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EU free trade agreement with Australia and New Zealand

Impact Assessment (SWD(2017) 293, SWD(2017) 292 (summary)) of a Commission recommendation for a Council Decision authorising the opening of negotiations for a Free Trade Agreement with Australia (COM(2017) 472) and New Zealand (COM (2017) 469)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above [proposals](#), submitted on 13 September 2017 and referred to Parliament's Committee on International Trade (INTA).

For the Commission, the proposals are a step towards fulfilment of the key criteria for the EU's trade relations with third countries, namely the criteria of effectiveness, transparency, and the safeguarding of the European social and regulatory model as underlined in the European Commission's '[Trade for all](#)' communication. One of the objectives of the Commission's 2017 work programme was to open negotiations with Australia and New Zealand. Both countries are important trade partners for the EU and vice versa. In 2015, total trade in commercial services amounted to €4.3 billion between the EU and New Zealand, and €21.9 billion between the EU and Australia. In recent years, the EU has concluded bilateral agreements containing trade-related arrangements. Since 2015, the Commission has been preparing the ground for a free trade agreement (FTA) with both countries. On 26 October 2017 the European Parliament adopted two [resolutions](#) in which it called on the Council to authorise the Commission to start negotiations for trade and investment agreements with Australia and with New Zealand.¹ The Parliament called on the Commission to outline the general future architecture of these trade agreements as rapidly as possible. The Parliament also stressed that the future FTAs 'must lead to improved market access and trade facilitation on the ground, create decent jobs, ensure gender equality for the benefit of the citizens on both sides, encourage sustainable development, uphold EU standards, safeguard services of general interest, and respect democratic procedures while boosting EU export opportunities'.²

The Commission conducted one impact assessment for the two proposals for free trade agreements with Australia and New Zealand and its conclusions are considered as valid for the EU's subsequent negotiations with both countries.

¹ For more detail see K. Binder, [International Agreements in Progress: EU-Australia free trade agreement](#), EPRS, European Parliament, 2017; K. Binder, [FTA talk with Australia and New Zealand](#), EPRS, European Parliament, 2017.

² [Resolution](#) of 26 October containing the Parliament's recommendation to the Council on the proposed negotiating mandate for trade negotiations with Australia, European Parliament.

[Resolution](#) of 26 October containing the Parliament's recommendation to the Council on the proposed negotiating mandate for trade negotiations with New Zealand, European Parliament.

Problem definition

According to the Commission, EU traders face less favourable conditions to access the Australian and New Zealand markets than traders from non-EU countries that have free trade agreements with those countries. The IA gives examples, using for instance comparisons with the trade regimes Australia has with other countries, such as the United States (US), Japan, South Korea and China. As the Commission states, it is only the EU that has to pay duties on the export of certain goods, cars for example, to Australia, while this is not the case for the other countries mentioned above. In addition to cars, the Commission also cites relatively high tariffs for processed agricultural and food product exports from the EU. In addition to exporters of EU goods, EU investors are also stated to be in a less favourable position than investors from non-EU countries. The IA also mentions the non-tariff barriers facing EU businesses in both Australia and New Zealand, such as Australian bio-security measures for pork and poultry products and impediments to accessing government procurement markets. The IA explains that these specific issues are linked with the political context of EU trade policy, in particular the 'Trade for all' policy goals.³ The conclusion of FTAs with Australia and New Zealand would help to achieve the EU's trade policy objective of opening up markets and to address the specific problems the EU faces in its trade relations with both countries.

The IA states that the absence of 'bilateral binding enforcement mechanisms to address effectively barriers to EU trade investment in Australia and New Zealand' is one of the problem drivers. Other problem drivers mentioned include the absence of binding bilateral mechanisms to facilitate trade and investment for SMEs and the absence of binding bilateral mechanisms for trade and sustainable development issues (IA, p. 10). Furthermore, according to the impact assessment, the existing problems are likely to increase and might lead to a loss of market, for example in the area of intellectual property rights (IA, p. 11).⁴ The IA states that it makes use of the results of stakeholder consultations to support the analysis of the problem (IA, p. 10), however given the overall rather low level of stakeholder involvement in this impact assessment, their responses can be considered to serve an illustrative rather than explanatory purpose.

