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# 1

## Introduction: Australia, the European Union and the New Trade Agenda

Annamarie Elijah, Donald Kenyon, Karen Hussey  
and Pierre van der Eng

This book examines issues relating to the prospective trade agreement between Australia and the European Union (EU). It takes the position that robust, informed debate about this potential agreement is timely and useful. As the title of the book suggests, the aim is to situate the debate in a rapidly changing international context. The collection has its origins in an important conference held at The Australian National University (ANU) Centre for European Studies in November 2013. The conference proceedings took place in an atmosphere of reflection about whether a trade deal between Australia and the EU would ever come to pass, with participants arguing the case for its consideration. It is a mark of the changing relationship that at the time of writing the preliminary scoping for this agreement is underway.

The European Commission's recently released trade policy strategy, *Trade for All*, commits the Commission to requesting authorisation to negotiate free trade agreements (FTAs) with Australia and New Zealand (European Commission 2015a: 32). In November 2015, Prime Minister Malcolm Turnbull together with European Commission President Jean-Claude Juncker and European Council President Donald Tusk agreed

to work towards the launch of ‘comprehensive’ trade negotiations, in a context of deepening the Australia–EU relationship (European Commission 2015b). These are steps in a process that will be slow to unfold; nevertheless, the debate about this agreement—and indeed the Australia–EU relationship at the centre of it—has moved on.

Historically, the path of the Australia–EU economic relationship has not run smoothly. The bilateral relationship is littered with examples of trade politics souring the broader terms. The difficulties have been well documented (see Benvenuti 2008; Kenyon & Lee 2006; Elijah 2004; Murray, Elijah & O’Brien 2002) and it is not the purpose of this book to reiterate them, but it is for these reasons that even a decade ago the notion of a trade agreement seemed remote. For Australian policy makers the difficulties appeared insurmountable. For European policy makers there would have been no obvious rationale for undertaking negotiations with Australia. What then has changed?

## Australia and the EU: From adversaries to allies

The common agricultural policy (CAP) was a major problem in Australia–EU trade relations through to the end of the 1980s. Australia also maintained a somewhat closed and protected (especially on manufactures and services) economy up to the mid-1980s. CAP reforms and the creation of the EU single market in the 1990s, together with domestic economic reforms in Australia from the mid-1980s, have changed these fundamental issues (Kenyon 2012: 34–39). Reform of the CAP enshrined in the Uruguay Round Agreement on Agriculture, especially disciplining the future use of export subsidies, took much of the heat out of the decades-long dispute between Australia and the EU over agricultural trade policy (WTO 1994). Former Trade Minister Mark Vaile was able to declare in 2002 that ‘there was more that united than divided Australia and the EU’ on trade policy issues (Vaile 2002).

Australia and the EU emerged from the Uruguay Round in 1994 with a much greater level of agreement over future reform to the global trading system than at the beginning of the negotiations in 1986. The economic policy reforms in both Australia and the EU from the mid-1980s onwards have made them strong allies in the push for greater trade liberalisation

on manufactures and services trade and in strengthening multilateral rules aimed at reinforcing the World Trade Organization (WTO) as the mainstay of an open global trading system.

These developments delivered a significant change for the better in the bilateral relationship after a long period of conflict. Australia and the EU became strong and active proponents of a new round of WTO trade negotiations from the beginning of the 21st century. The aim was to pursue the unfinished business of the Uruguay Round on the liberalisation of agricultural, manufactures and services trade—the so-called ‘inbuilt agenda’ for future negotiations foreshadowed at the end of the Uruguay Round—to further develop the new rules agreed during the Uruguay Round on services and non-tariff barriers (NTBs) more generally and to extend the General Agreement on Tariffs and Trade (GATT) rules into new areas. As this volume will show, the EU was particularly active in promoting the development of new WTO disciplines; for example, trade and the environment, labour standards, investment, competition policy and trade facilitation through the simplification of customs procedures. Young and Peterson refer to the EU as ‘the most aggressive and persistent advocate of a broader international trade agenda’ (2006: 796).

