
The Parliament of the Commonwealth of Australia
Joint Standing Committee on Treaties

Report 154

Treaty tabled on 17 June 2015

Free Trade Agreement between the Government of Australia and the
Government of the People's Republic of China (Canberra 15 June 2015)

October 2015
Canberra

© Commonwealth of Australia 2015

ISBN 978-1-74366-386-8 (Printed version)

ISBN 978-1-74366-387-5 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



Contents

Foreword	vii
Membership of the Committee	ix
Resolution of Appointment	xi
List of abbreviations	xii
List of recommendations	xvi
1 Introduction	1
Purpose of the report.....	1
Conduct of the Committee's review	2
2 Overview and analysis	3
Trade agreements	3
Observations on free trade agreements	3
China Australia Free Trade Agreement.....	5
Background.....	5
Overview and national interest summary	7
Reasons for Australia to take the proposed treaty action	8
Memoranda of Understanding.....	11
Obligations	11
Implementation.....	13
Costs.....	13
Review	14
3 Advantages	15

Introduction	15
Potential of China as a trading partner	15
Economic benefits	16
Competitive advantage	17
Business confidence	18
Intellectual property rights	22
Framework for review	24
4 Labour mobility	27
Introduction	27
Movement of Natural Persons.....	28
457 visa process	29
Skills assessment	32
Investment Facilitation Arrangement	35
IFA impact on 457 visas	36
Labour market testing	37
Safeguards for temporary workers	39
Work and Holiday Visa Arrangement	40
5 Other Issues.....	43
Introduction	43
Investor-state dispute settlement mechanism	43
Scale of the Chinese market	47
Tariffs	49
Remaining tariffs	49
Safeguards.....	49
Inequitable tariff reductions	50
Non-tariff barriers.....	51
Protocols	52
Sanitary and phytosanitary regulations	53
Regulations.....	53
Australian policy and regulation.....	53
Maintaining Australian standards.....	55
Omissions.....	55

Treaty making process	56
6 Conclusion.....	59
Introduction	59
Labour mobility	60
Skills assessment.....	60
Access and utilisation	61
Business initiatives.....	62
Austrade.....	63
Non-tariff barriers	64
Antimicrobial resistance	65
Framework for review.....	66
Conclusion	66
 Dissenting Report – The Hon K Thomson MP, The Hon M Parke MP, Senator S Lines and Senator G Sterle	 67
Mandatory Skills Testing	75
Investor State Dispute Settlement.....	76
Lack of Environment and Labour Chapters.....	78
Concern Over Protection of Food Labelling from ISDS.....	79
Australian Manufacturing	79
Conclusion	79
 Additional Comments – Senator the Hon J Ludwig	 91
Memorandum of Understanding: Investment Facilitation Arrangement.....	91
Labour market testing regime.....	92
Skills assessment.....	94
Investor-state Dispute Settlement mechanisms.....	95
Conclusion	96
 Dissenting Report—Australian Greens	 97
Advantages.....	98
Labour mobility	101
Other issues	103

Labour and environmental standards.....	103
Investor-state dispute settlement mechanism	104
Appendix A - Submissions	105
Appendix B - Witnesses.....	109
Appendix C - Exhibits	115



Foreword

The China Australia Free Trade Agreement (ChAFTA) is the third trade agreement to come before the Committee in the 44th Parliament. Together, the agreements with China, Korea and Japan open up the major markets in Asia to Australian consumers and industry.

China is currently Australia's largest trading partner with two-way trade worth \$160 billion in 2013–14. It is both Australia's largest export market and its largest source of imports. On entry into force of ChAFTA, more than 85 per cent of Australia's trade to China will have tariffs reduced to zero and, on full implementation, 95 per cent of trade will enter China duty-free. This Agreement is expected to promote closer economic integration between China and Australia and therefore enhance an already significant bilateral economic relationship.

As the Committee has observed before, in theory inclusive multilateral trade agreements may be the preferred route to trade liberalisation and economic growth. However, bilateral, plurilateral and regional trade agreements are often a more practical way to achieve results. Australia is losing market share in the burgeoning Chinese economy because of China's existing preferential trade agreements with some of Australia's major competitors such as New Zealand, Chile and ASEAN. The negotiation of a preferential trade agreement with China appears the most realistic option to combat Australia's growing competitive disadvantage.

The Committee heard that ChAFTA is a 'transformative' agreement, a 'watershed' that is going to deliver significant commercial benefits to a wide range of sectors. We found that many industries, including dairy, beef and fishing, are expected to benefit substantially from the implementation of ChAFTA. The service industries too are set to capitalise on the opportunities presented by China's growing middle class and its ageing population.

The labour provisions in ChAFTA proved controversial but the Committee is satisfied that the safeguards within Australia's immigration and employment frameworks will mitigate the concerns raised, with the proviso that the

government organisations responsible for ensuring compliance are adequately resourced.

The Committee wants to ensure that the full benefit of ChAFTA is realised by Australian businesses and industry. We are well aware that only 19 per cent of Australian exporters make use of Australia's existing free trade agreements. To achieve the promised economic growth, more steps must be taken to increase uptake.


While much is being done by government and business there is room for improvement in a number of areas. Non-tariff barriers continue to be a major obstacle for many industries. Work on alleviating these barriers must continue at an accelerated pace. An area that was again brought to our attention is the hindrance posed by domestic regulation on some sectors. The Committee has recommended that specific steps be taken to address this issue in the financial services sector.

As well, Australian business and industry must be provided with education and support to facilitate understanding of free trade agreements and access requirements. To this end, the Committee has recommended that Austrade be sufficiently resourced to ensure specialised expertise is available for specific sectors.

Overall, the Committee expects that broad sections of Australian business and industry will receive substantial benefit from greater access to one of the world's largest economies. However, the Committee urges government, business and industry to make full use of the review framework built into ChAFTA to ensure that the issues that remain are addressed quickly and systematically.

Finally, I would like to thank the Committee Members, and the previous Chair, for their engagement and hard work during this inquiry.

Mr Angus Taylor MP
Chair



Membership of the Committee

Chair Mr Wyatt Roy MP *(to 12/10/15)*

Mr Angus Taylor MP *(from 15/10/15)*

Deputy Chair The Hon Kelvin Thomson MP

Members Mr Andrew Broad MP

Dr Dennis Jensen MP

Mr Ken O'Dowd MP

The Hon Melissa Parke MP

The Hon Dr Sharman Stone MP

Mr Tim Watts MP

Mr Brett Whiteley MP

Senator Chris Back

Senator David Fawcett

Senator the Hon David Johnston
(from 12/10/15)

Senator Sue Lines

Senator the Hon Joe Ludwig

Senator James McGrath *(to 12/10/15)*

Senator Glenn Sterle

Senator Peter Whish-Wilson

Committee Secretariat

Secretary	Lynley Ducker
Inquiry Secretary	Dr Narelle McGlusky
Senior Researcher	Kevin Bodel
Researcher	Elizabeth Shaw
Researcher	Belynda Zolotto
Administrative Officer	Cathy Rouland



Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament;
 - (ii) a Minister; or
 - (iii) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACBC	Australia China Business Council
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
ADF	Australian Dairy Farmers
ADI	Australian Dairy Industry
AFGC	Australian Food and Grocery Council
AFPA	Australian Forest Products Association
AFTINET	Australian Fair Trade and Investment Network
AGWA	Australian Grape and Wine Authority
AiG	Australian Industry Group
ALFA	Australian Lot Feeders' Association
AMR	Antimicrobial resistance
AMWU	Australian Manufacturing Workers' Union
ANIC	Australian Nut Industry Council
ANU	Australian National University
ANZCO	Australian and New Zealand Standard Classification of Occupations

APL	Australian Pork Limited
AQF	Australian Qualification Framework
ASEAN	Association of Southeast Asian Nations
BCA	Business Council of Australia
BRTAs	Bilateral and Regional Trade Agreements
CEPU	Communications Electrical Plumbing Union
CFMEU	Construction, Forestry, Manufacturing and Energy Union
ChAFTA	China Australia Free Trade Agreement
CHINCA	China International Contractors Association
COPHE	Council of Private Higher Education Inc.
DFAT	Department of Foreign Affairs and Trade
DIBP	Department of Immigration and Border Protection
ECA	Export Council of Australia
EIU	Economic Intelligence Unit (EIU)
EPBC (the EPBC Act)	The <i>Environment Protection and Biodiversity Conservation Act 1999</i>
ETU	Electrical Trades Union of Australia
EU	European Union
FIRB	Foreign Investment Review Board
FSC	Financial Services Council
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GIMAF	Grain Industry Market Access Forum
HS	Harmonized Item Description and Coding System

IFA	Investor Facilitation Arrangement
ILO	International Labour Organisation
IP	Intellectual Property
ISDS	Investor-state dispute settlement
JSCOT	Joint Standing Committee on Treaties
KAFTA	Korea-Australia Free Trade Agreement
MBA	Master Builders Australia
MCA	Migration Council of Australia
MCA	Minerals Council of Australia
MFN	Most favoured nation
MIA	Murrumbidgee Irrigation Area
MLA	Meat and Livestock Australia
MOU	Memorandum of Understanding
NECA	National Electrical and Communications Association
NFF	National Farmers' Federation
NIA	National Interest Analysis
PFTZ	Shanghai Pilot Free Trade Zone
RCEP	Regional Comprehensive Economic Partnership
RIS	Regulation Impact Statement
SAGE	Studying and Advancing Global Eldercare
SPS	Sanitary and phytosanitary
STAG	Seafood Trade Advisory Group
TFGA	Tasmanian Farmers and Graziers Association
TRA	Trades Recognition Australia

TRQ	Tariff Rate Quota
TSMIT	Temporary Skilled Migration Income Threshold
TWE	Treasury Wine Estates
UK	United Kingdom
USA	United States
WAFIC	Western Australian Fishing Industry Council
WFA	Winemakers' Federation of Australia
WHV	Work and Holiday Visa Arrangement
WTO	World Trade Organization
WWA	Wines of Western Australia



List of recommendations

6 Conclusion

Recommendation 1

The Committee recommends that all government departments and agencies responsible for curbing unlawful immigration activity, particularly the Department of Immigration and Border Protection, are adequately resourced to carry out their functions effectively and efficiently.

Recommendation 2

The Committee recommends that Austrade is sufficiently resourced to support dedicated officers, with the specific expertise required to provide information and assistance to individual sectors to facilitate access to the Chinese market.

Recommendation 3

The Committee recommends that:

- the Department of Agriculture develop a set of performance indicators to measure progress on the removal of non-tariff barriers; and
- the Department of Agriculture and the relevant sections of the Department of Foreign Affairs and Trade are adequately resourced to enable effective progress to be made in removing non-tariff barriers.

Recommendation 4

That the Australian Government prioritise implementation of the recommendations of the *Review of the Tax Arrangements Applying to Collective Investment Vehicles* report and *Australia as a Financial Centre – Building on our Strengths* (the Johnson Report) in order to achieve full

utilisation of the China Australia Free Trade Agreement for Australian financial services.

Recommendation 5

The Committee supports the *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* (Canberra 15 June 2015), which was tabled in Parliament on 17 June 2015.
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.5 A *Regulation Impact Statement* (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The Treaty examined in this report required a RIS.
- 1.6 The Committee takes account of these documents in its examination of the Treaty text, in addition to other evidence taken during the inquiry program.

- 1.7 Copies of the Treaty considered in this report and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/17_June_2015/Treaty_being_considered.

Conduct of the Committee's review

- 1.8 The Treaty action reviewed in this report was advertised on the Committee's website from the date of tabling. Submissions for the Treaty were requested by 24 July 2015.
- 1.9 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the Treaty under review.
- 1.10 The Committee held public hearings into the Treaty in Canberra on 17 August and 7 September 2015, Brisbane on 27 July 2015, Sydney on 31 July 2015, Perth on 25 August 2015, Devonport on 27 August and Melbourne on 28 August 2015.
- 1.11 The transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the Treaty's tabling date, 17 June 2015.
- 1.12 A list of submissions received and their authors is at Appendix A.
- 1.13 A list of witnesses who appeared at the public hearings is at Appendix B.
- 1.14 A list of exhibits received is at Appendix C.

Overview and analysis

Trade agreements

- 2.1 The *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* (the China Australia Free Trade Agreement or ChAFTA), is the third free trade agreement to come before the Joint Standing Committee on Treaties (JSCOT) in the 44th Parliament. The previous agreements were with Korea and Japan.
- 2.2 As noted in the Committee's previous reports; bilateral, plurilateral and regional trade agreements increased as negotiations on the World Trade Organization's (WTO) multilateral trade agreements slowed during the 1990s.¹ These agreements, often referred to as 'free trade agreements' but more correctly 'preferential trade agreements', are signed between two or more countries and provide them with favourable market access conditions by reducing tariff and non-tariff barriers.
- 2.3 As of September 2015, Australia has nine free trade agreements (FTAs) in place, seven under negotiation and one signed but not yet in force.

Observations on free trade agreements

- 2.4 Advocates for free trade agreements suggest that FTAs have provided a way forward since the WTO process stalled during the 1990s, encouraging trade liberalisation, opening up market access and strengthening bilateral relationships. The WTO gives conditional support for free trade agreements, allowing for them under the General Agreement on Tariffs and Trade's (GATT) Article 24, providing they meet WTO rules. The WTO

1 See the Joint Standing Committee on Treaties (JSCOT), *Report 142: Treaty tabled on 13 May 2014*, September 2014, and JSCOT, *Report 144: Treaty tabled on 14 July 2014*, October 2014.

indicates that such agreements can go beyond what may be available in a multilateral agreement at a given time.² It is often quicker and easier to achieve an outcome for an FTA where negotiations are taking place between a limited number of parties.³

- 2.5 As well as tariff reduction or elimination, free trade agreements often cover a range of non-tariff barriers and increasingly cover such matters as investment protection, intellectual property rights, trade facilitation, government procurement, and labour and environment standards. Many of these impediments to free trade are 'not within scope in the WTO setting' and FTAs open up an avenue to pursue such matters.⁴ The outcome in these non-tariff areas frequently lays the foundation for rules and issues that are subsequently incorporated into multilateral agreements.⁵
- 2.6 On the other hand, the contribution of free trade agreements to world trade liberalisation and economic growth has been questioned. The WTO cautions that, although such agreements can complement the multilateral trading system, there are a number of concerns:
- net economic impact will depend on the architecture of the individual agreement and its internal parameters;
 - they are discriminatory and advantage the signatory countries;
 - distortions in resource allocation, and trade and investment diversion may minimise benefits; and
 - the proliferation of agreements and consequent overlapping trade rules can hamper trade by imposing extra costs on potential participants.⁶
- 2.7 The Productivity Commission found that commercial benefits for Australian businesses from bilateral and regional trade agreements

- 2 World Trade Organization (WTO), 'Understanding the WTO', p. 64, <https://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf> viewed 4 September 2015.
- 3 The Australian APEC Study Centre, Monash University, *An Australian-USA Free Trade Agreement: Issues and Implications*, Department of Foreign Affairs and Trade, August 2001, p. 19, <http://www.sice.oas.org/TPD/USA_AUS/Studies/MonashU_e.pdf> viewed 4 September 2015.
- 4 Productivity Commission, *Bilateral and Regional Trade Agreements*, November 2010, p. xxi.
- 5 WTO, 'Understanding the WTO', p. 64, <https://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf> viewed 4 September 2015.
- 6 WTO, 'Regional Trade Agreements: Scope of RTAs', <https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm> viewed 4 September 2015.

(BRTAs) were limited as the agreements did not address the non-tariff barriers that prevented market access.⁷

- 2.8 The Productivity Commission called for a more realistic, transparent process, including a post-negotiation analysis, to identify possible adverse impacts.⁸

China Australia Free Trade Agreement

- 2.9 The following summary of the *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* (ChAFTA) and its claimed benefits is taken from the National Interest Analysis (NIA) and the Regulation Impact Statement (RIS).

Background

- 2.10 According to the RIS Australia has an extensive, growing and highly complementary economic relationship with China. In 2013–14 two-way trade in goods and services reached \$159.7 billion, making China Australia's largest trading partner. China is both Australia's largest export market (\$107.6 billion or 32 per cent of total exports) and largest source of imports (\$52.1 billion or 15 per cent of total imports). The bilateral trade relationship is also among the fastest growing: exports grew 27 per cent from 2012–13 to 2013–14, while five-year trend growth to 2013–14 reached 19 per cent.⁹
- 2.11 The RIS states that, at the end of 2013, Chinese investment in Australia was valued at \$31.9 billion and Australian investment in China was \$29.6 billion. The RIS points out that, while bilateral investment figures are modest compared to other trade and investment relationships, investment in both directions is growing rapidly. At the end of 2013, Australian investment in China was 39 per cent higher and Chinese investment in Australia was 41 per cent higher than the previous year.¹⁰
- 2.12 However, the RIS argues that the bilateral trade and investment relationship will suffer in the absence of a bilateral trade agreement due to:

7 Productivity Commission, *Bilateral and Regional Trade Agreements*, p. xxiv.

8 Productivity Commission, *Bilateral and Regional Trade Agreements*, p. xxxiii.

9 Regulation Impact Statement, *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China*, done at Canberra, 15 June 2015, [2015] ATNIF 15 (hereafter referred to as 'RIS'), para 2.

10 RIS, para 3.

- limited trade opportunities due to persistent high import tariffs, particularly in agriculture;
- erosion of competitiveness for Australian goods and services exporters due to China's existing and future preferential agreements with other countries;
- constraints on Australian businesses' ability to fully capitalise on the increasing orientation of the Chinese economy towards consumption and services;
- denial of the benefit of increased certainty for Australian exporters as to treatment of their goods and services and investments in the Chinese market;
- risks of Australia becoming less attractive to Chinese investment; and
- lack of a framework for Australia and China to deepen liberalisation and expand market access over the longer term.¹¹

- 2.13 The RIS indicates that Australian exporters currently face significant tariff barriers into China, including tariff peaks for key products, limiting Australian businesses' ability to take full advantage of the growing Chinese market. China's imposition of high tariffs does not only constrain trade, it also adds additional costs to traded items, reducing efficiency and profitability.¹²
- 2.14 The RIS suggests that China's trade agreements with other countries, including ASEAN and New Zealand, put Australian exporters at a competitive disadvantage. The RIS argues that, as a result of the high tariffs and market access barriers faced by Australia and the preferential access given to Australia's competitors, without a bilateral FTA, Australian exporters will lose competitiveness and market share.¹³ Likewise Australian service industries may receive less favourable treatment than suppliers from countries with an existing FTA with China.¹⁴
- 2.15 The RIS also notes that on some products China applies a tariff lower than the maximum permitted under its WTO commitments, which means China has scope to raise tariffs for such products at any time. China has done this on a number of occasions, putting Australian exporters at a competitive disadvantage. By eliminating most of China's import tariffs

11 RIS, para 4.

12 RIS, para 8.

13 RIS, para 11.

14 RIS, paragraphs 18 and 19.

and locking in the reductions, the RIS argues that ChAFTA will provide greater certainty for Australian businesses.¹⁵

- 2.16 With regard to investment, the RIS points out that the 1988 bilateral treaty between Australia and China¹⁶ does not include market access obligations. ChAFTA is expected to provide increased certainty for investors in both countries.¹⁷

Overview and national interest summary

- 2.17 According to the NIA, ChAFTA is expected to significantly boost Australia's economic relationship with China, Australia's largest trading partner, and elevate the standing of the bilateral relationship overall. The Agreement is expected to give Australian exporters significantly improved market access in goods and services. It will eliminate or significantly reduce tariffs on a wide range of Australian goods exports including beef, dairy, sheepmeat, wine, horticulture, and energy and resource products. The NIA claims that the Agreement delivers China's best ever services commitments, including the provision of new or significantly improved market access not included in any of China's previous FTAs (with the exception of its Agreements with Hong Kong and Macau).¹⁸
- 2.18 The NIA states that beneficiaries of the Agreement are expected to include Australian service suppliers across a range of sectors including banking and financial, insurance, legal, education, health and aged care, construction, manufacturing and telecommunications. It is also expected that Australian businesses and consumers will have access to cheaper Chinese imports, particularly household and electronic goods. The NIA suggests that expanded trade liberalisation is likely to stimulate economic activity in Australia and could lead to job creation.¹⁹
- 2.19 The NIA maintains that the Agreement will protect Australia's competitive position in the Chinese market against other countries with which China has FTAs. The NIA indicates that the Agreement has the potential to facilitate the expansion of the economic relationship with

15 RIS, paragraphs 15 and 16.

16 *Agreement between the Government of Australia and the Government of the People's Republic of China on the Reciprocal Encouragement and Protection of Investments* (Beijing, 11 July 1988).

17 RIS, paragraphs 20 and 21.

18 National Interest Analysis [2015] ATNIA 7 with attachments *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China*, done at Canberra, 15 June 2015, [2015] ATNIF 15 (hereafter referred to as 'NIA'), para 4.

19 NIA, para 5.

China, including through a built-in review agenda for further liberalisation of bilateral trade and investment.²⁰

- 2.20 The NIA and RIS argue that the Agreement will deliver market access gains and cuts to tariffs in priority areas for Australia more quickly than any current multilateral and plurilateral negotiations underway, such as the WTO Doha Round and the Regional Comprehensive Economic Partnership (RCEP).²¹

Reasons for Australia to take the proposed treaty action

- 2.21 The NIA describes ChAFTA as a broad economic partnership agreement with China that is expected to further enhance the bilateral relationship, promote closer economic integration and highlight the relationship's strategic importance. According to the NIA the Agreement is expected to enhance an already significant and complementary bilateral economic relationship.²²
- 2.22 The NIA states that on entry into force of ChAFTA, more than 85 per cent of Australia's trade to China will have tariffs set at zero and on the full implementation of the Agreement, 95 per cent of trade will enter duty-free.²³ It also states that the Agreement will raise the Foreign Investment Review Board (FIRB) screening threshold for Chinese investors and commit China to providing Australian investors with the most favourable treatment it gives to any other investment partner in the future.²⁴
- 2.23 The following summary of the benefits for individual industries is taken from the NIA and RIS.

