

Market Access Opportunities in Australia's North Asian FTAs

Kristen Bondietti
Principal Trade Consultant
ITS Global

What's in an FTA?

What can FTAs do for me?

Summary

- What's in an FTA?
 - What do they do? Why do they matter?
- What can FTAs do for me?
 - New market opportunities
 - Better business 'beyond the border'
 - Greater regulatory integration?
- But barriers remain
- How do I secure the opportunities?

What's in an FTA?



What FTAs do

FTAs DO:

- Address or change laws and regulations in foreign (and home) markets
- Create opportunities to trade and invest

FTAs DON'T:

- Tell companies how to export or invest successfully
- Permit completely 'free' access to foreign (or home) markets – there are conditions and limitations

They are legal agreements between governments – changes are 'binding'

What 'good' FTAs do

- **'New' FTAs** regulate services and investment-
they cover a broad range of economic activity
- **'Good' FTAs** do more than open markets:
 - Create commercial opportunities 'beyond the border'
 - Serve as a catalyst for market reforms in other countries

Benefits vary. They depend on what is agreed

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Why FTAs matter



- Financial services are traded and invested:
 - The Australian industry is a major exporter
 - Depends on foreign funding to support capital investment
- North Asian markets are important:
 - 80% insurance exports, 28% other FS exports
 - Growth agendas and policy reforms create opportunities for business

- But trade with Asia lags other markets – accounts for $< 1/3$ cross border financial relationships
- Markets in Asia are less developed and less integrated
- And barriers are high. Regulatory and legal regimes for services and investment are overly restrictive.



Our North Asian FTAs

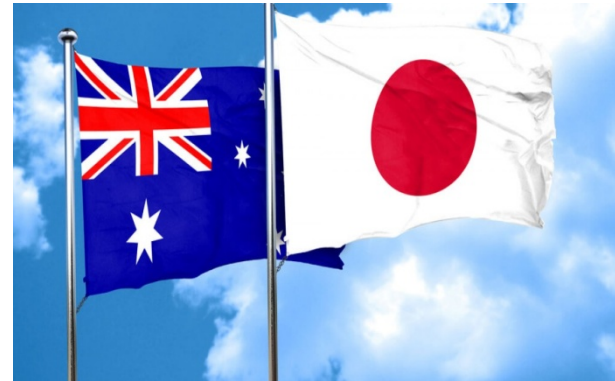
- **Korea Australia
Free Trade
Agreement (KAFTA)**



- Comprehensive – covers a wide range of services and investment activity
- Modelled on AUSFTA and KORUS
- Effective as of Dec 2014

Japan Australia Economic Partnership Agreement (JAEPA)

- Effective Jan 2015
- Most significant Japan bilateral (excl TPP)
- Improvements in access for financial services are equivalent or better than previous Japan FTAs
- Similar structure to KAFTA



China Australia Free Trade Agreement (ChAFTA)

- China's first comprehensive agreement with a developed economy
- Substantial access to China market for Australia (second to HK, Macau)
- Access as yet unmatched by competitors (US, EU)
- Effective Dec 2015



3 things FTAs can do for business

What FTAs can do	How FTAs work
1.Improve market access	Commitments to remove or reduce ‘barriers’ (market access) or at least ‘level the playing field’ (non discrimination).
	Parties retain restrictions. Usually set out an Annex.
2.Reduce ‘beyond the border’ barriers	Measures to promote transparency in regulations, streamline licensing procedures.
	Freedoms to transfer financial data between countries.
3. Promote regulatory integration	Commitments to permit labour mobility.
	Creation of institutional frameworks to facilitate recognition (eg: professional qualifications)

What's in FTAs? – New market opportunities

i. Deliver more services to Korea, Japan, China

- Greater access to Korea, Japan and China markets for financial institutions located in Australia
- **Deliver more services without having to establish a commercial presence – ‘cross border trade’**

KAFTA

➤ **Provide more services to Korean institutions and nationals**

➤ **Korean nationals can purchase from Australian providers**

- Investment and portfolio management services to collective investment schemes in Korea
- Some insurance services and insurance intermediation services
- Advisory and auxiliary services to a range of services

JA-EPA

➤ **General right to deliver services on same terms as Japanese nationals**

➤ **Access for these services is 'guaranteed'**

- Engage in securities related transactions
- Provide services to collective investment schemes
- Supply insurance of certain risks, auxiliary services

ChAFTA

➤ **Enhanced opportunities for Australian fund managers, securities and insurance providers**

- Access 3P motor vehicle insurance market without equity restrictions or establishment requirements
- Invest RMB in China's securities markets
- Provide cross border securities and brokerage services to Chinese QDII
- Plus quota access to RMB QFII program – purchase equities, bonds directly from mainland securities exchanges

ii. Transfer information and data across borders

- **Freely transfer and process financial information and data in and out of FTA countries:**
 - Transfer information to Korea and Japan for data processing, auxiliary services
 - More limited for China



iii. Provide 'new' financial services

➤ Provide 'new financial services' on the same terms as domestic providers

- Korea and Japan: no similar rights in ChAFTA
- Rights to impose restrictions, authorisation



iv. Establish and operate abroad more freely

JAIPA - examples

➤ **General controls on establishment prohibited**

No restrictions on the number, type or value of services, type of legal entity required (subject to exceptions) for branches, rep offices, subsidiaries

➤ **Freedom to operate in the market on same terms as Japanese providers**

No limits on the participation of foreign capital, freedom of transfer of payments and capital