When the Doha negotiations were finally launched in 2001, Australia and the EU both pursued the new multilateral trade round as a top priority trade policy objective (Lamy 2002). The EU declared a moratorium (1999) on further bilateral trade negotiations in order to accord priority to the WTO negotiations. Yet, despite more than a decade of sustained effort, the Doha negotiations have not progressed to a successful conclusion. There are a number of reasons for this.<sup>1</sup> These include ongoing differences on the depth of cuts to domestic subsidy levels for agriculture in the developed world and the magnitude of further cuts to industrial tariffs among developing countries. Linking these key, unresolved issues in the negotiations has not assisted their resolution.

Fuelled in part by the limited success in advancing the multilateral trade agenda through the Doha negotiations, the EU signalled a new direction in trade policy with its *Global Europe* strategy (2006). The EU identified key markets in Asia (Association of Southeast Asian Nations (ASEAN), South Korea and Mercosur) as targets for ‘new generation’ trade

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<sup>1</sup> For an in-depth discussion of the failure of the Doha Round and its significance, see Muzaka and Bishop (2015).

agreements aimed at liberalising trade beyond what was possible in the WTO; particularly, overcoming ‘behind-the-border’ barriers impacting on services, standards, investment, public procurement and competition policy problems. Recognising the limitations of current WTO rules, the EU argued in 2006 in *Global Europe* that trade agreements can go ‘further and faster in promoting openness and integration ... preparing the ground for the next level of multilateral liberalisation’ (European Commission 2006: 5–8). Since 2006, the EU has concluded agreements with South Korea, Singapore, Vietnam and Canada, and is now negotiating with Japan. The status of the proposed agreement with the United States of America (USA), the Transatlantic Trade and Investment Partnership (TTIP), is unclear.

Australian trade policy from the beginning of the 21st century has followed a similar trajectory. Beginning in 2003, trade agreements with an increasing emphasis on NTBs as well as tariffs have been concluded with Singapore, Chile, Thailand, USA, ASEAN (together with New Zealand), Malaysia and, in 2014, Korea, Japan and China. Australia is now seeking to conclude trade negotiations with India. Notwithstanding these bilateral and regional agreements, the Australian Government continues to accord primacy to the WTO and the multilateral agenda (DFAT 2015).

## The new trade agenda

The term ‘new trade agenda’—sometimes referred to as the ‘deep trade agenda’—is shorthand for the changed nature of international trade, ‘in terms of both content and process’ (Young & Peterson 2006: 795). The changes have recently gathered speed, as analysts have widely noted. The changed *content* of the new trade agenda is characterised by several factors. First, the trend towards global supply chains, where industries (e.g. motor vehicles) are increasingly global and where trade is in parts or components (or even intellectual property such as design) rather than in finished products.

Second, the new trade agenda explicitly recognises the rapid increase in the importance of services in world trade: professional services, financial services, services as part of the digital economy, education, tourism, transport and business services. Third, the new trade agenda is in the growing importance of foreign direct investment around the

world as enterprises, especially from developed economies, increasingly seek to invest in manufacturing, mining and services activities in other countries to take advantage of resources, labour conditions and proximity to markets in order to maximise the productivity of their enterprises.

As a consequence, the new trade agenda is as much concerned with behind-the-border barriers as it is with straightforward at-border market access. Current policy makers, therefore, engage with how domestic standards and regulations impact on trade. They aim to address regulatory divergences between countries and regions relating to technical and environmental standards for manufactured goods and basic agricultural and food products; licensing, qualifications and certification procedures impacting on the supply of tradeable services; conditions applying to foreign direct investment, including rights of establishment, investment protection, repatriation of profits and dispute settlement; and competition policies, including the disciplining of monopoly and oligopoly power and public procurement policies.

The changed *process* of the new trade agenda is impacting on the way governments (and indeed other actors) are now seeking to achieve their objectives. In part because the importance of new trade agenda issues has advanced significantly since the launch of the Doha negotiations in 2001, trade liberalisation is no longer predominately being dealt with in a multilateral setting. Multilateral rules designed for a time in which a much less integrated global trading system could be kept open by reducing and eliminating visible barriers to trade—notably import tariffs and quotas—were effective in delivering progressive liberalisation of the world trading system from the late 1940s to the early 1980s. The focus then was on elimination. With the creation of the WTO at the end of the Uruguay Round of Multilateral Trade Negotiations (UR), the focus has shifted increasingly to regulatory cooperation. This is proving more of a challenge for the multilateral trading system.

