



Ms Alison Burrows
Australia-European Union Free Trade Agreement
Office of Trade Negotiations
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221

27 March 2023

Dear Ms Burrows,

Further Submission Regarding Free Trade Negotiations between the European Union (EU) and Australia

Australian Business in Europe (ABIE) is an umbrella organisation that represents multiple organisations across Europe with an interest in commercial and business relationships between Australia and Europe, with the shared objective of growing and strengthening trade, investment, business and diplomatic ties between the two regions.

There are currently 19 organisations participating in ABIE, with the following supporting this joint submission:

- Australia France Business Association
- German Australian Business Council e.V.
- Australia Spain Business Association
- ABIE Netherlands
- Australian Network in Belgium (ANiB)
- Australian Business Council of Sweden
- Finland Australia Business Council
- Irish Australian Chamber of Commerce
- Australská a Novozélandská Smíšená Obchodní Komora v České Republice
- Bulgarian Australian Business Council (BABC)
- Croatian Chamber of Economy
- ANZCCL (Australia New Zealand Chamber of Commerce Luxembourg)
- ABIE Austria
- Australian Swiss Chamber of Commerce
- Australian Serbian Commerce Chamber Inc (together, the “ABIE organisations”).

Collectively, our remit is very much one of encouraging sustainable international trade and deeper relations between companies and citizens of Europe and Australia.

This submission has been prepared by the ABIE organisations independently of their patrons and sponsors and reflects the view of the boards of the ABIE organisations only, not that of any individual or corporate members.

Introduction

We made an earlier joint submission to this process, in 2019.

That submission covered a host of specific topics and issues which had been raised by our business and individual members of our organisations, under the following headings:

1. Labour Mobility
2. Trade in Goods and Services (particularly with E-Commerce/Digital Trade)
3. Technical Barriers to Trade
4. Intellectual Property
5. Energy and Raw Materials

Much has transpired since that submission was drafted. There have been significant changes in the global economic and trade environment and the global political and geostrategic order that have made the completion of this agreement between the European Union and Australia, as like-minded jurisdictions, even more pressing for both parties.

Among other things these factors have included:

- the multilateral trade order built around the WTO is starting to break down;
- a rising mood around the world toward protectionism.
- growing tensions between European nations and Russia over Russia's invasion of Ukraine;
- European trade and economic sanctions on Russia including cutting gas and oil imports from Russia;
- Russian blockades of food and agricultural exports from Ukraine;
- China's growing preparedness to weaponise trade to support a more aggressive political, economic and geostrategic positioning;
- a number of high-profile cybersecurity attacks on major Australian businesses by international criminal elements, alleged to be under the protection of antagonistic governments;
- an intensification of isolationist sentiment within the United States; and
- a major global pandemic with its attendant economic, health, political and social implications.

The primary purpose of this submission is to canvass how this has served to highlight and amplify significant risks and exposure for the EU and Australia as well as identify how a greater engagement between the EU and Australia can help both achieve greater progress to their climate policy goals.

"We can never find ourselves again, in a situation where we're reliant on one single country."

“Other countries are having the same sort of realisation. The reason why the Europeans are talking to us is that they need new and more reliable trading partners.”

(Don Farrell – Australian Minister for Trade and Tourism)

“My third point for our SMEs and our industry.

“Whether we talk about chips for virtual reality or cells for solar panels, the twin transitions will be fuelled by raw materials

“Lithium and rare earths are already replacing gas and oil at the heart of our economy.

“By 2030, our demand for those rare earth metals will increase fivefold.

“And this is a good sign, because it shows that our European Green Deal is moving fast.

“The not so good news is – one country dominates the market.

“So we have to avoid falling into the same dependency as with oil and gas.

“This is where our trade policy comes into play.

“New partnerships will advance not only our vital interests – but also our values.

“Trade that embraces workers’ rights and the highest environmental standards is possible with like-minded partners.

“We need to update our links to reliable countries and key growth regions.”

(Ursula von der Leyen – President of the European Commission)

A Changing and Volatile Geopolitical and Trade Environment

For the EU, Russia’s invasion of Ukraine has served to highlight the dangers of its heavy dependence (on Russia for its energy needs and the risks to secure supply of certain food products with disruption of Ukraine as a reliable source of supply. Supply chain disruptions and rising energy prices have highlighted the EU’s high dependence on Russia, and to some extent, Ukraine, for energy, critical raw materials and some agricultural product.

Many European economies, particularly Germany, but also many Eastern European countries for example, Bulgaria, faced one of their biggest challenges since those countries are some of the most dependent on energy imports from Russia.

