

City of London Corporation and TheCityUK – Written Evidence (AUT0019)

Introduction

1. The City of London Corporation and TheCityUK welcome the opportunity to respond jointly to the House of Lords EU International Agreements Sub-Committee inquiry into the ongoing UK-Australia trade negotiations. The UK financial and professional services industry contributes over 10% of the UK's total economic output and employs more than 2.3 million people, with two thirds of these jobs outside London. It is the largest taxpayer, the biggest exporting industry and generates a trade surplus almost equivalent to all other net exporting industries combined.
2. The City Corporation works closely with a wide range of stakeholders to promote UK-based financial and professional services (FPS). These include DIT, the Treasury, FCO and London and Partners. The common goal is to sustain prosperity and stimulate economic growth in London and across the UK through global trade and investment. TheCityUK is the industry-led body representing UK-based financial and related professional services (FPS). In the UK, across Europe and internationally, the City Corporation and TheCityUK work together to promote policies that drive competitiveness, support job creation and ensure long-term economic growth.
3. The UK and Australia enjoy a strong trading relationship with growing opportunities for financial and professional services firms in both markets. UK businesses traded £18.1 billion worth of goods and services with Australia in 2019. The UK is Australia's seventh largest trading partner and second largest outside the Asia-Pacific region. The UK was the second largest direct investor in Australia and the second largest recipient of Australian foreign direct investment (FDI) in 2019. The stock of UK FDI in Australia was £35.6 billion in 2018, while Australia invested £15.9 billion in the UK. Like Japan, the Australian market also presents a gateway to the Asia-Pacific region. UK based firms with operations in Australia can leverage the existing agreements and mechanisms such as the Asia Region Funds Passport and the Trans-Tasman Closer Economic Relations Agreement to supply their services to a much broader range of clients. These agreements are also examples of what can be achieved to mutual benefit outside a formalised FTA.

Does the Department for International Trade (DIT)'s strategic approach set out the right objectives for negotiations?

4. There is broad support for the level of ambition expressed by the government in its UK- Australia Free Trade Agreement Strategic Approach document, particularly as it relates to market access provisions for the FPS industry and specifically highlights the importance of financial services, professional services and digital trade in this regard.
5. The UK Government's stated desire to accede to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in future is welcome. The Australia and New Zealand FTA negotiations, and the recently concluded agreement with Japan, are key steps towards achieving this goal.
6. FTAs have the potential to deliver deep long-term gains for partners involved. For the FPS sector, FTAs have historic value in locking-in current market openness, prohibiting certain frictions (in the transfer of data, for example) and mandating mechanisms for continued dialogue at a regulatory level.
7. The pursuit of FTAs must run in parallel with a renewed focus on developing relationships at a regulatory level. These processes can and should be complementary and should be viewed holistically.
8. Many existing market access barriers in FPS can be addressed through enhanced regulatory cooperation outside specific FTA provisions. Enshrining a framework for regulatory cooperation dialogues in a trade agreement would provide greater regulatory and market certainty for ongoing regulatory cooperation and would clearly signal firm commitment to a continued collaborative spirit between these two governments and economies. Furthermore, embedding the principles of regulatory cooperation within an agreement, and grounding in law commitments to the use of mutual recognition, deference, substituted compliance and similar methods, would be of value in defining both parties' collective spirit. The Government's stated objective to "reduce regulatory obstacles, facilitate market access for UK businesses and investors, and improve trade flows by ensuring a transparent, predictable and stable regulatory framework to give confidence and stability to UK exporting businesses and investors".¹ is welcome.

