National Interest Analysis [2014] ATNIA 8
with attachments

Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea

(Seoul, 8 April 2014)

[2014] ATNIF 4

Attachments:

Attachment I	Consultation
Attachment II	Regulation Impact Statement
Attachment III	KAFTA: An Introduction to the Text of the Agreement (Chapter summaries)
Attachment IV	KAFTA Fact Sheets on Trade in Goods; Trade in Services; Investment; Investor-State Dispute Settlement; Intellectual Property, Electronic Commerce and Competition Policy; Government Procurement; and Temporary Movement of Natural Persons

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea
(Seoul, 8 April 2014)
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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea* (KAFTA), which was signed by the Governments of Australia and the Republic of Korea on 8 April 2014.

2. Article 23.2 provides that KAFTA will enter into force 30 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, or on such other date as the Parties may agree. It is proposed that Australia provide such notification as soon as practicable following consideration by the Joint Standing Committee on Treaties and passage of legislative amendments. The Governments of Australia and Korea are working towards entry into force of KAFTA prior to 31 December 2014, in order to maximise the business gains for both Parties. This would require an exchange of notes by the end of November 2014.

Overview and national interest summary

3. KAFTA substantially liberalises Australia's trade with the Republic of Korea (ROK), Australia's third-largest export market and fourth-largest overall trading partner. KAFTA gives Australian exporters significantly improved market access in goods and services, eliminating tariffs on a wide range of Australian goods exports, including beef, wheat, sugar, dairy, wine, horticulture and seafood, and creating new market openings comparable to those the ROK provided the United States and European Union in key areas of commercial interest to Australian services providers, including legal, accounting, financial, education and other professional services.

4. KAFTA also protects Australia's competitive position in the ROK market, where major competitors such as the US, European Union, Chile and ASEAN countries are already receiving preferential access through their respective free trade agreements, and against New Zealand and Canada, both of whom are close to concluding free trade agreement (FTA) negotiations with the ROK.

5. Economic modelling indicates that KAFTA will provide a significant boost to Australia's economy (nearly $5 billion in additional income between 2015 and 2030), increasing Australia's exports to ROK and creating more jobs and higher economic growth. KAFTA will deliver market gains and deeper cuts to tariffs more rapidly than current multilateral and plurilateral initiatives underway such as the World Trade Organization (WTO) Doha Round, the Regional Comprehensive Economic

Partnership (RCEP) and the Trans-Pacific Partnership Agreement (TPP) (which currently does not include the ROK).

Reasons for Australia to take the proposed treaty action

6. A comprehensive free trade agreement with the ROK will further strengthen the broader bilateral relationship. KAFTA will support an already significant, complementary and growing economic relationship with the ROK, Australia's third-largest export market and fourth-largest overall trading partner. KAFTA will benefit Australian exporters, importers and consumers by opening markets and freeing trade and investment between Australia and the ROK. With one in five Australian jobs linked to trade, KAFTA will provide an important boost to the Australian economy.

7. KAFTA will create immediate market access opportunities for many sectors of the Australian economy. The ROK's tariffs will be set at zero on 84.0 per cent of its imports (by value) from Australia immediately on entry into force with most other tariffs phased out quickly. After 10 years, a zero tariff would apply to 95.7 per cent of imports from Australia (by value) and on full implementation of KAFTA, 99.8 per cent of Australia's current goods trade would enter the ROK duty free. The key outcomes are set out in further detail in Attachment IV (refer fact sheets) and include:

<u>Agriculture</u>: Despite the ROK being Australia's fifth-largest agriculture market, Australian exporters face high barriers with the ROK imposing an average tariff of 53.6 per cent on agricultural imports and prohibitive tariffs on some products of up to 550 per cent. Under KAFTA, the ROK has agreed to eliminate beef tariffs over 15 years; eliminate tariffs immediately for raw sugar, wheat, wine and some horticulture; and eliminate most dairy tariffs over 3-20 years with immediate duty-free Australia-specific quotas for cheese, butter and infant formula. A small number of agricultural products (comprising 0.2 per cent of Australia's exports to ROK) were deemed too sensitive by ROK to include in KAFTA, including rice, milk powder, honey, abalone, ginger, apples, pears and walnuts.

<u>Energy, Minerals and Manufacturing</u>: Energy and minerals products accounted for approximately 80.0 per cent of the value of Australia's merchandise exports to the ROK in 2012-13. While many Australian mineral and energy exports to the ROK enter duty free, it applies tariffs of up to 8.0 per cent on a range of priority resource products, and tariffs of up to 13.0 per cent on manufactured products. On entry into force of KAFTA, 88.0 per cent of Australia's manufactures, resources and energy exports will enter ROK duty free, with all remaining tariffs eliminated within 10 years.

<u>Services</u>: KAFTA will provide new market openings for Australian service suppliers in education, telecommunications, financial, accounting, taxation and legal services, which currently face a range of restrictions including with respect to commercial presence, cross-border supply and licensing requirements. Under KAFTA, the ROK will permit new Australian access in these sectors, providing outcomes equivalent to those in its free trade agreements with the United States and the European Union. For example, Australian law firms will be allowed access to the ROK's legal consulting services market upon entry into force of the KAFTA, with the establishment of joint

venture law firms permitted within five years. Australian financial services providers will be able to supply specified financial services on a "cross-border basis" (for example, via electronic means) as well as a range of insurance and insurance-related services. Telecommunications providers will, within two years, be able to own up to 100 per cent of the voting shares of a facilities-based telecommunications service supplier in ROK. Education, engineering and other professional services will benefit from ROK's commitments to guarantee existing market access for Australian companies and work towards improving mutual recognition of qualifications.

Investment: KAFTA provides improved access and protection for Australian investors and investments in the ROK as well as for ROK investors in Australia, promoting investor confidence and certainty in both countries. The ROK has agreed to further open several sectors to Australian investment, including the telecommunications sector and legal, accounting and taxation services, through the progressive reduction of market access barriers. ROK investors will be afforded a foreign investment screening threshold equivalent to that currently afforded to investors from New Zealand and the United States. The stimulatory effect of ROK investment on the Australian economy can help create jobs across the country, including in regional Australia, and create further opportunities to generate export income. KAFTA includes an investor-state dispute settlement mechanism with appropriate protections in areas such as public welfare, health, culture, environment and foreign investment screening.

Other: KAFTA also includes commitments on:

- *intellectual property*: KAFTA will ensure that Australian innovators and Australian creative industries enjoy high levels of protection in the ROK broadly equivalent to protections provided in Australia;
- *government procurement*: for Australia, this will provide, subject to agreed exceptions, national treatment for Australian goods, services and suppliers in the ROK market for government procurements above agreed value thresholds; and
- *electronic commerce*: KAFTA contains provisions that safeguard electronic commerce, prevent the imposition of customs duties on electronic transmissions and maintain best practice regulation in this field.

8. The Department of Foreign Affairs and Trade (DFAT) commissioned a study, conducted by the Centre for International Economics (CIE), which examined the projected impact of KAFTA on Australia as well as the opportunity cost of not proceeding with KAFTA in light of the ROK's free trade agreements with the United States and the European Union. Their modelling, based solely on merchandise trade liberalisation, reveals KAFTA will be worth nearly \$5 billion in additional income to Australia between 2015 and 2030 and will result in an annual boost to the economy of around \$650 million after 15 years of operation. In its first year, increased exports under KAFTA would create over 1,700 jobs and increase real consumption per household by \$77. After 15 years of operation – by 2030 – Australia's exports to the ROK would be 25.0 per cent higher (or \$3.5 billion) than they otherwise would have been as a result of lower ROK tariffs. By 2030, exports of agricultural goods to the ROK will be 73.1 per cent higher than otherwise, mining exports 17.1 per cent higher and manufacturing exports 52.8 per cent higher. Additionally, services and investment liberalisation under KAFTA is likely to increase GDP and household incomes further.

9. CIE's modelling indicates that the cost to Australia of not proceeding with KAFTA is a 4.7 per cent decrease in annual exports by 2030, by which time ROK will have completed tariff reductions under its FTAs with the US and EU. This reduction in exports would reflect ROK importers' choice to source beef, sugar and dairy products from Australia's competitors who are already enjoying preferential access. Failure to proceed with KAFTA would result in ROK imports of Australian agricultural goods declining by 29.0 per cent, with mining and manufacturing exports also declining by 0.9 and 7.5 per cent respectively.

Obligations

10. KAFTA consists of 23 chapters, with associated annexes and schedules, and four side letters. A detailed chapter-by-chapter summary of key obligations is provided at Attachment III (*KAFTA: An Introduction to the Text of the Agreement*).

11. KAFTA is a broad agreement that will liberalise and facilitate trade and investment between Australia and the ROK. Upon entry into force, or over time, each Party will eliminate specified tariffs on imports of goods from the other Party (Chapter 2) that meet the agreed rules of origin[1] criteria (Chapter 3). The Parties' schedules of tariff commitments are set out at Annex 2-A. Tariff rate quotas[2] (TRQs) for certain Australian agricultural exports to Korea are set out at Appendix 2-A-1. Most TRQs will be progressively phased out over 10-20 years, depending on the product.

12. Each Party will grant market access and non-discriminatory treatment (known as national treatment[3] and most-favoured-nation treatment[4]) to services and investments from the other Party under the Cross-Border Trade in Services, Financial Services and Investment chapters (Chapters 7, 8 and 11 respectively), except where specific measures or individual sectors are specifically reserved in the non-conforming measures annexures to KAFTA (Annexes I-III).

13. KAFTA also contains commitments and disciplines on customs procedures (Chapter 4), sanitary and phytosanitary (SPS) measures[5] (Chapter 5), telecommunications (Chapter 9), the temporary entry of skilled persons (Chapter 10), government procurement (Chapter 12), intellectual property rights (Chapter 13), competition policy (Chapter 14), electronic commerce (Chapter 15), labour (Chapter 17) and the environment (Chapter 18). There is a binding State-to-State dispute

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[1] "Rules of origin" (ROO) establish the criteria for determining whether goods will qualify for preferential tariff treatment under KAFTA (that is, whether a good 'originates' in Australia or the ROK).

[2] Under KAFTA, a "tariff rate quota" (TRQ) represents the maximum quantity of a product permitted to enter duty-free in a particular year.

[3] "National treatment" means Australia must treat Korean investors and service providers no less favourably than it treats Australian investors and service providers in like circumstances, and vice versa.

[4] "Most-favoured-nation" (MFN) treatment means Australia must treat Korean investors and service providers no less favourably than it treats investors and service providers of third countries in like circumstances, and vice versa.

[5] "Sanitary and phytosanitary" (SPS) measures are measures, such as quarantine, to protect human, animal or plant life or health from pests and diseases.

settlement mechanism modelled on previous free trade agreements and the WTO system (Chapter 20). Most substantive obligations in KAFTA will be subject to this mechanism, except those found in the Technical Barriers to Trade, SPS Measures, Competition Policy, Labour, Environment and some aspects of the Movement of Natural Persons chapters. An Investor-State Dispute Settlement (ISDS) mechanism is included in the Investment Chapter (Chapter 11).

14. Chapter 22 sets out exceptions which apply to a number of chapters of KAFTA. Such exceptions ensure FTA obligations do not unreasonably restrict government action in key policy areas, including action to protect essential security interests, the environment and health. Chapter 22 also carves out application of KAFTA to a Party's taxation measures except in certain circumstances, and provides for the protection of confidential information.

15. Four legally binding "side letters" set out the Parties' agreed interpretation of particular KAFTA provisions in relation to services and investment, telecommunications, gambling and betting services and transparency in investor-state arbitration proceedings. The side letters form an integral part of KAFTA.

16. KAFTA is consistent with Australia's international obligations, including those under the *Marrakesh Agreement Establishing the World Trade Organization*.

Implementation

17. To implement KAFTA in Australia, amendments need to be made to the *Customs Act 1901*, the *Customs Tariff Act 1995* and relevant customs regulations such as the *Customs Regulations 1926*. New customs regulations need to be enacted for the product specific rules of origin set out in Annex 3-A of KAFTA. The *Foreign Acquisition and Takeovers Regulations 1989* will also require amendment to incorporate the new threshold for screening investment proposals by ROK investors at $1,078 million (subject to lower thresholds for sensitive sectors). The *Life Insurance Regulations 1995* will require amendment in order to implement the agreement reached in respect of life insurance, whereby ROK life insurers will be able to operate in Australia through branches rather than subsidiaries. Consistent with Australia's existing obligations in the Australia-US and Australia-Singapore FTAs, and to fully implement its obligations under KAFTA, the *Copyright Act 1968* will require amendment in due course to provide a legal incentive for online service providers to cooperate with copyright owners in preventing infringement due to the High Court's decision in *Roadshow Films Pty Ltd v iiNet Ltd*[6], which found that ISPs are not liable for authorising the infringements of subscribers.

18. The remainder of Australia's obligations under KAFTA do not require any legislative or regulatory amendments. The impact of KAFTA on States and Territories is outlined at Attachment 1 (*Consultation*).

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[6] [2012] HCA 16 (20 April 2012).

Costs

19. Treasury modelling has estimated that the loss of tariff revenue to the Australian Government resulting from KAFTA, based on current levels of trade, will be approximately $100 million in 2014-15 and $635.9 million over the forward estimates period. This estimate assumes that KAFTA will enter into force in the second half of 2014. The costing does not include any second-round impacts arising from increased bilateral trade. Accordingly, the estimates do not take into account additional lost tariff revenue if imports from the ROK displace imports from other countries. On the other hand, the estimates do not take into account the potential domestic economic growth that KAFTA could generate (see paragraph 8, above) and any additional taxation revenue resulting from this growth. Overall, noting the economic modelling, it is assessed that KAFTA represents a net gain to the Australian economy.

Regulation Impact Statement

20. A Regulation Impact Statement is attached (Attachment II).

Future treaty action

21. Article 23.3 provides that the Parties may agree in writing to amend KAFTA. Article 21.3 establishes a 'Joint Committee' that will meet annually and, among other things, consider and decide any amendments to KAFTA subject to ratification by both Parties. Any amendment would enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, or on such other date as the Parties may agree.

Withdrawal or denunciation

22. Under Article 23.4, either Party may terminate KAFTA by giving the other Party 180 days advance notice in writing. Termination of KAFTA would be subject to Australia's treaty process.

Contact details

Free Trade Agreement Division
Department of Foreign Affairs and Trade

ATTACHMENT I - CONSULTATION

Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea (Seoul, 8 April 2014)

CONSULTATION

23. The proposed treaty action will have an impact on the States and Territories. The obligations in Chapter 7 (Cross-Border Trade in Services), Chapter 8 (Financial Services) and Chapter 11 (Investment) apply to State and Territory measures. Where States and Territories wish to maintain measures that are inconsistent with these obligations, they must list them in the annexes of non-conforming measures to these chapters. Australia has included several non-conforming measures relating to regional government in its annexes. Chapter 10 (Movement of Natural Persons) and Chapter 12 (Government Procurement) will also affect State and Territory governments.

24. State and Territory governments were consulted through regular Senior State and Territory Trade Officials Group (STOG) and Commonwealth-State-Territory Standing Committee on Treaties (SCOT) meetings. State and Territory departments were contacted and invited to make public submissions at the outset of negotiations. In September 2009 the then Minister for Trade wrote to State and Territory leaders seeking endorsement of Australia's initial services and investment offer, reflecting the responsibilities State and Territory Governments have for regulation of services and investment activities, prior to exchanging offers with the ROK. State and Territory Governments subsequently advised that they supported the initial offer subject to continuing consultations on KAFTA.

25. Stakeholder views have been actively encouraged and considered throughout the negotiations, including through an initial call for public submissions in December 2008 to seek views on the expected economic, regional, social, cultural, regulatory and environmental impacts of a free trade agreement with the ROK. This was sent by email to over 600 addressees and by letter to over 50 key stakeholders, as well as advertised in media and on DFAT's website. As part of this process DFAT received more than 60 submissions, predominantly from individual companies and peak industry groups. Most submissions supported an FTA with the ROK; a common concern raised was that the ROK's FTAs with competitors (ASEAN, Chile, United States, European Union) risked reducing the competitiveness of certain Australian food and agricultural products in the ROK market. Other industries identified some sensitivities towards imports from ROK, most particularly in the manufacturing sector.

26. DFAT has undertaken numerous consultations, in Seoul, Canberra and State/Territory capitals, with both industry and civil society in relation to the FTA negotiations and taken a wide range of views into account. DFAT has held six-monthly stakeholders meetings involving peak associations, conducted sectoral roundtables, frequent ad hoc consultations with industry groups and individual

producers/exporters, regularly briefed the Australia-Korea Business Council and provided input for community cabinet meetings. Public forums, open to individuals and groups, were held in capital cities with invitations sent to key stakeholders. DFAT has also provided regular updates on the progress of the negotiations on its website.

27. Throughout the negotiation of KAFTA, written updates were provided to key stakeholders following each round of negotiations.

