issues.

In respect of trade negotiations on education services, the ASR focuses on cross-sectoral cooperation and joint export promotion; a national dialogue about the business purposes and social mission of the international education sector; and reducing barriers to offshore service provision (barriers to establishment offshore of wholly-owned foreign campuses, mandatory partnership requirements with local education providers, the temporary movement of Australian academic and teaching staff, wider recognition of Australian qualifications delivered offshore, mutual recognition of quality control and assessment systems, negotiation of an international privacy regime and national treatment access to offshore subsidies). Beyond this the ASR recommends broader trade negotiations on education services in terms of geographic spread and modes of delivery as well as greater alignment of regulations and improved assessment of equivalence. A final recommendation is for the development of 'education services knowledge platforms'.

With respect to transport services the issues raised in the ASR report relate to air transport services, which we have noted is politically sensitive, hence its exclusion from the GATS.

After identifying these 125 priority issues, the ASR proposes an early action plan with nine recommendations. Four of these directly address policy or regulatory issues:

1. an independent national review of Australia's skilled visa regime in association with an independent review of recognition processes for foreign qualifications;
2. more direct positioning of Australia as a high profile lead advocate for WTO/plurilateral negotiation on investment facilitation;
3. reform of the Asia-Pacific Economic Cooperation (APEC) Committee, and creation of a standing Regulatory Cooperation Committee to reduce regulatory heterogeneity;
4. a public/private Productivity Commission / Australian Competition and Consumer Commission taskforce to benchmark "best regulatory practice" principles for trade in digital services.

The ASR's five other recommendations are complementary measures aimed at improving the prospects for services export success. Apart from the call for a formal national audit of all services trade restrictions to identify priority reforms, the others are rather motherhood. They cover a re-confirmed government commitment to services export action, ongoing business community input to trade policy, engaging new change agents to lift the services sector export performance and promoting Australian services innovation and export capability.

In sum, the ASR report recommends that Australia should "bolster its international services trade and investment negotiating position, by making unilateral reforms to reduce its rankings in the OECD STRI." The ASR notes a reluctance to engage with reform on this front, especially with regards to barriers to competition and the movement of people.

4.3 Issues from an EU perspective

The European Services Forum's (ESF) 2018 report on European services industries priorities for the EU-Australia FTA briefly reviews Australia's important services – travel, transport, financial services, information media and telecommunications services. Then, it proceeds to identify horizontal issues affecting trade for all services sectors. The horizontal issues identified which are most relevant to this study are how services commitments are scheduled, the movement of natural persons, FDI regimes, public procurement, rules on state-owned enterprises, digital services and telecommunications networks, and domestic regulation.

The report also covers sector-specific issues for professional services, computer and related services, research and development, other business services, postal and courier services, telecommunications, construction and engineering services, distribution, environmental services, financial services, tourism and travel related services, transport services and energy-related services.

On horizontal issues, the ESF considers CETA as the minimum benchmark for future services and investment FTA negotiations. The ESF also assumes that Australia's Trans Pacific Partnership Agreement (TPPA)[48] and/or GATS commitments form the basis for its services and investment negotiations. The ESF has a strong preference for the negative list approach in developing services schedules as this makes discrepancies between agreements easier to identify. As the ESF says:

> "Such an approach ensures a good readability and comparability of the various FTAs commitments. It obliges the negotiators to review together all service sectors and produce greater liberalisation results and greater clarity for businesses, since it is much easier for companies to assess whether their sector is covered or not and what are the limitations." (ESF 2018: 7)

The ESF also recommends including standstill and ratchet clauses (see Box 4.1).

Box 4.1 Standstill and ratchet clauses[49]

Standstill clause: A standstill clause in a trade agreement is a provision through which both Parties commit to keep the market at least as open as it was as at the time when the agreement was made. For example, if a Party, say Australia, makes a commitment in a bilateral agreement to allow a higher foreign investment screening threshold of A$1.2 billion and in the future decides unilaterally to allow A$1.7 billion, Australia can re-introduce the original level of A$1.2 billion whenever it wants but cannot go below its initial commitment level of A$1.2 billion.

Ratchet clause: A ratchet clause in a trade agreement is a provision through which both Parties commit to lock in any future unilateral decisions made. Using the same example above, Australia would not then be able to roll-back (vis-à-vis its trade partner) its unilateral decision to allow for a more liberal screening threshold of A$1.7 billion.

During the Workshop in July 2019, the possibility of standstill and ratchet clauses flowing through a series of inter-related bilateral treaties in an unintended manner was raised. Where such clauses are used, care needs to be taken to ensure that unintended negative consequences flowing from ratchet clauses do not eventuate.

The ESF report indicates that Australia has good entry conditions to the EU for intra-corporate transferees.[50] However, the report questions the Australian government's removal of the Temporary Work (Skilled) visa (subclass 457 visa) as European firms used to rely primarily on the 457 visa to send intra-corporate transferees to EU subsidiaries or branches in Australia. The 457

[48] With the withdrawal of the USA from the TPPA it entered into force in slightly modified form as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). As the ESF report was written at the time the TPPA was under active consideration we retain that nomenclature here.
[49] See http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154427.pdf for more information (p.4).
[50] According to EU Directive 2014/66 of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra- corporate transfer (the ICT Directive).

visa was replaced with the Temporary Skill Shortage (TSS) visa in March 2018.[51] The ESF urges EU negotiators to negotiate for similar entry conditions as in the EU's ICT Directive. For intra-corporate transferees, the report noted that Australia has committed to grant the right of temporary entry, movement and work to the accompanying spouse or dependents of an intra-corporate transferees moving to Australia in the TPPA. The ESF requests the same commitments as found in CETA.

On FDI regimes, the ESF calls for the removal of any remaining equity caps on foreign ownership, and to limit the screening imposed by the Australian Foreign Investment and Review Board (FIRB) to a minimum number of sectors. The screening criteria should also be transparent. Australia became a member of the WTO Agreement on Government Procurement (GPA) in May 2019.[52] The ESF calls for commitments above the level of the WTO GPA.

On digital services, the ESF recommends the removal of local presence requirements for cross-border data flows, with only a few mutually agreed and well-justified exceptions. On domestic regulation, the ESF recommends a strong chapter covering regulatory coherence and regulatory cooperation.

On sector-specific issues, for professional services, the ESF welcomes the new opening on "legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and coordination/mediation services" in Australia's TPPA commitments and requests the same for the EU-Australia FTA. The ESF also requests that landscape architectural services are opened for the EU-Australia FTA as in the TPPA.

For postal and courier services, ESF would like to see Australia opening up market access in the postal sector with full, clear commitments for express delivery services. In the TPPA, Australia excludes "express delivery services reserved for exclusive supply by Australia Post as set out in the Australian Postal Corporation Act 1989 and its subordinate legislation and regulations". Under the Australian Postal Corporation Act 1989,[53] the letters service (up to 250 grams) is reserved to Australia Post. This includes normal and express delivery. There is a considerable degree of competition in the Australian market for express deliveries (other than the reserved letter service) and for parcel post.

For telecommunications services, restrictions on foreign ownership of Telstra – the dominant provider – have been relaxed with the allowable aggregate foreign equity being raised from 11.7% to 35%. Individual or associated group foreign investment is restricted to no greater than 5% of shares. The ESF calls for the removal of both restrictions in the EU-Australia FTA.

For financial services, a trade policy review of Australia by the WTO[54] notes that the screening process for proposed foreign investments in Australian financial institutions has been lifted for several Regional Trade Agreement (RTA) partners (Chile, Korea, New Zealand, and the USA).[55] The ESF favours the same exception for the EU. The ESF also requests exceptions with regards to the prohibition of provision of life insurance through branches since this is granted to some

[51] The TSS visa programme has a Short-Term stream allowing stays of up to two years and a Medium-Term stream for stays of up to four years. It has a number of safeguards to prioritise Australian workers.

[52] https://dfat.gov.au/trade/organisations/wto/Pages/wto-agreement-on-government-procurement.aspx

[53] Sections 29 and 30, https://www.legislation.gov.au/Details/C2012C00142.

[54] See https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=133397,132901,132882,132032,130975,130635,130634,96007,101163,96671&CurrentCatalogueIdIndex=0&FullTextHash=.

[55] Even though screening is not applied to investments in financial sector firms incorporated in Chile, Republic of Korea, New Zealand, and the US, these firms are still subject to a parallel approval process under separate legislation. The Financial Sector (Shareholdings) Act (FSSA) 1998 operates in parallel with the (usual) FDI screening process and requires that any investor, foreign or domestic, wishing to acquire an interest of 15% or more in a financial institution notify and seek approval from the Treasurer.

of Australia's RTA partners (NZ, USA, and Korea). Noting that retail banking in Australia is very uncompetitive, the ESF calls for improvement in this area.

For maritime transport services, the ESF notes that market access restrictions remain strong in Australia, with a total or partial ban on foreign investors to operate registered ships in Australia.[56] Maritime cabotage (coastal shipping) and offshore transport services are excluded in Annex II of Australia's TPPA Schedule. The ESF recommends that improvements should be negotiated in the EU-Australia FTA. Various aspects of shipping and related services have been hard to reform in Australia, despite the major breakthrough in stevedoring (cargo handling) services both in the early 1990s period of micro-economic reform and between 1996 and 1998. This pressure from the EU to reform domestic maritime services could provide useful leverage in negotiating further improvements to Australian transport services.

Lastly, the ESF would like the EU to seek commitments from Australia on energy related services, as in CETA.

The ESF has also produced a useful paper reminding us of the need to find a path back to multilateral services trade regulations (ESF, 2019). This short but useful document reminds us that GATS Article VI called for regulatory developments to ensure that licensing and technical requirements and procedures for recognizing qualifications did not create trade barriers. Guidelines for the recognition of accountancy qualifications were adopted by the WTO in December 1998,[57] but as yet there has been no progress in other service areas.

4.4 Comparing EU and Australian industry perspectives

Both the ESF and the ASR point to the ideal of returning to a multilateral negotiating environment. The G20 have established a think tank (T20) to drive policy innovation to address important global challenges. The T20's recent Policy Brief on Services also points to the importance of retaining a multilateral perspective (Braga et al., 2019). Clearly it is important to ensure that arrangements in preferential trade agreements are as aligned to this goal as possible. The ESF also identifies the practical importance of ensuring a high starting point for services negotiations in the proposed EU-AU treaty and strongly supports a negative list approach as providing greater clarity and liberalisation.

But an important issue is the amount of "water" in services trade commitments. The T20 paper points to the large discrepancy the OECD has identified between bound services and investment commitments and applied policy (Braga et al., 2019: 9). Gootiz and Mattoo use the OECD's STRI for five services sectors[58] to compare restrictiveness in current Doha round offers, a country's most progressive Preferential Trade Agreement, the TPPA and the country's actual policies (Gootiz and Mattoo, 2017: 6). For TPPA Partner countries they find a considerable gap between actual policy and trade commitments for many TPPA partner countries – clearly there is considerable "water" in these countries' services trade commitments. Interestingly these differences are smallest for New Zealand, Australia and Japan.

Turning to the contributions of the ASR, these identify barriers to movements of people, capital and data as critical issues. While we have defined data issues as beyond the scope of this project, barriers to the movement of people – whether visa limitations of lack of portability for qualifications – and barriers to the flow of capital are critical for most services trade. The ESF also focuses on changes to Australian visa arrangements as a potentially important issue.

Related to visas is the issue of mutual recognition of professional qualifications. This affects trade in services in a number of ways. There are direct impacts on education services, both through their impact on student demand and on teacher supply. There are also important

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[56] Shipping Registration Act 1981, Shipping Registration Regulations 1981.

[57] https://www.wto.org/english/news_e/pres98_e/pr118_e.htm.

[58] Financial, telecommunications, retailing, transportation, and professional services.

impacts across professional and technical service sectors. In these professional and technical service areas this issue extends into the issue of licences to practice.

The ASR specifically raises the question of the recognition of qualifications for actuaries. Given the nature of this profession, training in any one country is almost immediately applicable in any other country. Indeed there would be fewer national differences than in accountancy, where there has been multilateral success with respect to recognising accountancy qualifications. The actuarial profession could be an interesting area in which to launch a push for further progress in multilateral recognition of qualifications (and, if required, practicing licences).

Both the ASR and the ESF raise issues with respect to trade in financial services, pointing to areas where greater competition – likely through more foreign providers – would be beneficial. The ASR specifically considers the funds management sector where, because of compulsory superannuation, the Australian industry has grown hugely over the past two or more decades. One issue here that the ASR notes as important is a consistently applied international privacy regime. Again this should perhaps be a priority issue for multilateral negotiations.

Beyond finance the ESF focuses its attention on professional services (particularly legal and architectural), postal/courier services, telecommunications (particularly ownership restrictions for the dominant carrier), maritime services and energy related services. In contrast, the ASR, as might be expected, covers all service industries, even health. Education, as Australia's largest services export earner, attracts considerable attention and the ASR makes no less than 20 recommendations to improve trade in this sector. Education is not mentioned in the ESF report.

The ASR's recommendations on specific service industries go well beyond identifying barriers to trade. They extend beyond requests for export marketing and promotion assistance to general demands for further government support to industry. Examples include a national awards scheme for the ICT industries, more one-stop shops for business, taxation arrangements for education service providers and improved tourism infrastructure.

A final point of importance is the ASR's call for improved data on services trade, particularly the need for Australian FATS data and a call for the OECD to proceed to extend the STRI database to education services.

Chapter 5 Financial Services

5.1 Introduction

5.1.1 The financial services sector

The financial services sector is one of the most heavily regulated sectors in developed economies, with effective regulation being strengthened after the global financial crisis in 2008. This is because the financial services sector plays a central intermediation role in every economy, particularly in developed ones, but is highly sensitive to external shocks affecting financial markets or institutions. Consequently, regulators have to strike a fine balance between liberalising financial services trade to promote the efficient allocation of capital and financial service provision through competition in the sector, and maintaining sound prudential policies to limit systemic risks and sustain financial stability. Related to prudential regulation is the goal to protect consumers and investors. Regulators generally consider retail consumers as "unsophisticated", and wholesale consumers as "sophisticated" (OECD, 2000). Stricter measures are generally put in place to protect unsophisticated consumers. Therefore, the level of regulation in the financial services sector depends on the extent of importance of policy objectives related to efficiency and stability, as well as the objectives related to the interaction between financial service providers and consumers – i.e., whether the consumer is deemed sophisticated or unsophisticated.

Reflecting the importance of the financial sector to commerce and the efficient allocation of capital, financial services feature prominently in trade agreements such as the CETA, the EU-Singapore Free Trade Agreement (EUSFTA), and the EU-Japan Economic Partnership Agreement (EUJEPA). Such agreements usually include a "prudential carve out" to allow leeway for each party to deal with the systemic risks involved in financial market operations. The specific regulatory impediments in the sector will be discussed in Section 5.4.

