

Trade Opportunities for the Australian food services sector - Australia's North Asian FTAs

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Kristen Bondietti, Principal Trade Consultant, ITS Global www.itsglobal.net

What FTAs do

Australia's recent FTAs, including those with Korea, Japan and China cover more than just tariffs. They now encompass a wide range of economic activity, including not only tariff reductions for goods, but commitments to reduce investment barriers, some liberalization of services and provisions addressing intellectual property, E-commerce, and temporary movement of labour.

Australia's FTAs with Korea, Japan and China

Korea Australia Free Trade Agreement (KAFTA)

KAFTA is one of our most comprehensive FTAs. It applies to banking, insurance, funds management and other financial services. It covers services, investment, data processing, temporary movement, etc. KAFTA is modelled on the Australia/United States Free Trade Agreement (AUSFTA) and the (on hold) Trans Pacific Partnership Agreement (TPP). It entered into force in December 2014.

Japan Australia Economic Partnership Agreement (JAEPA)

JAEPA is the most comprehensive and significant bilateral agreement Japan has negotiated to date. JAEPA delivers improvements in access for Australian financial services equivalent to or better than that Japan's previous FTAs.¹ It adopts a similar content and structure to KAFTA. It began in January 2015.

China Australia Free Trade Agreement (ChAFTA)

ChAFTA is China's first comprehensive agreement with developed economy and the first covering trade in services. It became operational in December 2015. ChAFTA provides Australian financial services providers with substantial access to the China market (second only to China's agreements with Hong Kong and Macau). For the moment, competitors from other developed financial markets such as the United States, Europe or Japan cannot match this access.

Regulation of services and investment in FTAs involves legal commitments for regulation. These commitments change or remove regulatory controls in foreign (and home) markets, distinct from tariff reductions which apply to goods.

As FTAs are treaty agreements between governments, the regulations they govern are those which are subject to government control. The scope and reach of governmental control varies among economies and by sector (for example, services industries tend to be more regulated in developing economies than developed economies; financial services, as an industry, is generally more regulated than distribution services).

¹ JAEPA improves access for Australia to Japan compared to that previously applicable under Japan's commitments in the WTO General Agreement on Trade in Services (GATS). Japan also has bilateral FTAs with Mexico; Switzerland; Chile; India; The Philippines; Singapore; Malaysia; Indonesia; Brunei; Thailand; Viet Nam, as well as a regional agreement with ASEAN countries.

While FTAs do to some extent reduce regulatory controls in the market, they do not grant 'free trade' or guarantee a completely open market. Commitments to remove 'barriers' can be conditional or subject to exceptions, the extent of which varies among industries and agreements. It depends on what has been agreed.

Food and agribusiness involves both goods and services. The industry manufacturers, moves and sells goods across borders, involving a range of goods and services along the supply chain. While as a whole it is therefore impacted by both goods (tariffs and non-tariff measures) and services (regulations and regulatory barriers) provisions in FTAs, there is a clear delineation of the scope of activity that is regulated when considering 'food services'.

Services relevant to 'food manufacturing services' include distribution trade, commission agents services, wholesale trade, retailing, franchising, packaging, advertising, other services incidental to manufacturing². See box below. Food products which are manufactured, moved or sold by means of these services receive the benefit of FTA commitments which apply to goods – tariff reductions, treatment of standards and testing for example.

