

**The Voice for
Australia's exporters**



Submission to the Department of Foreign Affairs and Trade on the proposed Australia-European Union Free Trade Agreement

March 2016

Submission by the Export Council of Australia



Export Council of Australia

The Voice for Australia's Exporters

8 March 2016

Australia-European Union Free Trade Agreement
Europe Division
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221

Sent by email to: a-eufta@dfat.gov.au

Export Council of Australia (ECA) submission to the Department of Foreign Affairs and Trade on the proposed Australia-European Union Free Trade Agreement (EU FTA).

1. About the Export Council of Australia

A not-for-profit, membership based organisation, the ECA is the peak industry body representing Australia's exporters and importers, particularly SMEs. With a membership base of 1,000 and a reach of 15,000, the ECA represents companies of all sizes and across a wide range of industry sectors, including services exporters. The ECA's core activities include research, advocacy, skills development and events. Some details on the ECA's work are provided below.

- 1.1. The ECA works collaboratively with a number of Federal and State Government Departments to advance the interests of its members and the broader business community. These include Efic, the Department of Foreign Affairs and Trade (DFAT), Austrade, the Department of Immigration and Border Protection (DIBP), the Department of Industry, Innovation and Science, the Office of Transport Security, and the Department of Agriculture and Water Resources (DAWR). The ECA is represented on many of the advisory groups administered by the above listed agencies, including the National Committee on Trade Facilitation and the Department of Agriculture, and Water Resources Cargo Consultative Committee.
- 1.2. The ECA regularly provides submissions to government and its agencies on various reviews, as well as to parliamentary inquiries. These have included submissions relating to:
 - the Korea-Australia Free Trade Agreement (KAFTA) and the KAFTA Customs Bills
 - the Japan-Australia Economic Partnership Agreement (JAEPA) and the JAEPA Customs Bills
 - the China-Australia Free Trade Agreement (ChAFTA) and the ChAFTA Customs Bills
 - the EMDG Review
 - the Inquiry into Australia's Treaty Making Process
 - the Inquiry into the Business Experience in Utilising Australia's Free Trade Agreements
 - the Productivity Commission review into barriers to growth in Australian services exports
 - The Inquiry into Australia's Future in Research and Innovation
- 1.3. The ECA also releases annual Trade Policy Recommendations (TPR), and the latest document, TPR 2015/16, includes commentary and recommendations regarding the

Government's Free Trade Agreement (FTA) agenda and ways in which Government should work with industry to raise the level of understanding of FTAs.

- 1.4. In 2014 the ECA launched a longitudinal survey, Australia's International Business Survey (AIBS), with Austrade, Efic and the University of Sydney, designed to capture data on the international business activity of Australian companies. The 2014 survey captured data from over 1,600 Australian exporters, making it the most comprehensive investigation into Australia's international business activity in more than 15 years.
- 1.5. AIBS 2015 (which was released on 30 July 2015) resulted from the collection of fully completed and validated responses from 1,237 companies involved in international business. The findings of this report are distinctive and significant because they provide key insights into the nature, needs, concerns and future plans of the overall Australian international business community from the company perspective.
- 1.6. The ECA recently also released its *Advancing Trade Development* report, which examines the trade promotion activities offered by 10 of Australia's key export competitors including the United States, United Kingdom, New Zealand, and Singapore in a bid to encourage government to take a long-term, strategic approach to developing Australia's international trade.

2. The Australia-EU FTA

- 2.1 The ECA welcomes the opportunity to provide a submission to DFAT on the potential outcomes and impacts of the Australia-EU FTA. The ECA supports international agreements that serve to further liberalise trade between Australia and the rest of the world as trade is a driver of economic growth, job creation and long-term prosperity.
- 2.2 While the ECA would prefer international liberalisation of trade to advance on a multi – lateral basis, given the failure of the Doha Round of negotiations at the WTO, advances in liberalisation of international trade must occur, by default, pursuant to regional, bilateral and other FTAs or similar agreements. On that basis, the ECA is of the view that the Australia-EU FTA represents a reasonable and desirable outcome to advance Australian trade.
- 2.3 The ECA is also of the view that negotiations regarding an FTA will not always deliver a "perfect" outcome in which both parties secure all their aims for now and the future. Like any other agreement, any FTA represents a compromise outcome reflecting the respective negotiating strengths of the parties. On that basis the ECA believes that the Australia-EU FTA represents a significant opportunity to improve market access to the EU, especially given the need for Australia to advance its interests where its other competing trade partners have already secured, or are currently seeking to secure, FTAs with the EU.
- 2.4 AIBS 2015 results indicate that there is some appetite for a trade agreement with the EU with 5 per cent of respondents indicating that a trade agreement with the EU specifically would be useful to their business (see Table 1). Given that agreements have now been reached with China, Japan and South Korea and an agreement with India is under negotiation, the EU is a logical next step. It would also represent an important counterpoint and "balance" to our current focus on the Asia – Pacific region.