Agriculture and processed food

- 2.24 China is Australia's largest agriculture and fisheries market, with an estimated total value of \$9 billion in 2013-14. Its demand for high-quality agriculture and food products is growing rapidly. Nevertheless, China's current tariff barriers are high on certain agricultural products. Under the Agreement, agricultural tariffs of up to 30 per cent will be eliminated or significantly reduced on many Australian agricultural exports.²⁵

20 NIA, para 6.

21 NIA, para 7; RIS paragraphs 29-33.

22 NIA, para 8.

23 NIA, para 9.

24 NIA, para 10.

25 NIA, para 10.1. For further details see the RIS paragraphs 42-82.

Exclusions

- 2.25 China excluded several agricultural products from further liberalisation under the Agreement. China provides access to WTO members to its most sensitive agricultural markets (rice, wheat, cotton, maize and sugar) via large tariff rate quotas (TRQs) with low in-quota tariffs (one per cent for rice, wheat, cotton and maize, 15 per cent for sugar). Australian exporters have full access to these TRQs but Australia does not yet have technical quarantine market access for rice.²⁶

Resources, energy and manufacturing

- 2.26 Australia's exports of resources, energy and manufacturing products to China were worth over \$90 billion in 2013 (approximately 40 per cent of Australia's total exports), making China Australia's biggest export market in these sectors. On entry into force, 92.9 per cent of China's imports of these products from Australia (by value in 2013) will enter duty free. On full implementation of the Agreement, 99.9 per cent of Australia's current exports of these products will enter duty free. China will also provide greater certainty to traders by binding tariffs at zero for major resources and energy products, including iron ore, gold, crude petroleum oils and liquefied natural gas.²⁷

Impact on domestic manufacture

- 2.27 The RIS states that the implications of the Agreement for domestic manufacturing are expected to be mixed. Australian manufacturing businesses that use goods and materials produced in China are expected to have access to lower input costs as tariffs are eliminated or phased down, while industries that compete with products produced in China are expected to face additional competitive pressure. However, the RIS argues that greater competition provides incentives for domestic producers to innovate and lift their productivity, and is consistent with the Government's Industry Innovation and Competitiveness Agenda.²⁸

Services

- 2.28 China is Australia's largest services market, with exports worth \$7.5 billion in 2013–14 (13 per cent of Australia's services exports). Under the Agreement, China will bind its regulatory regime in a wider range of service sectors, providing greater certainty of treatment for Australian service providers. In some areas, the Agreement is expected to provide

26 RIS, paragraphs 83–84.

27 NIA, para 10.2. For further details see the RIS paragraphs 88–113.

28 RIS, para 114. For further details see the RIS paragraphs 115–119.

new access for Australian service providers. Australian banks, insurers, securities and futures companies, education providers, law firms, health and aged care services, mining and extractive industries, telecommunications providers, tourism and travel services are expected to be able to do business more easily in China.²⁹

- 2.29 Australia and China have agreed to a review two years after the Agreement's entry into force to consider the progressive liberalisation of measures affecting trade in services.³⁰

Investment

- 2.30 The Agreement is expected to provide further opportunities for investors in both countries. China has undertaken to extend the most favourable treatment it gives to any other investment party in a subsequent agreement with Australian investors. The FIRB screening threshold for Chinese private investors in non-sensitive sectors will increase from \$252 million to \$1 094 million.³¹
- 2.31 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 urban land, agricultural land (at \$15 million or above) and in agribusinesses (at \$53 million or above).³²
- 2.32 ChAFTA includes an investor-state dispute settlement mechanism which the NIA maintains contains appropriate protections for government regulation in areas such as public welfare, health, culture, environment and foreign investment screening.³³
- 2.33 Australia and China have agreed to a review within three years after the Agreement's entry into force to consider further investment protections and increased market access.³⁴

Other

- 2.34 The Agreement also includes commitments on:
- *movement of natural persons*: China and Australia will provide guaranteed access to individuals of the other Party for certain categories of business visitors and skilled service providers;³⁵

29 NIA, para 10.3.

30 NIA, para 10.3. For further details see the RIS paragraphs 126–146.

31 NIA, paragraphs 10.4 and 13.

32 NIA, para 13.

33 NIA, para 10.4.

34 NIA, para 10.4. For further details see the RIS paragraphs 147–152.

35 For further details see the RIS paragraphs 153–161.

- *intellectual property*: the chapter on intellectual property reaffirms the Parties' existing international obligations and includes provisions on various issues including national treatment, enforcement, border measures, geographical indications and cooperation;
- *competition policy*: promotes cooperation between Australian and Chinese competition authorities through the exchange of information and consultation;³⁶
- *government procurement*: negotiation of a reciprocal agreement on government procurement after the completion of China's negotiations to join the WTO Government Procurement Agreement; and
- *electronic commerce*: provisions to prevent the imposition of customs duties on electronic transmissions, safeguard electronic commerce and facilitate cooperation in respect of consumer protection.³⁷

Memoranda of Understanding

- 2.35 Alongside ChAFTA, Australia and China have negotiated two Memoranda of Understanding (MOUs). The first of these is a Work and Holiday Arrangement, under which Australia will grant visas for up to 5 000 Chinese work and holiday makers annually.³⁸
- 2.36 The second MOU will allow for Investor Facilitation Arrangements (IFAs). Chinese-owned companies registered in Australia undertaking large infrastructure development projects will be able to negotiate, similarly to Australian businesses, increased flexibilities for workers engaged on specific projects. IFAs will operate within the framework of Australia's existing 457 visa system and will not allow Australian employment laws or wages and conditions to be undermined.³⁹

Obligations

- 2.37 The text of ChAFTA comprises 17 Chapters, four Annexes (including Schedules of Commitments for Australia and China) and five side letters. There are two Memoranda of Understanding and an additional side letter which do not form part of the Agreement.⁴⁰
- 2.38 Upon entry into force, or over time, each Party will eliminate or reduce specified tariffs on imports of goods from the other Party (**Chapter 2**) that

36 For further details see the RIS para 64.

37 NIA, para 10.5. For further details see the RIS para 165.

38 NIA, para 14.

39 NIA, para 14.

40 NIA, para 15.

meet the agreed Rule of Origin criteria (**Chapter 3**). The Parties' Schedules of tariff commitments are set out at **Annex I** to the Agreement, with a country specific tariff rate quota for Australian wool exports to China (**Chapter 2**). A review clause of the Agreement (**Chapter 16**) stipulates a requirement for the Parties to consider the deepening liberalisation and further expansion of market access three years after ChAFTA's entry into force.⁴¹

- 2.39 Under the Trade in Services and Investment Chapters of the Agreement (**Chapters 8 and 9** respectively), each Party will grant market access and non-discriminatory treatment (known as national treatment and most favoured nation (MFN) treatment) to services and investments from the other Party. In China's case, national and MFN treatment will apply to specific sectors listed in its Schedule of Specific Commitments (**Annex III**). In Australia's case, national and MFN treatment will apply except where specific measures or individual sectors are specifically reserved in the non-conforming measures annexures to the Agreement (**Annex III**). The Parties also commit to additional sector-specific disciplines affecting financial service providers and investors from each Party (**Annex 8-B**), in addition to those above in the Trade in Services and Investment Chapters of the Agreement.⁴²
- 2.40 ChAFTA also contains commitments and disciplines on:
- customs procedures (**Chapter 4**);
 - sanitary and phytosanitary (SPS) measures⁴³ (**Chapter 5**);
 - technical barriers to trade (**Chapter 6**);
 - the movement of natural persons (**Chapter 10**);
 - electronic commerce (**Chapter 12**); and
 - Intellectual Property rights (**Chapter 11**).⁴⁴
- 2.41 **Chapter 15** (Dispute Settlement) contains a binding State-to-State dispute settlement mechanism modelled on previous free trade agreements and the WTO system. Most substantive obligations in the Agreement will be subject to this mechanism, except those found in the Chapters on Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Electronic Commerce and the Movement of Natural Persons (aside from disputes meeting certain criteria).⁴⁵

41 NIA, para 16.

42 NIA, para 17.

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

44 NIA, para 13.

45 NIA, para 19.

- 2.42 **Chapter 9** contains an Investor-State Dispute Settlement mechanism.⁴⁶
- 2.43 **Chapter 13** (Transparency) requires the Parties to publish and administer their laws, regulations, procedures and administrative rulings of general application in respect of matters covered by ChAFTA consistently and fairly. **Chapter 14** (Institutional Provisions) establishes a Joint Commission to oversee the Agreement's implementation.⁴⁷
- 2.44 **Chapter 16** (General Provisions and Exceptions) sets out several WTO-style general and security 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 action to protect essential security interests, the environment and health. **Chapter 16** also carves out application of a Party's taxation measures from the scope of the Agreement, and provides for the protection of confidential information.⁴⁸

Implementation

- 2.45 In order to implement the obligations in ChAFTA, a *Migration Act 1958* (Cth) Determination is required in relation to labour market testing. Amendments will also need to be made to the *Customs Act 1901* (Cth), the *Customs Tariff Act 1995* (Cth) and relevant customs regulations as follows:
- the Customs Regulations 2015;
 - the Life Insurance Regulations 1995 – in order to implement the agreement reached by the Parties to ChAFTA in respect of life insurance;
 - the Foreign Acquisitions and Takeovers Regulations 1989 requires amendment to incorporate the new threshold for screening investment proposals by Chinese private investors at 1 094 million.⁴⁹
- 2.46 In addition, new customs regulations will need to be enacted for the product specific rules of origin set out in **Annex II** of the Agreement.⁵⁰

Costs

- 2.47 The estimated loss of tariff revenue for Australia resulting from the Agreement is approximately \$160 million in 2015–16 and \$4 150 million

46 NIA, para 19.

47 NIA, para 20.

48 NIA, para 21.

49 NIA, para 23.

50 NIA, para 24.

over the forward estimates period. This estimate assumes that ChAFTA will enter into force in late 2015.⁵¹

- 2.48 This estimated costing does not include any flow-on impacts arising from increased bilateral trade with China once the Agreement enters into force or take into account additional lost tariff revenue if imports from China displace imports from other countries. The NIA states that the Government considers that entry into ChAFTA represents a net gain for the Australian economy.⁵²

Review

- 2.49 The review provision of the Agreement (**Article 16.5** (review of Agreement)), stipulates a requirement for the Parties to undertake a general review of the Agreement with a view to furthering its objectives (ie to consider the deepening liberalisation and further expansion of market access) within three years after the Agreement enters into force. Such negotiations may give rise to further treaty action under ChAFTA.⁵³

51 NIA, para 22.

52 NIA, para 22.

53 NIA, para 25.

Advantages

Introduction

- 3.1 The China Australia Free Trade Agreement (ChAFTA) has been described as ‘transformative’ for Australian industry and the economy more generally.¹ The Export Council of Australia (ECA) acknowledges that it is ‘not perfect’, but still expects it to deliver significant commercial benefits for a wide range of sectors.² The Australian Chamber of Commerce and Industry (ACCI) sees it as a high quality agreement that will substantially enhance the economic and trade relationship between Australia and China.³
- 3.2 This chapter examines the potential China holds as a trading partner for Australian business and industry and explores the benefits identified by Australian stakeholders in ChAFTA. It also examines two features of the Agreement that have attracted favourable comment: the treatment of intellectual property and the review framework built into the Agreement.

Potential of China as a trading partner

- 3.3 The Chinese market is considered to present substantial potential for Australian businesses and industry. The increasing wealth of China’s burgeoning middle class is driving demand for high quality products, investment and services.⁴ China’s ageing population and concomitant

1 Business Council of Australia (BCA), *Submission 76*, p. 5; Australian Dairy Industry (ADI), *Submission 45*, p. 2.

2 Export Council of Australia (ECA), *Submission 61*, p. 3; Australian Food and Grocery Council (AFGC), *Submission 49*, p. 12.

3 Australian Chamber of Commerce and Industry (ACCI), *Submission 41*, p. 2.

4 Australia China Business Council (ACBC), *Submission 26*.

health problems require long-term, sustainable solutions for care. China is also an emerging market providing growth opportunities not present in the mature markets of many of Australia's existing trading partners such as the United States (USA), United Kingdom (UK) or the European Union (EU).⁵

- 3.4 Global food demand is expected to increase by 77 per cent by 2050 over 2007 requirements, and China is projected to account for 43 per cent of that demand.⁶ Increasing income correlates with increasing demand for protein and high value food products.⁷ Australia's reputation for premium quality, clean, green food is expected to benefit Australian producers in the Chinese market.⁸
- 3.5 The demand for services is also expected to significantly increase with the growth of disposable income.⁹ China's ageing population is considered to open up opportunities in a number of areas. Financial services will benefit from the need for pension and retirement savings products.¹⁰ Aged care services will benefit; not only from designing, developing and managing institutional infrastructure and facilities, but from providing professional staff, training and technology.¹¹

Economic benefits

- 3.6 Evidence to the Committee identified a number of specific benefits that are expected to accrue to Australian businesses and industry from the implementation of ChAFTA. The most significant is a competitive advantage in the global market place particularly with respect to countries that already have an FTA with China. This competitive position will be furthered enhanced by 'most-favoured-nation' (MFN) status.
- 3.7 The Agreement is expected to provide a much needed alternative market for many products and will provide certainty and confidence for a range of businesses. The increase in confidence – together with an anticipated

5 Mr Noel Campbell, President, Australian Dairy Farmers (ADF), *Committee Hansard*, Canberra, 17 August 2015, p. 5.

6 BCA, *Submission 76*, p. 11; AFGC, *Submission 49*, p. 4.

7 AFGC, *Submission 49*, p. 9.

8 Ms Deborah Kerr, General Manager, Policy, Australian Pork Limited (APL), *Committee Hansard*, Canberra, 7 September 2015, p. 18.

9 Westpac, *Submission 42*; Financial Services Council (FSC), *Submission 39*.

10 FSC, *Submission 39*.

11 Mr David Keith Lane, Chairman, ThomsonAdsett, *Committee Hansard*, Brisbane, 27 July 2015, p. 24; Ms Elizabeth Cameron, Chief Executive Officer, Leading Age Services Australia WA, *Committee Hansard*, Perth, 25 August 2015, p. 23.

investment boost – is predicted to generate increased employment, particularly in rural and regional areas.

Competitive advantage

- 3.8 The greatest benefit from ChAFTA, apart from tariff reductions, is seen as the competitive advantage that it will give Australian producers. This is most noticeable in relation to major competitors that already have an FTA in place with China, including New Zealand and Chile. Chile's FTA came into effect in 2006 and New Zealand's in 2008. Wine exports from Chile to China have increased seven fold and New Zealand dairy eight fold since implementation of their FTAs.¹² New Zealand red meat producers will achieve a zero per cent tariff reduction on their product from 1 January 2016.¹³
- 3.9 Witnesses stress that early implementation of ChAFTA is essential if Australia is to regain and retain its competitive advantage. If the Agreement comes into effect before the end of calendar year 2015, Australian producers will receive a tariff cut upon implementation and a subsequent reduction on 1 January 2016. The Australian Dairy Industry estimates that any delay in implementing the Agreement will cost the industry an estimated \$20 million in tariff savings, with the potential to cost \$60 million.¹⁴
- 3.10 The Red Meat Industry exemplifies the plight of many producers if the Agreement does not come into effect before the end of 2015:
- The New Zealanders got their FTA in 2008, and their tariff goes to zero next year – 2016. So it would be 1 January 2016. By delaying us another year, we will have a 12 per cent tariff on our beef for an extra year while they are at zero – we will have a 12 per cent tariff on our sheep meat for an extra year while they are at zero. Then we are still 10 tariff cuts behind – nine years behind – in catching up to zero. Particularly now, we have the opportunity for a double catch up. So then we will only be eight cuts behind them. Whereas, if we do not get it now, we will be 10 cuts behind and a year behind. So we are losing time every day.¹⁵
- 3.11 As well as countering the existing advantages enjoyed by such competitors as New Zealand and Chile, ChAFTA will provide a

12 Mr Campbell, ADF, *Committee Hansard*, Canberra, 17 August 2015, p. 4; Australian Grape and Wine Authority (AGWA), *Submission* 71.

13 Teys Australia Pty Ltd, *Submission* 32; Fletcher International Exports Pty Ltd, *Submission* 43.

14 ADI, *Submission* 45, p.2.

15 Mr Michael Finucan, General Manager, International Markets, Meat and Livestock Australia, *Committee Hansard*, 31 July 2015, pp. 23–24.

significant competitive advantage over countries currently preparing to enter into FTAs with China, including the USA, Canada and the EU.¹⁶ However this advantage may be short-lived. The Australia China Business Council (ACBC) told the Committee that, in its estimation, Australia has approximately five years to take advantage of the opportunities provided by ChAFTA. China has taken a strategic approach to negotiating FTAs and is already developing agreements with other advanced economies:

... China has been very deliberate in the way it has planned its free trade agreements. It started with the smaller economies. It has now moved on to a medium-sized economy like Australia because it is also testing the ground for how it is opening up its markets and services and other things, and Australia was the next test case. I believe we probably have about a five-year window to reap the greatest benefits from this before China moves on to some of the larger economies which are highly competitive. The Europeans and the Americans are already highly competitive on a number of things like innovation and services. It is a relatively small window.¹⁷

- 3.12 Overall, there is a distinct sense of urgency for quick implementation of ChAFTA to improve Australia's competitive trading position.¹⁸

Most-favoured-nation status

- 3.13 The inclusion of MFN provisions in ChAFTA will further enhance and protect Australia's competitive advantage in the Chinese market. MFN status ensures that if China grants greater market access to other trading partners, the conditions will be extended to Australian businesses and investors.¹⁹ With the expected expansion of China's FTA program and the imminent conclusion of agreements with the USA and EU, this is seen as extremely beneficial.²⁰

Business confidence

- 3.14 Exporters emphasised that the certainty engendered by ChAFTA is already influencing business confidence, encouraging investment and promoting employment. For the Western Australian Fishing Industry

16 ECA, *Submission 61*, p. 3.

17 Ms Martine Letts, National Chief Executive Officer, Australia China Business Council (ACBC), *Committee Hansard*, Melbourne, 28 August 2015, p. 9.

18 Winemakers Federation of Australia (WFA), *Submission 11*, p. 5; Australian Lot Feeders' Association (ALFA), *Submission 17*; Minerals Council of Australia (MCA), *Submission 28*; Australian Nut Industry Council (ANIC), *Submission 50*.

19 BCA, *Submission 76*, p. 7; ANZ, *Submission 16*; Westpac, *Submission 42*.

20 BCA, *Submission 76*, p. 7.

Council (WAFIC) the flow on effect created by the opportunities for increased market demand are permeating the industry:

We believe that the FTA is a major opportunity ... the certainty that it signifies to the strategic management and planning of the state's fisheries. Increased certainty regarding markets has strong potential to drive research, development and extension; to drive marketing priorities, including branding; to help determine the best way to reinvest money into supporting fishers; and to further enhance trade and development links.²¹

- 3.15 In expectation of the finalisation and implementation of ChAFTA, the Seafood Trade Advisory Group (STAG) has invested in facilities in China and set up a Chinese company to handle the projected increase in demand:

In anticipation of the free trade agreement, our company has secured a bonded warehouse at Baiyun Airport, Guangzhou, which has a direct link from Australia – an eight-hour flight with direct connections to all major cities within China. We are also setting up a Chinese company in China and we are going to have a local representative who will, potentially, be an expat from here.²²

- 3.16 The Committee inspected the Lion Cheese Factory in Burnie in Tasmania and were told that the company has invested \$150 million in the factory over the past five years to position itself to take full advantage of the Asian market. This is indicative of the dairy processing sector generally, which has committed almost \$1 billion in upgrading existing capacity and establishing further capacity.²³ This commitment is only possible if there is certainty over market access and growth:

The China market certainly gives us that; it certainly gives us access to a growing market that allows our farmers to make those investment choices to grow their businesses and, therefore, employ more people on farm, put more infrastructure and jobs in factories, and help the Australian community generally.²⁴

- 3.17 The Australian Nut Industry Council (ANIC) reports that ChAFTA has provided the confidence for almond growers and investors to expand

21 Mr John Harrison, Chief Executive, Western Australian Fishing Industry Council (WAFIC), *Committee Hansard*, Perth, 25 August 2015, p. 28.

22 Mr Matthew Rutter, General Manager, Marketing and Business Development, Geraldton Fishermen's Co-operative, on behalf of Seafood Trade Advisory Group (STAG), *Committee Hansard*, Perth, 25 August 2015, p. 51.

23 ADI, *Submission 45*, p. 3; Mr Andrew Lester, Dairy Council Chairman, Tasmanian Farmers and Graziers Association (TFGA), *Committee Hansard*, Devonport, 27 August 2015, pp. 12–13.

24 Mr Campbell, ADF, *Committee Hansard*, Canberra, 17 August 2015, p. 5.

existing orchards by 50 per cent. Nursery stock has been ordered for the planting of 14 000 new hectares of almonds over the next three years and export will increase from a value of \$468 million to over \$1 billion by 2020:

These new orchards will require an investment of about \$A500 million over the next seven years. The investment phase will employ many people along the Murray Valley between Loxton in South Australia, through Sunraysia in Victoria and the MIA [Murrumbidgee Irrigation Area] in NSW.²⁵

Branding and marketing

- 3.18 Another source of confidence for Australian producers is the opportunity provided by ChAFTA to exert greater control over their product and over branding and marketing. The Agreement will allow Australian exporters to capitalise on Australia's reputation for clean, green, sustainable food production:

The biggest issue in China for food is food safety. It is a substantial concern amongst many of their consumers. When you talk to people in China, they look at what you can do in meeting that particular demand itself ... They are looking for a product that is packaged in Australia, freighted to them, with the traceability that we can provide and the food safety that we can provide as a nation.²⁶

- 3.19 Under current conditions Australian produce often enters the Chinese market indirectly making the 'chain of custody' difficult to control.²⁷ This can lead to abuse of 'Brand Australia' labelling, hampering producers' ability to capitalise on the Australian reputation. ChAFTA will change this by making it possible for producers to export directly into China:

In the current system that we operate under, Australian exporters struggle to promote or control their brands into China. They are reliant upon Chinese importers, who then on sell their product to downstream customers through an opaque local distribution chain. This limits market transparency and penetration for Australian products to a small number of provinces. Direct access to the market will enable Australian companies to build long-term supply relations with downstream food and beverage customers

25 ANIC, *Submission 50*.

26 Ms Kerr, APL, *Committee Hansard*, Canberra, 7 September 2015, p. 18; Treasury Wine Estates (TWE), *Submission 19*, p. 3; AFGC, *Submission 49*, p. 8.

27 Mr Rutter, STAG, *Committee Hansard*, Perth, 25 August 2015, p. 53.

and grow market share in new markets, including China's burgeoning second and third tier cities.²⁸

Alternative market

- 3.20 China is also seen as an important alternative market for Australian producers. Reliance on a single large market can be damaging for producers during a downturn. Wellard Group Holdings Pty Ltd reminded the Committee that when beef prices slumped during the 1970s, heavy reliance on the US market forced many producers to liquidate their stock. However, the Chinese market will cushion producers from such future market shocks, encouraging investment:

Now, a farmer can actually go out with confidence and put some more infrastructure into his places. He can go and put some more water in and he can go and put some more fences in, because they are saying the price that the Australian farmer is getting at the moment is very close to parity to the rest of the world. That is going to drive investment in farming. Guys are going to hold back their cows, they are going to put some more water in and put some more fencing in, they are going to put irrigation in where they can. Based on what is happening, we are going to have a herd of somewhere between 35 and 40 million cattle. What this does is provide a very competitive market for both live and slaughtered cattle here that is an alternative to the US.²⁹

- 3.21 Market choice for producers could also be beneficial for the domestic market. Increasing access to external markets provides growers and producers with more leverage when dealing with the Australian supermarket duopoly, forcing supermarket chains to offer more realistic prices.³⁰

Employment opportunities

- 3.22 The increased confidence generated by ChAFTA ultimately leads to increased employment opportunities. Food producers believe that while there are short term benefits from the implementation of ChAFTA, the substantial benefits will come over time, particularly with regard to employment.

28 Mr Harrison, WAFIC, *Committee Hansard*, Perth, 25 August 2015, p. 28.

29 Mr Scot Braithwaite, Chief Operating Officer, Wellard Rural Exports Pty Ltd, *Committee Hansard*, Perth, 25 August 2015, p. 18.

30 Mr Matthew Ryan, Board Director, Tasmanian Farmers and Graziers Association (TFGA), *Committee Hansard*, Devonport, 27 August 2015, p. 14; Mr Balzarini, Wellard Group Holdings Pty Ltd, *Committee Hansard*, Perth, 25 August 2015, p. 21.

- 3.23 The dairy industry conservatively expects 1.5 per cent annual growth in employment on farm going forward, which translates to 600 to 700 jobs each year.³¹ Wellard Holdings Group Pty Ltd estimates 50 or 60 people will be needed to cope with increased production.³²
- 3.24 As many primary industries will directly benefit from ChAFTA, the expectation is that rural and regional areas will benefit most from increased employment opportunities. The beef, dairy, seafood and wine industries all stressed the opportunities for employment in rural and coastal areas. The wine industry in Western Australia is currently facing economic challenges and Wines of Western Australia (WWA) pointed out that the opening up of the Chinese market and increasing profitability of wine producers is critical for regional employment:
- With that comes jobs in regional areas where there is not really a great deal that would take over if wine were to fail. You can only imagine what Margaret River would be like, as an example of just one region, if it were not for the wine industry, and that will roll out, and is doing so, throughout the South West.³³

Intellectual property rights

- 3.25 The Intellectual Property (IP) provisions in previous free trade agreements have been criticised for being too prescriptive and constraining future reform. They have also been seen as unbalanced and failing to protect the general public interest. There has been criticism too, of the lack of economic modelling to demonstrate their impact.³⁴ In contrast, the IP provisions in ChAFTA have been praised for their approach and suggested as a precedent for future agreements.³⁵
- 3.26 Associate Professor Weatherall explained the need for generality and abstraction in the IP provisions included in free trade agreements:

31 Mr David Losberg, Senior Policy Manager, Australian Dairy Farmers (ADF), *Committee Hansard*, 17 August 2015, p. 7.

32 Mr Mauro Balzarini, Chief Executive Officer and Managing Director, Wellard Group Holdings Pty Ltd, *Committee Hansard*, Perth, 25 August 2015, p. 15.

33 Mr Larry Jorgensen, Chief Executive Officer, Wines of Western Australia (WWA), *Committee Hansard*, Perth, 25 August 2015, p. 33.

34 Associate Professor Kimberlee Gai Weatherall, *Committee Hansard*, Sydney 31 July 2015, p. 27; See also Joint Standing Committee on Treaties (JSCOT), *Report 142: Treaty tabled on 13 May 2015*, September 2014, pp. 27–31.

