



Report of the 2nd round of negotiations for a Free Trade Agreement between the European Union and Australia

19-23 November 2018, Canberra

Officials from the European Commission and Australia met in Canberra from 19 to 23 November 2018 for the second round of negotiations for an EU-Australia Free Trade Agreement (FTA). The EU negotiating team was led by Ms Helena König, Chief Negotiator and Deputy Director General for Trade of the European Commission, while the Australian team was led by Ms Alison Burrows, Chief Negotiator and First Assistant Secretary at the Australian Department of Foreign Affairs and Trade.

Discussions were held in a good and constructive atmosphere and showed a shared commitment to negotiate an ambitious and comprehensive agreement. 16 working groups met covering almost all areas of a future FTA. Negotiators presented and explained the textual proposals that had been submitted in advance of the meeting. They clarified the underlying concepts and practices, the linkage with international agreements where relevant, and the involvement of different levels of government. Where possible, negotiators started to agree in principle on text parts that were agreeable to both sides. A number of follow-up actions were decided ahead of the third negotiation round which is scheduled for March 2019.

The underlying EU negotiation directives were adopted by the Council of the EU on 22 May 2018 and published on 25 June 2018.

Details per negotiating area

Trade in Goods: In the same constructive atmosphere as in the 1st round, both sides resumed work on the text on rules for trade in goods, closing six articles and agreeing on a number of definitions. The EU and the Australian sides then engaged in a discussion on expectations for initial market access offers, addressing a number of elements, such as sensitivities, degrees of ambition and link between market access and progress in other chapters under negotiation. Both sides will continue to work towards achieving the necessary degree of progress across all areas that will enable the exchange of initial market access offers to take place.

Rules of Origin: A discussion was held on the basis of the EU's proposed text for a protocol on Rules of Origin and Origin Procedures. Australia provided detailed comments on Rules of Origin (Section A) and initial comments on Origin Procedures (Section B), and the EU further explained its approach. A number of convergent and divergent positions were identified and will form the basis for further discussions. Both sides agreed to try to table their offers on product specific rules of origin ahead of the next round.

Customs and trade facilitation: Both sides discussed all the articles based on the EU text proposal and the comments provided by Australia. Some articles were agreed and substantial progress was made on others.

Customs anti-fraud and mutual administrative assistance in customs matters: Both sides discussed the EU proposal allowing for the suspension of tariff preference in case of fraud and lack of co-operation as well as the draft text of the protocol on mutual administrative assistance in customs matters. Good progress was made especially regarding the protocol where several articles were already agreed in principle.

Trade remedies: Both sides discussed the full text as proposed by the EU side. There are different views as to the inclusion of WTO plus elements in the chapter anti-dumping, anti-subsidy and global safeguard. Regarding the bilateral safeguard, the relation between such a clause and an ambitious market access offer was discussed.

Technical Barriers to Trade (TBT): Both sides discussed the EU proposal for the TBT Chapter, covering articles on objectives, scope, relationship with the WTO TBT Agreement, technical regulations, standards, conformity assessment, transparency, and marking and labelling. Issues were identified where further detailed exchanges will be needed, in particular, on the scope of the TBT Chapter, the provisions on conformity assessment and the application of dispute settlement. Both sides expressed their intention to work also on other sector specific provisions (apart from motor vehicles), in particular medical devices and cosmetics.

Annex on motor vehicles: The EU side presented its proposal for the annex on motor vehicles and both sides had a fruitful first discussion.

Sanitary and phytosanitary measures: Both sides discussed each other's text and identified similar approaches which will pave the way to agreeing on text in future work. As regards a number of other articles and approaches follow-up actions were agreed to allow further clarification.

Services and Investment: The discussions on services and investment in this round were based on the EU text proposal. A comprehensive and in depth analysis of the objectives, approach and the substance of the proposal took place. It was agreed to work on the basis of the EU text in most areas. The Australian side will confirm which text proposed by the EU side they can accept and provide detailed alternative proposals ahead of the next round in order to facilitate progress. Both sides also discussed the approach proposed by the EU side to scheduling commitments, notably providing full transparency regarding measures at sub-national level and taking market access commitments for both services and manufacturing and primary industry sectors on which the Australian side will conduct internal consultations.