Table 1: Demand for FTAs

Survey question: In addition to those countries listed, which other countries do you think it would be useful for Australia to have a Free Trade Agreement with?

Rank	Country	Number of respondents	Share (%)
1	China	254	34%
2	India	121	16%
3	Japan	55	7%
4	South Korea	50	7%
5	European Union	41	5%
6	Brazil	40	5%
7	Indonesia	36	5%
8	United Kingdom	29	4%
9	Canada	22	3%
10	Russia	22	3%
11	United Arab Emirates	20	3%
12	South Africa	18	2%
13	Germany	11	1%

Number of respondents = 755

Source: AIBS 2015

- 2.5 In its 2014/15 Trade Policy Recommendations for Government, the ECA states:
- In addition to implementing the trade agreements Australia recently secured with Korea and Japan, and concluding negotiations with China and the Trans-Pacific Partnership Agreement (TPP), the next focus should be on securing Free Trade Agreements (FTAs) with Indonesia, Hong Kong, India, the GCC and the EU.*
- 2.6 As highlighted by DFAT, the 28 members of the EU bloc are Australia's second largest trading partner and largest source of foreign investment. In 2014 two-way merchandise trade was valued at \$58.0 billion and two-way services trade was worth \$26.0 billion. In 2014 Australia exported \$22.2 billion worth of goods and services to the EU. The EU's combined GDP in 2014 was USD 18.5 trillion and it includes four of the world's 10 largest economies (Germany, the UK, France and Italy).
- 2.7 The UK and Germany were nominated by AIBS 2015 respondents as being the fourth and sixteenth top markets (by international revenue) respectively. In terms of the second top markets nominated by respondents, the UK ranked second, France sixteenth and Germany eighteenth.
- 2.8 The ECA does not believe that the Australia-EU FTA will be in any way inconsistent with any other negotiations to which Australia is a party, such as the WTO Trade in Services Agreement, the WTO Environmental Goods Agreement, the India-Australia Comprehensive Economic Cooperation Agreement, the WTO Government Procurement Agreement, the WTO Trade Facilitation Agreement, the WTO Information Technology Agreement, the Regional Comprehensive Economic Partnership and Indonesia-Australia Comprehensive Economic Partnership Agreement.
- 2.9 The ECA is of the view that in order to achieve the maximum benefit from negotiating a trade agreement with the EU, the government will firstly need to undertake extensive engagement with interested parties before commencing negotiations and during development of the agreement. Following the conclusion of negotiations, the government should focus on providing post-implementation tools and information to ensure businesses are aware and able to take full advantage of the benefits gained through the agreement.
- 2.10 In general terms, the ECA recommends that the FTA should generally adopt the same format and basic chapters as exist under other Australian FTAs. Such consistency assists comprehension and to the extent possible separate "side letters" and "MOUs" should only

be used in the most limited of circumstances. In the ECA commentary below we have limited our comments to those issues which have come to be of most concern to ECA members.

