

The China Australia Free Trade Agreement

Following a decade of negotiations, the China Australia free trade agreement (**ChAFTA**) has been officially signed. Together with the recently implemented free trade agreements with Japan and Korea, the free trade deal with China will facilitate even greater cross-border investment between Australia and its key trading partners.

Overview

On 17 June 2015, ChAFTA was officially signed by Australia's Trade Minister Andrew Robb and China's Commerce Minister Gao Hucheng. ChAFTA comes after a decade of trade negotiations between the two countries. Its conclusion closely follows the recently implemented Korea Australia free trade agreement (**KAFTA**) and Japan-Australia Economic Partnership Agreement (**JAPEA**), completing what has been described by the Australian Government as "a historic trifecta of trade agreements with our top three export markets".¹

China is Australia's largest trading partner, with trade between the two countries valued at around A\$160 billion in 2013-2014². The signing of ChAFTA builds on Australia's existing commercial relationship with China and secures a number of competitive advantages and opportunities for both countries. Some of the key outcomes of ChAFTA are set out below.

Foreign direct investment

Chinese investment into Australia

Under ChAFTA, private (non-government) Chinese investors will be accorded equal status with private investors from the USA, New Zealand, Japan, South Korea and Chile (**Preferred Investors**), gaining access to the higher monetary threshold (A\$1,094 million, up from

A\$252 million) for acquisition of substantial interests³ in inbound business investments in non-sensitive sectors. Once ChAFTA enters into force (potentially by year end), the Australian Government will no longer screen such investments below A\$1,094 million.

The Australian Government will still review private Chinese investments in:

- sensitive sector businesses (to which the lower threshold of A\$252 million will apply, provided all investments in media over 5% will also be screened); and
- Australian urban land and entities holding a majority of their assets in Australian urban land (subject to limited exceptions, no minimum monetary thresholds apply); and
- Australian rural land, agriculture and agribusiness, in line with published investment policy.

In relation to investments in Australian rural (primary production) land, Australia's foreign investment policy generally requires investment approval by sought where the cumulative value of rural land that a private investor (and any associates) already holds (whether directly or indirectly) exceeds, or immediately following the proposed acquisition is likely to exceed, A\$15 million⁴.

The Australian Government will also continue to screen all investments (*irrespective of value and the type of*

Key issues

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- Under ChAFTA, private (non-government) Chinese investors will be accorded equal status with private investors from the USA, New Zealand, Japan, South Korea and Chile
- ChAFTA provides improved access and protection for Australian investors into China
- Over 85% of Australia's goods exports to China will become duty free when ChAFTA enters into force.

investment) by foreign government investors (including all Chinese state owned enterprises)⁵, regardless of value, and ChAFTA will not change these arrangements in any way.

Australian investment into China

ChAFTA provides improved access and protection for Australian investors into China. In particular, China's commitments on access for Australian service firms, along with most favoured nations provisions (both discussed further below), marks a

significant improvement for the investment by Australians into China. However, protections for investors and investments, such as protection from unlawful expropriation and unfair treatment, are not included in ChAFTA.

Investor-state dispute settlement

Investors will also be able to use an investor-state dispute settlement (ISDS) mechanic to protect their investments from discriminatory treatment, subject to preservation of legitimate government regulation. However, investors' ability to use international arbitration to enforce their treaty rights more generally is limited. Government decisions on investment proposals (like determinations by the Australian Treasurer following application to the Foreign Investment Review Board), and other protections afforded by the treaty cannot be challenged by ISDS.

Australian exports

Over 85% of Australia's goods exports to China will become duty free when ChAFTA enters into force, rising to 95% on full implementation. Certain export sectors are expected to gain substantial advantages, including:

- **Agriculture:** ChAFTA secures reduction of tariffs across a range of agricultural exports, which may provide Australia with an advantage over traditional agricultural competitors. Some tariffs will be abolished on entry into force of ChAFTA (such as those on sorghum and barley). Tariffs are expected to be progressively abolished for Australia's A\$13 billion dairy industry. Rapid tariff reductions will apply to other exports such as seafood, beef and lamb, pork, wine, wool and a variety of horticulture, including fruits.
- **Resources, energy & manufacturing:** On entry into force of ChAFTA, 92.9% of China's imports of resources and

energy products will be duty free, with most remaining tariffs to be phased out over a period of 4 years. Outcomes include:

