

“Australian Outlook”

Australian Institute of International Affairs

**“In Pursuit of Services Trade and Investment Outcomes in the
Australia/European Union FTA”**

**by Pascal Kerneis – Managing Director
ESF (European Services Forum)**

In the course of 2017, the European Union and Australia will launch a so-called “deep and comprehensive free trade agreement” (DCFTA). While much of the attention goes on the possible contentious issues related to agriculture trade, trade and investment by the services sectors are of bigger importance for the bilateral trade between the two parties. This will need to be reflected into the talks.

The European Services Forum (ESF) is a private sector trade association that represent the interests of the European services industry in International Trade Negotiations in Services & Investments. It comprises major European service companies and European service sector federations covering service sectors such as financial services, telecommunications and IT services, maritime transport, business and professional services, distribution, postal and express delivery, tourism, etc.

The EU is by far the biggest global exporter of trade in services with US\$ 985 billion in 2014, representing more than 25% of global exports, and if we take the intra-EU trade into consideration, the EU countries exported US\$ 2,1 trillion of services in 2014, representing more than 40% of world exports. With such importance of the EU share in international trade in services, it is obvious that any EU FTA without substantial chapter, disciplines and commitments in trade and investment in services will not make much sense.

The EU is a big exporter to Australia with a total volume of €48.2 Bio in 2014, 38,6% of this being exports of services (€18.6 Bio). Australia exports of services are also significant (€7.8 Bio), representing 45.9% of total exports to the EU. This is bigger than agriculture trade. It is true that when we look at the figures of Australia world exports in terms of balance of payment (BoP), trade in goods (commodities, agriculture and manufacturing) represent 82% of total exports, letting trade in services to a small 18%. But when we look at the new way of

calculating international trade by the OECD and the WTO, who developed the Trade in Value Added indicators and database (TiVA) which allows to calculate trade in terms of value-added, 46.1% of total Australia exports are services. Indeed, according to this data base, 36.3% of Australia goods exports are services integrated, embedded into the exported goods. When we look at the same figures for the EU, 60.5% of all EU exports are services, and 39.1% of the value of exports of EU goods are in fact services around the products.

These new elements will need to be taken into consideration during the trade negotiations. The fact that the two parties are major proponents of the plurilateral negotiations towards a Trade in Services Agreement (TiSA) is a strong signal that negotiators are aware of this, but it will now need to be integrated by the political level in the framework of the bilateral FTA.

The dimension of services will also need to be well analysed when studying the impact of Brexit on EU Trade Policy for Services and Investment, and its possible influence on the interest of Australia for a strong EU-Australia FTA. Indeed, many Australian exporters and investors in the EU use the United Kingdom as a basis, and a significant share of EU services exports to Australia are coming from the UK. This will remain since the UK is a major player on international trade in services, ranking second after the US, representing 6.8% of world trade in services and 15.6% of EU exports in 2014, with US\$337 Bio.

Taking all of this into account, what should be the content of the EU-Australia FTA for trade and investment in services? By “Deep and Comprehensive FTA”, the EU understands a trade agreement that will include trade in Goods (tariffs cuts [+95%] on manufactured goods, agriculture and commodities, Non-Tariffs Barriers like standards, Rules of Origin, etc.); Trade in Services (Cross border trade, Movement of people); Investment (Pre-establishment market access including in services sectors, post establishment protection; IPR (copyrights, patents, data flows, etc.); Public Procurement, including for services (central, regions, local, public entities); Competition; State to state dispute settlement; Regulatory disciplines and cooperation; and a so-called “sustainable development chapter” that will establish rules on labour, on environment, etc.

When we specifically focus on trade and investment in services, we will see the negotiations dealing with the following elements: i) Market access Pillar; ii) Regulatory disciplines and cooperation; iii) Movement of natural persons and iv) Mutual recognition of qualification.

As for the Market Access Pillar, it is important to underline that the current bidding level of legal international commitments between the two parties are the commitments taken in the framework of the WTO Uruguay Round, and in particular those taken in the GATS (General Agreement on Trade in Services) in 1995, and subsequently in 1997 for basic telecoms and financial services. In the bilateral talks, the parties will hopefully adopt the Scheduling of Market access & National Treatment commitments using a Negative list approach, which is the preferred choice of the EU and Australian services industry, as well as of the Australian government, but which is a method that is not well understood and appreciated by the EU Member States and European Parliament. The parties should start the negotiations at least at the level of their best tabled offer in the framework of the TiSA negotiations in November 2016; but which could be even further improved, aiming at replicating or improving the EU's commitment of towards Canada in the recently signed CETA (Comprehensive Economic Trade agreement); and Australia's commitments in the Trans Pacific Partnership (TPP), which is now in uncertain territories.

For the market access in services sectors, parties should aim at removing of all equity caps, with negotiated exceptions; at binding their current regulatory practises with negotiated exceptions, and adopting a standstill and ratchet clause for a large number of sectors to lock-in the future autonomous reforms.

The FTA should include a state of the art Investment protection chapter including Investor-to-State Dispute Settlement (ISDS) with transparency process; and it is likely that the EU will insist on including the new EU Investment Court System (ICS). Another very important element of the negotiations will be the public procurement. There is no doubt that the EU will look for an increased public procurement market access in the services sectors: (Construction & related services (architects, engineers, etc.); cleaning and catering services in administrations and all public entities; insurance services; telecom and IT services; security services; environmental services, etc. Australia is not yet a GPA member (WTO Agreement of Government Procurement), so this chapter will be a test to see the level of difficulties eventually mentioned by the request to access Australia sub federal level.

The parties will also negotiate the adoption of a strong horizontal chapter on Disciplines for Domestic Regulation (Transparency of the regulation; Prior consultation of stakeholders;

Impact assessment; transparency of the licensing requirements and procedures). Like in TiSA, it is also likely that they will include in the services chapter or in annexes, some sector specific disciplines (e.g. on Telecoms, on Postal, on Energy, Environment, maritime and air transport, financial services, e-commerce and cross border data flow, etc.) and sector specific regulatory cooperation (living agreement). The disciplines on State Own Enterprises (SOEs) will also of course apply to services companies.

Negotiations of commitments for the so-called “Movement of Natural Persons” are also a key priority for EU and Australian businesses in EU-Australia FTA. The principle is to negotiate access to skilled business persons for a temporary period only, not permanent migration. Economic operators (services and non-services) are all interested to get faster Business Visa and Work permits delivery procedures.

To conclude, in some services sectors, however, to get access for the companies and for the natural persons is not always sufficient to do business. This is notably the case for the professional services (accountant and auditors, architects, engineers, lawyers, medical professions, etc.). It will therefore be important that the agreement will try to achieve some Mutual Recognition Agreements in Professional qualifications, which could be inspired by the EU-Canada CETA.