Note that "financial services", includes insurance services. When we want to separate the two sub-sectors, we refer to them as "financial services (excluding insurance)" and "insurance services".[59] Our general discussion of "financial services" in Sections 5.1 and 5.2 therefore includes investment banking activities and pensions.[60] However, whenever we discuss the STRI results in relation to "financial services", (Section 5.4) we define "financial services" as commercial banking and insurance services as per the STRI definition in Table 3.1.[61]

5.1.2 GATS modes of supply applied to financial services

In the context of financial services, cross-border trade and commerce (mode one of the GATS) includes financial account transactions such as deposit-taking from abroad, as well as the provision of loans, mortgages or insurance across borders and the associated direct or imputed service charges.[62] For example, an Australian bank could offer banking services such as loans, deposits, or investment products to Europeans via the internet. Consumption abroad (mode two) corresponds to foreign consumers, say Europeans, traveling to Australia to consume financial services. For commercial presence (mode three), an Australian bank could establish branches,

[59] "Financial services (excluding insurance)" corresponds to the "Banking and other financial services (excluding insurance)" sub-category in the definition of financial services in CETA, and "insurance services" corresponds to the "Insurance and insurance-related services" sub-category in the definition of financial services in CETA.
[60] Following the EBOPS 2010 definitions found in MSITS 2010, see UN Department of Economic and Social Affairs (2011).
[61] Therefore, excluding investment banking services, trading activities, non-bank investment, health insurance, and pension services.
[62] Imputed service charges are implicit charges that cannot be directly observed.

subsidiaries, [63] or engage in joint ventures in Europe to provide financial products through its affiliated enterprises in Europe. Finally, for economic activity through the presence of natural persons (mode four), an Australian bank could send its bankers to Europe to offer Australian-originating wealth management services such as investment advice and financial planning (OECD, 2000). Cross-border trade (mode 1) and commercial presence (mode 3) account for more than 75% of world services trade and commerce, while consumption abroad (mode 2) is largely unrestricted (Marchetti & Roy, 2013).

5.1.3 Entering the financial services market

A potential foreign entrant to a financial services market has four options. It can acquire a local firm, enter into a co-operative agreement (e.g., via a joint stock company or joint venture) with a local supplier, provide the service on a cross-border basis, or establish a local presence through the establishment of an affiliated enterprise or branch. The latter two options are the most common (OECD, 2000). For third-country entrants to the EU financial services market, the clearly preferred method is establishing an affiliated enterprise in an EEA Member State, then, operating from there using Single Market passport rights (known as the “single license”). The alternative is for third-country entrants to obtain authorisation in each Member State where they wish to conduct business, unless equivalence provisions explicitly state otherwise. Box 5.1 below describes how *passporting* works.

Box 5.1 Passporting in the EU

Under the EC’s Financial Service Directives, a financial firm incorporated in any EEA Member State can provide services across borders, or through the establishment of affiliates/branches in any Member State, on the basis of a single license. This Member State is effectively the home country for the firm. The firm then has access to the EU’s Single Market for financial services, without further authorisation or licensing requirements. The firm is allowed to provide services under home-country supervision and authorisation, as the home country rules comply with the harmonisation required by Community EU legislation (Szczepanski, 2017). This *passporting* regime allows foreign financial institutions to enter the EU market without establishing affiliates in each Member State in which it wants to do business. Such affiliates would each be separate legal entities with their own balance sheets, subject to host country supervision and regulation – a far more costly arrangement. Operating branches via *passporting* rights is therefore far more cost and time effective. Naturally, most foreign entrants prefer this mode of entry into the EU financial services market.

[63] Taking Australia as an example, foreign-owned banks operating typically operate as subsidiaries and/or branches. Subsidiaries are incorporated in Australia, must hold capital locally and are subject to the same prudential standards and supervision as Australian-owned banks. In contrast, branches are not locally incorporated, do not hold capital locally and are mainly supervised by the prudential regulator in their home country. Branches are also not permitted to accept initial retail deposits from Australian residents of less than $250,000 (https://www.rba.gov.au/publications/fsr/2012/mar/box-a.html#fn1) .

5.2 Financial Services Trade Statistics

5.2.1 Overview and current limitations of empirical evidence

Financial services economic flows cannot be observed directly, so care needs to be taken in interpreting available data. Sometimes data on financial flows by industry – including financial services – are not published for confidentiality or other reasons. Data on aspects of financial services trade and commerce are available from ABS survey information and an economic modelling database of the global economy. The Global Trade Analysis Project (GTAP) database provides detailed estimates of bilateral merchandise and services trade by region and sector.[64] The only drawback is the frequency of its release, and the cost of the licence, but it does provide a broad and complete picture of bilateral services flows.

Trade in services statistics are collected and published online by governments, using the Extended Balance of Payments Services Classification 2010 (EBOPS 2010).[65] There are 12 main categories. The category of financial services (excluding insurance) can be disaggregated into (i) explicitly charged and other financial services,[66] and (ii) financial intermediation services indirectly measured (FISM).[67] The value of insurance and pension services can be disaggregated into direct insurance encompassing freight, life, and other; reinsurance; auxiliary insurance; pension;[68] and standardised guarantee. The ABS provides disaggregation of the data for Australia's exports and imports of financial services to the rest of the world (see Table 5.1). However, bilateral trade data for Australia and its trading partners are only available at the aggregated level in terms of the EBOPS 2010 (see Table 5.2).

Empirical evidence relating to commercial presence (mode 3) requires data on home country's foreign affiliates abroad and foreign affiliates located in the home country. Typically, Foreign Affiliates Trade Statistics (FATS) are used, but in the event that such data are not available, Foreign Direct Investment (FDI) data, and survey data can be used as proxies.[69] Unfortunately, FATS for Australia are not available at the time of writing. Bilateral FDI statistics for the financial services sector are not published by the ABS due to confidentiality restrictions. As a result, there is a data gap on the EU-AUS bilateral FDI flows in the financial services sector. Nevertheless, for outwards foreign affiliates, there are survey data on Australia's outwards foreign affiliates engaged in the financial services sector in 2009-10 collected by the ABS, and we summarise the findings below after discussing BoP statistics.

[64] At the time of writing, the latest available release is the GTAP 9 data base, with three reference years: 2004, 2007, and 2011. See https://www.gtap.agecon.purdue.edu/databases/v9/default.asp

[65] See https://unstats.un.org/unsd/classifications/Family/Detail/101

[66] This subcategory covers financial intermediation and auxiliary services, except those of insurance enterprises and pension schemes. These services include those usually provided by banks and other financial intermediaries and auxiliaries. Included are services provided in connection with transactions in financial instruments, deposit taking and lending, letters of credit, credit card services, commissions and charges related to financial leasing, factoring, underwriting and clearing of payments as well as a variety of other financial services other than insurance, merger and acquisition services, credit rating services, stock exchange services and trust services (MSITS 2010).

[67] FISM is an imputed service charge that accrues to financial intermediaries, as a result of the margin between interest rates paid on deposits and interest rates charged on loans (https://www.abs.gov.au/AusStats/ABS@.nsf/Lookup/5204.0Feature%20Article12010-110). See also https://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/C5ACA29422243B56CA257F7D00177D09/$File/52160_2015_.pdf, for the methodology on how FISM is calculated by the ABS.

[68] Pension services, as defined in the BoP statistics (MSIT 2010), includes private and public pensions. See Appendix 3.1 B in Chapter 3.

[69] ABS Cat. No. 5495.0 - Australian Outward Foreign Affiliates Trade, 2002-03.

Table 5.1: Australia's top three service sectors and financial services, 2017

Sector	Value (A$million)		% share of total services trade		Services rank*	
	Export	**Import**	**Export**	**Import**	**Export**	**Import**
Travel	54,458	44,611	64.3	50.5	1	1
Other business services	10,199	11,137	12.0	12.6	2	3
Transport	7,589	16,471	9.0	18.6	3	2
Financial services (excluding insurance and pension services)	**4,264**	**2,858**	**5.0**	**3.2**	**4**	**6**
(i) explicitly charged and other financial services	2,237	2429	2.6	2.7		
(ii) FISM	2,027	429	2.4	0.5		
Total services (incl sectors not shown)	84,679	88,378	100.0	100.0		

Source ABS Cat. No. 5368.0.55.004 –International Trade: Supplementary Information, 2017.
Note: Data shown are from the 12 main services sectors by the EBOPS 2010 classification.

For inward foreign affiliates, the ABS conducted a survey of foreign owned businesses in Australia in 2014-15.[70] This estimated sales of financial and insurance services at A$ 232 billion. This consisted of A$153 billion from firms with less than or equal to 50% foreign ownership, and A$79 billion from firms with more than 50% foreign ownership. For outward foreign affiliates, the most recent ABS survey is for 2009-10 for Australian financial services overseas investments. For other sectors we note that the next most recent ABS survey on Australia's outwards foreign affiliates investments was in 2002-03.[71]

There is an obvious gap in the frequency and depth of data on trade and commerce via commercial presence (mode three) for Australia. There is a significant contribution of foreign affiliates of Australian businesses through commercial presence abroad, and of foreign affiliates of EU businesses in Australia. Instead of a few one-off studies, the publication of more frequent survey results, or even better, the regular collection of FATS data, would fill the data gap.[72] Consequently, taken together with BoP statistics, FATS would provide a more complete picture of economic flows, thus enhancing the analysis of service trade and related financial flows.

We focus on particular EU economies – the United Kingdom, France, Germany, Ireland, Netherlands, and Luxembourg. These are countries with the highest levels of bilateral trade in financial services in 2017 with Australia, and/or are recognised to be among the top financial centres in the world, according to the Global Financial Centres Index GFCI.[73] A recent report has identified 275 financial firms in the UK that have moved or are moving some of their business from the UK to the EU to prepare for Brexit. The report found that Dublin (Ireland) was the most popular post-Brexit choice with 100 firms, followed by Luxembourg with 60 firms, Paris (France) with 41, Frankfurt (Germany) with 40, and Amsterdam (The Netherlands) with 32. Therefore, it would be reasonable to focus the analysis on these countries.

To our knowledge, disaggregated data on bilateral trade in financial services from Luxembourg is not available from the ABS as it publishes trade data for Luxembourg and Belgium combined.

[70] ABS Cat. no. 5494.0 – Economic Activity of Foreign Owned Businesses in Australia, 2014-15.
[71] ABS Cat. No. 5495.0 - Australian Outward Foreign Affiliates Trade, 2002-03.
[72] The ABS is currently collecting FATS for Australia, but the data are not available at the time of writing of this paper.
[73] https://www.longfinance.net/programmes/financial-centre-futures/global-financial-centres-index/gfci-25-explore-data/gfci-25-rank/

Nevertheless, we still include it in the analysis in the next section since in terms of the GFCI, Luxembourg is ranked sixth in the EU, and it is also one of the top exporters of financial services (excluding insurance) in the world, reflecting its importance in the EU as a financial centre.[74] Note that the GTAP database does provide bilateral trade data for Luxembourg.

5.2.2 BoP statistics for financial services trade[75]

Australia and the world

Overall, the total value of Australia's financial services (excluding insurance and pension services) exports to the world was approximately A$4.3 billion in 2017. Total insurance and pension services exports in the same year was valued at A$526 million.[76]

Bilateral trade in financial services between EU and Australia, ABS statistics

Table 5.2 shows a snapshot of Australia's bilateral trade in financial services with the EU in 2017, as well as selected EU countries.

These data show that 21.2% of total financial services (excluding insurance) exports in 2017 from Australia went to the EU. Notably, 17.3% went to the UK.[77] Financial services accounted for about 6% of total EU services exports to Australia, and around 7% of EU services imports from Australia in 2017.[78] Australia had a trade surplus with the EU of A$174 million for financial services (excluding insurance), but a large deficit for insurance and pension services.

Table 5.2 Australia's bilateral financial services trade, selected countries, 2017

Sector	***Value, A$million (% share)***							
Exports	*EU*	UK	FR	DE	IE	NL	BE & LU	EU-UK
Financial services (excluding insurance)	*906 (21.2%)*	738 (17.3%)	11 (0.3%)	50 (1.2%)	22 (0.5%)	51 (1.2%)	28 (0.7%)	168 (3.9%)
Insurance and pension services	*15 (2.9%)*	9 (1.7%)	1 (0.2%)	2 (0.4%)	0 (0.0%)	1 (0.2%)	1 (0.2%)	6 (1.1%)
Imports								
Financial services (excluding insurance)	*732 (25.6%)*	609 (21.3%)	24 (0.8%)	53 (1.9%)	1 (0.0%)	25 (0.9%)	14 (0.5%)	123 (4.3%)
Insurance and pension services	*474 (67.7%)*	444 (63.4%)	2 (0.3%)	8 (1.1%)	1 (0.1%)	3 (0.4%)	1 (0.1%)	30 (4.3%)
Exports minus Imports								
Financial services (excluding insurance)	*174*	129	-3	-13	21	26	14	45
Insurance and pension services	*-459*	-435	-6	-1	-1	-2	-140	-24

Source ABS 5368.0.55.004 - International Trade: Supplementary Information, Calendar Year, 2017, and author's calculations.

[74] OECD STRI Sector Brief: Commercial banking, http://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-commercial-banking.pdf

[75] Data on FDI, critically relevant to trade via commercial presence, are discussed in Section 5.3.2.

[76] ABS Cat. 5368.0.55.004 –International Trade: Supplementary Information, 2017.

[77] The UK was Australia's second largest export destination for financial services in 2017, just after the United States (19.6%).

[78] Eurostat and author's calculations.

5.2.3 Financial services trade statistics from GTAP data base

Table 5.3 shows a snapshot of bilateral trade in financial services (excluding insurance) in percentage terms for Australia, selected EU countries, the rest of the EU, and the rest of the world. As noted above GTAP data are very detailed, but are not frequent. These data are from 2011.[79]

The data in Table 5.3 show bilateral trade in financial services in percentage terms. The first row presents Australia's financial services exports, with France, Germany, Ireland, Luxembourg, the Netherlands, UK, the rest of the EU, and the rest of the world (ROW). For example, it tells us that Australia's exports of financial services (excluding insurance and pension services) was principally to countries outside Europe. The total value of Australia's financial services (excluding insurance and pension services) exports to the world was approximately $2.7 billion in 2011.[80] Looking at Europe, 7.4% of Australian financial services total exports in 2011 went to the UK, 4.4% to Germany, and 3.6% to Luxembourg.

Comparing these statistics with those from the ABS, we find that the ABS statistics indicate that Australia's exports of financial services (excluding insurance) to the world was nearly eight times as much as that in insurance and pension services (in 2017). The statistics from the GTAP data base seem to indicate that trade in both financial categories are about the same (in 2011). It would be interesting to investigate the disparity in both sources of data – using the same statistics from the same year might also provide a more accurate analysis. Such an analysis is beyond the scope of our study.

Among the European countries shown in Table 5.3, only the Netherlands (65.4%) and the UK (56.5%) had substantial exports beyond Europe. Within Europe, Luxembourg was a major destination for financial services exports from Germany (37%), Ireland (25%) France (19%) and the UK (18%). The UK was also a significant destination for financial services flows from other European countries, principally Ireland, Germany and France. Australia scarcely figured as a destination for financial services flows from Europe, receiving less than 1% from all countries in Table 4.3. It is likely that European financial services trade with Australia occurs mostly through commercial presence (mode 3).

5.3 Financial services via commercial presence / foreign direct investment

5.3.1 Australia and the world

Using international investment statistics, overall, the total level of Australia's direct investment abroad in the financial services sector was A$169.0 billion in 2018 (24.3% of total share of direct investment abroad), with A$107.5 billion worth of inward FDIs in Australia (11.1% of total inward FDI).[81] Further disaggregation of the data by sub-sector and country is not available.