KAFTA - examples

➤ 'Level playing field' for establishment, acquisition of financial institutions in Korea	Australians may now establish representative offices for international accounting services
➤ Choice of legal form	Establish as a branch or subsidiary
➤ Right to perform certain business functions	Includes functions such as trade and transaction processing, data processing, accounting functions

ChAFTA - examples

➤ **Loosening of equity ownership restrictions**

- 49% foreign equity for securities firms permitted, up from 33%
- Joint venture futures companies permitted

➤ **Better terms for operation of banks**

- Capital requirements for subsidiaries removed
- Waiting period for local currency services reduced
- Profit making precondition removed

➤ **Improved treatment for financial services firms in China**

- Level playing field for approved securitisation business
- No controls on juridical form for some services by accounting firms

v. Protect and enforce investments abroad

- Australian investments in Korea and Japan receive certain protections (eg: from expropriation)
- China will treat *existing* Aus investments equally to domestic investments
- ‘Review’ of agreement could improve investment liberalisation by China

vi. Support foreign investment in Australia

- **Direct investments in Australia will become more attractive**
 - FIRB screening threshold raised from \$252 million to \$1,094 billion (non sensitive sectors)
 - Equivalent to treatment given to other FTA partners



vii. Benefit from future liberalisation

- **Most Favoured Nation clause:** receive 'better' treatment given to other parties in subsequent FTAs
 - KAFTA, JAEPA
 - ChAFTA limited to securities services, but applies to investments

- **Improve liberalisation over time:**
 - KAFTA 'ratchet mechanism'
 - Review of commitments
 - ChAFTA review of services and investment, March 2017

What's in FTAs– Better business 'beyond the border'

Ease business operations in Korea, China, Japan

- **FTAs can help ease regulatory burden on business:**
 - More streamlined licensing procedures
 - Improved transparency in regulatory decision making (eg: financial services licensing)
 - Reduce the scope for overly restrictive controls on business (eg: back office functions)

What's in FTAs – greater financial integration?

i. Transfer of personnel, skills and expertise

➤ FTAs improve the terms for temporary entry of services professionals

KAFTA	<ul style="list-style-type: none">• 3 years for relevant services professionals• CPA qualified accountants can work in Korea (from Dec 2019)
JAEPa	<ul style="list-style-type: none">• 1-3 years for specified professional services providers/investors• Visa limits lifted for some professionals
ChAFTA	<ul style="list-style-type: none">• Up to 3 years for managers/specialists• Improved terms for issue of licenses to Australian accountants

ii. Less onerous licensing controls

➤ Enablers for increased regulatory integration

- Institutional frameworks to facilitate recognition agreements (regulatory requirements, professional qualifications)
- FTA Working Groups as a platform to address for specific issues (eg: ChAFTA MOU on RMB settlement)

But barriers remain....

Korea

- Access is subject to prudential regulation
- Financial institutions in Korea must still meet domestic licensing and authorisation requirements
- Access does not generally extend to marketing or solicitation of financial services in Korea
- Various 'controls' are maintained under KAFTA (reserved in the Annexes)

Examples of regulatory 'barriers' - KAFTA

➤ Residency requirements	CEOs of financial institutions
➤ Foreign exchange controls	Korean residents of Korea not permitted to settle payment in KRW for cross-border financial services
➤ Limits on scope of service	Restrictions on the manner of sales of insurance products (eg: number of windows in a single bank location)
➤ Controls on foreign investment	Establishment/acquisition of a controlling interest in a financial institution limited to institutions supplying the same services in the same financial services sub sector in Australia

Japan

- Similar to Korea – prudential regulation; registration and authorisation to operate
- Right to restrict the legal form of commercial presence and admission to market for new financial services
- May impose restrictions on some services in future



Examples of regulatory ‘barriers’ - JAEPA

➤ **Restrictions on legal form**

Solicitation of securities related transactions must be conducted by securities firms in Japan.

Foreign accounting enterprises must establish an audit corporation (‘Kansa-Hojin’) or a tax accountant corporation to deliver services

➤ **Licensing and registration**

Foreign banks, insurance providers and providers of mutual funds and pension funds must be licensed.

New insurance products (and modifications) require approval.

Foreign CPAs and tax accountants must be qualified and certified under Japan laws

China

- Market opening does not extend to all services
- Most open in Shanghai Free Trade Zone
- Prudential controls apply

➤ **Degree of market opening in ChAFTA coincides with broader liberalisation**



Examples of regulatory 'barriers' - ChAFTA

➤ Limits on foreign investment	Domestic securities investment fund management businesses limited to joint ventures (49% FE cap)
➤ Licensing and registration	Securitisation business requires relevant business qualifications and approval of the Chinese Regulator
➤ Limits on scope of services	Insurance institutions may not engage in statutory insurance business (except third party auto liability)
➤ Restrictions on legal form	Life insurers limited to establish as a joint venture with (50% FE cap)

Securing opportunities – how to benefit?

How large are the benefits?

- 'Benefits' of FTAs are difficult to measure and quantify - gains are dynamic
- Market opening in FTAs can support broader policy initiatives (eg: Asia Funds Passport)
- More competitive and open markets in the region will benefit Australian financial services in the longer term

How to benefit?

- Governments negotiate FTAs, but business trades and invests
- Realisation of FTA opportunities require more than legal commitments:
 - Sound business strategy
 - Good understanding of the market
 - Supportive policy environment



Thank you



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