- lock-in for existing zero tariffs on iron ore, gold, crude petroleum oils and LNG, providing greater certainty for Australian exporters;
- tariffs on coking coal will be eliminated and those on thermal coal will be eliminated over 2 years;
- tariffs of up to 10% on refined copper and alloys (unwrought), aluminium oxide (alumina), unwrought zinc, unwrought aluminium, unwrought nickel and titanium dioxide will be eliminated; and
- tariffs on pharmaceuticals, including vitamins and health products as well as tariffs on car parts and engines, plastic products, pearls, opals and other precious stones will be eliminated within 4 years.

On full implementation, 99.9% of Australian's resources, energy and manufacturing exports will enjoy duty-free status in China.

- **Services:** Under ChAFTA, China has offered Australia favourable commitments in terms of market access for Australian banks, insurers, securities and futures companies, legal and other professional services suppliers, education services exporters, as well as health, aged care, construction, manufacturing, hospitality, tourism, telecommunications services businesses. ChAFTA also accords Australia "most favoured nation" status, ensuring Australia's competitive position in the future should China extends any more favourable treatment to other trade partners in certain service sectors.

Chinese imports

Remaining Australian Government tariffs on Chinese imports will be gradually eliminated (consistent with other bilateral FTAs which Australia has entered into). This will include removal of tariffs on Chinese manufacturing exports including clothing, electronics and white goods, which is expected to benefit Australian consumers. This is also anticipated to increase the competitiveness of Chinese exporters.

Worker mobility

ChAFTA will introduce improved access and mobility for a range of Australian and Chinese skilled personnel, improving temporary access and facilitating business certainty.

Alongside ChAFTA, Australia and China have also completed negotiations on a Work and Holiday Arrangement (WHA) under which Australia will grant visas for up to 5,000 Chinese work and holiday makers annually. The WHA is expected to increase support the development of Australia's tourism sector and allow Chinese greater access to Australian markets.

Other outcomes

Outcomes of ChAFTA also include:

- affirmation of existing intellectual property commitments and provision of a framework for co-operation;
- promotion of co-operation and co-ordination between respective regulators on competition policy;
- provision of a framework for growth of e-commerce;
- provision for future negotiations on access to Chinese government procurement markets; and
- facilitation of trade through streamlined customs processes.

Next steps for implementation

The Australian and Chinese Governments will now undertake

internal domestic treaty-making processes with a view to bringing ChAFTA into effect as soon as practicable. Once those processes are completed, both countries will exchange diplomatic notes to certify that they are ready for the Agreement to enter into force. ChAFTA is expected to enter into force 30 days after this exchange, or on a date otherwise agreed.

While no specific guidance on the timing for implementation has been provided, Australian Government press announcements indicate both countries are looking to bring ChAFTA into force as soon as possible. Having regard to the implementation timeline for KAFTA and JAEPA, it is possible that ChAFTA may come into force by year end.

Australia's free trade agenda

In addition to the free trade agreements (**FTAs**) with China, South Korea and Japan, Australia has existing free trade agreements in force with New Zealand, the United States, Chile, Thailand, Malaysia, Singapore, and the Association of South East Asian Nations (**ASEAN**).

Australia is presently negotiating a number of FTAs, including with India and Indonesia. These include a number of plurilateral FTAs, including:

- the Australia-Gulf FTA with the Gulf Co-operation Council (comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates);
- the Pacific Agreement on Closer Economic Relations (**PACER**) (between New Zealand a number of Pacific island nations);
- the Regional Comprehensive Economic Partnership (**RCEP**) (which would initially include the ten ASEAN member states

(including China) and those countries which have existing FTAs with ASEAN); and

- the Trans Pacific Partnership Agreement (which has, in addition to Australia, 11 other negotiating parties comprising the US, Japan, Singapore, Malaysia, New Zealand, Brunei, Canada, Chile, Mexico, Peru and Vietnam) (**TPP**).