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[79] GTAP data are collected infrequently and were initially intended for use in developing countries, so can be fairly poor measures of the underlying variables (e.g. they are quite 'noisy').

[80] Converted from US$1.9 billion, using Bloomberg's exchange rate of 0.702 AU$ to US$.

[81] ABS Cat. No. 5352.0 –International Investment Position, Australia: Supplementary Statistics, 2018.

Table 5.3 Bilateral trade in financial services (except insurance),* percentage share, 2011

Financial service exports from:	Percentage share of financial service exports to:									
	AU	FR	DE	IE	LU	NL	UK	EU_rest	ROW	Total
Australia (AU)	-----------	1.0	4.4	1.8	3.6	0.3	7.4	7.5	74.2	100.0
France (FR)	0.4	-----------	7.3	2.7	18.7	2.7	11.1	19.5	37.6	100.0
Germany (DE)	0.2	2.4	-----------	4.4	37.0	3.5	11.4	9.7	31.4	100.0
Ireland (IE)	0.1	1.1	2.8	-----------	25.0	1.9	18.8	16.0	34.3	100.0
Luxembourg (LU)	0.1	3.2	16.5	4.0	-----------	2.4	8.6	33.1	32.2	100.0
Netherlands (NL)	0.2	2.2	9.1	3.6	2.1	-----------	6.3	11.1	65.4	100.0
United Kingdom (UK)	0.8	1.2	8.8	5.2	16.1	0.6	-----------	10.7	56.6	100.0
EU_rest	0.4	3.2	6.5	3.7	17.8	1.4	11.4	19.6	36.1	100.0
Rest of the world (ROW)	0.8	1.8	4.2	4.8	14.5	1.3	14.6	10.3	47.7	100.0
Total	0.6	2.0	6.7	4.4	14.6	1.4	10.4	14.3	45.6	100.0

Source: GTAP data base, version 9. The raw data for this table are shown in Table A5.1.2 in Appendix 5.1.

Notes: * Data in this table include financial intermediation (except insurance and pension funding), and activities auxiliary to financial intermediation.

A parallel table for insurance services exports is provided in Appendix 5.1, Table A.5.1.1, based on raw data provided in Table A.5.1.3. The total insurance and pension services exports in the same year was valued at approximately US$1.5 billion in 2011 (A$2.1 billion, using Bloomberg's exchange rate of 0.702 AU$ to US$).

ROW: rest of the world;
AU Australia; FR France; DE Germany; IE Ireland; LU Luxembourg; NL Netherlands;
UK United Kingdom; EU-rest All other EU member states

5.3.2 Bilateral financial services investment: EU and Australia

Foreign Direct Investment data: As mentioned in the previous section, there are currently no Australian data on the stock of FDI in the financial services sector in the EU on a country-level basis.[82] Eurostat publishes investment data by country and sector, but for Australian majority owned enterprises in the financial services sector in the EU, such data are confidential and hence, not available.

Survey data: The ABS conducted a survey of outward finance and insurance foreign affiliate trade in services (SOFI FATS) for the financial year 2009-10, and found that Australia's 1,245 finance and insurance affiliates located abroad had sales of financial and insurance services valued at A$38.9 billion.[83] When compared to cross-border trade in the same year, valued at A$1.3 billion, this implies that around 96% of those financial services of Australian located businesses and their foreign affiliates were delivered through commercial presence by Australian firms abroad in 2009-10.

As a result, services export data as measured by BoP statistics only provide a very partial picture of the global level of financial services delivered by Australian located firms and their foreign located affiliates. Disaggregation of the survey data by sub-sectors was available, but not by country. These findings reiterate the importance of the need for greater efforts to improve the frequency and depth of data collection on commercial presence of firms abroad (mode three). This is essential to provide a more complete picture of the EU-Australia commercial relationship in financial service provision.

Keeping in consideration the limitations to which data on financial services trade and investment are subject, they nevertheless highlight the importance of financial services trade and commerce, both to the Australian economy as well as to the EU.

5.4 STRI Results and Analysis

This section describes and analyses the STRI results for commercial banking and insurance services.

The composite STRI quantifies the level of restrictiveness based on policy measures implemented on a most-favoured nation (MFN) basis (Section 2.5). As such, preferential treatment in trade agreements are not taken into account.

The composite STRI can be disaggregated into five policy areas where interventions occur:

- Restrictions on foreign entry
- Restrictions to movement of people
- Other discriminatory measures
- Barriers to competition
- Regulatory transparency.

5.4.1 Composite STRI

Figures 5.1 and 5.2 present the aggregate indices for commercial banking and insurance services respectively, disaggregated by types of interventions. The regulatory data presented here was collected as of end-2018, but we note that there is minimal change in the STRIs year-on-year.[84]

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[82] Australia's FDI in the EU was valued at $163.6 billion, and the EU's FDI in Australia was valued at $225.7 billion in 2018 (ABS Cat. No. 5352.0 - International Investment Position, Australia: Supplementary Statistics, 2018).

[83] Explicit fees and charges were valued at $28.1 billion, and implicit charges or FISM, were valued at $10.7 billion (ABS Cat. No. No. 5485.0 - Australian Outward Finance and Insurance Foreign Affiliate Trade, 2009-10).

[84] In 2018, Australia and France relaxed some regulations, resulting in a slight decrease in their STRIs for both commercial banking and insurance. The STRI results for the remaining countries remain unchanged.

The STRI for commercial banking in OECD countries ranges from 0.121 in Latvia (0.133 in the Czech Republic and 0.136 in Spain) to 0.370 in Mexico (0.358 in Iceland and 0.307 in Switzerland) (Figure 5.1). In the seven countries we focus on here, the index values are quite low, though higher than in Latvia etc. The STRI for insurance in OECD countries ranges from 0.111 in Korea (0.119 in Ireland and 0.120 in Latvia) to 0.366 in Iceland (0.289 in Norway and 0.288 in the USA). Again, for the seven countries we focus on, the STRIs for insurance are towards the lower end of the scale (Figure 5.2), though not the very lowest.

5.4.2 OECD STRI database: commercial banking

Investigating where the restrictions occur in Australia identifies eight foreign entry restrictions, five issues with regard to regulatory transparency, three movement of people restrictions and one barrier to competition (government has discretionary control over funding of the supervisory agency) are scored one. Two of the four foreign entry restrictions concern requirements for resident managers and directors and for commercial presence. Regulatory transparency impediments relate to the cost and bureaucracy of obtaining visas. In respect of movement of people three types of labour market tests are listed for key personnel.

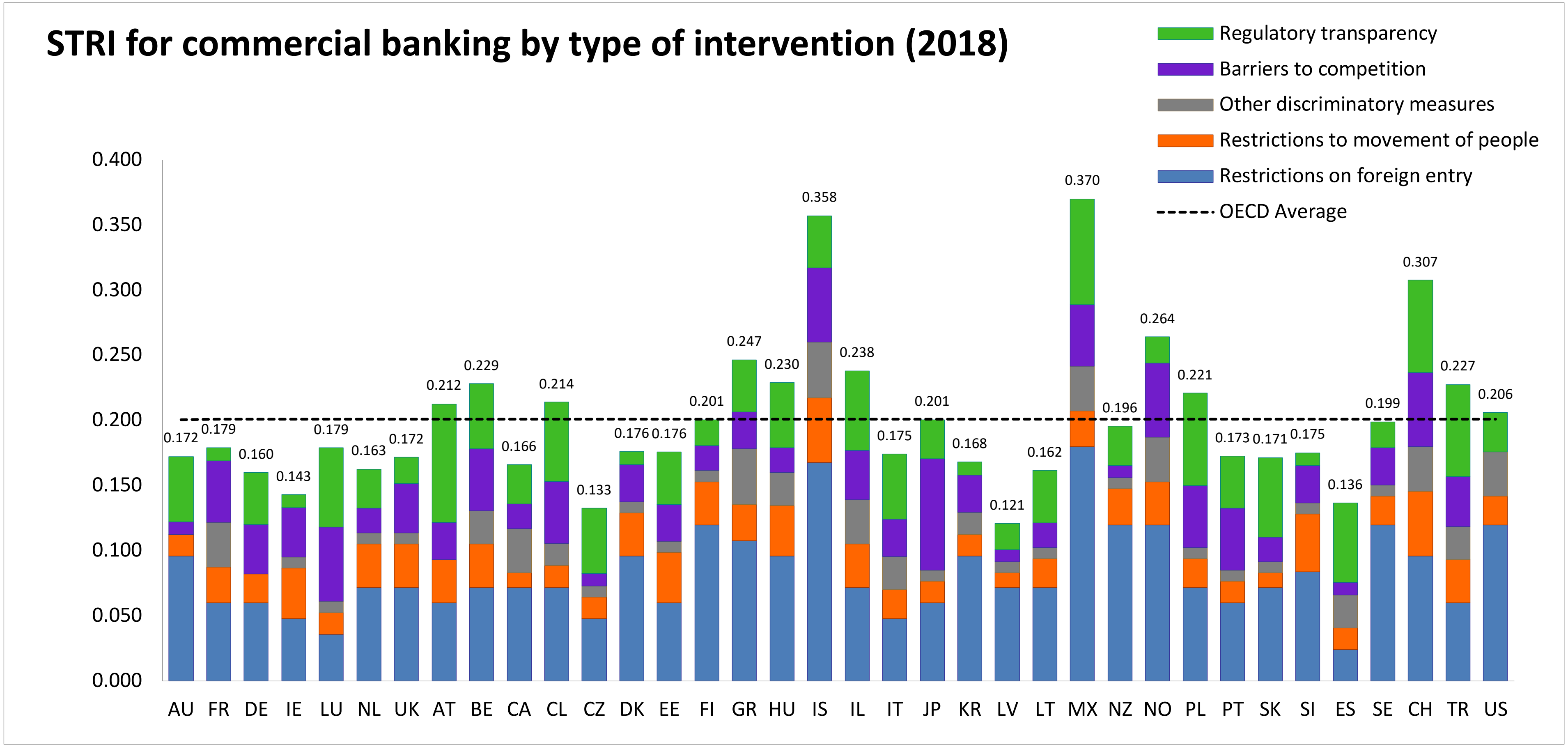
In France, there are five restrictions relating to each of foreign entry, movement of people and barriers to competition; four issues relating to other discriminatory measures; and one with regard to regulatory transparency (16 documents are needed to obtain a business visa) that are scored one. restrictions on foreign entry concern the requirements for commercial presence for deposit taking and lending activities. Also, some financial products are reserved for statutory monopolies. On movement of people, the impediments mainly relate to three types of labour market tests for key personnel, and limitations on the duration of stay for contractual and independent service suppliers. restrictions on barriers to competition mainly relate to regulations on interest rates for loans and deposits. For other discriminatory measures, three out of the four restrictions relate to more stringent public procurement requirements for foreign suppliers. The last involves restrictions on extending loans or taking deposits in foreign currency.

In Germany, the index identifies five foreign entry measures, four barriers to each of competition and regulatory transparency restrictions, three impediments on the movement of people, and zero other discriminatory measures that were scored one. On foreign entry measures, three of the measures relate to limitations on the proportion of shares that can be acquired by foreign investors in publicly-controlled firms, screening, and local presence requirements, while the other two are related to cross-border data flows. Interestingly, there is no commercial presence requirement for deposit-taking, lending, and payment services. This is because, normally, a licence requires that the bank has a branch in Germany. However, exemptions can be granted according to Article 2(4) of the Banking Law. For business with institutional investors, exemptions are granted as a rule. For business with private clients, it is a condition that financial services provided to them are brokered through a credit institution within Germany. Financial institutions without a licence are allowed to provide services to German residents, but not to solicit them actively. Next, two out of the four barriers to competition relate to the state-owned development bank, the Kreditanstalt für Wiederaufbau (KfW) group.[85] Also, product-tying is not regulated in Germany. Regulatory transparency restrictions mainly relate to the bureaucracy of obtaining visas. For movement of people, two types of labour market tests for key personnel, along with a limitation on the duration of stay for contractual service suppliers (three months) are identified as restrictions.[86]

[85] In particular, KfW Group is exempt from Parts 1 to 3 of the Competition Act in Germany.

[86] There are two thresholds with regard to the limitation for duration of stay are: less than 12 months, and less than 36 months. If natural persons are allowed to stay for 36 months or more, the score is zero. If natural persons can stay for less than 12 months, the score is two as both brackets are scored one. See Geloso Grosso, et al. (2015): 9, for a discussion of this methodology.

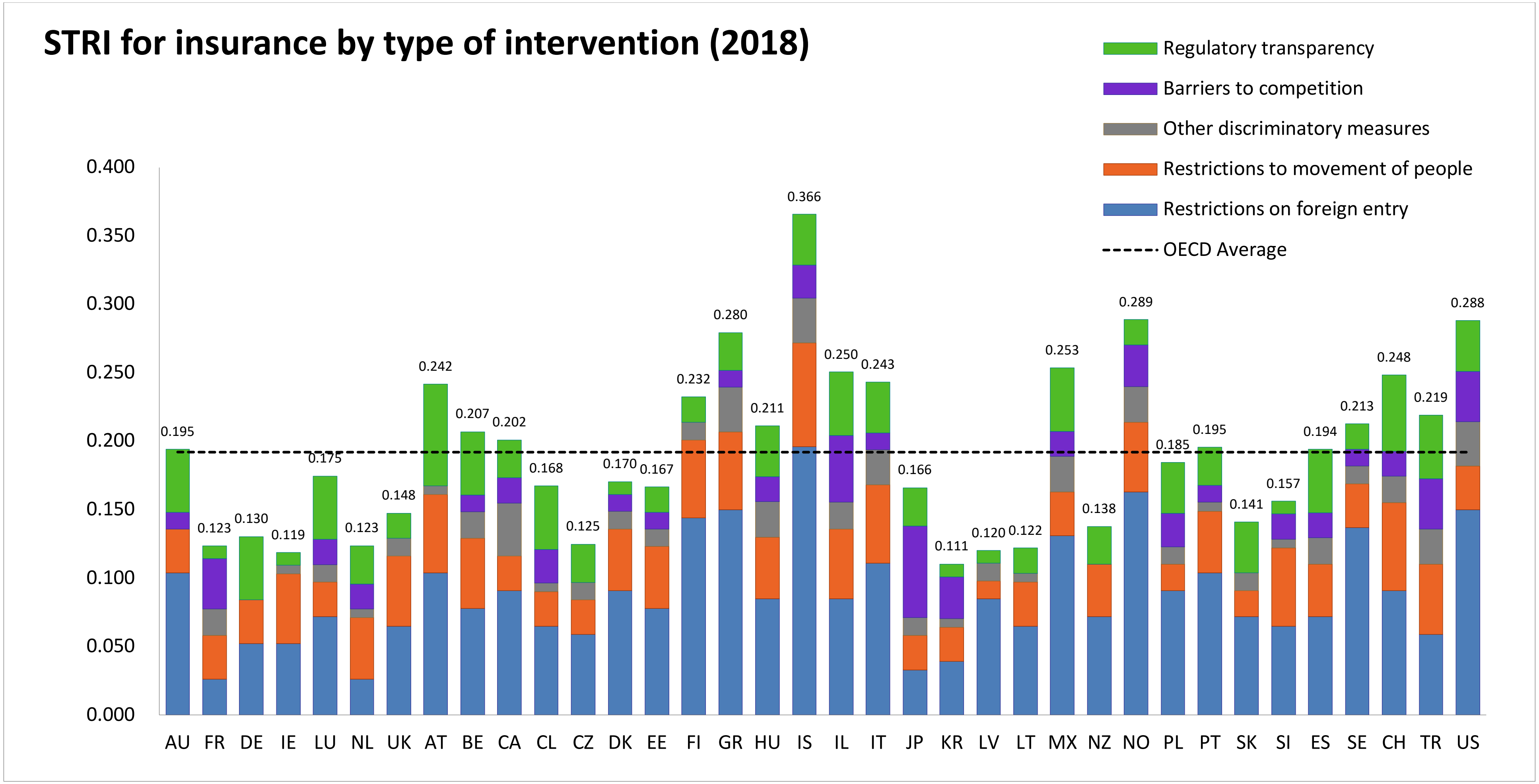
Figure 5.1 STRI values for commercial banking by type of intervention, 2018



Source: OECD STRI and own calculations.

