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## The Jean Monnet Centre of Excellence for EU-Australia Economic Cooperation

*Academic Workshop August 2022, Summary*



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The principal objective of the Jean Monnet Centre of Excellence for European Union – Australia Economic Cooperation is to identify opportunities for the EU and Australia to progress their bilateral economic relationship and to pursue shared objectives in regional and multilateral contexts. The academic workshop considered recent developments in the EU-Australia economic relationship, the long-term multi-lateral context for the relationship in terms of economic growth and international trade, energy, the global trading system and new generation trade issues that are likely to be of importance to the relationship.

*The following is a report on the academic workshop held in accordance with the Jean Monnet Centre of Excellence's key research objectives following the Chatham House rule.*

## **Introduction**

The workshop heard of the importance of the EU-Australia economic cooperation agreement currently under negotiation. Negotiations towards such an agreement were commenced in 2018 with there being hopes that it will be concluded in 2023. It was suggested 'all signs are green' at this juncture. It was noted that there are a number of broad factors contributing to the current momentum, including: the political will in Australia to tackle climate change; the new momentum for Indo-Pacific cooperation; the like mindedness of the EU and Australia towards the conflict in Ukraine; and the need for both the EU and Australia to have reliable supply lines in a more volatile global environment. There are remaining issues to be negotiated, but it was considered that these would not be stumbling blocks to completion.

It is expected that an EU-Australia agreement would open new opportunities for trade and that these would be complemented by other mechanisms including Horizon Europe in research cooperation and the Europe Enterprise Network to support small and medium sized enterprises (SMEs). It was also noted that the EU had recently introduced the Single Entry Point system to support firms facing trade barriers in third countries. The visit of the European Parliament's Committee on International Trade (in September 2022) should give political support to the conclusion of the negotiating process for the EU-Australia agreement. Such support is of importance because new trade agreements to be entered into by the EU cannot be concluded without the support of the European Parliament.

With respect to particularly product markets, it was also observed that there is potential for trade cooperation between the EU and Australia particularly with respect to raw materials,

including lithium, cobalt and graphite, that are of importance to emerging energy technologies. There is also scope for cooperation on the exchange of experience and know-how in mining.

### **Multi-lateral context of EU-Australia economic cooperation**

Framing the EU-Australia cooperation towards the medium to longer term future, it was suggested that the context of the Australian-EU relationship would be materially influenced by changes in the relative importance of trade between regions across the globe. Using longer term economic projections, it was noted that in a moderate growth scenario global exports could reach around 35% of global product by 2050. The workshop heard that as economic gravity shifted towards the wider developing world rather than China that wider area could increase in importance as a destination for exports and as a source imports for both the EU and Australia. Trade footprints between countries in the developing world are also likely to increase in the longer term. The projections also suggested some rebalancing of the product composition of trade between regions. For example, growth in demand for services in the developing world could be accompanied by an increase in the importance of services exports from Australia and the EU to this area.

It also was noted that trade and economic growth has relied on a steady increase in primary energy consumption, but that, reflecting different stages of economic development between regions, there is a wide gap in energy consumption per capita between OECD and non-OECD countries. This indicates the potential for a very large increase in energy consumption by non-OECD countries to close the gap with an important question being: Where will the energy come from to close the gap? Against this backdrop, it was also observed that we are increasingly seeing the issue of energy supply and use being connected with climate change. In this context, it was suggested that as we are learning about the underlying natural processes relating to the connection, new technologies and ways of working are evolving, as are processes of commercialisation. Looking to the future, it was suggested that being clearer in our thinking and planning out to 2050 is crucial to giving context and accessibility to new findings on environmental change and the transition to new technologies and ways of working, and to help us to understand the trade-offs that may occur as we adapt to change.

A wide gap also exists between productive capital per capita between developed and developing countries. It was also noted that a very large gap in productive capital exists between Australia and other countries, which may be attributed to relatively large geographical

distances between population centres and the concentration of productive activity in relatively capital intensive activities, particularly mining industries. Progressive closing of the gap in capital per person between developed and developing countries would compete for funding and resources globally. There would likely be associated expansion of financial markets, including through portfolio and direct investment activities, and especially in the regions outside the OECD group.