Meanwhile, China’s growing preparedness to weaponise trade to prosecute its political positions and geostrategic ambitions have brought into sharp focus the overexposure to and dependence of both Australia and the EU on China.

China’s actions to deploy restrictive trade measures on Australian agricultural and food products as punitive measures over political positions, while placing an embargo on Lithuanian products over the country’s position on Taiwan is indicative of the Chinese government’s more aggressive posture.

On the other side of the Pacific, there is growing concern that growing isolationist sentiment, particularly on one side of American politics, may impact on the United States’ preparedness to enter a military conflict in support of its western allies, or the nature, extent and conditions of such support, possibly even risking long established strategic alliances.

Australia (ANZUS) and, maybe to a lesser extent the EU (NATO), are both reliant on America's support, and the deterrent effect of that implied support, in any significant conflict in their respective regions. The need for western democracies such as Australia, the EU, Canada and Japan to consider a strategy for mutual defence and economic support, that considers the contingency of any possible default or shortfall in US support, in addition to critical supply chain assurance, for critical equipment, parts, technology or services, in the event of conflict, is something that, albeit not a high probability in the near future, needs to be considered.

The lead time involved in realising alternative contingencies can be substantially longer than the time within which the political circumstances that would necessitate them to change.

As recent global events have brought into sharp focus the overdependence of both the EU and Australia on too few suppliers and markets – particularly for their export markets, supply chains for industry and food security.

The Growing Importance of Common Values

Australia and the member states of the European Union, as “like-minded” countries, share common values, ambitions and significant mutual interests that would be well served by an agreement covering much closer engagement across numerous economic, political and strategic interests, as well as trade.

These include the commitments to democracy, human rights, rule of law and a rules-based global order, fair labour laws and occupational health and safety (OHS), urgently addressing the factors driving demographic and climate changes, as well as compatible views on free trade and industry protection.

Trade agreements and relationships have traditionally been transactional predicated mainly on considerations of the effect on particular industry sectors in participating economies – both in terms of the opportunities they offer and the challenges they pose.

There is mounting political pressure within many western economies to provide for a “level playing field” in terms of environmental laws, labour and OHS and other requirements that apply in some countries (with their attendant impact on costs and competitiveness) but not in others.

This provides the countries or economies that have no such laws or requirements with a competitive advantage on cost and tends to direct business to “low cost” countries, subverting the intent of such laws, as well as fostering resentment in the country where jobs and economic activity are lost for such reasons.

Within the European Union there are many industries and individual businesses that now require suppliers to meet conditions that fit within a carbon or environmental footprint.

At the same time, there is growing consumer pressure, which is also translating into political pressure for ethical factors, such as forced labour (including ‘modern slavery’), exploitative labour, child labour, dangerous work practices and broader human rights concerns to be accommodated in sourcing decisions.

In the EU, the prospect for such concerns to be reflected in law is likely to ultimately also reflect in trade policy. An affluent market of more than 450 million people, with a €14.5 trillion (AUD \$23 trillion) economy, is far more likely to be able to insist in such conditions than a comparatively smaller market, such as Australia.

These are factors potential Australian exporters will need to consider if they are to take advantage of the enormous market opportunities offered in the European Union.

As demand for such conditions widens in Australia, the EU offers a market that is more willing than others to require them of importers.

The Australian manufacturing sector has been hit very hard by competition from markets with cheap, sometimes exploitative, labour and low production costs enabled by an absence of environmental and other requirements.

Access to an affluent market of more than 450 million people, that also insists on such regulatory requirements may provide the opportunity for the Australian manufacturing sector to reinvent itself at the high value-added end of the market.

Too Many Eggs in One Basket – Risk Exposure from Overdependence on One Market or Source

Over recent years, some developed, western economies have also identified their over dependence on too few and problematic or unreliable sources for energy, critical raw materials, vital agricultural produce and essential elements to their supply chains in a more tense and volatile global environment.

The European Union has become concerned about its overdependence on Russia for energy as well as its vulnerability to agricultural blockade of Ukraine by Russia, as Russia's war in Ukraine shows no sign of ending and sanctions on Russia continue to expand.

As political tensions between the West and China increase, and China has demonstrated a preparedness to use trade as a political and strategic weapon, the European Union has also expressed concern about its overdependence on China for many raw materials, rare earth, and lithium essential to its advanced technological sectors and its targets for emissions reductions and reduced reliance on fossil fuels.

Moreover, overreliance on Chinese components critical to the supply chains of Europe's major industries and strategic capabilities is another risk exposure identified by the European Union.