Note: The selected economies are the first seven from the left of the figure. Other countries are shown alphabetically.

Figure 5.2 STRI values for insurance by type of intervention, 2018



Source: OECD STRI.

Note: The selected economies are the first seven from the left of the figure. Other countries are shown alphabetically.

In Ireland, there are seven movement of people restrictions, four restrictions on each of foreign entry and barriers to competition, one measure each on other discriminatory measures (procurement regulations do not explicitly prohibit discrimination against foreign suppliers[87]) and regulatory transparency (12 documents needed for a business visa) that are scored one. For movement of people measures, there are three types of labour market tests and limitations are imposed on stay duration for key personnel (24 months). Foreign entry restrictions are concerned with commercial presence requirements on lending and deposit-taking activities, as well as residency requirements for directors. Barriers to competition mainly relate to control of more than one major bank by the state,[88] regulatory approval requirements by Central Bank prior to banks changing their rates or fees, and advertising restrictions with regard to deposits.

In Luxembourg, there are six restrictions with regard to each of the barriers to competition and regulatory transparency, three measures each for foreign entry and movement of people restrictions, and one other discriminatory measure (procurement) that are scored one. Barriers to competition are attributed to full or partial state-ownership of major banks,[89] lack of regulation for product tying, unequal access to credit and collateral histories for all lending institutions (due to the absence of credit and collateral registries) and the lack of independence of the supervisory authority over licensing and the enforcement of prudential measures (with the government having the power to override decisions). Regulatory transparency impediments relate to the cost and bureaucracy of obtaining visas, the absence of mandatory transmission of information regarding new regulations to the public, and the relatively higher cost of resolving insolvency.[90] Foreign entry restrictions concern commercial presence requirements for deposit-taking, and limitations on acquisition of shares by foreign investors in publically controlled firms – the two state-owned banks. For movement of people restrictions, there are three types of labour market tests for key personnel.

In the Netherlands, there are six foreign entry and movement of people restrictions, three issues with regard to regulatory transparency, two barriers to competition, and one other discriminatory measure (procurement) that were scored one. Foreign entry restrictions mainly concern commercial presence requirements for deposit-taking, lending, and payment services, requirements for resident managers, as well as the government retaining a controlling majority of the shares in ABN Amro. For movement of people restrictions, three types of labour market tests are listed. So also are limitations on duration for stay for some key personnel, while foreign workers must comply with additional requirements as per the Aliens Employment Act. Regulatory transparency impediments mainly relate to the cost and bureaucracy of obtaining visas. On barriers to competition, the government has discretionary control over funding of the supervisory agency, and has majority ownership in more than one bank: ABN AMRO Group (77%), and SNS Bank (100%).

In the UK, there are six measures for each of foreign entry and movement of people restrictions, four barriers to competition, two issues on regulatory transparency and one other discriminatory measure (procurement) that are scored one. Foreign entry restrictions relate to commercial presence requirements on deposit-taking, lending, and payment services, and

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[87] While non-discrimination is mandated, this is not explicitly required with respect to third country tenderers that are not Parties to the GPA or other international agreements by which the EU is bound. This regulation implements Directive 2014/24/EU of 24 February 2014 on public procurement, article 25.
[88] At August 2017, the Irish Government holds 14% of the capital in the Bank of Ireland, 99% of the capital in the Allied Irish Bank (AIB), and 75 % of the capital in Permanent TSB.
[89] Two Luxembourg banks, Banque et Caisse d'Epargne de l'Etat and Société Nationale de Crédit et d'Investissement are state-owned public institutions where the State of Luxembourg owns 100% of the total capital. The Grand Duchy of Luxembourg still holds 34% of the shares of BGL BNP Paribas and 1% of the shares of BNP Paribas.
[90] The cost of resolving insolvency measure (less than 9%, and above 9% (of the estate's value)) is based on the World Bank's Doing Business Indicators (https://www.doingbusiness.org/en/rankings).

screening requirements – the UK government may intervene in a merger or acquisition transaction involving a transfer of material influence (above 15% shareholding) on public interest grounds. Movement of people restrictions are mainly concerned with labour market tests for key personnel and quotas on independent and contractual suppliers. Barriers to competition mainly relate to the majority government ownership (71%) of the Royal Bank of Scotland, no regulation on product-tying, and regulated contractual interest rates on loans. Regulatory transparency impediments are due to the cost and time taken to obtain visas.

5.4.3 OECD STRI database: insurance

For insurance, Australia is assessed as having the highest level of overall restrictiveness (0.195 out of a maximum of 1) among the seven countries studied, followed by Luxembourg (0.175). Ireland (0.119), the Netherlands (0.123) and France (0.123) have the most liberal regimes for insurance services in 2018.

Investigating where the restrictions occur in Australia identifies sixteen foreign entry restrictions, five restrictions with regard to the movement of people and regulatory transparency, two barriers to competition and zero other discriminatory measures that are scored one. Foreign entry restrictions concern the prohibition on foreign branches for life insurance,[91] requirements for screening, resident manager and director requirements (for life, non-life, and reinsurance), commercial presence requirements (life and non-life insurance) and the Australian government operating one state-controlled reinsurer – the Australian Reinsurance Pool Corporation (ARPC), in which foreigners cannot acquire shares. Regulatory transparency impediments mainly relate to the cost and bureaucracy of obtaining visas. Movement of people impediments are related to labour market tests for key personnel (as for commercial banking), residency and accreditation requirements for appointed actuaries, and an absence of regulations establishing a process for recognition of qualifications gained abroad.[92] On barriers to competition, the government has discretionary control over funding of the supervisory agency, APRA, and the ARPC is also government controlled. Further detail on insurance regulation in Australia is provided in Box 5.2.

In France, there are six measures on barriers to competition, five restrictions relating to the movement of people, four foreign entry restrictions, three other discriminatory measures and one measure on regulatory transparency (16 documents are needed to obtain a business visa) that are given a score of one. Barriers to competition are due to the government having control of at least one major firm in the life, non-life and reinsurance sub-sectors, restrictions on asset holdings (life and non-life), and regulations on life insurance premiums or fees. restrictions on the movement of people and other discriminatory measures are the same as for commercial banking. Foreign entry restrictions concern requirements for commercial presence in the life and non-life insurance classes.

In Germany, there are eight foreign entry restrictions, five issues with regard to regulatory transparency, four on movement of people, and zero measures on barriers to competition and other discriminatory measures that are scored one. Foreign entry restrictions mainly concern requirements for screening, commercial presence in the life and non-life insurance classes and the absence of local availability tests in the non-life sub-sector. Movement of people restrictions are the same as commercial banking, with an additional issue concerning the lack of regulations establishing a process for recognising qualifications gained abroad for broking and agency

[91] Only life insurance companies incorporated in the US or in NZ may operate in Australia through a branch as an Eligible Foreign Life Insurance Company (EFLIC).

[92] Despite the absence of regulations establishing a process for recognising qualifications gained abroad, the Actuaries Institute in Australia currently holds mutual recognition agreements with a number of actuarial associations based overseas (https://www.actuaries.asn.au/becoming-an-actuary/becoming-a-member/becoming-an-accredited-member).

services. Similar to commercial banking, regulatory transparency impediments mainly relate to bureaucracy of obtaining visas.

Box 5.2 Insurance Services Regulation: Australia

Regulators

The Australian Prudential Regulation Authority (APRA) is the prudential regulator, and the Australian Securities and Investments Commission (ASIC) is the consumer protection regulator, for the insurance industry. The International Monetary Fund (IMF), in its 2018 Financial Sector Assessment Program (FSAP) review of Australia, recommended that Australia strengthen the independence of APRA and ASIC by removing constraints on policymaking powers and providing greater budgetary and funding autonomy; strengthening ASIC's enforcement powers and expanding their use to mitigate misconduct (see https://www.imf.org/external/np/fsap/fsap.aspx).

General insurers (including health) and life insurers and reinsurers carrying on business in Australia must be authorised by, or registered with, APRA.

Insurers, insurance brokers, agents and other distributors must hold an Australian financial services licence (AFSL) issued by ASIC, be authorised by a licensee or rely on an exemption from the licensing requirements. A reinsurer may operate from abroad without registering with APRA or holding an AFSL.

Life insurance and EFLICs

A foreign-incorporated applicant may seek to establish a locally incorporated subsidiary to carry on life insurance business in Australia.

Alternatively, a foreign-incorporated life company may, if it is from a jurisdiction covered by the Life Insurance Regulations 1952 (the regulations), seek to operate in Australia through a branch as an Eligible Foreign Life Insurance Company (EFLIC).

Foreign-owned subsidiaries and EFLICs are subject to similar legislative and prudential requirements to Australian-owned and incorporated life companies. So, all life companies (except EFLICs) have to comply with the Prudential Standard LPS 510 Governance made under subsections 230A(1) and (5) of the Life Insurance Act 1995 in its entirety.

EFLICs have to comply with only those provisions of this Prudential Standard which specifically indicate that they apply to EFLICs. The obligations imposed by the Prudential Standard, on or in relation to an EFLIC, only apply in relation to its Australian business. An EFLIC must maintain a Compliance Committee and there are regulated requirements on its composition, operation and duties and responsibilities. There are no special restrictions on the number, size or mix of operations of foreign-owned subsidiaries or EFLIC's operating in the Australian market. The prime responsibility for oversight of the Australian operations of an EFLIC rests with its local management and Compliance Committee. While a foreign life company's home regulators will play a role in supervising the EFLIC, to protect the interests of Australian policy owners, an EFLIC is required to maintain statutory funds in relation to its life insurance business in Australia and have its local operations subject to APRA's prudential supervision.

Sources: https://www.apra.gov.au/sites/default/files/guidelines-on-registration-of-life-companies-21.pdf; https://www.legislation.gov.au/Details/C2017C00057, Section 16ZD; and http://www.mondaq.com/australia/x/586250/Insurance/Insurance+regulation+in+Australia

In Ireland, there are eight restrictions relating to foreign entry and the movement of people, one measure for regulatory transparency (documents needed for business visa, as for commercial banking) and other discriminatory measures (procurement, same as commercial banking) and zero barriers to competition that are scored one. Foreign entry restrictions concern requirements for residency of directors, commercial presence in the life and non-life insurance sub-sectors, and absence of local availability tests in the non-life sub-sector. restrictions on the movement of people are the same as for commercial banking, with an additional issue concerning the lack of regulations establishing a process for recognising qualifications gained abroad for broking and agency services.

In Luxembourg, there are 11 foreign entry restrictions, five issues with regard to regulatory transparency, four movement of people restrictions, three barriers to competition and two other discriminatory measures that are scored one. Foreign entry restrictions concern restrictions on foreign branches (non-life and reinsurance),[93] requirements for residency of directors and commercial presence requirements in all insurance sub-sectors (i.e., cross-border trade is entirely prohibited for all insurance classes), and the absence of local availability tests in the non-life, maritime and reinsurance sub-sectors. Regulatory transparency impediments are generally the same as those in commercial banking. Restrictions on the movement of people are the same as for commercial banking, with an additional issue concerning the lack of regulations establishing a process for recognising qualifications gained abroad for broking and agency services. Barriers to competition are due to the absence of arbitration structures to deal with reinsurance disputes, the lack of complete authority of the supervisor over licensing and the enforcement of prudential measures and advertising restrictions. Other discriminatory measures concern procurement issues (as for commercial banking).[94]

In the Netherlands, there are seven movement of people restrictions, four foreign entry restrictions, three restrictions each relating to barriers to competition (as for commercial banking) and regulatory transparency (as for commercial banking, with the government controlling at least one major firm in the life and non-life sub-sectors)[95] and one other discriminatory measure (procurement, as for commercial banking) that are scored one. restrictions for the movement of people are the same as in commercial banking, with the additional issue of an absence of regulations establishing a process for recognising qualifications gained abroad for actuaries. Foreign entry restrictions concern requirements for resident managers for life, non-life and reinsurance.

In the UK, there are ten foreign entry restrictions, eight measures related to the movement of people, two on regulatory transparency and other discriminatory measures, and zero measures relating to barriers to competition that are scored one. Foreign entry restrictions concern requirements for commercial presence for cross-border provision of life, non-life, maritime, and reinsurance services, screening, and the absence of three local availability tests for cross-border trade in all insurance services except life. For movement of people, the main measures relate to labour market tests on key personnel, quotas on contractual and independent suppliers, and recognition of foreign qualifications for actuaries and broking and agency services (insurance

[93] For non-life and reinsurance, foreign branches' capital must be located in Luxembourg and except for insurance companies having their registered office in an OECD member state, approval may be refused if reciprocity is not ensured by national law for Luxembourg companies (Directive 2009/138/EC of 25 November 2009 Solvency II, articles 162-175).

[94] Note that the answer to measure 3.7.4 (whether there are discriminatory financial requirements on foreign reinsurance suppliers) is No, but it is scored one because it is linked to measure 1.16.1 (commercial presence is required to provide cross-border services in reinsurance). According to the scoring methodology (Grosso et al. 2015), if cross-border reinsurance provision is entirely prohibited, the measures on discriminatory financial requirements for foreign reinsurers are also scored one.

[95] The state owns 100% of the assets of ASR Netherlands, which provides a wide range of insurance services.

mediation). Regulatory transparency impediments are due to the cost and time required to obtaining visas. Other discriminatory measures relate to procurement.[96]

5.4.4 Comparing Restrictions in financial services

Using the OECD STRI database, we compared the measures that were scored as restrictive (i.e., scored one) in commercial banking and insurance services across the seven countries. Tables 5.4 and 5.5 show the specific regulations in commercial banking and insurance services that are common to four or more countries.

We will first begin with horizontal measures that affect both the commercial banking and insurance sectors. Labour market tests are required for all personnel for all seven countries except Germany. In Germany, intra corporate transferees are exempt from such tests. The other common restrictions concern the limitation on duration of stay for contractual services suppliers and bureaucracy in obtaining a business visas. On visas, it is interesting to note that only two documents are needed in the UK to obtain a business visa, but more than ten documents are required for the other six countries. However, it takes around 15 days to get a business visa for the UK, while it only takes around five days for France. It is also worthwhile to note that Australian and Japanese citizens are exempted from business visa requirements in Germany.