According to the WTO, the eight rounds of trade negotiations that were completed during the 1980s and 1990s saw tariff rates on manufactured goods in developed countries fall steadily to less than 4 per cent (WTO 2014). The GATT progressively sought to deal with emerging issues since the 1980s; however, the system has not entirely succeeded in creating effective new rules to discipline new trade agenda and NTB problems. Even the signature reform reached in the Uruguay Round in the form of a new set of rules designed to liberalise trade in services—the General

Agreement on Trade in Services (GATS), aimed at mirroring the original GATT rules of 1947—has suffered from these shortcomings. To some extent this explains why it has not been possible to repeat the Uruguay Round success in the WTO. As it is, the multilateral process is essentially stalled. Bilateral, plurilateral and mega-regional deals have proliferated. At December 2015 the WTO has been notified of some 452 regional trade agreements (counting goods, services and accessions *together*) with 265 currently in force.<sup>2</sup> The incompleteness of efforts in the UR to bring new rules into effect, with the creation of the WTO, to discipline new trade agenda issues, is dealt with in more detail in the final chapter of this collection.

Thus, in the 1960s and '70s, an emergent Australian economy and a (then) European Economic Community of six and later nine member states endured a difficult bilateral relationship centred on straightforward 'at-border' market access issues. At present the 28 EU member states (EU28) and Australia find themselves partners in pursuing an agenda that includes revitalising credentials of the WTO; embedding GATT-plus commitments in other agreements in the meantime; and finding scope for trade liberalisation 'behind borders', with all of the complexity that entails. Further, the bilateral economic relationship between Australia and the EU is no longer adequately regulated by the WTO (Villalta Puig 2014: 300). It is in this context—a changed bilateral trade relationship; a vastly different international context—that an Australia–EU trade agreement becomes possible, and perhaps inevitable.<sup>3</sup>

The chapters that follow are in one sense deeply practical contributions to the forthcoming policy debate on the Australia–EU FTA. They are designed to contribute background information, provide case studies and directly inform the negotiations. The chapters highlight potential points of difficulty and possible gains from an Australia–EU FTA. They set out different perspectives on issues that will soon be front and centre in trade policy debates. Contributors from the Australian Productivity Commission, the European Services Forum and Austrade ensure that this book is policy relevant.

2 Counted separately, the figures are 619 notifications with 413 in force (see WTO 2015).

3 For a full account of the changing bilateral relationship, see Kenyon and van der Eng (2014).

The book seeks to make two further contributions. First, it constitutes a reappraisal of Australia–EU relations; particularly, but not only, the economic relationship. Here it complements a growing body of work that demonstrates that the Australia–EU relationship need not consist only of squabbles over agriculture (Kenyon & van der Eng 2014; Murray & Benvenuti 2014; Villalta Puig 2014). Whatever the past difficulties, the relationship described in this volume is multidimensional and maturing. The treaty-level Framework Agreement (concluded in 2015) between Australia and the EU is expected to underline the extensive cooperation underway across a range of policy areas.

Second, the chapters taken together present a snapshot of current issues in trade policy—the ‘new trade agenda’—that is more complex and politically visible than ever. The issues that will arguably be confronted by Australia and the EU in forthcoming negotiations are those confronting policy makers around the globe. They are testing public tolerance of decisions once viewed as dull and technocratic, and are redefining the academic treatment of trade policy.

## Structure of the book and key themes

This book is organised into three sections. Section 1 deals with lessons from abroad. The EU has recently sought trade agreements with several of Australia’s major Asia-Pacific and Organisation for Economic Co-operation and Development (OECD) trading partners such as South Korea, India, Singapore, Canada, Japan and the USA. These new generation agreements are ambitious in scope and aim to go beyond border measures, such as tariffs. Proposed liberalisations extend to behind-the-border barriers, such as domestic regulation impacting on trade in both goods and services. What can we learn from recent trade deals the EU has concluded? This section examines the EU’s trade deals with South Korea, Singapore and Canada. In doing so, it provides important background information about the likely shape of negotiations, the length of time that reaching agreements can take, and the obstacles to successful conclusion. What are the similarities with the Australian case, and what are the points of difference?

