



Serving the automotive parts,
accessories, tools and equipment
industry in Australia

**Submission on Issues Relevant
to the
Australia-China Free Trade Agreement
by the
Australian Automotive Aftermarket Association**

June 2005

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CONTENTS

1	INTRODUCTION AND EXECUTIVE SUMMARY	3
2	THE AUSTRALIAN AND CHINESE AUTOMOTIVE AFTERMARKETS.....	6
2.1	AUSTRALIA	6
2.2	CHINA	9
3	OPPORTUNITIES FOR AUSTRALIA'S AFTERMARKET.....	10
3.1	DRIVERS OF OPPORTUNITY	10
3.2	WHAT OPPORTUNITIES?	10
4	ISSUES FOR CONSIDERATION.....	16
4.1	MARKET ACCESS.....	16
4.2	POLICY MEASURES THAT PRECLUDE FREE TRADE.....	17
4.3	ANTI DUMPING PROVISIONS	18
4.4	RULES OF ORIGIN	18
4.5	INVESTMENTS	18
4.6	COUNTERFEITING AND PROTECTION OF INTELLECTUAL PROPERTY (IP)	19

1 Introduction and Executive Summary

The Australian Automotive Aftermarket Association – AAAA – welcomes this opportunity to acquaint the Department of Foreign Affairs and Trade (DFAT) with its views on the issues relevant to the Australia-China Free Trade Agreement (ACFTA).

An ACFTA must enable the Australian automotive aftermarket to take advantage of opportunities

The central theme of this Submission is “opportunity”. An ACFTA must remove all tariff and non-tariff barriers that preclude participants in the Australian automotive aftermarket that are willing and able to do so from taking full advantage of the opportunities that are presented by free trade between Australia and China.

The removal of these barriers is fundamental to an ACFTA delivering “*substantial commercial and economic benefits, including ... preventing others from gaining a competitive edge in our current and/or future export markets.*”

These benefits will only accrue to the Australian economy if the ACFTA meets the DFAT description of a Free Trade Agreement:

“A contractual agreement between two or more parties under which they give each other preferential market access. The agreement must apply to substantially all trade in goods between the two parties and must not erect new barriers to other countries. (The ACFTA must) also cover trade in services, as well as other non-tariff issues such as the recognition of standards, customs cooperation, protection of intellectual property rights and regulation of foreign investment.”

Frankly, the AAAA sees little benefit in an ACFTA to Australian automotive aftermarket manufacturers. An ACFTA will only hasten the demise of automotive aftermarket manufacturing in Australia with consequent job losses and balance of trade implications.

An ACFTA will result in the loss of Australian automotive aftermarket manufacturing activity

The Australian automotive aftermarket is an integral part of Australia’s automotive industry.

AAAA is disturbed by the ready acceptance that “... *an FTA would accelerate job losses in some industries ... especially in ... motor vehicles and parts in Australia*” and “... *an FTA would tend to speed up the natural course of structural change that is under way in response to domestic reform and globalisation. In Australia, the largest structural adjustment pressures could be expected to occur in ... the automotive (industry).*”

The broader Australian automotive industry has already seen at least two decisions by Australian based automotive component producers to shift manufacturing to China, resulting in job losses. This trend has been and will continue to be replicated by automotive aftermarket manufacturers.

Unlike those Australian automotive manufacturers that provide components for fitment to vehicles at the time of vehicle assembly (OE suppliers), manufacturers of automotive aftermarket parts have been excluded from any specific transitional assistance packages such as the Automotive Competitiveness & Investment Scheme (ACIS). The absence of such assistance to encourage investment in plant and equipment and research and development will exacerbate the “structural adjustment pressures” on Australian automotive aftermarket manufacturers.

The advent of an ACFTA should entitle automotive aftermarket manufacturers to transitional assistance measures.

Matters covered by this Submission

In this Submission we:

- provide an overview of the Australian and Chinese automotive aftermarkets;
- comment on the perceived opportunities arising from the ACFTA for AAAA members;
- comment on specific issues included in DFAT's “General Guidance on Preparing Submissions” – market access, investments and protection of intellectual property rights.