On sector-specific measures in commercial banking, commercial presence is required for deposit taking except in Germany and for lending except in Germany and Luxembourg. Germany seems to be the least restrictive EU country in terms of establishment requirements for foreign banks.

On sector-specific measures in insurance, the most significant finding is that commercial presence is required in order to provide cross-border services in the life and non-life insurance classes for all countries except the Netherlands.

Again we find some interesting issues in the specific indicators with respect to balancing competition objectives with domestic social objectives. Two countries – France and Ireland – regulate interest rates. Interpreting this as trade distorting does, however, require more in-depth analysis. Similarly one country (Ireland) bans advertising financial services. Whether such a ban is trade distorting is a moot point.

5.4.5 STRI by type of intervention (policy area)

Going back to Figures 5.1 and 5.2, one obvious result from the composite STRIs is that Ireland is assessed as having the most open commercial banking and insurance sector. Interestingly, the composition of the STRI for commercial banking and insurance are slightly different. Ireland's STRI for commercial banking is mainly driven by an almost equal combination of restrictions on foreign entry, restrictions to movement of people and barriers to competition. Its score for insurance is driven almost entirely by restrictions on foreign entry and restrictions to movement of people. This suggests that the insurance sector is more open to competition than the banking sector in Ireland.

This prompts us to look at the purple section in Figure 5.2, which corresponds to barriers to competition in the insurance sector. We find that Germany, Ireland and the UK are assigned an index value of zero in this intervention type, indicating that they are assessed as being "completely open" with regards to measures relating to barriers to competition in the insurance sector. France, Luxembourg and the Netherlands are more restrictive in this type of intervention. We conclude, in general, that the insurance sector is more open to competition when compared to commercial banking for all seven countries, although other barriers to trade remain.

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[96] Again, measure 3.7.4 is scored one for the UK because it is linked to measure 1.16.1 (commercial presence is required to provide cross-border services).

Table 5.4 Commercial banking Restrictions in four + countries

	Value given in answer to indicator question							
Indicator	AU	FR	DE	IE	LU	NL	UK	# countries with high score (=1)
Commercial presence is required: deposit-taking	yes	yes	no	yes	yes	yes	yes	6
Commercial presence is required: Lending	yes	yes	no	yes	no	yes	yes	5
Cross-border data flows: cross-border transfer of personal data is possible to countries with substantially similar privacy protection laws	yes	yes	yes	yes	yes	yes	yes	7
Labour market tests: intra-corporate transferees	yes	yes	no	yes	yes	yes	yes	6
Labour market tests: contractual services suppliers	yes	yes	yes	yes	yes	yes	yes	7
Labour market tests: independent services suppliers	yes	yes	yes	yes	yes	yes	yes	7
Limitation on duration of stay for contractual services suppliers (months)	48	12	3	24	36	12	61	4
Public procurement: procurement regulation explicitly prohibits discrimination of foreign suppliers	yes	no	yes	no	no	no	no	5
National, state or provincial government control at least one major firm in the sector	no	no	yes	yes	yes	yes	yes	5
Range of visa processing time (days)	15	5	10	10	15	15	15	4
Number of documents needed to obtain a business visa	13	16	15	12	13	12	2	6

Source: constructed from data from OECD STRI policy simulator, 2018, https://sim.oecd.org/.

Table 5.5 Insurance Restrictions in four + countries

	Value given in answer to indicator question							
Indicator	AU	FR	DE	IE	LU	NL	UK	# countries with high score (=1)
Commercial presence is required in order to provide cross-border services (life)	yes	yes	yes	yes	yes	no	yes	6
Commercial presence is required in order to provide cross-border services (non-life)	yes	yes	yes	yes	yes	no	yes	6
Local availability test for cross-border trade (non-life)	yes	yes	no	no	no	yes	no	4
Local presence is required for cross-border supply	no	yes	no	no	no	no	no	6
Cross-border data flows: cross-border transfer of personal data is possible to countries with substantially similar privacy protection laws	yes	yes	yes	yes	yes	yes	yes	7
Labour market tests: intra-corporate transferees	yes	yes	no	yes	yes	yes	yes	6
Labour market tests: contractual services suppliers	yes	yes	yes	yes	yes	yes	yes	7
Labour market tests: independent services suppliers	yes	yes	yes	yes	yes	yes	yes	7
Limitation on duration of stay for contractual services suppliers (months)	48	12	3	24	36	12	61	4
Laws or regulations establish a process for recognising qualifications gained abroad (broking and agency services)	yes	yes	no	no	no	no	no	4
Public procurement: Procurement regulation explicitly prohibits discrimination of foreign suppliers	yes	no	yes	no	no	no	no	5
Range of visa processing time (days)	15	5	10	10	15	15	15	4
Number of documents needed to obtain a business visa	13	16	15	12	13	12	2	6

Source: constructed from data from OECD STRI policy simulator, 2018, https://sim.oecd.org/.

Additionally, we observe that the STRI results for both commercial banking and insurance for 2017 and 2018 are mainly driven by measures relating to restrictions on foreign entry. In particular, for commercial banking, all countries except Luxembourg have restrictions on foreign entry that generate 25% or more of total STRI value. For insurance, all countries with the exceptions of France and Netherlands have restrictions on foreign entry ≥ 25% of total STRI value. This might be attributable to critical public policy prudential objectives relating to financial services.

Next, we turn to Australia – where STRI scores indicate the most restrictive regime in both the commercial banking and insurance sector in our set of seven countries. Australia scores highly on restrictions to foreign entry, which corresponds with the highest numbers of measures (8 and 16) identified respectively for commercial banking and insurance, in Section 5.4. The EU might be interested in negotiating for greater liberalisation in this area. In some ways this seems odd as FDI in Australia as a proportion of total investment is amongst the highest globally. It is well known that Australian saving does not meet investment potential and over many decades this has created reliance on and/or opportunities for foreign investors.

5.4.6 Policy assessments about financial service provision regulations

Some recommendations specific to the financial service sector have been made by the European Services Forum (ESF). First, the ESF notes that the Australian banking sector is in good prudential health, but there are concerns, particularly relating to the degree of concentration in banking.

In a similar vein, the Australian Productivity Commission found that substantial market power is held by the four major Australian banks in a number of important financial markets. The Commission also found that regulators' actions contribute to maintaining this market power (Productivity Commission, 2018: 37 (finding 3.2).

On financial services excluding insurance,[97] the ESF comments that the Australian banking sector remains closed for many sub-sectors with regard to cross-border (mode one) trade. Cross-border trade is only considered for: (i) provision and transfer of financial information, and financial data processing and related software; and (ii) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services.[98] The ESF argues that retail banking in Australia remains restricted, e.g., an authorised deposit-taking foreign bank branch is not permitted to accept initial deposits of less than A$ 250,000 from individuals and non-corporate institutions.[99] As a consequence foreign banks tend to operate only in selected markets – particularly the wholesale banking sector (Productivity Commission, 2018: finding 4.2). Due to the regulatory framework there is minimal international competition in the retail banking sector. However, the Commission made no recommendation with regard to new entrants in banking. The ESF concludes that there is a need for improvements in all these aspects within the framework of the Australia-EU FTA (ESF 2018).

Similarly, in CETA, cross-border trade in financial services is open only for the two types of services listed in the previous paragraph ((i) and (ii)) for both Canada and the EU.[100] We note, however, that within the resources of this project, we have not confirmed whether these CETA commitments are more or less liberal than actual regulatory regimes in either Canada or EU member states.

It would be reasonable to expect a similar approach in any EU-AU treaty. This suggests that if the EU would like Australia to liberalise more sub-sectors relating to cross-border trade in financial services, Australia is likely to request that the EU does the same.

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[97] As defined in the CETA. This definition may be similar in the EU-Australia FTA according to the text proposed by the EU (http://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157572.pdf).

[98] Annex 11-A, Schedule of Australia, in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

[99] Annex III, Schedule of Australia, in the CPTPP.

[100] However, for the EU, six member states exclude themselves from this openness with respect to insurance and eight with respect to other financial services (CETA Annex 13-A, Schedule of the EU).

With regards to the insurance sector, Australia's insurance market was the 13th largest in the world in 2017 (Swiss Re Institute 2018).[101] However, APRA notes that following the decline in the number of licensed insurers/insurance providers over the past decade, the general insurance business has become more concentrated.[102] In particular, the home and motor insurance market in Australia is now dominated by four main insurers – IAG, Suncorp, QBE and Allianz collectively account for 74% of the market.[103]

In Section 5.3 we identified a measure in the OECD database – the prohibition of the provision of life insurance by foreign domiciled companies through branch operations. Exceptions to this measure have been made through Australia's trade agreements with Korea, New Zealand, and the USA.[104] The ESF favours the same exemption for European life insurers (ESF 2018).

Finally, on FDIs, the ESF states that Australia maintains an open stance towards foreign investment but continues to screen large foreign controlled investment projects through the operation of the Foreign Investment Review Board (FIRB) to ensure they are in the national interest.

Under the Foreign Acquisitions and Takeovers Act 1975, approval by the Treasurer must be obtained prior to any foreign person acquiring a substantial interest (of 20% or more) in an Australian entity that is valued above AUD 266 million. Even though proposals subject to screening are rarely rejected, they often have conditions attached. Some of Australia's trading partners are subject to more liberal screening thresholds under bilateral trade agreements. These provide a higher FIRB screening threshold – raised from pre-agreement levels to A$1,154 million – for investors in non-sensitive sectors from Canada, Chile, China, Japan, Mexico, NZ, Singapore, South Korea, and US, in non-sensitive sectors.[105] Where the proposed investment is in a sensitive sector, more detailed screening procedures apply. Sensitive sectors in the context of the sectors in the STRI are: telecommunications, media, and transport. The ESF accordingly favours the same exception for the EU.[106]

From Australia's perspective, Luxembourg has the highest composite STRI value in 2018, for both commercial banking and insurance, among all selected EU countries in our study, with the greatest contribution from restrictions to foreign entry (11 measures), followed by measures relating to regulatory transparency (five measures). This suggests that there is scope for reducing barriers to cross-border commerce in these areas for Luxembourg.

It could also be worthwhile for negotiators to look at France (second highest in selected EU countries in 2017, tied for highest in 2018), and the UK (second highest in selected EU countries for insurance for both years).

5.5 Financial Services Commitments Made by the EU in Recent FTAs

Leblond (2016) analysed the effects of the commitments laid out in the financial services chapter of CETA and concluded that the provisions in the main text and annexes closely followed those in the GATS, to which both parties are signatories. As such, he argues that the CETA does not offer much that is new with regards to increasing competition and market access over the status quo. It is therefore unlikely to have a significant impact on the cross border delivery of financial services between the EU and Canada in the short to medium term (Leblond 2016).

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[101] Ranking was based on total (life and non-life) premium volume. As of 30 September 2016, there were 109 APRA registered general insurers licensed to conduct business in Australia, of which 99 were direct insurers and 10 were reinsurers (www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/~/media/Committees/economics_ctte/Generalinsurance/c02.pdf).

[102] Australian Prudential Regulation Authority, Annual Report 2015–16: 24.

[103] www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/~/media/Committees/economics_ctte/Generalinsurance/c02.pdf

[104] WTO, Trade Policy Review: Australia https://www.wto.org/english/tratop_e/tpr_e/tp412_e.htm

[105] https://cdn.tspace.gov.au/uploads/sites/79/2017/07/34_GN.pdf

[106] http://www.esf.be/new/esf-eu-trade-policy/bilateral-negotiations/eu-australia-fta/

Leblond (2016) also notes that European financial institutions and individuals have yet to recover fully from the banking and debt crises that the region experienced between 2008 and 2015. In the aftermath of this crisis, Leblond suggested that EU financial service providers are relatively less concerned with international expansion than consolidating their domestic positions and strengthening their balance sheets. From the perspective of foreign suppliers, he also suggested that the EU is currently not a very attractive destination for supplying financial services.

With Brexit, foreign financial service suppliers incorporated only in the UK will find it in their interest to move aspects of their operations to other EU countries in order to continue to benefit from *passporting* arrangements in service provision to the EEA area (Box 5.1). Much uncertainty continues to surround Brexit, but large Australian banks and financial institutions have made contingency plans to prepare for Brexit. ANZ already holds full banking licenses in France and Germany, and it is likely to face the least disruption in its business after Brexit. The Macquarie Bank, Commonwealth Bank, and Westpac banking groups have each applied for a full banking license in Ireland (Dublin), the Netherlands (Amsterdam), and Germany (Frankfurt), respectively. They are waiting for their applications to be approved by the respective local regulators. NAB had not, at the time of writing, yet applied for a banking license in a European Member State.

A report by the European Commission Directorate-General for Internal Policies (2014) noted that with regards its bilateral agreements, the EU has sought and obtained considerable concessions in the financial services sector which go beyond those at the GATS level. Such concessions include additional sectoral commitments for market access and national treatment, and new and enhanced rules governing financial regulation. The latter is clearly evident from specific provisions in the CETA and EUJEPA text, but the former seems to contradict the conclusions drawn by Leblond (2016). In the context of this project, we note that it is difficult to compare the texts of the CETA and the EUJEPA, especially since there are numerous exemptions listed in the schedules for each Party in the Annexes. In view of the complexity, such a comparison was not undertaken for this paper.

The report clarified that the EU's main financial services priority has been to secure enhanced market access in the area of commercial presence (mode 3), and this is where most additional commitments over and above GATS have been concentrated in all recent EU treaties, including CETA. Cross-border services trade (modes 1 and 2) has been the subject of few extra commitments and the temporary presence of natural persons (mode 4) is most often treated as ancillary to liberalisation undertaken in respect of establishment.

The report also noted that Canada agreed to bind and reduce its 'widely held' rule, which prohibits any person from owning more than 20% of the voting shares of financial institutions which meet certain criteria. This rule cannot now be extended to other sectors or institutions. Maximum shareholding caps cannot be reduced. Finally, EU financial institutions may continue to control banks they own, even after they reach the C$12 billion threshold, provided their ownership is sufficiently longstanding.

We would expect that the commitments in the financial services in the EU-Australia treaty will be similar to the CETA and EUJEPA, in that cross-border supply (modes 1 and 2) of financial services is likely to remain restricted for both parties – commitments are generally confined to reinsurance and retrocession,[107] auxiliary insurance services, and provision of financial information and financial data processing. We can also expect both parties to maintain their regulatory autonomy through prudential carve-outs, along with commitments for greater financial cooperation.

However, given the limited competition in both retail banking and in insurance, it could well be in Australia's interests to open these markets to greater foreign competition.

5.6 Other issues emerging from the Workshop

Effective transmission of data is a potentially critical issue for trade in financial services. Requirements to hold data locally or to limit the transmission of sensitive data (such as that of customers) seriously

[107] Retrocession refers to the purchase of reinsurance by a reinsurance company (http://www.investorwords.com/6645/retrocession.html#ixzz5sLsyErxY).

limit trade in financial services. Data and privacy requirements are often economy wide (horizontal) barriers to trade, with few sector-specific rules for financial services. But given how heavily financial services rely on the movement of data, pursuing financial services specific rules in a trade agreement could be an effective means for increasing trade in financial services. The US Trade Representative has made data transmission a key goal in US trade negotiations.

