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Australia-European Union Free Trade Agreement
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Australia-European Union Free Trade Agreement

ANZ is pleased to support commencement of negotiations on an Australia-European Union Free Trade Agreement (Australia-EU FTA) and provide initial views on the potential agreement.

Expanding trade and investment links between Australia and the EU will deliver net economic benefits in Australia and the EU. An Australia-EU FTA has the potential to set a benchmark for trade liberalisation and bolster economic growth at a time of low global growth. In this respect, Australia should seek as a starting point any liberalisation and market access gains provided to the United States under the ongoing EU-US Transatlantic Trade and Investment Partnership (TTIP).

ANZ in the EU

ANZ was established 180 years ago to finance trade and today continues to build on its experience in supporting regional trade and investment flows. ANZ provides banking and financial products and services to around 10 million individual and business customers. We employ around 50,000 people worldwide and operate in 34 markets internationally.

ANZ Europe, based in London, is an institutional business focused on supporting trade and investment flows from large business customers, multinationals and financial institutions. The ANZ network in Europe includes branches in London, Frankfurt and Paris. There are 231 employees working for ANZ Europe.

Ability of non-EU banks to operate across the EU

ANZ believes that the Australia-EU FTA should consider the rights of an Australian bank to operate across the EU, particularly under the *Markets in Financial Instruments Directive* reforms. Two particular issues of concern are the timely determination of the equivalence of the Australian regime, and the recognition of each national regulator within each EU jurisdiction of an equivalence determination.

The *Markets in Financial Instruments Directive* (Directive 2014/65/EU) (MiFID II), and the related *Markets in Financial Instruments Regulation* (Regulation 600/2014) (MiFIR) are important EU regulations covering securities, some derivatives, investor protection and regulatory powers. The two pieces of reform will apply directly in EU member states from 2018. EU firms are able to operate across the EU under MiFID.

Under the regulation, a non-European Economic Area financial services firm should be able to provide their services directly within the EU without the need to establish branches in each nation. This should be able to occur where the European Commission determines that regulation in the non-EEA state (that is, Australia) is equivalent to that applying in the EU. However, not all EEA jurisdictions take the same view on permitting the use of non-EEA firms to "passport" within the EU via MiFID II. This determination is down to each individual member state.

Of more interest to non-EEA firms would be the ability under MiFIR for them to passport their services via their home jurisdiction (in this instance from Australia) where the EC has made an equivalence determination on a country. However, again there seems inconsistency between local EU regulators as to whether this determination would permit the "passport" to be used by the non-EEA firms with an EU branch.

The EC is not expected to start the equivalence assessment process until the MiFID reforms have been implemented. The financial services industry believes there may be significant delays based on the length of time taken to make determinations under the European Market Infrastructure Regulation.

ANZ encourages DFAT to include in Australia–EU FTA negotiations consideration of Australian financial firms' ability to operate across the EU and the timely determination of the relevant regulatory permissions.

Agriculture and regulatory standards

ANZ is a significant financier of the agriculture sector and strongly supports comprehensive agriculture negotiations and reductions in barriers to Australian agricultural exports.

An Australia-EU FTA should reduce EU agricultural support and provide opportunities for increasing exports of agricultural products such as meat, dairy, sugar and other sectors. Australian exports of these products have shifted to Asia with low growth in exports to the EU. This trend in part reflects the relative ease of exporting into Asia and the continuation of EU quotas and non-tariff barriers applying to particular Australian agricultural exports.

Standards and disputes about standards can be a significant non-trade barrier; for example, phytosanitary testing for agricultural imports. Tests required in particular EU member state jurisdictions may be stricter than required under standards applying within the EU. This allows products to be locked out where they would otherwise be allowed under EU standards. Sometimes issues such as different calibration of testing machines between Australia and EU testers can also significantly impact market access.

Banks become involved in these matters because payments under bank Letters of Credit can be contested because of differences between Australian and EU testing.

ANZ suggests using the Australia-EU FTA negotiations to establish better processes for determining and resolving disputes about standards of agricultural products. We suggest that more use could be made of contractual terms covering dispute resolution rather than invoking regulatory processes in each individual EU jurisdiction.

Investment

ANZ supports extending to the EU Australia's higher monetary thresholds for Foreign Investment Review Board (FIRB) review offered to a number of other FTA partner countries. We also support seeking more liberal treatment of Australian direct investment into EU member states.

We agree with Treasury's assessment of the benefits of foreign investment set out in its recent Working Paper.[1] In our recent submission to the Senate Economics Committee Inquiry into the Foreign Investment Review Framework, ANZ highlighted the importance to the Australian economy of foreign direct investment in Australia and outward direct investment by Australian businesses.[2]

The 2012 ANZ Insight paper "Greener Pastures: The Global Soft Commodity Opportunity for Australia and New Zealand"[3] estimated that Australia may be able to increase agricultural exports by up to $1.8 trillion by 2050. Australian agriculture requires significant capital, including foreign investment, to achieve that goal. The paper estimates that there will a shortfall between capital requirements and available domestic capital of up to $850 billion by 2050 and a total capital requirement of up to $1.6 trillion.

Foreign investment can contribute to developing more efficient supply chain and logistics services, and opening up offshore markets for Australian products. Foreign investors in Australia will seek to capitalise on integration between their home markets and Australia, leading to more efficient transport and distribution infrastructure. Foreign investment is also recognised as a means of gaining access to high productivity processes and technologies.[4]

ANZ supports the decision in other FTA negotiations to offer a higher monetary threshold for FIRB review to investors from Chile, China, Japan, Korea, New Zealand and the United States. It would be appropriate to consider such an extension to EU countries under an Australia-EU FTA.

ANZ would be pleased to provide further information to DFAT and comment on approaches. Please feel free to contact me on Rob.Lomdahl@anz.com or on 03 8654 3459.

Regards,

Rob Lomdahl
Head of Government & Regulatory Affairs

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[1] Treasury Working Paper, 2016-01, 'Foreign Investment Into Australia'.
[2] ANZ, Submission to Senate Economics Committee Inquiry into the Foreign Investment Review Framework, January 2016.
[3] ANZ Insight, 'Greener Pastures: The Global Soft Commodity Opportunity for Australia and New Zealand', Issue 3, October 2012.
[4] Parliamentary Library Research Paper (2014), 'Foreign investment in Australian Agriculture', p.16.