35 Associated Professor Weatherall, *Submission 38*; Ms Anna George, *Committee Hansard*, Perth, 25 August 2015, p. 45.

When it comes to treaties, the basic point is that intellectual property is concerned with innovation. It is concerned with technology that is constantly changing and an economic environment and business models that are constantly changing. We frequently – repeatedly – review and change our IP law as technologies change and as economic models and business models change. The more detailed an IP treaty is, the harder it becomes to make those necessary changes when we need to in order to encourage innovation. The more detailed it is, the more it locks in particular models, particular thinking about IP. Frankly, you cannot do that for 20 years. We do not know what technology is going to look like 20 years from now. That is why it is so critical that we keep these things general ...³⁶

- 3.27 The IP provisions in ChAFTA comply with these requirements. The chapter is drafted ‘at a high level of generality’ avoiding detailed IP provisions that would lock in certain forms of IP law. Professor Weatherall provides two examples:
- Article 11.13 requires protection of collective and certification trade marks without specifying in any detail how such protection should be provided; and
 - Article 11.20 which notes that parties may take appropriate measures to limit the liability of internet service providers, without specifying any details regarding how that should be done.³⁷
- 3.28 The IP chapter endorses a balanced view of IP protection. It promotes effective protection and enforcement for rights holders and users on the one hand,³⁸ and supports appropriate measures to prevent abuse by rights holders on the other.³⁹ It recognises that protecting IP rights will promote economic and social development and liberalise international trade⁴⁰ while acknowledging that IP rights can be used to restrain trade.⁴¹
- 3.29 The provisions reflect existing multilateral IP standards and will require no changes to existing Australian IP law.⁴² Additionally, the provisions

36 Associate Professor Weatherall, *Committee Hansard*, Sydney, 31 July 2015, p. 28.

37 Associate Professor Weatherall, *Submission 38*.

38 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* (ChAFTA), Article 11.1(a).

39 ChAFTA, Article 11.1(f).

40 ChAFTA, Article 11.1(c).

41 ChAFTA, Article 11.1(f).

42 Associate Professor Weatherall, *Submission 38*.

focus on cooperation; establishing a mechanism for reviewing and monitoring implementation.⁴³

- 3.30 Professor Weatherall submits that the IP provisions in ChAFTA demonstrate that ‘it is possible to conclude a modern trade agreement *without* descending to significant detail on questions relating to intellectual property’.⁴⁴

Framework for review

- 3.31 ChAFTA contains an in-built framework for review. This framework provides for review periods and implementation committees designed to encourage further trade liberalisation and market access expansion.⁴⁵ Article 16.5 provides for an overarching general review of the Agreement within three years of the date of entry into force and further reviews at least every five years.⁴⁶ There are also review periods specified in individual chapters of the agreement including rules of origin and implementation procedures (Article 3.24), trade in services (Article 8.24), and investment (Article 9.9).
- 3.32 Chapter 14 of ChAFTA establishes a Joint Commission to oversee the implementation of the Agreement.⁴⁷ The Joint Commission will be composed of senior officials and will meet annually.⁴⁸ In addition, specific sub-committees are established to review implementation for Trade in Goods (Article 2.15), Sanitary and Phytosanitary Measures (Article 5.11), Technical Barriers to Trade (Article 6.13), Trade in Services (Article 8.20), Financial Services (Annex 8B, Article 7), and Investment (Article 9.7).
- 3.33 This framework for review has been welcomed. Many sectors stress the importance of the review mechanism in obtaining future consideration of further tariff reductions. Like other sectors, GrainGrowers have not achieved as much as they had hoped from ChAFTA but the review process allows them to continue to pursue their goals:

GrainGrowers had hoped to achieve specific review of grains concessions, in particular the wheat tariff. Despite ChAFTA not including this, it does include a general agreement review,

43 Associate Professor Weatherall, *Submission 38*.

44 Associate Professor Weatherall, *Submission 38*.

45 BCA, *Submission 76*, p. 7.

46 ChAFTA, Article 16.5: Review of Agreement.

47 ChAFTA, Chapter 14: Institutional Provisions.

48 ChAFTA, Article 14.2.2 and 14.2.3. The meeting can be convened at Ministerial level if requested by either Party.

including on market access, three years after the agreement comes into force. This is a key element of the agreement that GrainGrowers hopes is a meaningful basis on which ChAFTA may become an increasingly beneficial agreement to both China and Australia, over time.⁴⁹

- 3.34 As well as providing a mechanism for further tariff reductions, the Business Council of Australia (BCA) indicates it will play a crucial role in reducing non-tariff barriers:

[The review framework] also provides Australian authorities with a direct channel to work closely with Chinese counterparts to tackle specific non-tariff barriers that impede trade. For example, developing regulatory consistency through a range of mutual recognition of qualifications, skills and experience would benefit Australian business across a range of sectors.⁵⁰

- 3.35 Telstra suggests that ‘these forward-looking tools’ built into ChAFTA will prove more important to the telecommunications sector over time than the limited commitments currently included in the Agreement.⁵¹ It also argues for industry input to the ChAFTA committee process through regular consultation between business and industry and the relevant Australian representatives.⁵²

49 GrainGrowers, *Submission 59*, pp. 4–5.

50 BCA, *Submission 76*, p. 7.

51 Telstra, *Submission 62*.

52 Telstra, *Submission 62*.

Labour mobility

Introduction

- 4.1 The most contested provisions of the China Australia Free Trade Agreement (ChAFTA) are those on labour mobility. This chapter examines the provisions, breaking them down into their component parts to establish the individual issues and the way the provisions interconnect within the ChAFTA structure.
- 4.2 Labour movement is governed by two separate areas of the treaty plus two Memoranda of Understanding (MOUs), which operate in conjunction. In much of the discussion, the issues in the separate sections have been conflated, adding confusion to an already complex framework. This has led to considerable public debate fed by a widespread media campaign.
- 4.3 The Migration Council of Australia (MCA) suggests that much of the community concern being expressed over the labour mobility provisions in ChAFTA 'relate to the technical nature of migration related to FTA provisions and a lack of understanding of the existing regulatory framework'.¹
- 4.4 The two sections containing labour provisions within the Agreement are:
- Chapter 10: Movement of Natural Persons; and
 - Side letter on skills assessment.

1 Migration Council of Australia (MCA), *Submission 72*.

- 4.5 Labour provisions are also contained in two MOUs which are not part of the Agreement but are official documents considered to be part of the overall ChAFTA package:²
- Memorandum of Understanding: Investment Facilitation Arrangement; and
 - Memorandum of Understanding: Work and Holiday Visa Arrangement.

Movement of Natural Persons

- 4.6 Under Chapter 10: Movement of Natural Persons, Australia agrees to provide temporary entry for Chinese individuals in the following categories:
- business visitors;
 - intra-corporate transferees;
 - independent executives;
 - contractual service suppliers; and
 - installers and servicers.³
- 4.7 With regard to temporary entry under the provisions in Chapter 10, Australia shall not:
- (a) impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party; or
 - (b) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.⁴
- 4.8 Based on the definition of 'contractual service suppliers' in Annex 10-A:10, these provisions have given rise to two major concerns: unlimited numbers of Chinese workers entering Australia, and no labour market testing taking place to determine if Australian workers are available to fill particular positions. The Construction, Forestry, Manufacturing and Energy Union (CFMEU) outlined these concerns:

2 Department of Foreign Affairs and Trade (DFAT), 'China-Australia Free Trade Agreement: FTA Text', <<http://dfat.gov.au/trade/agreements/chafta/official-documents/Pages/official-documents.aspx>> viewed 15 September 2015.

3 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China (ChAFTA)*, Annex 10-A: Specific Commitments on the Movement of Natural Persons pp. 116-118.

4 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China (ChAFTA)*, Article 10.4: Grant of Temporary Entry.

In the non-concessional 457 visa program, the effect of the Australian commitments in ChAFTA is that all 457 sponsoring employers (not just Chinese companies) can engage unlimited numbers of Chinese nationals on 457 visas in all 651 'skilled' occupations (trade, technical and professional) currently on [the Consolidated Sponsored Occupation List] with no legal obligations to look first for qualified Australian workers and prove none are available.⁵

457 visa process

- 4.9 Visas for contractual service suppliers will be implemented through Australia's existing 457 visa programs.⁶ Given this, an understanding of the 457 process is necessary to consider the impact of the ChAFTA agreement.
- 4.10 The Temporary Work (Skilled) (subclass 457) visa is demand driven and enables 'employers to address labour shortages by bringing in skilled workers where they cannot find an appropriately skilled Australian'.⁷ The 457 visa process consists of three stages: sponsorship, nomination and visa application. Business sponsors must comply with a range of obligations and must ensure that 457 visa holders are afforded the equivalent employment terms and conditions of an Australian worker.⁸ This includes being paid no less than the local market rate and more than the Temporary Skilled Migration Income Threshold (TSMIT), currently \$53 900 per annum.⁹
- 4.11 Labour market testing was re-introduced into the process in 2013. Most occupations remain exempt. Those occupations requiring labour market testing are 'mostly trades-based as well as nurses and some engineering occupations'.¹⁰

Existing exemptions in the 457 process

- 4.12 The *Migration Act 1958* gives the Minister the discretion to waive the requirement for labour market testing to comply with Australia's

5 Construction, Forestry, Manufacturing and Energy Union (CFMEU), *Submission 80*, p. 15; Australian Council of Trade Unions (ACTU), *Submission 51*, p. 9; Australian Manufacturing Workers' Union (AMWU), *Submission 66*, pp. 4-5; UnionsWA, *Submission 89*, p. 5.

6 Ms Jan Adams, Deputy Secretary, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 7 September 2015, p. 24.

7 Department of Immigration and Border Protection (DIBP), *Submission 88*, p. 5.

8 DIBP, *Submission 88*, p. 6.

9 DIBP, *Submission 88*, p. 6.

10 MCA, *Submission 72*.

international trade obligations.¹¹ Australia has exercised this power with regard to contractual services providers in previous free trade agreements including the agreements with Korea, Chile and Thailand.

- 4.13 The Department of Immigration and Border Protection (DIBP) pointed out that exemption from labour market testing for 457 visas in similar categories for other FTAs has not led to a substantial increase in the number of applications or temporary workers coming into Australia.¹²
- 4.14 This suggests that legislative change will not be required to maintain the current framework of safeguards, which includes a degree of ministerial discretion. There is a risk that additional legislation will increase compliance costs and reduce flexibility.

Impact of ChAFTA on 457 process

- 4.15 DIBP argue that the existing standards and obligations are sufficient to ensure that Australian workers will be protected within the Australian employment market:

Under the standard business sponsored project, the first thing you have to be is a lawfully trading entity in Australia. We then approve you as a sponsor. Once you have been approved as a sponsor, you have a right to apply to access workers beyond the domestic labour market. Once you are a sponsor, however, you are actually signing up to a whole pile of obligations. You make attestations around putting Australians first in terms of the jobs; you make attestations around how you will treat them, the money you will pay them et cetera.¹³

- 4.16 Once the sponsor has acknowledged these obligations, they may make a nomination. At this point the Department looks at the company, its size and the size of its workforce to satisfy itself that the job and the vacancy are genuine before approving the nomination.¹⁴ Labour market testing only comes into play after the steps of sponsorship and nomination have been fulfilled, and only for certain categories of employment and where an existing exemption does not apply.¹⁵

11 *Migration Act 1958*, s 140BA(1)(c), 140GBA(2).

12 Mr David Wilden, First Assistant Secretary, Immigration and Citizenship Policy Division, Department of Immigration and Border Protection (DIBP), *Committee Hansard*, Canberra, 7 September 2015, p. 24. The definition of 'contractual service suppliers' is the same in the Korea FTA and the China FTA.

13 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 27.

14 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 27.

15 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 24.

- 4.17 The Department maintains that the first two steps in the 457 visa process provide assurance that Australian workers will be offered jobs ahead of temporary foreign workers:
- ‘Genuine job’ and ‘genuine vacancy’ are the two prime criteria at the nomination phase. We would not classify that strictly as labour market testing, however ... that is where our obligations are triggered.¹⁶
- 4.18 The MCA confirmed the requirements to undertake the initial steps in the 457 visa process will protect Australian workers:
- ... Chinese citizens on 457 visas under ChAFTA will still require English proficiency and sponsorship under standard terms and conditions of the 457 visa program, including market salary rates and a wage threshold. In effect, those elements of the 457 regulatory framework that have been shown to be most effective in preventing employers from preferencing overseas workers will still apply.¹⁷
- 4.19 With regard to contractual service suppliers, DIBP does not concede that the provisions in Chapter 10 will lead to an influx of Chinese workers into Australia:
- ... the contractual service suppliers are the individuals who would come in here. It is not company based; they are the service suppliers under the definition of natural persons. Let us use one of the examples you have just said, say a cleaning company. If they wanted to bring in a worker, they would still have to be trading here and the worker would have to meet all necessary mandatory qualifications. You would be talking about maybe the accountant or the managing director; you are not talking about cleaners as they do not qualify under the 457 because they are not considered skilled positions. They have to be ANZSCO level 3 or above. As I said, you still have to go through nominations, sponsorship et cetera before you can even look at accessing an individual worker and then that individual worker still has to meet all of the mandatory requirements that Australia has for the occupation.¹⁸
- 4.20 DIBP also identified the cost to the employer of using the 457 visa program as a deterrent to misuse.¹⁹ This was corroborated by Master Builders Australia who told the Committee that the compliance costs for

16 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 28.

17 MCA, *Submission 72*.

18 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 31.

19 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 29.

employing temporary workers through the 457 visa process forced employers to test the local market first:

... our members first of all look for local people to fill the vacancies – because it is inherently very expensive to go down the 457 track, so there is an in-built bias to look for local employees to fill the positions.²⁰

- 4.21 Overall, the MCA suggests that the effect of ChAFTA on the 457 visa program will be ‘small and positive’:

As at September 2014, there were 6 245 Chinese citizens on primary 457 visa holders in Australia. Of these, the Migration Council estimates about 1 150 would be subject to labour market testing as they fall into non-exempt occupations. These migrants represent approximately one per cent of the 457 visa program.²¹

Skills assessment

- 4.22 A side letter to ChAFTA streamlines the skills assessment process for temporary skilled labour visas by removing the requirement for mandatory skills assessment for ten occupations. It also undertakes to review remaining occupations within two years with the intention of reducing the number of occupations requiring such assessment, or eliminating the requirement within five years.

- 4.23 The removal of mandatory skills assessment for these occupations and the possibility of the future removal of mandatory assessment from others raises concerns over safety in some sectors. In particular the Electrical Trades Union (ETU) said it would have a significant impact on safety in the electrical trades:

Electrical work is inherently dangerous, that’s why there are stringent electrical training and safety standards in Australia that have been developed over decades. Removing the requirement for overseas trades workers to be assessed to see if their skills meet our standards is dangerous for workers, their colleagues and for the public.²²

20 Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia Ltd, *Committee Hansard*, Canberra, 7 September 2015, p. 14.

21 MCA, *Submission 72*.

22 Electrical Trades Union of Australia (ETU), *Submission 44*.

- 4.24 There are currently two pathways for applicants applying for a 457 visa in a nominated occupation²³: those for nationals in a short list of nominated countries²⁴ and nationals in all other countries. China has been moved from the short list to the list for all other countries.
- 4.25 Applicants from the nominated countries must undertake a skills assessment recognised by Trades Recognition Australia (TRA) *prior* to lodging a visa application.²⁵ Applicants from all other countries are required to include evidence of requisite skills, qualifications and work experience *as part of* their application.²⁶ Applicants from both streams need to meet all other visa requirements as well as any Federal, State or Territory licensing or registration requirements.²⁷
- 4.26 For applicants from countries on the broader list, DIBP must be satisfied that the evidence submitted with the application demonstrates the necessary experience to work in the nominated occupation in Australia. If the Department is not satisfied it will request that TRA undertake an assessment of the applicant's skills and the application will need to be re-lodged with evidence of successful skills assessment.²⁸
- 4.27 After arriving in Australia, applicants have 28 days to obtain the appropriate Australian registration or certification for the nominated occupation before they can start work.²⁹
- 4.28 Moving China from the short list of nominated countries to the list for all other countries acknowledges the improvement in China's training system:
- [This action] signals Chinese qualifications will be treated in the same manner as other countries, such as the United Kingdom, recognising the continuous improvement in the Chinese formal education sector and the growth in the maturity of the Chinese labour market.³⁰

23 There are currently 28 nominated occupations. See Trades Recognition Australia, '457 Nominated Occupations', <<http://www.tradesrecognitionaustralia.gov.au/Programs/457/Pages/Eligibility.aspx>> viewed 15 September 2015.

24 The nominated countries are: Brazil, China (including Hong Kong and Macau), Fiji, India, Papua New Guinea, Philippines, South Africa, Thailand, Vietnam and Zimbabwe.

25 Department of Foreign Affairs and Trade (DFAT), *Submission 78*.

26 DFAT, *Submission 78*.

27 DFAT, *Submission 78*.

28 DFAT, *Submission 78*.

29 DIBP, *Submission 88*, p. 7.

30 MCA, *Submission 72*.

- 4.29 The Australian Manufacturing Workers' Union (AMWU) conceded that in some trades Chinese training has improved substantially but still expressed reservations about blanket recognition of Chinese trade skills and qualifications:

We have great respect for our Chinese colleagues and the skills that they have. Having some knowledge of Chinese vocational training, I can say that in some instances they actually have higher standards of vocational training than comparable areas in Australia, but we have no certainty about that with respect to vehicle testing and vehicle maintenance.³¹

- 4.30 The AMWU explained that equivalence between Australia's and China's skills levels and qualification system is difficult to establish because of the difference in their training schemes. It is difficult to compare the Chinese two year, school-based system with Australia's four-year apprenticeship program. They suggest that the system lacks the 'rigour' of the Australian system.³²

- 4.31 The National Electrical and Communication Association (NECA) initially had serious concerns over the new arrangements for skills assessment proposed under ChAFTA. However, after consultation with the Minister and DFAT, NECA is satisfied that the new arrangement does not jeopardise licensing and safety standards:

A 457 applicant will still need to satisfy the Department of Immigration and Border Protection that they have the skills and the experience required for their nominated occupation in order for a visa to be granted. The process for determining an applicant's experience still includes evidence of qualifications: membership of trade bodies, if applicable; references; and English language tests and skills. As with all 457 applications, if a processing officer considers that further verification is required, a skills assessment can then be ordered.³³

- 4.32 NECA is also reassured that licensing requirements will be rigorously enforced:

On the assumption that the applicant satisfies the 457 application, the applicant is still required to obtain a licence as part of the conditions and requirements of their relevant state or territory

31 Mr Andrew Dettmer, National President, Australian Manufacturing Workers' Union (AMWU), Melbourne, *Committee Hansard*, 28 August 2015, p. 37.

32 Mr Dettmer, AMWU, *Committee Hansard*, Melbourne, 28 August 2015, p. 37

33 Mr Suresh Manickam, Chief Executive Officer, National Electrical and Communications Association (NECA), *Committee Hansard*, Melbourne, 28 August 2015, p. 18.

licensing authority. Critically, the regular 457 application track that is being proposed for Chinese nationals does not remove the requirement that temporary visa holders must hold relevant licences and certification as required by Australia federal, state and territory laws and regulations.³⁴

- 4.33 Master Builders Australia supports the change to the skills assessment proposed in the side letter provided that the process for the alternative pathway retains the current safeguards.³⁵ The Business Council of Australia (BCA) is also satisfied with the change but stresses that, with the implementation of the Korea and Japan FTAs as well as ChAFTA, steps must be taken to ensure that the relevant agencies are adequately resourced and coordinated to assure compliance.³⁶

Investment Facilitation Arrangement

- 4.34 The Memorandum of Understanding (MOU) that contains the Investor Facilitation Arrangement (IFA) was negotiated alongside ChAFTA, although it is not a part of the treaty. The MOU is an agreement between Australia and China that is not legally binding and therefore not enforceable under international law. The Committee's review of ChAFTA covered all matters relating to the Agreement, including arrangements such as this MOU, the MOU on a Work and Holiday Visa arrangement and the side letters.
- 4.35 The IFA provides for Chinese investors in projects over \$150 million to negotiate a concessional visa arrangement for temporary workers. Eligible projects will be determined by DFAT and the China International Contractors Association (CHINCA).
- 4.36 Concerns have been raised regarding three issues:
- the lack of mandatory labour market testing;
 - the possibility of a negotiated arrangement broadening the 457 visa to include semi-skilled workers; and
 - the potential for exploitation of temporary workers entering Australia under the concessional 457 visa program.
- 4.37 These concerns stem from section 4 of the MOU:

34 Mr Manikam, NECA, *Committee Hansard*, Melbourne, 28 August 2015, p. 18.

35 Master Builders Australia (MBA), *Submission 54*, pp. 8–9.

36 Business Council of Australia (BCA), *Submission 76*, pp. 5–6.

The areas which will be subject to negotiation between DIBP and the project company in respect of the eligible project will include:

- (a) the occupations covered by the IFA project agreement;
- (b) English language proficiency requirements;
- (c) qualifications and experience requirements;
- (d) calculation of the terms and conditions of the Temporary Skilled Migration Income Threshold (TSMIT).³⁷

IFA impact on 457 visas

4.38 Under section 4(a) of the IFA MOU, 'occupations covered by the IFA' is one of the areas for negotiation between DIPB and the project company. The occupations eligible for negotiation include those listed as skills levels 1-4 in the Australian and New Zealand Standard Classification of Occupations (ANZCO). Level 4 is the skill level equivalent of Australian Qualification Framework (AQF) Certificate II or III and is considered semi-skilled or sub-trade level.

4.39 The CFMEU point out that this skill level has never been included in an FTA package before.³⁸ However, the MCA indicates that the subsection is based on precedents for arrangements for labour agreements under various previous governments:

Many labour agreements provide the pathway for employers to hire 457 visa holders in skill level 4 occupations not available under the standard 457 visa program. This is neither new nor noteworthy. For example, a new occupation – the 'Skilled Meat Worker' – was created for abattoirs in regional Australia and is based on a skill level 4AQF standard.³⁹

4.40 Broadening the eligibility criteria to include semi-skilled workers is seen as threatening vulnerable Australian workers particularly if there is no requirement for labour market testing:

... there is merit to the argument that skill level 4 occupations should be preceded by a requirement to demonstrate the need for labour in some form. This is as semi-skilled and unskilled work is more precarious and has traditionally not been seen as the domain of immigration policy.⁴⁰

37 *Memorandum of Understanding between the Government of Australia and the Government of the People's Republic of China on an Investment Facilitation Arrangement (MOU IFA)*, s 4.

38 CFMEU, *Submission 80*, p. 30.

39 MCA, *Submission 72*.

40 MCA, *Submission 72*.

Labour market testing

- 4.41 The MOU for the IFA states clearly that:
- There will be no requirement for labour market testing to enter into an IFA.⁴¹
- 4.42 Implementing an IFA is a three step process. The first stage, negotiated between CHINCA and DFAT, solely addresses the infrastructure development criteria in the MOU. If the proposed IFA is endorsed by DFAT, the second stage commences, where the project company submits a project proposal to DIPB.
- 4.43 According to DIBP Project Agreement Guidelines, at this second stage the project company must provide:
- evidence of being registered in Australia and the owner or project manager of a major resource or infrastructure project;
 - supporting business case;
 - robust labour market analysis;
 - project workforce strategy; and
 - evidence of stakeholder consultation.⁴²
- 4.44 The DIBP states that the labour market analysis would have to ‘demonstrate labour market shortages in the occupations the project company is seeking to fill for the successful completion of the project’.⁴³
- 4.45 When the project agreement has been agreed to by the Minister, the third stage commences; negotiating individual labour agreements with direct employers.⁴⁴
- 4.46 At the labour agreement stage of the process, employers must show that there is a ‘demonstrated labour market need’ which may require labour market testing:
- [The company] must provide a comprehensive written statement of the labour market need for the requested occupation(s), demonstrating ongoing shortages. This includes a project workforce profile illustrating the composition of the business’ current and future anticipated workforce on the project, as well as evidence that [the company] have made significant efforts to recruit workers from the Australian labour market within the previous six months.⁴⁵

41 MOU IFA, s 6.

42 DFAT, *Submission 78*.

43 DIBP, *Submission 88*, p. 9.

44 DFAT, *Submission 78*; DIBP, *Submission 88*, pp. 8-9.

45 DIBP, *Submission 88*, p. 9.

- 4.47 Both the second (project agreement) and third (labour agreement) stages rest on existing legislation and regulations.⁴⁶ Despite reassurances from the implementing departments, there is still scepticism regarding the application of labour market testing for positions covered by an IFA. The failure to specify that labour market testing will be mandatory is seen as a 'loophole' that will encourage circumvention of a requirement to determine if there are suitable workers locally available.⁴⁷ The CFMEU is not convinced that the DIBP Guidelines are sufficient to ensure that the Australian labour market will be tested before employing temporary overseas workers and argues that the Guidelines are ambiguous and contradictory.⁴⁸ The AMWU would prefer to see the requirements given the force of law:

One of the fundamental problems with the way all these schemes operate is that the actual conditions and requirements that are there are neither in legislation nor in regulations. They are in ministerial decrees and departmental guidelines. That means that they have very little actual force in law in a sense and are very easy to get around. One of the things we would like to see is very strong sensible conditions ... put into legislation ...⁴⁹

- 4.48 The questions around mandatory labour market testing for IFA projects have been compounded by the conditions set out in Chapter 10 of ChAFTA discussed above. There appears to be confusion over whether the exemption from labour market testing for 457 visa applicants under 10.4(3)(b) applies to applicants under the IFA provisions. The MCA recommends that the Government clarify the connection between the requirements in Chapter 10 and the MOU.⁵⁰
- 4.49 However, overall the MCA maintains that existing processes are adequate and sees nothing to suggest that the provisions in ChAFTA will lead to migrant workers being prioritised over Australian workers:

... there does not appear to be clauses in ChAFTA Chapter 10, the side letter on skills assessment and licensing or either Memorandum of Understanding that will prioritise potential

46 MCA, *Submission 72*.

47 Communications Electrical Plumbing Union (CEPU), *Submission 79*, p. 4; Dr Patricia Ranald, Coordinator, Australian Fair Trade and Investment Network Ltd (AFTINET), *Committee Hansard*, Sydney, 31 July 2015, pp. 8 and 12.