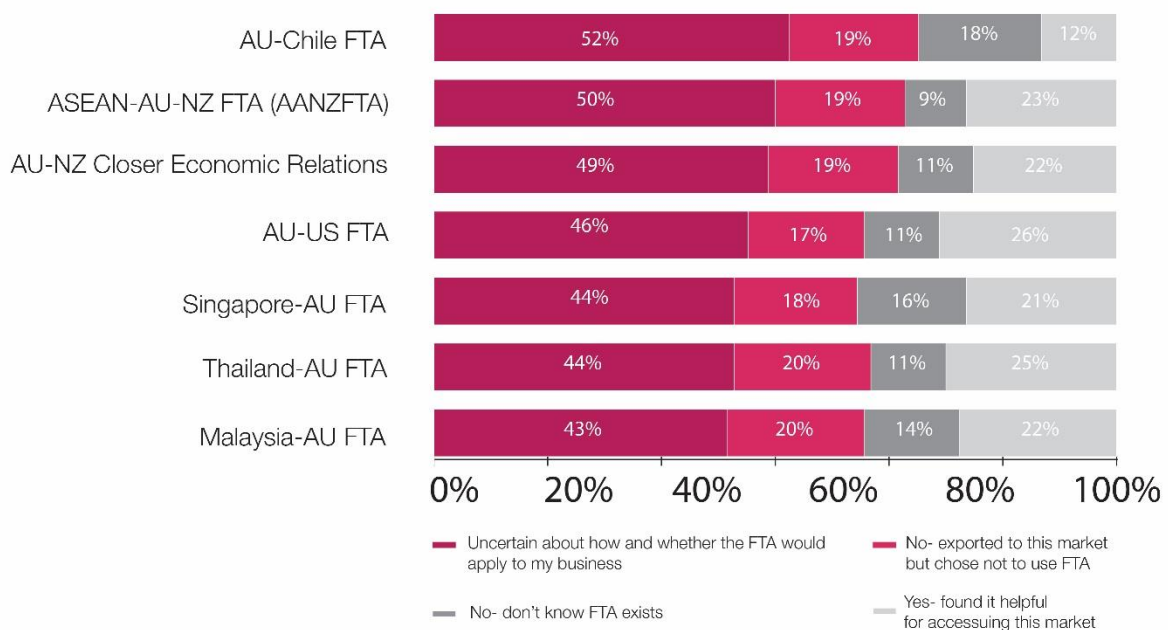
- 2.11 The ECA believes that the Australia-EU FTA should be a living agreement and notes that its terms and benefits could continue to develop over time through the Committees established pursuant to the FTA with the EU.

3 Utilisation of FTAs

- 3.1 While the ECA applauds the government's work in successfully negotiating landmark trade agreements, including with China, South Korea, Japan and the nations who are parties to the TPP, there is a need to ensure that agreements, which require a significant investment, are well understood by the business community, particularly with regard to SMEs.
- 3.2 AIBS 2015 reveals that there are significant knowledge gaps in the international business community that need to be addressed if the agreements are going to be fully leveraged (see Figure 1).

Figure 1: Use of FTA by individual FTA

Survey question: Please specify your use of FTAs in the markets exported to?



No. of respondents: ASEAN-AU-NZ FTA = 555, AU-Chile FTA = 172, AU-US FTA = 465, AU-NZ Economic Relations = 468, Thailand-AU FTA = 352, Malaysia-AU FTA = 389, Singapore-AU FTA = 439

© AIBS 2015

Source: AIBS 2015

- 3.3 The Joint Standing Committee on Treaties' report on the China-Australia Free Trade Agreement (ChAFTA) states that to take full advantage of ChAFTA, and other FTAs, Australian business and industry must be provided with the education and support required to understand, navigate and comply with the FTAs' complexities. Moreover, following the inquiry into business utilisation of Australia's FTAs, the Joint Select Committee on Trade and Investment Growth's report notes that while the business community supports the government's pursuit of FTAs, potential reforms to improve awareness of their advantages could help improve businesses' ability to benefit from the Agreements.

- 3.4 The ECA appreciates that businesses need simple and practical information about FTAs that they can utilise quickly and easily. As a result, in 2015 the ECA developed an FTA Tool with ANZ Bank, and content partner Hunt and Hunt Lawyers, which it believes is an excellent starting point for businesses wishing to understand the basics about FTAs. The "FTA Dashboard" which has now been launched and is being further developed by DFAT will complement the ECA's work in this space and offer businesses a deeper level of detail.
- 3.5 These online tools are helping businesses to understand and navigate FTAs but there is room for greater collaboration between government and industry in terms of offering ongoing support and information.