Matters for consideration when negotiating an ACFTA

AAAA believes the following should be taken into consideration by the Australian Government when negotiating the terms of an ACFTA:

- an ACFTA must remove all tariff and non-tariff barriers that preclude participants in the Australian automotive aftermarket that are willing and able to do so from taking full advantage of the opportunities that are presented by free trade between Australia and China;
- Australian automotive aftermarket manufacturers will be adversely affected by the implementation of an ACFTA;
- unlike their counterparts who are being assisted in meeting the challenges of exposure to a global industry through the availability of the Automotive Investment & Competitiveness Scheme, Australian automotive aftermarket manufacturers have no such assistance package – AAAA strongly believes that the implementation of an ACFTA entitles this group of manufacturers to support similar to ACIS;
- given the level of State ownership of China's automotive industry and the ability of the central and provincial governments to intervene directly in the operation of automotive enterprises through policy setting and the setting and enforcement of regulations, it is unlikely that, in the near future, the Chinese automotive industry will operate in a “market economy” – an economy where supply and demand are unregulated except by the country's competition policy, and rights in physical and intellectual property are upheld;
- based on the recent experience of AAAA members, there are issues relating to market access, investment and counterfeiting and the protection of intellectual

property rights that must be addressed before the Australian automotive aftermarket will feel confident in dealing with their Chinese counterparts; and

- AAAA members are involved in the manufacture and supply of safety critical products to Australian consumers – the terms of an ACFTA should recognise the right of Australian government agencies to enforce Australian safety standards without fear of accusation of erecting a technical trade barrier.
- The continued tying of the Chinese RMB to the USD creates a competitive advantage for Chinese industry and amounts to a government subsidy to Chinese manufacturers.
- That an ACFTA should strengthen current anti dumping protection.
- That the Rules of Origin in an ACFTA be based on the Change in Tariff Classification methodology as used in FTA's with Thailand and the USA.

2 The Australian and Chinese automotive aftermarkets

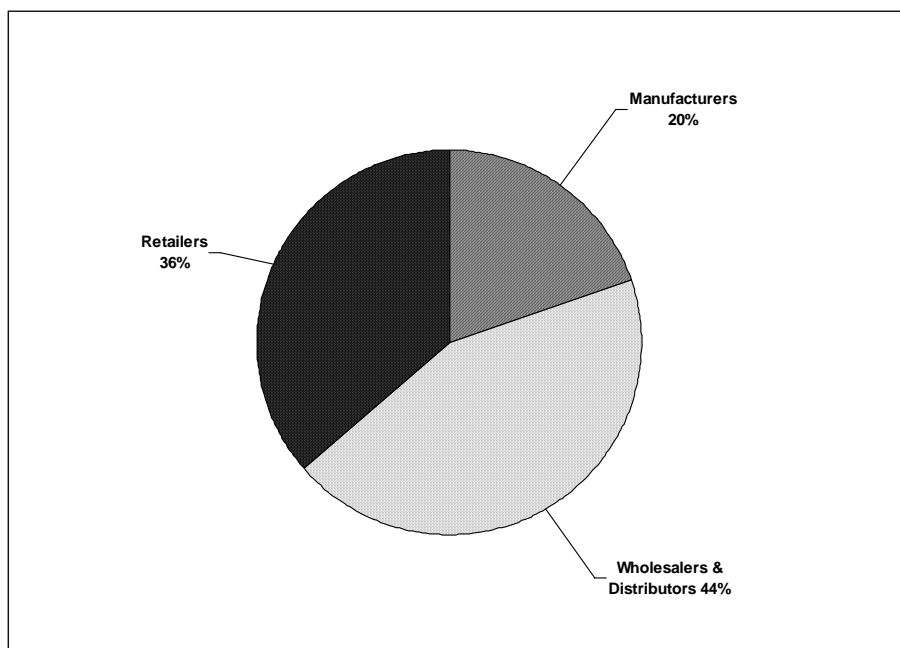
2.1 Australia

AAAA defines the automotive aftermarket industry as:

“that part of the automotive industry concerned with the manufacturing, re-manufacturing, distributing, wholesaling and retailing of all vehicle parts, tools, equipment and accessories except those products which are supplied for use in the manufacturing of original equipment.”

The Association has 940 members. Chart 1 profiles AAAA’s membership by activity.

Chart 1: AAAA’s membership by activity



The typical aftermarket enterprise can be classified as an SME – a small to medium enterprise. The Australian Bureau of Statistics categorises a business that employs up to 20 Full Time Equivalent Persons (FTEs) as “small”, one that employs 21 to 200 FTEs as “medium” and a business employing more than 200 FTEs as large.

Chart 2 provides an analysis of aftermarket enterprises using these criteria, while Chart 3 provides a further indication of the nature of the industry based on annual turnover.