Digital Trade: Both sides discussed in detail their respective approaches based on the textual proposals. The EU side provided clarifications and explanations of its Digital Trade title proposal. Both sides exchanged useful information on several aspects of their regulatory systems with relation to some of the elements discussed. The discussions showed that there were many areas of convergence between the two approaches. Overall, both sides confirmed their objective of being ambitious and forward-looking on this topic.

Government Procurement: The discussion focussed on the architecture of the draft chapter, i.e. whether it was preferable to include Government Procurement Agreement disciplines by reference or replicate them in full length. Australia provided presentations on procurement by sub-central entities in Australia, AusTender (the e-procurement system at Commonwealth level), and the procurement of Government Business Enterprises. Both sides explained their respective drafting proposals.

Intellectual Property Rights (IPR), incl. geographical indications (GIs): Both sides continued discussions based on EU and Australia's text proposals. Discussions covered all sections of the IPR Chapter, including general provisions, copyright and related rights, trademarks, designs, plant varieties, patents, protection of undisclosed information, geographical indications and IPR enforcement, including border measures. Both sides provided more details on their IPR legislation and practice and concentrated on identifying similarities and divergences in the two texts. The EU side replied to Australian questions on the EU GI list submitted for protection under the FTA. A number of follow up actions in relation to various IPRs were agreed.

Competition (incl. Subsidies and State-Owned Enterprises): Since the EU text proposal on competition had not yet been submitted to Australia, the two sides discussed the principles and specific disciplines usually included in EU FTA negotiations. On antitrust and mergers, there was a general agreement on principles. On subsidies, the two sides exchanged views on the scope of the chapter, its specific obligations and how these will be implemented. On State-Owned Enterprises, discussions took place on the basis of the EU text proposal. The two sides had a constructive discussion on the text and removed a number of brackets. Comments, questions and answers in writing will be exchanged before the next round.

Trade and sustainable development (TSD): Both sides discussed the principles behind their approach to TSD provisions on trade and labour, multilateral environmental agreements, climate change, biodiversity, and forests, as well as TSD institutional provisions and mechanisms: TSD subcommittee and national contact points, transparency, dispute settlement (government consultations and panel of experts). Discussions also touched upon TSD aspects of civil society mechanisms of the FTA (Civil Society Forum). The EU side recalled its TSD 15 point's action plan and the importance it attaches to the ratification of all fundamental conventions of the International Labour Organisation (ILO).

Energy and raw materials (ERM): Discussions focussed on a further exchange of views on the specific articles aimed at facilitating trade in ERM goods, as well as promoting services and investment in these sectors, most notably in the area of renewable energy. There was also an in-depth discussion of ERM-related environmental and offshore safety rules.

Transparency: Both sides discussed the EU proposal on Transparency, revealing significant common ground and consistent practises. The discussion covered all the articles of the Chapter, i.e. objectives, definitions, publication, enquiries, administration of measures of general application, review and appeal and relation to other chapters. Key issues to consider further are the scope of application of the publication obligation to judicial decisions and interpretation of the requirement that judicial or arbitral tribunals should not have any “interest” in the outcome of their decisions.

Good regulatory practice: Negotiations confirmed that both side have similar approach to good regulatory practises in their decision-making. Both sides had a first discussion based on the EU proposal for the GRP Chapter and covered articles on general principles, definitions, scope, internal coordination of regulatory development, regulatory processes and mechanisms, early information on planned regulatory measures, public consultations, impact assessment, retrospective evaluations, regulatory register and exchange of information. Both sides identified issues for further discussion, including annual list of planned measures, public consultations and retrospective evaluation.

Dispute settlement: Both sides discussed in detail the Dispute Settlement Chapter, and its two Annexes (Rules of Procedure and Code of Conduct). The discussion took place on the basis of a draft text consolidated after the first round. Both sides reached agreement on the objectives for the Chapter, which include transparent, efficient and effective dispute settlement procedures. Both sides also agreed in principle on many areas relating to the concrete operation of the dispute settlement mechanism but certain areas remain outstanding. Both sides agreed on next steps to prepare for Round 3.