¹ Department for International Trade: UK-Australia free trade agreement: the UK's strategic approach found at: <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-australia/uk-australia-free-trade-agreement-the-uks-strategic-approach#:~:text=An%20FTA%20between%20the%20UK,a%20sustained%20global%20economic%20recovery.>

9. The City of London recently published a report on the cross-border trade in financial services with Australia² which highlighted key areas where greater regulatory cooperation, either within or alongside a free trade agreement, could benefit the trading relationship. This report was drafted primarily as a starting point for the formation of a continuing regulatory dialogue on the UK-Australia future financial services relationship.
10. In order for such a dialogue to be successful, it will require both permanent government to government structures and ongoing industry input. Accordingly, the City of London and TheCityUK stand ready to facilitate industry input into any future UK-Australia financial regulatory forum as already happens in the UK-US relationship via the British American Finance Alliance which feeds into the UK-US government to government forum, the Financial Regulatory Working Group.

What opportunities are there for the UK financial services sector and what provisions do you think the UK should seek on financial services in an FTA with Australia?

11. The City of London's recently published report on the cross-border trade in financial services with Australia³ highlighted key areas where greater regulatory cooperation, either within or alongside a free trade agreement, could benefit the trading relationship. A brief summary of these changes is below.

Licensing Regime

- The Australian Securities and Investments Commission (ASIC) have repealed the Sufficient Equivalence Relief which allowed UK financial services firms to service wholesale clients in Australia on the basis that they were regulated by the Financial Conduct Authority (FCA). The new licensing regime will significantly increase the cost of providing financial services through imposing new compliance burdens on UK based firms going forward.
- The UK government could seek an exemption to this new regime as part of wider trade negotiations. In the absence of this opportunity, the UK should seek the effective operationalization of this new regime for UK based firms.

² UK cross-border trade in services with Australia: An analysis of market access for financial services firms. Found at: <https://www.cityoflondon.gov.uk/assets/Business/UK-crossborder-trade-in-services-with-Australia.pdf>

³ ibid

Asset Management

- Foreign Investment Review Board (FIRB) approvals are required for some investments which fall above a certain threshold. Approvals can take up to forty days and seeking these can delay the acquisition process and make firms uncompetitive. Some jurisdictions operate under higher thresholds that have been negotiated as part of trade agreements. As the UK pursues an FTA with Australia it should seek to secure these higher thresholds for UK based firms.
- Marketing foreign funds to investors in Australia is limited to the wholesale market. For the retail market, firms have launched Australian domiciled funds which essentially duplicate the investment strategy of the offshore fund. To mitigate the associated costs of this, some form of mutual recognition of funds should be explored.

Banking

- For historical reasons UK banks are limited in the services they can provide in comparison to their counterparts in other jurisdictions. An extension of the UK licence to bring it in line with the licence coverage of other jurisdictions would be of benefit to UK based firms.
- A certain degree of ambiguity exists around the booking of transactions facilitated by Australian entities of UK banks between non-Australian companies and clients. Firms have highlighted the differing registration rules as well as the lack of clarity makes booking these transactions difficult. Greater clarity, especially within the new licensing framework would be welcomed by firms.
- UK firms in Australia are subject to an interest withholding tax . This is a tax paid by UK banks on the interest they generate when they lend capital to Australian banks. Although there has been consensus around the removal of this tax, perhaps an FTA, and the changing regulatory landscape post Covid-19, will provide the impetus needed to achieve this.

Payments

- Hiring a responsible manager is costly for small FinTechs and payments firms. At present, they are required to fill this role as a prerequisite of obtaining a license. Being able to hire this role once in market would be preferable.
- The complexity of Australia's regulatory system and its divergence from the European standard is an issue for UK based firms. Australian regulators have laid out plans to reform the retail payments sector in recognition of its overlapping regulatory frameworks. As these policy changes are enacted it would be valuable for UK based firms to have some form of equivalence or

mutual recognition determination of key UK payments legislation when seeking to enter and operate in the Australian market.

- Using the Australian faster payments system, the New payments Platform (NPP) is costly and the regulations burdensome. Bringing down these costs and relaxing some of the regulatory burden could see wider adoption of the NPP for new entrants.
- The Australian License does not enable payments firms to deal in foreign exchange contracts. An exemption or a more streamlined process would help firms widen the range of services on offer to Australian clients.