Food and agribusiness services in FTAs

- **Distribution trade services**, principally reselling merchandise, including refrigeration, storage, warehousing and garage services; sales promotion, marketing and advertising, installation and after sales services including maintenance and repair and training services related services: inventory management; assembly, sorting and grading of bulk lots; breaking bulk lots and redistributing into smaller lots)
- **Commission agents services** - sales on a fee or contract basis by an agent, broker or auctioneer or other wholesalers of goods/merchandise and related subordinated services
- **Wholesale trade services** -sale of goods/merchandise to retailers to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services
- **Retailing** - sale of goods/merchandise for personal or household consumption either from a fixed location (e.g., store, kiosk, etc.) or away from a fixed location and related subordinated services
- **Franchising** - sale of the use of a product, trade name or particular business format system in exchange for fees or royalties. Product and trade name franchising involves the use of a trade name in exchange for fees or royalties and may include an obligation for exclusive sale of trade name products
- Plus **Packaging services, Advertising services** and other services incidental to manufacturing

Source: Australia/China Free Trade Agreement

2.Why FTAs matter

Food and Agribusiness is an important Australian industry.³ It is a significant exporter and importer. In 2015, food and agribusiness exports were worth \$40.8 billion, having almost

² A wider definition would encapsulate hospitality services including hotels, restaurants, catering, convenience stores etc, but has not been adopted for the purposes of this briefing based on the composition of attendees.

³ Statistics sourced from Rene Chaustowski and Stephanie Dolman, *Australia's Food and Agribusiness sector – Data profile*, Department of Industry, Innovation and Science, Economic and Analytical Services Division, April

doubled since 2005 when they were \$22.6 billion. There has been an increase in the rate of growth and the sector's share of total exports over past 5 years. Imports are important, they were \$17.1 billion in 2015, or 6.4 per cent of total imports.

The industry is a major employer, employing approximately 522,000 persons in 2015. There were over 178,500 businesses trading in the sector in June 2015. It is also an important contributor to broader economic activity. The sector produced \$53.9 billion of industry value added in 2014–15, equivalent to 3.3 per cent of total GDP.

Trade involves not only both goods and services, but also a range of intermediaries and 'modes' of delivery (eg: delivery of products across borders from Australia, commercial presence in foreign markets delivering services, natural persons delivering services, online sales of products). Market access is dependent on access to reliable supply chains and distribution channels.

Open services and investment matter. Services will be the next driver of growth in Asian Pacific developing economies. While the share of GDP generated by services is already relatively high in most developed economies (70% - 80%), in developing and some Asian economies it is much lower (40% - 60%). Barriers to services are still relatively high, especially in developing countries. Most FTAs of Asian economies (the Korea/US Agreement excepted) have few commitments which advance liberalisation of services.

Investment is now a key driver of growth. Businesses are establishing operations in foreign markets rather than exporting. Australia depends on foreign investment to expand its food and agribusiness sector.

North Asia is important. The commercial opportunities for Australian business in Asian markets is well understood. Japan, China and Korea are already major food export destinations for Australia. See Table below.

North Asian food and agribusiness markets	
China	<ul style="list-style-type: none"> • Largest food export market - worth \$5.2 billion to the Australian agricultural sector in 15/16 • Australian product advantages (clean, green, trusted manufacturer) • Online market for food and bev sales growing (Austrade estimates 5-10% sold online)
Korea	<ul style="list-style-type: none"> • Australia supplier to local food manufacturing industry • Online market becoming more popular • 5th largest food export market (\$2.9b in 2015/16)
Japan	<ul style="list-style-type: none"> • Second largest food export market (\$4.2b in 2015/16) • Largest export market for processed food and bev products

Source: Austrade, ABARES

Policy agendas in the markets create future growth opportunities. China, Japan and Korea all understand that their economies need reform of the services sector. Bilateral FTAs, particularly with the US (in Korea's case), and the TPP (which Japan has ratified despite the failure of the agreement to enter into force) have provided justifications for domestic reform. China has triggered review of an APEC-wide FTA. Building the appreciation of the importance of services has been a long-standing program driven by Australia in APEC.