48 CFMEU, *Submission 80*, p. 34.

49 Dr Tom Skladzien, National Economics Adviser, Australian Manufacturing Workers' Union (AMWU), *Committee Hansard*, Melbourne, 28 August 2015, p. 36.

50 MCA, *Submission 72*.

Chinese migrants [sic] workers over Australian workers in the labour market.⁵¹

Safeguards for temporary workers

- 4.50 Allowing the areas listed in section 4 of the MOU to be negotiated between the investor and the DIBP at the IFA stage and before the temporary workers arrive in Australia has led to concerns over the exploitation of these workers. The MOU requires all direct employers to comply with Australian workplace law:

All direct employers under an IFA and workers granted visas under an approved IFA labour agreement will be required to comply with applicable Australian laws, including workplace law, work safety law and relevant Australian licensing, regulation and certification standards.⁵²

- 4.51 The MCA reiterates that all temporary workers in Australia under the 457 visa scheme fall under Australia's domestic workplace law:

... when participating in the Australian labour market, all Chinese citizens on either a subclass 457 or 462 visa will remain subject to the Fair Work Act and all other relevant domestic legislation governing the labour market.⁵³

- 4.52 However, AMWU argues that these workers have no guaranteed access to representation and that a lack of English language skills could leave them unaware of their rights under Australian law:

This raises grave concerns that these workers will be exploited, with no recourse to or assistance from the usual Australian institutions that expose, counter and fight against worker exploitation.⁵⁴

- 4.53 Australian Fair Trade and Investment Network Ltd (AFTINET), among others, echoes these concerns emphasising the possible isolation and vulnerability of these workers:

... it says that their conditions are supposed to meet Australian minimum standards. But bear in mind that these workers will be brought over by a particular employer, they will be tied to that employer, and they [will] be isolated from the rest of the workforce. They certainly do not have the basic right to collective

51 MCA, *Submission 72*.

52 MOU IFA, s 11.

53 MCA, *Submission 72*.

54 AMWU, *Submission 66*, p. 9.

bargaining, which is a fundamental aspect of the Fair Work Act, because their conditions have already been determined in this prior negotiation.⁵⁵

4.54 A number of unions provided examples of abuse under the current temporary worker arrangements to illustrate the type of exploitation that currently occurs, ranging from low wages and poor conditions to unfair dismissal.⁵⁶ The fear is that temporary workers brought in under the MOU IFA will face similar problems.

4.55 There is also concern that the provision to employ temporary foreign workers on these projects could be used to pressure Australian workers into accepting lesser conditions.⁵⁷ The AMWU suggests that a project company could use the threat of bringing in Chinese workers to force Australian workers to accept lower wages and conditions:

From our point of view, this is a very clear way that pressure can be exerted on workers and their representatives to accept lower pay, lower conditions and lower safety standards. It is not even by entering an IFA, but just by casually mentioning that such an option is theoretically possible – that is our concern.⁵⁸

Work and Holiday Visa Arrangement

4.56 The MOU to establish a work and holiday visa (WHV) arrangement provides for up to 5 000 multiple entry Work and Holiday visas for a temporary stay of twelve months for Chinese students wishing to come to Australia. While the arrangements contain employment provisions, they are primarily intended for students intending to holiday in Australia.⁵⁹

4.57 Previous arrangements with other countries have had reciprocal provisions, where Australian students are able to access work and holiday visas. Concern has been expressed with the lack of reciprocity in this arrangement:

... it appears there is a lack of reciprocity for Australian citizens to 'work and holiday' in China. This is a [sic] disappointing given

55 Dr Ranald, AFTINET, *Committee Hansard*, Sydney, 31 July 2015, p. 9; ETU, *Submission 44*.

56 Mr Leslie McLaughlan, National President, Western Australia State Secretary, Electrical Trades Union (ETU), *Committee Hansard*, Perth, 25 August 2015, pp. 3-4; Mr Dettmer, *Committee Hansard*, Melbourne, 28 August 2015, p. 35; AFTINET, *Submission 21*, p. 6.

57 AMWU, *Submission 66*, p. 9.

58 Dr Skladzien, AMWU, *Committee Hansard*, Melbourne, 28 August 2015, p. 35.

59 *Memorandum of Understanding between the Government of Australia and the Government of the People's Republic of China on a Work and Holiday Visa Arrangement (MOU WHV)*, s 2.

traditionally these agreements are reciprocal in nature. It would be lamentable if this MoU established a precedent extended to future negotiations.⁶⁰

4.58 The MOU provides for a review in three years in which reciprocity will be considered.⁶¹

4.59 The most pressing concern raised over the WHV arrangements is the possibility of exploitation of young workers. Recent media reports⁶² of the exploitation of young international workers in Australia have fuelled speculation that young Chinese workers could face similar problems.⁶³

60 MCA, *Submission 72*.

61 MOU WHV, s 3.

62 Examples: Four Corners, 'Labour exploitation, slave-like conditions found on farms supplying biggest supermarkets', 04.05.15 and 7:30, 'Young workers on holiday visas face exploitation, locals asked to accept the same says union', 22.06.15.

63 AFTINET, *Submission 21*, p. 9; CFMEU, *Submission 80*, p. 36.

Other Issues

Introduction

- 5.1 Although concerns over labour mobility tended to dominate the inquiry, a number of other issues were identified. This chapter looks first at the investor-state dispute settlement (ISDS) mechanism included in ChAFTA before moving on to concerns around tariff and non-tariff barriers and the constraints imposed by domestic legislation.
- 5.2 It then examines a range of other concerns including the possible effect of ChAFTA on Australian standards with regard to food labelling and the importation of electrical goods. The chapter also considers a number of chapters that have been left out of ChAFTA and finally looks at some suggestions on reforming the treaty making process.

Investor-state dispute settlement mechanism

- 5.3 Originally conceived to protect foreign investors in developing countries from direct or indirect expropriation of their investments, ISDS mechanisms have become common place in free trade agreements over the last decade. ISDS provisions have attracted criticism as the number of disputes has increased, leading to a perception that the provisions threaten state sovereignty and exert undue influence on government policy decisions.
- 5.4 Many of the concerns raised with regard to the ISDS provisions in ChAFTA have been raised in the Committee's previous inquiries into FTAs. However, an additional major concern in relation to the ISDS

chapter in ChAFTA is that it is 'unfinished' and does not provide important definitions of key concepts.¹

- 5.5 It should be noted that Australia and China signed a bilateral investment treaty containing ISDS provisions in 1988.² The inclusion of an ISDS mechanism in ChAFTA is seen as an opportunity to include safeguards that are not contained in the 1988 bilateral treaty.³
- 5.6 Article 9.9 of ChAFTA provides for a review of the investment legal framework between the two countries, including consideration of the existing 1988 bilateral investment treaty, within three years of entry into force of ChAFTA.⁴
- 5.7 The Department of Foreign Affairs and Trade (DFAT) advised that the apparently unfinished nature of the chapter on the ISDS provisions had to be seen in the context of China's developing FTA program:

The situation is due to the fact that China is just starting to enter into negotiations for full investment agreements or investment chapters in FTAs. So far China has not made the sorts of commitments in FTAs that we would have in the Japan or Korea agreements, for example.⁵
- 5.8 China is currently negotiating bilateral treaties with the United States (USA) and the European Union (EU) and is in the process of developing its investment policy. In three years China will be in a better position to determine the commitments it expects from ISDS provisions:

By that time, their policy will have evolved and they may have concluded by then with the US and the EU. We would be able to then incorporate a modern standardised, if you like, set of investment commitments that China will have with their major investors at that point in time.⁶

1 In particular, definitions of 'minimum standard of treatment' and 'expropriation'. Australian Fair Trade and Investment Network Ltd (AFTINET), *Submission 21*, 12; Dr Romaine Rutnam, *Submission 22*, p. 2; Dr Kyla Tienhaara, Research Fellow, RegNet, College of Asia and the Pacific, Australian National University (ANU), *Submission 36*, p. 6.

2 *Agreement between the Government of Australia and the Government of the People's Republic of China on the Reciprocal Encouragement and Protection of Investments* (Beijing, 11 July 1988).

3 Ms Jan Adams, Deputy Secretary, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 7 September 2015, p. 36.

4 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* (ChAFTA), Article 9.9: Future Work Program, p. 90.

5 Ms Adams, DFAT, *Committee Hansard*, Canberra, 17 August 2015, p. 22.

6 Ms Adams, DFAT, *Committee Hansard*, Canberra, 17 August 2015, p. 22.

- 5.9 There was concern that the re-negotiated provisions will not come before the parliament for review.⁷ DFAT assured the Committee that these provisions will be dealt with as a new agreement and come before the Joint Standing Committee on Treaties (JSCOT) in the usual way to ensure parliamentary scrutiny of any new conditions:

... [at this point] parliament will not be voting on future commitments. Those commitments will come back as a new part of an agreement which will go through a JSCOT process ...⁸

- 5.10 An added benefit of the review could be the opportunity it provides for wider community consultation. HopgoodGanim lawyers suggested that the review process could incorporate a structured consultation program:

We submit to this committee that this presents an opportunity for community consultation on the further articles to be added. We recommend that a program of consultation be run seeking input into these further articles to be included in ChAFTA.⁹

- 5.11 As it stands, the scope of the ISDS provisions in ChAFTA are quite narrow, applying only to 'national treatment' and 'most-favoured-nation treatment'. The provisions protect investments and investors from discriminatory or less favourable treatment. With regard to national treatment, Chinese investors are covered during the establishment and acquisition phase while Australian investors are not. This is seen as unusual and prompted claims that the provisions are unbalanced and 'lopsided'.¹⁰ Dr Tienhaara calls it 'puzzling':

Whichever option is chosen it is customary that both parties have the same obligations; reciprocity is a fundamental principle in trade negotiations. It is puzzling that in the national treatment provision in ChAFTA, Australia has committed to non-discrimination in the case of establishment and acquisition phase but China has not.¹¹

- 5.12 However, Lexbridge Lawyers argue that the impact of the differing provisions is lessened by Australia's use of its 'carve-out' prerogative:

In practical terms, this difference, while significant, may not be as great as first appears as Australia has exercised its ability to 'carve-

7 AFTINET, *Submission 21*, p. 12; Dr Romaine Rutnam, *Submission 22*, p. 2; Dr Kyla Tienhaara, Research Fellow, RegNet, College of Asia and the Pacific, ANU, *Submission 36*, p. 6.

8 Ms Adams, DFAT, *Committee Hansard*, Canberra, 17 August 2015, p. 22.

9 Mr Lea Fua, Senior Associate, HopgoodGanim, *Committee Hansard*, Brisbane, 27 July 2015, p. 15.

10 AFTINET, *Submission 21*, p. 11; Dr Romaine Rutnam, *Submission 22*, pp. 1–2.

11 Dr Kyla Tienhaara, Research Fellow, RegNet, College of Asia and the Pacific, ANU, *Submission 36*, p. 4.

out' existing measures and policy space from the National Treatment obligations. For Australia the most significant treatment at the pre-establishment stage of investment is related to the review of investments which are required to be notified to the Foreign Investment Review Board (FIRB). The FIRB may refuse notified investments or approve them subject to certain conditions. In ChAFTA Australia, consistent with its standard practice, has carved out the key elements of the FIRB investment screening regime from the National Treatment obligation.¹²

- 5.13 There is some consensus that the safeguard provisions included in the ISDS chapter to protect government decisions regarding health and the environment are a positive development.¹³ In particular the mechanism in Article 9:11 for issuing a public welfare notice has been singled out as innovative. This notice is issued by the relevant government if it considers that the public welfare exemptions apply to a claim, and imposes a compulsory 90 day consultation period. This occurs early in the process, before a matter is taken to arbitration, and is expected to deter a claimant from proceeding with a dispute.¹⁴ However, concern remains that investors will continue to 'dispute the legitimacy of the stated public welfare objectives of governments as well as the efficacy of particular measures'.¹⁵
- 5.14 While some safeguards have been included in the ISDS provisions, disquiet has been expressed over the standard of transparency in the ISDS chapter. It is considered that with regard to transparency, ChAFTA is a backward step.¹⁶ Compared with Australia's recent FTAs, including the Korea Australia Free Trade Agreement (KAFTA), ChAFTA 'significantly limits transparency' by allowing the respondent state to decide to withhold documents from the public or conduct proceedings in private.¹⁷
- 5.15 To counter these issues, the Committee was also reminded by the Business Council of Australia (BCA) and the Export Council of Australia (ECA) that

12 Lexbridge Public International Lawyers, *Submission 46*, 2.1.

13 Business Council of Australia (BCA), *Submission 76*, p. 15; Dr Kyla Tienhaara, Research Fellow, RegNet, College of Asia and the Pacific, *Submission 36*, p. 8.

14 Lexbridge Public International Lawyers, *Submission 46*, 4.1.

15 Dr Kyla Tienhaara, Research Fellow, RegNet, College of Asia and the Pacific, ANU, *Submission 36*, p. 8.

16 AFTINET, *Submission 21*, p. 12.

17 Dr Kyla Tienhaara, Research Fellow, RegNet, College of Asia and the Pacific, ANU, *Submission 36*, p. 10.

such provisions serve to protect Australian investors operating in foreign markets.¹⁸

- 5.16 Although serious concerns remain regarding the inclusion of ISDS provisions in FTAs, it was suggested to the Committee that these mechanisms have become part of international trade agreements and are 'here to stay'.¹⁹ Australia, like other countries, has to accept and alleviate the risks inherent in ISDS mechanisms.
- 5.17 In ChAFTA the ECA believes that a 'balanced position has been achieved'²⁰ and Lexbridge Lawyers concluded that the risks have been mitigated by the included safeguards and narrow scope of the provisions:

Taken together, these factors lead to the conclusion that the exposure under ChAFTA – in terms of a challenge to legitimate government regulation – is significantly less than the vast majority of Australia's agreements. In this regard, ChAFTA provides an example of a modern, balanced approach to ISDS.²¹

Scale of the Chinese market

- 5.18 While the size of the Chinese market provides enormous potential for Australian exporters, the Committee was warned that the scale of the market also presents considerable risks. There is a danger that Australian enterprises, particularly in the services sector, will be overwhelmed by the size of the projects they are asked to take on.
- 5.19 ThomsonAdsett, an architectural firm specialising in aged and health care facilities that has been active in the Chinese market for over 30 years, advised that Australian providers need to understand the implications of the size of the market:

The single biggest barrier to entry in this market is the difference in scale between typical project opportunities of a similar type in Australia as compared to China. Consideration needs to be given by Government on how we maximise this opportunity without risking failure through scale disadvantage.²²

18 Business Council of Australia (BCA), *Submission 76*, p. 15; Export Council of Australia (ECA), *Submission 61*, p. 5.

19 Mr Fua, HopgoodGanim, *Committee Hansard*, Brisbane, 27 July 2015, p.16.

20 ECA, *Submission 61*, p. 4.

21 Lexbridge Public International Lawyers, *Submission 46*, 5.

22 ThomsonAdsett, *Submission 82*, p. 2.

- 5.20 In order to leverage the possibilities of the Chinese market without being ‘swamped’, Australian companies will need assistance to navigate the complex Chinese business environment. Relationships are the key and identifying and building relevant relationships is an area where the Australian government may be able to assist:

The problem we have in China, which is one that I think government can play a role in solving, is not knowing who it is that we should be talking to and who actually makes the decisions. There is a plethora of organisations, a complex web of apparently equal levels of seniority in competing departments within the government and within competing interests within the government. It becomes quite complex to know who to deal with, unless you are a very large and sophisticated company with very strong networks, and that is an area where, at a [government to government] level, there can be a very useful contribution made.²³

- 5.21 To successfully manage the size and scale of the Chinese market, many Australian producers, especially food producers, are aiming to capitalise on high-value premium products. The Australian Food and Grocery Council (AFGC) recognise the necessity of focusing on this end of the market.²⁴ Australian rock lobster and abalone producers are targeting high-demographic groups with premium product.²⁵ The pork industry are not attempting to enter the mainstream market but compete at the upper end of the market:

The interest that we have for China is certainly around high-value niche markets. Australia produces 0.03 per cent of the world’s pork, so to think that we can go in there and supply substantial quantities of pork into China is quite misleading at best. We can, however, target a high-value niche product into China. We have specialities in supplying into Singapore a chilled overnight freight product and we would be looking at extending that type of service to Chinese consumers.²⁶

23 Mr David Keith Lane, Chairman, ThomsonAdsett, *Committee Hansard*, Brisbane 27 July 2015, p. 23.

24 Australian Food and Grocery Council (AFGC), *Submission 49*, p. 6.

25 Mr Matthew Rutter, General Manager, Marketing and Business Development, Geraldton Fishermen’s Co-operative, on behalf of Seafood Trade Advisory Group (STAG), *Committee Hansard*, Perth, 25 August 2015, p. 51.

26 Ms Deborah Kerr, General Manager, Policy, Australian Pork Limited (APL), *Committee Hansard*, Canberra, 7 September 2015, p. 18.

Tariffs

- 5.22 While the overall tariff reductions for Australian business and industry have been welcomed, there are concerns over a number of issues. China has excluded several agricultural products from further liberalisation – retaining existing tariffs – and placed discretionary safeguards on others. Australia has removed or reduced tariffs on some Chinese imports that will have a detrimental effect on a number of Australian businesses.

Remaining tariffs

- 5.23 Grain growers are disappointed that tariffs have been retained on wheat and canola. High tariffs also remain on rice and maize.²⁷ However, they are hopeful that the in-built review process will deliver tariff reductions over time.²⁸

Safeguards

- 5.24 Under ChAFTA, China may apply a safeguard, or upper limit, to beef and dairy products from Australia. For beef this has been set at 170 000 tonnes, which is 10 per cent above Australia's historical calendar-year peak beef shipments to China. The Australian Red Meat Industry warned that, if triggered, the safeguard has the 'potential to disrupt trade flows – with the applied tariffs reverting to the pre-ChAFTA levels'.²⁹
- 5.25 However, the Red Meat Industry mitigated this statement, explaining that the safeguard has been set at approximately 24 000 tonnes above current shipments plus 10 per cent, providing a comfortable buffer. Additionally, China is able to choose whether to apply this safeguard:
- ... it is a discretionary safeguard, so it will not automatically come in; there will be discussions with Chinese officials about whether they need it. So, if there is strong demand and the Chinese see the need for extra beef to come in, there is that discretionary option for them.³⁰
- 5.26 The dairy industry also faces discretionary safeguards on milk powders and condensed and evaporated milks. The volume is higher than existing trade and contains a compound annual growth rate of five per cent until at least year fifteen, equating to 34 694 tonnes. Exports in 2014 were 13 376

27 Grains Industry Market Access Forum (GIMAF), *Submission 47*.

28 GrainGrowers, *Submission 59*, pp. 4-5.

29 Australian Red Meat Industry, *Submission 20*; Teys Australia Pty Ltd, *Submission 32*.

30 Mr Michael Finucan, General Manager, International Markets, Meat and Livestock Australia (MLA), *Committee Hansard*, Sydney, 31 July 2015, p. 25.

tonnes.³¹ The dairy industry is confident that the safeguard will not be triggered under current expectations:

With the initial volume and the growth rate included, we would anticipate that we would not run into that safeguard upper limit in the implementation phases of the China-Australia free trade agreement.³²

Inequitable tariff reductions

5.27 Inequitable tariff reductions will put some Australian industries at a disadvantage. The Australian pulp and paper industry was one example drawn to the Committee's attention. The industry is estimated to support 18 000 jobs with a gross sales income of over \$9 billion.³³ The Australian Forest Products Association (AFPA) points out that under ChAFTA, the Australian tariff on paper products – including tissue, copy paper, newsprint and packaging papers – will either immediately be reduced to zero or fall to zero within three to five years, while there will be no change to the Chinese tariffs for the same products:

The majority of paper and paperboard products imported from China have historically had a 5% tariff imposed on them which would be removed under the proposed ChAFTA. By comparison, tariff rates on Australian paper exports to China would remain in force at 5% to 7.5% in most cases.³⁴

5.28 The Australian Industry Group (AiG) also drew attention to the imbalance in some tariff reductions, singling out the Australian Fibre Packaging Industry. It stressed that the Australian packaging industry is globally competitive but is facing significant pressure from imports, particularly from China. The tariff reductions proposed in ChAFTA will further exacerbate the problem, with AiG estimating that the industry will face 'almost \$1 billion of Chinese imports over the next four years'.³⁵

5.29 Armstrong World Industries, Australia's only remaining manufacturer of vinyl flooring, faces a similar situation. The tariff on Chinese imports of vinyl flooring will drop to zero on implementation of ChAFTA, while the tariff on Australian imports to China will phase out over five years. Armstrong World Industries understands the need for free trade

31 Australian Dairy Industry (ADI), *Submission 45*, p. 3.

32 Mr Peter Myers, International Trade Development Manager, Dairy Australia, *Committee Hansard*, Canberra, 17 August 2015, p. 11.

33 Australian Forest Products Association (AFPA), *Submission 85*, p. 3.

34 AFPA, *Submission 85*, p. 4-5.

35 Australian Industry Group (AiG), *Submission 86*.

agreements but urges the Government to establish a level of equity for Australian businesses facing competition from Chinese imports.³⁶

- 5.30 Misclassification of product can also led to inequitable tariff treatment. Packer Leather, a company that exports kangaroo leather to 19 countries, including China, told the Committee that the Harmonised System (HS) classification applied to kangaroo leather places the Company at a disadvantage. Cow hides and skins face a lower tariff than kangaroo leather:

Currently kangaroo leather is classified under HS code 4113-90-00 Other. This has dutiable effect of 14 per cent as a base rate. It is also notable that this same HS code is also used for goat/kid skins, swine and reptiles. Here we have a unique Australian material found nowhere else in the world in its natural state but which appears to suffer from a perhaps poorly classified HS code when compared to bovine leather. By comparison, the bovine leather rate is only five per cent.³⁷

- 5.31 Packer Leather suggests that a more equitable outcome would be achieved by re-classifying kangaroo leather so that it falls within the lower tariff applying to cow hides and skins.³⁸

Non-tariff barriers

- 5.32 As with previous FTAs, non-tariff barriers are a major concern. The ECA cautions that, despite the merits of ChAFTA, it does not address the non-tariff barriers inherent in China's complex and multi-layered regulatory framework.³⁹ The ECA identified a number of non-tariff barriers including:

- information about local language, culture and business practices;
- understanding local regulations;
- payment issues; and
- regulations that favour local firms.⁴⁰

36 Mr Michael Keam, Strategic Marketing Manager, Commercial Flooring, Armstrong World Industries (Australia) Pty Ltd, *Committee Hansard*, 28 August 201, p. 21.

37 Mr Graham Roy Packer, Director and International Marketing Director, Packer Leather, *Committee Hansard*, Brisbane, 27 July 2015, p. 6.