28. Commonwealth Government departments were extensively consulted throughout the negotiations and representatives from relevant departments attended the negotiations in Canberra and Seoul.

29. The following is a list of submissions received and stakeholders consulted:

LIST OF SUBMISSIONS RECEIVED

1. ANZ Bank
2. Australian Bankers' Association Inc
3. Australian Chamber of Commerce and Industry
4. Australian Council of Trade Unions
5. Australian Council of Wool Exporters & Processors Inc
6. Australian Dairy Industry Council
7. Australian Electrical and Electronic Manufacturers' Association
8. Australian Fair Trade and Investment Network
9. Australian Food and Grocery Council
10. Australian Horticultural Exporters Association
11. Australian Industry Group
12. Australia-Korea Business Council
13. Australian National University
14. Australian Nursing Federation
15. Australian Nursing and Midwifery Council
16. Australian Oilseeds Federation
17. Australian Plantation Products and Paper Industry Council
18. Australian Pork Ltd
19. Australian Recording Industry Association / Music Industry Piracy Investigators
20. Australian Wine and Brandy Corporation
21. BHP Billiton Ltd
22. BlueScope Steel
23. Centre for International Law, University of Sydney
24. Commonwealth and Public Sector Union - State Public Services Federation Group
25. Compassion in World Farming
26. Daeshin Agricultural Co. Ltd
27. Dairy Australia
28. Engineers Australia
29. Ford Australia
30. Frosty Boy Australia
31. Generic Medicines Industry Association Pty Ltd

32. GM Holden Ltd
33. Horticultural Market Access Committee (Horticulture Australia Ltd)
34. International Legal Services Advisory Council
35. International Trademark Association
36. Investment and Financial Services Association Ltd
37. Macquarie Bank
38. Mariani Foods
39. Maryborough Sugar
40. Meat and Livestock Australia
41. Media Entertainment and Arts Alliance
42. Monash University
43. Mulwarra Exports
44. Music Council of Australia
45. National Farmers' Federation
46. Mr Jean Ough
47. Mr George Pietrzykowski
48. Queensland Government
49. Queensland Law Society
50. Queensland Sugar Ltd
51. Queensland University of Technology
52. Ricegrowers Association of Australia Inc
53. Seafood Services Australia (on behalf of Seafood Access Forum)
54. South Australian Government, Department of Trade and Economic Development
55. Mr Richard Stone
56. Sugar Australia
57. TAFE Directors Australia
58. Thoroughbred Breeders Australia
59. Toyota Motor Corporation Australia
60. Universities Australia
61. University of Newcastle
62. Victorian Government
63. Western Australian Government, Department of Agriculture and Food
64. Dr Brett Williams
65. Woodside Energy
66. Yum! Restaurants International

LIST OF STAKEHOLDERS CONSULTED

1. AGR Matthey
2. AISIN Australia
3. ANZ Bank
4. Air International
5. AMP Capital
6. Architects Accreditation Council of Australia
7. Asia Business Forum
8. Asialink
9. Asia Society AustralAsia Centre
10. Association of Consulting Engineers in Australia
11. Austcham

12. Australasian and New Zealand Society of Nuclear Medicine
13. Australasian Radiation Protection Society
14. Australasian Veterinary Boards Council
15. Australian Acupuncture and Chinese Medicine Association Ltd
16. Australian Aluminium Council
17. Australian Bankers' Association Inc
18. Australian Canvas and Synthetic Products Association
19. Australian Chamber of Commerce and Industry
20. Australian Council on Healthcare Standards
21. Australian Council of Trade Unions
22. Australian Council of Wool Exporters & Processors Inc
23. Australian Dairy Industry Council
24. Australian Electrical and Electronic Manufacturers' Association
25. Australian Fair Trade and Investment Network
26. Australian Federation of Travel Agents
27. Australian Food and Grocery Council
28. Australian Industry Group
29. Australian Institute of Energy
30. Australian Institute of Radiography
31. Australia-Korea Business Council
32. Australian Logistics Council
33. Australian Lot Feeders' Association
34. Australian Meat Industry Council
35. Australian Manufacturing Workers' Union
36. Australian Medical Acupuncture College
37. Australian Medical Association
38. Australian Medical Council
39. Australian National University
40. Australian Natural Therapists Association
41. Australian Nursing Federation
42. Australian Nursing and Midwifery Accreditation Council
43. Australian Oilseeds Federation
44. Australian Petroleum Production and Exploration Association
45. Australian Plantation Products and Paper Industry Council
46. Australian Pork Ltd
47. Australian Processor Council
48. Australian Prudential Regulation Authority
49. Australian Radiation Protection Society
50. Australian Recording Industry Association / Music Industry Piracy Investigators
51. Australian Services Roundtable
52. Australian Steel Institute
53. Australia Sugar Milling Council
54. Australian Tourism Export Council
55. Australian Traditional Medicine Society
56. Australian Wine and Brandy Corporation
57. Australian Writers Guild
58. Barley Australia
59. BHP Billiton Ltd
60. Blake Dawson Waldron

61. BlueScope Steel
62. Bovis Lend Lease
63. Business Council of Australia
64. Carpet Institute of Australia Ltd
65. Cattle Council of Australia
66. Centre for International Law, University of Sydney
67. Certified Practising Accountants Australia
68. Chinese Health Foundation of Australia
69. Commonwealth Bank of Australia
70. Commonwealth and Public Sector Union - State Public Services Federation Group
71. Compassion in World Farming
72. Continental
73. Corrs Chambers Westgarth
74. Council of Regulating Authorities for Dental Technicians and Dental Prosthetists Australia and New Zealand
75. CSR
76. Daeshin Agricultural Co. Ltd
77. Dairy Australia
78. Dental Board of Australia
79. Dental Hygienists Association of Australia
80. Engineers Australia
81. English Australia
82. Federal Chamber of Automotive Industries
83. Federation of Automotive Products Manufacturers
84. Federation of Chinese Medicine and Acupuncture Societies of Australia Inc
85. Footwear Manufacturers Association of Australia
86. Ford Australia
87. Frosty Boy Australia
88. Futuris
89. General Motors Holden Ltd
90. Generic Medicines Industry Association Pty Ltd
91. Government of Western Australia, Department of Agriculture
92. Government of Western Australia, Department of State Development
93. Griffith University
94. Horticultural Market Access Committee (Horticulture Australia Ltd)
95. Hunt and Hunt Lawyers
96. Institute of Actuaries
97. Institute of Public Accountants
98. Institute of Chartered Accountants in Australia
99. Institution of Arbitrators and Mediators
100. Insurance Australia Group Ltd
101. International Legal Services Advisory Council
102. International Legal Services Committee
103. International Trademark Association
104. Investment and Financial Services Association Ltd
105. ITS Global
106. JETRO Sydney
107. Kia Motors Australia

108. KPMG
109. Law Council of Australia
110. Leightons Holdings
111. Lowy Institute
112. Macquarie Bank / Group
113. Macquarie Telecommunications
114. Mallesons Stephen Jaques
115. Mariani Foods
116. Maryborough Sugar
117. Meat and Livestock Australia
118. Media Entertainment and Arts Alliance
119. Minerals Council of Australia
120. Minter Ellison
121. Monash University
122. Mulwarra Exports
123. Music Council of Australia
124. National Association of Forest Industries Ltd
125. National Australia Bank
126. National Farmers' Federation
127. National Institute of Accountants
128. New South Wales Business Chamber
129. New South Wales Government, Department of Education and Communities
130. New South Wales Government, Department of Trade and Investment, Regional Infrastructure and Services
131. OneSteel
132. Mr Jean Ough
133. Mr George Pietrzykowski
134. Pharmaceutical Society of Australia
135. Pharmacy Guild of Australia
136. Philip Morris Ltd
137. Planning Institute of Australia
138. Plastics and Chemicals Industries Association
139. Professions Australia
140. Qantas Airways Ltd
141. QBE
142. Queensland Government, Department of Primary Industries
143. Queensland Law Society
144. Queensland Sugar Ltd
145. Queensland University of Technology
146. Red Meat Advisory Council
147. Research Institute for Asia and the Pacific
148. Ricegrowers Association of Australia Inc
149. Rio Tinto
150. Robert Bosch Australia
151. Royal Australian Institute of Architects
152. Royal College of Nursing Australia
153. Seafood Services Australia (on behalf of Seafood Access Forum)
154. South Australian Government, Department of Trade and Economic Development

155. Spatial Sciences Institute
156. State and Territory Bar Associations
157. State and Territory Law Councils
158. State and Territory Premiers and Chief Ministers Departments
159. State and Territory Trade Officials
160. Mr Richard Stone
161. Sugar Australia
162. TAFE Directors Australia
163. Tasmanian Government, Department of Economic Development
164. Telstra
165. Technical Textiles and Non-woven Association
166. Textile and Fashion Industries Association of Australia
167. Thoroughbred Breeders Australia
168. Time Taylor Ltd
169. Toyota Motor Corporation Australia
170. Tourism Australia
171. Trade Queensland
172. Universities Australia
173. University of Newcastle
174. Victorian Government, Department of Innovation, Industry and Regional Development
175. Western Australian Tourism Office
176. Westpac Banking Corporation
177. Dr Brett Williams
178. Wilson Parking
179. Winemakers Federation
180. Woodside Energy
181. Yum! Restaurants International

Korea-Australia Free Trade Agreement

Regulation Impact Statement

4 February 2013

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INTRODUCTION

1. This Regulation Impact Statement (RIS) relates to the Korea-Australia Free Trade Agreement (KAFTA). Negotiations on a free trade agreement (FTA) with the Republic of Korea (Korea) were launched in March 2009. The Prime Minister and Trade and Investment Minister jointly announced on 5 December 2013 that negotiations had concluded.

PROBLEM IDENTIFICATION

2. Despite Korea's importance as an economic partner and the opportunities offered by its growing economy (see 'Options that may achieve these objectives' for a discussion on the status quo), the absence of a FTA is constraining Australia's ability to realise the full potential of trading with this market.

3. Over the past decade, Korea´s economic importance to Australia has expanded significantly to become Australia´s third-largest export market, fourth-largest trading partner, and a growing investment partner. It is Australia's fifth-largest market for agricultural exports, Australia's largest export market for raw sugar (estimated at $461 million in 2012-13); third-largest for beef ($703 million in 2012-13); and an important market for wheat, malt and malting barley, dairy products, animal fodder, wine, seafood and horticulture. Korea is also an important export market for Australian ores and concentrates, crude petroleum, coal, inorganic chemical elements, pharmaceuticals and automotive parts. In services, Korea is Australia's ninth largest export market, accounting for 3.2 per cent of Australia's total services exports.

4. However, as things currently stand, Australia faces various tariff and non-tariff barriers and restrictions in Korea which limit the extent to which our goods and services exports can expand. Korea's average tariff on imports is 16.8 per cent, with an average tariff on agricultural goods – a priority for Australia – of 53.6 per cent, with tariff peaks of over 500 per cent. (Table 2 summarises selected tariff restrictions faced by Australian exporters.)

5. At the same time, Australian exporters to Korea are coming under increasing competitive pressure which threatens Australia´s existing market share as competitor countries enter bilateral and regional FTAs with Korea. The European Union (through the Korea-European Union Free Trade Agreement, or KOREU), the United States (through the Korea-United States Free Trade Agreement, or KORUS), Association of South-East Asian Nations (ASEAN) countries and Chile, key competitors of Australia in agriculture and services, already enjoy preferential access through their FTAs with Korea, Canada and New Zealand, also key competitors with Australia, are close to concluding their own FTAs with Korea.

6. Korea's FTA partners have received either immediate tariff elimination or phased reductions over several years for key products, thereby locking in a tariff disadvantage in favour of Australia's competitors over time. This is also the case in services where under KORUS and KOREU, competitor firms from the US and EU have secured preferential market access in key sectors of interest to Australian firms including financial services, telecommunications services, education services and legal and other professional services.

7. As a result of the high tariffs and market access barriers faced by Australia and the preferential access given to our competitors, Australian exports to Korea can be expected to decline as they lose competitiveness. Independent modelling by the

Centre for International Economics[1] predicts that in the absence of a bilateral Free Trade Agreement with Korea, Australia's total exports to this important market would decline by 5 per cent by 2030. Australian agriculture exporters would be most disadvantaged as Korean imports of Australian agricultural goods would decline by 29 per cent. Mining and manufacturing exports would also decline, by 1 and 7 per cent respectively.

8. On the other hand, modelling predicts that implementing a bilateral Free Trade Agreement with Korea would in fact result in exports to Korea being 25 per cent higher than they otherwise would have been by 2030. Agriculture exports would be 73 per cent higher; mining exports would be 17 per cent higher and manufacturing exports would be 53 per cent higher. Entering into an FTA with Korea would therefore not only avert the threat faced by erosion of Australia´s competitiveness in the market but would also create new and further opportunities for Australian exporters to Korea.

9. In this context, in 2013 the Government decided to seek the timely conclusion of ongoing bilateral free trade agreement negotiations with Korea.

OBJECTIVES OF GOVERNMENT ACTION

10. Consistent with Government policy, the primary objective was to conclude a comprehensive, high-quality bilateral FTA that secures Australia's competiveness in a key market, and to do so as soon as practicable. In negotiating KAFTA, the following specific outcomes were sought:

- significantly improved goods market access through the elimination of Korea's tariffs across the board, particularly on Australia's priority agriculture products, over the shortest possible timeframe;
- a KORUS and KOREU-equivalent agreement that secures Australia's competitiveness in the Korean market in light of the preferential access granted to our competitors (US, EU, ASEAN and Chile) in their agreements with Korea;
- mutual commitment to the development and application of technical standards and sanitary and phytosanitary measures, consistent with WTO Agreements;
- better access for Australian service suppliers in the Korean market, including by eliminating or reducing restrictions on commercial presence, cross-border supply and foreign equity holdings;
- streamlined licensing requirements and further opportunities for cooperation in professional services (including qualifications recognition);
- services market access outcomes equivalent to KORUS and KOREU in areas of key commercial interest to Australia, such as legal, accounting, financial, telecommunications and education services;
- government procurement market access to the Korean market broadly equivalent to that provided by Korea to members of the WTO Agreement on Government Procurement and to the US and the EU through KORUS and KOREU;
- commitments to ensure rights of Australian intellectual property holders are protected effectively and enforced by Korea's intellectual property regime;

[1] Modelling conducted in late November 2013

- commitments to enhance the use of electronic commerce in goods and services, including by ensuring that customs duties will not be introduced on electronic transactions;
- commitments to ensure that the benefits of KAFTA are not undermined by anticompetitive practices;
- promotion of appropriate labour and environment standards, recognising that labour and environment laws, regulations and policies should not be used for trade protectionist purposes;
- an audiovisual co-production agreement to facilitate joint development of Korean and Australian creative audiovisual content; and
- a framework for settling disputes under KAFTA.

OPTIONS THAT MAY ACHIEVE THESE OBJECTIVES

11. Korea is one of the fastest-growing OECD countries, with real GDP growth estimated at 3.5 per cent in 2014, picking up to 4.1 per cent in 2015[2]. Exports account for more than half of Korea´s GDP and are expected to expand in 2014 and beyond as the global economy recovers and demand increases for Korean ships, mobile devices and cars.[3] This expansion will subsequently drive an increase in imports, as domestic consumer spending expands and Korea seeks inputs for its manufacturing and export sectors.

12. If Australia had preferential access for its exports or a level playing field, increased Korean growth would lead to increased demand for Australian exports, particularly in the agricultural sector as Korea currently imports around 70 per cent of its food needs. An increasingly affluent middle-class would generate greater demand for key Australian products such as beef, wine and seafood. But under the current status quo, in which our competitors have an advantage in many of our key export sectors, Australian exports to Korea, especially in the agricultural sector, would decrease despite the overall growth in the Korean economy (see paragraph 6).

13. Thus, given the character of the primary objective, and the specific outcomes sought, the only realistic option available to Government to achieve this objective was the negotiation of a bilateral FTA with Korea. Other options, such as negotiations with Korea in the context of a regional trade agreement or multilateral trade negotiations, or taking no action, would not achieve the primary objective and specific outcomes.

No Action

14. As outlined in the 'Problem identification' section, the absence of a new trade arrangement with Korea will continue to preclude Australian exporters from the full opportunities of trading with a major and growing market. The status quo without an FTA will significantly disadvantage Australia's major exports, particularly in agriculture (sugar, beef, wheat, dairy, fodder, horticulture, seafood and wine), but also in industrial products (resources products, pharmaceuticals, auto parts, titanium dioxide) and services (legal, professional, financial, telecommunications and education). Preferential access already being granted to Korea's FTA partners, including the US, EU, ASEAN and Chile, will make Australian goods increasingly

[2] The Economist Intelligence Unit
[3] Ministry of Trade, Industry and Energy

uncompetitive against products from these countries. Service providers will also be disadvantaged against competitors from countries or regions that have FTAs with Korea. As discussed in Paragraph 7, independent modelling indicates Australia's exports to Korea would decline by five per cent in the context of KORUS and KOREU giving the US and EU a competitive advantage over Australia.