4 Reducing the adverse effects of non-tariff barriers

- 4.1 Many international barriers to exports are barriers inherent in domestic regulations within the destination country. As highlighted in the ECA's 2015/16 Trade Policy Recommendations, non-tariff barriers (NTBs) are an increasing impediment to international trade flows. While eliminating and/or reducing tariff barriers will be a key focus of Australia-EU FTA negotiations, the ECA believes it is also crucial to acknowledge the NTBs that Australian companies face and, where possible, take the necessary steps to ensure these are addressed in the final agreement.
- 4.2 The ECA does recognise that while NTBs can sometimes be addressed in FTAs, they are often complex obstacles to break down. A trade agreement with the EU should establish a framework to identify and address NTBs barriers after entry into force of the agreement, with the long term objective of facilitating increased two-way trade.
- 4.3 As noted in the Productivity Commission's Report on Barriers to Growth in Services Exports:
- Realising benefits from trade depends on governments committing to further reducing barriers at and behind the border. No one mechanism will be sufficient to address international barriers to services trade.*
- Trade agreements can be a precursor to market access, including establishing a commercial presence abroad, but realised benefits may be limited without supplementary measures, such as mutual recognition. The Australian Government can help by putting in place a framework in trade agreements for developing mutual recognition agreements.¹*
- 4.4 The 2015 B20 Trade Taskforce Policy Paper also called for G20 countries to reaffirm the standstill commitment and roll back existing protectionist measures, especially NTBs. As noted in the 2014 B20 Australia Trade Taskforce, NTBs can have a much greater negative impact on GDP growth than tariff barriers.²
- 4.5 In the agrifood sector, for example, the Australian Food and Grocery Council's (AFGC's) International Trade Report on NTBs facing Australia's agri-food exports identifies that NTBs have been increasing over the past decade. For established markets, particularly in Europe and North America, there has been an observed push to entrench their domestic approaches to food regulation and standards into international trade.
- 4.6 The ECA believes there should be a focus on addressing NTBs to trade, is supportive of initiatives that aim to harmonise standards across countries and agrees that the government should build stronger frameworks for developing mutual recognition agreements. To enable effective progress to be made on removing these barriers, however,

¹ Productivity Commission, Barriers to Growth in Service Exports - Research report, 7 December 2015, page 2, <http://www.pc.gov.au/inquiries/completed/service-exports/report/service-exports.pdf>

² B20 Turkey, B20 Trade Taskforce Policy Paper 2015, September 2015, http://b20turkey.org/policy-papers/b20turkey_trade.pdf

the government needs to invest in adequately resourcing the DFAT and the DAWR. Prioritising this will help break down NTBs and ensure the desired benefits of trade are delivered. At the same time, the ECA recognises that some NTBs cannot be resolved by negotiations alone. In its 2015/2016 Trade Policy Recommendations the ECA stresses the merit of Australia having recourse to the mechanisms to resolve trade disputes—including those relating to NTBs—between nations, whether they be pursuant to the WTO Dispute Settlement Understanding or pursuant to the dispute resolution provisions in various FTAs of other agreements. The ECA understands that for many years, Australia has chosen not to initiate such proceedings and has confined itself to being a third party to WTO disputes brought by other nations. However, some ECA members have recently expressed their hopes that Australia should be prepared to initiate the proceedings directly both to protect the interests of Australian exporters and importers and also to ensure that those Australian interests are not disadvantaged compared to their competitors (such as the US, NZ and Brazil) whose governments are prepared to initiate proceedings directly. The ECA also believes that national relationships between countries are not adversely affected by being directly engaged in such disputes and that, in fact, the ability to conduct such disputes in a sensible manner according to agreed procedures represents evidence of a sound trading relationship.