Although there is currently no imminent threat to these supplies, this situation is capable of turning quite rapidly. The pace and momentum with which the EU's dealings with and relationship to Russia have unravelled and isolation of Russia has taken effect, serve as a salient reminder of how rapidly such circumstances can change.

Tensions between China and the West over Taiwan and tensions with other regional neighbours as well, over the South China Sea, combined with growing criticisms of China over forced labour, its treatment of the Uyghurs and other human rights issues (accompanied by mounting calls for sanctions) have served to intensify apprehensions on this front.

While the dependence of the European Union and other western economies on China, for reasons canvassed earlier is dangerously high, China's own heavy dependence on western investment and western markets, its oddly symbiotic economic relationship to Taiwan is important to the viability of certain industry sectors in the People's Republic of China (PRC). While this acts as a greater inhibitor on the PRC than was the case with Russia, the situation remains volatile.

Taiwan's dominance of the global semiconductor industry, and the West's dependence on reliable supply of semiconductors from Taiwan to underpin its technological advantages industrially and militarily, ensure these tensions will linger.

In response to these significant risk exposures, the EU has drafted an Indo-Pacific policy that seeks to access new sources of raw materials and reliable supplier networks and develop new and growing sales markets.

An example of the European point of view is the German Institute for International and Security Affairs (*Stiftung Wissenschaft und Politik*) (SWP), which, as may be seen from the statements below, advocates that the pursuit of an active trade policy, instead of reversion to protectionism, may be leveraged to improve protection against unfair competition, "make tangible contributions to Europe's green and digital transformation" and "reduce the geopolitical vulnerabilities of European companies":

- *"Elements of a climate-friendly industry and agriculture can be included in the sustainability clauses and sector chapters of trade agreements. Political commitments to environmental protection or concrete measures to reduce CO2 emissions can be made legally binding not just inside but also outside Europe. In addition, new markets for climate-friendly products and processes can be opened up.*
- *"International cooperation is essential for the success of Europe's digital agenda. The governance and standardization of digital services and trade in digital goods must be tested, implemented and made binding in international practice. The EU's desire to have a say in the establishment of international rules, including with regard to data security, and in the creation of fair competitive opportunities for European companies by clamping down on regulatory protectionism demands an active digital trade policy – both bilateral and multilateral.*
- *"Trade agreements open up access to sales markets and sources of supply and make it possible to limit economic and political risks through diversification. Companies with a broad international presence are generally better equipped to deal with unexpected events such as Covid-19, the Ukraine war and the recent Taiwan crisis. Production locations and purchasing and sales markets scattered over a wide area make it easier for German and European companies to reduce their vulnerability to a China that not only threatens economic competition but also poses foreign- and security-policy risks that are extremely difficult to predict. That is because neither decoupling from China nor reshoring or rigorous friend-shoring of supply chains can be a viable option for companies competing internationally. In a world in which the G7 account for about 10 per cent of the world's population and a good 30 per cent of world trade, a policy that sought to limit foreign trade to those countries with which Europe shares the same values would be unrealistic and self-destructive. While soberly weighing potential returns against geopolitical risks, European companies must at the same time strive to diversify their sales markets and sources of supply and not restrict their choices of location for production facilities unless absolutely necessary."*

(“Sea Change in EU Trade Policy – Opportunities for Diversification in the Indo Pacific”, SWP, 19.10.2022)

In the paper referred to prior, SWP has identified Australia and New Zealand as “partners with shared values” (sometimes termed “like-minded” countries).

“The mutual interest of defending the liberal world order, similar views about trade liberalization and multilateralism, and the same perception of global and regional threats have fostered this closeness.”

While the SWP notes that under the new government of Anthony Albanese Australia and New Zealand are now broadly on the same page with regard to climate policy, “it remains to be seen whether Australia will commit bilaterally, as New Zealand has done, to climate-policy sustainability standards that are sanctions based. Australia needs to be aware that the Europeans will be introducing a carbon border adjustment mechanism and it will not be possible for Australia to simply demand exemption. Australia will need to have a programme to account for carbon credits if it is to fully benefit from a free trade agreement.

The SWP correctly observes that agricultural trade remains the major stumbling block to conclusion of a bilateral agreement between Australia and the EU.

“It is very unlikely that Australia will agree to a treaty like that negotiated with New Zealand. Canberra’s demands carry more weight owing to the country’s larger import market but, above all, because of Europe’s urgent need for reliable access to crucial energy resources and raw materials. Given the Australian-European confluence of interests in geopolitics and current convergence on climate policy issues, the two sides should be prepared to reach a compromise on agricultural trade.”

