

Painting the town red: China-Australia Free Trade Agreement

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Australia has concluded a landmark free trade agreement with its largest export market, China. The China-Australia Free Trade Agreement will unlock significant commercial opportunities for Australian businesses and provide enhanced investment protections by way of the inclusion of investor-state settlement provisions.

Background

On 17 November 2014 (after ten years of negotiations), President Xi Jinping and Prime Minister Tony Abbott announced the conclusion of negotiations for the China-Australia Free Trade Agreement (**ChAFTA**). China is Australia's largest export market for both goods and services, accounting for nearly a third of total exports, and a growing source of foreign investment. Upon entry into force, the main Australian benefactors of ChAFTA will be the agriculture, resources and energy, manufacturing exports, services, and investment sectors.

ChAFTA

More than 85% of Australian goods exports (some of which are currently subject to tariffs of 40%) will be tariff free, rising to 93% in four years. On full implementation of ChAFTA, 95% of Australian goods exports to China will be tariff free.

Australia's three largest exports to China are iron ore (AUD 52.65 billion), coal (AUD 9.08 billion) and gold (AUD 8.07 billion). It comes as no surprise then that the resources and energy sectors stand to reap significant benefits from ChAFTA. These benefits include:

- The removal of tariffs on all resources and energy products (including on coking coal)
- The removal of tariffs on transformed resources and energy products, such as refined copper, alloys and other metals
- Locking-in of zero tariffs on major exports such as iron ore, gold, crude petroleum oils and liquefied natural gas

ChAFTA also provides Australia with an advantage over major agricultural competitors, including the United States, Canada and the European Union. It also brings Australia's agricultural export industry into line with Chile and New Zealand, who reached trade deals with China in 2006 and 2008 respectively. The benefits to the agricultural sector include:

- The removal of all tariffs on dairy products within 4 to 11 years
- The removal of tariffs of 12 to 25% on beef over 9 years
- The removal of tariffs on live animal exports of 10% within 4 years

The Australian services sector, which currently accounts for about 72% of Australia's economic

activity and AUD 7 billion in exports, will be offered new or significantly improved market access. Service providers who will benefit from ChAFTA include banks, insurers, securities and futures companies, law firms and professional services suppliers, education services exporters, and construction and manufacturing businesses in China.

Specifically in the insurance sector, China has guaranteed access for Australian insurance services beyond its WTO commitments. Under ChAFTA, Australian insurance providers will be given access to the statutory third-party liability motor vehicle insurance market without establishment or equity restrictions and the establishment of internal branches of Australian insurers in China will be improved.

It is significant that there is an inbuilt forward work agenda for financial services which will allow Australia to continue to negotiate further liberalisation with China as it progresses its economic reform agenda. The first review will be held within three years. A regular dialogue will also occur between the Australian Securities and Investments Commission and the China Securities Regulatory Commission with the establishment of a financial services committee.

Chinese investment in Australia has grown strongly over the last decade, from around AUD 3 billion ten years ago to around AUD 32 billion today. Future investment growth will be facilitated by an increase of the Foreign Investment Review Board (**FIRB**) threshold for Chinese investments in Australia from AUD 248 million to AUD 1,078 million. Although, notably, FIRB will continue to screen all investment by Chinese State-Owned Enterprises, regardless of the transaction size.

ChAFTA is also the source of some rare good news for Australia's struggling manufacturing sector, with tariffs being removed in respect of certain manufactured products (including car engines, plastic products and precious stones).

North Asian trade agreements

The ChAFTA is the third trade agreement concluded by Australia this year with a North Asian trading partner. The Korea-Australia Free Trade Agreement was signed 8 April 2014 and the Japan-Australia Economic Partnership Agreement (**JAEPA**) was signed 8 July 2014. China, Korea and Japan are Australia's three largest export markets and account for more than 61% of its export goods.

Investor-state dispute settlement provisions

Unlike the JAEPA, ChAFTA includes investor-state dispute settlement provisions. Such provisions allow foreign investors recourse to arbitration at the World Bank administered International Centre for Settlement of Investor Disputes (**ICSID**) where they believe actions taken by a government are in breach of commitments made under a trade agreement.

A recent and notable example of a foreign investor relying on investor-state dispute settlement provisions is the arbitration brought by Phillip Morris against Australia. In that arbitration, Phillip Morris alleges that it has suffered damages as a result of Australia's adoption of cigarette plain packaging legislation, which Phillip Morris alleges is in breach of the Australia-Hong Kong bilateral investment treaty.

To date, China has only been subject to two investor-state arbitrations, the most recent of which being registered by the Secretary-General of ICSID on 4 November 2014. This dispute arises out of an investment by a South Korean property developer in a proposed golf course and country club in Sheyang-Xian, Jiangsu province. The investor alleges that it was forced to dispose of its entire investment to a Chinese purchaser at a price significantly lower than the amount it had invested. The investor claims CNY 100 million in damages.

China-Australia trade – the numbers

Total exports: AUD 101.54 billion

Total imports: AUD 49.33 billion

Total two-way trade: AUD 150.87 billion

What next?

A day after the conclusion of ChAFTA was announced, Australia announced that negotiations for a Comprehensive Economic Cooperation Agreement (**CECA**) with India will be fast tracked with a plan to complete this agreement by the end of 2015. Given India's young population it has the potential to become the largest consumer market in the world. Negotiations of the CECA launched in May 2011 and the next negotiating round is scheduled for December 2014.

Also on Australia's wish list is the Trans-Pacific Partnership Agreement (**TPPA**). The TPPA is a multi-lateral agreement proposed between a variety of nations, including Australia, the United States, Canada, Japan, Malaysia, Mexico, Peru and Vietnam. If concluded, the TPPA could implement a free trade area across the Asia Pacific region. Based on 2013 figures, TPPA countries account for approximately 37.5% of the world's GDP, with Australia's portion of trade representing AUD 209,160 million.

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