38 Mr Packer, Packer Leather, *Committee Hansard*, Brisbane, 27 July 2015, p. 6.

39 ECA, *Submission 61*, p. 11.

40 ECA, *Submission 61*, p.11.

- 5.33 BHP Billiton stressed that in today's interconnected global trading conditions it is often red tape and non-tariff barriers that pose the biggest threat to the 'flow of goods, services, people and ideas'.⁴¹ BHP provided the example of recently introduced Chinese import regulations for coal:

A recent example of global supply chain inefficiency in the resources sector was the introduction of China's new import restrictions for trace elements in coal. These regulations, and the testing regime that has been put in place at the border, have caused delays and uncertainty for Australian exporters and our customers.⁴²

Protocols

- 5.34 The National Farmers' Federation (NFF) warns that, for many commodities, non-tariff barriers will significantly inhibit trade with China, particularly Australian pork and rice.⁴³ Both commodities require import protocols and export processor accreditation before Australian product can be imported.⁴⁴
- 5.35 Australian Pork Limited (APL) told the Committee that currently there is no Australian pork sold into China. The industry is optimistic about the potential of the Chinese market for its product but cannot take advantage of the opportunities presented by ChAFTA until the protocols and accreditation are in place.⁴⁵ APL understands that the negotiation of the protocols and accreditation system is a separate process to the FTA negotiations.
- 5.36 The Department of Agriculture has indicated that it could take five to ten years for the process to be completed.⁴⁶ Progress on the sale of pork may be slow until China prioritises the request to develop the protocols:

The reason that it might take that long is not just about the detail of the protocols but, in fact, to engage China to actually undertake the investigations that are required. We have made a request for China to consider access to pig meat from Australia, but they have not yet taken up our request to develop the protocol.⁴⁷

41 BHP Billiton (BHP), *Submission 77*, p. 2.

42 BHP, *Submission 77*, p. 2.

43 National Farmers' Federation (NFF), *Submission 48*.

44 NFF, *Submission 48*.

45 Ms Kerr, APL, *Committee Hansard*, Canberra, 7 September 2015, p. 20.

46 Ms Kerr, APL, *Committee Hansard*, Canberra, 7 September 2015, p. 21.

47 Mr Simon Smalley, North Asia, Trade and Market Access Division, Department of Agriculture, *Committee Hansard*, Canberra, 7 September 2015, p. 35.

Sanitary and phytosanitary regulations

- 5.37 Sanitary and phytosanitary (SPS) regulations continue to present a primary non-tariff barrier for many industries. While the Grain Industry Market Access Forum (GIMAF) welcomed the tariff reduction on pulses, for example, they indicated that without the necessary phytosanitary regulations the tariff reduction was ineffective:

This is positive news for the pulse industry but is tempered with the fact that no pulses are currently traded to China from Australia due to the absence of a phytosanitary protocol. Until this is resolved the tariff reduction is not relevant as China does not allow trade currently, however will provide an improved trading environment if SPS conditions can be successfully negotiated.⁴⁸

Regulations

- 5.38 Non-tariff barriers are of concern to the service industries set to benefit from the implementation of ChAFTA. The Law Council of Australia acknowledges the progress that has been made for Australian lawyers wishing to practice in China but cautions that many inhibiting regulations are still in place:

... it is disappointing that the unnecessarily burdensome provisions that currently apply to foreign lawyers have not been eliminated in full or in part and therefore will continue to apply to lawyers wishing to establish outside the PFTZ [Shanghai Pilot Free Trade Zone] and within it. These include minimum residency and post-admission experience requirements, and lengthy prior establishment of offices in China as a pre-requisite to qualify for the establishment of a 'commercial association' office in the PFTZ. This latter restriction prevents potential new law firm entrants from taking immediate advantage of the benefits provided by the FTA and PFTZ.⁴⁹

Australian policy and regulation

- 5.39 As in previous FTA reviews, the difficulties imposed by domestic policy and regulation on trade liberalisation were brought to the Committee's

48 GIMAF, *Submission 47*.

49 Law Council of Australia, *Submission 58*.

attention. The Financial Services Council (FSC) reiterated the need for full implementation of the 2010 Johnson Report.⁵⁰ It welcomed implementation of the Investment Manager Regime but stressed that further taxation initiatives are required:

... the completion of other taxation-related initiatives such as the development of collective investment vehicle regime and the reduction of withholding tax rates are still required to increase inflows as well as support Australian investment managers in exporting their services through the Asia Region Funds Passport (ARFP) initiative.⁵¹

- 5.40 The aged care services sector expects ChAFTA to open up possibilities for the industry. Although it is poised to take advantage of those possibilities, it considers that domestic regulation may hamper its efforts. Aged care is a highly regulated industry and changes to the regulatory environment often happen at short notice:

In recent years the industry has been subject to substantial, annual changes to legislation, with final detail often provided in the weeks (or days) before the date of implementation. While such a significant administrative burden is imposed upon us, our focus is on managing domestic regulatory requirements and the capacity to take advantage of opportunities such as those presented by ChAFTA are reduced.⁵²

- 5.41 The fishing industry also felt regulatory hurdles were inhibiting access to the opportunities presented by ChAFTA:

The fishing industry is highly regulated, to the extent that sometimes I wonder how some of these guys continue to operate. In the export field, you have got the EPBC Act [Environment Protection and Biodiversity Conservation Act]. You have then got to get your wildlife trade operation processes underway. So there is always something that is required for the fishing industry to leap over hurdles.⁵³

50 Australian Financial Centre Forum, *Australia as a Financial Centre-Building on our Strengths*, November 2009.

51 Financial Services Council (FSC), *Submission 39*.

52 Leading Age Services Australia WA, *Submission 81*.

53 Mr John Harrison, Chief Executive, Western Australian Fishing Industry Council (WAFIC), *Committee Hansard*, Perth, 25 August 2015, p. 30.

Maintaining Australian standards

- 5.42 There is a perception that ChAFTA has the potential to threaten Australia's control of the standard of goods entering the country. In particular, concerns have been raised about food labelling and electrical goods.
- 5.43 CHOICE, among others, suggests that provisions in ChAFTA will negatively influence Australian policy on food labelling and make it difficult to change food labelling laws.⁵⁴ Food labelling has not been specifically excluded from the ISDS provision, causing concern that changes to food labelling regulations could provoke an ISDS case.⁵⁵
- 5.44 However, DFAT maintains that the ISDS provisions do not apply to food labelling and that all importers must meet Australia's food labelling requirements:
- Investor-state dispute settlement does not apply to imports of food stuffs – the worlds do not overlap. Investor-state dispute settlement, really only gives an investor in Australia, covered by the agreement – so a Chinese investor established in Australia – the ability to directly enforce the obligations in the investment chapter of the agreement.⁵⁶
- 5.45 The importation of sub-standard electrical products into the Australian market and subsequent safety issues were raised by the electrical industry and unions.⁵⁷ DFAT offered assurance that ChAFTA does not reduce China's conformity and assessment obligations and provides an avenue for Australia to work with China on improving this area:
- ... it does not reduce our standards or our enforcement, in any way. In fact, we do have capacity under the agreement to work more intensively with China on improving conformity and assessment processes.⁵⁸

Omissions

- 5.46 ChAFTA does not contain separate chapters on labour and environmental standards. Such chapter were included in the FTA with Korea. Dedicated

54 CHOICE, *Submission 33*.

55 AFTINET, *Submission 21*, pp. 14-15.

56 Ms Adams, DFAT, *Committee Hansard*, Canberra, 7 September 2015, p. 37.

57 NECA, *Submission 52*; ETU, *Submission 44*.

58 Ms Adams, DFAT, *Committee Hansard*, Canberra, 17 August 2015, p. 25.

chapters on these areas are seen as a means of encouraging compliance with the standards of the International Labour Organisation (ILO) and international environmental standards.⁵⁹

5.47 DFAT told the Committee that the chapters and issues included in each individual FTA are determined by the two countries negotiating the agreement and therefore vary from agreement to agreement.⁶⁰

5.48 The ECA suggests that the absence of these chapters could indicate that Australia and China are satisfied that the importance of these issues is recognised through other agreements.⁶¹ However, the ECA also notes the lack of a chapter on government procurement and urges the Australian Government to continue to work on developing commitments in this area. Under Article 16.8 of ChAFTA, both governments agree to negotiate on government procurement, with a view to making reciprocal commitments.⁶²

Treaty making process

5.49 As with inquiries into previous FTAs, many comments were made on the treaty making process itself. In particular, there was criticism of the lack of access to the text of a proposed treaty – to scrutinise and test the treaty's effectiveness and viability – *before* it is signed.⁶³

5.50 There were also suggestions to improve the future interpretation of treaty text. The Committee received a proposal from Dr Rebecca LaForgia for an interpretative declaration to be developed and attached to ChAFTA. This would promote clarity and openness around the interpretation of the text.⁶⁴ The interpretative declaration would be created by the Executive and interpret ambiguous sections of the text, particularly the provisions in Article 14 governing the Joint Commission.⁶⁵ The declaration should also allow public access to reports from the Joint Commission.⁶⁶ Dr LaForgia

59 AFTINET, *Submission 21*, pp. 12–14.

60 Ms Adams, DFAT, *Committee Hansard*, Canberra, 17 August 2015, p. 24.

61 ECA, *Submission 61*, p. 12.

62 ECA, *Submission 61*, p. 12.

63 Dr Patricia Ranald, Coordinator, Australian Fair Trade and Investment Network Ltd (AFTINET), *Committee Hansard*, Sydney, 31 July 2015, p. 15.

64 Dr Rebecca LaForgia, *Submission 56*.

65 Dr Rebecca LaForgia, *Submission 56*, pp. 6–9.

66 Dr Rebecca LaForgia, *Committee Hansard*, Melbourne, 28 August 2015, pp. 13–14.

suggests that this would provide a means of ensuring that the working of ChAFTA is transparent over the long term.⁶⁷

- 5.51 Ms Anna George, a former ambassador and multilateral negotiator with DFAT, proposes that JSCOT provide a 'forensic' record of the evidence it receives during its inquiry into ChAFTA to ensure that the material is readily available for future reference:

I would urge [JSCOT] ... to prepare, as part of its Report, a specific section that formally records the public service and the government's responses to *the scope, interpretation and implementation obligations of the Agreement*. A record such as this should be capable of serving as a concise and clear formal record of evidence given and provide a failsafe 'living' record after the 'ink is dry' on [JSCOT's] deliberations.⁶⁸

- 5.52 Ms George urges this course of action to pre-empt the future misinterpretation of the treaty text, particularly with regard to the links between the sanitary and phytosanitary, technical barriers to trade and investment provisions and the areas of public health and public welfare:

... throughout the language, where you are looking at the public welfare side, it goes from public welfare to public health – there is no clear line such that you can say that we are discussing this and this is what is out of scope, specifically. The language is very loose. It can be interpreted many ways, and if you look at both the WTO language and the language in the treaty and the language that is used in the ISD[S] provisions and how that all operates, these issues can be picked out in little elements of it.⁶⁹

- 5.53 Ms George's concerns are driven by the threat posed by antimicrobial resistance (AMR) and the spread of noncommunicable diseases. Ms George considers that, under ChAFTA, Australia's legitimate efforts to protect its environment and people could leave it open to litigation.⁷⁰

67 Dr Rebecca LaForgia, *Submission 56*, p. 8.

68 Ms Anna George, *Submission 57*.

69 Ms Anna George, *Committee Hansard*, Perth, 25 August 2015, p. 41.

70 Ms George, *Committee Hansard*, Perth, 25 August 2015, p. 40.

Conclusion

Introduction

- 6.1 China is currently Australia's largest trading partner with two-way trade worth \$160 billion in 2013-14. It is both Australia's largest export market and its largest source of imports. On entry into force of China Australia Free Trade Agreement (ChAFTA), more than 85 per cent of Australia's trade to China will have tariffs reduced to zero and, on full implementation, 95 per cent of trade will enter China duty-free. The Agreement is expected to promote closer economic integration and further enhance this significant bilateral economic relationship.
- 6.2 In theory, inclusive multilateral trade agreements are the preferred route to trade liberalisation and economic growth. However, bilateral, plurilateral and regional trade agreements are often a more practical way to achieve results. Australia is losing market share in the burgeoning Chinese economy because of existing preferential trade agreements with some of Australia's major competitors such as New Zealand, Chile and ASEAN. The negotiation of a preferential trade agreement with China appears the most realistic option to combat Australia's growing competitive disadvantage.
- 6.3 There has been considerable public debate on the advantages and disadvantages of entering into preferential trade agreements. Such agreements involve negotiations and compromise; inevitably some sectors of the economy gain and some lose. ChAFTA has proved more controversial than previous agreements, particularly regarding the provisions for labour mobility.

Labour mobility

- 6.4 The Committee acknowledges the extent of the public concern generated by the labour mobility provisions in ChAFTA and the underlying fear that Australian jobs are threatened. However, promoting temporary entry access to facilitate labour mobility – within the context of robust immigration and employment frameworks – is considered essential to support increased trade and investment.
- 6.5 The Committee recognises that increasing labour mobility comes with risks but is confident that, providing the relevant monitoring organisations are adequately resourced, those risks can be mitigated.
- 6.6 The Committee understands that the classification changes provided in ChAFTA will open up access to temporary entry to a broader range of workers. However, there is no ‘right of entry’ to Australia for Chinese workers. Safeguards remain in place to ensure strict entry criteria are adhered to and enforced.
- 6.7 No immigration system can entirely prevent deliberate unlawful activity. However, Australia’s system for ensuring compliance – including the Fair Work Ombudsman, corporate regulation and the Department of Immigration and Border Protection (DIBP) – can manage and contain these breaches. The Committee reiterates that it is essential to adequately resource all government organisations with responsibility for curbing unlawful immigration activity and recommends that the Government ensure that sufficient funding is provided for this purpose.

Recommendation 1

- 6.8 **The Committee recommends that all government departments and agencies responsible for curbing unlawful immigration activity, particularly the Department of Immigration and Border Protection, are adequately resourced to carry out their functions effectively and efficiently.**

Skills assessment

- 6.9 The Committee is satisfied that the administrative changes to the skills assessment process contained in the side letters to ChAFTA do not remove the need for skills assessment for affected occupations. Although the timing of skills assessment has been shifted, licence and regulatory

requirements must be met before applicants can commence work in Australia.

Access and utilisation

6.10 If the full economic potential of the Agreement is to be achieved, the negotiation and implementation of ChAFTA is only the starting point. The Committee remains concerned that FTAs in general are underutilised and Australian business and industry are not accessing the new opportunities. According to recent research, only 19 per cent of Australian exporters make use of Australia's existing FTAs.¹ To take full advantage of ChAFTA, and the other FTAs Australia has negotiated, Australian business and industry must be provided with the education and support required to understand, navigate and comply with the FTAs' complexities.

6.11 Many small businesses, in particular, have neither the time nor resources to dedicate to untangling the requirements of FTAs.² Asked to identify the reason for the lack of utilisation of FTAs, HopgoodGanim lawyers said that there is a knowledge-gap that needs to be addressed:

We find that the main barrier is information and knowledge. A lot of clients do not actually know how to avail themselves of the benefits of those free trade agreements. To be honest, the process itself is not difficult, but it is a process of education, I believe.³

6.12 In this regard, the Committee notes the work being undertaken by DFAT through the development of the FTA Dashboard and the continuing rollout of the FTA Seminars.

6.13 The Committee notes that ChAFTA Article 2.10.2 should also encourage utilisation and access of the Agreement:

In accordance with Article VIII of GATT 1994, neither Party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation, which is easily rectified and obviously made without fraudulent

1 The Economist Intelligence Unit (EIU), *FTAs: fantastic, fine or futile? Business views on trade agreements in Asia*, <https://globalconnections.hsbc.com/downloads/ftas_fantastic_fine_or_futile.pdf> viewed 19 September 2015.

2 Australia China Business Council (ACBC), *Submission 26*; Freight & Trade Alliance and Hunt & Hunt Lawyers, *Submission 73*, p. 5.

3 Mr Lea Fua, Senior Associate, HopgoodGanim, *Committee Hansard*, Brisbane, 27 July 2015, p. 17.

intent or gross negligence, shall be greater than necessary to serve merely as a warning.⁴

- 6.14 The Committee concurs with the Export Council of Australia (ECA) that, in accord with the spirit of this provision, the Department of Immigration and Border Protection (DIBP) should exercise leniency when dealing with minor or inadvertent compliance errors.⁵

Business initiatives

- 6.15 The Committee is encouraged by the initiatives instigated by the business community to inform and educate stakeholders. HopgoodGanim hosts regular information events and have structured processes in place to alert their clients to the opportunities available through FTAs.⁶ The Australia China Business Council organises approximately 200 events annually around Australia, including business-to-business briefings and roundtables, to disseminate information.⁷

- 6.16 ThomsonAdsett have had a long association with the Asian and Chinese markets and, some time ago, developed a professional tour education service, SAGE (Studying and Advancing Global Eldercare). The program provides an opportunity for professionals in the aged care sector to experience the market firsthand:

The purpose of [SAGE] was to gather together professionals and senior leaders in the industry and travel to different countries to look at what they do in their marketplaces. We have now been to China four times ... and in that process we have developed a very strong relationship with the China National Committee on Ageing, which is one of their peak bodies; it represents and develops policy for China in this space.⁸

- 6.17 The ECA has developed an online FTA Tool designed to assist the trading community to understand the basics of FTAs.⁹

4 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China (ChAFTA)*, Article 2.10: Administration of Trade Regulations.

5 Export Council of Australia (ECA), *Submission 61*, p. 9.

6 Mr Fua, HopgoodGanim, *Committee Hansard*, Brisbane, 27 July 2015, pp. 17–18.

7 Ms Martine Letts, National Chief Executive Officer, Australia China Business Council (ACBC), *Committee Hansard*, Melbourne, 28 August 2015, p. 7.

8 Mr David Keith Lane, Chairman, ThomsonAdsett, *Committee Hansard*, Brisbane, 27 July 2015, p. 23.

9 ECA, *Submission 61*, p. 6.

Austrade

- 6.18 The Committee acknowledges the work currently being done by Austrade to educate business and industry regarding FTAs. The Committee received positive feedback on Austrade's relationship with business and industry and its existing initiatives. For example, ANZ singled out Austrade's report on *E-commerce in China – a guide for Australian business* for special mention as it provides a guide to preparing, selling and distributing a product for the Chinese market as well as explaining Chinese regulation.¹⁰
- 6.19 Businesses indicated Austrade's pivotal role in promoting the Australian brand in foreign markets:
- Austrade is principally used ... as a vehicle for marketing these programs in countries like China, Korea and Japan. They do a good job of branding Australian education as a high quality provider, which I think is one of the reasons why Australia punches above its weight internationally. So my personal opinion and my experience with them is that they are easy to engage with and do a good job.¹¹
- 6.20 However, there is some concern that the demands imposed by Australia's growing FTA commitments is putting strain on Austrade's ability to provide targeted, sector specific information. ThomsonAdsett praised Austrade's role in assisting the company in the past but warned that more will need to be done to ensure that frontline staff have the skills and knowledge to be useful in the complex Chinese market:
- ... increasingly Austrade cycles staff through its offices quite regularly. I have more knowledge than almost all the staff and I have been telling them where to go rather than the reverse ... the government should ensure that, through Austrade, trade offices are appropriately skilled and knowledgeable in the aged-care and healthcare services sector and understand clearly the different roles and responsibilities of facility operators and professional advisors.¹²
- 6.21 The Committee recognises the central role that Austrade plays in both facilitating access to markets for Australian exporters and promoting the Australian brand in those markets. The Committee recommends that Austrade is sufficiently resourced to support dedicated officers, with the

10 ANZ, *Submission 16*.

11 Mr Alexander Chevrolle, Member Institution Representative, Council of Private Higher Education Inc. (COPHE), *Committee Hansard*, Sydney, 31 July 2015, p. 7.

12 Mr Lane, ThomsonAdsett, *Committee Hansard*, Brisbane, 27 July 2015, p. 26.

sector specific expertise required to provide information and assistance to access the Chinese market.

Recommendation 2

- 6.22 **The Committee recommends that Austrade is sufficiently resourced to support dedicated officers, with the specific expertise required to provide information and assistance to individual sectors to facilitate access to the Chinese market.**

Non-tariff barriers

- 6.23 The Committee recognises that non-tariff barriers continue to present the biggest impediment for many sectors wishing to take advantage of ChAFTA. Although many of these barriers will require government-to-government negotiations and may take considerable time to address, the Committee is aware that some domestic issues can be directly addressed by the Australian government.
- 6.24 The Committee understands that the Department of Agriculture has an ongoing program in place to address non-tariff barriers including sanitary and phytosanitary (SPS) issues, as well as import protocols and export processor accreditation, and that delays are often determined by the priorities of foreign governments. Nonetheless, the Committee urges the Department to make every effort to expedite the negotiation of the required import protocols and export processor accreditation and the removal of SPS barriers.
- 6.25 The Committee recommends that the Department of Agriculture develop a set of performance indicators to measure the Department's progress in tackling non-tariff barriers and ensure external accountability. The Committee also recommends that both the Department of Agriculture and the relevant sections of DFAT are adequately resourced to ensure that work on reducing non-tariff barriers is prioritised and effective progress made as quickly as possible.

Recommendation 3

6.26 The Committee recommends that:

- the Department of Agriculture develop a set of performance indicators to measure progress on the removal of non-tariff barriers; and
- the Department of Agriculture and the relevant sections of the Department of Foreign Affairs and Trade are adequately resourced to enable effective progress to be made in removing non-tariff barriers.

6.27 The Financial Services Council reiterated issues it has previously brought to the Committee's attention regarding the need for domestic regulatory reform to facilitate access to foreign markets.¹³ The Committee recommends that the Government take steps to complete the implementation of the remaining recommendations of the 2010 Johnson Report and tax-related initiatives such as the development of a collective investment vehicle regime and the reduction of withholding tax rates.

Recommendation 4

6.28 That the Australian Government prioritise implementation of the recommendations of the *Review of the Tax Arrangements Applying to Collective Investment Vehicles* report and *Australia as a Financial Centre – Building on our Strengths* (the Johnson Report) in order to achieve full utilisation of the China Australia Free Trade Agreement for Australian financial services.

Antimicrobial resistance

6.29 The Committee has been alerted to the dangers presented to the health security of Australians by antimicrobial resistance. The Committee recognises the link between microbial resistance and Australia's current regulatory framework which enables Australia to control antibiotic use. The Committee is aware that this regulatory framework must not be

13 See Joint Standing Committee on Treaties (JSCOT), *Report 142: Treaty tabled on 13 May 2014*, September 2014, p. 47.

threatened by Australia's commitments under FTAs and will be monitoring this area during its examination of future agreements.

Framework for review

- 6.30 The Committee welcomes the framework for review built into ChAFTA and urges government, business and industry to fully utilise the framework to address the issues that have been raised during this inquiry. In particular, the Committee encourages government to ensure that comprehensive, structured consultation processes are in place to guarantee effective input from stakeholders.

Conclusion

- 6.31 The Committee acknowledges the widespread community disquiet that has been generated by ChAFTA but considers that many of the concerns are unfounded. The Committee recognises that broad sections of Australian business and industry are expected to receive substantial benefit from greater access to one of the world's largest economies.
- 6.32 The Committee supports the Treaty and agrees that binding treaty action should be taken.

Recommendation 5

- 6.33 **The Committee supports the *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* and recommends that binding treaty action be taken.**

Mr Angus Taylor MP
Chair
15 October 2015



Dissenting Report – The Hon K Thomson MP, The Hon M Parke MP, Senator S Lines & Senator G Sterle

- 1.1 The China-Australia free trade agreement (ChAFTA) is an unbalanced agreement as a result of the Coalition government's eagerness to complete the negotiations to an artificial deadline.
- 1.2 China is already our largest trading partner. Australian agriculture exports to China have trebled in the past six years, from \$3 billion in 2007/8 to \$9 billion in 2013/14. They will continue to grow in future.
- 1.3 China had \$22.7 billion - \$12 billion of it in Australian real estate - in investment proposals approved by the Foreign Investment Review Board in the 2014 financial year, more than from any other country. Chinese investors bought more real estate in Sydney and Melbourne combined - almost \$3.5 U.S. billion - than in each of London, Paris, or New York. The claim in the majority report that Australia risks becoming less attractive to Chinese investment is fanciful, and out of touch with the reality of 2015 Australia.
- 1.4 Labor has made it clear that in government we would not have agreed to key items in ChAFTA, including Investor-State Dispute Settlement provisions, and a general exemption from labour market testing.
- 1.5 The Productivity Commission heavily criticised Australia's pursuit of FTAs in a 2010 report that recommended future agreements first undergo independent cost-benefit analysis and verification of the predictions produced by the Department of Foreign Affairs and Trade. The PC found that overall national benefits from FTAs were hard to find, and unilateral or multi-lateral agreements produced clearer improvements for Australia.
- 1.6 More recently the Productivity Commission has pointed to a lack of transparency and a lack of rigorous assessment of provisions in recently signed agreements.