As regards agricultural products, member organisations of Australian Business in Europe (ABIE) are well aware that Australia and the EU share different views as to the use of certain veterinary products or the naming of products using traditional geographic indications. We would urge both sides to be aware of these views and to seek solutions, such as grandfathering local use of European-originated geographic names in Australia or providing support to Australian farmers to adapt their methods of production to European food standards.

The overriding benefits to both parties in areas such as reducing overreliance on particular markets and particular sources of supply, facilitating and accelerating comparable aspirations towards carbon emissions standards and achieving a fairer basis for trade and economic co-operation on a more level playing field that takes human and environmental values into account are something that should provide added incentive for both sides to resolve differences over agricultural policy.

Australia’s overreliance on China as a market for export of raw materials and agricultural produce and as a source for certain manufactured goods critical to its strategic industries can be tempered significantly with the freeing of access to markets and production sources in Europe.

Similarly, Australia’s abundant reserves of lithium, rare earth and other natural resources provide an alternative to China for resources needed to support the continued development of the EU’s digital economy and transition to more sustainable energy sources and both the

EU and Australia would benefit by having access to the advanced minerals processing technology to ensure that value is retained in Australia, rather than processing offshore.

Australia's enormous and unique potential to provide adequate and stable supply of green hydrogen is discussed later in this paper.

There is also a high level of complementarity to support each other's needs in terms of alternative markets, alternative locations of production and supply chains and alternative sources for energy, critical minerals, rare earths as well as essential food and agricultural supplies.

In the current geo-political environment, with increasing political demand for economic and political sanctions targeting breaches in these areas, Australia as an alternate source for energy, raw materials, "rare-earth" minerals and food and agricultural supplies addresses an area of critical need to the EU, while the EU provides Australian exporters with alternative markets for their export.

Australia also offers an alternative production location in an environment where diversification to minimise risk exposures is becoming a bigger factor in investment decisions.

The policy change of the new Australian Government with respect to climate change, sustainability and clean energy has also brought it into much closer alignment with the EU.

Innovation and Research and Development

Australia and the European Union are both committed to continuous innovation through intensive research and development to maintain competitive advantage across many sectors including medical science and biotechnology, pharmaceuticals, medical equipment, energy, engineering, advanced materials, information and digital technology, communications, agriculture and food production, among others.

Businesses, organisations and institutions on both sides understand that in an increasingly competitive global environment for innovation breakthroughs, the pace of innovation needs to be accelerated.

This is achievable through collaboration via 24-hour R&D cycles and shared knowledge with trusted partners.

Both Australia and the EU enjoy high levels of competencies across many sectors of mutual interest, as well as rigorous standards and sound legal frameworks for the protection of intellectual property.

Meanwhile, their respective geographic locations on opposite sides of the world, in vastly different time zones, enables continuous work on a research and development project on one side of the world while the other sleeps.

A prospective trade agreement between Australia and the European Union should establish a framework within which R&D collaboration across government, private sector, universities and research institutes is facilitated and encouraged through:

- extensive dialogue about projects of mutual interest;

- a mutually complementary protection for sharing of intellectual property;
- a streamlined process for mutual recognition of qualifications and skills;
- a simplified visa process for personnel engaged in collaborative research and development projects;
- greater engagement of non-commercial research institutes and educational institutions with industry and businesses working in complementary areas of interest, including placement of specialist personnel; and
- removal of impediments to easy identification and introduction of potential partners for collaboration on areas of mutual and complementary interest.

Data and Cybersecurity

Recent high profile cyber-attacks on major Australian businesses such as Optus and Medibank Private, which saw the publication of vast quantities of personal information, has ignited further debate on the need for increased standards in Australia and it would appear that the EU's GDPR framework, now well-developed and embedded in EU businesses, should be the target for alignment in such matters within the FTA.

Feedback received from EU businesses and those EU-based divisions of Australian companies, points to this alignment as being the most practical and efficient outcome.

Green Hydrogen

The energy sector, globally, has been the subject of rapid transformation for some time.

The need to address climate change through drastic reduction of carbon emissions has been recognised by both EU and Australia with commitment to specific targets.

According to Dr. Hinrich Thölken, deputy director-general for energy and for energy and climate policy at Germany's Foreign Office, achieving the EU's stated target of climate neutrality by 2050 demands wholesale decarbonisation of the entire economy - including sectors like cement, heavy duty transport and chemicals which are difficult to switch to electricity.

He points out the potential use of hydrogen as a clean alternative.

Meanwhile, heavy reliance by major industrial economies on oil and gas sourced from jurisdictions increasingly inclined to leverage their degree of control over the supply of such fuels to achieve political outcomes has accelerated the urgency to develop adequate alternative carbon neutral energy from stable and reliable sources.

