

# **Border Barriers and Behind the Border Barriers in the Australia – European Union Trade and Investment Relationship**

Australia – European Union Free Trade Agreement  
Submission to the Department of Foreign Affairs and Trade, Australian Government

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## **Introduction**

The European Union (EU) is the only major trading partner with whom Australia has not yet signed a Free Trade Agreement (FTA). It is becoming increasingly obvious that an FTA between Australia and the EU is necessary. After all, the EU is still one of Australia's major economic partners when the bilateral exchange of goods and services and the two-way investment flow are taken together.

## **General Points**

Negotiations to forge an FTA are important as the barriers are not in Australia's favour. Australia applies an average applied Most Favoured Nation (MFN) rate of 3.0% whereas the EU applies an average applied MFN rate of 6.4%. And both Australia and the EU have high behind the border barriers. It is not suggested that there are no regulatory measures between Australia and the EU in terms of declarations and treaties. Indeed, a Framework Agreement between Australia and the EU will shortly be ready for signature and it will contain a trade and investment chapter but it would never make an FTA. Neither would the various sectoral agreements already in force for wine and mutual recognition. The fundamental problem is that Australia has taken a country to country approach to the management of trade with Europe and altogether dismissed the EU as a trading block, let alone the world's largest market. It is time for Australia to move beyond common values and a shared history with the United Kingdom and embrace the EU.

It is understood that the trade and investment relationship between Australia and the EU is a mix of agreement and disagreement, almost in equal parts. Both sides agree on the importance of free trade but the EU disagrees with the Australian biosecurity system while Australia disagrees with the EU's protectionist approach to agricultural trade. More generally, one of the issues that both sides need to be overcome is the link between human

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rights and trade. Australia rejected the offer of a Framework Trade and Cooperation Agreement with the EU in 1996 because of the proposed human rights clause.

### **Specific Points**

Australia will not start with a blank sheet in its negotiations with the EU. Arguably, Australian negotiators ought to keep in mind that some progress has been made recently through the negotiations for the Framework Agreement and, more widely, the work of Australia and the EU on trade facilitation for the World Trade Organization (WTO) and the Trade in Services Agreement negotiations. Nevertheless, there remain significant barriers to trade and investment between Australia and the EU. The barriers are not only at the border but also, equally importantly, behind the border. Negotiations for an FTA would need to take both types of barriers into consideration.

EU tariffs – especially agricultural tariffs at an average applied MFN rate of 14.4% – are still relatively high as are behind the border barriers to government procurement and services markets. Agriculture does indeed remain a concern: after all, Australia exports about 65% of its agricultural output. This concern is not new. It dates back to the EU's introduction of the Common Agricultural Policy (CAP). The CAP, through a complex export subsidy scheme and restrictive import tariff and quota system, can lead to a contradictory state of oversupply and expensive prices with the potential to block out competition from agricultural producers such as Australia. Both in the WTO and as permanent chair of The Cairns Group, Australia has long pressed the EU to move towards greater liberalization and facilitation in agricultural trade. Despite those efforts, the EU (together with the United States and Japan and a group of developing countries led by Brazil, India, and China) has continually withdrawn agriculture from the Doha Development Agenda. Negotiations for an FTA would not be easy because they would be subject to the sensitivities of agriculture. Australian beef exporters, who come under a tariff-rate quota, are sure to face opposition from Irish and other beef producers. And then the French, Italian, and Spanish food and beverage industry will raise the issue of geographical indications. Another stumbling block, though of greater concern in the past, is coal production. Australia is a major exporter of coal to the EU but it has long had to contend with EU state aid for the closure of uncompetitive coalmines. In relation to trade in services, technical barriers are almost unavoidable, particularly for suppliers of professional services whose qualifications must meet the relevant requirements in their target jurisdiction. Architects are a case in point.

Australia too proves difficult. Its intransigent biosecurity standards attract frequent complaints by the EU in the WTO. The complaint is that Australia covers its protectionist intent under the cloak of environmental protection. Whatever their policy origins, the fact is that Australia's assessment procedures, quarantine standards, and other technical barriers, including the Luxury Car Tax, even the mere fact of regulatory divergence as well as its traditional reliance on European place names for its foodstuffs continue to be a concern. Australia is especially sensitive to the importation of live animals and animal products (raw meat is at the top of its concerns) ever careful – protectionist even – to avoid the outbreak of European animal infections such as mad cow disease and foot and mouth disease. Room to negotiate is small as Australia's reputation as a clean country needs to be kept in mind. As for behind the border barriers, Australia's occupational health and safety laws, worker's compensation system, State taxes such as the payroll tax, and trade and professional licencing regime are all stumbling blocks for a successful FTA negotiation. In many areas, Australia faces greater duplication and overlap than the whole of the EU.

Both sides, therefore, need to make further progress on trade liberalization, deregulation, and harmonization if their trade relations are to improve and lead to further economic growth and job creation. Both sides must progress towards the elimination of all regulatory divergences within them and between them. They must do so because Australia and the EU need each other. Australia needs the EU if it is to develop a knowledge economy that will allow for economic sustainability in the future. As Australia's second largest source of goods imports, the EU supplies the kind of capital goods that Australia needs for its infrastructures. And the EU is Australia's largest partner for trade in services. Services – professional, technical and other business services – are the key sector in a knowledge economy. Moreover, the EU is Australia's largest investment partner. Investment is credit and credit drives the economy. Correspondingly, the EU needs Australia. It needs Australia as a commercial base in Asia. And it needs Australia as an energy supplier.

## **Conclusion**

An FTA between Australia and the EU could address the regulatory divergences that arise out of the policy discord over agriculture and biosecurity. It could bridge the legal divide too. For trade in goods, tariffs are low but behind the border barriers remain high. And for trade in services, the non-unitary constitution of Australia and the EU impedes further trade creation with its fragmentation of the market. Investment facilitation would, necessarily, follow.

In addition, it is argued that an FTA with the EU, though very desirable, must not lose sight of biosecurity issues vital for the agricultural sector. Science has established that once a disease such as fire blight or mad cow enters an agricultural environment, the economic cost could be significant. Similarly, in order to spread the benefits of an FTA across multinationals as well as small and medium-sized enterprises, the conclusion of an FTA should go hand in hand with the complete removal of costly behind the border barriers.

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