



Australian Government

Department of Foreign Affairs and Trade

Introduction

The Department of Foreign Affairs and Trade (the Department) welcomes the opportunity to make a submission to the Senate Select Committee on Financial Technology and Regulatory Technology's inquiry into Australia's FinTech and RegTech industries. The Department notes the terms of reference for this inquiry; namely to inquire into and report on:

- “(a) the size and scope of the opportunity for Australian consumers and business arising from financial technology (FinTech) and regulatory technology (RegTech);*
- (b) barriers to the uptake of new technologies in the financial sector;*
- (c) the progress of FinTech facilitation reform and the benchmarking of comparable global regimes;*
- (d) current RegTech practices and the opportunities for the RegTech industry to strengthen compliance but also reduce costs;*
- (e) the effectiveness of current initiatives in promoting a positive environment for FinTech and RegTech start-ups; and*
- (f) any related matters.”*

The Department supports Australian FinTech and RegTech providers by actively shaping an enabling environment for those providers to operate and compete in overseas markets.

Through our trade negotiations and engagement in international organisations (including the Group of Twenty, the Organisation for Economic Co-operation and Development and the Asia-Pacific Economic Cooperation) we work to foster an enabling environment through:

- shaping international rules – including advocating rules that support digitalisation of trade related practices, build trust and confidence in the online environment, and reduce barriers to trade;
- supporting trade initiatives, particularly with regard to harmonisation of standards and regulatory cooperation, and;
- advocating to other governments the importance of minimising any trade distorting impacts when considering rules affecting trade.

Opportunities for Australia

FinTech and RegTech offer opportunities to boost our exports. Australia's financial sector represents a large proportion of our economy but makes up only a small proportion of our trade.¹ Our financial expertise, resources and infrastructure, including our regulatory and prudential regimes, and our advanced information and communication technology sector mean we are well positioned to compete in the development of innovative financial products and services.

FinTech can also provide greater choice and efficiency for Australian businesses and consumers. It is an important enabler of business development sectors of the economy that benefit from lower transaction costs, access to capital and more tailored financial products and services.

Section 1: Supporting FinTech and RegTech through trade agreements

Rules in Australian trade agreements can help Australian FinTech and RegTech companies operate and compete internationally. These are emerging industries and historically our trade rules have not specifically targeted these industries. However, some of the rules that Australia seeks in our trade agreements can help underpin increased FinTech and RegTech exports.

1.1 Financial Services in trade agreements

All of Australia's trade agreements include provisions on financial services, sometimes in an Annex to the Trade in Services Chapter (e.g. the ASEAN-Australia-NZ Free Trade Agreement), and sometimes in a separate Financial Services Chapter (e.g. CPTPP). The definition of financial services in these agreements is broad, typically covering "any service of a financial nature". This is broad enough to cover FinTech.

Provisions on financial services have two purposes. First, they establish rules to facilitate trade and investment in financial services. These typically include provisions:

- requiring non-discriminatory treatment of foreign services suppliers and investors in the sector;
- limiting requirements for senior management and boards of directors to be of a particular nationality or resident in the host country;
- requiring transparency in the regulation of financial services;
- ensuring that foreign providers can supply new financial services similar to those provided by domestic providers;
- guaranteeing non-discriminatory access to payment and clearing systems;
- facilitating transfers and payments related to financial services; and
- granting exceptions for services supplied by governments and for reasonable prudential measures.

¹ <https://dfat.gov.au/about-us/publications/trade-investment/trade-at-a-glance/trade-investment-at-a-glance-2019/Documents/trade-and-investment-at-a-glance-2019.pdf> at p24

Australia's more modern and ambitious free trade agreements (FTAs) also include provisions on digital trade in the financial services sector. For example, Australia's FTA with Hong Kong (due to come into force on 17 January 2020) includes a provision facilitating electronic payment services.

The second objective of trade agreement provisions on financial services is to improve market access. Countries make specific commitments in sub-sectors where they are willing to guarantee market access for partner country providers, such as money-broking, asset management and derivative products.

Most of these commitments should be broad enough to encompass FinTech elements where relevant, but it is also possible to include commitments more specific to FinTech. For example, annexes of commitments typically include commitments on:

- provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services (for e.g. see AHKFTA, Annex 8A, item (o)); and
- the transfer of information in electronic or other form, into and out of its territory, for data processing (for e.g. see CPTPP Financial Services Chapter, Annex 11-B, Section B).

1.2 Digital Trade (e-commerce) in trade agreements

Australia seeks several commitments in our trade agreements to facilitate trade by electronic means which will be important to enable our FinTech and RegTech companies to provide services in overseas markets.

The e-commerce chapters of our modern FTAs contain rules to obligate a country to permit businesses to transfer data across borders and to prohibit countries from requiring business to locate computing facilities in a particular territory (subject to legitimate public policy carve-outs). However, with the exception of the Australia-Hong Kong FTA, these data flows and localisation rules generally do not apply to most financial services.

Securing commitments from countries guaranteeing that businesses can transfer financial services-related data would benefit FinTech and RegTech operators seeking to provide services online across borders by limiting circumstances under which restrictions on flows could affect the delivery of their services.

Securing commitments preventing countries from requiring businesses operating in the financial services sector to locate computing facilities in their territory, except where implementation of a legitimate public policy objective requires this, gives Australian FinTech and RegTech providers certainty that they can transfer data to and from their Australian offices or processing centres. It also means providers are not required to set up data storage facilities in the export destination, and can decide themselves on the most cost-effective and secure means to store the data concerned (for example, in the cloud).