5 Geographical Indications (GIs)

- 5.1 The ECA is concerned with the ongoing efforts by the EU to increase protection for GIs that would, in effect, privilege one set of food producers – predominantly those in the EU – over others. GIs can have broad implications for food and non-food products alike, should an EU style system ever be implemented here. There is significant anecdotal evidence that GIs are becoming a significant NTB.
- 5.2 Under the EU system, an increasing number of products are being protected and the scope of protection afforded to those products means that any name, symbol or other product which ‘evokes’ the protected product is not permitted even if the true origin of the product is known. The EU is now considering extending this to non-food items such as textiles and ceramics.
- 5.3 The ECA supports the proper protection of GIs as provided for under the WTO Agreement on Trade in Intellectual Property. However, the ECA would like to ensure the ongoing use of common food names that are part of the public domain and that can be legitimately used in current world markets.
- 5.4 The EU continues to seek enhanced protection for GIs through both FTAs and other international agreements. The Australian Dairy industry, which is significantly impacted by GIs, have advocated with trading partners that any modified GIs regime should follow these principles:
 - **Use of compound terms:** GIs, as a general rule, should be compound terms that include the name of the region or sub-region where the product is produced, along with the name of the product (as illustrated by “Camembert de Normandie”.) The product name would be considered as being generic (eg camembert)
 - **Protection in entirety:** Protection should be accorded to a registered name in its entirety, that is, the full compound term (e.g., Parmigiano Reggiano) and not to the individual components or derivative terms (e.g., parmesan)
 - **Reference points for generic names:** As trade becomes more globalised and interdependent, establish reference points for identifying common names, such as existence of a Codex standard or other international standards; use of the term in dictionaries, newspapers, product descriptions in tariff schedules or in explanatory notes; levels and diffusion of global production; international trade

- **Transparent objection procedures:** GIs regimes should provide the opportunity for stakeholders around the world to comment on applications for GI registrations to ensure that officials have fully considered the request and its impact on other farmers and food producers, that is, allow for objection procedures.

5.5 It is the view of the ECA that during Australia-EU FTA negotiations the Australian Government should attempt to safeguard the use of common food names, as in the TPP.

6 Market Access

- 6.1 The EU is one of the world's most significant economies and remains one of the largest investors in Australia, including in agriculture and food. A proposed trade agreement should continue to improve the framework for two-way investment flows, and movement of people in support of investment. It should also include specific services commitments, including mutual recognition of educational and professional qualifications (such as the ability to practice across jurisdictions) and reductions in visa requirements across jurisdictions.
- 6.2 An Australia-EU FTA would provide an excellent opportunity to secure substantive and commercially meaningful market access across the full range of Australia's goods and services, including agri-food exports.
- 6.3 Australia has significant interests in improved market access for meat into the EU market, particularly for high quality meat. The beef and sheepmeat industries face highly restrictive market access arrangements (low volume quotas and high above quota tariffs) in the EU which effectively limits their trade response.
- 6.4 For dairy to be able to utilise market access opportunities in the EU, there would need to be comprehensive reform of both tariff and non-tariff barriers to trade.
- 6.5 The EU is an important producer and market for the grains industry globally, so continued reform through tariff eliminations, and addressing technical barriers to trade, is vital.

7 Customs and other issues

- 7.1 The ECA believes the Australia-EU FTA should include provisions on standardising labelling and origin procedures across the whole region, similar to the standard wine labelling provisions in the TPP regions.
- 7.2 Given the importance of SME businesses to the global economy, the ECA believes there should be a specific Chapter in the Australia-EU FTA to recognise and advance the interests of SMEs. It should be similar to that included in the TPP but advanced beyond that with more specific examples of how the interests of SMEs could be recognised and advanced.
- 7.3 The ECA believes that there should also be Chapters on State Owned Enterprises, Environment and Labour modelled on and drawing from those in the TPP but developed further than in the TPP.
- 7.4 The ECA is concerned that FTAs should include "customs procedures" provisions that assist in the use of the FTA rather than, on their own account, create impediments to the use of the FTA.
- 7.5 The ECA is also aware that importers, exporters and their service providers have often experienced problems with implementing FTAs. For example, implementation problems have been of particular concern with ChAFTA. Even with the support of DFAT, DIBP and industry associations such as the ECA and the CBFCA, there has been a significant level of uncertainty in the implementation of the ChAFTA occasioned in part by the rapid implementation of ChAFTA, the late availability of information to industry and difficulties in the late advice on requirements from Chinese authorities which, on occasion, were different to those in Australia. Accordingly, the ECA requests that DFAT and others place a premium on early, comprehensive and settled advice on requirements for customs

procedures and extensive training on the terms of the FTA and specific requirements at the border well in advance of its implementation, including education and information from relevant industry associations.