Against this background, it was argued that the shift in economic gravity between the developed and developing world will have important policy implications. It was suggested that common elements of high regulatory standards and similar stages of economic development will remain between developed economies and naturally support a closer relationship. Domestic policies that increase the competitiveness of local firms in existing and new markets and lower the costs of trade across all markets will be advantageous in the changing environment. With a particular focus on energy and resources, it was suggested that there will be an increasing premium on innovation and the development of new energy technologies and ways of working that help: (i) meet ongoing global energy demands; and (ii) close the energy gap between OECD and non-OECD economies. More broadly, there will also be a premium on non-discriminatory and multilateral and plurilateral regional institutions that prompt cooperation, non-discriminatory global order and technological transfer.

### **WTO Myths and the Reform Agenda – Potential implications for the future of the global trading system and its members**

The EU and Australia both have a strong policy and research engagement with the WTO, often with a particular policy orientation. Recognising this engagement, the workshop discussion on WTO myths and the reform agenda was framed in terms of three questions and two observations. First it was asked: (i) Is the WTO facing challenges, not necessarily because it has failed, but because it has succeeded? (ii) Is the WTO becoming more, not less, essential to Members' trade relations and to a secure and predictable world economy? and (iii) Does the system's core strengths – its global scope and membership – necessarily make it harder to improve and 'upgrade'? It was then observed that: (i) the system has responded to challenges as they arise through a process of evolution, not revolution, balancing integration with flexibility, particularly when the negotiating function has become less productive than in the past; and (ii) there are signs that WTO reform is already taking place in many areas from dispute settlement, to notifications, to committee work, to negotiations.

It was suggested that the WTO is in fact facing challenges in international trade governance not because it has failed but because it has been successful in improving governance and contributing to trends towards global integration.

On dispute settlement, it was observed that there has been a tendency for members to build complex legal cases for which the WTO disputes resolution system was not designed. It was also suggested that the US has taken a litigious approach focused on the enforcement of obligations within the system rather than negotiation to resolve differences between Members. Under these circumstances, the appointment of additional judges could afford some relief and shorten the time between filing and final determinations in cases. Transparency mechanisms around technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) could also afford potential to moderate litigation.

On border protection, it was noted that over 80 percent of global trade now occurs at WTO MFN rates with 50 percentage points of this total having MFN rates of zero. Dispersion of above zero tariffs has also been reduced.

More broadly, it was observed that the WTO is also very much about reducing uncertainty in trade through clear, tested and mutually agreed trade rules. From a trade perspective, it was suggested that the good news is that the WTO and WTO processes have led to below 'game theoretic' optimum tariffs. However, overall trade costs are much higher than tariffs and affected by many factors including, technology, geography culture and language. Preferential trade agreements are not considered as an efficient substitute for WTO-based trade because of additional rules of origin and other compliance costs associated with the granting of preferences and enforcing the terms of an agreement.

In terms of securing a national balance in trade objectives, it was suggested that it is very difficult to convince trade policy economists to engage with macro-policy advisors, and vice versa, to achieve balance-of-trade policy objectives even though broad economic conditions in national economies have been found to be the main influence in determining trade imbalances. It can also be disappointing for trade negotiators that trade growth is largely dependent on macro-forces and broader domestic policy alignment rather than particular trade-related provisions under negotiation.

Looking forward, it was observed that outcomes from the Twelfth WTO Ministerial Conference (MC12) afforded a range of top-down and root-and-branch measures for improving the WTO across all its functions, including negotiation, monitoring and dispute settlement. Of note is that important areas of trade policy such as harmful fishing subsidies, food security, E-commerce and vaccine production might also be dealt with by plurilateral agreements within the WTO framework. Nevertheless, it was observed that global sanctions and disruptions outside of the WTO (highlighted by conflict in Eastern Europe) can have a significant influence on trade, while policies for establishing coherence between the trading system and multilateral environmental agreements is yet to be achieved. It was also suggested that there is a gap in the WTO multilateral trading system framework for dealing with the implications of the cross-border spread of illness and cross-border responses in policy.

