

Australia-EU FTA Coordinator
Regional Trade Agreements Division
Department of Foreign Affairs and Trade
RG Casey Building, John McEwen Crescent
Barton ACT 0221
AUSTRALIA

23 October 2020

Dear Sir/Madam:

ENABLING DIGITAL TRADE UNDER THE AUSTRALIA-EU FREE TRADE AGREEMENT

TradeWindow applauds the Department of Foreign Affairs and Trade (DFAT) for the progressive approach it has taken with regard to enabling digital trade. The new Australia – Singapore Free Trade Agreement (FTA) sets a new precedent for actively shaping an enabling environment for digital trade. We urge DFAT to continue to build upon this progress when finalising the recently announced prospective bilateral FTA between Australia and the European Union (EU). Specifically, we request that DFAT negotiate an FTA which includes the following:

- Free movement of data across borders;
- Prohibition of data localisation requirements; and
- Further adoption of United Nations Commission on International Trade Law (UNCITRAL) Model Law.

Inclusion of these provisions in the Australia-EU FTA support the building of a trade architecture consistent with international standards, regulations and the contemporary needs of the Australian business community.

Introduction

TradeWindow is the developer of a digital trade platform designed for exporters to create and share export documents (data) with their supply chain partners including their customers, freight forwarders, shipping lines, banks, insurance companies and Government agencies. TradeWindow provides the tools which enable digital trade for many of Australasia's leading exporters in the meat, seafood, horticulture, timber and manufacturing sectors.

Discussion

Australia and the EU have the opportunity to future proof the prospective FTA by negotiating one that enables end-to-end digital trade. While it is understood that the follows items are already being pursued by DFAT, we would like to emphasis the critical nature of these provisions in enabling digital trade.

Free Movement of Data Across Borders

It is requested that the prospective FTA allow for the movement of data across borders without restriction. Modern supply chains are global, a single shipment of merchandise typically requires the collaboration of 10 to 20 entities spread across the globe for the production of 10 to 20 documents and the exchange of approximately 5,000 data points¹. Consequently, the free movement of data across borders is a prerequisite to realising end-to-end digital trade.

Prohibition of data localisation requirements

Countries should not require businesses operating in their territory to locate computer facilities (including computer servers and storage devices for processing or storing information for commercial use) within the country's borders. Data localisation risks forgoing the benefits of digital innovation which can lead to greater costs of goods and services (ultimately borne by consumers), barriers to competition, and a reduction in Australian business' capacity to participate in global supply chains²

Further adoption of UNCITRAL Model Law

The Australia-EU FTA presents an opportunity for both countries to continue with the adoption of legal frameworks consistent with UNCITRAL Model Law. While Australia has already ratified the Model Law on Electronic Commerce, majority of EU member states are yet to. Australia and the EU have the opportunity to gain a first mover advantage by ratifying the following Model Laws and enshrining it within the prospective FTA:

- Electronic Commerce (1996);
- Electronic Signatures (2001); and
- Electronic Transferable Records (2017).

The Model Law on Electronic Transferable Records provides generic rules that may apply to various types of electronic records based on the principle of technological neutrality and a functional equivalence approach. The principle of technological neutrality entails adopting a system-neutral approach, enabling the use of various models whether based on registry, token, distributed ledger or other technology.

Transferable documents and instruments are essential commercial tools. Their availability in electronic form may be greatly beneficial for facilitating electronic commerce in international trade as this could allow for faster and more secure transmission. Transferable documents or instruments

¹ See, Boston Consulting Group, *Digital Ecosystems in Trade Finance*(2019) at https://image-src.bcg.com/Images/BCG_Digital_Ecosystems_in_Trade_Finance_tcm38-229964.pdf

² See, Business Council of Australia, *Response to the future of digital trade rules discussion paper* (2018) at <https://www.dfat.gov.au/sites/default/files/business-council-of-australia-bca.pdf>

include: bills of exchange; cheques; promissory notes; consignment notes; bills of lading; warehouse receipts; insurance certificates; and airway bills.

Conclusion

TradeWindow welcomes the opportunity to provide this submission with regard to specific inclusions within the Australia-EU FTA which serve to enable digital trade. We look forward to helping Australian exporters realise the benefits of digital trade.

Yours faithfully,



AJ Smith
Founder and CEO