RCEP and TPP both represent potential pathways for free trade in the Asia-Pacific. The RCEP participating countries account for almost half the world's population and around 30% of global GDP⁶ whereas the TPP participants represent around 11% of world population and 36% of global GDP⁷. Australia (as a participant in both groupings) is expected to benefit irrespective of which is concluded first. However, it is expected that China will push heavily for conclusion of the RCEP ahead of the US-backed TPP.

Further information

Further information on all of Australia's FTAs (including English and Chinese language versions of ChAFTA) can be found on the Australian Government Department of Foreign Affairs and Trade website at www.dfat.gov.au.

Australia's foreign investment policy (in both English and Chinese language versions) is available on the Foreign Investment Review Board website at www.firb.gov.au.

¹Media Release from The Hon. Tony Abbott, MP Prime Minister and The Hon. Andrew Robb AO MP, 17 June 2015

²Australian Government Department of Foreign Affairs and Trade – "ChAFTA – Benefits for Australian Businesses" at www.dfat.gov.au/trade/agreements/chafta/factsheets/Pages/chafta-benefits-for-australian-business.aspx.

[sheets/Pages/chafta-benefits-for-australian-business.aspx](http://www.dfat.gov.au/trade/agreements/chafta/factsheets/Pages/chafta-benefits-for-australian-business.aspx).

³A substantial interest occurs when a single foreign person (and any associates) acquires an interest of 15 per cent or more of the interests or voting power in a target, or several foreign persons (and any associates) acquire an interest of 40 per cent or more in interests or voting power a target.

⁴The A\$15 million threshold currently applies under Australia's foreign investment policy to all private investors except those from the US, New Zealand, Chile, Singapore and Thailand. Singaporean and Thai investors will require prior approval if acquiring a substantial interest in a primary production business valued above \$50 million. United States, New Zealand and Chilean investors will require prior approval if acquiring a substantial interest in a primary production business valued above \$1,094 million.

⁵In February 2015 the Australian Government also released a proposal for a new A\$55 million screening threshold for foreign investment in Australian "agribusiness" (as distinct from acquisitions of rural land, to which the A\$15 million screening threshold applies). It remains to be seen whether ChAFTA will result in relaxation of the rural land threshold for private Chinese investors.

⁶Australia's foreign investment policy provides a very wide definition of "foreign government investor" which includes:

- a body politic of a foreign country;
- entities in which governments, their agencies or related entities from a single foreign country have an aggregate interest (direct or indirect) of 15 per cent or more;
- entities in which governments, their agencies or related entities from more than one foreign country have an aggregate interest (direct or indirect) of 40 per cent or more; or
- entities that are otherwise controlled by foreign governments, their agencies or related entities, and any associates, or could be controlled by them including as part of a controlling group.

⁷Australian Government Department of Foreign Affairs and Trade – "Regional Comprehensive Economic Partnership" at www.dfat.gov.au/trade/agreements/rcep/Pages/regional-comprehensive-economic-partnership.aspx.

Australian Government Department of Foreign Affairs and Trade – "Trans Pacific Partnership Agreement" at <http://www.dfat.gov.au/trade/agreements/tpa/Pages/trans-pacific-partnership-agreement-tpa.aspx>

Contacts

Sydney

Mark Pistilli

Partner

T: +61 2 8922 8001

E: mark.pistilli
@cliffordchance.com

Amelia Horvath

Counsel

T: +61 2 8922 8023

E: amelia.horvath
@cliffordchance.com

Perth

Paul Lingard

Partner

T: +61 8 9262 5575

E: paul.lingard
@cliffordchance.com

Sam Luttrell

Counsel

T: +61 8 9262 5564

E: sam.luttrell
@cliffordchance.com

Beijing

Terence Foo

Partner

T: +86 106 535 2299

E: terence.foo
@cliffordchance.com

Tim Wang

Partner

T: +86 106535 2266

E: tim.wang
@cliffordchance.com

Shanghai

Kelly Gregory

Partner

T: +86 212 320 7234

E: kelly.gregory
@cliffordchance.com

Glen Ma

Partner

T: +86 212320 7217

E: glen.ma
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Level 7, 190 St Georges Terrace, Perth, WA 6000, Australia
Clifford Chance, Level 16, No. 1 O'Connell Street, Sydney, NSW 2000, Australia

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