In terms of longer-term economic growth and development, it was suggested that domestic reform is of greatest importance. The potential for gains from trade being greatest where tariffs are high would suggest that developing countries should work towards lowering their own tariffs and create domestic conditions that take advantage of the potential trade this brings. It was nevertheless suggested that some consider the opening of China was detrimental to reform in other developing economies. While it was acknowledged that China's export and investment led approach, particularly following accession to the WTO, did take opportunities from other countries, it also reflects the potential for the income generating re-organization potential of globalization. Policies that trigger trade tensions or seek to spread home-region values such as those pursued by the US and the EU are not particularly helpful to the process of effective globalization. More broadly, it was observed that the current WTO leadership is encouraging participants to drop long-held national positions (the party line) in WTO consultation and negotiations to enable conversations and trade policy development around matters of importance to individual members. In terms of monitoring of national trade policies, it was observed that the WTO trade policy review mechanism allows members to express concerns regarding national policies bearing on trade. There could be merit, as suggested by some, to bring more quantitative analysis, including on the costs to members of remaining tariffs, into the policy review process.

### **Securing Global Energy Supplies for the Future**

The session focused on the global imperative to develop new sources of environmentally clean, firm power capable of an increasing scale over time. It was suggested that nuclear fusion power

has the potential to provide such a capability and ultimately to replace fossil fuels. This potential has attracted heightened research and development interest particularly from the EU, USA, UK and Japan and increasingly China and South Korea. The workshop heard of the ITER ('the way' in Latin) project with China, the EU, India, Japan, Korea, Russia, and the United States as members and 35 nations collaborating to construct the world's largest fusion experimental device. It was indicated that the EU would contribute some EURO5.61 billion in public funding to the ITER project over the years 2021 to 2027. The UK Government has published proposals for a regulatory framework for fusion energy and seeks to enable the safe and rapid development of fusion.

It was noted that fusion relevant research is being undertaken at a number of research centres across Australia. In particular, the ANU has internationally recognised expertise in fusion science in terms of fusion plasma theory and modelling, advanced diagnostics and materials. It was argued that Australia has an important role to play in the development and application of fusion technologies.

Fusion energy generation involves combining light atoms to produce energy, the opposite of nuclear *fission*, where unstable nuclei are split for energy production. When fusion power is realized it will have a number of benefits: (i) as a source of energy and industrial heat that can be easily generated on a large scale without emitting greenhouse gases; (ii) is intrinsically safe; (iii) does not create long-lived radioactive waste; and (iv) cannot be weaponised. The main fuel input to fusion is tritium which is essentially in limitless supply and readily extracted from the ocean water.

From an economic perspective, some studies show that despite very large initial capital investment needed for the construction of fusion plants, the overall costs would be lower than solar and wind technologies and fossil fuelled generators. It was also noted that there is scope to use existing steam-turbine facilities with fusion in electricity generation, which could lower the transition costs in any move from fossil fuel-based power generation to fusion-based generation.

Fusion power stands to have a lower environmental impact compared to solar and wind technologies. The ubiquitous, near limitless power offered by fusion technologies also holds the potential to help lift the developing world out of poverty, power large scale clean water through desalination, help prevent energy-price shocks and associated conflict over energy

resources and even contribute to longer-term carbon reduction goals by the direct removal of carbon from the atmosphere.

In discussion, it was noted that current thinking about energy futures is shaped by solar and wind technologies. It was argued that greater attention should be given to fusion and its potential in the future global energy mix. In addition, it would be helpful if regulation in Australia governing nuclear energy was developed to allow for new technologies, particularly those that do not carry the security and environmental risks of fission technologies, which are the focus of current regulation.

### **Digital Platform Regulation: Comparing the European and the Australian Approach**

New digital platform technologies adds to the possibilities for interaction between both businesses and consumers. It was observed that the adoption of such technologies has been widespread including in platforms for marketing, maps and navigational tools, and social, trade and professional networks. The widespread adoption, combined with a diversity of providers and ever-increasing information technology capabilities, has brought with it new regulatory challenges including in the balancing of freedom of speech and association with freedom of entrepreneurship. Associated privacy concerns have also arisen.

In response to the rise of digital platforms in our economic and social lives, both the EU and the Australian Government have taken new regulatory initiatives. The EU approach emphasises a service-focus of platform qualification, referencing platforms of communication, video sharing, communication, the sharing economy and news aggregators. In terms of regulation, these platforms are governed by general EU law, an emerging body of law on platforms in general, and then by regulation directed at specific types of platforms such as platforms in the gig economy, crypto exchanges, and online marketplaces. It was noted that some critiques of the EU services approach suggest that it is not well equipped to respond to rapid changes in the field.