Section 2 consists of sectoral analysis. It addresses in detail two crucial aspects of a potential trade agreement between Australia and the EU. Trade in agriculture has historically been the principal source of tension



in the bilateral relationship, a fact that dates from the United Kingdom's (UK) decision to join the European Community in 1973. Recent changes inside the EU and in Australia's export profile mean that this aspect of the relationship has altered fundamentally, such that scope for genuine gains exist for both sides in the negotiations; regulatory convergence across a range of NTBs is 'ripe for the picking'. Trade in services is now a key plank of the bilateral trade relationship and a much-lauded aspect of new generation FTAs. A successful Australia–EU FTA would contain ambitious measures relating to trade in services. The chapters in this section consider agriculture and services in detail.

Section 3 deals with the broad political and economic terms of an Australia–EU agreement. It brings together European and Australian perspectives on what could be gained from a potential agreement. It debates whether a trade agreement is the best format for pursuing cooperation and liberalisation, it details institutional questions about how trade agreements actually work, and it considers the risks to both sides of *not* undertaking the negotiations. A number of the contributions in this book present arguments in favour of Australia negotiating an FTA with the EU: the growing importance of bilateral services trade and scope for its expansion and mutual interests in agricultural trade, for example. Importantly, the Abbott and Lee-Makiyama chapter details the reasons why an EU–Australia agreement is also in the interests of the EU.

Several key themes emerge from the collection of chapters in this book. The list of five below is not exhaustive.

## 1. The current limitations of multilateralism and the search for alternatives

Without exception, the chapters that follow take as a starting point the apparent incapacity of the multilateral system to successfully conclude the Doha negotiations. Gretton describes prospects for finalising the Doha Round as 'bleak'; Gosper describes the multilateral possibilities as 'underwhelming'. Two issues feature repeatedly. First, governments seeking greater market access via tariff reductions and increased quotas need to secure this bilaterally given the lack of multilateral progress. The rationale for bilateral deals in this case is clear, especially given the all-but-finalised deals that remain in limbo pending the successful

conclusion of Doha. Gosper's chapter notes that Australian negotiators could 'see the shape' of EU agricultural market access that Doha could make possible, still.

Swinbank and Daugbjerg's chapter deplores the failure of the international community to conclude the Doha Round, explaining the role of the WTO in locking in CAP reform in the past. In their view, the EU will not likely agree to further tariff reductions *except* in the context of a multilateral agreement, and in the meantime countries like Australia could potentially use a trade agreement to 'sidestep' continuing high EU tariffs on agriculture through increased tariff quota (TQ) access, much as has been secured in the Comprehensive Economic and Trade Agreement (CETA). Thus, the stalling of the recent WTO Round is seen as a motive for governments to embark on more diffuse trade strategies, including bilateral, plurilateral and mega-regional deals. The second issue, as Kang explains, relates to coverage. The limited ability of the WTO to deal with issues of concern to the EU such as investment, public procurement, competition policy and intellectual property rights has led directly to the strategy of institutionalising EU preferences in other trade agreements.

## 2. The changing nature of trade agreements

The chapters in this volume demonstrate that especially bilateral trade agreements increasingly broach new territory. The issues covered in the new generation agreements and the level of ambition that they articulate differ greatly from previous bilateral trade agreements. Particularly where developed countries have already substantially lowered their tariffs on manufactured goods, trade in services takes on new significance in negotiations and is considered crucial to the projected gains. Elms argues the centrality of services trade in the EU–Singapore deal and sees it as 'the primary offensive objective' of the EU. Elijah notes CETA was hailed as a major achievement by both sides, especially in relation to its treatment of services. Kerneis outlines the importance of services trade to both the EU and Australia and explains how negotiations about services trade liberalisation might unfold between the two. Hussey and Tidemann illustrate that while tariff reductions are unlikely to feature prominently in any potential Australia–EU FTA, the opportunities to remove technical barriers to agricultural trade are many, particularly where those barriers relate to environmental and human health objectives.