The UK's exit from the EU is a significant background issue, as the UK is the EU's largest financial services centre. The EU's need to ensure that post-Brexit access for UK financial firms is substantially more limited than Single Market rules is shaping the EU's approach to third-country trade agreements. Given this, Australia should seek to incorporate a 3-year review into those parts of any trade agreement affecting financial services. This would allow possible amendments once the impact of Brexit on financial services markets becomes clear.

The history of financial services regulation in the aftermath of the Global Financial Crisis also weighs against increased liberalisation of market access rules. The focus of central banks on financial stability can limit the scope for trade except for services to wholesale and sophisticated investors.

Commercial presence will likely remain the primary vehicle for market access, often driven by acquisitions of existing banks and insurers. The prudential 'carve-out' in all trade agreements, which protects the right of states to regulate for financial stability, underlies the role of commercial presence. Limited consumption abroad and movement of natural persons (such as bankers) will continue. Here it is important to ensure arrangements for business visa and temporary residence visa work well.

Given the continued reliance on commercial presence as the primary means of market access, several Workshop participants raised limited competition in the Australian financial services market as a concern. The example of the high average cost of funds management compared to Europe was given. Some participants suggested that the significant concentration of Australia's banking and insurance industries reflects a failure of competition policy that can only be addressed through domestic economic reform. Absent this, foreign companies would struggle to establish a greater presence in the Australian market except through mergers and acquisition.

In regard to identifying restrictions that can be subject to negotiation in the proposed EU-Australia trade agreement, the OECD's STRI offers a useful means to identify priority barriers to trade in commercial banking and insurance. However, many of the barriers identified in the STRI are difficult to reduce given the context discussed above.

Appendix 5.1 GTAP data on bilateral trade in financial and insurance services, 2011

Table A5.1.1 Bilateral trade in insurance services,* percentage share, 2011

Insurance service exports from:	Percentage share of insurance service exports to:									
	AU	FR	DE	IE	LU	NL	UK	EU_rest	ROW	Total
Australia (AU)	-----------	0.6	1.8	2.3	0.3	0.3	2.5	4.1	88.0	100.0
France (FR)	0.9	-----------	12.3	3.8	6.8	2.9	7.8	21.4	44.1	100.0
Germany (DE)	0.3	4.9	-----------	1.6	1.2	1.9	3.0	20.7	66.5	100.0
Ireland (IE)	0.1	3.8	4.2	-----------	0.2	1.6	3.3	18.2	68.7	100.0
Luxembourg (LU)	1.0	2.3	5.9	1.4	-----------	0.2	3.2	19.8	66.3	100.0
Netherlands (NL)	0.3	2.8	14.4	26.9	0.2	-----------	5.0	19.5	30.8	100.0
United Kingdom (UK)	0.9	0.7	1.9	10.1	0.8	0.5	-----------	8.2	76.8	100.0
EU_rest	0.5	3.6	7.3	8.4	1.6	2.4	2.9	16.7	56.6	100.0
Rest of the world (ROW)	1.1	1.5	2.6	6.8	1.0	0.6	2.5	7.4	76.5	100.0
Total	0.8	2.2	3.7	6.1	1.1	1.1	2.6	11.9	70.4	100.0

Source: GTAP data base, version 9.

* This category includes includes pension funding, except compulsory social security (https://www.gtap.agecon.purdue.edu/databases/contribute/detailedsector.asp).

ROW: rest of the world;
AU Australia; FR France; DE Germany; IE Ireland; LU Luxembourg; NL Netherlands;
UK United Kingdom; EU-rest All other EU member states

Table A5.1.2 Bilateral financial services trade (excluding insurance) in 2011, US$ million, GTAP data base

Financial service exports from:	US $ million (2011 prices)									
	AU	FR	DE	IE	LU	NL	UK	EU_rest	ROW	Total
Australia (AU)	0	18	82	33	67	6	139	141	1,398	1,884
France (FR)	14	0	237	88	606	87	359	632	1,220	3,243
Germany (DE)	21	271	0	495	4,156	394	1,277	1,094	3,522	11,230
Ireland (IE)	8	93	238	0	2,118	163	1,591	1,353	2,908	8,472
Luxembourg (LU)	22	1,059	,5551	1,340	0	792	2,900	11,113	10,808	33,585
Netherlands (NL)	4	35	148	59	34	0	103	181	1,066	1,630
United Kingdom (UK)	444	684	5,048	2,995	9,255	376	0	6,132	32,532	57,466
EU_rest	102	910	1,863	1,054	5,107	404	3,277	5,630	10,360	28,707
Rest of the world (ROW)	1,121	2,524	5,702	6,471	19,794	1,741	19,859	14,055	64,931	136,198
Total	1,736	5,594	18,869	12,535	41,137	3,963	29,505	40,331	128,745	282,415

Source: GTAP data base.

Table A5.1.3 Bilateral trade in insurance services* in 2011, US$ million, GTAP data base

Insurance service exports from:	US $ million (2011 prices)									
	AU	FR	DE	IE	LU	NL	UK	EU_rest	ROW	Total
Australia (AU)	0	9	26	33	5	5	37	60	1,279	1,454
France (FR)	35	0	471	145	259	111	299	815	1,682	3,817
Germany (DE)	26	471	0	151	113	180	284	1,982	6,362	9,569
Ireland (IE)	22	714	796	0	32	306	621	3,433	12,992	18,916
Luxembourg (LU)	42	97	246	57	0	7	133	827	2,771	4,180
Netherlands (NL)	5	51	258	483	3	0	90	350	553	1,793
United Kingdom (UK)	145	114	300	1,573	124	77	0	1,273	11,939	15,545
EU_rest	100	714	1,456	1,672	329	467	578	3,314	11,251	19,881
Rest of the world (ROW)	776	994	1,795	4,576	675	397	1,722	5,018	51,847	67,800
Total	1,151	3,164	5,348	8,690	1,540	1,550	3,764	17,072	100,676	142,955

Source: GTAP data base. * This category includes pension funding, except compulsory social security (https://www.gtap.agecon.purdue.edu/databases/contribute/detailedsector.asp).

Chapter 6 Education Services

6.1 Introduction

In this chapter, education services are reviewed with respect to their current economic significance to Australia and the European Union (EU) and in regards to potential trade restrictions that might be the subject of negotiations towards a trade agreement between Australia and the EU.

Education services are Australia's largest services export (DFAT, 2018), although the reported figure of $35 billion in 2018 is limited to export income derived from international students studying in Australia. This activity is categorised as mode 2 (consumption abroad) in the General Agreement on Trade in Services (GATS). GATS is the first (and as yet only) multi-lateral treaty on trade in services. It sets up a schema identifying four different ways in which services can be supplied across international borders (see Section 2.2.2). These four modes are commonly used in trade analysis and the OECD's STRI is designed to facilitate their use. While more difficult to quantify, the other three modes of supply of education services (cross-border supply, commercial presence and movement of natural persons) also represent significant opportunities for growth and trade. This chapter reviews the different modes of education services supply (Section 6.2), key issues underlying trade in education services (Section 6.3) and the potential policy interventions that can restrict trade (Section 6.4). It also outlines how education services trade has been addressed in other recent EU trade agreements (Section 6.5).

6.2 The underlying drivers of the different modes of supply of education services

As noted above, international students studying in Australia is an example of services consumed abroad (mode 2) (Table 6.1). This activity is reported by the Australian Bureau of Statistics (ABS) as *education-related travel services* and is Australia's largest services export recorded on Australia's Balance of Payments, and its fourth largest export overall after iron ore, coal and natural gas.

Table 6.1 Education services trade, modes of supply

Mode of supply	Example	Potential for Australian export
Mode 1: Cross-border supply	An Australian university delivers an on-line education course which is purchased for study by a EU student	Great potential for growth, but market demand is not strong. Needs risk-taking and innovation in content delivery and outputs (e.g. micro-credentials).
Mode 2: Consumption abroad	An EU student travels to study and live in Australia (contributing tuition fees and living expenses to the economy)	This is currently the largest area of demand and supply for Australia with domestic regulation having the biggest influence on its scale. Australia may attract more EU27 students after Brexit.
Mode 3: Commercial presence	An Australian university has a branch campus in an EU member state or works in partnership with an EU provider to deliver a jointly-badged qualification largely via classroom-based learning.	Limited success and modest growth to date. A 'bricks and mortar' campus may be a higher risk strategy than working in partnership with a foreign supplier. The latter strategy accounts for the majority of Australia's offshore tertiary student enrolments.
Mode 4: Movement of natural persons	Australian teachers and researchers travel to the EU to work as contractors or employees	Anecdotally, this is a very active area though difficult to quantify. Its contribution to the Australian economy is also difficult to quantify.

6.2.1 Education consumed abroad

The latest OECD and UNESCO data on global student mobility is for 2016 and positions Australia as the third most popular study destination in the world after the US and the UK. Indeed, some commentators have suggested that Australia may have recently taken over the UK as the world's second most popular study destination, albeit the comparative global data needed to confirm this may not be available before 2020.[108]

Of all international students coming to Australia, the majority (46% in 2018) enrol in the higher education sector followed by the Vocational Education and Training (VET) sector (28%) and the English Language Intensive Courses for Overseas Students (ELICOS) sector (Table 6.2). Much smaller proportions enrol in Australian schools (3%) and non-award courses (6%).

Table 6.2 International students in Australia, by sector and source country

Education sector	International student enrolments		% of incoming students
	2017	2018	2018
Higher Education	349,152	399,078	46%
VET	216,123	244,287	28%
Schools	25,664	26,801	3%
ELICOS	155,212	156,369	18%
Non-award	49,979	49,864	6%
Total	796,130	876,399	100%

Source: Australian Government Department of Education

International students coming to Australia are primarily from Asian countries, notably from China which contributed 30% of incoming students in 2018 (Table 6.3). The largest source of students from an EU Member State was the United Kingdom, which was Australia's 21st source country for student enrolments. However, if the EU is considered as a bloc it has been the third largest source of international student enrolments after China and India for many years.

Table 6.3 Export income arising from student enrolments by source country and the EU

Source country	2017	2018	% of total in 2018	% growth 2018
China	230,681	255,896	29%	11%
India	86,966	108,292	12%	25%
Nepal	35,212	52,243	6%	48%
Brazil	36,382	40,864	5%	12%
Malaysia	32,697	33,730	4%	3%
South Korea	30,968	30,037	3%	-3%
Vietnam	30,371	29,989	3%	-1%
Thailand	30,550	27,794	3%	-9%
Colombia	21,566	26,211	3%	22%
Indonesia	19,958	20,895	2%	5%
EU	**55,185**	**54,003**	6%	**-2%**
Rest of world	185,594	196,445	22%	6%
Total world	**796,130**	**876,399**	**100%**	**10%**
% EU of world	7%	6%		

Source: Australian Bureau of Statistics

As shown in Table 6.4, the EU is Australia's fourth largest source of education export income after China, India and Nepal. The EU has a lower per enrolment value as EU students are more likely to study

[108] https://www.bbc.com/news/education-44872808

short courses in VET and ELICOS and less likely to study in higher education courses which have higher tuition fees. Comparing Table 6.2 to Table 6.5 indicates that only 14% of EU student enrolments were in higher education compared with a world average of 46%. Thus, Australia could gain from making itself a more attractive higher education destination for European students, which may involve improving mutual recognition of qualifications with particular member states.

Table 6.4 International student enrolments by source country and the EU.

Source country/bloc	2017	2018	% of total in 2018	% growth 2018
China	10,020	11,711	33%	17%
India	3,431	4,573	13%	33%
Nepal	1,304	2,137	6%	64%
EU	**1,534**	**1,569**	**4%**	**2%**
Malaysia	1,334	1,405	4%	5%
Viet Nam	1,254	1,343	4%	7%
South Korea	966	984	3%	2%
Brazil	777	972	3%	25%
Indonesia	833	899	3%	8%
Thailand	819	782	2%	-5%
Hong Kong	785	780	2%	-1%
Rest of the world	7,206	8,079	23%	12%
Total world	**30,263**	**35,234**	**100%**	**16%**
% EU of world	5%	4%		

Source: Australian Government Department of Education

Students from the European Union (EU) represent less than ten per cent of all incoming students and only three per cent of all incoming higher education students (Table 6.3). Nonetheless, EU students come from many different member states and they contributed a significant $1.6 billion to the Australian economy in 2018. Although Australia and the UK share strong academic linkages, students from the UK form only 14 % of EU students studying in Australia (Table 6.6), being out-numbered by students from non-English speaking countries such as Italy and Spain who are pursuing ELICOS and VET studies. It is also the case the UK students are more likely to enrol in VET than in higher education.

Table 6.5 Students from European Union studying in Australia, by sector

Education sector	**Number of incoming students**		**% of incoming students**
	2017	**2018**	**2018**
Higher Education	7,973	7,721	14%
VET	24,419	24,491	45%
Schools	1,811	1,780	3%
ELICOS	11,866	11,043	20%
Non-award	9,116	8,968	17%
Total	55,185	54,003	100%

Source: Australian Government Department of Education

Table 6.6 Students from European Union studying in Australia, by Member State

EU member states	Number of incoming students		% growth on previous year	% of incoming students
	2017	2018	2018	2018
Italy	10,191	9,274	-9%	17%
Spain	7,695	8,197	7%	15%
United Kingdom	7,458	7,678	3%	14%
France	5,879	6,003	2%	11%
Germany	5,443	5,403	-1%	10%
Czech Republic	2,541	2,135	-16%	4%
Sweden	2,042	2,055	1%	4%
Poland	2,265	1,917	-15%	4%
Netherlands	1,323	1,429	8%	3%
Portugal	1,131	1,131	0%	2%
Ireland	996	1,105	11%	2%
Denmark	1,091	1,082	-1%	2%
Slovakia	1,174	1,077	-8%	2%
Greece	1,320	1,069	-19%	2%
Lithuania	868	877	1%	2%
Belgium	622	634	2%	1%
Estonia	523	537	3%	1%
Hungary	677	514	-24%	1%
Total EU	**55,185**	**54,003**	**-2%**	**100%**

Source: Australian Government Department of Education

From an export perspective, consumption of education services abroad is most restricted by Australian domestic policies with respect to student visa eligibility, academic entry requirements and provider registration requirements. Access to work opportunities both during and after study is of great interest to many international students and is considered a point of competitive advantage for Australia in the global education market.[109] Some international students may also be seeking permanent migration to Australia. Analysis of visa statistics over time suggests only 16% of student visa holders eventually achieve this outcome, often a decade or more after completing their first Australian qualification (Treasury and Department of Home Affairs, 2018).

Although consumption abroad (mode 2) is largely affected by policy interventions imposed by the country where the consumption takes place, there may also be restrictions applied by the student's country of origin, such as exit visa requirements that restrict numbers of outgoing students from that country.

6.2.2 Other forms of international supply

Export income from education services supplied through cross-border supply, commercial presence and movement of natural persons (modes 1, 3 or 4) is difficult to isolate from the national accounts data currently released by the ABS. The combined delivery of Australian Qualifications Framework (AQF) accredited courses via cross-border trade and commercial presence was estimated to be worth over $430 million in 2014 (Deloitte Access Economics, 2016) and has grown only modestly since then. In 2017, there were nearly 120,000 offshore student enrolments, with less than 8,000 that were fully delivered as 'distance education' (including fully online courses). The remainder of courses included

[109] https://www.abc.net.au/news/2018-07-27/temporary-graduate-visa-485-boom/10035390

classroom instruction. Australian courses delivered by classroom instruction in another country represent commercial presence and are generally delivered through either a branch campus of a domestic institution or a partnership arrangement with a foreign institution.