The workshop heard about the proposed Digital Markets Act and the Digital Services Act for regulation focused on digital platforms (that is, regulation across specific platforms and platform services providers in general). In this framework, the Digital Markets Act is to focus on providers deemed to be gatekeepers through the provision of platform services characterised by extreme returns to scale, network externalities and the role of data and have: (i) significant

market impact, (ii) perform a gateway function and (iii) hold an entrenched and durable position. On fulfilling conditions for a gatekeeper, firms would be required to integrate a series of obligations into their business models. The Digital Services Act would apply to ‘intermediary services’ of conduit provision, caching and hosting. Under the DSA, reporting requirements and stringency of regulatory requirements will be graded according to the potential to cause societal risk. The most stringent of requirements would be applied to very large platforms reaching a significant share of EU population.

The discussion turned to the core differences between the EU’s top-down and prescriptive approach compared to the Australian self-regulatory approach to economic regulation, in this case of digital platforms. It was also questioned how the provisions of EU’s top-down regulation relate to the concept of unconscionable conduct and what is the definition of fairness as applied in EU regulation.

### **Blockchain Technology and Trade**

Blockchain technology is widely recognized as a key element for the next phase of digitization in trade and commerce. The take-up of blockchain technology offers the prospect of cost reductions in supply chains and international trade, opportunities for new product varieties and ways of working, and improved systems integrity in currency and finance, governance and trade and commerce.

To do this the technology is characterized as affording a tamper-proof, distributed-controlled data structure through which transactions are chronologically logged. Under the technology, a blockchain for a transaction (or event) would be stored in a traceable, unchangeable manner without the requirement for a central storage system. It was noted that a blockchain can be distinguished by its characteristics of read/write permission, transaction validation requirements, transparency, flexibility, tamper resistance and scalability. The combination of features would then determine its openness and operating characteristics, for example, being ‘public’ with wide access or ‘private’ with restricted access, depending on purpose.

It was noted that blockchain technology requires ‘smart contracts’ which have to be created in an application manner. Such contracts are conceived as the link to enable complex transactions (e.g exchanges) to be formed adding to systems integrity. They are programmed to satisfy common contractual terms and conditions, such as payment terms, liens, confidentiality and

even enforcement. Smart contracts are considered to have the advantage of being deterministic and self-executing, therefore serving to minimise the need for negotiators or trusted intermediaries, potentially lowering trade costs while adding to systems integrity. Such contracts can also perform essential functions in creating new applications ('apps') and tokens. However, it was observed that blockchain technology is not without limitations. In particular, effective application of the technology can require: (i) complex signature and verification processes; (ii) high data storage capacities and limited latency in data transfer; and depending on the blockchain type high inputs of scarce energy. Legal disparities in blockchain regulation between the jurisdictions could also act as an impediment to trade and commerce potentially raising costs, while programming languages will need to be further standardized and developed to accommodate the cross-border recording and execution of legal matters. Despite these qualifications, owing to its decentralised nature, blockchain technology offers high security and traceability of all processes, thereby potentially reducing transaction costs on that account. Moreover, with quick and flexible transactions, blockchain technologies can further opportunities to develop new global business models with attendant commercial advantages.

As noted, fields of application of blockchain technology are potentially wide-ranging and include in currency and finance, governance and trade and commerce. This potential and emerging applications has been accompanied by recent European central bank reports and proposals for regulation strategies as well as the development of standards by the International Standards Organization (ISO) for blockchain and digital ledger technologies. In the context of evolving regulatory frameworks and standard setting, it was observed that there are some notable challenges in applying blockchain technology to international trade, which revolve around interoperability between exporters and importers, disparities of identification and authentication, application of data protection law, liability of terms without an intermediary and dispute resolution. There is also the potential for new standards for establishing and recognising product ownership to interact with intellectual property law.

It was observed that with blockchain technology set to play a larger role in international trade and commerce, the EU has an aspiration to play a leading role in standard and regulatory setting. This aspiration would be in competition with initiatives of other leading trading nations, such as the US and China. It was also asked in discussion, 'To what extent will the EU be able to be the norm setter in this field'? The field opens new potential for regulatory cooperation –

for implementation of smart contracts, for identifying product and service ownership, as well as regulatory competition.

In order to help meet these challenges and facilitate the adoption of blockchain technology, it was suggested that there is a need for a ‘global blockchain service infrastructure’, at least one effective global digital currency, international model regulation and a means for resolving identifiable barriers that may impede efficient transition to digitized trade and commerce using blockchain technology.

