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Korea FTA Task Force
Attn: Mr Michael Growder
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221

Dear Mr Growder,

ANZ welcomes the conclusion of preparatory talks between Australia and South Korea on a bilateral free trade agreement (FTA) and appreciates the opportunity to comment on issues specific to financial services which we believe could be usefully addressed in an FTA.

ANZ in South Korea

ANZ has had a presence in South Korea since 1978 and operates one branch in Seoul - a fully licensed commercial bank. ANZ Korea offers a range of commercial banking products and services to support the activities of both its international and local customers in their business activities in Korea.

ANZ Seoul's product range includes both trade and corporate financial services, including working capital loans, short-term funding in both local won and foreign currencies, medium-term loans and foreign currency term and revolving facilities. Our branch also provides treasury services, covering money market activities, foreign exchange transactions as well as interest rate swaps and derivative services.

Over the short-to-medium term we plan to expand our institutional business in South Korea and to target Korean corporates and multinational companies who trade with or have invested in key Asian markets.

Impact of an FTA on ANZ

In any consideration of whether to invest or establish operations overseas, ANZ looks for transparent regulations and corporate governance based on international standards, the rule of law (and enforcement thereof), clearly defined dispute mechanisms, and a well resourced and independent regulatory structure with established prudential oversight.

Korea's regulatory and governance frameworks largely address these criteria, however there is scope for an FTA to lock in reforms that will result in a more open and competitive market, delivering further opportunities for Australian service providers. A comprehensive, high quality bilateral FTA could facilitate a greater range of services to Korean companies from Australian services providers, boosting already strong bilateral economic and trade links. From ANZ's perspective, any gains made under an FTA could also potentially make decisions to invest in growing our business in Korea more attractive.

Issues for an FTA

Market access for foreign banks in Korea is relatively good by regional standards, with prudential regulations applying equally to domestic and foreign financial institutions. Nevertheless, there are a number of issues relating to regulation of Korea's finance sector that could usefully be addressed in a bilateral FTA.

The United States-South Korea FTA (KORUS) provides an excellent point of reference from which to formulate Australia's FTA priorities for financial services. The KORUS FTA is a comprehensive agreement, covering trade in goods and services, investment, intellectual property, competition policy and government procurement. It provides for improved access to service markets and grants US financial services firms full rights to establish or acquire financial institutions in Korea and to offer a full range of services in the Korean market. Looking ahead, it is possible that the KORUS FTA (once ratified) could serve as a foundation for Korea's future FTAs, including for any negotiations with Australia.

In terms of financial services, a bilateral FTA should set the same rules for local and foreign banks, including on market access issues; set the same prudential regulations pertaining to the provision of new financial services and products; and permit cross-border supply of financial services and data processing, subject to meeting appropriate privacy standards.

Regulatory transparency and policies governing activities of financial institutions are integral in facilitating access of foreign financial institutions to markets. A bilateral FTA should therefore seek to enhance the regulatory and governance arrangements for financial services to ensure Australian and Korean companies are treated no less favourably than their local counterparts in all aspects of their business.

Korea currently has in place a 'positive list-based' regulatory regime which means that in order for a foreign bank to conduct new product business in Korea, its local subsidiary or branch is required to have 'pre-approval' from the regulator for each new product or service. To address this, the Korean Government has committed in early 2009 to establish a more flexible 'negative list-based' regulatory regime that presumes an activity or service will be allowed unless explicitly prohibited. A negative list will remove restrictions that separate securities, futures, asset management, trust services, and other financial services, and provide opportunities for innovation, unless a new product is otherwise proscribed.

A bilateral FTA between Australia and Korea should, however explicitly seek to remove or relax barriers and restrictions associated with the provision of 'new' financial products and services. In this context, the KORUS FTA's provisions on financial services could be usefully incorporated into any Australia-Korea FTA to require each party to permit a financial institution of the other to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action.

The provision of cross-border financial services is currently not permitted in Korea. However, the KORUS FTA will provide for the cross-border supply of certain financial services, including the right to provide portfolio management services to South Korean investment funds. Under the KORUS FTA, financial institutions will also be allowed to transfer data cross-border within 2 years of the entry into force of the agreement, allowing regional integration of data processing. ANZ would be strongly supportive of similar cross-border provisions being negotiated as part of an Australia-Korea FTA.

As highlighted in the joint non-government feasibility study into a possible Australia-Korea FTA, there are a number of tax-related issues that impact on the operations of foreign banks in Korea. While these issues do not represent direct trade barriers and do not necessarily lend themselves to inclusion in FTA negotiations, they do impact on the operations of foreign banks.

Notwithstanding, we would welcome consideration being given to establishing a dialogue with Korean officials on these issues with a view to reviewing these requirements as part of the existing Australia-Korea double taxation agreement.

Conclusion

A bilateral FTA would lead to increased investment and trade flows between Australia and Korea and have a positive impact on the business and regulatory culture in Korea. More transparent and liberalised regulatory processes and rules would strengthen the relationship between Korean regulators and Australian financial service providers and provide increased certainty for Australian investors more broadly.

In short, ANZ would welcome any decision by the Australian Government to commence formal bilateral FTA negotiations of a bilateral FTA with Korea. Should you require further information about this submission, please contact:

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