15. On the import side, under the current status quo without an FTA, Australian demand for exports from Korea, which are dominated by refined petroleum and passenger motor vehicles, could be expected to follow current trends (in 2013 Korea's exports to Australia rose 2.3 per cent) subject to the growth of the Australian economy. An FTA which made Korean motor vehicles and consumer goods more competitive than their competitors' products would benefit Australian consumers and likely result in an increase in demand for these products as consumers shift their preferences from competitors that do not have a tariff advantage.

Regional trade negotiations

16. At present, there are two ongoing regional trade agreement negotiations which could be viewed as possible alternative options: the Regional Comprehensive Economic Partnership (RCEP) and the Trans-Pacific Partnership Agreement (TPP) negotiations.

17. RCEP negotiations include all ten ASEAN Member States and ASEAN's six FTA partners – Australia, China, India, Japan, Korea and New Zealand. While the guiding principles for RCEP potentially allow for negotiation of a high quality, comprehensive agreement, there is no certainty that the full range of specific outcomes could be achieved. RCEP negotiations are at an early stage, with key decisions still to be taken on the scope and level of goods and services market access and the comprehensiveness and coverage of the agreement. As RCEP negotiations are not scheduled to conclude before the end of 2015, KAFTA will deliver the objectives and specific outcomes sought in a more certain and timely manner.

18. As with RCEP, the approach taken in the TPP negotiations potentially allows for negotiation of a high quality, comprehensive agreement. There are currently 12 countries engaged in the TPP negotiations, including Australia, but not Korea. While Korea has expressed its interest in joining TPP negotiations, it is not yet been accepted as a participant by the TPP parties. TPP is therefore not a realistic alternative option at this time.

Multilateral trade negotiations

19. The WTO Doha Round of trade negotiations was launched in 2001 and is a trade policy priority for the Government. However, given the limited and specific mandate for the Doha Round negotiations, a successful conclusion (which at present is unlikely to be secured for at least several years) would not achieve the primary objective and specific outcomes. Furthermore, Korea has developing country status in the WTO and has access to flexibilities that reduce its level of commitment.

Bilateral trade negotiations

20. A comprehensive, WTO-consistent bilateral FTA with Korea is the only realistic option to achieve the primary objective and specific outcomes.

IMPACT ANALYSIS

Key market access outcomes of bilateral negotiations for Australia

21. KAFTA will deliver significant market access improvement and significant tariff liberalisation for Australia's merchandise exports to Korea. Korea's tariffs will be set at zero on 84 per cent of its imports (by value) from Australia immediately on entry into force with most other tariffs phased out quickly, with 99.8 per cent duty free on full implementation of the agreement. Table 2 summarises the agreed tariff elimination schedule that will apply to Australia's major goods exports to Korea.

Table 1: Elimination schedule for Korean tariffs on imports of Australian goods

Outcome	Tariff lines			Korea's imports from Australia		
	No.	% of total	Cumulative total (%)	2011* US$'000	2011* % of total	Cumulative total (%)
Zero at EIF	8,940	75.2	75.2	22,102,655	84.0	84.0
MFN 0	*1,932*	*16.3*	..	*18,423,065*	*70.0*	..
Tariffs eliminated on EIF	*7,008*	*59.0*	..	*3,679,589*	*14.0*	..
3-year phasing**	1,019	8.6	83.8	141,875	0.5	84.5
5-year phasing	565	4.8	88.6	2,410,403	9.2	93.7
7-year phasing	265	2.2	90.8	28,146	0.1	93.8
10-year phasing	413	3.5	94.3	509,701	1.9	95.7
11-20 year phasings	491	4.1	98.4	1,061,087	4.0	99.8
Seasonal outcomes	5	0.0	98.5	10,499	0.0	99.8
50% tariff reduction in 10 years	12	0.1	98.6	85	0.0	99.8
No access concessions	171	1.4	100.0	51,828	0.2	100.0
Total	**11,881**	**100.0**	**100.0**	**26,316,279**	**100.0**	**100.0**

2011 trade data are the most recent figures that accord with the HS2007 nomenclature, on which KAFTA market access schedules are currently based. More recent trade data will be incorporated once Korea and Australia convert their respective schedules to HS2012 nomenclature. Tariff phasings will occur in equal annual stages, i.e. "3-year phasing" means the tariff will be reduced to zero in three equal annual stages; the first cut taking place on entry into force of the agreement.*
Source: KAFTA, Global Trade Atlas

Table 2: Key goods market access outcomes for Australia

Product	Australian Exports to Korea ($ million, 2012-13)	Korea's MFN tariff (%)	Years until tariff elimination		
			KAFTA outcome	KORUS outcome	KOREU outcome
Agriculture					
Beef	703	40 - 72	15	15	16
Sugar, raw	461*	3	0	0	0
Wheat	449	1.8	0	0	0
Fodder	149	100.5	15	15	16
Malt and malting barley	88	269 and 513	15	15	16
Dairy	80	36 - 176	3 - 20 some duty-free quotas	0 - 15 some duty-free quotas	0 - 16 some duty-free quotas
Canola oil	26	8 - 10	5 - 10	5 - 10	6 – 11
Maize	20	328	7	7	14
Sheepmeat	18	22.5	10	10	11
Wine	10	15	0	0	0
Macadamia nuts	3	30	5	7	8
Southern bluefin tuna	0.5	20	3	3	4
Table grapes	0**	45	5***	5***	5***
Resources, energy and industrial products					
Crude petroleum	1,534	3	5	0	0
Natural gas	701	3	0	0	0
Unwrought aluminium	677	1 and 3	0	0	0
Propane, butane	236	3	0	0	0
Gold	209	3	0	0	0
Ammonia	196	1 and 2	0	0	0
Sea salt	90	1	0	0	0
Unwrought lead	90	1 and 3	10	0	0
Cobalt mattes and articles	35	3	0	0	0
Titanium dioxide	8	6.5	0	0	0

**Korean imports (A$ million, 2012-13); **Phytosanitary market access achieved end 2013; ***seasonal.*

Source: Australian Bureau of Statistics, WTO, Global Trade Information Services

22. A very limited number of Korea´s most sensitive products, including rice, walnuts, milk powders, honey, abalone and certain wood products receive no tariff concessions – these 171 sensitive lines account for only 0.2 per cent of exports to Korea. Korea has also excluded many of these sensitive products from their previous FTAs including rice which has been excluded from all of Korea´s FTAs, meaning Australian exporters will not be disadvantaged vis-à-vis their competitors. Australian producers will retain access to a WTO country-specific quota. Australia's rice trade with Korea was negligible in 2010-11 and 2011-12, and was worth AU$9.9 million in 2012-13.

23. The services and investment outcomes provide Australian service providers and investors with improved access and greater certainty in areas of key interest to

Australia, and ensure that Australian business interests are not disadvantaged compared with their US and EU competitors.

Key market access outcomes for Korea

24. Tables 3 and 4 summarise the market access outcomes that Australia will grant Korea under KAFTA. Consistent with Australia's other FTAs, Australia will remove its remaining tariffs on Korean goods. Tariffs will be either eliminated on entry into force or over several years.

Table 3: Elimination schedule for Australian tariffs on imports of Korean goods

Outcome	**Tariff Lines**			**Australia's imports from Korea**		
				2011*		
	No.	**% of total**	**Cumulative total (%)**	**A$'000**	**% of total**	**Cumulative total (%)**
Zero at EIF	5,449	90.7	90.7	5,570,169	81.5	81.5
MFN 0	*2,775*	*46.2*	..	*2,471,543*	*36.1*	..
Tariffs eliminated on EIF	*2,674*	*44.5*	..	*3,098,626*	*45.3*	..
3-years	115	1.9	92.6	882,725	12.9	94.4
5-years	412	6.9	99.5	383,868	5.6	100.0
8-years (phasing beginning in year 4 of agreement)	32	0.5	100.0	1,608	0.0	100.0
Total	**6,008**	**100.0**	**100.0**	**6,838,370**	**100.0**	**100.0**

**2011 trade data are the most recent figures that accord with the HS2007 nomenclature, on which KAFTA market access schedules are currently based. More recent trade data will be incorporated once Korea and Australia convert their respective schedules to HS2012 nomenclature.*
Source: KAFTA, Global Trade Atlas

Table 4: Key goods market access outcomes for Korea

Product	Australian imports from Korea *($ million, 2012-13)*	Australia's MFN applied tariff (%)	Years until tariff elimination
Motor vehicles and parts	2,319.3	5	0, 3, 5
Heating and cooling equipment and parts	355.0	5	0, 5
Pumps and parts	255.6	0, 5	0, 3, 5
Telecommunications equipment and parts	246.0	0, 5	0
Monitors, projectors and TVs	219.2	0, 5	0
Electrical machinery and parts	148.1	0, 5	0, 3, 5
Civil engineering equipment and parts	131.5	0, 5	0
Rubber tyres and tubes	130.0	0, 5	0, 5
Tubes and pipes of Iron or steel	115.3	5	0, 3, 5
Household equipment (e.g. white goods)	109.1	0, 5	0, 3, 8, 10

Source: Australian Bureau of Statistics, WTO

25. Given these outcomes will make Korean goods more competitive than goods from countries that do not have FTAs with Australia, it can reasonably be expected that Korean exports to Australia will increase. There will likely be a shift in demand from Korea´s competitors on certain products, including electronic products and motor vehicles as tariff elimination reduces the import costs of these goods. This will benefit both Australian consumers and Australian businesses which rely on Korean imports. While Korea will conduct its own modelling on the benefits of the FTA to its economy, an initial study published in Korea in early 2013 by the Korea Institute for International Economic Policy before the FTA was concluded, suggested on tariff eliminations alone, the FTA would benefit the Korean economy by US$1.6 billion.

26. The FTA provides Korea with services and investment outcomes up to the level of other Australian FTA partners such as the United States and Chile. This includes binding a higher FIRB screening threshold for Korean investors. Australia has bound access for Korean services suppliers, ensuring their competitiveness with foreign competitors, and provided new market access in areas such as life insurance branching and audiovisual co-production.

Benefits to the Australian economy

27. Increased bilateral trade through KAFTA will benefit the Australian economy. Improved market access for Australian exports and lower import prices will increase Australia's terms of trade, increase capital accumulation, raise productivity and improve utilisation of resources. The results of independent economic modelling[4] by

[4] The modelling study conducted by the Centre for International Economics assumes entry into force on 1 January 2015 and calculates present value using a discount rate of five per cent.

the Centre for International Economics (CIE) predict that liberalisation of the bilateral goods trade would have strong benefits for the Australian economy:

- KAFTA goods liberalisation would contribute $226 million in additional GDP in the first year of its implementation. After 15 years of operation, Australian GDP would be $653 million higher than would be the case without KAFTA. The present value of the cumulative increase in GDP over the 15-year period is $5,036 million.

- Real household consumption – a measure of the welfare impacts of KAFTA – would be $754 million higher in 2015 and $1,351 million higher in 2030, equivalent to a present value of $11,148 million over the 15-year period.

- KAFTA goods liberalisation is estimated to raise real consumption per household by $82 a year in 2015, and by $118 a year in 2030, equivalent to a cumulative value of $1,088 per household over the 15-year period.

- KAFTA goods liberalisation is estimated to lead to the creation of 1,719 new jobs in its first year and 1,062 new jobs after 15 years.

28. KAFTA will have significant benefits to trade. Economic modelling predicts that Australian exports to Korea would be 25 per cent higher after 15 years of KAFTA's entry into force than a scenario in which Australia does not enter a FTA with Korea. While Australia's responsiveness to increased demand under KAFTA will differ across sectors and enterprises, it is expected that Australian exporters would increase overall production capacity to meet the increased demand, especially in those industries where tariff elimination will be phased out over a period of years.

29. The economic impacts described above reflect goods liberalisation alone.[5] The services outcomes in KAFTA will facilitate stronger services exports to Korea in key sectors of interest to the Australian economy, which is services dominated.

30. In addition to the benefits associated with increased bilateral trade, KAFTA will protect Australia's competitive position in a major market where competitor countries are already enjoying preferential access through their bilateral FTAs with Korea. Modelling results estimate that if Australia did not proceed with KAFTA, exports to Korea would be 5 per cent lower by the time the US and EU's FTAs are fully implemented in 2030.

Impacts on Australian's major merchandise exporters

31. Beef: Korea is Australia's third largest export market for beef, with exports totalling $703 million in 2012-13. Since the detection of bovine spongiform encephalopathy (BSE) in US beef in 2004, Australia has replaced the US as the largest exporter of beef to Korea. In 2012-13, Australia supplied 55 per cent by value of imports, compared to 36 per cent from the US and eight per cent from New Zealand. Prior to 2004, US beef exports to Korea were three to four times greater than Australian exports.

[5] The Centre for International Economics conducted its analysis using global and domestic computable general equilibrium economic models. The focus of this modelling was on the impact on the production and flow of goods between countries arising from changes in tariff rates and quota arrangements. Because of the difficulty in modelling services and investment trade liberalisation, these components were not included in the modelling study's main simulations.

32. Australia's position in the Korean market is under threat from the lifting of BSE restrictions by Korea and the rising tariff preferences provided to US beef exporters under KORUS, which reduces Korea's 40 per cent tariff on US beef exports to zero over 15 years in equal annual reductions. As a result, the US currently enjoys a 8.1 per cent tariff advantage over Australia, and will receive its next annual 2.7 per cent reduction cut on 1 January 2015. Under KAFTA Australia has secured equivalent terms as the US – elimination of the tariff over 15 stages. This means the tariff differential between US and Australian beef to Korea will be capped and eventually eliminated. Independent modelling shows that under KAFTA Australia's beef exports to Korea will double by 2030. Without KAFTA, Australian beef exports would halve as they become increasingly uncompetitive with US suppliers. Throughout KAFTA negotiations, Meat and Livestock Australia, the Cattle Council and the Australian Meat Industry Council emphasised the objective of achieving a KORUS-equivalent outcome. The National Farmers' Federation has warmly welcomed the KAFTA outcome for Australian beef.

33. Other meats: The 22.5 per cent tariff on all Australian sheepmeat exports ($18 million in 2012-13) and goatmeat ($5 million in 2012-13) will be eliminated over 10 years. Despite the Korean pork industry's extreme sensitivity to imports, the 25 to 30 per cent tariff currently applied on Australia's key pork exports will be eliminated over five years.

34. Dairy: Australian dairy exports to Korea were valued at $80 million in 2012-13. The Korean dairy industry is currently heavily protected. On implementation of KAFTA, Australia will receive immediate duty-free quotas for cheese, butter and infant formula, equivalent to the quotas in KOREU. Outside the duty-free quotas, most high tariffs will be eliminated over phase-out periods.

35. In the absence of a FTA, Australia's position in the Korean market would be under increasing threat from the duty free quotas enjoyed by the US and EU and the rising out-of-quota tariff preferences provided to US and EU dairy exporters, as well as by preferences likely to be given to Australia's key competitor New Zealand, which is currently negotiating a FTA with Korea. KAFTA means Australian exports of cheese, butter and infant formula will have the same duty free quota access on entry into force of the agreement as the US and EU and the tariff differential on out-of-quota trade will be capped and eliminated. Independent modelling[6] predicts total Australian dairy products exports to Korea to be 210 per cent higher by 2030 under KAFTA.

36. Sugar: Korea is Australia's largest market for raw sugar, worth $461 million in 2012-13. The Australian sugar industry strongly advocated the immediate elimination of Korea's three per cent tariff on raw sugar to help maintain its leading position in the Korean market, particularly as its main competitor, Thailand, is scheduled to receive duty-free access under the Korea-ASEAN FTA. Korea has agreed to immediately eliminate the tariff on Australian raw sugar on entry into force. Independent modelling predicts Australian sugar exports to Korea to be 27 per cent higher by 2030 under KAFTA. The peak industry group Canegrowers has 'applauded loudly' the outcome and welcomed the improved access for sugar.

37. Cereals: Korea is Australia's third-largest destination for wheat exports, with exports worth $449 million 2012-13. Korea has agreed to eliminate the 1.8 per cent tariff for Australia on the entry into force of the FTA. This outcome has been

[6] Conducted by the Centre for International Economics in late November 2013

welcomed by the Australian wheat industry, which is seeking to protect Australia's market share from the US (Australia's main competitor in the Korean market), which already enjoys duty free access. Independent modelling predicts total Australian wheat exports to Korea to be nine per cent higher by 2030 under KAFTA.

38. Australia supplied two-thirds of Korea's malt imports (valued at $79 million) and 91 per cent of Korea's malting barley imports ($18 million) in 2012-13. On entry into force, Australian exporters will have immediate access to new duty-free quotas, with quota volumes larger than secured by the US and EU. Australian exporters will also obtain concessional tariffs on exports outside these quotas, as Korea's very high out-of-quota tariffs (269 per cent tariff on unroasted malt and 513 per cent tariff on malting barley) will be eliminated over a 15 year phase-out period. Maize exporters will benefit from the elimination of Korea's 313 per cent tariff over a seven-year period. Independent modelling predicts total Australian 'other cereal grains' exports to Korea to be 91 per cent higher by 2030 under KAFTA. Grains industry body Grain Growers said the 'agreement is fantastic news for Australian grain producers'. Grain Growers' economists expect to see increased exports and higher prices for Australian grain producers as a result of KAFTA.