Green hydrogen has been identified as the energy source most likely to enable the dramatic changes required. The EU has estimated that clean hydrogen could meet 24% of global energy demand by 2050.

France, for its part, presented in 2020 a National Strategy for the development of low-carbon hydrogen, the ecological, technological and economic challenge of which is to create and to structure a cutting-edge French industrial sector competitive at an international level.

In this promising context for hydrogen, both in France and abroad, a Hydrogen Task Force has been established, led by two business associations, France Hydrogène, the association bringing together all the French players belonging to the hydrogen value chain and MEDEF International, the French private sector business network at an international level. In this regard, a Hydrogen Mission to Australia has been organized on 27th March 2023 by the MEDEF & France Hydrogène.

The production of hydrogen, however, according to BloombergNEF would require more electricity than is currently produced globally from all sources.

There are few countries with the vast land area and climatic conditions to meet such demand. Australia is one of a few such countries. The advantage it has over Middle Eastern and North African nations is political stability.

To transport hydrogen over such long distances, as between Australia and Europe, requires conversion to ammonia, and then reconversion. The cost of conversion and transportation is a relatively small percentage of the cost of producing green hydrogen.

In Europe, Germany and Australia have already realised the mutual complementarity in this regard with commitment to a feasibility study on a supply chain for hydrogen produced from renewables. Germany has the technology and Australia has the space and natural resources.

Moreover, in France, the energy company ENGIE announced in September 2022 the development of one of the world's first industrial-scale renewable hydrogen projects, to be located in the Pilbara region of Western Australia.

Once commissioned it will be amongst the largest renewable energy powered electrolysis in the world, which will provide lessons to accelerate the hydrogen industry in Australia and demonstrate the ability to integrate electrolysers with ammonia plants. The project will also share knowledge and experiences in the areas of community engagement, permit processes and industry participation.

There are significant benefits to Australia and also to Europe from having the European Union buy into this European-Australian partnership as well.

In this respect, securing some commitment from both sides, within the scope of a broadly based trade agreement between the EU and Australia to our complementary green hydrogen ambitions, with provisions addressing technology exchange, standards and certification, commercial viability and economy, regulatory and logistical issues, offers the ability to accelerate progress and anchor Australia as a key partner to Europe with regard to green hydrogen.

Labour Mobility

To optimise these green hydrogen opportunities, we feel that a shift to a framework for freer labour mobility, incorporating streamlined and more relaxed visa regulations, educational qualifications, mutual recognition of skills and professional qualifications, pension portability, dual tax arrangements and greater regulatory compatibility are a high priority towards the aim of a free movement and exchange of knowledge, idea, skills, technology and human

resources, as well as a freer regulatory environment for investment, collaborative research projects and technology transfer.

Whilst this was addressed more specifically in our submission of June 2019, labour mobility continues to be a challenging area. By way of example, pension portability, dual tax arrangements and EU investment into Australia are significant obstacles in Luxembourg.

To improve pension portability, one avenue which may be open for dialogue under the umbrella of an Australia-EU Free Trade Agreement is the establishment of an agreement at European Union level (instead of at national level) with Australia, which facilitates transparent and simplified transfers between European and Australian contributory pension funds. So too, would dual tax arrangements agreed at European Union level, benefit countries like Luxembourg, who are currently excluded from the double tax agreement (DTA) implemented with other EU member states, thus creating significant obstacles for individuals, businesses and investors looking to expand markets. So much so, Luxembourg based entities often seek to route investments into Australia via one of the many other EU countries which do have a DTA with Australia.

Additionally, some commitment towards working towards mutual healthcare coverages for Australian and European expatriates working across both markets would further accelerate opportunities on this front.

We appreciate that healthcare in the European Union is primarily the responsibility of individual national jurisdictions and that the basis on which healthcare is funded, and eligibility is determined, differs significantly across EU jurisdictions.

We note, however that there is already shared eligibility for healthcare coverage between Australia and some EU member states and feel a move towards broader shared eligibility between EU members states and Australia would further encourage a freer movement of labour and all the mutual benefits that this brings.

The Road Ahead

We understand the next round of negotiations towards an agreement between Australia and the European Union are to commence in April 2023, with the hope of wrapping the process up by mid-2023, and that complex consultations between the EU and its member states, as well the Australian Government and Australian stakeholders are still ahead.

The ABIE organisations remain available to engage with the Department of Foreign Affairs and Trade (DFAT) and the Australian Government more broadly towards a successful conclusion of the process.

Yours sincerely,

The Honourable
André Haermeyer MAICD
Deputy Chair and Board Member
German Australian Business Council e.V.

on behalf of the Australian Business In Europe network (ABIE)