Chart 2: Classification of AAAA's membership based on employee numbers

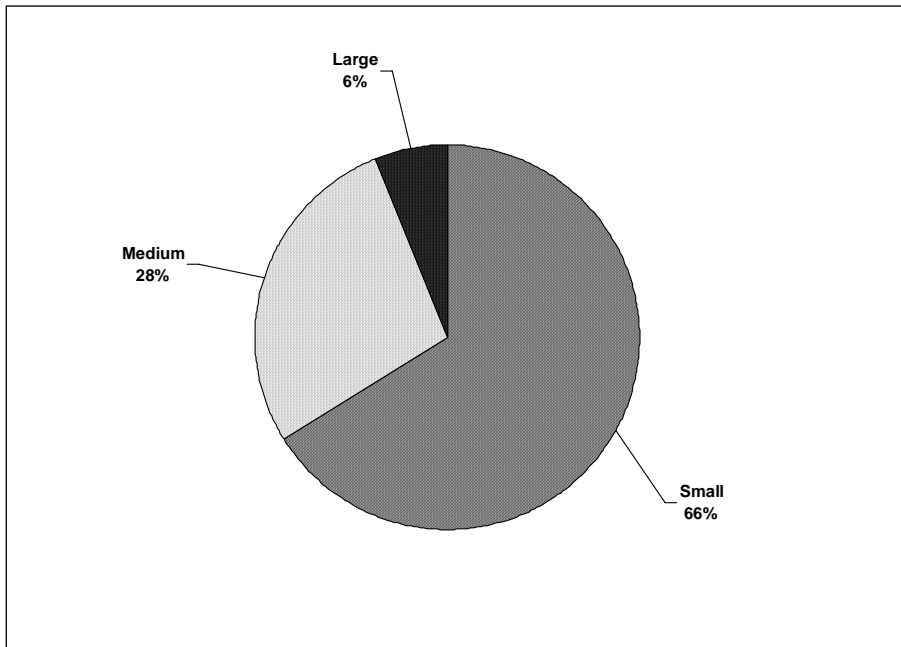
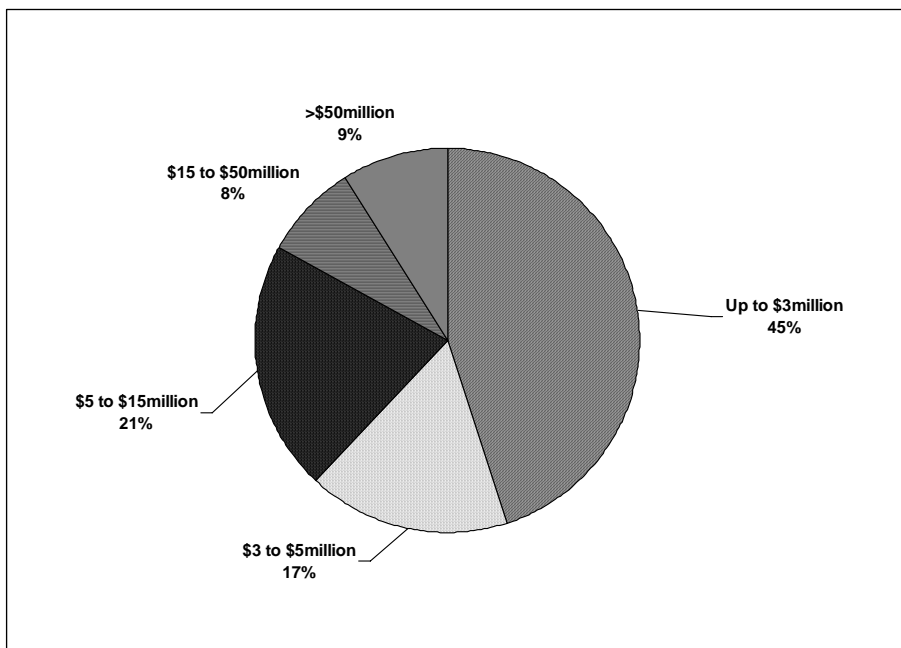
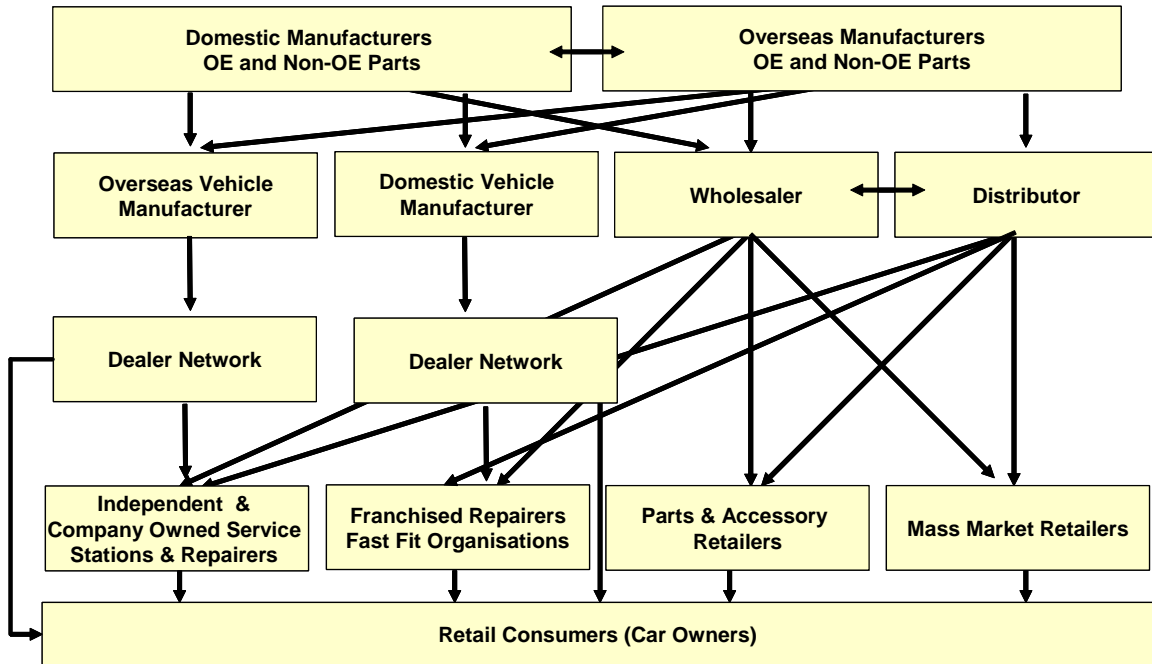