39. Wine: Australia exported $10 million worth of wine to Korea in 2012-13. Korea has agreed to eliminate its 15 per cent tariff on wine immediately on KAFTA's entry into force. Chilean, US and EU wines currently enter Korea duty-free under their respective FTAs. The KAFTA outcome will allow Australian wine to compete on equal terms. Independent modelling suggests beverage and tobacco exports would be 48 per cent higher by 2030 under KAFTA. Wine Federation Australia has strongly welcomed the outcome saying: 'This agreement is critical to enhance the export opportunities for Australian wine and we congratulate the Australian government in bringing these negotiations to a successful conclusion'.

40. Horticulture: Korea is not currently a large market for Australian horticultural exports, accounting for less than 1 per cent ($18 million) of Australia's total horticulture exports in 2012-13. However, the horticulture industry has identified Korea as an important prospective market, particularly if prohibitively high tariffs and quarantine restrictions could be addressed. KAFTA provides improved market access for key Australian products. Independent modelling predicts total Australian vegetables, fruit and nut exports to Korea will be 183 per cent higher by 2030 under KAFTA. Ausveg, the vegetable and potato peak body has said: 'The establishment of a free trade agreement with Korea is a momentous outcome for the Australian horticulture industry and will create new opportunities for Australian growers'.

41. Additionally, key horticultural products, including potatoes, grapes and oranges, will receive seasonal tariff elimination. During certain months (Australian exporting season) these product will enjoy duty-free access, or staged tariff elimination. Potatoes (for chipping), Australia's largest horticulture export to Korea, worth $6 million in 2012-13, are currently subject to very high tariffs of up to 304 per cent and exporters have advised their contracts are in danger from duty-free US potatoes. Under KAFTA, potatoes (for chipping) will immediately enter duty-free. Oranges, with exports worth $2 million in 2012-13, will have the current high tariff of 50 per cent reduced to 30 per cent on entry into force and then eliminated over seven years. For table grapes, the current high tariff of 45 per cent will be reduced to 24 per cent on entry into force, with full elimination over five years. This result is particularly important as Australia has only very recently achieved technical (phytosanitary) market access for table grapes.

42. Other priority products, including almonds, cherries and dried grapes, will enter Korea duty free on entry into force; macadamia nuts, carrots and most fruit juices will have tariffs eliminated over five years; and tomatoes and summer fruit and mangoes will have tariffs eliminated within ten years.

43. Seafood: Korea is a growing market for seafood and is a growing net importer of seafood, with an import market valued at $3.5 billion in 2012-13. While Korea is not currently a large market for Australian seafood, industry consultation has suggested this is because of prohibitively high tariffs. On Australia's largest seafood export to Korea, frozen southern bluefin tuna (worth $0.5 million in 2012-13), the 10 per cent tariff will be eliminated in three annual stages. Other priority products, such as mackerel and lobsters, will also receive quick tariff phase-outs.

44. Minerals and fuels resources: In 2012-13, Australia exported around $13.6 billion worth of minerals and fuels resources products to Korea, our third-largest market for these goods. While many Australian mineral and energy exports to Korea already enter duty free, Korea applies tariffs of up to eight per cent on a range of priority resource products. Korea has agreed to eliminate these tariffs under KAFTA, including crude petroleum (worth $1.5 billion), natural gas ($701 million) and unwrought aluminium ($677 million).

45. Titanium dioxide: Australian titanium dioxide exporters will benefit from immediate elimination of Korea's 6.5 per cent tariff. Korea was traditionally Australia's second-largest market for titanium dioxide but, following the entry into force of KORUS, Australia's exports to Korea fell from $44 million in 2011 to $8 million in 2012-13. KAFTA will assist titanium dioxide exporters regain competitiveness in the Korean market.

46. Pharmaceutical and vitamin products: Pharmaceutical and vitamin supplement exporters will have tariffs of up to eight per cent eliminated within three years. Korea is Australia's second-largest export market for pharmaceuticals, worth $564 million in 2012-13.

47. Automotive parts: Korea is Australia's largest market for gearboxes, with exports of $93 million in 2012-13 and second largest export market for car engines, worth $53 million in 2012-13. Under KAFTA Korea's eight per cent tariff on these products will be eliminated immediately on entry into force of the agreement.

Impact on Domestic Manufacturing

48. The implications of KAFTA on domestic manufacturing will be mixed. Those industries that use parts produced in Korea will enjoy lower input costs as tariffs are eliminated or phased down, while those industries that compete with products produced in Korea will face additional pressure.

49. The elimination of Australia's five per cent tariff on automotive products will increase competitive pressure on the Australian automotive industry in the domestic market. However, the impact of tariff elimination on Australia's competitiveness is lower than other factors facing the Australian manufacturing sector generally, including higher production costs and exchange rate movements. Korean steel producers are already strong competitors in Australia for a share of the cold rolled and coated coil steel products market, which attract a tariff of five per cent. While the Australian steel industry also faces the non-tariff related pressures identified above, elimination of the five per cent tariff may contribute to an increase in Korean steel

imports. The five year phase out of sensitive tariffs to the steel industry will, however, provide the industry time to adapt to tariff elimination.

50. Other manufacturing sectors, such as the plastics, chemicals, textiles, clothing and footwear industries, will also possibly face increased competition from Korean imports following the elimination of Australian tariffs. To mitigate any negative impact, and consistent with suggestions from relevant stakeholders, tariffs on some of Australia's most sensitive products will be phased out over periods of up to eight years.

51. While KAFTA will increase competitive pressure for some Australian manufacturers, the elimination of Korea's tariffs of up to 13 per cent on Australian industrial exports will create opportunities for Australian manufacturers. Current levels of manufacturing exports are relatively small but economic modelling[7] predicts manufacturing exports to be 53 per cent higher after 15 years of KAFTA's entry into force. In particular, as discussed above, there will be improved export opportunities for pharmaceuticals, machinery and equipment, chemical, rubber and plastic products and for automotive parts and accessories (especially gearboxes) and engines.

Rules of origin: implications for exporters

52. KAFTA benefits Australian businesses trading with Korea by removing or reducing regulatory burdens such as import tariffs. Taking advantage of such benefits may require some changes to existing business processes, but such changes are not expected to impose additional costs. While under the Rules of Origin and Origin Procedures Chapter of KAFTA exporters will need to provide a certificate of origin (COO) to claim preferential tariff treatment, this is standard practice for Australian businesses accessing the benefits of existing FTAs. In addition, a substantial number of businesses already obtain third-party-issued non-preferential COOs for each consignment for other purposes as a standard practice, including for obtaining letters of credit or because of a requirement of the importer.

53. With the objective of minimising regulatory requirements, KAFTA allows traders to self-declare origin or to obtain a COO through a third party if that is their preferred approach. The COO arrangement under KAFTA is also expected to reduce the regulatory burden for many businesses because a COO can be valid for multiple consignments over a minimum two year period rather than for a single consignment.

54. COOs will also not be necessary for a large proportion of trade between Korea and Australia. Where Korea's most favoured nation (MFN) rate for a particular product is zero, no claim for preferential treatment need be made and therefore a COO would not be required. Additionally, there is no mandatory requirement for exporters to claim preferential tariff treatment under KAFTA. Exporters that do not consider there to be a net benefit from meeting the rules of origin and obtaining a COO to claim KAFTA's preferential tariff rates can still choose to export under Korea's MFN rates.

55. The Product Specific Rules (PSRs) in KAFTA assist exporters in determining whether their goods meet origin requirements and therefore qualify for preferential tariff treatment. The PSRs are based primarily on change in tariff classification (CTC), a simple means of determining whether goods have undergone substantial transformation in the production process in the partner country, and therefore meet origin requirements for the purposes of preferential tariff treatment. Industry supports

[7] Conducted by the Centre for International Economics in late November 2013

CTC rules because they do not require burdensome cost calculations or extensive records. CTC rules are already used in Australia's FTAs with the US, Thailand, Chile and with New Zealand in the Closer Economic Relations Trade Agreement. The CTC rules in KAFTA are supplemented for certain items by regional value content rules (which require a certain percentage of production to be undertaken in the territory of an FTA Party). Although these require additional records and calculations, they are necessary to take into account instances where a CTC would not reflect substantial transformation.

Impact on Australian service providers[8]

56. Korea maintains restrictions affecting market access in a wide range of commercially relevant sectors for Australian services providers, which constrain opportunities for further growth. These restrictions take a variety of forms, including: restrictions on commercial presence (for example, with respect to legal and accounting firms); cross-border supply (for example, with respect to certain financial services, education, distribution and business services); onerous licensing requirements (for example in several professional services sectors); limitations on foreign equity holdings and majority ownership (for example, in the telecommunications sector); business scope restrictions (for example in legal, accounting and other professional services); and residency requirements.

57. Under KAFTA, Korea will address many of these restrictions and provide Australia with better treatment in trade in services, including financial services, telecommunications services, education services, legal and other professional services than is currently available under Korea's existing WTO commitments. These outcomes will ensure that Australian business interests are not disadvantaged compared with their US and EU competitors, which receive preferential treatment under KORUS and KOREU. Australia will provide Korea with treatment in trade in services which is substantively equivalent to commitments made under Australia's existing FTA with the United States (AUSFTA). KAFTA encourages mutual recognition of professional qualifications. These commitments are made without prejudice to our immigration regime. All immigration related requirements are dealt with exclusively through the Movement of Natural Persons Chapter (see relevant section below).

58. Legal services: Korea's legal services market is, at present, largely closed to foreign firms and Korea's current commitments under the WTO's General Agreement on Trade in Services (GATS) do not cover legal services. KAFTA delivers a KORUS-equivalent outcome that puts Australian lawyers on equal footing with their US and EU counterparts in allowing: (i) Australian law firms to establish representative offices in Korea; (ii) Australian lawyers to provide legal advisory services on home jurisdiction and public international law; and (iii) as staged liberalisation, enter into cooperative agreements and, later, joint ventures with Korean law firms. Stakeholders, including the Law Council of Australia, the International Legal Services Advisory Council and many Australian law firms are highly supportive of improved access to the Korean legal services market through the FTA.

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[8] Current statistical data on services trade between Australia and Korea are not as comprehensive as goods trade data, and is likely to (in some cases significantly) understate actual value and volume of services trade. This is for two reasons: difficulties in measurement, particularly in relation to mode 3 (commercial presence, as defined under the WTO General Agreement on Trade in Services), which is not picked up in current services trade data methodology, and because of confidentiality restrictions impacting on the level of detail of data available.

59. Accounting services: KORUS and KOREU included liberalising outcomes on accounting and tax accounting services allowing: (i) US and EU accountants and accounting firms to supply consulting services related to home jurisdiction or international accounting laws; (ii) US and EU accountants to work in Korean accounting firms; and (iii) as staged liberalisation, US and EU investment in Korean accounting firms. Under KAFTA, Australian accountants will be able to obtain equivalent treatment, ensuring that, once staged liberalisations are complete, they will not be at a comparative disadvantage. Australia's professional accounting bodies have strongly welcomed improved access to the Korean market under the FTA.

60. Education services: Korea has strong defensive interests in education and has made no GATS commitments covering education services. Under KAFTA, Korea will liberalise aspects of the adult education market to Australian services providers, specifically allowing Australian interests to establish certain types of adult education institutions in Korea, and thereby creating new commercial opportunities for Australian education providers.

61. Telecommunications services: Australia exported $2 million in telecommunication, computer and information services to Korea in 2012-13, and Australian telecommunications companies are active in the Korean market. Australia has achieved an equivalent outcome on access to Korea's telecommunications market to that achieved by the United States in KORUS. Korea has undertaken to permit, within two years, Australian companies to control up to 100 per cent of a facilities-based telecommunications service supplier in Korea. Existing Korean law caps foreign control of telecommunications companies at 49 per cent of total voting shares. Korea's commitments also ensure that such companies will have access to licences to provide public telecommunications services. These concessions will provide new commercial opportunities for Australian service providers.

62. The Telecommunications Chapter secures detailed WTO plus commitments on access to and use of telecommunications networks, infrastructure and services in Korea. The chapter also contains improved transparency obligations, including for licensing processes and regulatory decisions, and ensures the availability of dispute resolution procedures and the independence and impartiality of telecommunications regulatory bodies.

63. Financial services: Current ABS statistical data on financial services exports to Korea value these services at $3 million in 2012-13, but this does not include services supplied by Australian financial companies through a commercial presence in Korea. Australian financial services companies are active in the Korean market and there is capacity for further growth in revenues and for expanded commercial presence. KAFTA supports Australian firms by binding current regulatory arrangements, locking in existing access for Australian services providers and ensuring that barriers cannot be put in place which would impede future opportunities. Korea has made commitments in the FTA on transparency of financial sector regulation and the removal of business scope and licensing restrictions. In preliminary briefings, stakeholders were supportive of the outcomes. Australia has similarly made commitments to Korea, binding our existing regulatory arrangements, while retaining adequate protections for interests such as prudential requirements.

64. The Financial Services Chapter contains similar obligations to the Cross-Border Trade in Services Chapter and the Investment Chapter, with additional provisions that reflect the importance of regulation of the financial sector to ensure the integrity and stability of the financial system. The Financial Services Chapter contains

provisions locking in much broader commitments from Korea on Australian cross-border financial services suppliers and for off-shore processing of financial information and data than has been previously available to Australian service suppliers in Korea.

65. Film and television producers: KAFTA will enable Australian film and television producers, in collaboration with Korean partners, to access for the first time Korean government incentives to develop audiovisual content that will count as local content in both countries.

66. This is a significant new opportunity for Australian producers given the size and competency of the Korean audiovisual sector and the extent to which the Korean government promotes local content. It will encourage creative collaborations on screen projects of the quality and scale to compete in the international marketplace and facilitate the wider distribution of screen products to markets.

Impact on Australian investors in Korea

67. Australian total investment in Korea was worth $10.4 billion at the end of 2012. These investments are concentrated in Korea's financial and infrastructure sectors. KAFTA will provide an opportunity to broaden and deepen Australian investment in Korea by improving market access and protections for Australian investors.

68. Korea has agreed to further open its economy to Australian investors through the progressive raising of foreign equity caps in certain sectors and removing restrictions on investment in sectors previously closed to Australian investors, including the telecommunications sector; legal services and accounting and taxation agency services.

69. The key obligations of the Investment Chapter – which operate on a reciprocal basis - include non-discrimination, most favoured nation treatment, performance requirements and obligations on senior management and boards of directors.

70. Under KAFTA, investments of all forms are protected and Australian investors, unless specifically exempted, are to be treated no less favourably that Korean investors in the establishment or acquisition, operation and sale of their investments in Korea. KAFTA also provides enhanced protections for Australian investors in Korea, with measures to ensure transparency, equitable treatment and security for investments. KAFTA protects Australian investors from discriminatory or arbitrary expropriation and nationalisation.

Impact on Korean investors in Australia

71. Korea's total investment in Australia was worth $12.0 billion at the end of 2012. The provisions and protections in the Investment Chapter apply equally to Korean investors in Australia.

72. KAFTA will promote an increase in the flow of Korean investment into Australia and affirm Australia's attractiveness to Korean investors by raising the monetary threshold at which investments from Korea in non-sensitive sectors are considered by the Foreign Investment Review Board from $248 million to $1,078 million, consistent with the threshold provided to the US and New Zealand.

73. The Australian Government has retained the ability to screen for sensitive sectors, including media, telecommunications and defence related industries, at lower levels and has also reserved policy space to introduce its policy on screening

proposals for foreign investment in agricultural land at $15 million and in agribusinesses at $53 million.

Implications of investor-state dispute settlement provisions

74. KAFTA includes an investor-state dispute settlement (ISDS) mechanism, which will promote investor confidence by providing for international arbitration of FTA-based investment disputes. The ISDS provisions do not constrain the Government's ability to regulate or implement policy.

75. To succeed in an ISDS claim, an investor must establish that the host government has breached an investment obligation. A claim could only potentially succeed if none of the relevant carve-outs and safeguards included in the agreement to protect legitimate regulation were found to apply.

76. Substantive carve-outs and safeguards have been included for key public policy concerns including public welfare, health, culture and the environment. Foreign investment screening decisions are also carved-out from the scope of the ISDS mechanism. Procedural safeguards to deter frivolous claims and contain costs are also included.

Movement of natural persons

77. The Movement of Natural Persons Chapter provides for coverage of temporary entry of service suppliers and investors. Australia has made a commitment not to apply labour market testing. The *Migration Act 1958* provides that labour market testing may only be applied if not inconsistent with Australia's international trade obligations. In order to implement Australia's undertaking not to impose labour market testing on Korean nationals, a determination needs to be made by the Immigration Minister under regulatory arrangements. As this chapter locks in existing arrangements, no significant change is expected in the number of skilled workers entering Australia.