3. Opportunities for business - FTAs with Korea, Japan, China

There are 4 things that FTAs can do:

- i. Provide commercial opportunities - Make it easier to access or invest in foreign markets (market access)
- ii. Improve environment for doing business - Make it easier to operate in foreign markets ('beyond the border')
- iii. Expand investment - Enhance security and protection of investment in FTA markets, encourage foreign investment into Australia (attract investment)
- iv. Serve as a vehicle for economic reform- Support more open and competitive services markets in the region (standard setting)

Each is summarised in greater detail below.

i. Deliver commercial opportunities for business

FTAs can make it easier to access FTA markets through the removal or reduction of restrictions. The agreements with Korea, Japan and China deliver some improvements in liberalisation for relevant services (in that they are better than that accorded previously under the WTO). For example, KAFTA provides new rights for Australian packaging firms to supply services to Korea without establishing a commercial presence there. Commitments are limited however – by and large 'food services' tend to be already formally open. Examples are summarised in more detail at Annex 1.

ii. Improve the business operating environment

FTAs can make it easier to operate in the market by addressing 'beyond the border' barriers. All FTAs include commitments which are designed to ease impediments to doing business in the foreign market, enhance the certainty of the regulatory environment and facilitate mobility of personnel.

For example, under ChAFTA China will accord online consumer protection in a manner equivalent to protections for consumers engaged in other forms of commerce. Both parties must ensure publication of laws and regulations, and provide rights of notification for changes in laws and rulings. Examples are summarised in more detail in Annex 1.

iii. Expand investment in FTA markets

Enforceable legal protections should enhance the protection of intellectual property and security of investments. Investments in Korea and in Australia receive standards of protection (eg: from expropriation). Private investors can enforce these rights through international arbitration under the investor state dispute settlement mechanism (ISDS). Australian investors and investments in Japan are accorded similar protections under JAEPA, though there is no ISDS available for enforcement. Australia and Japan have agreed to consider its inclusion in the future. CHAFTA requires China to treat *existing* investments by Australian investors on equal terms to domestic investments. This obligation can be enforced under ISDS.

iv. Strengthen intellectual property rights

Intellectual property (IP) provisions in the FTAs generally guarantee international treaty protections under the WTO TRIPS Agreement and various IP treaties. However, under ChAFTA China has agreed to make its IP databases publicly available on the internet (including for patents, utility models, industrial design, plant variety protection, geographical

indications and trademarks) and has agreed to provide opportunities to address Chinese IP protection which may have been inappropriately granted to trade mark squatters and copycat products. The ChAFTA agreement also provides a framework for raising intellectual property rights issues of interest to private stakeholders. These can be discussed in the Committee on Intellectual Property, established under the Agreement, at request of either Australia or China.

v. Encourage greater foreign investment in Australia.

Our North Asian FTAs should encourage more foreign investment in Australia and help grow Australia's food manufacturing sector. Direct investment opportunities from Korean, Japanese and Chinese institutions in Australia will also become more attractive with a quadrupling of the Foreign Investment Review Board's screening threshold for investments in non-sensitive sectors. The threshold for private investors is raised from A\$252 million to A\$1,094 million for Korea, Japan and China in non-sensitive sectors (sensitive sectors include agribusiness and agricultural land).⁴ This is equivalent to treatment given to the US and New Zealand under previous trade agreements.

Investment from North Asia is growing and is increasingly strategic. For example, there is an emerging pattern of acquisition by Chinese food companies that have sought to secure supplies of foodstuffs to the Chinese market. Investment has been notable in the dairy, beef and horticulture sectors.

Investments have provided the Chinese investor with logistics and production capacity in Australia, and a platform for greater expansion of bilateral trade and trade into Asia. At the same time, they have strengthened the domestic manufacturing capacity of the Australian industry (local staff and operations are often retained on the basis of well regarded, high quality Australian produce) and its export capacity within the region.

v. Serve as vehicles for economic reform.

Over the longer term, the creation of binding legal commitments for liberalisation will help set 'standards' for more open services markets and support more competitive services in the region. It is important in current times of increased protectionism and uncertainty in global trade.