Objectives of the legislative proposal

The **general** objectives of the proposals are to:

- promote smart, sustainable and inclusive growth through the expansion of trade and investment and relevant rules;
- generate job opportunities and welfare gains;
- increase consumer benefits (e.g. in terms of choice, availability, price and maintenance of high standards);
- improve Europe's competitiveness on global markets; and to
- strengthen cooperation on trade-related issues with like-minded partners.

The general objectives translate into the following **specific** objectives:

- to reap the benefits of enhanced trade and investment flows between the EU and Australia and between the EU and New Zealand respectively by reducing barriers for trade and investment, taking into account the EU's agricultural sensitivities, and by exploring forward-looking regulatory cooperation in appropriately selected areas, such as public procurement, intellectual property, investment protection; and to increase opportunities through specific mechanisms and simplified procedures for SMEs;

³ In its communication, the Commission states that EU trade policy should improve conditions for citizens, consumers, workers and the self-employed and small, medium and large enterprises. EU trade policy should deliver growth, jobs and innovation and must be consistent with the principles of the European model, while promoting and defending European values.

⁴ As the IA explains, EU business stakeholders face several specific issues regarding intellectual property rights, such as insufficient protection of copyright, trademarks, and designs (IA, p. 8).

- to level the playing field with other countries that already enjoy preferential treatment due to their FTAs with Australia and New Zealand; and
- to provide a new framework with a comprehensive, progressive and up-to-date set of rules for the EU-Australia and EU-New Zealand trade and investment relationships, including for the promotion of sustainable development in line with the EU's general trade policy objectives.

The **operational** objectives are defined in relation to the preferred option as follows:

- to provide reciprocal and effective market opening for goods, services and investment (including through access to government procurement), based on a high level of ambition and taking into account the EU's agricultural sensitivities;
- to tackle barriers in a comprehensive way, along with effective implementation and enforcement, without leaving room for new barriers to replace old ones, including for small- and medium-sized companies;
- to ensure a high level of protection of investment and IPR including geographical indications vis-a-vis both Australia and New Zealand;
- to strengthen dialogue and cooperation on regulatory frameworks (including sanitary and phytosanitary measures, standards, technical regulations and conformity assessment procedures) and administrative practices to improve regulatory coherence;
- to contribute to the shared objective of promoting sustainable development including through trade-related provisions on labour and environment;
- to support and promote EU values and standards such as human rights, labour rights and environmental, health and consumer protection.

At times, the operational objectives appear to overlap somewhat with the specific objectives. They are also rather general and do not entirely abide by the recommendations of the Commission's Better Regulation Guidelines since they are not time-bound in the sense of having clear time indicators.

Range of options considered

The IA considers the following policy options:

A) No policy change (baseline scenario):

B1) Improved implementation scenario

This option envisages the modernisation of several sectoral agreements within the existing framework (e.g. low voltage electric equipment and telecommunications terminal equipment). However this option would not address tariff and non-tariff barriers to trade and services and investment. Several important policy areas such as digital trade and SMEs would not be addressed.

B2) Sectoral agreements scenario

This option would consider more sectoral agreements than the previous one (e.g. a wine agreement with New Zealand, and a veterinary agreement with Australia). Overall, this option seems to have the same drawbacks as the B1, as it closely resembles it. Indeed it is not entirely clear why this option was framed as a separate option for the impact assessment. The Commission decided to discard both B1 and B2 options without developing them further for a more detailed assessment. These options appear to have been discarded at a very early stage during the impact assessment although this is not clearly stated in the report. The Commission does not provide a detailed explanation as to its decision not to develop these options citing their 'falling short of expectation and a refusal from Australia and New Zealand' (IA, p. 16).

C) A modern and comprehensive EU-Australia and EU-New Zealand free trade agreements scenario

This option would provide for two modern and comprehensive agreements – one with Australia and the other with New Zealand. In fact, this is the only option fully presented and assessed by the IA. It includes two sub-options:

C1) a conservative, partial liberalisation scenario; and

C2) an increased liberalisation scenario including full liberalisation of import tariffs for goods (preferred option).

According to the Commission, both of these sub-scenarios provide for comprehensive FTAs but with different levels of ambition for liberalising trade in goods. Option C1 includes full tariff elimination for industrial goods and asymmetric tariff elimination for agricultural products, i.e. for EU agricultural exports to Australia and New Zealand there would be full liberalisation, while EU imports of agricultural goods from Australia and New Zealand would undergo significant liberalisation.