Government procurement

78. Under the Government Procurement Chapter, Australian and Korean government procuring entities (at both the central and sub-central/State and Territory level) are obliged, subject to exceptions, to afford the suppliers, goods and services of the other country the same treatment that applies to domestic suppliers, goods and services. This will provide greater certainty and market access opportunities for Australian companies in Korea's government procurement market, broadly equivalent to those Korea provides other countries in its bilateral agreements.

79. Australia's commitments go no further than existing free trade agreement commitments. The chapter also sets out rules and procedures which are consistent with existing Australian government procurement frameworks, requiring no domestic change.

Intellectual property

80. KAFTA reinforces Australia and Korea's existing rights and obligations on intellectual property (IP) under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The IP Chapter in KAFTA builds on TRIPS with provisions for the protection and enforcement of IP equivalent to that provided under AUSFTA.

81. The chapter contains a number of specific obligations on the protection of IP rights, including patents, trademarks and copyright. In relation to the digital

environment, it contains measures to protect copyright rights management information, effective technological protection measures, and limitations on service provider liability. It also sets out obligations for government use of legitimate software, and for the protection of encrypted programme carrying satellite signals.

82. The provisions on the enforcement of intellectual property provide for presumptions to facilitate proceedings as well as clarifying civil and administrative procedures and remedies to ensure judicial authorities have appropriate authority to deal expeditiously with infringement cases. The chapter also includes special requirements related to border measures which ensure that Customs, or the relevant competent authority, is able to deal appropriately with suspected infringing goods and also ensure that the interests of the importer are protected.

Competition policy

83. KAFTA includes commitments to ensure that trade and investment liberalisation achieved across the FTA is not undermined by anti-competitive practices. Australia and Korea have committed to:

- address anti-competitive practices, including cartel behaviour, abuse of dominant position and anticompetitive mergers, by maintaining and enforcing competition laws in their respective jurisdictions;
- ensure that competition laws are applied to all businesses and to only allow the exemption of a business from the application of the competition laws where that exemption is transparent and made in the public interest; and
- ensure that the enforcement of their respective competition laws shall be consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

84. The Competition Policy Chapter also provides a framework for competition authorities in Korea and Australia to cooperate and coordinate their enforcement practices.

Electronic commerce

85. The Electronic Commerce Chapter in KAFTA will contribute to a secure and liberalised environment for the growth of electronic commerce between Australia and Korea. This will aid Australian business in harnessing the efficiencies of electronic commerce, while ensuring the protection of online consumers.

Labour and the environment

86. Some stakeholder submissions expressed concern that KAFTA should not undermine human rights, labour rights and environmental protection or erode the Government’s ability to regulate in the public interest in these areas.

87. The right of both Australia and Korea to determine and enforce domestic labour and environmental protection and priorities is not undermined by KAFTA. The agreement is consistent with existing international commitments and does not prevent Australia from meeting any of its international labour or environmental obligations. An ad-hoc committee can be established in the event of concerns about implementation of the Labour and Environment chapters. These chapters are not subject to dispute settlement or ISDS.

Impacts on small business

88. The overall impact of KAFTA on Australian small business is likely to be positive. Australian small businesses will benefit from cheaper inputs and consumers also will benefit from the increased choice of goods and services that flow from a reduction in trade and investment barriers.

Australian consumers

89. The impact of KAFTA on Australian consumers is likely to be positive, providing greater availability of Korean products at more competitive prices. Independent modelling indicates the cumulative value of real consumption per household would increase by over $1,000 to 2030 as a result of KAFTA.

Impact on government revenue

90. The removal of tariffs on merchandise imports will lead to reductions in tariff revenue, and thereby affect the government's fiscal position. It has been estimated that tariff revenue would decline by an additional cumulative amount of $635.9 million over the forward estimates. This figure does not include the unmodelled, second-round effects on government revenue from increased economic activity, which are expected to be positive.

State and Territory Governments

91. During negotiations, State and Territory Governments raised issues of interest to industries residing in their respective states, their regulatory responsibilities and the administrative implications of KAFTA. There are no additional impacts on State and Territory Governments beyond those discussed in other sections of this impact statement.

Australian trade regulations

92. KAFTA maintains the integrity of our system of trade remedies and is consistent with our WTO rights and obligations.

93. The Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) Chapter reaffirms Australia and Korea's commitment to relevant WTO agreements and improve consultation arrangements. KAFTA does not change Australia's system in this area.

Dispute Settlement

94. KAFTA includes a binding State-to-State dispute settlement mechanism modelled on previous free trade agreements and the WTO system. Most of Australia's substantive obligations in KAFTA will be subject to this mechanism, except those found in the chapters concerning technical barriers to trade, sanitary and phytosanitary measures, competition policy, labour and the environment and some aspects of movement of natural persons.

TRADE IMPACT ASSESSMENT

95. KAFTA will support an already significant, complementary and growing economic relationship with Korea and would contribute to boosting bilateral trade and investment links. Australian and Korean two-way goods and services trade reached $30.5 billion in 2012-13. Total Australian investment in Korea in 2012 was valued at $10.4 billion, while Korean investment in Australia was valued at $12.0 billion.

96. Independent economic modelling[9] predicts that after 15 years of KAFTA's operation, Australian exports to Korea would be 25 per cent higher than they otherwise would have been as tariffs and other barriers on Australian exports to Korea are removed. Exports of agricultural goods to Korea would be 73 per cent higher than otherwise, contributing to a total five per cent increase in Australia's total agricultural exports to all markets. Mining exports to Korea would be 17 per cent higher and manufacturing exports would be 53 per cent higher.

97. Agricultural products that would see the largest increases in exports to Korea by 2030 include bovine meat products (100 per cent increase); horticulture (183 per cent); and dairy products (210 per cent). Other products in mining and manufacturing would also increase: oil (114 per cent); gas (155 per cent); other metals (40 per cent); chemical, rubber and plastic (52 per cent); and motor vehicles and parts (52 per cent).

98. In addition to the benefits associated with increased bilateral trade, KAFTA will protect Australia's competitive position in a major market where competitor countries are already enjoying preferential access through their bilateral FTAs with Korea. Results of independent modelling show that if Australia did not proceed with KAFTA, its exports would be five per cent lower by the time the US and EU's FTAs are fully implemented in 2030. Agriculture would be particularly disadvantaged: Korean imports of Australian agricultural goods would decline by 29 per cent by 2030. Mining and manufacturing exports would decline by one and seven per cent respectively.

99. KAFTA will also create new services export opportunities to Korea through the removal of Korean barriers in services sectors of commercial interest to Australian services providers including in financial services, legal services, accounting services, telecommunications services, education services and other professional services.

100. Under KAFTA, Korean exports to Australia are also expected to increase, particularly in Korea´s major export areas including passenger motor vehicles and consumer goods.

101. KAFTA is consistent with Australia's trade policy objectives as it is a comprehensive, high-quality trade agreement that complements multilateral and regional trade liberalisation. KAFTA is consistent with Australia's existing international commitments, including those under the WTO Agreement.

CONSULTATION

Business, industry and civil society

102. Stakeholder views were actively encouraged and considered throughout negotiations on KAFTA, including through an initial call for public submissions in December 2008 to seek views on the expected economic, regional, social, cultural, regulatory and environmental impacts of a free trade agreement with Korea. This was sent by email to over 600 addressees, by letter to over 50 key stakeholders, as well as advertised in the media and on DFAT's website. As part of this process DFAT received more than 60 submissions, predominantly from individual companies and peak industry groups. A diverse range of sectors participated in consultations, including agriculture, education, manufacturing, telecommunications, mining and energy, and financial institutions.

[9] Conducted by the Centre for International Economics in late November 2013

103. Most submissions supported an FTA with Korea. A common concern raised was that Korea's FTAs with competitors (ASEAN, Chile, US, EU) risked reducing the competitiveness of certain Australian food and agricultural products in the Korean market. Other industries identified sensitivity toward Australian imports of Korean goods, most particularly in the manufacturing sector.

104. Australian agricultural industry bodies (including the National Farmers' Federation, Meat and Livestock Australia, the Horticultural Market Access Committee, the Australian Dairy Industry Council, and the Australian Wine and Brandy Association) and individual producers strongly pushed for a comprehensive agriculture outcome so as to allow Australian agricultural exporters to remain on competitive terms with Chile (for horticulture and wine), ASEAN countries (for sugar), the EU (for dairy and wine) and with the US (for beef, sheep and goat meat, dairy, barley, molasses and other sugar, and some root crops, such as potatoes).

105. Stakeholder views on a FTA with Korea were mixed within Australia's automotive industry. Some members of the industry expressed concern that KAFTA would impose additional pressure on local automotive manufacturing. Some stakeholders called for a FTA to improve reciprocal access for Australian automotive products into Korea if Australia were to remove its tariffs on Korean imports. Pointing to the potential for greater collaboration through the automotive components trade between Australia and Korea, other stakeholders expressed support for a FTA.

106. Automotive parts companies were mainly concerned that the FTA not undermine the ongoing viability of the Australian passenger vehicle industry. KAFTA largely meets these concerns by providing for a phase-out of Australia's tariffs for motor vehicles and automotive parts over three to five years, while securing immediate entry into force elimination of Korea's eight per cent tariffs on motor vehicles and automotive parts.

107. Among other manufacturing industries, stakeholders noted a range of competitive pressures, including the strong Australian dollar and high domestic cost structures, had led to reduced activity and volumes in Australian manufacturing. Removal of Australia's remaining five per cent tariff on most manufactured imports would increase that pressure. Stakeholders called for a gradual phasing out of the tariff, rather than an immediate elimination on entry into force, in order to avoid significant short-term disruption to the domestic manufacturing sector.

108. Stakeholders in the textiles, clothing and footwear sector were concerned to receive reciprocal treatment in any FTA with Korea. The carpets industry sought similar treatment to that under the ASEAN-Australia-New Zealand FTA, where Australian tariffs on carpets would not be eliminated until 2020. KAFTA addresses these concerns by providing phase-out of tariffs on most carpet lines, with the five per cent tariff to be removed in five equal annual instalments beginning in year four of the agreement (i.e. duty free from year eight). Korea will eliminate its 10 per cent tariff on carpets on entry into force. The plastics and footwear industries were concerned that Australia not eliminate its tariffs without reciprocity from the Korean side, and these concerns have been addressed. Australia's tariffs on sensitive footwear and plastics lines will be phased out over five years for sensitive footwear and from three to five years for sensitive plastic lines. Korea will eliminate tariffs on all footwear lines (with the exception of a single line) on entry into force, while tariffs on the majority of plastic lines will be eliminated on entry into force, with a limited number phased-out over three to five years.

109. The Ricegrowers Association of Australia expressed disappointment that rice was excluded from KAFTA with South Korea being an important market for the Australian rice industry. While Australia negotiated on every product, some products were too sensitive for Korea to include in KAFTA. Rice is a highly sensitive product for South Korea and its inclusion in KAFTA proved too difficult, particularly since rice is excluded from all Korea's FTAs, including with the United States and European Union. Accordingly, although rice does not benefit from greater market access under KAFTA, rice growers of Australia will not be disadvantaged vis-à-vis its other foreign competitors in the Korean market.

110. Other products excluded from KAFTA include abalone, Korean citrus, ginger, apples, pears, walnuts, onions, capsicums, capsicum, garlic, chestnuts and certain wood products. However, Korea is not a significant market for Australia's exports of these products.

111. Submissions were received from a range of services industry bodies, including the Australian Bankers' Association, International Legal Services Advisory Council, Investment and Financial Services Association, TAFE Directors Australia and Universities Australia. Respondents signalled strong interest in removing barriers to Australian services in the Korean market, including restrictions on commercial presence and licensing requirements. Cooperation on professional services could also be improved. Some submissions warned that an FTA should not undermine the ability of the Australian Government to regulate on public health and welfare issues.

112. In addition to receiving written submissions, DFAT undertook consultations in Seoul, Canberra and State and Territory capitals with both industry and civil society. DFAT held six-monthly stakeholders meetings involving peak associations; conducted sectoral roundtables; regularly briefed the Australia-Korea Business Council; and provided input for community cabinet meetings. Public forums, open to individuals and groups, were held in capital cities, with invitations sent to key stakeholders. DFAT held a large number of meetings and discussions with affected organisations and companies, and provided regular updates on negotiations on its website.

States and Territories

113. State and Territory governments were consulted through regular Senior State and Territory Trade Officials Group (STOG) and Commonwealth-State-Territory Standing Committee on Treaties (SCOT) meetings. State and Territory departments were contacted and invited to make public submissions at the outset of negotiations. In September 2009 the then Trade Minister wrote to State and Territory leaders seeking endorsement of Australia's initial services and investment offer, reflecting the responsibilities State and Territory Governments have for regulation of services and investment activities, prior to exchanging offers with Korea. State and Territory Governments subsequently advised that they supported the initial offer subject to continuing consultations on KAFTA.

114. State and Territory Governments and Ministers were also consulted via correspondence, Officials' Groups meetings (including the Standing Committee on Treaties) and teleconferences. Federal Government agencies and Ministers have been consulted via bilateral meetings, correspondence and inter-departmental committee meetings. Stakeholders were updated via bulletins following each round of negotiations.

Commonwealth Government agencies

115. Commonwealth Government departments were consulted extensively throughout the negotiations and representatives from relevant departments attended negotiations in Australia and Korea.

CONCLUSION

116. It is in Australia's interests to enter into an FTA with Korea, given KAFTA is expected to:

- deliver commercially meaningful market access gains that will benefit Australian agriculture, resources, energy and manufacturing exporters, service providers, consumers and investors;
- secure Australian exporters' competitive position in Korea against other countries' suppliers that are enjoying preferential treatment under Korea's existing bilateral FTAs and against competitors from countries that are currently negotiating their own FTAs with Korea;
- deliver faster and deeper market access gains than are possible through multilateral WTO or any regional negotiations;
- be consistent with WTO requirements for free trade agreements;
- complement Australia's efforts to seek additional trade liberalisation from Korea through the WTO and regional mechanisms; and
- only impose adjustment costs that would be outweighed by the overall economic gains to the Australian economy.

It should be noted that:

- the removal of tariffs on merchandise imports will lead to reductions in tariff revenue, and thereby affect the government's fiscal position, although this would be offset over time by the second-round effects of increased economic activity;
- KAFTA will eliminate Australia's remaining low-level (five per cent) tariff protection for Australia's automotive and other consumer products industries against Korean competition, resulting in lower costs to Australian consumers; and
- Korea will maintain protection on a small number of sensitive sectors including rice, walnuts, milk powders, honey, abalone and certain wood products. However, these represent about 0.2 per cent of Australian exports to Korea and we will not be disadvantaged vis-à-vis our competitors in relation to these products.

IMPLEMENTATION AND REVIEW

117. Following the conclusion of negotiations in December 2013, the text of KAFTA will be translated and undergo legal verification before it is signed. Both

English and Korean versions will be official versions of the agreement. Following Cabinet and Executive Council approval, the finalised FTA text will be signed by representatives of the Australian and Korean governments. Upon signature, the full text of the agreement will be made publicly available.[10] Following signature, the text will be tabled in Parliament and examined by the Joint Standing Committee on Treaties.

118. Implementation of KAFTA will require changes to: the *Customs Act 1901;* the *Customs Tariff Act 1995* and associated regulations; the *Copyright Act 1968*; the *Foreign Acquisitions and Takeovers Regulations 1989*; and the *Life Insurance Regulations 1995*.

119. Once domestic processes are completed, including amendments to relevant legislation and regulatory changes, Australia and Korea will exchange diplomatic notes advising that the ratification process has been completed by both Parties. Both Parties are aiming for entry into force before the end of 2014.

120. The provisions of the FTA do not set out dates for the review or expiry of the FTA. However, the FTA provides mechanisms for unilateral termination by either party and review through the joint FTA institutional provisions.

[10] Consistent with past practice, Korea wishes to initial the agreement prior to signature and may release publicly the FTA text at that time. At time of writing, Australian officials were consulting with Korean counterparts on when the text would be made available publicly.

ATTACHMENT: REGULATORY BURDEN AND COST OFFSET ESTIMATE

1. The entry into force of KAFTA is expected to result in a small reduction in ongoing business compliance costs for Australian exporters to Korea. The reduction arises from the possibility that some businesses that previously sought and obtained non-preferential certificates of origin (COOs) may now be able to self-certify the origin of their goods.

2. There is a significant level of uncertainty regarding the number and composition of COOs issued in respect of Australian exports into Korea. Accordingly, the estimates of the compliance costs under the status quo – as well as the likely incremental changes – are largely assumption driven and should be interpreted as such. However, based on the available data, it is possible to gain an appreciation of the order of magnitude of these changes.

Certificates of Origin

3. COOs are issued by industry groups such as the Australian Chamber of Commerce and Industry and the Australian Industry Group.