Chart 3: Classification of AAAA's membership based on annual turnover



Aftermarket products reach the end user through a complex distribution chain as depicted in Figure 1.

Figure 1: Distribution in Australia's automotive aftermarket



The end user of the product - the retail customer - may fall into one of four broad categories, as depicted in Table 1.

Table 1: Retail sales by customer segment		
Segment	Characteristics	%'ge
Enthusiast DIY	Vehicle owners who spend a lot on their vehicles, who love it and do it.	31
Functional DIY	Lower disposable income with Aussie car bias, regard their car simply as transport from A to B.	22
Enthusiast DIFM	Higher disposable income and higher spending enthusiasts, no grease thanks.	20
General	Regard their vehicle as transport from A to B, want reliability. Generally purchasers of accessory and car care products.	27
Total		100

The products are supplied to a mature market of 12 million vehicles driven by a sophisticated consumer group. At a retail level, AAAA estimates the Australian aftermarket to be \$7.2billion.

2.2 China

The increase in sales of privately owned cars in China is helping to develop an automotive maintenance and repair business sector in China, especially in the larger cities such as Shanghai, Beijing and Guangzhou. It is these businesses that are the basis of an automotive aftermarket industry. Western automotive service companies such as AC Delco and Bosch and Japan's Autobacs and Yellowhat are entering the Chinese auto service and repair market.

AAAA shares the opinion of many industry observers that the Chinese market has strong pent up demand for aftermarket parts. The increased production of vehicles in China creates demand for OE products at the time of vehicle production.

Sales of vehicles in the domestic market create demand for auto products to maintain and repair vehicles, the domain of the aftermarket. As vehicle sales increase and the national car parc increases, so does demand for automotive aftermarket products to maintain and repair vehicles.

Future opportunities will arise as the market for used cars becomes more controlled and codified and drivers move beyond vehicle maintenance to vehicle differentiation.

The growth of a used car market will also encourage a DIY segment.

The current Chinese motorist has been described as being unfamiliar with automotive maintenance. They could be described as functional DIFMs – anxious to keep their car on the road and provide transport from A to B. At present their needs are being met by the vehicle manufacturers networks and the organisations referred to earlier – AC Delco, Bosch, Autobacs and Yellowhat. The independent aftermarket is very small.

Distribution of aftermarket parts in China is very fragmented.

Industry observers have estimated that the automotive aftermarket in China in 2003 was about \$US3 billion. Growth from 2002 to 2003 has been estimated to be between 12% and 19%. Factors driving this growth are:

- the emerging population of wealthy households;
- the emerging middle class consumer segment;
- the low level of "content" in the vehicle driven by the emerging middle class, which presents opportunities to upgrade or differentiate vehicles using aftermarket accessories; and
- demand for aftermarket parts and service for farm vehicles.

3 Opportunities for Australia's aftermarket

3.1 Drivers of opportunity

In a developed market the drivers of demand for automotive aftermarket product are:

- the growth in the number of vehicles in use;
- the age of the vehicle fleet;
- changes in the vehicles being driven;
- the use of vehicles;
- government regulation; and
- the level of economic activity.