Since CPTPP, Australia has advocated for the application of data flows and localisation rules to the financial services sector in our trade negotiations.

Other provisions in our FTA e-commerce practice that support our FinTech and RegTech services include:

- **Domestic regulation** – this provision makes reference to the United Nations Commission on International Trade Law *Model Law on Electronic Commerce 1996* (Model Law) and the newer *United Nations Convention on the Use of Electronic Communications in International Contracts 2005* (the Convention). The Model Law creates internationally acceptable rules that countries can use in their domestic legislation, and includes provisions such as the fundamental principle that documents, messages, signatures, etcetera that are in electronic form should not be discriminated against. For example, the Convention provides that contracts concluded, and communications exchanged electronically are as valid and enforceable as their paper-based equivalents.
- **Electronic authentication** – this allows flexibility in determining the process by which the parties to an electronic transaction can be identified.
- **Electronic Signatures** –provisions in FTA Chapters differ in scope, but generally contain an obligation that if a signature is in electronic form, it should not be rejected or denied by a country. Other FTAs encourage parties to use electronic signatures based on internationally accepted standards.
- **Treatment of Source Code** - obligation that a country not require access to, or transfer of, source code of software as a pre-condition to import, distribution, sale or use of that software into the local market.

1.3 Investment protections

Investment rules in Australia's FTAs and Bilateral Investment Treaties (BITs) provide protections and greater certainty for Australian investors overseas, including for the FinTech and RegTech industries. Some of Australia's more recent FTAs (including the CPTPP, PAFTA, and IA-CEPA) prevent the imposition of technology transfers as a performance requirement for the entry and operation of investments. This may be relevant for FinTech and RegTech providers depending on the nature of their investment in other jurisdictions.

1.4 Consultations on trade rules and negotiations

To ensure our negotiating agenda supports Australian FinTech, RegTech and other industries and to inform Australia's position in trade negotiations, DFAT continues to welcome submissions from business and other stakeholders on

- the Future of Digital Trade Rules discussion paper (<https://dfat.gov.au/trade/services-and-digital-trade/Pages/the-future-of-digital-trade-rules-discussion-paper.aspx>),
- WTO e-commerce negotiations

- our FTAs under negotiation
<https://dfat.gov.au/trade/agreements/negotiations/Pages/ftas-under-negotiation.aspx> and
- our prospective FTA negotiation with the UK
(<https://dfat.gov.au/trade/agreements/prospective/aukfta/submissions/Pages/aukfta-submissions.aspxb>), and
- the Singapore-Australia Digital Economy Agreement
(<https://dfat.gov.au/trade/services-and-digital-trade/Pages/australia-and-singapore-digital-economy-agreement-submissions.aspx>).

Section 2: Cooperation and facilitation arrangements

Trade agreements are not the only avenues to promote international trade and investment in the financial services sector. The Australian Government and its agencies responsible for regulation of the financial services sector also enter into arrangements with other governments and regulator counterparts. As noted in the Committee's Issues Paper, one example is the FinTech Bridge between Australia and the United Kingdom.

Another example is the Cooperation Agreement between ASIC and the Hong Kong Securities and Futures (SFC) which enables SFC and ASIC to refer innovative FinTech businesses to each other for advice and support via ASIC's Innovation Hub and its Hong Kong equivalent, the SFC's Fintech Contact Point. This means Australian FinTech businesses wishing to operate in Hong Kong will now have a simple pathway for engaging with the SFC, and vice versa.

While typically not part of trade agreements, trade negotiations can provide an opportunity to negotiate such arrangements in parallel and they can form part of the overall package. In the Australia-Singapore Digital Economy Agreement negotiations, we are exploring whether there is scope to include provisions committing both parties to encourage enhanced FinTech and RegTech collaboration for the FinTech and RegTech industries.

In the context of public consultations on the Singapore-Australia Digital Economy Agreement, industry reported to DFAT that Fintech facilitation and cooperation arrangements would benefit from robust reporting so that parties have visibility of how effective the arrangements have been in facilitating new market entrants.

We continue to actively seek opportunities and engage with other like-minded partners/countries for further cooperation and facilitation arrangements in the Fintech sector.

Section 3: Economic Diplomacy

Australia engages with partner governments to support and promote strong trade and investment partnerships and to advocate for open and transparent business conditions. The digital economy is a particularly important priority for engagement as governments globally are grappling with how to strike a balance between facilitating international trade and protecting the interests of consumers and businesses.

Faced with these policy choices, some governments in our region are putting in place measures that have the potential to significantly dampen international digital trade such as

restrictive cyber security measures, onerous privacy requirements, data localisation requirements and censorship. In addition to seeking rules on these issues in our trade agreements, the Department engages partner governments in policy dialogue to highlight the importance of not unduly undermining trade opportunities.

While Austrade is the lead trade promotion agency, DFAT also promotes Australian business as a core feature of our overseas engagement. Our embassies provide support to official business missions and trade delegations, including those that form part of ministerial or prime ministerial visit programs.

Conclusion:

Supporting our FinTech and RegTech industries to expand internationally will require an open, free and secure internet, and regulatory environments that adapt and respond as technologies change.

The Department contributes to achieving these outcomes by enabling digital trade through ever-evolving international trade architecture, and encouraging international regulatory cooperation and policy dialogue.

We remain open to new and innovative ways in which the Department's work can support Australian FinTech, RegTech and other businesses to export their goods and services.

More information is available at:

<https://dfat.gov.au/trade/Pages/trade-and-investment.aspx>.

We thank the Joint Committee for the opportunity to lodge a submission.