4. Preferential certificates account for around 10 per cent of all certificates issued. Preferential certificates are generally issued in respect of countries with whom Australia has an FTA, but which do not allow for self-declaration.

5. Korea is Australia's third largest export destination, with the share of Australian exports going to Korea rising to eight per cent in 2012-13.

7. However, under the status-quo, it is expected that demand for Australian exports would be relatively less relative to Korea's other trading partners, and that figure could be expected to decline over time.

Direct Costs

8. Where businesses seek third-party certification from industry groups, the cost of each certificate varies from between $20-70 at an average of $33.

9. The cost of a certificate depends on the level of complexity – relatively simple or 'wholly obtained' goods (such as primary products, agricultural exports or resources) attract lower fees than complex or composite manufactured goods (which may require more complex cost of manufacture calculations).

10. It is estimated that around 70 per cent of Australian goods exported to Korea are 'wholly obtained' goods. A representative cost for the certification of Australian exports to Korea in general would therefore be towards the lower end of the $20-70 range.

Administrative costs

11. The ongoing administrative costs incurred by a business in preparing the documentation to obtain a COO are likely to be relatively low. As noted above, the bulk of Australian exports to Korea are 'wholly obtained' goods. Further, while new businesses may expend considerable time applying for certification for their initial consignment, as a matter of practice this information is re-submitted for subsequent certifications. In addition, much of the information required would be collected for other purposes. The administrative time burden for each application is therefore estimated to be modest.

12. Similarly, the records related to certificate of origin are required to be kept for five years for most foreign customs agencies. However, businesses are required under Australian Tax Law to retain these records for seven years. The incremental compliance burden associated with record keeping for COOs is therefore assessed as nil.

Incremental reduction in number of certificates under KAFTA

13. COOs are required for Australian exports to Korea for a range of purposes in addition to tariff compliance. For example, overseas customs agencies may require COOs for the purpose of calculating import quotas. Alternatively, foreign banks may require COOs in order to provide letters of credit.

14. Therefore, it is possible that of the total number of Australian COOs currently issued in respect of Korea, some of these will no longer be required as a result of the KAFTA. However, each business will have to consider for themselves, as a commercial decision, whether the benefits of obtaining a COO is outweighed by the costs (administrative and otherwise).

15. It is therefore assumed that there will be a modest reduction in the number of COOs issued in respect of Australian exports to Korea as a result of the KAFTA. To the extent that this reduction occurs, those businesses will save the direct costs of certification by industry bodies; together with the administrative costs.

Regulatory Burden and Cost Offset (RBCO) Estimate Table

Average Annual Compliance Costs (from business as usual)				
Costs ($m)	**Business**	**Community Organisations**	**Individuals**	**Total Cost**
Total by Sector	($96 318.20)	$	$	($96 318.20)
Cost offset ($m)	**Business**	**Community Organisations**	**Individuals**	**Total by Source**
Agency	$	$	$	$
Within portfolio	$	$	$	$
Outside portfolio	$	$	$	$
Total by Sector	$	$	$	$
Proposal is cost neutral?	☑ **yes** ☐ **no**			
Proposal is deregulatory	☑ **yes** ☐ **no**			
Balance of cost offsets	**$96,318.20**			

KOREA-AUSTRALIA FREE TRADE AGREEMENT (KAFTA)

AN INTRODUCTION TO THE TEXT OF THE AGREEMENT

Australian Government

Australia UNLIMITED

KOREA-AUSTRALIA FREE TRADE AGREEMENT (KAFTA)

1. KAFTA is a comprehensive free trade agreement similar in form and content to Australia's other comprehensive agreements, such as with the United States and Singapore.

2. The full Agreement comprises 23 chapters with associated annexes and schedules, and four side letters. These documents, together with additional explanatory materials, are available at dfat.gov.au/fta/kafta.

Preamble and Chapter 1: Initial Provisions and Definitions

3. The Preamble recites the historical basis, bilateral context and broad aims for KAFTA.

4. Chapter 1 establishes KAFTA, consistent with World Trade Organization (WTO) rules. The Chapter also sets out KAFTA's relationship to other international agreements and provides general definitions to guide interpretation of the Agreement.

Chapter 2: Trade in Goods

5. The Trade in Goods Chapter prohibits the Parties from raising any tariff, and obliges the Parties to progressively reduce and/or eliminate tariffs in accordance with each Party's applicable schedule contained in two Schedules of Tariff Commitments (one for Australia and one for Korea). It establishes the framework of rules for trade in goods between the Parties. It affirms a number of WTO provisions that already govern trade in goods among the Parties designed to promote transparency.

6. The Chapter ensures the consistency of KAFTA with the WTO Import Licensing Agreement. It requires each Party to provide information about their respective licensing requirements for imported goods promptly after the date of entry into force of KAFTA, and publish any new or modified licensing requirements.

7. The Chapter requires the Parties to ensure that any non-tariff measures are transparent and do not create unnecessary barriers to trade between the Parties. It provides a review mechanism to address non-tariff measures, on a case-by-case basis, through the establishment of a Committee on Trade in Goods that will consider methods to promote trade between the Parties and review any non-tariff measure identified by a Party. The Committee on Trade in Goods will consider approaches to better facilitate trade and may submit any recommendations to the Joint Committee for consideration or action.

8. The Chapter prohibits the imposition of export duties on goods destined for the other Party, unless the duty is also applied to goods for domestic consumption.

9. The goods market access commitments (Annex2-A) and tariff schedules for each country are attached to this chapter.

10. Set out in an appendix to the Chapter are the administrative procedures for agricultural country-specific tariff rate quotas (TRQ) that will apply to certain Australian imports into Korea (Appendix 2-A-1). It provides for the publishing of information regarding the utilisation of the TRQs and sets out a method by which the Parties may resolve any issues arising with the administration of TRQs.

Chapter 3: Rules of Origin and Origin Procedures

11. The Rules of Origin (ROO) Chapter and the accompanying Schedule of Product Specific Rules (Annex 3-A) establish the criteria for determining whether goods will qualify for preferential tariff treatment under KAFTA (whether a good ‘originates’ in Australia or Korea). The Chapter sets out the procedures and documentation for demonstrating that a good qualifies for preferential treatment and, if necessary, verifying that this is the case.

12. In general, a good can qualify as 'originating' under KAFTA if:

- wholly obtained or produced entirely in the country;
- it is produced entirely in either or both Korea and Australia, from materials that conform to the provisions of the ROO Chapter; or
- the product is manufactured in either or both Korea and Australia using inputs from other countries, and meets the Product Specific Rules and requirements specified in the ROO Chapter.

13. Wholly obtained or produced goods are typically agricultural goods and energy and mineral resources. Goods produced entirely from originating materials are products produced entirely in either or both Korea and Australia, exclusively from originating materials, with no imported material content.

14. For goods that contain inputs sourced outside the territories of KAFTA, a change of tariff classification (CTC) approach has been adopted. A good qualifies as originating if a transformation takes place defined in terms of a change in the tariff code of the input to the tariff code of the final product (for example, transforming gold into jewellery). The Schedule of Product Specific Rules sets out the specific CTC requirements.

15. For some goods, a regional value content (RVC) approach has been specified. Under an RVC approach, domestically sourced materials and processes must represent an agreed proportion of the final value of the product. The RVC component can take the form of either an additional requirement to the specified CTC, or can provide an optional test, allowing the product to meet a lesser degree of tariff change if the threshold is reached.

16. The Chapter includes provisions covering determination of origin, including: methodology for calculating regional value content; non-qualifying operations which do not affect originating status; treatment of accessories, spare parts and tools; treatment of goods where only a small proportion of inputs fail to meet the relevant ROO (the so-called *de minimis* principle); treatment of packing materials and containers; and transport of goods through non-Parties.

17. The Chapter also sets out procedures and requirements relating to documentation that the good satisfies the origin requirements. Australian and Korean exporters and producers of goods can self-certify through completing a Certificate of Origin (COO). Reflecting the trade facilitating nature of KAFTA, a COO can apply to multiple importations of the goods described in the COO. Australian exporters and producers also have the option to be granted a COO from an authorised body. Furthermore, KAFTA provides flexibility for each Party to waive the requirement of a COO under certain conditions.

18. The Chapter contains a provision relating to review and appeal of decisions on eligibility for preferential tariff treatment / determination of origin. The Chapter's direct transport provision allows goods to be transhipped through, stored, repacked and relabelled in non-Parties and retain origin providing certain conditions are observed. The direct transport provisions are business friendly and reflect modern trading practices such as the use of distribution hubs.

19. The treatment of goods partially processed in outward processing zones, such as the Gaeseong Industrial Complex, is a matter for further consideration by a committee to be established under KAFTA. Under KAFTA Annex 3-B, the Committee on Outward Processing Zones is to review the conditions on the Korean Peninsula and identify geographic areas that may be designated as outward processing zones.

Chapter 4: Customs Administration and Trade Facilitation

20. The Chapter on Customs Administration and Trade Facilitation establishes arrangements for expeditious, predictable, transparent and simplified customs administration aimed at facilitating trade between the Parties. In particular, the Chapter encourages procedures that facilitate the clearance of low-risk goods, and provides for the use of advance rulings to give greater certainty to business, and ensure the availability of review and appeal mechanisms to address disputes.

21. The Chapter requires the Parties to provide for written advance rulings on tariff classification, valuation and origin to be issued in response to a request by importers or by exporters or producers in the exporting Party.

22. The Chapter promotes the use of information technology solutions to facilitate trade, and encourages a focus on a risk management approach to customs administration. It provides for the adoption of simplified procedures that ensure

the prompt release of goods, including systems for urgent clearance, and which allow for advance, electronic processing before the arrival of goods.

23. The Chapter provides for the establishment of enquiry points for FTA-related queries and the publication of all statutory, regulatory and administrative requirements on the Internet.

24. There is a requirement for Parties to ensure importers have access to independent administrative and judicial review of decisions taken by their Customs administrations.

25. The Chapter provides for increased customs cooperation to facilitate the implementation of KAFTA, and to give advance notice of any proposed legal or policy changes which might affect KAFTA's operation.

Chapter 5: Technical Barriers to Trade and Sanitary and Phytosanitary Measures

26. This Chapter affirms the Parties' rights and obligations under the WTO Agreement on Technical Barriers to Trade and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The Parties commit to ensure that technical regulations, including mandatory marking or labelling of products, do not create unnecessary obstacles to international trade. It provides for the establishment of arrangements for enhanced information exchange, cooperation and consultation. It identifies a range of possible vehicles for giving effect to enhanced cooperation. It recognises the benefits of increasing efficiency, avoiding duplication and ensuring cost effectiveness in conformity assessment procedures. It provides for the Parties to facilitate the acceptance of conformity assessment procedures. It also provides for the Parties to designate TBT Coordinators to facilitate cooperation between the Parties on standards, technical regulations and conformity assessment procedures.

27. The Chapter contains SPS provisions on arrangements aimed at strengthening information exchange, cooperation and consultation between the Parties and provides for the establishment of Contact Points. The Parties agree to hold technical meetings to review and monitor implementation of SPS commitments, enhance mutual understanding of each party's SPS measures and regulatory processes.

28. The dispute settlement provisions of KAFTA are not applicable to any matter arising under this Chapter.

Chapter 6: Trade Remedies

29. The Chapter on Trade Remedies affirms Australia and Korea's rights and obligations under the WTO with regard to the application of safeguards, anti-dumping and countervailing measures. It establishes arrangements for a KAFTA

specific safeguard measure which may be applied during the transitional period, that is, while tariffs are being reduced and/or eliminated.

30. The Chapter sets out the conditions and limitations of a safeguard action. A Party can only apply a safeguard measure following an investigation by the Party's competent authorities to establish whether the conditions justifying such action are met. A safeguard action cannot be taken more than once against the same good. The Chapter also provides for provisional safeguard measures in critical circumstances (200 days maximum).

31. The safeguard action may involve either a suspension in the reduction of the tariff or an increase in the tariff. The Chapter also contains procedures/provisions in relation to compensation in the form of substantially equivalent concessions.

32. The Chapter provides Korea with the ability to impose an agricultural safeguard measure when imports of Australian beef, malt and malting barley, maize and refined sugar reach predetermined volume levels in a calendar year. The measure is not automatic and is temporary, as it cannot apply beyond the end of the calendar year.

33. Through referencing WTO provisions relating to anti-dumping, countervailing measures and global safeguard measures, the Chapter provides certainty regarding the application of relevant WTO disciplines, and some limited 'WTO-plus' treatment. In relation to anti-dumping measures the Chapter provides for a Party to normally apply the 'lesser duty' rule if this is adequate to remove injury to domestic industry. On Countervailing Measures, the Chapter affirms the WTO rights and obligations of the two Parties. Regarding global safeguard measures, the Chapter provides that there should be no duplication in the application of bilateral and global safeguard measures, and for the Parties to consult with each other relating to consideration by either Party of the initiation of global measures.

Chapter 7: Cross-Border Trade in Services

34. Core obligations in the Chapter on Cross-Border Trade in Services require each Party to provide market access, national treatment, and most-favoured-nation (MFN) treatment to service suppliers of the other Party. The Chapter also includes the obligation not to impose local presence requirements. Measures which do not conform with these obligations are listed in 'negative lists' contained in schedules of non-conforming measures (NCM Schedules). The NCM Schedules list specific areas which are carved out from the obligations of the Chapter. Any sectors not listed in the NCM Schedules are subject to the liberalising obligations of the Chapter.

35. Other key obligations in the Chapter provide enhanced certainty and transparency for each Party's services suppliers in relation to licensing requirements and other domestic regulations. Each Party is required not to unduly restrict the use of enterprise names used by other Party's services

suppliers. The Chapter incorporates a framework for enhanced cooperation on professional services (Annex 7-A), as well as an Audiovisual Co-Production Agreement (Annex 7-B). The Chapter does not apply to services provided in the exercise of governmental authority.

Chapter 8: Financial Services

36. The Chapter on Financial Services applies to measures affecting financial institutions of both Parties as well as to investments in financial institutions and cross-border trade in financial services. As with the Cross-Border Trade in Services Chapter, this Chapter provides for the scheduling of market access commitments on a ‘negative list’ basis, where each Party lists in NCM Schedules specific areas which are carved out from the obligations of the Chapter. Core obligations in the Chapter require each Party to provide market access, national treatment and MFN treatment to financial institutions and cross-border financial service suppliers of the other Party, unless otherwise listed in the NCM Schedules. The Chapter also requires each Party not to impose nationality requirements on senior management and boards of directors, unless listed in the NCM Schedules.

37. The Chapter provides for enhanced non-discriminatory treatment of banks, insurance companies and other financial firms of both Parties. There are specific commitments allowing for the offshore processing of information and other back-office functions, and for cross-border portfolio management services. The Chapter enables financial services suppliers of either Party to provide new financial services that the other Party permits its own institutions, in like circumstances, to provide. Importantly, the Chapter provides safeguards to allow either Party to adopt or maintain measures for prudential reasons.

Chapter 9: Telecommunications

38. The Chapter on Telecommunications governs areas including resale, submarine cable access and the allocation of telecommunications spectrum. The Chapter requires both Parties to prevent anti-competitive conduct and ensure that major suppliers provide interconnection, leased circuit services and co-location of equipment on reasonable, non-discriminatory terms and conditions.

39. Other key outcomes include commitments on technology neutrality, number portability and network unbundling. There are strong provisions on transparency and review for regulatory decisions. Regulators must be independent and impartial and properly explain decisions, such as determining which services are subject to regulation and licensing decisions.

Chapter 10: Movement of Natural Persons

40. The Chapter on Movement of Natural Persons provides for coverage of temporary entry of service suppliers and investors. Australia and Korea have

made commitments to liberalise access for skilled service suppliers, investors and business visitors to enter and stay in the territory of the other Party. Australia has agreed not to apply labour market testing.

41. Annex 10-A sets out in detail the requirements that skilled service suppliers, investors and business visitors (including citizens and permanent residents) must meet to qualify under this Chapter.

Chapter 11: Investment

Section A: Investment

42. This Chapter covers market access and protections for investors of both Parties. The key commitments in this Chapter include:

- **Non-discrimination** through national treatment and most-favoured-nation (MFN) provisions;
- **Minimum standard of treatment:** the foreign investor / investment to be treated in accordance with customary international law, including fair and equitable treatment and full protection and security;
- **Expropriation and compensation:** commitment not to expropriate or nationalise a covered investment unless it is undertaken in a non-discriminatory manner, for a public purpose and on payment of prompt, adequate, and effective compensation;
- **Transfers:** commitment to allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory;
- **Performance requirements:** lists the types of requirements which each Party agrees not to impose as a condition of establishment or operation of an investment in the other Party; and
- **Senior management and board of directors:** prohibition on requiring the appointment of particular nationalities to senior management positions in businesses that are covered investments.