The drivers of opportunity for Australia's automotive aftermarket participants in the Chinese aftermarket are the first and the last of the items on this list – the level of activity in the Chinese economy which is leading to growth in the number of vehicles in use.

Estimates of growth in the size of the Chinese motor vehicle fleet, particularly in the number of cars on the road, vary according to forecasts of Gross Domestic Product (GDP) growth. One estimate forecasts a motor vehicle fleet of 36 million vehicles by 2010 (including 11.4 million cars), almost 53 million vehicles by 2015 (18 million cars) and almost 78 million vehicles by 2020 (28.5 million cars). More importantly, the number of privately owned vehicles is anticipated to increase.

3.2 What opportunities?

What opportunities does this growth in market size provide for the aftermarket?

As noted at the commencement of this Submission, the aftermarket comprises three broad sectors – manufacturers, importer/wholesaler/distributors and retailers. In Part 2 we have given an indication of the size of the enterprises that make up Australia's automotive aftermarket.

We concede that only a small number of AAAA's members would consider entering the Chinese domestic market. Only those members with the funds to invest and an appetite for the risks associated with investing in China will consider taking advantage of the opportunities presented by this huge consumer market.

Despite this AAAA is strongly of the opinion that the ACFTA must create an environment free of any market access, investment or other barriers that prevents any Australian automotive aftermarket enterprise from entering and participating in the Chinese domestic market should it wish to do so.

In Part 4 of this Submission we provide some details of these barriers that have been encountered by Australian aftermarket enterprises that have been involved with the Chinese market.

3.2.1 Manufacturers

Automotive aftermarket manufacturers are subject to the same anticipated outcomes of an ACFTA as the broader automotive manufacturing sector. These outcomes are outlined in the "Australia-China Free Trade Agreement Feasibility Study" (the Feasibility Study). The economic analysis used in preparation of the Feasibility Study indicates that there will be shrinkage of Australia's automotive industry, noting:

"... an FTA would accelerate job losses in some industries ... especially in ... motor vehicles and parts in Australia ... net employment growth ... in China ... would be concentrated in (inter alia) the auto sector."

and

"Industries that would benefit ... in China include ... motor vehicles and parts."

and

"... an FTA would tend to speed up the natural course of structural change that is under way in response to domestic reform and globalisation. In Australia, the largest structural adjustment pressures could be expected to occur in ... the automotive (industry)."

Automotive aftermarket manufacturers are already experiencing "structural change" associated with the growth of Chinese manufacturing capability. For example:

GUD Limited

GUD had been manufacturing automotive filters in Australia for over 60 years when, on 21 September 2004 it announced that it would cease that activity at the end of February 2005. In its announcement GUD advised that it would import filters to replace those previously manufactured in Australia. Suppliers of the imported filters *"have the technological resources and quality manufacturing systems ... to maintain the Ryco brand's high standards."* The announcement went on to say that *"design, development, validation and quality assurance resources"* will be maintained in Australia.

Replacement brake rotors

The Australian market for replacement brake rotors has become more competitive due to the increasing level of imported products. This competition was evident as far back as September 2000 when aftermarket manufacturer Disc Brakes Australia Pty Ltd lodged an application with the Australian Customs Service (ACS) that led to an investigation of DBA's assertion that certain disc brake rotors from China (and other countries) were being "dumped" on the Australian market. As a result of their enquiries, ACS reached the opinion that there was no basis for the investigation to continue.

More recently, in early 2004 brake manufacturer Pacifica, which manufactures both OE components and aftermarket replacement parts, announced that it was establishing a joint venture manufacturing operation in Dalian, China. While the facility will manufacture product for China's vehicle manufacturers, it will enable manufacture for supply to both the Chinese and Australian markets.

The conclusions expressed in the extracts from the Feasibility Study noted above and the "structural change" to the automotive aftermarket that has already occurred lead AAAA to support the conclusions drawn by the Federation of Automotive Products Manufacturers (FAPM) in its *"Submission to the DFAT on Negotiations for a FTA between Australia and China – Issues and Implications for Australia's Automotive Components Industry"* (the FAPM Submission).

The FAPM concluded:

"FAPM is of the view that any FTA with China, at least as far as the automotive components sector is concerned would be best focusing on the restrictions on the free operation of foreign investment enterprises."

"FAPM members see little potential benefit in an FTA between Australia and China if most of the benefit is on trade barriers."

"Market access is not easy either by direct exports or by on-shore manufacturing."

"An FTA if it concentrates predominantly on trade barriers would provide an additional advantage to what will be low cost Chinese imports of both vehicles and components."