7.6 For current purposes, the ECA believes that the following are relevant specific issues worthy of close attention:

- That there is one set of Rules of Origin (ROO) which are consistent across all parties to the FTA and consistent to existing FTA practices with as few divergences as possible.
- That there not be a requirement that Certificates of Origin (COO) be used by parties but with the option for parties to secure COO from an issuing authority or to self – certify with a Declaration of Origin (DOO) if they believe it assists.
- The provisions for COO and DOO (whether compulsory or not) be as easy and clear as possible including that they do not need to include FOB values of goods or their original producer in the COO or DOO.
- If COO are mandated, then the option for DOOs should be included as an alternative.
- There be one COO issuing body for the EU instead of a multiple number of bodies in different countries.
- There should be provision for cumulation to secure "EU originating status" by manufacturing in different countries across the EU region.
- There should be a practical approach to "consignment" issues. This would allow transport across the whole EU and through other countries as long as goods are only subjected to limited types of treatment without necessarily the need for goods to be under customs control at all times. There should not be any requirement for certificates of non – manipulation to certify that the goods are in the same form as permitted by the consignment provisions.
- There should be access to advance rulings on origin for exporters and importers with timeframes set for them to be issued.
- There should be provisions so that there is no loss of preferential status or penalties for minor and inadvertent failure to comply with COO or other border requirements, such as in ChAFTA.
- There should be a moratorium against liability of any kind for inadvertent and minor errors for the first six months of the FTA (as in the AUSFTA).
- There should be a specific obligation for customs authorities to take into account the terms of the FTA when exercising powers under their legislation. Ideally the provisions of the FTA should be included in amendments to relevant customs legislation to implement the FTA.
- The ECA strongly recommends establishing a "centre for customs procedures and practices" with expertise to be drawn from all member countries to work together on COO, DOO, ROO and other customs and border issues from the start of the FTA rather than only to start at some time after commencement. The centre would be funded and resourced by members. The ECA believes that the centre would be consistent with the aims of the WCO and the WTO Trade Facilitation Agreement. The centre could include a mechanism or forum to resolve customs disputes which would normally be excluded under an Investor-State Dispute Settlement (ISDS) system.

7.7 An Australia-EU FTA should include a provision in the "Customs Procedures" or "Trade Facilitation" Chapters expressly setting out a timetable for cooperation to develop a Mutual Recognition Agreement to cover all Authorised Economic Operator Programmes existing in the member countries.

7.8 The ECA sees the merit in the inclusion of an ISDS provision in the FTA. This would have application only to limited types of disputes, as in the TPP. The ISDS provision could also include the rights of the parties to further exclude other disputes where the parties believe it is in the collective interests of all parties to do so. Moreover, the ECA recognises the potential merits of including an "Investment Court" system as was recently introduced in the Canadian-EU Comprehensive Economic and Trade Agreement.

8 Reform of Common Agricultural Policy

- 8.1 OECD analysis highlights that more than 18 per cent of a German, French and Italian farmers' income is provided by the European Union through the Common Agricultural Policy (CAP). By contrast, Australian farmers receive just two per cent of their income from the Australian Government, while New Zealand farmers receive one per cent from their government.
- 8.2 The impacts of CAP are a lack of structural adjustment in the farming sector, and subsidisation of the full market cost of commodities and food manufactured from those commodities. Thereby, allowing EU farmers and food manufacturers to undercut farmers and food processors in Australia.
- 8.3 While Australia's trade negotiations with the EU may not cover (domestic support) subsidies to farmers, as per convention under bilateral trade negotiations, the ECA supports the AFGC's call for the agreement to include a commitment to return to the WTO to reduce and eliminate farm subsidies.

Conclusion

The ECA supports the Australia-EU FTA and believes it has the potential to create tangible benefits for Australian businesses. An FTA that results in the lowering of tariff and NTBs would be welcomed and would help level the playing field for Australian businesses whose competitors are already benefiting from an existing FTA with the EU. The ECA stresses that any trade agreement with the EU needs to be coupled with effective post-implementation outreach to the business community to raise awareness and provide information to assist with the utilisation of the agreement.

Sincerely



Andrew Hudson
Director and Chair of the Trade Policy Committee
Export Council of Australia