43. As with the Chapter on Cross-Border Trade in Services, the Chapter on Investment provides for measures which do not conform with the obligations of the Chapter to be scheduled on a ‘negative-list’ basis. Such non-conforming measures are set out in the NCM Schedules.

Section B: Investor-State Dispute Settlement

44. The Chapter includes an Investor-State Dispute Settlement (ISDS) mechanism which allows investors to directly enforce investment obligations. Where an investor from one Party to KAFTA alleges loss or damage as a consequence of the other Party breaching a commitment in the Investment Chapter, the investor can commence arbitration against that Party in a tribunal.

Chapter 12: Government Procurement

45. Under this Chapter procuring entities of one Party (at the central level of government and, in Australia's case, States and Territories, and, in Korea's case, certain regional governments) are required to afford the suppliers, goods and services of the other Party the same treatment that applies to its domestic suppliers, goods and services.

46. Annex 12-A sets out the specific entities bound by commitments and other conditions (such as monetary thresholds) that must be met before a procurement will be covered by the Chapter. Transactions not covered by this Chapter include procurements below the relevant thresholds (set out in the Annex) and procurements by government entities which are not listed in the Annex to the chapter. In addition, the Government Procurement chapter is limited in application by specific exceptions.

47. The Chapter also sets out rules and procedures for conducting procurements which are consistent with existing Australian government procurement frameworks, requiring no domestic change.

Chapter 13: Intellectual Property Rights

48. The Chapter on Intellectual Property Rights reinforces commitments Australia and Korea have made under the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). It builds on TRIPS with provisions for the protection and enforcement of Intellectual Property (IP) equivalent to that provided under Australia’s free trade agreement with the United States.

49. Korea and Australia have committed to accord national treatment in relation to the protection of intellectual property rights, with exceptions, and agreed to specific commitments on patents, trademarks, copyright and related rights, and enforcement.

50. Provisions on the enforcement of intellectual property clarify civil and administrative procedures and remedies to ensure judicial authorities have appropriate authority to deal efficiently and effectively with infringement cases. The Chapter also includes requirements related to border measures which ensure that authorities are able to deal with suspected infringing goods.

51. A Committee will be established under this Chapter to monitor and assess the implementation of the Chapter, provide a mechanism for the exchange of information on IP rights, discuss and recommend cooperative activities and to discuss and seek resolution of any matter arising under the Chapter.

Chapter 14: Competition Policy

52. The Chapter on Competition Policy ensures the trade and investment liberalisation achieved through KAFTA is not undermined by anti-competitive practices. Australia and Korea have committed to:

- address anti-competitive practices, including cartel behaviour, abuse of dominant position and anticompetitive mergers, by maintaining and enforcing competition laws in their respective jurisdictions;
- ensure that competition laws are applied to all businesses and to only permit exemptions where they are transparent and in the public interest; and
- ensure that the enforcement of their respective competition laws are consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

53. The Chapter also provides a framework for competition authorities in Korea and Australia to cooperate and coordinate their enforcement practices, including through:

- consultation on how to further curtail anticompetitive practices that affect trade or investment between the Parties; and
- notification of enforcement activity that may affect the interests of the other Party.

Chapter 15: Electronic Commerce

54. The Chapter on Electronic Commerce supports businesses of both Parties in harnessing the efficiencies of electronic commerce, while ensuring the protection of consumers engaging online. Key commitments include:

- **Customs duties**: neither Party shall impose customs duties on electronic transmissions between the two countries.
- **Domestic regulations**: the Parties undertake to adopt or maintain domestic measures regulating electronic commerce taking into account the *UNCITRAL Model Law on Electronic Commerce*, including measures to minimise the regulatory burden on electronic commerce.
- **Authentication and digital certificates**: the Parties commit to maintaining domestic legislation governing methods of authenticating electronic transactions.
- **Online consumer protection**: the Parties undertake to adopt or maintain measures to protect consumers engaged in electronic commerce, which are at least equivalent to those provided for consumers engaged in other forms of commerce. The Parties also recognise the importance of cooperation between their respective national consumer agencies on activities related to cross-border e-commerce.
- **Paperless trading**: the Parties agree to endeavour to make publicly available, in electronic form, all trade administration documents and to accept electronic trade administration documents as the legal equivalent of the paper version of those documents.

- **Online personal data protection**: the Parties undertake to adopt or maintain measures which ensure the protection of the personal data of the users of electronic commerce.
- **Unsolicited commercial electronic messages**: the Parties agree to endeavour to adopt or maintain measures to regulate unsolicited spam and telemarketing.

Chapter 16: Cooperation

55. The Chapter supports increased bilateral cooperation in the fields of agriculture, fisheries, aquaculture, forestry, energy and mineral resources. Coverage includes cooperation on innovation, research and development in areas such as sustainable resource management, climate change adaptation and mitigation, animal husbandry practices, productivity enhancement, biotechnology, food safety and the exploration, extraction, processing, transportation and use of energy and mineral resources. It establishes Contact Points for cooperation.

56. It promotes cooperation on sanitary and phytosanitary matters, namely in the areas of human, animal and plant health and food safety. It underlines the importance of domestic agricultural production and bilateral trade for the maintenance of a stable and reliable food supply and the fulfilment of food security objectives. In the event of a severe and sustained disruption to supply of staple foods and feed grain, the Chapter provides for Australia and Korea to enter into consultations and to endeavour to take any appropriate actions. Committees on Agricultural Cooperation and Energy and Mineral Resources Cooperation are established to review and assess the implementation of the Chapter and to make recommendations regarding cooperative activities.

Chapter 17: Labour

57. The Chapter provides for the enhancement of cooperation between Korea and Australia on trade-related aspects of labour issues, while preserving the policy space for each to establish and maintain national laws, policies and priorities. It requires each Party to respect the other Party’s right to establish its own labour policies and priorities and to adopt and administer its labour laws, regulations and practices in accordance with those policies and priorities. Under this Chapter the Parties also commit to not failing to enforce their own labour laws and state that they shall endeavour not to weaken them to encourage trade. The Parties also recognise that labour laws, policies and priorities should not be used for trade protectionist purposes. An ad-hoc committee can be established or consultations held in the event of any concerns of a Party about implementation of the Chapter. The Chapter is not subject to dispute settlement or ISDS.

Chapter 18: Environment

58. Similar to the Labour Chapter, the Environment Chapter also provides for enhanced cooperation between Korea and Australia on trade-related aspects of environment issues. The Parties state their respect for the other’s right to

establish its own environmental policies and priorities and to adopt and administer its environmental laws, regulations and practices in accordance with those policies and priorities. As with the Labour Chapter, the Parties also commit to not failing to enforce their own environment laws, state that they shall endeavour not to weaken them to encourage trade and also recognise that environment laws, policies and priorities should not be used for trade protectionist purposes. An ad-hoc environment committee can be established or consultations held in the event of any concerns of a Party about implementation of the Chapter. The Chapter is not subject to dispute settlement or ISDS.

Chapter 19: Transparency

59. The Chapter on Transparency requires the prompt publication of all laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by KAFTA, allowing interested persons and either Party to be aware of them. The Parties must also notify each other of any proposed or actual measure they might take that could materially affect the operation of the Agreement or otherwise substantially affect the other Party's interests under KAFTA.

60. The Chapter also contains provisions in respect of the fair conduct of any administrative proceedings undertaken in regard to laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by KAFTA. It also requires each Party to provide impartial and independent review and appeal processes for final administrative actions regarding matters covered by the Agreement.

Chapter 20: Dispute Settlement

61. This Chapter includes a binding State-to-State dispute settlement mechanism modelled on previous free trade agreements and the WTO system. Most substantive obligations in KAFTA will be subject to this mechanism, except those found in the Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Competition Policy, Labour, Environment and some aspects of the Movement of Natural Persons chapters.

Chapter 21: Institutional Provisions

62. The Chapter on Institutional Provisions establishes a Contact Point to facilitate communications between the Parties. The Chapter also establishes a Joint Committee, consisting of representatives of the Parties and co-chaired by each country's Minister of Trade. The Joint Committee will oversee implementation and operation of KAFTA and supervise and coordinate the work of all subsidiary bodies. The Joint Committee will meet within one year after KAFTA enters into force, annually for the first three years and thereafter as the Parties mutually agree.

63. The Chapter also establishes a variety of committees and working groups under the auspices of the Joint Committee. The committees and working groups shall inform the Joint Committee of their schedules and agendas and report to the Joint Committee on their activities.

Chapter 22: General Provisions and Exceptions

64. The Chapter on General Provisions and Exceptions sets out exceptions which apply to a number of chapters of the Agreement. Such exceptions ensure FTA obligations do not unreasonably restrict government action in key policy areas, including to protect essential security interests, the environment and health.

65. The Chapter also carves out application of KAFTA to a Party's taxation measures except in certain circumstances. However, should any inconsistency arise with the bilateral tax treaty, the tax treaty will prevail.

66. The Chapter also provides that nothing in the Agreement shall require a Party to furnish or allow access to confidential information that would impede law enforcement, be contrary to the public interest or prejudice legitimate commercial interests of public or private enterprises. Where one Party discloses confidential information to the other Party, the Chapter provides for protection of that information.

Chapter 23: Final Provisions

67. The Chapter on Final Provisions governs the way in which KAFTA operates as a treaty. It establishes the processes by which the Agreement will enter into force, how it may be amended and the conditions under which it may be terminated.

FACT SHEET: TRADE IN GOODS

The Korea-Australia Free Trade Agreement (KAFTA) is a comprehensive agreement that substantially liberalises trade with Korea and creates significant new commercial opportunities for Australian businesses.

KAFTA achieves high levels of tariff elimination

- Korea will provide duty-free access on 84 per cent of Australia's current exports (by value) to Korea from entry into force of the Agreement
    - increasing to 95.7 per cent within ten years, and 99.8 per cent on full implementation.
- A small number of products will be subject to other phasing arrangements (including seasonal tariff elimination)
- Korea has insisted that some of its most sensitive products, such as rice, be excluded from any tariff concessions under KAFTA (accounting for only 0.2 per cent of Australia's current exports to Korea).
- Australia will provide duty-free access on 86 per cent of our current imports from Korea on entry into force of the Agreement
    - increasing to 100 per cent in eight years.
- For certain import sensitive products, Australia's tariff elimination will be undertaken progressively over transitional periods.
    - Products covered by transitional arrangements include certain motor vehicles and parts, steel, chemical, plastics and textile, clothing and footwear products.
    - A bilateral safeguard mechanism will also be in place to address any sudden surge in imports over the transitional periods.

KAFTA helps to address non-tariff barriers

- KAFTA creates a review mechanism to address non-tariff measures on a case-by-case basis, providing scope to address existing and future non-tariff measures.

KAFTA seeks to minimise red tape

- A claim for preferential tariff treatment for Australian goods exported to Korea can be made on the basis of either: a certificate of origin completed by the exporter or the producer; or a certificate of origin issued by an authorised body. This approach provides flexibility for traders, particularly small and medium-sized enterprises.

More information on the Korea-Australia Free Trade Agreement is available at www.dfat.gov.au/fta/kafta

Australian Government

Australia UNLIMITED

- A claim for preferential tariff treatment will be able to be made post-importation provided certain conditions are met.
- To provide increased transparency and legal certainty, KAFTA provides for:

  - advance rulings from customs authorities on the importation of products;
  - procedures to appeal the decisions of customs authorities;
  - the publication on the Internet of customs and trade related legislation; and
  - designation of enquiry points so members of the public can access further information on the customs issues covered by the Agreement.

- To simplify and streamline border procedures, KAFTA includes provisions on:

  - risk management, with resources focused on high-risk shipments and facilitating the release of low-risk goods;
  - advance electronic submission and processing of documentation to enable prompt release of goods on arrival;
  - simplified customs procedures; and
  - harmonising customs documentation and data requirements to minimise the administrative burden on importers and exporters.

- The Agreement also establishes mechanisms to facilitate future cooperation between Australia and Korea in the area of geographical indications and common names.

KAFTA Market Access Outcomes – Agriculture

Beef

Beef is Australia's biggest agricultural export to Korea, worth $703 million in 2012-13. Korea is Australia's third-biggest export market for Australian beef.

Key KAFTA outcomes include:

- Elimination of Korea's 40 per cent tariff on beef in 15 equal annual stages.
- Korea has the right to apply an agricultural safeguard on some beef products for 15 years

  - This discretionary safeguard can apply only on volumes above the safeguard trigger level set at 154,584 tonnes in year one, increasing by 2 per cent per annum (compound).
  - The safeguard trigger is set above current trade levels.
  - Volumes above the trigger level can attract a tariff that will fall from 40 per cent to 30 per cent to 24 per cent in five year intervals.

- Korea will eliminate its 18 per cent tariff on bovine offal over 15 years (with no safeguard)

- o Australia's exports of bovine offal to Korea were worth $60 million in 2012-13.

- Korea will eliminate its 72 per cent tariff on processed beef products over 15 years (with no safeguard).

Sugar

Korea is Australia's biggest export market for sugar, receiving over one third of our sugar exports. Raw sugar exports were worth $461 million in 2012-13. Key KAFTA outcomes include:

- Elimination of Korea's three per cent tariff on Australian raw sugar on entry into force
- Elimination of Korea's three per cent tariff on molasses over five years.
- Elimination of Korea's 35 per cent tariff on refined sugar over 18 years in equal annual steps. For 18 years Korea can apply a discretionary safeguard.
  - o The trigger for the safeguard will start at 946 tonnes, growing at two per cent per annum (compound). This volume is above current trade levels.

Wheat

Australia's exports of wheat to Korea were worth $450 million in 2012-13.

- Under KAFTA, Korea will eliminate its 1.8 per cent tariff on wheat from Australia on entry in force of the Agreement.
- Tariffs of 8 per cent on wheat gluten will also be eliminated on entry into force.

Dairy

Australian dairy exports to Korea were worth $80 million in 2012-13 despite very high tariffs. The industry will benefit from immediate duty-free quotas for key exports and the elimination of tariffs up to 89 per cent on most other dairy products. Key KAFTA outcomes are:

- Cheese, Australia's main dairy export to Korea, will enjoy liberalised trade including:
  - o an immediate duty-free quota of 4,630 tonnes, growing at three per cent per annum (compound); and
  - o progressive elimination of the 36 per cent tariff over periods ranging from 13 years for cheddar cheese to 18 years for cream cheese, with all cheese tariffs eliminated after 20 years.

- Butter, dairy spreads and preparations comprising more than 70 per cent butter, another lucrative group of products, benefit from a range of measures.

- o Immediate duty-free quota of 113 tonnes for butter, growing at two per cent per annum, with tariffs of up to 89 per cent eliminated within 15 years.
- o Elimination of the 8 per cent tariff on dairy spreads over three years and the 8 per cent tariff on preparations of butter over 10 years.

- Infant formula will receive an immediate duty-free quota of 470 tonnes, growing at three per cent per annum (compound). Tariffs of 36 per cent and 40 per cent will be eliminated over 13 and 15 years respectively.
- Tariffs on a range of other dairy products, such as milk, cream, ice-cream, yoghurt and whey will be eliminated within three to 20 years.

Malt and Malting Barley

- Korea will provide Australia with a duty-free quota on malt and malting barley of 10,000 tonnes in the first year, growing two per cent per annum (compound) for 15 years. This is in addition to Korea's WTO tariff rate quota on malt and malting barley of 30,000 tonnes and 40,000 tonnes respectively.
  - o Korea will also eliminate its out-of-quota tariffs of 269 per cent for malt and 513 per cent for malting barley over 15 years. A safeguard can apply on volumes above 147,486 tonnes during these 15 years. After that period, trade will be completely liberalised.
- Tariffs on Australian corn exports to Korea of 167 per cent will be eliminated progressively over ten years.
  - o Australian corn exporters will also continue to have access to Korea's WTO tariff rate quota of 6,102,100 tonnes at three per cent tariff.

Oilseeds

- Tariffs of between 8 and 30 per cent on rapeseed (canola) oil will be eliminated within five to 15 years. Korean imports from Australia were worth $31.4 million in 2012.
- Korea will eliminate on entry into force its 3 per cent tariff on cotton seeds. Australia's exports were worth $37 million in 2012-13.

Lamb/goat/pork

Korea will eliminate its 22.5 per cent tariff on all sheep and goat meat over 10 years. Tariffs on key pork exports of 22.5 to 25 per cent will be eliminated in five to 15 years.

Seafood

Key products, such as southern bluefin tuna (current tariff 10 per cent) and rock lobsters (20 per cent) will enter duty free after three years.

Wine

Australia's wine trade with Korea is significant, with nearly $10 million worth of wine exported to Korea in 2012-13. Wine exports currently face a 15 per cent tariff.

- On entry into force, Australian wine – including sparkling wine, red wine and white wine – will enter Korea duty free.