- 1.7 Trade Minister Robb has said Australian jobs would grow by 9,000 per year to be 178,000 higher in 2035. This is incorrect.
- 1.8 Peter Martin – The Economics Editor at *The Age* – has crunched the numbers in the Government’s commissioned study by the Centre for International Economics (CIE) on the combined impacts of the Korea, Japan and China FTAs. There is no separate study of the China FTA. That figure of 178,000 jobs does not appear anywhere in the CIE study. The three agreements will only create 5434 net jobs in 2035.
- 1.9 The Government made a huge gaffe by adding up all the job figures for each individual year without realising that each year’s figure is a net figure counting both gains and losses up to that year. Peter Martin says that by 2035 Australia’s workforce will exceed 15 million, meaning that an extra 5434 jobs will impact the unemployment rate by less than one-half of one-tenth of 1 per cent. He says modelling also shows that the agreement will boost imports by 2.5% while only boosting exports by 0.5%.
- 1.10 Ugly allegations of “racism” and “xenophobia” have been directed by the Government and other China Free Trade Agreement supporters to try to shut down debate. The allegations rest totally on the claim that the China FTA is no different from other Trade Treaties Australia has entered into. But the words and the meaning of the China deal are different from those of previous treaties.
- 1.11 The definition of "contractual service suppliers" in the Chile deal refers to persons with "high-level technical or professional qualifications, skills and experience". The definition for the China, Korea and Japan deals was watered down to persons with “trade, technical or professional skills and experience”, with the words "high-level" and "qualifications" being omitted.
- 1.12 The Department of Foreign Affairs and Trade provided unequivocal advice to the Treaties Committee in 2008 that the Chile deal was limited to professional skilled business people, and people with high-level qualifications who are already employed by an enterprise of the other country. The Department said the Chile FTA would not widen the capacity for people to apply for 457 visas, and was "not about nationals seeking access to the employment market; it is about service professionals coming temporarily to Australia to deliver their particular service and then leaving".
- 1.13 But with the China FTA there are over 650 trades and other occupations in the 457 program (including over 200 about which the Department has said that there is labour market testing now) which can never again be subject to labour market testing if this China deal comes into force. A list of these 215 occupations is at Appendix A.

- 1.14 The Department also said the Chile deal did not limit Australia's scope to change or abolish 457 visas. This is not true of the China deal.
- 1.15 The ASEAN and Malaysian FTAs, which Labor signed in government, provided labour market testing exemptions in the 457 visa program for very limited categories of foreign nationals. The China deal gives labour market testing exemptions to all Chinese nationals in the 457 program.
- 1.16 Furthermore, the initial period of entry for temporary contractual service suppliers in the Japan and Korea FTAs is one year. It is four years for the China FTA, four times as long.
- 1.17 The China Deal also differs from other trade deals in that it has a Memorandum of Understanding which provides young Chinese with 5000 work and holiday visas each year, with the right to work in Australia for 6 months of the year. There is no reciprocal arrangement for young Australians to work and holiday in China.
- 1.18 The Government majority report quotes the Department arguing that the existing standards and obligations are sufficient to protect Australian workers (paragraph 4.15 p.30). But the China-Australia Free Trade Agreement weakens the rules about employing migrant workers from China. At present for some 457 occupations employers have to test the labour market – that is to say, advertise positions or vacancies in Australia and show no qualified locals are available – before they can bring in temporary migrant workers, or employ those already here.
- 1.19 The China FTA puts an end permanently to labour market testing in the 457 visa program for all Chinese nationals in all skilled occupations. This includes engineers, nurses, electricians, motor mechanics and another 200 trades and occupations where testing currently applies, plus the 400 or so other mainly graduate-level occupations where there is no testing now simply by government policy.
- 1.20 The Memorandum of Understanding establishes Investment Facilitation Arrangements (IFA). These will allow companies with a minimum 15% Chinese investment registered in Australia undertaking infrastructure development projects of more than \$150 million in specified sectors (a very low threshold, which would cover most projects) to negotiate bringing in semi-skilled temporary workers on 457 visas plus 'concessional' skilled workers. The Liberal Government says it will be the same as the Enterprise Migration Agreements proposed by Labor at the time of the Roy Hill Mining proposal. But trade unions objected vehemently to Enterprise Migration Agreements and none of them ever happened - not at Roy Hill and not anywhere else. The Government says direct employers on these infrastructure projects must test the local labour market first. But the government's labour market testing requirement

allows employers to stop advertising jobs locally up to a year and a half before employing Chinese semi-skilled workers!

- 1.21 The Government has expressly stated that in order to implement our obligations under ChAFTA, a Migration Act Determination is required in relation to labour market testing in the 457 visa program. Clearly if nothing was changing there would be no determination.
- 1.22 The definition of 'contractual service suppliers' of China, in combination with other ChAFTA provisions, means that all standard business sponsors nominating Chinese citizens for non-concessional 457 visas will no longer have to test the labour market.
- 1.23 IFA workers can have lower English skills than under the standard 457 visa, which will hamper their ability to understand their rights or to complain about their violation. Lower English skills also have concerning implications for workplace safety and potentially for public safety.
- 1.24 The definition of 'contractual service suppliers of China' is identical to that of 'contractual service suppliers of Korea' in the Korea Free Trade Agreement. It is noteworthy that the Immigration Department has advised registered migration agents that "The effect of the obligations under the KAFTA is that labour market testing will NOT be applied to Korean nationals/permanent residents or to employees of businesses in Korea transferring to an Australian branch of that business being nominated under the 457 programme".
- 1.25 The China FTA also removes Australia's right to apply labour market testing in the 400 visa program, for Chinese 'installers and services' of machinery and equipment.
- 1.26 At present there is no legislated requirement for labour market testing in the Visa 400 category. But by policy 400 visas are only granted to foreign workers to do 'highly specialised work – that is, it involves skills, knowledge or experience....which cannot reasonably be found in the Australian labour market.'
- 1.27 The China FTA will remove the Australian government's ability to apply this current test or indeed any form of labour market testing to Chinese 'installers and services' in the 400 visa program.
- 1.28 The claim made in the majority report that Investment Facilitation Arrangements "will not allow Australian employment laws or wages and conditions to be undermined" (Paragraph 2.36), is not accurate.
- 1.29 The Department's IFA guidelines say "all overseas employees under the project agreement must be employed under terms and conditions of employment no less favourable than the employer's Australian workforce working in the same position at the same location". But if there are no

such Australian workers, the default position is likely to be the award minimum.

- 1.30 As Dr Joanna Howe, Senior Lecturer, University of Adelaide Law School, says,

“There is no requirement in the memorandum that a Chinese worker employed via an IFA receives the same wages and conditions for their occupation as a local worker. The only stipulation in the memorandum is that the award rate be paid. Similarly, in the Project Agreements information booklet, which is the policy document governing IFAs, there is no market salary rates requirement. This means the ChAFTA could be used to create an IFA which undercuts local wages and conditions because although local workers may expect to be paid a higher rate for a certain occupation as provided for in the relevant enterprise agreement, a Chinese worker may be willing to work for the far lesser rate provided for in the award.

This effectively means that so long as the award rate is an acceptable concession on the Temporary Skilled Migration Income Threshold which has been negotiated in advance with the Department, then a Chinese worker employed via an IFA is simultaneously being employed in accordance with Australian law *and at the same time* undercutting local wages and conditions that are provided for in enterprise agreements. The risk of this occurring is high given that it provides Chinese employers with a relatively easy way to cut labour costs on infrastructure development projects.”

- 1.31 The majority report quotes the Migration Council in support of the claim that nothing in ChAFTA will lead to migrant workers being prioritised over Australian workers. This claim is directly contradicted by the FTA text, Chapter 10, article 10.4.3:

“Neither party shall require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.”

- 1.32 The removal of labour market testing was also confirmed by the evidence of a senior officer from the Department of Immigration and Border Protection to the Joint Standing Committee on Treaties on September 7, 2015.

Kelvin Thomson MP: “Are Chinese tradesperson, category 3 engineers and nurses currently subject to labour market testing conditions and requirements?”

David Wilden, DIBP: "If they were to come currently and they are not exempt, they would be required to be subject to labour market testing, the sponsors would be."

Thomson: "And if the China FTA comes into force, will they be subject to those labour market testing conditions then?"

Wilden: "No, they would be exempt."

- 1.33 The majority report (paragraph 4.10) says that 457 visa holders get the equivalent terms and conditions of an Australian worker. But Dr Joanna Howe has pointed out the great gulf between the theory and the reality.

"Firstly, Chinese workers will be unlikely to complain about being paid below the Australian minimum wage or the relevant market salary rate because whatever they are earning here is still likely to be far more than what they would receive back in China. Many Chinese workers employed using the ChAFTA's provisions will be 'remittance workers' motivated by a desire to temporarily remain in Australia and to send a large amount of their wages back to China where its purchasing power is worth far more. This provides an even stronger disincentive for Chinese workers to bring to light the fact of their exploitation. Without inside informants, it is highly unlikely that Australian authorities will uncover it.

This is because Chinese workers will operate with a 'dual frame of reference' that computes the wages and conditions that can be earned in Australia compared with China. Unlike Australia, China has no national minimum wage as each province sets its own rate. In Beijing the hourly minimum wage is 18.70 yuan (\$3.96 AUD) compared with \$17.29 AUD in Australia. Given that China has nowhere near the labour market protections or a strong (and enforced) minimum wage, this may induce Chinese workers to accept conditions illegal under Australian law in the knowledge that these conditions are far superior to those that would be experienced in China, a willingness that might be openly exploited by some employers."

- 1.34 At pages 39 and 40 the majority report outlines the concerns about recent evidence about the exploitation of temporary migrant workers, but then is silent about how these might be addressed.
- 1.35 Labour market testing means a business has to prove there is a genuine shortage of skills and there are no local workers who can do a job before temporary visas are granted for migrant workers. The policy intent is to protect and privilege the employment opportunities of local workers.

- 1.36 Without labour market testing there is no proper mechanism to ascertain that temporary migrant workers are needed. Firstly, this damages public confidence in the temporary migration system which is necessary for its continued functioning. Public confidence in immigration policy is a fundamental precondition for permissive visa regulations.
- 1.37 The absence of labour market testing allows employers to use overseas workers to exploit their vulnerability. Research shows that employer requests to access temporary migrant labour cannot be taken at face value and may produce a permanent demand (also called a ‘structural dependence’) upon temporary migrant labour.
- 1.38 Independent confirmation of skills shortages is ‘the first fundamental step’ in the development of temporary migration schemes and cannot be outsourced to employers as they will always have a “demand” for foreign workers if it results in a lowering of their costs. The simplistic notion that employers will only go to the trouble and expense of making a 457 visa application when they want to meet a skill shortage skims over a range of motives an employer may have for using the 457 visa.
- 1.39 The Majority Report (paragraph 4.20) quotes the Department of Immigration and Border Protection as identifying the cost to the employer of using the 457 visa program as a deterrent to misuse. But Dr Joanna Howe says a study of employers’ motivations for accessing 457 visa workers found that these were varied and were not always contingent upon whether a particular occupation was in shortage. This study found that a significant minority of employers sought to acquire 457 visa-holders with certain behavioural traits due primarily to their dependence on their sponsoring employers, reflecting an ‘embedded preference’ for temporary migrant workers as a way of gaining a competitive advantage.
- 1.40 It is claimed that under the ChAFTA Chinese workers would have the same workplace rights and entitlements as Australian workers. For example, with regard to IFAs, the memorandum specifically states that all employers will ‘be required to comply with applicable Australian laws, including minimum wage, workplace law, work safety law and relevant Australian licensing, regulation and certification standards.’ Nonetheless, there is a substantial literature examining the phenomenon of temporary labour migration that clearly establishes the particular vulnerability of temporary migrant workers which renders these workers extremely vulnerable to exploitation despite a legal right to equality of remuneration, conditions, treatment and rights as local workers.
- 1.41 A recent joint investigation by Fairfax Media and Monash University revealed hundreds of thousands of temporary foreign workers at any one time were being illegally exploited and underpaid in a widespread black

economy for jobs. Fairfax Media said it had been flooded with emails of examples of illegal pay and conditions from across the country.

- 1.42 The investigation found that hundreds of thousands of workers in food courts, cafes, factories, building sites, farms, hairdressers and retail shops were being systematically paid less than their legal entitlement. Associated Research by Monash University journalism students revealed 80% of foreign language job advertisements were offering waged below legal rates.
- 1.43 Examples of exploitation include:
- Taiwanese workers on a 417 working holiday visa being paid \$4 an hour to work in a meatworks;
 - Mandarin-language websites openly advertising jobs at \$10-\$13 an hour, significantly below Australia's legal minimum wage; and
 - Working holiday visa workers paid \$15 per hour to pick fruit – no tax, no super, no holidays, no sick pay. The minimum legal rate for such work is over \$21.
- 1.44 One feature of these abuses is the use by employers of labour hire middlemen. This enables workers to be called contractors rather than employees, and the labour hire firms melt into the night on the rare occasions whistle-blowers or regulatory agencies expose them, enabling the employer to avoid responsibility for the exploitation. But Employment Minister Cash initially rejected federal action to crack down on the labour hire companies driving foreign worker scams. She said regulation should come from the labour hire industry. This is a guaranteed recipe for inaction, and a clear sign that the Government has no real desire to stamp out the exploitation of foreign workers by unscrupulous employers.
- 1.45 The majority report says (paragraph 6.7, p.60) that "No immigration system can entirely prevent deliberate unlawful activity. However Australia's system for ensuring compliance....can manage and contain these breaches". Given the extent of the abuse of temporary workers going on in Australia right now, we regard this view as hopelessly naïve and out of touch with reality.
- 1.46 Working holiday makers have often experienced severe exploitation in the Australian labour market. How else to describe the kinds of exploitative treatment of those in fruit-picking jobs exposed by the ABC Four Corners program?
- 1.47 The potential for exploitation of Chinese workers on a Work and Holiday visa is compounded by their use of a visa for a non-work purpose. There is no way of knowing just how many, or where, Chinese Work and Holiday visa holders engage in employment. The fact of their employment may

only become visible when circumstances of exploitation occasionally come to light. In its 1997 report, the Joint Standing Committee on Migration noted evidence that ‘employers often pay less than award wages to Working Holiday Makers, putting pressure on locals to accept the same conditions to secure the relevant job’.

- 1.48 As a matter of general principle, it is eminently reasonable that China should be part of Australia’s Work and Holiday program. But the expansion of the Work and Holiday program by 5000 would be occurring at a time when a number of concerns have been raised about current exploitation of working holiday makers in the Australian labour market and impacts on local workers. Viewed from this perspective, it is highly concerning that the memorandum facilitates the annual entry of a significant number of Chinese young people on the Work and Holiday visa without regard for the consequences for their wellbeing or for the Australian labour market. If, as it is likely to be, this visa is largely used for a work purpose, these young people will be extremely vulnerable to exploitation in the workplace and can also be used to increase competition for low skilled, entry level jobs which are essential for providing young Australians with a foothold in the labour market.
- 1.49 The majority report notes the risks of exploitation spelt out in the submission by the Australian Fair Trade and Investment Network (AFTINET) (paragraph 4.59), without any indication about how this might be addressed. The majority report also notes the lack of reciprocity – young Australians aren’t and won’t be allowed to work and holiday in China – but again makes no comment.
- 1.50 There is a danger that Australia’s labour mobility commitments in CHAFTA will be used as the new baseline demand by all countries with which Australia is negotiating FTAs and all will expect Australia to offer additional concessions. This includes India, where Trade Minister Robb is once again negotiating under a self-imposed deadline of end-2015. India is the largest country in the 457 visa program with 24 per cent of all visa grants.

Mandatory Skills Testing

- 1.51 A side letter does away with mandatory skills testing by the Australian Government in a range of trades before Chinese-trained workers come to Australia. These include high risk trades like electrical work, which is inherently dangerous. We have stringent electrical training and safety standards in Australia, and eroding these standards could lead to accidents, injuries and deaths.

- 1.52 The Government says the Immigration Department can still order a skills test 'if needed', and the States will step in and do assessments for licensed trades. However, there is no clear mechanism to ensure that this will happen.
- 1.53 Mandatory skills assessment for 457 visa applicants from high-risk countries including China was introduced in 2009 by the former Labor Government to help restore some integrity to the 457 program. Before that it was commonplace for employers to nominate Chinese and other workers for skilled 457 visas in trade occupations but work them as semi-skilled or unskilled workers. For example some Chinese workers granted 457 visas as professional engineers were found to be working as labourers on Australian construction sites! There was also concern about trade training standards and qualifications and document fraud in some countries. Authorities like the World Bank say those concerns are still valid.

Investor State Dispute Settlement

- 1.54 The agreement contains Investor State Dispute Settlement (ISDS) provisions, which are problematic because they allow foreign companies to sue governments in private international tribunals for laws, policies and court decisions impacting upon their profits; for instance health, environmental and labour regulations, food labelling or quality and safety standards. That's why the former Labor government was not prepared to sign an agreement with Korea.
- 1.55 The Philip Morris tobacco company is using an ISDS clause in an obscure Hong Kong-Australia investment agreement to sue the Australian government in relation to our plain-packaging reforms, despite the laws having passed the parliament with bipartisan support and having been upheld in our own High Court. Even if Australia ultimately wins the case, it will have to pay its own legal costs of millions of dollars – that so far have amounted to \$50m.
- 1.56 Australians might be surprised to know that these cases are not heard by a respected independent international tribunal of judges but by panels of lawyers who can be advocates for multinationals one month and panel members adjudicating cases the next. Unlike national legal systems, there is no system of precedents and there are no appeals.
- 1.57 Juan Fernandez-Armesto, an arbitrator from Spain made this observation:
- When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all. Three private individuals are entrusted with the power to review, without any restrictions or

appeal procedure, all actions of the government, all decisions of the courts and all laws and regulations emanating from parliament.

- 1.58 The Chief Justice of the High Court, Robert French, gave a speech last year in which he raised concerns about ISDS and its implications for Australia's judicial system. He referred to the case of Eli Lilly, the US pharmaceutical giant that sued Canada under ISDS after the Canadian Supreme Court ruled two of its medicine patents invalid. The Chief Justice quoted Professor Brook Baker of North Eastern University law school's assessment of that case:

'After losing two cases before the appellate courts of a western democracy should a disgruntled foreign multinational pharmaceutical company be free to take that country to private arbitration claiming that its expectation of monopoly profits had been thwarted by the court's decision? Should governments continue to negotiate treaty agreements where expansive intellectual property-related investor rights and investor-state dispute settlement are enshrined into hard law?'

- 1.59 The United Nations Independent Expert Alfred de Zayas recently raised serious concerns about the inclusion of Investor-State Dispute Settlement (ISDS) clauses in free trade and investment agreements, saying:

"In the light of widespread abuse over the past decades, the Investor-State Dispute Settlement mechanism, which accompanies most free trade and investment agreements must be abolished because it encroaches on the regulatory space of states and suffers from fundamental flaws including lack of independence, transparency, accountability and predictability."

- 1.60 Nobel laureate for economics Prof Joseph Stiglitz has said this is a "new private judicial system", only available to foreign corporations. It is notable that ISDS may not be used by governments, civil society or domestic companies.

- 1.61 Some more recent trade agreements have attempted to improve ISDS processes. For instance KAFTA requires ISDS hearings and documents to be made public. However, ChAFTA says only that parties "may" not "shall" make ISDS documents and hearings public.

- 1.62 Moreover, important matters such as the definition of *indirect expropriation* and *the minimum standard of treatment of foreign investors* – are not complete and have been delegated to a committee to review in 3 years' time. This creates ambiguity about the criteria for ISDS cases.

- 1.63 We note that this foreshadowed future review may present an opportunity for revision and removal of the ISDS mechanism under the agreement in accordance with the ALP platform.
- 1.64 The government claims that “safeguards” in the China FTA will prevent cases against health or environment legislation, and that cases can only be taken on the grounds of failure to apply non-discriminatory treatment.
- 1.65 But as AFTINET points out that recent ISDS “safeguards” for health, environment and other public welfare measures have not prevented cases. The US-Peru FTA has “safeguards” but this has not prevented the Renco lead smelting company from suing the Peruvian government over a court decision which ordered it to clean up its lead pollution.
- 1.66 The kind of case that could arise from the ChAFTA is provided by the Shenhua coal mine on the NSW Liverpool Plains. This has been approved by the Federal Government, but strongly opposed by local farmers and by the Agriculture Minister Barnaby Joyce on the grounds that the federal government environment assessment did not properly examine the evidence on the possible impacts on groundwater.
- 1.67 The NSW government has the final responsibility for approving a mining lease. If community opposition results in a lease being refused after the ChAFTA comes into force, Shenhua could sue the government under ISDS provisions of the ChAFTA. Differences in Federal and State government environmental processes could assist the company to argue that a state mining lease refusal was discriminatory treatment rather than a legitimate environmental objection.

Lack of Environment and Labour Chapters

- 1.68 Unlike KAFTA, ChAFTA does not contain chapters on labour and environment, which means neither government has made any commitments not to reduce labour rights or environmental standards, nor to implement ILO rights or international environmental agreements.
- 1.69 AFTINET’s submission notes that “China is listed as one of the world’s 10 worst countries for labour rights...Violations occur not only in locally-owned enterprises but in those under contract to global corporations like Apple and Walmart. Recent strikes and protests by Chinese workers have been met with police repression.”
- 1.70 AFTINET notes that ChAFTA in effect “rewards violations of labour and rights by granting preferential market access to Australia for its products.”

Concern Over Protection of Food Labelling from ISDS

- 1.71 Given the recent imported frozen berries scandal, it is also extremely concerning that while KAFTA excludes ISDS from application to the Technical Barriers to Trade chapter, which includes such matters as food labelling, ChAFTA does not. We note the response of DFAT officials during the hearing that ISDS only applies to the investment chapter of ChAFTA and not to other chapters, however, we have not been able to verify that this is clearly provided in the text of ChAFTA.

Australian Manufacturing

- 1.72 The Government's hype about the ChAFTA fails to acknowledge that the benefits promised at the time deals are signed are often unrealised due to behind the border barriers and other unforeseen problems. The majority report acknowledges that only 19% of Australian exporters make use of Australia's existing FTAs (page 61, paragraph 6.10).
- 1.73 And there are losers in Australian manufacturing too, who have to date received little attention. The majority report notes that the tariff reductions on paper products are inequitable, to the detriment of Australia's paper industry, (paragraph 5.27 page 50), as are the arrangements for fibre packaging (paragraph 5.28). Companies like Armstrong World Industries (vinyl flooring) and Alucoil (aluminium building products) expressed to JSCOT their concern about the impact of ChAFTA on their businesses.
- 1.74 The ChAFTA fails to create a level playing field for Australian domestic industry facing competition from Chinese imports. There is no chapter on labour standards. There is no chapter on environment standards. There is no mechanism to ensure that imported products are of an appropriate standard. Alucoil Australia advises that the much publicised Docklands Fire in Melbourne was in a high rise apartment building clad with non-compliant panels imported from China.

Conclusion

- 1.75 We express opposition to the inclusion of Investor State Dispute Settlement provisions in the ChAFTA given that such provisions have been subject to criticism by economic and legal experts.
- 1.76 We note that the China-Australia Free Trade Agreement and an associated Memorandum of Understanding on an Investment Facilitation Arrangement erode safeguards for Australian jobs including labour market testing obligations under the Migration Act 1958.

- 1.77 We note that side letters on skills assessment processes which form part of the China-Australia Free Trade Agreement include provisions which have raised concerns amongst trade unions, employer associations and the community over their impact on workplace skills and safety standards; and
- 1.78 We call on the Government to accept amendments to the Migration Act 1958 which will complement the China-Australia Free Trade Agreement by introducing safeguards to support local jobs, wages, conditions and skills and to deter exploitation of overseas workers.
- 1.79 The amendments Labor proposes amend the *Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015* by adding a new schedule which amends the Migration Act 1958.
- 1.80 Amendments to the Migration Act would:
1. Require employers nominating 457 visa workers under work agreements, including ChAFTA IFAs, to meet *labour market testing* requirements (legislated labour market testing requirements currently apply only to employers under the general 457 visa stream).
 2. Require the Minister, before entering a work agreement with an employer, to be satisfied that base pay rates for 457 workers will be greater than the *Temporary Skilled Migration Income Threshold*.
 3. Require the Minister, before entering a work agreement, to have regard to:
 - ⇒ whether the agreement will support or create Australian jobs (*Australian jobs test*);
 - ⇒ a *labour market need statement* provided by the employer demonstrating why they need to utilise temporary skilled migration (writing into the Migration Act requirements currently set out in Departmental guidelines for project-based work agreements);
 - ⇒ a *training plan* adopted by the employer showing how they will improve the skills of local workers (writing into the Migration Act requirements currently set out in Departmental guidelines for the former Labor Government's Enterprise Migration Agreements and Meat Industry Labour Agreements);
 - ⇒ whether the 457 workers will be able to *transfer skills* to Australian workers;
 - ⇒ an *overseas worker support plan* showing how the employer will provide 457 visa workers with support and assistance during their stay in Australia, including information about workplace entitlements and community services (writing into the Migration Act

requirements currently set out in Departmental guidelines for Project Agreements).