Fintech

- With the recent implementation of CDR (consumer data rights) there is a great opportunity for the UK to work with Australia and extend the current fintech bridge to include data. This could use the UK's experience of open banking and Australia's work to develop open financing to become global leads in data and data management.

Professional Services – Legal Services

- With respect to professional services, particularly legal services, TheCityUK's Legal Services Group has been liaising with the Ministry of Justice, the Department for International Trade and other relevant departments to communicate industry priorities in an effort to inform the Government's approach to trade talks. In summary, professional/legal services priorities (some of which could be achieved in an FTA, others via regulatory cooperation) include:
 - Mutual market access provisions allowing lawyers to provide legal services, in home and international law, under that lawyer's home jurisdiction professional title.
 - Provisions enabling a streamlined regime for the reciprocal mutual recognition of professional qualifications and the elimination or minimisation of additional academic study within the admissions process.
 - Improved mobility provisions to better facilitate intra-company transfers and short-term business visitors (including those operating on a fly-in-fly-out basis).
 - The ability to establish operations in Australia under UK business structures such as Limited Liability Partnerships (LLPs).

How might a trade deal with Australia help the UK to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and what benefits would there be in joining?

12. Like Japan, the Australian market also presents a gateway to the Asia Pacific. UK based firms with operations in Australia can leverage the existing agreements and mechanisms such as the Asia

Region Funds Passport and the Trans-Tasman Closer Economic Relations Agreement to supply their services to a much broader range of clients. These agreements are also examples of what can be achieved to mutual benefit outside a formalised FTA.

13. Using the CPTPP as a basis for the Australian-UK negotiation will enhance the UK's ability to accede to CPTPP in the future. CPTPP was, and still is, seen as ground-breaking across many provisions particularly in the digital trade realm. The UK could also benefit from some of the following provisions:

- **CPTPP includes provisions that help facilitate the recognition of Australian financial service licence holders** in CPTPP countries and avoid duplicative licensing requirements. This could be interesting for the UK to explore given the recent changes made to the Australian licensing regime which now requires UK firms to apply for a license to operate in Australia.
- **Movement of professionals between some CPTPP countries is usually more fluid** - Australian lawyers are guaranteed the ability to work temporarily in CPTPP countries, there are guaranteed market access arrangements for engineers in several CPTPP countries and Australia's temporary entry commitments are limited to business persons from those CPTPP countries that provide similar access for Australian business persons in equivalent categories. Additionally, Australian intra-corporate transferees, being those business persons seeking to work in an overseas branch or subsidiary of their company, will benefit from guaranteed initial lengths of stay in CPTPP countries of between one and five years, without being subject to quotas or economic needs tests such as labour market testing. Onerous labour market testing conditions have been cited as one of the issues for UK firms when recruiting personnel.
- **Elimination of tariffs and reduction in non-tariff barriers in CPTPP export markets and common and transparent trade and investment rules between 11 Asia-Pacific countries**, assisting in the reduction of administration costs rules that encourage SME participation in government procurement opportunities in all CPTPP countries.
- **The CPTPP promotes further foreign investment in Australia** by liberalising the screening threshold at which private foreign investments in non-sensitive sectors are reviewed by the Foreign Investment Review Board.

14. Longer-term, UK accession to the CPTPP could carry the following broader advantages for UK trade and investment policy and for the CPTPP Agreement itself:

- UK accession would have potential value in terms of political signalling of the importance of the region.
 - UK accession would offer a means for the UK to participate directly in the shaping of the CPTPP's future rules (for example through review mechanisms) and influence the CPTPP's longer-term agenda.
 - Other CPTPP member countries could benefit from a strong UK voice on the importance of upholding strong regulatory, governance and other related commitments.
 - a UK decision to accede could encourage the US to revisit the question of its participation in the CPTPP bloc.
15. While the potential advantages listed above of using CPTPP as a basis for negotiations with Australia are numerous, ambition should not be limited or constrained by them. If there are opportunities for the UK and Australia agreement to go further than CPTPP in certain areas, these areas should be explored and, if possible, agreed. The CPTPP provisions should be seen as a minimum of what can be achieved with Australia bilaterally.