4. Securing opportunities

What can FTAs do? Notably, while it is governments that negotiate FTAs, it is business that trades and invests. FTAs can provide commercial opportunities, but the benefits must be realised by business. There are, however, several ways in which FTAs themselves can help business secure the opportunities FTAs present.

- They can support further/continued liberalisation. For example both KAFTA and JAEPA include a Most Favoured Nation (MFN) clause which means that Australia will receive the benefit of any future liberalisation commitments Korea or Japan makes in subsequent FTAs. KAFTA also includes what is termed a 'ratchet mechanism' which prevents parties from imposing more restrictive measures in the future. ChAFTA includes a built in work program to advance liberalisation of services and investment commitments. The Australian and Chinese governments have recently (March 2017) agreed to bring this program forward to begin later this year.

⁴ The FIRB will also continue to screen all direct investments, new business proposals and acquisitions of interests in land (including agricultural land), by Chinese state-owned enterprises, regardless of transaction size. ChAFTA does not change these arrangements in any way, consistent with the Government's practice in other FTAs.

- FTAs can also facilitate dialogue between government and industry to address specific barriers. For example, ChAFTA includes a specific mechanism to review and address Non-Tariff Measures on a case-by-case basis, as raised by Australia or China. All agreements include similar committees for both goods and services.

The 'benefits' of FTAs are difficult to measure. Gains from services trade are particularly complex, not readily quantifiable and tend to be 'dynamic' throughout the economy. It is to be expected that opportunities for services arising from our North Asian FTAs will take time to be realised – it is still early days.

Annex 1- Examples of FTA commitments to advance market access and address ‘beyond the border’ barriers

1.Commercial opportunities - market access

Opportunity	Commitment/right	FTA example
Deliver more services from Australia (cross border trade)	New rights to supply some services to Korea without establishing a commercial presence	KAFTA: <ul style="list-style-type: none"> Provision of packaging services to Korea on a cross border basis ‘Level playing field’ (national treatment) for commission agent services
	Commitment to make online services delivery more secure	ChAFTA <ul style="list-style-type: none"> Agreement to maintain the practice of not imposing customs duties on electronic transmissions (subject to the WTO Work Programme on Electronic Commerce).
Establish and operate in FTA markets more freely	New rights to establish a commercial presence to provide some retail and wholesale services in Korea	KAFTA: <ul style="list-style-type: none"> Removal of economic needs tests for establishing large stores for wholesale trade (private wholesale markets only, specific products subject to government regulation (eg: grain, meat) Removal of the general prohibition on establishment of retail department stores and shopping centres
	WTO commitments for range of services guaranteed	ChAFTA, KAFTA, JAEPA: <ul style="list-style-type: none"> General rights of non-discrimination accorded in all agreements for wholesale trade services, advertising, packaging, distribution and franchising in market, subject to exceptions

2.Enhance the business operating environment – ‘beyond the border’

Opportunity	Provision	FTA example
Ease burdens/impediments to doing business	Licensing and registration	ChAFTA <ul style="list-style-type: none"> Parties must ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner, Parties must provide information on licensing/authorisation procedures where required
	Freedom of data transfer	All FTAs <ul style="list-style-type: none"> Freedom of international transfers and payments for current transactions relating to trade in services
	Ecommerce	ChAFTA <ul style="list-style-type: none"> China to accord online consumer protection in a manner equivalent to protections for consumers engaged in other forms of commerce
Enhance certainty of business environment	Transparency	ChAFTA <ul style="list-style-type: none"> Parties to ensure publication of laws and regulations, provide rights of notification for changes in laws and rulings, provide independent review processes for review Parties to ensure that all measures of affecting trade in services are administered in a reasonable, objective and impartial manner
Ease movement of people and skills	Temporary movement of	All FTAs: <ul style="list-style-type: none"> Entry commitments, including for contractual

across borders	personnel	service suppliers, spouses and dependents in all FTAs <ul style="list-style-type: none">• Access for lower skilled workers in Aust (eg: ChAFTA 457 Visas)
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