4. Provide the Minister with power to impose *additional safeguards* on work agreements to ensure that they have a positive impact on Australian jobs (such as minimum numbers of Australian workers to be employed or a ceiling on the number of overseas workers).
5. Require the Minister to publish a register of work agreements entered into and to report annually to Parliament on the operation and impact of work agreements.
6. Increase the *Temporary Skilled Migration Income Threshold* (TSMIT) from \$53,900 to \$57,000 (restoring two years of indexation increases not provided by the Coalition Government) and index it to wages growth.
7. Extend the TSMIT from the general (standard business sponsor) 457 visa stream to 457 visas granted under work agreements, including ChAFTA Investment Facilitation Arrangement (IFA) work agreements.
 - ⇒ The amendments would give the Minister the power to exempt an individual work agreement or class of work agreements from the operation of this provision, in order to retain flexibility in areas with special circumstances (such as Designated Area Migration Agreements or Meat Industry Labour Agreements).
8. Strengthen enforcement of *skills assessment and occupational licencing* requirements by creating new visa criteria and conditions for 457 visa workers in occupations where it is mandatory to hold a licence, registration or membership (such as electrical or plumbing occupations where workers must hold State and Territory occupational licences).
 - ⇒ A new visa criterion will require visa applicants in these occupations either to hold the relevant licence when they apply for a visa or to demonstrate that they meet the requirements for obtaining a licence. This criterion will need to be met for the Minister to grant a 457 visa.
 - ⇒ New visa conditions will require 457 visa holders in licenced occupations:
 - ⇒ not to perform the occupation before obtaining a licence;
 - ⇒ to obtain the licence within 60 days of arriving in Australia;
 - ⇒ to provide the Department with documentation showing they hold the licence, and showing any conditions or requirements imposed on their licence, before they perform the occupation;
 - ⇒ to comply with any conditions on the licence;
 - ⇒ not to engage in any work which is inconsistent with the licence or conditions imposed on the licence;

- ⇒ to notify the Department of any changes to their licence or the conditions imposed on the licence.
- ⇒ These new visa conditions will improve the Department's ability to enforce occupational licencing requirements and ensure 457 visa workers do not operate as unlicensed workers in trades such as electrical work;
- ⇒ Breaching these visa conditions would provide the Department with grounds to cancel the workers' visa and to impose sanctions on the nominating employer.

We recommend that the China Australia Free Trade Agreement not be ratified until these legislative safeguards are put in place.

The Hon Kelvin Thomson MP
Deputy Chair

The Hon Melissa Parke MP

Senator Sue Lines

Senator Glenn Sterle

Dissenting Report: Attachment

Occupations Not Exempt From LMT

The following list is provided as a guide to the occupations which require labour market testing (any occupations which do not appear in the list below but are eligible for the subclass 457 programme and are described by ANZSCO as being skill level 3 or 4 require labour market testing):

Occupation	ANZSCO Code
Engineering Manager	133211
Nursing Clinical Director	134212
Ship's Engineer	231212
Chemical Engineer	233111
Materials Engineer	233112
Civil Engineer	233211
Geotechnical Engineer	233212
Structural Engineer	233214
Transport Engineer	233215
Electrical Engineer	233311
Electronics Engineer	233411
Industrial Engineer	233511
Mechanical Engineer	233512
Production or Plant Engineer	233513
Mining Engineer (Excluding Petroleum)	233611
Petroleum Engineer	233612
Aeronautical Engineer	233911
Agricultural Engineer	233912
Biomedical Engineer	233913
Engineering Technologist	233914
Environmental Engineer	233915
Naval Architect	233916
Engineering Professionals nec	233999
Midwife	254111
Nurse Manager	254311
Nurse Practitioner	254411
Registered Nurse (Aged Care)	254412
Registered Nurse (Child and Family Health)	254413

Occupation	ANZSCO Code
Registered Nurse (Community Health)	254414
Registered Nurse (Critical Care and Emergency)	254415
Registered Nurse (Developmental Disability)	254416
Registered Nurse (Disability and Rehabilitation)	254417
Registered Nurse (Medical)	254418
Registered Nurse (Medical Practice)	254421
Registered Nurse (Mental Health)	254422
Registered Nurse (Perioperative)	254423
Registered Nurse (Surgical)	254424
Registered Nurse (Paediatrics)	254425
Registered Nurses nec	254499
Telecommunications Engineer	263311
Telecommunications Network Engineer	263312
SKILL LEVEL 3 (includes also some Skill level 4)	
Pathology Collector (Aus)/Phlebotomist (NZ)	311216
Electronic Engineering Draftsperson	312411
Mechanical Engineering Draftsperson	312511
Building and Engineering Technicians nec	312999
Automotive Electrician	321111
Motor Mechanic (General)	321211
Diesel Motor Mechanic	321212
Motorcycle Mechanic	321213
Small Engine Mechanic	321214
Blacksmith	322111
Electroplater	322112
Farrier	322113
Metal Casting Trades Worker	322114
Metal Polisher	322115
Sheetmetal Trades Worker	322211
Metal Fabricator	322311
Pressure Welder	322312
Welder (First Class)	322313
Aircraft Maintenance Engineer (Avionics)	323111
Aircraft Maintenance Engineer (Mechanical)	323112
Aircraft Maintenance Engineer (Structures)	323113
Fitter (General)	323211

Occupation	ANZSCO Code
Fitter and Turner	323212
Fitter-Welder	323213
Metal Machinist (First Class)	323214
Textile, Clothing and Footwear Mechanic	323215
Metal Fitters and Machinists nec	323299
Engraver	323311
Gunsmith	323312
Locksmith	323313
Precision Instrument Maker and Repairer	323314
Saw Maker and Repairer	323315
Watch and Clock Maker and Repairer	323316
Engineering Patternmaker	323411
Toolmaker	323412
Panelbeater	324111
Vehicle Body Builder	324211
Vehicle Trimmer	324212
Vehicle Painter	324311
Bricklayer	331111
Stonemason	331112
Carpenter and Joiner	331211
Carpenter	331212
Joiner	331213
Floor Finisher	332111
Painting trades workers	332211
Glazier	333111
Fibrous Plasterer	333211
Solid Plasterer	333212
Roof Tiler	333311
Wall and Floor Tiler	333411
Plumber (General)	334111
Airconditioning and Mechanical Services Plumber	334112
Drainer	334113
Gasfitter	334114
Roof plumber	334115
Electrician (General)	341111
Electrician (Special Class)	341112

Occupation	ANZSCO Code
Lift Mechanic	341113
Airconditioning and Refrigeration Mechanic	342111
Electrical Linesworker	342211
Technical Cable Jointer	342212
Business Machine Mechanic	342311
Communications Operator	342312
Electronic Equipment Trades Worker	342313
Electronic Instrument Trades Worker (General)	342314
Electronic Instrument Trades Worker (Special Class)	342315
Cabler (Data and Telecommunications)	342411
Telecommunications Cable Jointer	342412
Telecommunications Linesworker	342413
Telecommunications Technician	342414
Baker	351111
Pastrycook	351112
Butcher or Smallgoods Maker (Excluding the activity of slaughtering animals, or primarily boning, slicing or packaging meat in a non-retail setting.)	351211
Cook	351411
Dog Handler or Trainer	361111
Horse Trainer	361112
Zookeeper	361114
Kennel Hand	361115
Animal Attendants and Trainers nec	361199
Shearer	361211
Veterinary Nurse	361311
Florist	362111
Gardener (General)	362211
Arborist	362212
Landscape Gardener	362213
Greenkeeper	362311
Nurseryperson	362411
Hairdresser	391111
Print Finisher	392111
Screen Printer	392112
Graphic Pre-press Trades Worker	392211

Occupation	ANZSCO Code
Printing Machinist	392311
Small Offset Printer	392312
Canvas Goods Fabricator	393111
Leather Goods Maker	393112
Sail Maker	393113
Shoemaker	393114
Apparel Cutter	393211
Clothing Patternmaker	393212
Dressmaker or Tailor	393213
Clothing Trades Workers nec	393299
Upholsterer	393311
Cabinetmaker	394111
Furniture Finisher	394211
Picture Framer	394212
Wood Machinist	394213
Wood Turner	394214
Wood Machinists and Other Wood Trades Workers nec	394299
Boat Builder and Repairer	399111
Shipwright	399112
Chemical Plant Operator	399211
Gas or Petroleum Operator	399212
Power Generation Plant Operator	399213
Jeweller	399411
Broadcast Transmitter Operator	399511
Camera Operator (Film, Television or Video)	399512
Light Technician	399513
Make Up Artist	399514
Musical Instrument Maker or Repairer	399515
Sound Technician	399516
Television Equipment Operator	399517
Performing Arts Technicians nec	399599
Signwriter	399611
Diver	399911
Optical Dispenser	399913
Optical Mechanic	399914
Plastics Technician	399916

Occupation	ANZSCO Code
Wool Classer	399917
Fire Protection Equipment Technician	399918
Technicians and Trades Workers nec	399999
Diversional Therapist	411311
Enrolled Nurse	411411
Mothercraft Nurse	411412
Defence Force Member – Other Ranks	441111
Emergency Service Worker	441211
Fire Fighter	441212
Prison Officer	442111
Driving Instructor	451211
Funeral Workers nec	451399
Flight Attendant	451711
Travel Attendants nec	451799
First Aid Trainer	451815
Diving Instructor (Open Water)	452311
Gymnastics Coach or Instructor	452312
Horse Riding Coach or Instructor	452313
Snowsport Instructor	452314
Swimming Coach or Instructor	452315
Tennis Coach	452316
Other Sports Coach or Instructor	452317
Dog or Horse Racing Official	452318
Sports Umpire	452322
Other Sports Official	452323
Footballer	452411
Golfer	452412
Jockey	452413
Court Bailiff or Sheriff (Aus)/ Court Collections Officer (NZ)	599212
Sportspersons nec	452499
Insurance Investigator	599611
Insurance Loss Adjuster	599612
Insurance Risk Surveyor	599613
Clinical Coder	599915
Auctioneer	611111
Stock and Station Agent	611112

Occupation	ANZSCO Code
Insurance Agent	611211
Business Broker	612111
Property Manager	612112
Real Estate Agent	612114
Real Estate Representative	612115
Retail Buyer	639211
Wool Buyer	639212
Driller	712211



Additional Comments – Senator the Hon J Ludwig

Trade drives growth, creates jobs and improves living standards.

Labor has been the party of trade liberalisation – and Asian engagement – for decades. Closer engagement with the People's Republic of China is critical for Australia's future. China is set to become the world's biggest economy in coming years.

That growth presents great opportunities for Australia.

Labor members of the committee understand the potential benefits of the China-Australia Free Trade Agreement:

- removing Chinese tariffs on 95 per cent of Australian exports;
- boosting our farm exports to China; and
- improving access for our services industries to the Chinese market.

However, I hold grave concerns about a number of issues which have not been adequately addressed in the Committee's report on the *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China*.

Memorandum of Understanding: Investment Facilitation Arrangement

The Memorandum of Understanding (MOU) on an Investment Facilitation Agreement (IFA) establishes arrangements between the Department of Immigration and Border Protection (DIBP) and an eligible Chinese project company. A project company is eligible to establish such arrangements where either a single Chinese enterprise owns 50 per cent or more of a project company, or if no single enterprise owns 50 per cent or more of the project company, a Chinese enterprise holds a substantial interest in the project company. A 'substantial interest' is defined as per Australia's Foreign Investment Policy, as '15 per cent or more, or several foreign persons (and any associates) have 40 per

cent or more, of the issued shares, issued shares if all rights were converted, voting power, or potential voting power, of a corporation'.¹

The project company must be involved in a proposed infrastructure development project with an expected capital expenditure of \$150 million over the term of the project.² The infrastructure development project must be within the food and agribusiness, resources and energy, transport, telecommunications, power supply and generation, environment, or tourism sectors.³

Evidence to the Committee indicated that the low threshold for IFA projects could capture the majority of infrastructure projects in a wide range of industries.⁴ The Electrical Trades Union of Australia (ETU) identified large residential and commercial construction ventures, mining operations and tourism development as well as power supply companies as falling within this threshold:

There are a number of Chinese companies considered likely buyers for the privatised New South Wales power transmission and distribution networks. The maintenance and upgrade contracts for these assets, as well as those in the Victorian energy sector that are already owned by Chinese companies, are well in excess of \$150 million.⁵

Although the Government has compared the IFA arrangements with Enterprise Migration Agreements (EMAs), the Australian Council of Trade Unions (ACTU) pointed out that the threshold for the EMAs is capital expenditure of \$2 billion. Additionally, the EMAs apply only to the resource sector and are available to projects with a peak workforce of more than 1 500 workers while the IFAs have no minimum workforce requirement.⁶ Finally, EMAs require labour market analysis to show detailed projected shortages to justify the need for 457 visa workers in semi-skilled and skilled occupations. IFAs have no requirement for labour market testing.⁷

Labour market testing regime

Requirements for sponsors to undertake labour market testing (LMT) before employing temporary foreign workers under 457 visa arrangements, ensure that Australian workers are given priority in the labour market. Chapter 10 of ChAFTA on the Movement of Natural Persons specifically states that there will be

1 Memorandum of Understanding between the Government of Australia and the Government of the People's Republic of China on an Investment Facilitation Arrangement 9IFA), 2(a).

2 IFA, 2(b).

3 IFA, 2(c).

4 Australian Fair Trade & Investment Network Ltd (AFTINET), Submission 21, p. 8.

5 Electrical Trades Union of Australia (ETU), Submission 44.

6 Australian Council of Trade Unions 9ACTU), Submission 51, pp. 3 and 4.

7 ACTU, Submission 51, p. 4.

no requirement for LMT or economic needs testing for temporary Chinese skilled workers including contractual service suppliers and installers and servicers.⁸ Neither Australia nor China will impose any limits on the total number of visas granted under these provisions, raising concerns that unlimited numbers of Chinese workers could be brought into Australia to fill vacant positions without first checking if qualified local workers are available.⁹

Under 457 temporary work visa arrangements, Skill level 3 (mostly trade-level) occupations have been subject to labour market testing since 2013. Skill Levels 1 and 2 occupations have been exempted from labour market testing (except engineering and nursing occupations) by Ministerial discretion. The provisions in Chapter 10 of ChAFTA appear to remove Ministerial discretion suggesting that engineering and nursing positions would no longer be subject to labour market testing.

In addition to the provisions in Chapter 10, the IFA arrangements will extend concessional 457 visas to semi-skilled workers. The IFA states that there will be no requirement for LMT for these concessional 457 visas.¹⁰ The IFA is the first step in a three step process to make these projects operational: the IFA, a Project Agreement and a Labour Agreement.¹¹

The Government maintains that LMT will be applied at the second step in the process, the Project Agreement stage.¹² The DIBP says that ‘labour market *analysis* would be required’ to demonstrate a labour market shortage (emphasis added).¹³ Labour market analysis is only a projection of possible market conditions at a future date. At stage three of the process, the Labour Agreement, DIBP says that ‘labour market testing *may* be required’ (emphasis added).¹⁴ Clause 8 of the IFA says that under the Labour Agreement, direct employers will have to meet the ‘sponsorship obligations associated with the labour agreement, including any requirements for labour market testing’.¹⁵ However, the footnote says that only ‘where labour market testing is required’ will employers need to demonstrate that there are no suitable Australian workers available.¹⁶

8 *Free Trade Agreement between the Government of Australia and the Government of the People’s Republic of China* (ChAFTA), Article 10.4:3(b).

9 ChAFTA, Article 10.4:3(a); Construction, Forestry, Manufacturing and Energy Union (CFMEU), Submission 80, p. 15.

10 IFA, 6.

11 Department of Foreign Affairs and Trade (DFAT), Submission 78.

12 Department of Immigration and Border Protection (DIBP), Submission 88, p. 9; DIBP, Submission 88.2, question 28.

13 DIBP, Submission 88, p. 9.

14 DIBP, Submission 88, p. 9.

15 IFA, 8.

16 IFA, footnote 6.

The process depends on Departmental Guidelines, not legislation or regulation, and is therefore subject to easier change. There is no indication that LMT will be mandatory at any stage of the process.

The Migration Council of Australia (MCA), who otherwise support ChAFTA, have called for the Government to clarify whether or not LMT can occur for an IFA or whether it is precluded by the provisions in Chapter 10.¹⁷ The Government argues that the IFA 'does not form part of the formal treaty agreement' and therefore 'is not bound by international treaty law or the commitments made under the ChAFTA'.¹⁸ According to the Government the commitments under ChAFTA will be provided for through the 'standard' subclass 457 visa program while the IFA will be provided for under the DIBP agreement programme and will be 'facilitated by the subclass 457, but, it is not part of the 'standard' subclass 457 visa programme'.¹⁹

Despite the Government claims, there is still confusion around LMT requirements in ChAFTA. Labour market testing will not be required for sponsors nominating Chinese nationals under the provisions of Chapter 10, thus opening up the possibility of qualified Australians missing out on the opportunity for local jobs. The requirement for LMT for IFA projects are couched in ambiguous terms and contained in Departmental Guidelines rather than legislation or regulations.

Skills assessment

Under a side letter to ChAFTA, Australia has agreed to remove the requirement for mandatory skills assessment for Chinese nationals in 10 occupations including some electrical, building and mechanical trades. In effect, China has been removed from the existing list of 10 countries requiring applicants for 457 visas to undertake a skills assessment prior to lodging a visa application and moved to the list of all other countries where an applicant is required to include evidence of skills as part of their application. The DIBP claims that this arrangement will only 'change the administrative pathway' for these 10 occupations and does not change the required skill level.²⁰

All visa applicants under either list have 28 days from the date of arriving in Australia to obtain any mandatory licence, registration or membership required to perform their occupation in the place where the position is situated. Licencing and registration are usually the responsibility of States and Territories.

Witnesses to the Committee voiced concern over safety standards being compromised by the new arrangements, particularly with regard to the electrical trades. The CEPU explained that 'Australia has a unique wiring protocol that

17 Migration Council of Australia (MCA), Submission 72.

18 DIBP, Submission 88.2, question 28.

19 DIBP, Submission 88.2, question 28.

20 DIBP, Submission 88, p. 7.

overseas trained workers are unlikely to be familiar with'.²¹ China was on the list of countries requiring mandatory skills assessment because trade qualifications in the two countries are not equivalent:

[China's] qualifications, the colour of the wiring, the voltages and a whole range of things do not comply directly with the Australian standards, and that is why there is that mandatory skills assessment first to determine whether they have the necessary skill sets to even come into that country to work in that occupation.²²

When an applicant has entered Australia, the DIBP told the Committee that neither the visa applicant nor the sponsor is required to notify that Department of the outcome of their application for registration or certification.²³ The DIBP does not contact States and Territories to request confirmation of registration or certification as the requirements are imposed by the States and Territories.²⁴ DIBP does conduct targeted, risk-based monitoring 'to verify that sponsors have complied with sponsorship obligations, including [licencing] requirements'.²⁵ However, there was scepticism that the Government had the resources to effectively police compliance with the requirements for licencing or registration:

Of all of the workplace visits that were conducted - and there were about 3,000 workplace visits conducted of the 36,000 or 37,000 sponsoring employers - over a third of them were failing to meet their obligation under the sponsorship arrangements.²⁶

The Committee was also presented with evidence that visa applicants are being exploited during the waiting period for their licence and employed as unlicensed trade assistants.

Investor-state Dispute Settlement mechanisms

ChAFTA, like the Korea Australia Free Trade Agreement, contains an investor-state dispute settlement mechanism. The fact that these clauses are becoming common in free trade agreements does not alleviate concerns that the Committee has previously raised regarding the threat they pose to state sovereignty and policy decision making. The relevant chapter in ChAFTA is unfinished and the

21 Mr Allen Hicks, National Secretary, Communications, Electrical and Plumbing Union (CEPU), Committee Hansard, Sydney, 31 July 2015, p. 34.

22 Mr Hicks, CEPU, Committee Hansard, Sydney, 31 July 2015, p. 36.

23 DIBP, Submission 88.2, question 10.

24 DIBP, Submission 88.2, question 11.

25 DIBP, Submission 88.2, question 12.

26 Mr Hicks, CEPU, Committee Hansard, Sydney, 31 July 2015, p. 35.

Committee has been assured that the revised provisions will come before JSCOT when they are completed.²⁷

Despite claims that the inclusion of caveats and safeguards in ISDS provisions are mitigating the risks presented, such clauses continue to leave the Australian Government open to expensive litigation. The Government should consider the findings of the Productivity Commission with regard to ISDS mechanisms and take steps to find a workable solution to avoid their inclusion in future FTAs.²⁸

Conclusion

There is no doubt that access to the burgeoning Chinese market will prove an advantage to many sectors of Australian business and industry. China is already our largest trading partner and it is essential that Australian business and industry are provided with the competitive advantage that ChAFTA will provide. In particular, our reputation for premium quality, clean, green food will benefit Australian producers. The Committee heard ample evidence of the growth already being experienced in many sectors and the investment commitments being undertaken to maximise the opportunities presented by ChAFTA.

However, while it is important that ChAFTA be ratified as quickly as possible to enable business and industry to gain the full advantage provided by a double tariff reduction, it cannot be done at the expense of Australian jobs. If the Government agrees to address the issues raised regarding labour market testing and skills assessment to ensure that Australians are not disadvantaged in the labour market, there is no reason why the ratification of ChAFTA cannot be supported. These issues can be solved through legislative changes without re-negotiating ChAFTA.

The Government should be prepared to accommodate legislated safeguards that enable ChAFTA to enter into force this year and ensure the full benefits of the agreement can be realised.

Senator the Hon Joe Ludwig

27 Ms Jan Adams, Deputy Secretary, Department of Foreign Affairs and Trade (DFAT), Committee Hansard, Canberra, 7 September 2015, p. 22.

28 Productivity Commission, *Bilateral and Regional Trade Agreements*, November 2010, pp. 276–77.



Dissenting Report—Australian Greens

Australia's treaty-making process is broken, and the China-Australia Free-Trade Agreement is a case in point. ChAFTA was negotiated in secret. At no stage was the Australian Parliament, or the people it represents, asked why we would be seeking to negotiate this agreement or what we wanted from it. At no stage was the expertise or insights of businesses, unions, academics or a host of other interest parties called upon to help inform the government on the implications of the deal, at least not in any publicly transparent way. ChAFTA has been initiated and agreed to by the executive, and presented to parliament as a take-it-or-leave-it prospect.

The milieu that follows is familiar. There's the overhyping of benefits — the government has, literally, exponentially inflated the number of jobs. And there's the confected sense of urgency — 'we must sign this now!' is the chant. Free-trade is presented as being inherently good. Those who speak out against are accused of being xenophobic and anti-trade.

Against this backdrop, the committee is meant to provide a calm and reasoned assessment to inform the government of the day. To a large extent, the committee report provides this. However, as is the pattern, the subsequent recommendations are either inadequate or non-existent, and do not reflect the content of the committee report. On free-trade, the committee has unfortunately become a rubber stamp to the executive.

There are serious problems with this agreement. It is lopsided. The projected economics benefits are based on a faulty methodology. On labour mobility, ChAFTA reads like Kafka, and appears to be creating a parallel industrial relations system. On the issue of whether Chinese corporations should be able to sue our government for public policy changes, Australia appears content for the EU and the US to sort that for us out at a later date. And environmental standards don't get a look in.

The Australian Greens believe we should be seeking to consolidate economic relations with China, our largest trading partner and the second largest economy

in the world. Further, open and transparent trade relations helps breed trust between nations, which can, in turn, help bring about a more peaceful and prosperous world. However, in its current form, ChAFTA is not a good deal, is not in our national interest, and should not be supported.

Recommendation: The Committee does not support the Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China and recommends that binding treaty action not be taken.

Advantages

It is notable that the committee report makes no direct reference to the study commissioned by DFAT into the economic benefits of ChAFTA, KAFTA and the Japan-Australia Economic Partnership Agreement (JAEPa) despite stating that ChAFTA is “predicted to generate increased employment”. The only reference to the Centre for International Economics (CIE) report on the *Economic benefits of Australia's North Asian FTAs*¹ is provided by Master Builders Australia in respect of their submission.

This is particularly notable given the government has been quoting this report when promoting the employment benefits that would flow from ChAFTA and the other two North Asian FTAs. Trade Minister, Andrew Robb, has said that “many hundreds of thousands of jobs” will flow from these three North Asian FTAs.² The Minister representing the Trade Minister in the Senate, Senator Payne, said in response to a question without notice on ChAFTA that:

...modelling shows that between 2016 and 2035 there will be 178,000 additional jobs as a result of the [North Asian] FTAs, which is almost, on average, 9,000 extra jobs per year.³

A number of other members of the government have also quoted in parliament the figure of 178 000 additional jobs between 2016 and 2035.

However, the government has made a fundamental error and this figure is wrong by a large margin. The CIE report provides a table with forecasts yearly impacts on employment out to 2035 *relative to the baseline* of no North Asian FTAs.⁴ The government has mistakenly summed these annual relative figures and have compounded the projected employment benefits.