A much larger volume of online courses that are not AQF accredited are delivered in the form of Massive Open Online Courses (MOOCs), with student enrolments in Australian MOOCs allegedly numbered in the millions, but with only a small proportion of course completions recorded and with many of those MOOCs not charging tuition fees. Hence, the economic value of this activity is uncertain, but probably not substantial.

The economic value to Australia of education service delivery through movement of natural persons (mode 4) is even harder to quantify. There is no national data source, but anecdotally Australian academic scholars are routinely employed on a short-term basis by foreign universities for both teaching and research. This activity is very prevalent across many EU member states, including the UK. The international mobility of English language teachers is also thought to be commonplace across the world and in the EU. To be considered a services export from Australia such employment arrangements must be for less than 12 months. If it is longer, those persons are then viewed as temporary migrants, primarily contributing to their local economies rather than to Australia's.

6.3 Some key issues underlying Australia's education services trade

6.3.1 Qualifications recognition

Mutual recognition of qualifications is a common feature addressed in trade agreements for several reasons including professional mobility. For student mobility specifically, mutual recognition encourages bilateral student mobility by first enabling students to gain recognition of prior learning when entering a foreign country's education system, as well as later having the completed foreign qualification recognised when they return home. Recognition of Australian qualifications will also influence the success of initiatives in cross-border supply and commercial presence, since international students are unlikely to pursue Australian qualifications over their own domestic or other international qualifications if Australian qualifications are not recognised by their government or by employers in their country. At a broader level, there may be some scepticism about the value of qualifications gained solely through distance and online education. Supply through movement of natural persons involves professional, rather than student mobility, but recognition of professional status and relevant academic credentials may be of equal importance to sustain this mode of supply.

6.3.2 Different education sectors

While consideration of international education often focuses on higher education only, Australia has been successful in attracting international students to study in its vocational education and training (VET), English language and school sectors onshore (Table 6.2). Australia is also a significant provider of offshore education, again primarily in higher education, but also in VET, English language and secondary school education. Table 6.7 shows numbers of higher education enrolments in EU member states (1,690 in 2017). A small number of EU students (80) were also enrolled in Australian VET courses in 2017, principally in the UK (60) and also in France, Italy and Malta.[110]

6.3.3 Mixed mode services supply

The delivery of Australian education services to offshore students can be enabled in a number of ways. In terms of the GATS modes of supply classification, a mix of supply modes is frequently used. In the higher education sector, distance education is commonly enabled by online delivery, often done as a component of a broader course of study that includes classroom-based teaching. That teaching may be facilitated through partnership with a foreign education institution or through an offshore branch campus of an Australian university. An example of the latter is Monash University's campus in Prato,

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[110] National Centre for Vocational Education and Research data, see: https://internationaleducation.gov.au/research/OffshoreEducationData/Documents/196877_req201819-020_DoET_os_prg_enrol%20-%20for%20Web.XLSX

Italy.[111] Generally less than 10 per cent of Australia's offshore higher education students study by distance only, the remainder being enrolled in courses involving a mix of service supply modes that incorporate classroom-based teaching.

It is likely, though difficult to quantify, that Australian staff may be employed offshore by Australian branch campuses or by foreign partners to facilitate classroom-based teaching and other student services. Where these arrangements are for periods of less than twelve months this would be classified as supply through movement of natural persons.

Thus, it is likely that most Australian offshore education services, which incorporate classroom-based teaching as well as online content, are routinely achieved through a mix of delivery strategies. Such commerce can be potentially restricted by a range of 'behind-the-border' domestic policy interventions relevant to course content and copyright; market access and commercial presence; and the movement of people.

Table 6.7 EU students enrolled in Australian higher education courses delivered in EU member states (cross-border and commercial presence supply)

Member states	Students enrolled 2017
Austria	365
Germany	361
France	316
United Kingdom	162
Denmark	116
Sweden	101
Finland	73
Italy	59
Netherlands	44
Spain	33
Ireland	23
Belgium	13
Hungary	9
Czech Republic	5
Total EU	**1,690**

Source Higher Education Statistics Collection, Australian Government Department of Education.
Note: Data on other countries with less than five students is masked. So this total may undercount the actual EU total by up to 45.

6.3.4 The potential impact of Brexit

The impact of Brexit on Australia's education services trade with the EU is expected to be significant.[112] Nearly 140,000 non-UK EU students studied in the UK in the 2017-18 academic year, presumably facilitated by the current ease of cross-border mobility through existing EU28 arrangements. Should this change post-Brexit, Australia could find itself becoming a more competitive alternative for EU students seeking to study abroad. So too will the USA and Canada. New opportunities for Australia to expand its education services exports to the EU also include the cross-border supply of online courses,

[111] http://www.monash.it/
[112] International students: 'Brexit makes UK less attractive', https://www.universityworldnews.com/post.php?story=20190402085559563

the commercial presence of Australian education institutions and the employment of Australian scholars in the EU27.

6.3.5 Education imports to Australia

Education services imports are also important to Australia, notably via consumption abroad which in an education context involves Australian students studying abroad (in the EU and elsewhere). Currently, there is substantial institutional and government investment (e.g. through scholarships and grants) to support Australians studying abroad and it is likely that the EU would welcome any increase in the number of Australians studying in the EU. Led by the UK, EU destinations are amongst the most popular study destinations for Australian students (Table 6.8).

The other modes of supply are also significant in an import context. These encompass Australian domestic students purchasing distance and online courses (mode 1), foreign institutions establishing a commercial presence in Australia in the form of a branch campus (mode 3) and foreign scholars being employed on a short-term basis in teaching and research roles in Australia (mode 4). The University College London (Australia Campus), based in Adelaide, is a European branch campus that has been established in Australia since 2008, albeit its closure may be pending.[113]

Table 6.8 Australian university students studying in the EU

Member States	2013	2014	2015	2016	2017
Austria	234	243	264	380	368
Belgium	75	55	163	56	126
Denmark	574	439	480	626	789
France	1,134	982	1,081	1,314	1,236
Germany	1,168	1,089	1,339	1,593	1,522
Greece	73	96	126	200	162
Italy	1,120	1,035	1,266	1,874	2,142
Netherlands	563	651	748	854	949
Portugal	75	53	60	98	108
Spain	378	425	530	625	717
Sweden	507	528	502	598	553
UK	2,637	2,919	3,304	3,486	4,065
Other EU	875	325	301	714	907
Total EU	**9,413**	**8,840**	**10,164**	**12,418**	**13,644**

Source Australian Universities International Directors Forum
Note: In 2017, the UK was the most popular destination in the EU and the third most popular destination in the world, after China and the USA.

6.4 Towards a quantitative measurement of education services trade Restrictiveness

The OECD Services Trade Restrictiveness Index (STRI) currently provides comparative values for different countries' relative restrictiveness to services trade across 22 services sectors. However, the services trade sector travel, incorporating education-related, business-related and personal travel, is not currently included. The majority of activity in the travel sector involves consumption abroad, and is hence mostly impacted by domestic regulations of the *exporting* country. The only exception is business-related travel which would be primarily impacted by domestic regulations of the *importing* country with respect to the movement of natural persons.

[113] https://en.wikipedia.org/wiki/UCL_Australia

As discussed earlier, consumption abroad only represents one mode of education services supply, albeit the most widely recognised mode. Education services delivered through other means of supply could be readily considered within the existing STRI framework, which incorporates the following five areas of policy interventions:

- Restrictions on foreign entry
- Restrictions to movement of people
- Other discriminatory measures
- Barriers to competition
- Regulatory transparency.

6.4.1 Restrictions on foreign entry

Qualifications recognition and more specific course accreditation or provider registration requirements can form restrictions on international commerce in education services when this is delivered by either distance education or classroom-based teaching. Other restrictions on online commerce or online content delivery could also restrict the delivery of online courses.

Establishing a commercial presence, such as a university branch campus, in a foreign country may be restricted by that country's domestic regulations regarding the number of foreign providers that can be granted an operating licence. Further, it may be the case that foreign providers can only operate in partnership with local providers and are not be permitted to establish a branch campus of their own. Limits on foreign investment and ownership may also impact on the extent to which institutions can operate through partnership arrangements.

Restrictions on data transfer could also impact on supply of course content, videoconferencing and other online communications between students and staff, as well as student submissions of assignments. There may also be regulatory restrictions on the collection of survey data (e.g. student satisfaction or graduate outcomes data) that would impede an education providers' ability to monitor and remain responsive to consumer trends. Restrictions on funds transfer, including the repatriation of profit earned from commercial presence in a foreign country would also be an issue in this area.

6.4.2 Restrictions to the movement of people

As noted above this area has significant implications for the consumption of education services abroad, but such restrictions are largely imposed by an exporting country's own domestic regulations. Nonetheless, there is potential for a source country to restrict numbers on students leaving the country for education purposes.

Restrictions on access to visas enabling people to enter a country and to work in a country would significantly restrict the supply of education services through the movement of natural persons and perhaps also through commercial presence should a foreign education provider's commercial presence depend on the employment of teachers or administrative staff from its home country.

6.4.3 Other discriminatory measures

The discriminatory treatment of foreign providers with respect to taxes and charges and also any discriminatory access to subsidies or procurements (e.g. government contracts for service delivery) are generally included in this category.

6.4.4 Barriers to competition

Course accreditation or provider registration requirements which favour domestic providers over foreign providers would generally be included in this category. For example, domestic policies requiring domestic students to enrol in domestic courses (as may be particularly the case with school-age students) would impact on a foreign provider's ability to compete. Restrictions imposed on foreign providers' advertising and other marketing strategies would also be included here.

6.4.5 Regulatory transparency

Like any commercial enterprise, education providers may be discouraged from committing time, resources or money to initiate commercial activity with another country whose policy and regulatory framework is not transparent or is otherwise inconsistently applied. Such lack of transparency can lead to unanticipated costs and business uncertainty.

6.4.6 An education services trade restrictiveness index

Although the education sector is not included under the OECD's current STRI, Australia's Productivity Commission developed an equivalent index more than a decade ago (Nguyen-Hong & Wells, 2003). The index is similar in scope to the OECD index, although the Productivity Commission's index had more focus on all four modes of services supply. Notable was the particular consideration given to consumption abroad, where restrictions on student mobility include restrictions imposed by both the exporting (student host) country and the importing (student source) country. These tables are reproduced in Appendix 6.1.

The Productivity Commission used its index to calculate indexes for each education mode of supply across 20 economies (mostly Asia-Pacific Economic Cooperation members), and the results are in detailed tables in the published report (Nguyen-Hong & Wells, 2003). These include values calculated for each mode of supply and for different education sectors (higher, secondary, primary and other). Although no European countries were included in this analysis, the report represents ground-breaking work towards development of a restrictiveness index for education services that is equivalent to the OECD's STRI.

6.5 The treatment of education services in other EU trade agreements

The Canada-EU Comprehensive Economic and Trade Agreement (CETA) includes provisions for higher education services (European University Association, 2017). This includes consideration of mutual recognition of professional qualifications. The Agreement establishes the foundation for pursuing future Mutual Recognition Agreements (MRAs) in specific professions. In that context, higher education providers and curriculum developers would also need to consider qualifications recognition and look to responding to the Agreement's definition of 'equivalency', incorporating the level, duration, credit points and course content of a qualification.

The Canada-EU CETA agreement also has implications for supply through the movement of natural persons. The movement of independent professionals and contractual service suppliers is largely unrestricted for university graduates. There are also specific provisions enabling (for example) Canadian persons to work at a Canadian university branch campus within the EU.

The agreement also considers the establishment and operation of branch campuses (commercial presence). Here, the mixed status of the agreement enabled several member states to depart from the general multi-lateral principles agreed by the EU.[114] The agreement acknowledges that some restrictions already in place will be upheld and several EU members stated requirements regarding the operation of higher education providers within their states (European University Association, 2017: 6-8).

The EU-Japan Economic Partnership Agreement was not a mixed agreement but nonetheless some member states had reservations about on the basis that they would "not accept an agreement that would not protect public services nor the right to regulate in the public interest". Similarly, Japan will uphold 'existing measures', including that formal education institutions must be established by 'school juridical persons', meaning non-profit legal persons established for the purposes of supplying educational services under the laws and regulations of Japan.

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[114] These are national treatment (*service providers of one Party operating in the territory of the other Party will benefit from treatment no less favourable than that accorded to domestic providers*) and market access (*any limits set on the volume of services which can be delivered in each party by the other party*).

Like CETA, the EUJEPA lists mutual recognition commitments for professional services.[115] However, the extent of the effect on each Party's educational services exports will depend on the speed with which the recommendations by the joint committee are approved. Even after an agreement on a final text has been reached, higher education providers might have to make further adjustments to the curriculum in order to meet 'equivalency' requirements in any MRA. As noted in Chapter 3, the pace of change will not necessarily be fast.

Notwithstanding the above, the European University Association has stated a position that higher education should not be the subject of trade negotiations, considering higher education is "not a commodity to be transacted by commercial interests on a for-profit basis" (European University Association, 2018: 1). The European University Association does support the formation of institution-level agreements to support student mobility and research collaboration, so this statement highlights the need for diplomatic sensitivity to avoid perceptions of for-profit motives when negotiating agreements that include education services.

6.6 Other issues emerging from the Workshop

Participants in the Workshop on educational services defined two areas of opportunity for Australia. Firstly, international students studying in Australia were recognised as delivering substantial economic benefits to Australia. This includes indirect benefits to other sectors such as tourism, which benefits from students, as well as visiting family and friends. However, unrestrained growth in international students in Australia was identified as a risk to Australia's reputation for delivering quality education in an increasingly competitive global marketplace. Participants suggested education quality could be enhanced by maintaining Australia's reputation for excellence in research, minimising casualisation of staff, ensuring high course entry standards and having a stronger focus on developing English language proficiency. Student experience was also acknowledged as important, with respect to ensuring student safety, affordability of accommodation, access to public transport concessions and student support services. Thus, the discussion highlighted areas of domestic reform that could enhance Australian educational services trade. Students from the EU generally show more interest in Australia's VET and English language courses, probably because high education study is available free of tuition fees in many EU member states. However, there may be unexplored opportunities for growing student exchange between Australia and EU member states, which may be a less expensive option for many EU students, as well as enabling more Australian students to study in the EU before completing their Australian qualification.

The second area of opportunity identified was the delivery of Australian education offshore, either by online delivery; by classroom-based teaching in branch campuses or via institutional partnerships; or by the movement of teachers, scholars and researchers. Participants pointed to the growing global demand for technical and workplace training, as well as broader ongoing adult learning, as key areas of offshore opportunity for Australia. Australia's public Technical and Further Education (TAFE) sector has had significant success in offshore training delivery and currently enrols more international students offshore than onshore.

However, there is a growing demand for short intensive training, more likely to lead to microcredentials than to traditional degrees or diplomas, That demand is also primarily for courses tailored to suit local conditions offshore, rather than fitting Australia's regulatory and policy frameworks. Meeting such demands are challenging in the context of Australia's current approach to course accreditation. Thus, it was agreed in the workshop that improving trade in offshore educational services delivery could also benefit for domestic reforms.