Investment provisions (recently elevated to the EU level by the Treaty of Lisbon, 2009) now feature across multiple trade agreements; for example, in the EU–Singapore agreement and in the CETA. The full implications of this development—for the EU and its trading partners—are still becoming clear. As Elms explains, the EU–Singapore agreement was delayed as a result. The investment provisions in CETA have become especially controversial and contributed to the so-called ‘CETA-saga’ of late 2016.

Largely because of the investment policy provisions of CETA—both ‘direct investment’, which following Lisbon is now an EU matter, and ‘portfolio investment’, which remains a member state responsibility—the European Commission decided to treat the ratification of the CETA treaty as a ‘mixed agreement’ requiring approval by all 38 national and regional governments in the EU rather than the simpler route of a ‘qualified majority’ vote by the 28 national governments in the Council. The government of the Belgian region of Wallonia threatened to veto the CETA immediately prior to its signature. Clarifications were sought from the EU (especially in relation to investor–state dispute settlement (ISDS) provisions), which finally enabled the CETA treaty to enter into force provisionally on 30 October 2016.

Trade agreements are more complex and broader in scope than ever. The complexities of entry into force, especially with the multiplicity of governments required to approve ‘mixed agreements’ has both political and practical implications.

### 3. Trade agreements are interconnected

Multiple chapters here attest to the interconnectedness between the different agreements that are now finalised or in prospect. It is clear that the sequence of negotiations matters greatly—in terms of potential trade diversion, but also in relation to the inclusion of liberalising measures, which are seen to represent the latest best possible outcome. The obvious example examined in this collection is the CETA. These negotiations were conducted with an eye to the proposed TTIP, as some of its ‘wait and see’ clauses demonstrate. Outcomes will ultimately depend on what the USA and the EU can agree. Meanwhile, Australian policy makers contemplate the CETA and its usefulness as a ‘roadmap’ for Australia. Abbott and Lee-Makiyama suggest that it is a deliberate strategy of the EU to pursue

negotiations with a smaller, more flexible partner in a given region first, before engaging a larger trade partner (South Korea, then Japan; Canada, then the USA; and potentially New Zealand, then Australia).

Kang argues that South Korea may lose its competitive edge as the EU finalises more deals in East Asia, and underlines the need for Korean companies to make full use of the agreement's provisions. Elms traces the history of the EU–Singapore agreement to the failed EU–ASEAN negotiations, and notes the extent to which these negotiations were conducted by the EU with the aim of returning to an ASEAN-wide deal at a later date. Thus, the purpose of the EU–Singapore agreement is not simply trade liberalisation, but the building of a model that may form the basis of regional arrangements between the EU and ASEAN. Gosper outlines the place of the EU in Australian trade considerations. The fact that the EU is negotiating with Australia's trade partners 'adds to the logic' of trade negotiations with the EU.

It is clear in this volume that governments are pursuing defensive interests via trade agreements. It is less clear how the various agreements might ultimately relate to each other for the purpose of reinvigorating multilateralism, or even plurilateral initiatives. Bhagwati's concerns about the 'spaghetti bowl' and its impact on the multilateral trade system surface in multiple chapters (Bhagwati 2008). With their stated commitment to multilateralism, Australia and the EU share an interest in resolving this dilemma. The EU identifies the 'interoperability' of agreements as a priority in its recent trade strategy statement (European Commission 2015: 29).

#### 4. Domestic settings and trade policy are inseparable

The domestic roots of trade policy have long been established. As Adams, Brown and Wickes (2013: 87) remind us, 'domestic policy settings form the basis of negotiating positions'. For the policy makers behind the new trade agenda, as the chapters show, domestic policy is not merely the source of negotiating positions, it is their prime target. The new trade agenda progressively inserts itself into national sovereignty issues in the determination of public policy decisions across a wide range of regulatory policies. Given the overall decline in the importance of tariffs, regulatory divergences have an increasing profile (Hussey & Kenyon 2011). These divergences arise more frequently from legitimate (e.g. historical) differences in public policy than protectionist motives. Nevertheless, the

adverse impact of regulatory divergences—as intended or unintended NTBs—is incontestable. Dealing with the trade impacts of regulatory divergences is challenging (Mumford 2014). Further, it raises a raft of institutional questions that are far from resolved.