While Option C1 does not assume any reduction of non-tariff barriers (NTBs), Option C2 includes reduction of NTBs at 10 % for all non-agricultural goods by Australia and New Zealand. Under Option C1, EU imports of agricultural goods from Australia and New Zealand are subject to substantial liberalisation, while keeping the status quo (such as the existing treatment of tariff rate quotas (TRQs) or tariffs) for EU sensitive sectors such as rice, cereal, sugar, fruit and vegetables, ruminant meat (i.e. beef and sheepmeat) and dairy. Option C2 includes full tariff elimination across the board.

The IA compares the two sub-options against the baseline scenario, in which it is assumed that no major or qualitative improvement can be expected under the current arrangement. According to the Commission, the growth of bilateral trade and investment flows would be likely to continue with the expansion of the relevant economies but there would be new drivers for additional growth and therefore no significant further gains in overall welfare to be expected in the EU, Australia or New Zealand (IA, p. 45). The two sub-options are also compared more specifically against three sets of criteria: general objectives, specific objectives and overall effectiveness (this includes time and resources spent in relation to estimated effectiveness, as well as coherence with overarching EU policy objectives, and gains from simplification effects). On all criteria, both sub-Option C1 and sub-Option C2 appear to be preferable to the baseline scenario. According to the IA, sub-Option C2 is the most preferable albeit with some special provision for sensitive agricultural sectors to mitigate the otherwise negative impact expected in specific sectors, e.g. ruminant meat and sugar sectors. The Commission explains that for these sectors the existing trade policy approaches of partial liberalisation could be used. Should these exceptions for the sensitive sectors be requested by the EU during the negotiations – as the political intention seems to indicate – other sectors might be affected too. The IA states that it is impossible to ascertain the precise outcome of the negotiations at this point and therefore the extent to which it would diverge from the preferred sub-option.

Overall, the panel of options appears to be rather limited as the choice hinges on two sub-options of a single realistic option included in the Commission's assessment.

Scope of the impact assessment

The IA assesses only the baseline scenario and the two sub-options of Option C for economic, environmental and social impacts, and the impact on consumers, human rights, governance and administration.

As far as the environmental impacts are concerned, the IA conducted a qualitative analysis of three criteria: air pollution, biodiversity, and land use change. According to the IA, the environmental impacts of the FTA will be minor. The impact on global emissions is not pronounced either, primarily because the FTAs are expected to lead to a relocation of production towards cleaner sectors in the EU. The IA also says that the FTAs will also bring in

sustainable development provisions, which are expected to have a positive effect on climate change, biodiversity, and the promotion of sustainable management in forestry and fisheries. At the same time, the expansion of the agricultural sector will have negative impact on biodiversity owing to its inefficient use of water and nitrogen.

As far as the social impacts are concerned, the IA looks specifically at wages, the reallocation of jobs, freedom of association and collective bargaining, child labour, and the elimination of discrimination in employment and occupation. When it comes to the impact on wages, the Commission explains that they would increase for all trade partners under both sub-options with the largest increases in New Zealand (between 0.3 % and 0.8 % depending on the sub-option) (IA, p. 35). Wages in the EU are expected to increase albeit 'negligibly' (between 0.02 % and 0.05 %). The Commission also explains that consumers will be affected due to changing consumer prices (for the EU both sub-options would bring a 'negligible increase' of 0.03 % and 0.06 %). Consumers will also be affected by rising welfare standards. The Commission estimates these gains at between €2.4 billion and €4.8 billion (IA, p. 37).

With regard to human rights, the IA identified four main criteria, namely availability and affordability of essential goods or services, the right to health, the rights of indigenous people, and business and human rights. The Commission explains that with regard to Australia, the FTA will provide opportunities to further enhance dialogue and cooperation on human rights, as this dimension has already been included in the current bilateral framework agreement (FA) since 2015. There is a similar bilateral agreement between the EU and New Zealand (the Partnership Agreement on Relations and Cooperation, or PARC) that includes respect for human rights. This provision will be fully integrated into the proposed FTAs. Sub-options C1 and C2 seem to have an equal (mostly positive) impact on human rights. In particular, the Commission envisages that both options would have the potential to lessen the gender gap in employment and raise the standard of living overall, with the exception of small farmers in the EU (owing to the negative impact on rural employment). The IA does not envisage any hindrance to the rights of indigenous peoples in Australia and New Zealand on account of the proposed FTAs.