### **Engendering Trust in Regulatory Cooperation**

Commercial ties between countries depend on effective protocols recognized by the parties to a transaction and the wider community. These protocols cover cross border trade and also commercial ties that lie behind the border. Such measures are often referred to as non-tariff measures (NTMs) and are increasingly the subject of economic cooperation agreements between countries as well as wider plurilateral and multinational agreements. It was observed that the issues of concern typically interact with regulatory frameworks operating in partner countries. Given that individual-country regulatory frameworks are often based on different legal and local practices, it was suggested that special conventions are required to accommodate mutually beneficial trade and commerce without prejudice to domestic frameworks.

It was argued that trust is the foundation of such effective transnational cooperation. The importance of this foundation is heightened as a ‘new generation’ of economic cooperation and trade agreements are increasingly extended into non-tariff measures or behind the border regulation, and regulatory settings in a broadening range of areas (including environmental and social policy). While the terminology specific to ‘new generation’ agreements may not be self-evident beyond the international trade policy field, it was noted that in some areas such as investment dispute resolution and government procurement, the role of the partner States, that is the contracting parties, is dominant. In other areas however, such as professional and financial services, small and medium sized enterprises (SMEs), economic and technical cooperation and competition policy, mutually beneficial cooperation must rely more heavily on trans-border engagement and direct involvement of the private-sector agents and representative groups (civil society) in the implementation processes.

It was also observed that some recent agreements are tending to be more than static trade liberalizing instruments. This is supported by measures that provide for periodic reviews of provisions combined with new institutions created by the agreements (such as committees, boards, councils) that together help modern agreements create a dynamic environment in which greater mutually beneficial trans-border cooperation can occur. However, to date, it was suggested that such cooperation has tended to be ad hoc and has not reached its full potential.

Mutual recognition was suggested as an effective policy tool for promoting effective and mutually beneficial economic cooperation. That concept evolved in the EU to underpin the internal market. It was noted that mutual recognition does not readily fit into the category of a legal transplant, but rather that of a shared principle. This principle has been extended from the EU to international trade and commerce, and also from law to public policy. In its strongest form, it articulates the ‘country-of-origin’ principle, however, it was noted that recognition according to this principle also requires definition which may not be straightforward and can be hampered by national laws relating to the marketing of products and standards. It was also observed that the regulatory environment for goods is more settled and more harmonized in the Union than it is for services. This is exemplified by the failure so far to include the principle of mutual recognition on the basis of ‘country-of-origin’ or home-state regulation in the EU Services Directive.

At another level, mutual evaluation was suggested as a possible policy tool for bringing economies closer together. For example, in the EU, mutual evaluation is a regulatory review process constituted under the EU Services Directive. The evaluation process requires Member States to assess existing schemes for services regulation and receive comments and observations from other Member States, the Commission and its committees. Mutual evaluation however, does not confer mutual recognition although it may progressively bring the regulation of services by Member States, in this case, closer together.

Jurisdictionally, mutual recognition (and mutual evaluation) in an EU context is a matter of EU internal law and governance not conventional public international law. In the context of a multi-jurisdictional mutual recognition agreement, mutual recognition (and mutual evaluation) is a matter for agreement between jurisdictions and international law.

In its strongest form, it was noted that the concept of mutual recognition requires the jurisdiction of the importing or host state to accept the regulatory determinations of the

exporting or originating state. In practice, mutual recognition as a policy tool has leaned towards the concept of ‘managed mutual recognition’ whereby conditions and caveats are attached to recognition to satisfy domestic policy and regulatory goals. The management of recognition can then be thought of as a contribution of regulators to the process of recognition and mutually beneficial trade and commerce. This would require the establishment of some sort of equivalence of regulatory systems of participants. Despite potential advantages, mutual recognition agreements are accompanied by a number of paradoxes, including: (i) members of one state needing to defer to the norms of a partner state; (ii) the need to manage the extent, conditions and limits of recognition to uphold diversity and independence of participants; and (iii) the need for mutual recognition agreements to embody referee mechanisms to balance asymmetries of power and the determination of powerful participants.

Overall, it was suggested that there is a need for the new generation of trade agreements to embody cultural frameworks that can engender trust between states and foster effective cooperation and development. Indeed, the effectiveness of economic cooperation and trade agreements will heavily depend on trust between counterparts. Mutual recognition and mutual evaluation provide effective policy tools for fostering trust and achieving mutually beneficial economic cooperation between jurisdictions.

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