6.7 Priorities for education services liberalisation

As discussed above, education trade with the EU may be strengthened through a number of domestic reforms which would enhance Australia's reputation as a quality provider of education, closely linked

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[115] EUJEPA, Article 8.35.

to its reputation for world class research. Trade agreement negotiations may also open up opportunities for growing research linkages and collaboration between Australia and the EU.

It is unlikely that Australia's higher education sector will be perceived as a competitive option for many European students. However, marketing efforts focusing on Australian academic specialties and expertise, as well as its lifestyle attractions may be effective. The interconnectedness of Australia's education sectors is also an advantage, enabling students to transition through English language and other preparatory studies onto higher education or VET on the same student visa.

Trade negotiations which enhance the movement of people can also benefit educational services delivery. This includes work rights during and after study, which represent a current area of competitive advantage for Australia, although recent reforms introduced in the UK will challenge this.[116] Policy settings for the movement of people will also influence Australia's ability to deliver education within the EU and for Australian students to study in the EU.

Another potential area of negotiation is the mutual recognition of qualifications between Australia and EU member states. Mutual recognition enables workplace entry for graduates, as well as course progression and credit transfer for students. The broader area of licensing of professionals is also vital to enable the movement of teachers, researchers and skilled technicians who can facilitate a range of educational services, including short intensive workplace training.

Growing offshore delivery to meet extant global demand requires further research, in the form of interviews or focus groups of offshore education providers that may inform trade agreement negotiations. Indeed, such research might also inform the development of an STRI for education services which would assist in informing trade negotiations both now and in the future.

[116] https://www.gov.uk/government/news/uk-announces-2-year-post-study-work-visa-for-international-students

Appendix 6.1 Extract from Productivity Commission Restrictiveness Index for Education Services.

Table A6.1 Restrictiveness index for education services, consumption abroad

DOMESTIC INDEX — INWARD MOVEMENT OF FOREIGN STUDENTS

Restrictiveness category	*Specific score*	*Maximum index score*
Numbers of foreign students		1.00
Quotas on foreign students	1.00	
Number of foreign students are restricted for particular foreign countries, or educational institutions/sub-sectors	0.50	
No restrictions	0.00	
Visa entry requirements – addition categories		1.00
Length/class of visa	0.20	
Requirements for admission to educational institutions	0.20	
Proof of financial support	0.20	
Language skills	0.20	
Cost of visa and other requirements	0.20	
Recognition of overseas qualifications		1.00
Reported non-recognition of foreign qualifications for admission to domestic educational institutions	1.00	
Overseas qualifications are recognised in part or on a case-by-case basis	0.50	
Full recognition of overseas qualifications	0.00	
Registration requirements specific to export of education services – addition categories		1.00
Compulsory registration	0.33	
Financial viability/assurance/prepayment of course fees requirement	0.33	
Charges/levies	0.33	
Other restrictions – addition categories		1.00
Limits on foreign student access to employment	0.50	
Limits on foreign student access to public concessions[a]	0.50	
Transparency of regulations		1.00
Reported difficulties in obtaining information on regulations and lack of consistency and clarity in regulatory implementation	1.00	
Regulations are stated in legislation, but inconsistency in implementation is reported	0.50	
Lack of transparency is not reported	0.00	
TOTAL		6.00

[a] By definition, the granting of such concessions to foreign students would involve an income transfer to foreign residents.

Appendix 6.1 (continued):

Table A6.2 Restrictiveness index for education services, consumption abroad

FOREIGN INDEX — OUTWARD MOVEMENT OF DOMESTIC STUDENTS

Restrictiveness category	*Specific score*	*Maximum index score*
Number of domestic students studying abroad		1.00
Quotas on domestic student numbers	1.00	
No restrictions	0.00	
Visa exit requirements – addition categories		1.00
Requirement to have licensed travel agents	0.50	
Age restrictions	0.50	
Recognition of overseas qualifications		1.00
Reported non-recognition of overseas qualifications obtained by domestic students	1.00	
Overseas qualifications are recognised in part or on a case-by-case basis	0.50	
Full recognition of overseas qualifications	0.00	
Other restrictions – addition categories		1.00
Limits on foreign exchange, payment transfers or use of credit cards by students	0.33	
Limits on access to public concessions for domestic students to study abroad	0.33	
Restrictions on student recruitment for study in overseas institutions	0.33	
Transparency of regulations		1.00
Reported difficulties in obtaining information on regulations and lack of consistency and clarity in regulatory implementation	1.00	
Regulations are stated in legislations, but inconsistency in implementation is reported	0.50	
Lack of transparency is not reported	0.00	
TOTAL		5.00

Chapter 7 Conclusions

An early version of this paper fed into an intensive Workshop held in Canberra in July 2019. This Workshop brought together academics, policy-makers, data experts, trade negotiators and industry representatives to assess priorities for enhancing trade in services. These deliberations identified important issues falling into four major categories: critical issues that were not fully explored during the workshop; priorities for domestic reform; priorities for trade negotiations; and unmet data needs. The last category includes suggestions for further development of the OECD's STRI.

7.1 Critical issues needing further exploration

The main identified issue that was not fully explored at the Workshop, yet is critical for many aspects of services trade, is the set of regulations governing how personal, business and administrative data are handled. This issue was evident in all parts of the Workshop, but particularly in the intensive discussion of trade in financial services. Key issues include how privacy is handled, the importance of data security, local storage requirements and cross-border data flows. The issues of privacy and security are essential to trust in the firms or institutions using the data particularly when breaches of these criteria can cause substantial market losses or security concerns. Governments also have priorities regarding how digital data are handled and these priorities differ between different regional trading blocs. Further exploration of this issue was beyond the scope of this project.

7.2 Priorities for domestic reform

Economists regularly identify one of the benefits of trade negotiations as identifying areas within the domestic economy where competitiveness can be improved. While many barriers to trade in goods lie at the border, for services such impediments are rare. Almost all barriers to trade in services derive from various aspects of domestic regulation. As noted in Chapter 1 such regulations have many valid social, cultural and economic objectives. The challenge is to ensure that such goals are achieved in the least trade-distorting manner possible.

In this Project there were three major sources from which information to identify priority domestic reform issues arose. First, in the intensive Workshop, discussion of educational services exports identified many issues needing domestic reform. Second, views from industry – both Australian and European – also suggest a number of areas where domestic reforms would enhance competitiveness and through this productivity. Finally, the EU negotiating demand also identifies areas where domestic reform might be beneficial. Here the new open approach of the EU is noted – the publication of most of their initial negotiating demand provides academics and the general public with substantial information on issues that might be important in the Australia-EU trade negotiations.

7.2.1 Domestic reforms in the education sector

Australia is the third most popular study destination in the world for overseas students and international students make a substantial contribution to the Australian economy, positioning education as Australia's fourth largest export and largest services export. However, unrestrained growth can impact on the quality of service delivery and create perceptions of exploiting students for profit. Reaffirming Australia's reputation for quality education can be achieved through institution level reforms such as ensuring high course entry standards, minimising casualisation of staff and having a stronger focus on developing English language proficiency. Broader initiatives to ensure student safety, enhance the affordability of accommodation and maximise access to public transport concessions and student support services are also important to maximise the soft diplomacy impact on students returning overseas. Further enhancing Australia's reputation for research and researcher development, including strong PhD supervision, would help maintain the position of Australian universities in world rankings.

Australia's delivery of courses offshore via face-to-face and online teaching and learning, is an area where substantial expansion might also be achieved through domestic reforms. Currently, the offshore delivery of accredited Australian courses in both higher education and vocational education and training (VET) is in slow decline. Courses that are designed to meet local needs and conditions in foreign countries are more likely to be successful than those designed to meet Australian regulatory requirements. Australian VET delivery may be well placed to meet growing global demand for short intensive training in foreign workplaces,[117] perhaps including the awarding of micro-credentials which are not common features of Australian education's current policy and regulatory framework.

Australia's existing education relationship with the EU is on a smaller scale than with Asia. Nonetheless as a bloc, the EU was Australia's fourth largest source of international students in 2018 (after China, India and Nepal). The majority of EU students in Australia study VET or English language courses, perhaps because higher education is available free of tuition fees within several European countries. Expanding higher education exchange programs, which do not require payment of full tuition fees, may be an effective way of growing bilateral higher education student mobility between Australia and the EU. Such institution-level arrangements are generally achieved outside of formal trade negotiations, though they may be facilitated by trade agreements which enhance the movement of people.

7.2.2 Other domestic reforms

Market access issues with respect to European services exports to Australia can directly assist in identifying priority areas for domestic reform. The Australian Services Roundtable (ASR) identified no less than 125 priority issues in its report to the DFAT on services exports (ASR, 2019), and many of these related to domestic issues. Many service industries provide critical inputs to firms in all sectors of the economy, so ensuring the most competitive environment in these sectors maximises the possibility of other firms being internationally competitive.

In this respect, transport and communications sectors are of particular importance, followed by the various business services, particularly finance. Much has been achieved in Australia to reform the transport and communications industries, yet there remain pockets where performance falls far short of international best practice. One such area is coastal shipping, and this is an industry identified as a priority in the EU's negotiating demand. The Productivity Commission has pointed to a less than satisfactory situation in finance markets, with respect to competitiveness. Again these trade negotiations could potentially provide an impetus for domestic reforms that are otherwise difficult to achieve.

An area where ordinary consumers face high prices is telecommunications, particularly with respect to cross-border roaming charges. Should Australia and the EU agree to mutually extend the EU's provisions for roaming – which would ensure a single market in telecommunications – then substantial numbers of both Europeans and Australians would welcome this treaty.

The OECD's survey of Australian business perceptions on the main obstacles faced by Australian services providers in foreign markets (OECD, 2018: 75-76) points to the importance of recruiting qualified personnel as a key barrier to Australia increasing its exports of services to Europe.

7.3 Priorities for trade negotiations

Interestingly, this was the area where it was most challenging to identify specific priorities. In part, this arises from that fact that, with respect to services industries, the EU negotiates on behalf of its member states, but market access issues are agreed separately for each member state. There can be substantial differences between the 28 (27 after Brexit) member states with respect to impediments to the export of different Australian-produced services.

Data regulation issues are beyond the scope of this Project, yet are vital to many aspects of services trade. These issues should ideally be handled in a multilateral forum such as the WTO. Yet progress here is slow. To be most effective, issues related to how digital data are handled in the proposed bilateral agreement need to be consistent with possibilities for progressing a genuine multilateral outcome.

[117] https://monitor.icef.com/2019/10/global-survey-reveals-growing-interest-in-shorter-programmes-and-lifelong-learning/

Beyond this, priority areas common to most service industries are the movement of people and mutual recognition of qualifications (MRQ). Interestingly, on MRQ, the ASR raises the specific issue of actuaries. We have noted that the nature of the actuarial profession is such that there should be fewer impediments to international provision of services than for accountants. Given the success in negotiating mutual recognition arrangements for accountants, a useful next step would be to extend this to actuaries. During the Workshop, the issue of mutual recognition of architecture qualifications was raised, particularly questions as to how effective the CETA arrangements are for progressing such mutual recognition. Further assessment of the post-CETA outcomes for MRQ in architecture would be helpful for assessing whether CETA-style arrangements would be effective in progressing MRQ issues in the EU-Australia economic relationship.

Issues relating to the establishment of businesses will be important for financial services in a post-Brexit environment. Given the dominance of the UK's financial services industry within Europe, it would make sense for Australia to suggest inclusion of an early review of treaty commitments with respect to financial services commitments – perhaps 3 years after Brexit, when post-Brexit markets have taken firmer shape.

7.4 Needs for improved statistical data

Good policy requires good statistical and administrative data, effectively analysed. The ASR called for more detailed trade data, with increased disaggregation of the data. Beyond trade data, the ASR also called for improved ABS data on services innovation and services productivity.

Where the main mode for trade in services is through commercial presence overseas the critical data requirement is for data on foreign direct investment. Foreign affiliates of Australian businesses make a significant contribution through commercial presence abroad, as do foreign affiliates of EU businesses in Australia. In our analysis of financial services trade (Chapter 5) we noted that the ABS currently undertakes one-off surveys on the business activities of Australian firms abroad. The publication of more frequent survey results, or even better, the regular collection of FATS data, would fill the data gap.[118] Taken together with Balance of Payments statistics, FATS data would provide a more complete picture of economic activities of locally-based firms across the globe, thus enhancing the analysis of service trade and related financial flows. The ASR also called for regular Foreign Affiliates Trade Statistics (FATS) data for Australia.

7.4.1 The OECD's STRI

The OECD's STRI provides a useful vehicle for analysing services trade and impediments to this. Unlike trade in goods, where the EU member states have a common external tariff, the barriers to trade in services are generally not consistent across the EU member states, due in part to variations in domestic regulation (Drake-Brockman, 2018). In general, we found the STR database informative and the tools provided for analysing it effective. At a service sector level, it is possible to compare Australia's relative restrictiveness in comparison to different EU member states. Drilling down into the underlying policies that influence STRI values calculated for different EU members and Australia is also instructive. In respect of courier services, however, where many countries maintain a postal monopoly to ensure Community Service Obligations are met, we would have liked the capacity to analyse the courier services data excluding the monopoly segment of the market. As the reserved service areas are general uncompetitive in more remote parts of a country, the primary interest of commercial firms lies in those parts of the market which are not part of the reserved monopoly.

Australia's Productivity Commission has undertaken exploratory work developing an STRI for education services. Its index captures restrictions imposed on both inward and outward student mobility, as well as restrictions on the delivery of education services within a foreign country, including the ability of researchers and teachers to work in that country. Their index captured measures for 20 economies, including major student source countries in Asia and Latin America, as well as the major English-speaking education destinations, namely USA, UK, Australia, Canada and New Zealand. The

[118] The ABS is currently collecting FATS for Australia, but the data were not available at the time of writing of this paper.

methodology employed is different from that used in the OECD, indeed the OECD has not to date developed an STRI for any of the major travel trade sectors, namely personal travel (tourism), business-related travel and education-related travel. In informal discussions around this project OECD representatives indicated development of STRIs for education and other travel sectors might be undertaken at some time in the future.

An education STRI would be most useful as the issues involved in trade in education differ somewhat from those affecting other service sectors. The delivery of education online is likely to be impeded by the same trade restrictions as other digital services. The delivery of education face-to-face will be impeded by market entry restrictions, as well as restrictions on the movement of people and their ability to work in a foreign country.

7.5 Returning to multi-lateralism

The WTO principles of non-discrimination and national treatment underpin an effective multi-lateral approach. No discussion of bilateral trade negotiation issues is complete without a consideration of whether the shape these negotiations take will help or hinder a return to multi-lateralism. Both Australia and the EU identify the multilateral approach based on WTO principles as the preferred approach to trade negotiations, so it is important to ensure that arrangements in bilateral agreements are aligned to this broader goal as much as possible. In Chapter 4 we noted the amount of “water” in services trade commitments. If the EU-Australia trade agreement is to achieve greater economic value, it needs to contain *genuine* commitments that are also aligned with WTO MFN principles and as free from bilateral preferential provisions as possible.

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