In short, the opportunities for Australia's automotive aftermarket manufacturers in the Chinese domestic market arising from an ACFTA will be very limited. Furthermore, AAAA is of the opinion that an ACFTA will have a detrimental effect on the Australian manufacturing sector. As has already been noted, both OE component and automotive aftermarket manufacturers have decided to shift production offshore.

The impact of the loss of this manufacturing activity will go beyond the automotive industry because of linkages between the automotive and other industries. As noted by the Victorian Government in its "Strategic Audit of Victorian Industry – Automotive":

"The importance of the Victorian automotive industry to the wider economy extends beyond the activities of those directly involved in automotive manufacturing. Inputs purchased by the automotive industry represent a major market for companies in other sectors of the Victorian economy. For example, the motor vehicle industry is the single largest purchaser of products from the rubber and the furniture and mattresses sectors of the economy, the second largest purchaser of basic iron and steel products and the third largest purchaser of paints. The automotive industry is also a leading user of advanced technologies which are associated with design and engineering, production, material handling, inspection and testing processes and communications."

3.2.2 Importers/wholesalers/distributors (IWDs)

Access to a broader range of parts

IWDs will benefit from an ACFTA by gaining access to a broader range of competitively priced automotive parts for distribution through the Australian aftermarket.

The structural adjustment occurring in the Chinese industry will result in a broader range of automotive parts being manufactured in China. It is anticipated that over the period of the current 5 Year Plan for the Chinese automotive industry, the industry will reach a high level of self sufficiency and reduce its current reliance on imported components for assembly into Chinese manufactured vehicles.

For example, currently 40% of components used in General Motors Chinese auto assembly plants are imported from North America, including electronics, axles and exhaust systems. However GM sees China as a great opportunity for the auto industry to develop a new supplier base and that auto electronics in particular will be a growth area.

While this development will focus on supply to the vehicle makers, as the industry develops capacity and capability it will look to develop product for sale in the automotive aftermarket. It is believed that the majority of automotive parts imported by Australia from China are for the aftermarket.

The potential for Australian IWD activity in China?

IWDs possess a skill – sourcing of automotive aftermarket product and facilitation of distribution of that product. Does an ACFTA present this sector of the aftermarket to take that skill and use it in the Chinese aftermarket?

While the likelihood of an Australian IWD entering the Chinese aftermarket is small AAAA is of the view that an ACFTA should provide the opportunity for an IWD to do so if it wishes. Indeed, IWDs may act in a pivotal role in facilitating two-way trade between the Chinese and Australian aftermarkets, particularly in providing an avenue for the smaller Australian aftermarket manufacturers who are able to provide products for niches in the Chinese aftermarket.

The Feasibility Study noted:

“In the WTO context, China has made comprehensive market access and national treatment commitments on commission agents’ services, retailing, wholesaling, franchising, and wholesale or retail trade services away from a fixed location, excluding commission agents’ services, wholesaling of salt and tobacco, and retailing of tobacco. From 11 December 2006, business scope, equity and geographic restrictions on foreign invested enterprises will be removed.”

Another writer provides an expanded view of these undertakings as they apply to the automotive industry:

“With China’s WTO accession, foreign-invested companies may currently distribute all products manufactured in China. Within one year, they will be able to distribute both domestic and foreign products. Restrictions on the establishment of distribution companies will remain, but such restrictions will also be completely phased out within three years of accession. The timetable for this process is as follows: within one year of accession, wholesale joint ventures may be established with a minority foreign investment. In the second year, majority foreign investment will be permitted, while in the third year, wholly foreign-owned wholesale distributors may be established. Therefore, both domestic and foreign companies will be permitted to distribute autos and auto parts into any part of China after a three-year period.”¹

AAAA believes that an ACFTA should include provisions that remove this phased introduction of access by foreign invested companies to distribution of automotive parts in China.

3.2.3 Retailers

Australia’s aftermarket retailers are already sourcing Chinese product for sale through their stores. For example, both Repco and Super Cheap Auto intend to directly source at least 30% of products for sale in their stores from China.

Like their IWD colleagues, Australia’s aftermarket retailers have developed a business model that may be transferable to the Chinese automotive aftermarket. The business model revolves around:

- a widely recognised brand that stands for quality, expertise, knowledge and professional parts people;
- a national presence based on an extensive store network carrying an broad range of products;
- a store format that appeals to customers;
- strong supply chain management based around strategically positioned distribution centres, delivery warehouses and advanced information systems; and
- a broad product range that includes global brands and exclusive lines.

An ACFTA must give these enterprises the opportunity to deploy that model in the Chinese market if they wish to do so. This is particularly important for Australian franchisors such as Autobarn who may be able to take their business model to China for the benefit of Chinese who aspire to be aftermarket retailers.