The Commission stressed that a fuller and more detailed assessment of the economic, social and human rights and environmental impacts of a free trade agreement with both countries will be examined in independent sustainability impact assessments (SIAs). The IA does not contain much information regarding how and when the SIAs will be conducted. It states, however, that SIAs will rely on 'wide-ranging, continuous consultation with stakeholders – notably civil society – in the EU, Australia, and New Zealand' (IA, p. 39).

Subsidiarity / proportionality

The legal basis for the proposal is Article 218 (3) and (4) of the Treaty on the Functioning of the European Union (TFEU) which stipulates that common commercial policy is an area of exclusive EU competence. This includes the negotiation of trade agreements under Article 207.

As regards proportionality, the Commission explains that 'all reasonable policy options were considered in order to assess the likely effectiveness of such policy interventions' (Explanatory Memorandum of the proposal, p. 4.). A more detailed proportionality test of the preferred option might have been expected, particularly as this is recommended by the Better Regulation Guidelines.

Budgetary or public finance implications

The Explanatory Memorandum states that the proposed FTAs will have a limited negative impact on the budget of the EU through lost customs duties as a result of tariff liberalisation. At the same time, there should be indirect positive gains on account of the expected increase in gross national income resulting from more intense trade. The Commission estimates that annual revenue after the elimination of tariffs on imports to the EU from Australia and New Zealand would be worth €146 million for the EU-Australia FTA and €100 million for the EU-

New Zealand FTA under sub-Option C1 and €166 million for the EU-Australia FTA and €208 million for the EU-New Zealand FTA under sub-option C2 (IA, p. 45).

SME test / competitiveness

The IA explains that SMEs are likely to benefit from the simplification of customs procedures and lowering of operational costs should the proposed FTAs come into force. Sub-Option C2 is stated to provide the most benefits in terms of cost reduction for SMEs. According to the Commission, SMEs producing dairy products, wood and paper products, food and textile products are likely to benefit more under sub-Option C1. Under sub-Option C2 sectors such as wood and paper products, textiles, chemical products, motor equipment and machinery manufacturing are likely to benefit most from the full liberalisation measures prescribed. The IA does not provide sufficient information regarding the share of SMEs involved in EU trade with Australia and New Zealand. While it is understandable that owing to their size and limited resources, there are fewer SMEs involved in international trade, it would have been helpful for the IA to include more statistical data to show the distribution of SMEs across sectors.

As regards competitiveness, the IA does not provide much more analysis other than stating that an FTA would increase the EU's competitiveness on global markets as a result of the projected growth of exports in all sectors (except for EU exports of rice in the case of Australia, and rice, cereal, fruit and vegetables in the case of New Zealand).

Impact on third countries

The IA touches briefly upon the impact on third countries, in particular the least developed countries (LDCs). According to the Commission, several Pacific countries would encounter a 0.2 % decline in their total exports in the long term under Option C2, owing to a reduction in their trade with the two countries. At the same time Pacific island countries would continue to benefit from the existing trade relations with the EU (the Pacific Economic Partnership Agreement). The Commission mentions that this assessment stems mostly from preliminary modelling calculations and is not supported by further qualitative analysis. The Commission does not assess environmental or any other impacts when it comes to third countries and uses the volume of their exports to Australia and New Zealand as the only indicator for assessing potential impact.

Simplification and other regulatory implications

The Commission takes the view that the proposed FTA would lead to the enhancement of the regulatory framework through improved customs procedures and increased regulatory transparency. These improvements are seen as particularly beneficial to SMEs as they could open up new business opportunities. The IA does not provide any concrete examples of regulatory simplifications or how various stakeholders could benefit from them.

Quality of data, research and analysis

The Commission relied primarily on three sets of analysis when preparing the impact assessment: an analysis of the stakeholder consultation, a quantitative econometric modelling simulation and an external study prepared for this task by an outside consultant (LSE Enterprise).⁵ As regards the quality of data, it can be said to be somewhat mixed given, for example, the low number of stakeholder responses (see below). The economic modelling (CGE modelling) for the IA was conducted by the Commission (DG TRADE). As the Commission explains, two scenarios were simulated: the 'conservative' and the 'increased liberalization' scenarios underlying the assumptions of sub-options C1 and C2. The IA states explicitly that some of the statistical data was not available for the CGE modelling exercise and that the current trade figures are only indicative (IA. p. 25). The

⁵ [Ex-ante study](#) of the EU-Australia and EU-New Zealand trade and investment agreements – Executive Summary, European Commission, 2017.

model itself also has limitations, such as the fact that it does not take into account a possible reduction in non-tariff barriers in the ruminant meat sector, making it impossible to simulate the complexity of trade in this sector (IA, p. 28). The Commission sets out the limitations of the modelling exercise in an open and precise manner (IA, p. 80).