Horticulture

KAFTA will provide quick tariff elimination on most of our horticulture exports to Korea. Key KAFTA outcomes include:

- Tariffs on cherries (24 per cent), almonds (8 per cent) and dried grapes (21 per cent) will be eliminated on entry into force.
- Tariffs on asparagus (27 per cent) will be eliminated over three years.
- Tariffs on macadamia nuts (30 per cent), carrots (30 per cent) and most fruit juices (orange, lemon, lime, pineapple, grape and tomato – which face tariffs of 45-54 per cent) will be eliminated over 5 years.
- Tariffs on tomatoes (45 per cent) and apricots (45 per cent) will be eliminated over seven years.
- Tariffs on mangoes (30 per cent), peaches (45 per cent), plums (45 per cent) and peanuts (63.9 per cent) will be eliminated over 10 years.

For some of Korea's more sensitive horticulture products, seasonal tariff elimination during Australia's exporting months was achieved.

- Potatoes – tariffs of up to 304 per cent on potatoes (for chipping) will be eliminated on entry into force from December to April each year. For other months, the 304 per cent tariff will be eliminated over 15 years. Australia is Korea's major supplier of potatoes for chipping in value terms, with exports worth $6 million in 2012-13.
- Table grapes – the tariff of 45 per cent will almost halve to 24 per cent on entry into force and be eliminated over five years for the months November to April each year.
- Oranges – the tariff of 50 per cent will fall to 30 per cent on entry into force and be eliminated over seven years from April to September each year. Oranges will also have an immediate 20 tonne duty free quota
- Mandarins – the high tariff of 144 per cent will be eliminated over 18 years for the months April to September each year.
- Kiwi fruit – the tariff of 45 per cent will be eliminated over 15 years for the months November to April each year.

Exclusions

Despite sustained effort by Australia to have all products included, some products were too sensitive for Korea to include in the FTA. These products include: rice, unhulled barley, milk powders, condensed milk, abalone, ginger, apples, pears, watermelon, walnuts, onions, capsicums, garlic and frozen pork belly. Korea is not a significant market for these products, which account for 0.2 per cent of Australia's exports to Korea.

KAFTA Market Access Outcomes – Resources, Energy and Manufacturing

Resource commodities (energy and mineral products) and simply-transformed manufactures (comprising mainly unwrought metals such as aluminium and copper) accounted for over three-quarters of the value of Australia's merchandise exports to Korea in 2012-13. While many Australian mineral and energy exports to Korea already enter duty free, Korea applies tariffs of up to 8 per cent on a range of priority resource products, and tariffs of up to 13 per cent on manufactured products. Under KAFTA, Korea will eliminate tariffs on manufactures, resources and energy products within 10 years.

Crude Petroleum

- Korea is Australia's third largest market for crude petroleum, with exports of $1.5 billion in 2012-13.
- Korea's 3 per cent tariff on crude petroleum imports from Australia will be eliminated in five years.

Natural Gas

- Korea is Australia's third largest market for liquefied natural gas after Japan and China, with exports worth $701 million in 2012-13.
- Korea's 3 per cent tariff on natural gas imports from Australia will be eliminated immediately on entry into force of the Agreement.

Titanium Dioxide

- Korea was traditionally Australia's second largest market for titanium dioxide.
    - But, following the entry into force of Korea's FTA with the United States, Australia's titanium dioxide exports to Korea fell from $43 million in 2011-12 to $8 million in 2012-13.
- Korea's 6.5 per cent tariff on titanium dioxide imports from Australia will be eliminated immediately on entry into force of the agreement.

Unwrought Aluminium

- Korea is Australia's second largest market for unwrought aluminium after Japan, with exports worth $677 million in 2012-13.
- Korea's 1-3 per cent tariffs on unwrought aluminium imports from Australia will be eliminated immediately on entry into force of the agreement.

Pharmaceuticals (including vitamins)

- Australia exported $564 million worth of pharmaceutical products to Korea in 2012-13, its second largest market.
- Korea’s tariffs on pharmaceutical products range from 0-8 per cent
  - Tariffs on almost 90 per cent of pharmaceutical products will be eliminated immediately on entry into force of the Agreement, with the remainder phased out within three years.

Automotive Parts and Accessories

- Australian automotive manufacturers exported $93 million of gear boxes (for which Korea is Australia’s largest market) and $53 million of engines and engine parts to Korea in 2012-13.
- Korea’s 8 per cent tariffs on automotive part imports from Australia will be eliminated immediately on entry into force of the Agreement.

Sea Salt

- Although Korea’s tariff on sea salt of 1 per cent is low, exports in 2012-13 were worth $90 million.
- Korea’s 1 per cent tariff on sea salt imports from Australia will be eliminated immediately on entry into force of the agreement.

FACT SHEET: TRADE IN SERVICES

The Australia-Korea Free Trade Agreement (KAFTA) will provide Australian services exporters with the best treatment Korea has agreed with any trading partner, on par with its agreements with the United States and Europe. This includes new market access for suppliers of legal, accounting, and telecommunications services and guaranteed access across a broad range of other services.

Specific gains for services suppliers include:

LEGAL SERVICES

- Australian law firms will have access for the first time to Korea´s legal consulting services market by being able to:
  - establish representative offices in Korea upon entry-into-force;
  - enter into cooperative agreements with Korean law firms within two years after entry-into-force and, within five years, establish joint venture law firms;
  - hire local lawyers and deploy Australian lawyers more easily in Korea.
- Australian lawyers will also be permitted to advise on Australian and public international law as foreign legal consultants in Korea.

FINANCIAL SERVICES

- Australian financial services providers will be able to supply specified financial services on a “cross-border” basis, enabling Australian suppliers to do business without the need to open a full commercial presence. This includes:
  - investment advice and portfolio management services for investment funds;
  - a range of insurance and insurance related services including risk assessment, actuarial and claims settlement services.
- Australian financial services providers will benefit from commitments which require Korea to allow Australian institutions to transfer data into and out of its territory, allowing for more efficient data processing in Australia.
- KAFTA provides for enhanced transparency around licensing of financial institutions and regulatory decision-making, as well as streamlined licensing procedures for Australian suppliers in Korea.

ACCOUNTANCY SERVICES

- Australian accountants (holders of Certified Practicing Accountant or Chartered Accountant qualifications) will be able for the first time to provide accountancy consultancy services relating to Australian or international tax or accounting law through offices in Korea and, within five years, be able to work and invest in Korean tax or accounting corporations. Continuing work on professional services and mutual recognition will aim to extend these benefits to holders of other Australian accounting qualifications over time.

KOREA-AUSTRALIA Free Trade Agreement

TELECOMMUNICATIONS SERVICES

- Australian telecommunications providers will be able to own up to 100 per cent of the voting shares of a facilities-based telecommunications service supplier in Korea within two years, and be licensed to provide public telecommunications services.
- KAFTA establishes strong disciplines to prevent anti-competitive conduct and ensure that major suppliers provide interconnection, resale of services, leased circuit services and co-location of equipment on reasonable, non-discriminatory terms and conditions.
  - There are strong provisions on transparency and review for regulatory decisions.

EDUCATION SERVICES

- Australian education providers will benefit from new commitments which guarantee market access to Korea's growing adult education sector.

ENVIRONMENTAL SERVICES

- Australian environmental service providers will benefit from guaranteed access to Korea's environmental services market (including waste management, waste water treatment, air pollution treatment, oil remediation and groundwater purification).

FILM AND TELEVISION SERVICES

- The Australian film and television industry, in collaboration with the Korean industry, will be supported by an Audiovisual Co-production Annex that will enable wider distribution of their work in Korea and international markets.

ENGINEERING SERVICES

- Australian engineers will benefit from guaranteed market access in Korea and from closer collaboration under KAFTA between Engineers Australia and its counterpart body in Korea, the Korean Professional Engineers Association (KPEA) via a Mutual Recognition Arrangement (MRA).
  - The MRA will enhance professional recognition of Australian engineers in Korea and facilitate closer collaboration by engineers from both countries in international markets.

OTHER PROFESSIONAL SERVICES

- A broad range of Australian professionals, including architects, landscape architects, surveyors, and urban planners will benefit under KAFTA from Korea's commitments to guarantee existing market access.

- Australian professionals will benefit from ongoing work to enhance mutual recognition of professional qualifications. This will be initially focused on: engineering services; accounting services; architectural services; healthcare services provided by pharmacists and radiographers; and veterinary services
    - An agreement by both countries for improving recognition of health professional qualifications over time, including for pharmacists and radiographers, is one example of this.
- Australian professionals will benefit from guaranteed visa access arrangements, including for their spouse and dependents, to enter and stay in Korea.

FACT SHEET: INVESTMENT

The Korea-Australia Free Trade Agreement (KAFTA) improves opportunities and protections for Australian investors in Korea. Under KAFTA, Korea will further open its economy to Australian investors through the progressive reduction of market access barriers in key sectors including:

- telecommunications;
- legal services; and
- accounting and tax agency services.

KAFTA will provide enhanced protections and certainty for Australian investors in Korea (and equally for Korean investors in Australia) with provisions to ensure non-discrimination, and protection and security for investments. In particular:

- all forms of investments are protected, including enterprises, shares and stocks, debt instruments, property rights and intellectual property;
- Australian investors and investments may not be treated less favourably, in like circumstances, than Korean investors with respect to the establishment, acquisition, operation and sale of investments in Korea;
- investments may not be expropriated or nationalised in the absence of prompt, adequate, and effective compensation; and
- investments must be treated in accordance with an internationally accepted minimum standard of treatment, which includes obligations of fair and equitable treatment and full protection and security of investments.

These commitments can be enforced directly by Australian investors (and equally by Korean investors) through an investor-State dispute settlement mechanism (ISDS).

KAFTA WILL PROMOTE INCREASED KOREAN INVESTMENT IN AUSTRALIA

Korea's total investment in Australia was worth $12.02 billion at the end of 2012. KAFTA will promote an increase in the flow of Korean investment into Australia by raising the screening threshold at which Korean investments in non-sensitive sectors are considered by the Foreign Investment Review Board from $248 million to $1,078 million, consistent with the threshold provided to the US and New Zealand.

Under KAFTA Australia has:

- retained the ability to screen investments in sensitive sectors, including media, telecommunications and defence related industries at lower levels; and
- reserved policy space to screen proposals for foreign investment in agricultural land at $15 million and in agribusinesses at $53 million.

ISDS does not apply to decisions made concerning investments which are subject to review under Australia's foreign investment policy.

FACT SHEET: INVESTOR-STATE DISPUTE SETTLEMENT (ISDS)

The Korea-Australia Free Trade Agreement (KAFTA) Investment Chapter and ISDS provisions do not prevent the Government from regulating in the public interest and contain explicit safeguards to protect legitimate government regulation in areas such as public health and the environment. These include:

- general exceptions including for measures to protect human health and the environment;
- safeguards built into the core obligations of the Investment Chapter, which include a confirmation that, except in rare circumstances, non-discriminatory actions to protect legitimate public welfare objectives do not constitute expropriation;
- schedules of ‘reservations’ which allow Australia to maintain existing measures and to reserve policy space to maintain or adopt new measures in sensitive areas including with respect to security, human health and creative arts; and
- procedural safeguards built into the ISDS mechanism, such as an expedited procedure to promptly dismiss frivolous claims.

ISDS does not apply to decisions made concerning investments which are subject to review under Australia’s foreign investment policy.

An ISDS claim can only be made on the basis of a breach of an investment obligation:

- an investor must establish a breach of a treaty obligation under the Investment Chapter of KAFTA or a breach of an investment agreement between the investor and the government of the other Party; and
- an ISDS claim cannot be based on a breach of commitments in other parts of the FTA including the intellectual property or environment chapters.

Australian investors in Korea will be able to use the ISDS mechanism to protect their investments.

FACT SHEET: INTELLECTUAL PROPERTY, ELECTRONIC COMMERCE AND COMPETITION POLICY

The Korea-Australia Free Trade Agreement (KAFTA) includes Chapters on Intellectual Property, Electronic Commerce and Competition Policy that will facilitate trade and investment by:

- providing appropriate protection and enforcement of intellectual property rights;
- including disciplines on anti-competitive practices; and
- promoting a secure and liberalised environment for the growth of electronic commerce.

INTELLECTUAL PROPERTY

The Intellectual Property Chapter reinforces commitments Australia and Korea have made under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights. Korea and Australia have committed to accord national treatment in relation to the protection of intellectual property rights, with appropriate exceptions, and agreed to specific commitments on patents, trademarks, copyright and related rights, and enforcement. The Chapter also establishes mechanisms to facilitate future cooperation between Australia and Korea on the protection of intellectual property, including in the area of geographical indications and common names.

Provisions on the enforcement of intellectual property rights clarify civil and administrative procedures and remedies to ensure judicial authorities have appropriate authority to deal efficiently and effectively with infringement cases. The Chapter also includes requirements related to border measures which ensure that authorities are able to deal with suspected infringing goods.

ELECTRONIC COMMERCE

The Electronic Commerce Chapter will aid Australian business in harnessing the efficiencies of electronic commerce, while ensuring the protection of consumers engaging online. Key commitments include:

- **customs duties**: neither Australia nor Korea shall impose customs duties on electronic transmissions between the two countries;
- **online consumer protection**: Australia and Korea undertake to adopt or maintain measures to protect consumers engaged in electronic commerce, which are at least equivalent to those provided for consumers engaged in other forms of commerce;
- **online personal data protection**: Australia and Korea undertake to adopt or maintain measures which ensure the protection of the personal data of the users of electronic commerce; and
- **unsolicited commercial electronic messages**: Australia and Korea will endeavour to adopt or maintain measures to regulate unsolicited spam and telemarketing.

COMPETITION POLICY

The Competition Policy Chapter contains important commitments that ensure trade and investment liberalisation achieved in the Agreement is not undermined by anti-competitive practices.

Australia and Korea have committed to:

- address anti-competitive practices (including cartel behaviour, abuse of dominant position and anti-competitive mergers) by maintaining and enforcing competition laws in their respective jurisdictions;
- ensure that competition laws are applied to all businesses and to only permit exemptions where they are transparent and in the public interest; and
- ensure that the enforcement of their respective competition laws are consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

FACT SHEET: GOVERNMENT PROCUREMENT

The Korea-Australia Free Trade Agreement (KAFTA) guarantees Australian suppliers access to the Korean procurement market and contains commitments that will ensure transparency and facilitate participation in procurement processes.

Australian and Korean procuring entities have committed not to discriminate against the suppliers, goods and services of the other Party for procurements covered by the Government Procurement Chapter. The Annex to the Chapter sets out the specific entities bound by commitments and other conditions (such as monetary thresholds) that must be met before a procurement will be covered by the Chapter.

Korean procuring entities bound by Chapter commitments include 45 ministries and agencies, 17 statutory authorities and state-owned enterprises and 16 metropolitan cities and provinces. Australia's procuring entities include a broad range of Commonwealth and State and Territory departments, agencies and other entities, consistent with coverage Australia has agreed in previous Free Trade Agreements.

The Chapter includes specific rules, procedures and transparency standards to be applied in the conduct of government procurement, consistent with non-discrimination and with Australia's existing procurement practices. These include:

- minimum standards for public notices;
- requirements to ensure suppliers have sufficient time to respond to tender requests;
- requirements to provide information necessary to permit suppliers to prepare and submit responsive tenders;
- commitments to ensure the protection of intellectual property and confidential information supplied in tender processes;
- limitations on the conditions that can be imposed on tenders; and
- independent review of complaints.

Procuring entities are required to receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

FACT SHEET: MOVEMENT OF NATURAL PERSONS

The Korea-Australia Free Trade Agreement (KAFTA) commitments on movement of natural persons build upon those made by Korea and Australia in the World Trade Organization. These commitments guarantee access for Australian and Korean skilled service suppliers, investors and business visitors to enter and stay in the other Party.

Under KAFTA, **Korea** will provide access for the following categories of person:

- intra-corporate transferees for up to three years (this includes Australian personnel who are executives, managers and specialists);
- traders and investors for up to two years;
- contractual service suppliers, in certain sectors, for up to one year; and
- business visitors for up to 90 days.

Korea will also permit equivalent entry and stay for dependents and spouses of Australians granted entry under the categories above (excluding business visitors).

Under KAFTA, **Australia** will provide access for the following categories of person:

- intra-corporate transferees for up to two years for specialists and up to four years for an executive or a senior manager;
- independent executives for up to two years;
- contractual service suppliers for up to one year; and
- business visitors for up to 90 days.

Australia will also provide access for dependents and spouses of Koreans that have been granted entry, in accordance with the Agreement, for a period of longer than 12 months.

The Annex to the Chapter on the Movement of Natural Persons sets out in detail the requirements that skilled service suppliers, investors and business visitors must meet to qualify under a category of person.

Other key benefits:

- Korea's commitments on the temporary entry and stay of Australians will apply equally to Australian citizens and permanent residents.
- Korea and Australia commit to process expeditiously applications for immigration formalities, to provide timely information on visa application progress, and to ensure simplified procedures and requirements relating to the movement of natural persons of the other Party.
- Korea and Australia commit to making publically available explanatory material regarding requirements for temporary entry and to respond appropriately to enquiries from persons interested in temporary entry into the territory of the other Party.