¹ Centre for International Economics (CIE ChAFTA), *Economic benefits of Australia's North Asian FTAs*, June 2015.

² ABC Radio - AM Program, interview with Michael Brissenden, 17 June 2015.

³ Hansard, The Senate, 17 June 2015, p. 3715.

⁴ CIE ChAFTA, p. 35

The CIE's modelling actually forecasts that the employment impacts from the North Asian FTAs will peak at an additional 14 566 jobs in Australia in 2020. After this time, the number of jobs are projected to decline such that by 2035 there are only 5 434 additional jobs relative to the baseline of no North Asian FTAs.⁵ CIE does not specify what proportion of these jobs can be attributed to ChAFTA itself. Assuming a split based on the current distribution of trade between these three countries and Australia, of which China accounts for 60%⁶, then it is likely to be something in the order of 3 300 additional jobs from ChAFTA in 2035.

Table 1 shows Parliamentary Budget Office projections of the tariff revenue impacts over the forward estimates.⁷ Assuming that these impacts stabilise at trend levels once the agreement is bedded in – from 2017-18 – then the impact of ChAFTA will be upwards of \$40 billion on the federal budget over the next twenty years. Over the next twenty years that's over \$12 million for each of the 3 300 new jobs that ChAFTA will create.

Table 1: Tariff Revenue Impacts – Introducing the China FTA from late 2015 (\$ million)

2015-16	2016-17	2017-18	2018-19
610	-1,050	-1,210	-1,280

The fluctuation of the actual forecast changes in employment illustrates why there is, as stated in the committee report, “a distinct sense of urgency” about ChAFTA. CIE's report states that:

Australia's competitive advantage under ChAFTA would end as
China concludes other FTAs.

That is, ChAFTA is only expected to provide a competitive advantage to Australia for the next five years, principally because China is in the process of negotiating bilateral treaties with the EU and the US.

This underscores one of the problems with preferential trade agreements: each agreement becomes a precedent for the next, and any benefits gained are often fleeting. This is in accord with the findings outlined in a recent paper by Shiro

⁵ The mistake was belatedly acknowledged by the Minister for Employment, Michaela Cash, when she corrected an answer she gave to a question on notice after initially quoting the figure of 178 000 new jobs (Hansard, Tuesday, 13 October 2015, Page: 30, Questions without notice: additional answers – Employment). To date, no other members of the government have sought to correct the record.

⁶ DFAT, Australia's trade in goods and services 2013-14.

⁷ The government is yet to explain how it would make-up the projected shortfall in tariff revenue that will result from the agreement.

Armstrong from the Crawford School of Public Policy at ANU⁸. Mr Armstrong analysed the actual trade figures following the implementation of the 2004 Australia-US free-trade agreement (AUSFTA). The evidence suggested that:

...Australian and US trade with the rest of the world fell – that there was trade diversion – due to AUSFTA after controlling for country specific factors. Estimates also suggest trade between Australia and the United States fell in association with the implementation of AUSFTA – also after controlling for country-specific factors. The existence of trade diversion suggests that trade between Australia and the United States could well have fallen even further without AUSFTA. These results add to the evidence about whether or not preferential trade agreements increase net trade – with the body of evidence currently suggesting that they do not and if anything lead to a contraction.⁹

The Australian Greens believe that ChAFTA also reflects another shortcoming of preferential trade deals that arises when there is an imbalance of bargaining power, as there is between Australia and China. Australia has increased market access for Chinese producers, but this has not been reciprocated in many areas. Almost all Australian tariffs have been removed, but Australian access to Chinese markets remains much more limited. The government has made more concessions than gains.

For those industries that have been granted increased market access, the benefits are not necessarily immediately available. Australian Pork Limited gave evidence at a public hearing that it could take five to ten years to get Chinese accreditation to sell their produce.¹⁰

Mr Armstrong's report is also pertinent in demonstrating that CIE have a history of overstating the benefits of free-trade agreements. As with ChAFTA, CIE was commissioned by DFAT to undertake an economic analysis of AUSFTA.¹¹ As with ChAFTA, CIE projected that AUSFTA would bring economic benefits. And, as with ChAFTA, the projected economic benefits of AUSFTA were treated with

⁸ Armstrong, S., Australia – Japan Research Centre Working Paper No. 1, *The economic impact of the Australia–United States free trade agreement*, 2013.

⁹ Mr Armstrong, p. 14.

¹⁰ Official Committee Hansard, Joint Standing Committee On Treaties, Treaty tabled on 17 June 2015, Canberra, Monday, 7 September 2015.

¹¹ Centre for International Economics (CIE AUSFTA), *Economic Analysis of AUSFTA: Impact of the bilateral free trade agreement with the United States*, April 2004.

scepticism at the time,¹² a suspicion which has since been justified by Mr Armstrong's findings.

It is for this reason that the government should take up the suggestion of the Productivity Commission for free-trade agreements to be referred to the commission for a rigorous and independent analysis of the impacts on the overall economy.

Recommendation: ChAFTA be referred to the Productivity Commission for for comprehensive economic analysis. Legislation enabling ChAFTA should be delayed until this analysis is completed.

Labour mobility

The committee report is right to note that “there appears to be confusion” over the impact of ChAFTA on labour market testing, particularly with respect to large projects covered by IFAs. This confusion reflects the contradictory and convoluted nature of the agreement, with labour market testing being addressed at different points in the agreement itself, a side letter and a MoU; and with there being little legal guidance or precedence as to the actual interplay between these sections.

As such, it is absurd that the committee report fails to make any recommendation in respect of labour mobility. This is an abrogation of the committee's responsibility.

The confusion around labour market testing reflects the extraordinarily contradictory statements in made in this respect. DFAT proclaims on their website that, through IFAs, Chinese companies will have:

...increased access to skilled overseas workers when suitable local workers cannot be found.

Yet the MoU states:

There will be no requirement for labour market testing to enter into an IFA.

The committee report makes a distinction between the different phases of an IFA, and the different considerations for labour market testing when 'entering' into an IFA as opposed to 'labour agreement' phase of an IFA. This distinction is reflected in the MoU, which states that once an IFA is entered into:

¹² Ross Garnaut famously said that the CIE AUSFTA modelling does not pass the laugh test. See: *Ross Garnaut says Government's FTA report laughable*, AM - Tuesday, 4 May , 2004, Reporter: Hamish Fitzsimmons.

A labour agreement will be entered into in a timely manner and will set out the number, occupations and terms and conditions under which temporary skilled workers can be nominated, consistent with the terms of the IFA, and the sponsorship obligations associated with the labour agreement, including any requirements for labour market testing.

But the footnote to this clause reads:

Where labour market testing is required, employers *may* satisfy this requirement by demonstrating that they have first tested the Australian labour market and not found sufficient suitable workers (emphasis added).

Even so, the DIBP provides assurances that labour marketing will still be undertaken on the basis that it is required in its Project Agreement Guidelines. But these are only guidelines, and the government has the discretion to waive any requirements in them.

To confuse matters even more, the MoU is, supposedly, not legally binding, but is clearly part of the ChAFTA package. Further, as noted by the committee, it is not clear how the provisions in the MoU relate to the temporary entry provisions in the agreement itself, which state that neither party shall:

require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.

For the committee to recommend that the Australian Parliament approve a treaty knowing that a fundamental component is so ambiguous is irresponsible and careless.

Recommendation: ChAFTA be referred to the Law Reform Commission for advice on the status and impact of labour mobility clauses in ChAFTA on Australian labour standards. Legislation enabling ChAFTA should be delayed until this advice is provided and acted upon.

Irrespective, the government can ensure domestic requirements for labour market testing to the extent that ChAFTA – or any other trade agreement – is subservient to Australian law. Former Australian Trade Minister, Craig Emerson, has outlined how migration regulations could be amended to make it mandatory (rather than discretionary) to undertake labour testing for low-skilled occupations.¹³

Recommendation: That the Migration Regulations 1994 are amended to make it mandatory for the government to undertake labour market testing for ANZSCO skill levels 1-4.

¹³ Craig Emerson Economics: *Economic Note No. 19: A way through the China-Australia FTA.*

However, there are other labour components of ChAFTA that are clearly inherent to the agreement, and that cannot be safeguarded against without renegotiating the agreement. With respect to temporary entrants to the labour market, Chapter 10 of the agreement states that no cap may be applied; and removes the requirements for labour market testing for a wide class of workers over certain visa periods, including “contractual service providers” for up to four years.

Imported labour would be required to be paid the amounts set by the Temporary Skilled Migration Income Threshold, currently set at \$53 900. However, in many cases, this threshold is below the award rates for trades where the requirement for labour market testing has been removed.

Chapter 10 alone should be enough for the parliament to reject the enabling legislation. It opens up the possibility for the wages and conditions of workers on Australian soil to be undercut – including the right to collectively bargain – by a trade deal; and for these wages and conditions not to be subject to oversight by domestic courts or the domestic industrial relations system.

Other issues

Labour and environmental standards

As is noted in the committee report, ChAFTA does not include chapters on labour right or environmental standards, unlike the recently negotiated KAFTA. The committee report states that:

DFAT told the committee that the chapters and issues included in each individual FTA are determined by the two countries negotiating the agreement and therefore vary from agreement to agreement.

The conclusion to be drawn is that the Australian Government did not see fit to try to commit to the maintenance of current labour and environmental standards, or the advancement of future standards, through ChAFTA. As has been noted above, the erosion of Australian labour standards is inherent to the labour mobility clauses of the agreement, in accord with China’s poor labour standards. China also has a poor record in environmental standards. Yet the Australian government is prepared to give preferential access to Chinese labour and products without seeking to defend our domestic values.

Investor-state dispute settlement mechanism

For all of the urgency surrounding ChAFTA, and the supposed need for Australia to act quickly to gain a competitive advantage, the government appears to have foregone any first mover advantage with respect to ISDS. The investment chapter

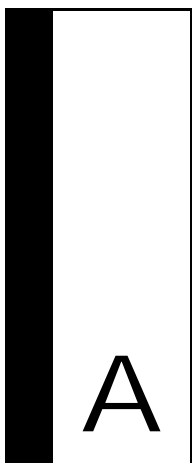
is clearly unfinished. This is explained by DFAT on the basis that China will know what it wants in ISDS clauses once it has completed bilateral negotiations with the EU and the US. A review of the ISDS provisions in three years' time will establish the details. In other words, Australia will wait to see what China works out with the EU and the US, and then follow suit. Presumably, this will include policy regarding indirect expropriation, which leaves open the prospect that provisions will be included that would allow Chinese companies to sue the Australian Government for the impact that any environmental or public health laws might have on their profits.

As it stands, the existing investment chapter is unusually uneven. Chinese investors have been provided full market access in Australia, but this privilege has not been reciprocated, and Australian investors will not be afforded protection in China in respect of the "establishment or acquisition of a new, separate investment". On discriminatory measures – domestic laws limiting the scope of foreign companies – Australia has listed specific exclusions, whereas China has applied a blanket exclusion. In other words, ChAFTA removes some of regulatory barriers for Chinese companies investing in Australia, but does not remove any for Australian companies investing in China.

The ISDS chapter also makes a regressive step on transparency. Hearings and documentation in relation to any ISDS proceedings initiated under ChAFTA can be kept secret at the request of either party. This is in contrast to the ISDS provisions in other recently agreed to treaties, including KAFTA.

ChAFTA provides a peculiar inversion of the historical origins of ISDS. As noted in the committee report, ISDS clauses originated to protect investors – usually from liberal democracies – from expropriation in developing countries with less well-established legal systems. Yet the investment chapter of ChAFTA is strongly weighted in favour of China, and reflects the more autocratic and secretive nature of its government.

Again, the committee has failed to make any recommendation with respect to the investment provisions in ChAFTA, despite the problems that are evident. For the Australian Greens, the investment chapter is also grounds enough for Australia not to enact the treaty. It does little to further the interests of Australian companies, and does nothing to further the interests of open and transparent public policy.



Appendix A - Submissions

- 1 Mr Tony Clunies-Ross (*this is an example of 33 form submissions with similar content*)
- 2 Ms Pauline Sedgwick
- 3 Mr Darryl Nelson
- 4 Blackmores Limited
- 5 Mr Tim Henwood
- 6 Mr Peter Sainsbury
- 7 Mr David Thompson
- 8 Ms Sheriden Tate
- 9 Tor Larsen and Darani Lewers AM
- 10 Viet Labor
- 11 Winemakers' Federation of Australia
- 12 Mr Steve Flora
- 13 Ms Kimm Woodward
- 14 Mr Roger Jowett
- 15 Ms Stephanie Poleson
- 16 Australia and New Zealand Banking Group Limited (ANZ)
- 17 Australian Lot Feeders' Association
- 18 Australian Pork Limited
- 19 Treasury Wine Estates
- 20 Australian Red Meat Industry ChAFTA Taskforce
- 21 Australian Fair Trade and Investment Network (AFTINET)
- 22 Dr Romaine Rutnam

-
- 23 Mr Peter Prior (this is an example of two form submissions with similar content)
- 24 Equity Trustees Limited
- 25 Ms Margid Bryn-Burns
- 26 Australia China Business Council
- 26.1 Australia China Business Council
- 27 Mr Ben Burns
- 28 Minerals Council of Australia
- 29 Australian Bankers' Association Incorporated
- 30 Coburg West ALP Branch
- 31 MADGE Australia Inc.
- 32 Teys Australia Pty Ltd
- 33 CHOICE
- 34 Dr Luke Nottage, The University of Sydney
- 35 Australian Macadamia Society
- 36 Dr Kyla Tienhaara, The Australian National University
- 37 Insurance Council of Australia
- 38 Associate Professor Kimberlee Weatherall
- 39 Financial Services Council
- 39.1 Financial Services Council
- 40 Confidential
- 41 Australian Chamber of Commerce and Industry
- 42 Westpac Group
- 43 Fletcher International Exports Pty Ltd
- 44 Electrical Trades Union of Australia
- 45 Australian Dairy Industry Council Inc. and Dairy Australia
- 46 Lexbridge Lawyers
- 47 Grains Industry Market Access Forum
- 48 National Farmers' Federation
- 49 Australian Food and Grocery Council
- 50 Australian Nut Industry Council
- 51 Australian Council of Trade Unions
- 52 National Electrical and Communications Association
- 53 Williams Trade Law

-
- 54 Master Builders Australia
 - 54.1 Master Builders Association
 - 55 Sutherland Shire Environment Centre
 - 56 Dr Rebecca LaForgia
 - 57 Ms Anna George
 - 58 Law Council of Australia
 - 59 GrainGrowers
 - 60 Australian Horticultural Exporters Association
 - 61 Export Council of Australia
 - 61.1 Export Council of Australia
 - 62 Telstra Corporation Limited
 - 63 Ms Heather Herbert
 - 64 Ms Bette Phillips-Campbell
 - 65 Australian Council of Wool Exporters and Processors Inc.
 - 66 Australian Manufacturing Workers' Union
 - 67 Wellard Group Holdings Pty Ltd
 - 67.1 Wellard Group Holdings Pty Ltd
 - 68 Armstrong World Industries (Australia) Pty Ltd
 - 68.1 Armstrong World Industries (Australia) Pty Ltd
 - 69 Citrus Australia Ltd
 - 70 Council of Private Higher Education Inc.
 - 71 Australian Grape and Wine Authority
 - 72 Migration Council Australia
 - 73 Freight & Trade Alliance and Hunt & Hunt Lawyers
 - 74 Mr John Halstead
 - 75 Mitsui & Co. (Australia) Ltd
 - 76 Business Council of Australia
 - 77 BHP Billiton
 - 78 Department of Foreign Affairs and Trade
 - 78.1 Department of Foreign Affairs and Trade
 - 79 Communications Electrical Plumbing Union
 - 80 Construction, Forestry, Mining and Energy Union (CFMEU)
 - 81 Leading Age Services Australia Western Australia
 - 81.1 Leading Age Services Australia Western Australia

- 82 ThomsonAdsett
- 83 Confidential
- 83.1 Confidential
- 84 The China-Australia Chamber of Commerce (AustCham Beijing)
- 85 Australian Forest Products Association
- 86 The Australian Industry Group
- 87 HopgoodGanim Lawyers
- 88 Department of Immigration and Border Protection
- 89 UnionsWA
- 90 Construction, Forestry, Mining and Energy Union (CFMEU) Western
Australia
- 91 Mr N C Balzary on behalf of Alucoil Composites Pty Ltd



Appendix B - Witnesses

Monday, 27 July 2015 – Brisbane

HopgoodGanim

Mrs Nicole Radice, Partner

Mr Lea Fua, Senior Associate

Packer Leather Pty Ltd

Mr Graham Packer, Director and International Marketing Director

ThomsonAdsett

Mr David Lane, Chairman

Queensland Seafood Industry Association

Mr Eric Perez, Executive Officer

Friday, 31 July 2015 – Sydney

Australian Fair Trade and Investment Network

Dr Patricia Ranauld, Coordinator

Australian Red Meat Industry ChAFTA Taskforce

Ms David Larkin, Chairman

Blackmores

Ms Christine Holgate, Chief Executive Officer

Communications Electrical Plumbing Union

Mr Allen Hicks, National Secretary

Mr Lachlan Williams, National Communications Manager

Mr Lance McCallum, National Policy Officer

Council of Private Higher Education Inc.

Mr Adrian McComb, Chief Executive Officer

Mr Alexander Chevrolle, Member Institution Representative

Financial Services Council

Mr Andrew Bragg, Director, Policy and Global Markets

Ms Sara Dix, Policy Manager, Global Markets and Investment

Meat and Livestock Australia

Mr Michael Finucan, General Manager – International Markets

Private Individual

Associate Professor Kimberlee Weatherall

Monday, 17 August 2015 – Canberra**Australian Dairy Farmers**

Mr Noel Campbell, President

Mr David Losberg, Senior Policy Manager

Dairy Australia

Mr Charlie McElhone, General Manager, Trade and Industry Strategy

Mr Peter Myers, International Trade Development Manager

Department of Education and Training

Dr Melissa McEwen, Branch Manager, Governance and Engagement
Branch, Skills Market Group

Department of Foreign Affairs and Trade

Ms Jan Adams, Deputy Secretary

Ms Frances Lisson, First Assistant Secretary, Free Trade Division

Mr Lloyd Brodrick, Assistant Secretary, Free Trade Agreement Legal Issues
and Advocacy Branch, Free Trade Division

Mr Simon Farbenbloom, Assistant Secretary, North Asia Investment and
Services Branch, Free Trade Division

Mr Peter Roberts, Assistant Secretary, North Asia Goods Branch, Free
Trade Division

Department of Immigration and Border Protection

Mr David Wilden, First Assistant Secretary, Immigration and Citizenship
Policy Division

Ms Anita Langford, Acting Assistant Secretary, Trade Branch

Tuesday, 25 August 2015 – Perth**Construction, Forestry, Mining and Energy Union (CFMEU), Western Australia Divisional Branch**

Mr Michael Buchan, State Secretary, Construction and General Division

Electrical Trades Union

Mr Leslie McLaughlan, National President, Western Australia State Secretary

Leading Age Services Australia – Western Australia

Ms Elizabeth Cameron, Chief Executive Officer

Private Individual

Ms Anna George

Seafood Trade Advisory Group

Mr Matthew Rutter, General Manager, Marketing and Business Development, Geraldton Fishermen's Co-operative

UnionsWA

Ms Meredith Hammat, Secretary

Mr Timothy Dymond, Organising and Strategic Research Officer

Wellard Group Holdings Pty Ltd and Wellard Rural Exports Pty Ltd

Mr Mauro Balzarini, Chief Executive Officer and Managing Director, Wellard Group Holdings Pty Ltd

Mr Scot Braithwaite, Chief Operating Officer, Wellard Rural Exports Pty Ltd

Western Australian Fishing Industry Council

Mr John Harrison, Chief Executive

Wines of Western Australia

Mr Larry Jorgensen, Chief Executive Officer

Thursday, 27 August 2015 – Devonport**Fishing Investment and Management Pty Ltd**

Mr Alan Gray, Director

Seafood Trade Advisory Group

Mr Dean Lisson, Executive Chairman, Abalone Council Australia Ltd

Tasmanian Farmers and Graziers Association

Mr Andrew Lester, Dairy Council Chairman

Mr Matthew Ryan, Board Director

Mr Nicholas Steel, Rural Affairs Manager

Friday, 28 August 2015 – Melbourne**Armstrong World Industries (Australia) Pty Ltd**

Mr Michael Keam, Strategic Marketing Manager, Commercial Flooring

Mr Liang Ye, General Manager Australia/New Zealand, Flooring

Mr Robert McLorinan, National Sales and Marketing Manager
Australia/New Zealand, Flooring

Australia China Business Council

Ms Martine Letts, National Chief Executive Officer

Australian Council of Wool Exporters and Processors

Dr Peter Morgan, Executive Director

Australian Manufacturing Workers' Union

Mr Andrew Dettmer, National President

Dr Tom Skladzien, National Economics Advisor

Construction, Forestry, Mining and Energy Union (CFMEU)

Mr Michael O'Connor, National Secretary

Mr Travis Wacey, Policy Research Officer, Forestry, Furnishing, Building
Products and Manufacturing Division

Entrepreneurs&Co

Mr Warwick Peel, Director

Export Council of Australia

Mr Andrew Hudson, Director

National Electrical and Communications Association

Mr Suresh Manickam, Chief Executive Officer

Private Individual

Dr Rebecca LaForgia

Monday, 7 September 2015 – Canberra**Australian Council of Trade Unions**

Mr Scott Connolly, Assistant Secretary

Mr Tim Shipstone, Industrial Officer

Australian Pork Limited

Mr Andrew Spencer, Chief Executive Officer

Ms Deborah Kerr, General Manager, Policy

Department of Agriculture

Mr Simon Smalley, North Asia, Trade and Market Access Division

Department of Education and Training

Dr Melissa McEwen, Branch Manager, Governance and Engagement
Branch, Skills Market Group

Department of Foreign Affairs and Trade

Ms Jan Adams, Deputy Secretary

Ms Frances Lisson, First Assistant Secretary, Free Trade Division

Mr Simon Farbenbloom, Assistant Secretary, North Asia Investment and
Services Branch, Free Trade Division

Mr Peter Roberts, Assistant Secretary, North Asia Goods Branch, Free trade
Division

Department of Immigration and Border Protection

Mr David Wilden, First Assistant Secretary, Immigration and Citizenship
Policy Division

Department of Industry and Science

Mr Karl Brennan, Trade Policy, Trade and International Branch, Portfolio
Strategic Policy Division

Master Builders Australia Ltd

Mr Wilhelm Harnisch, Chief Executive Officer

Mr Peter Jones, Chief Economist



Appendix C - Exhibits

- 1 Minerals Council of Australia (*Related to Submission 28*)
Trading Nation Consulting, *China, minerals and energy and the China-Australia Free Trade Agreement (ChAFTA)*, June 2015.
- 2 Ms Anna George (*Related to Submission 57*)
China Australia Free Trade Agreement treaty text with comments
D Cox, 'Antibiotic resistance: the race to stop the 'silent tsunami' facing modern medicine', *The Guardian*, 21 August 2015
<<http://www.theguardian.com>> viewed 24 August 2015.
L Milligan, 'Experts raise fears of antibiotic-resistant superbugs spread through food supply', *ABC News Online*, 25 July 2013
<<http://www.abc.net.au/news>> viewed 22 August 2015.
- 3 Australia China Business Council (*Related to Submission 26*)
Australia China Business Council, *The 2014 Australia-China Trade Report*.
Australia China Business Council, *The 2014 Australia-China Trade Report Synopsis*.
- 4 National Electrical and Communications Association (*Related to Submission 52*)
Asia-Pacific Skills Mapping Project – Final Report September 2008, National Electrical and Communications Association
- 5 Master Builders Australia (*Related to Submission 54*)
What difference does the existence of the North Asian FTAs make?, Master Builders Australia estimates based on Centre for International Economics report *Economic benefits of Australia's North Asian FTAs*, June 2015
- 6 Australian Manufacturing Workers' Union (*Related to Submission 66*)

S Armstrong, 'The economic impact of the Australia-United States free trade agreement', *Australia – Japan Research Centre Working Paper 01/2015*, January 2015.

S Armstrong, 'The costs of Australia's "free trade" agreement with America', *Inside Story*, 28 April 2015, <<http://insidestory.org.au>> viewed 18 September 2015.

P Martin, 'Australia flying blind on free trade agreements, says Productivity Commission', *The Sydney Morning Herald*, 22 July 2015, <<http://www.smh.com.au>> viewed 18 September 2015.

7 Tasmanian Farmers and Graziers Association

DairyTas, 'Tasmanian milk production record 886 million litres', *Media Release*, 28 July 2015.

DairyTas, *Making more milk, filling the factories*, Presentation Slides, August 2012.