Kenyon and van der Eng conclude this volume by elaborating the possibilities for Australia–EU cooperation on the new trade agenda. It is argued that Australia and the EU are now set on a trade policy course with common objectives: to embed WTO-plus liberalisation in agreements with key trading partners in the context of frustrated multilateralism; and to ensure that current commitments can ultimately be ‘stepping stones’ in future, rather than ‘stumbling blocks’ to more effective multilateral trade liberalisation (European Commission 2006: 8). The concluding chapter examines how a new generation trade deal between Australia and the EU could advance these objectives.

## 5. The increased political salience of trade policy

Recent developments—notably the Brexit vote in favour of the UK leaving the EU in the referendum of June 2016, the near-scuppering of the CETA prior to its signature and the surprise victory of Donald Trump over Hillary Clinton in the US presidential election of 8 November 2016—have brought into sharp relief the political discontent that exists amongst those who have been left behind by the internationalisation of the global economy and technological change that have gathered pace through the second half of the 20th century.

In fact, these concerns have been growing since the end of the GATT Uruguay Round of trade negotiations in the mid-1990s. The Round broke new ground in moving beyond liberalising tariff barriers into the liberalisation of NTBs in areas such as agriculture, services, technical barriers to trade, investment and public procurement. Liberalising NTBs frequently results in adjustments to domestic regulations. With the decline in importance of tariffs as trade barriers the move into non-tariff barriers is a logical next step in the continuing liberalisation of global trade.

Opposition to aspects of the new trade agenda dogged the Doha Development agenda—intended as the successor to the Uruguay Round of the 1980s and 1990s from its inception in 2001. From the beginning of the Doha negotiations, the prospect of moving further down the path of liberalising particular NTBs was especially challenging to a number of

developing countries, which were expanding their economies and enjoying increasing living standards for a growing proportion of their populations. At the same time, concerns about losing jobs to globalisation was growing in the developed world.

The political backlash now evident in the US and Europe is of particular concern for the trade policy agenda. Since the end of the Second World War, it has been the OECD countries that have driven global openness in trade as a key instrument in spreading economic growth and increasing living standards around the world. In key OECD countries it is now apparent that a rising tide does not automatically lift all boats—some have clearly been left behind. Jobs have been lost; pockets of poverty in even the richest of countries have persisted and expanded. Corrective action is needed to deal with these (not quite new) domestic political problems.

This collection brings together diverse perspectives, but none of the chapters here suggest turning back the clock on trade liberalisation. Much in terms of growth, better living standards and greater equality across countries in the world has been achieved. To fall back on increased protection, erecting new barriers against immigration and increased autarky in economic and security terms would only generate new conflicts. It is clear, however, that those who have lost out through the process of increasing global openness—in both developed and developing countries—need to have their interests more effectively taken into account. This is the task of individual governments. Domestic policy settings on job-enhancing programs and providing governments with increased financial resources will be needed. Noting the increased political complexity of trade negotiations, the focus of this book is on the role that trade policy might play in moving forward.

The point is now frequently made that Australia (with New Zealand) is one of the few OECD countries with which the EU does not have some kind of trade agreement. Australia and the EU appear to be entering a new phase in the bilateral relationship, and the push towards a potential trade agreement has been steadily gaining momentum. Chapters in this volume argue that a potential Australia–EU trade agreement has ‘ample scope’ for a substantive negotiating agenda and that the failure to act in this regard is untenable. Contributors to this collection have not assumed, however, that an agreement should be undertaken simply because there is not one in place. Trade agreements take time and resources. They are not self-evidently good, and the case must be demonstrated. With the prospect of

an agreement under active consideration in both Brussels and Canberra, this volume begins to examine and explain the coming negotiations and inform public debate.

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