As noted in 3.2.2, The Feasibility Study advises that from 11 December 2006 there will be no restrictions on foreign invested enterprises involved in retailing. During the interim:

“WTO membership permits foreign retail ventures. Foreign retailers may supply services in the form of joint ventures in the five Special Economic Zones (Shenzhen, Zhuhai, Shantou, Xiamen and Hainan) and six cities (Beijing, Shanghai, Tianjin, Guangzhou,

¹ As explained by Owen D Nee Jr of Coudert Brothers LLP in “Automotive Industry in China”, September 2002. Accessed from www.coudert.com/publications

Dalian and Qingdao). Within two years after China's WTO accession, foreign majority control will be permitted in joint venture retailing enterprises and the market will open to all provincial capitals and Chongqing and Ningbo".²

AAAA believes that an ACFTA should include provisions that remove this phased introduction of access to China's automotive retail sector.

² *ibid.*

4 Issues for consideration

In this Part of our Submission we comment on specific issues included in DFAT's "General Guidelines on Preparing Submissions." These issues are:

- market access;
- policy measures that preclude Free Trade;
- Anti Dumping Provisions;
- Rules of Origin;
- investment; and
- protection of intellectual property (IP).

Discussions with senior executives in the Australian automotive aftermarket have revealed that these matters are of concern to them. We have included a synopsis of some of their experiences to provide DFAT with an insight as to why they hold these concerns.

4.1 Market access

The structure of the Chinese automotive industry limits the access Australian automotive manufacturers have to the Chinese market. The Chief Executive Officer (CEO) of an Australian based manufacturer which produces both OE components and the automotive aftermarket advised:

- his organisation had been negotiating to supply components to one of the vehicle manufacturing joint ventures in which a Chinese State Owned Enterprise (SOE) is a participant;
- as part of the negotiations, design specifications and samples were provided to the SOE;
- his organisation was unsuccessful in winning the tender – the supply contract was awarded to a SOE subsidiary;
- the component supplied by that subsidiary was a copy of the sample provided by the Australian manufacturer during negotiations.

In this situation it would be easy to focus on the question of protection of IP rights. However, the situation also points to a structural issue that presents a market access barrier to Australian automotive component manufacturers (both OE and aftermarket).

The presence of SOEs in the automotive industry combined with the Automotive Industry Development Policy (AIDP) described in Box 1 results in State interference in the automotive industry through industrial policy and purchasing decisions. It is difficult to see how the automotive sector of the Chinese economy can be described as a "market

economy” - an economy where supply and demand are unregulated except by the country’s competition policy, and rights in physical and intellectual property are upheld.

Box 1 – China’s Automotive Industry Development Policy (AIDP)

In June 2004 China’s State Development and Reform Commission released the 11th Five Year Plan for China’s automotive industry - the Automotive Industry Development Plan (AIDP) – which took effect on 1 June 2004.

The AIDP has two objectives – to bring government policy relating to China’s automotive industry in line with China’s WTO membership obligations and to provide direction for the industry’s development. In particular the policy is looking to rationalise the number of domestic manufacturers to improve industry efficiency.

The Plan:

- continues to exempt foreign automotive component manufacturers from the 50% ownership limit;
- stipulates minimum amounts that must be invested in vehicle assembly facilities; and
- includes measures to “incentivise” local component production and sourcing, which will expand component production, including aftermarket production, for export.

4.2 Policy measures that preclude Free Trade

In addition to the AIDP, there are a number of Chinese central government policies that mitigate against true “free trade”.

Paramount amongst these are is currency manipulation. China has maintained its currency at the same level against the USD since 1994 despite a huge increase in production capability, productivity, foreign direct investment inflows and other factors that would normally be expected to cause currency to appreciate in value.

The currency is controlled by the central government and is not allowed to fluctuate freely.

The strength of the AUD against the USD makes Australian manufactured automotive aftermarket products less competitive against product imported from China and less competitive in export markets.

AAAA believes that the Australian government should support the US Government in its efforts to convince China to allow its currency to float freely.

Current Chinese central & regional government policy provides for substantial subsidies to industry to offset the costs of energy, land infrastructure, plant and equipment.

These subsidies have the effect of creating an impediment to free trade.

4.3 Anti Dumping Provisions

The AAAA believes that an ACFTA should not reduce the power of current anti dumping legislation. Ideally an ACFTA should strengthen the application of this legislation so that exporters are forced by the Chinese government to cooperate in the provision of information required for anti dumping actions. The process to mount an anti dumping action must be more speedy to prevent substantial damage to an Australian automotive aftermarket manufacturer where dumping is proved to occur.