What provisions do you think the UK should seek to agree with Australia on the movement of people in professional services and what impacts might there be for UK workers and businesses?

16. Mobility and access to talent is an issue of prime importance for the FPS industry, which has a critical interest in being able to continue moving and recruiting people across the UK and the globe. Without the ability to place the right people at the appropriate time in the jurisdictions in which they have interests, the competitiveness of UK businesses can become compromised.
17. Seamless travel for short term business visitors and independent professionals is an essential element of the competitiveness of the UK's professional services sectors. Lawyers, accountants and consultants need to be able to travel to other jurisdictions in order to advise clients, often at very short notice. An inability to do so because of visa and other restrictions would mean those services businesses would be at a considerable competitive disadvantage.
18. The commitment in the Strategic Approach document to "enhance opportunities for business travel" is welcome and mobility provisions could be improved to facilitate intra-company transfers and short-term business visitors (including those operating on a fly-in-fly-out basis).
19. A number of FPS firms have highlighted issues with the barriers posed by immigration and, in particular, Australia's current points-

based visa system. Under the new Temporary Skills Shortage structure there exists a two-year visa with a discretionary two-year renewal. There are few pathways to offer long term employment which limits the opportunities firms can offer to staff and over the long term restricts their ability to grow/expand the business through the introduction of new capabilities.

20. The onerous market testing requirements also pose an issue. Under the previous scheme an organisation needed to establish a business case for a visa to be granted. Under the new Temporary Skills Shortage visa scheme further labour market testing measures, including job advertising requirements to demonstrate that organisations have been unable to find a suitable Australian professional, are needed. Under temporary service provision (GATS Mode 4 or fly-in-fly-out) foreign lawyers, are currently entitled to provide advisory services for their clients in Australia and provide legal services in relation to the law of a foreign country where the lawyer is authorised to practise. However, the exemption from local legal professional regulatory requirements related to this service provision is limited to a maximum period of 90 days in any 12-month period. There are also “conditional admission” requirements, that affect barristers’ ability to practise, and which vary from State to State.
21. TheCityUK recently published a report outlining industry asks at the intersection of UK immigration policy and its future trade agreements⁴ where it advocates for a substantive expansion of Mode 4 commitments, both at the horizontal level and by way of an expansion into additional sectors. The UK’s immigration policy is particularly relevant here as the extent to which improved business travel provisions can be achieved with Australia will almost certainly depend on reciprocation on the UK’s part.

How might negotiated digital trade provisions serve as enablers for businesses in the UK? What provisions would bring the most benefit and so should be the highest priority in this area?

22. Addressing issues such as digital trade and data localisation will help to future-proof the important services trade relationship between the UK and Australia and provide a model for further innovative trade agreements around the world. The FPS industry is among many which depend on the free flow of data on a daily basis and it is vital for international trade to limit any disruption to an absolute minimum.

⁴ International Trade Agreements and UK Immigration Policy: A Practical Blueprint for Evolution. Found at: <https://www.thecityuk.com/research/international-trade-agreements-and-uk-immigration-policy-a-practical-blueprint-for-evolution/>

23. Australia is cited as leading the APAC region in the area of digital trade. The recently agreed Australia-Singapore Digital Economy Agreement (DEA) could provide a blueprint for digital provisions in UK-Australia deal. The DEA builds upon the provisions in CPTPP through more robust rules that ensure businesses, including those in the financial services sector, can transfer data across borders and will not be required to build or use data storage centres in either jurisdiction; improves protections for source code; establishes new commitments on compatible e-invoicing and e-payment frameworks; and delivers new benchmarks for improving safety and consumer experiences online.
24. The wide-ranging digital trade provisions contained in the recently agreed UK-Japan Comprehensive Economic Partnership Agreement would also be a good template upon which to base talks with Australia on digital trade.

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