Stakeholder consultation

According to the IA, about a half of the stakeholders who took part in the online public consultation considered that the EU's current bilateral relationship was not satisfactory and should be improved and only one fifth were satisfied. The Commission held a public consultation between 11 March and 3 June 2016. 108 answers were received from a range of stakeholders (e.g. industry associations, private companies from the EU but also from Australia and New Zealand, and private individuals). The Commission does not seem to have conducted any additional targeted consultation activities.

The stakeholders' views are presented in Annex 2 of the IA, in line with the Better Regulation Guidelines. Business associations accounted for the biggest share of responses (45 %), 24 % were enterprises (with 10 responses from SMEs). One response came from a trade union and another from a government institution. Eight responses were from non-governmental organisations and 11 from private individuals. Geographically, most of the respondents were in the EU (75 %) whereas New Zealand-based and Australia-based submissions represented 13.5 % and 3 % respectively. Of note is the very low number of Australia-based submissions. The stakeholders' views are presented not by option but by issue and priority sector, e.g. agriculture, property rights, etc. This has made it difficult to gauge the reactions of stakeholders to the options set out in the impact assessment.

The Commission admits that the replies submitted during the stakeholder consultation cannot be regarded as a representative sample of all stakeholders. The low level of participation (in particular among SMEs) might have affected the quality of the SME analysis, as noted above.

Monitoring and evaluation

As the IA explains, the exact monitoring methodologies will be defined once the outcome of the EU's negotiations with Australia and New Zealand is known. The impact assessment presents a list of indicators matching them up with the operational objectives. These indicators include the value of bilateral trade in goods and services (measured in billion euros), the number of trade barrier cases resolved, the value of investment (in billion euros), the number of policy areas where regulatory coherence has improved. Some of these indicators appear to be rather weak, such as for example the number of meetings promoting EU human rights standards. All operational objectives are meant to be measured once a year and the baseline for them is 2017. The evaluation of the effects of the proposed FTAs will be conducted 'once they have been in force for sufficient time to ensure availability of meaningful data' (IA, p. 51).

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) issued a positive [opinion](#) with reservations on 15 March 2017. Most of the criticism made by the RSB concerned the lack of clarity with regard to social, environmental and labour standards and impacts of the options. More specifically, the RSB asked the lead DG TRADE to clarify the difference between the conservative C1 option and the increased liberalisation C2 options. Also the RSB stated that geographical distribution of impacts as well as the sectors that are most sensitive to the impacts of the options should be better indicated. The IA mentions in detail the revisions made to address the RSB's points of criticism (IA, p. 53) in accordance with the Better Regulation Guidelines, but it appears that although the bulk of the report seems indeed to have been revised, some elements could have been elaborated to a greater extent such as the geographic distribution of impacts.

Coherence between the Commission's legislative proposal and the impact assessment

The Commission explains that the conclusions of the impact assessment 'remain valid' for the recommendation. It remains to be seen during the period of negotiations how the recommendations of the IA are going to be followed and to what extent the sustainability impact assessment will draw upon and develop the analysis made by the IA.

Conclusions

The IA report describes the problems faced by EU traders operating in Australia and New Zealand, namely problems stemming from trade barriers, the absence of bilateral facilitation and enforcement mechanisms and a fragmentation of approaches to the protection of intellectual property rights. It also argues that various improvements could be achieved and potential for boosting trade in goods and services tapped if the current systems were to be modernised towards free trade agreements. However, the impact assessment would have been stronger had its analysis of what were essentially just two options – the conservative, partial liberalisation scenario, and the full liberalisation of import tariffs for goods – contained more quantitative evidence, not least because of the overall preference for full liberalisation. The results of the econometric modelling used to identify the untapped trade potential and assess the impacts of the options on SMEs could have been better explained since the impacts of the full liberalisation option on SMEs are expected to be significant.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on International Trade, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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