Current anti dumping legislation fails to often provide the protection or remedies that are required by Australian industry.

4.4 Rules of Origin

To avoid complexity, an ACFTA should use the Rules of Origin Change in Tariff Classification methodology contained in the Thailand – Australia Free Trade Agreement – TAFTA - and the Australia – US Free Trade Agreement – AUSFTA.

4.5 Investments

The same Australian manufacturer has experienced difficulty when investing in China. The CEO has provided two examples.

His company is required to deal with at least two and sometimes three levels of regulation before profits earned by its Chinese operations can be repatriated. Despite the existence of Central government regulations dealing with repatriation of profits, there are layers of provincial regulation that must be complied with and the interpretation and application of the regulations can vary. The company has developed an understanding of how to deal with this situation, engaging local Chinese lawyers to ensure “they get all of the red stamps”. However, the CEO expressed the view that, because of this experience, his company now takes a more cautious approach when making decisions to invest in China.

As a further example of the impact application of regulations can have on investment decisions, the CEO advised that his company has been forced to vary values agreed to in contracts by actions of Chinese government agencies.

He cited the example of a joint venture (JV) arrangement entered into by his company. As part of his company’s contribution to the JV, tooling was supplied at a value agreed to by both joint-venturers, and this value was included in the JV agreement. When the tooling was delivered to China it was subjected to Chinese Customs inspection and valuation. The tooling was valued by Customs at less than 10% of the agreed value included in the executed JV agreement.

This valuation required the Chinese JV partner to renegotiate the value of the capital contributions represented by the tooling. This renegotiation resulted in the Australian manufacturer making an additional cash contribution equal to the difference between the “agreed” value of the tooling and the value assessed by the Chinese Customs.

This situation is an example of the interference by Chinese Government agencies in commercial decisions.

4.6 Counterfeiting and protection of Intellectual Property (IP)

This is the area which is of most concern to AAAA members. Apart from the matter referred to in 4.1 above, which prompted the CEO to comment "IP is clearly not protected" in China, members have provided the following.

A senior executive of an Australian manufacturer of automotive aftermarket accessories provided an example of Chinese manufactured copies of his company's accessories being imported by an Australian IWD. The accessories are designed in Australia and registered under the Designs Act.

Some of the imported counterfeit accessories were sold to consumers through a Sydney based retailer. On being made aware of the presence of these copies in the Australian market, the Australian manufacturer took action in the Federal Court of Australia to have the accessories withdrawn from the market. The Australian manufacturer was successful in this action and was awarded damages by the Federal Court of Australia, but has been unable to enforce that award.

This situation shows the disregard Chinese manufacturers have for IP rights. Another aftermarket executive described how accessories on display at a recent trade show in Japan were digitally photographed by Chinese visitors to the trade show and emailed to China. Copies of the accessories were available from Chinese manufacturers within a month of the opening of the trade show.

Apart from the commercial implications of this attitude to IP, there are safety implications. This matter was brought to the attention of DFAT's Chinese FTA Study Taskforce by the Institute of Patent and Trademark Attorneys of Australia (IPTA), who advised:

"Australian companies have difficulties with counterfeit products produced in China and imported into Australia. Many of these counterfeit products do not meet Australian standards and safety regulations and, in some cases, place Australian lives at risk. An example is in the alloy wheel market where Chinese counterfeiters produce copy wheels with false or misleading markings in relation to country of origin, test loads, test standards and other specifications. According to information provided these wheels often fail catastrophically when subjected to standard testing procedures."

We have discussed the issue with a senior executive of an Australian aftermarket wheel manufacturer who advised that Australian manufactured wheels are obliged by market pressure to comply with Australian Standard AS 1638 – Motor Vehicles, Light Alloy Road Wheels. This Standard sets out the minimum requirements for the approval of light alloy wheels based on performance testing of the wheels for vehicles with a gross mass not exceeding 3.5 tonnes.

Imported wheels are not required to comply with this Standard. His company is looking to supplement their Australian manufactured range of wheels with imported wheels. Samples provided by potential suppliers, including Chinese manufactures, are subject to the same "impact testing" as that applied to wheels manufactured in Australia. All have failed.

The same wheel manufacturer has found copies of their Design Registered products in the Australian market. These copies were manufactured in China and included all the company's markings. In appearance it was difficult to tell the copy and the "real thing"

apart. Testing of the copies showed that the copy wheels did not meet the Australian Standard even though it was marked as doing so.

AAAA believes safety critical automotive products such as wheels that are imported should be subjected to the same safety standards as those imposed on Australian manufacturers of the products. The terms of a final ACFTA should enable the relevant Australian government agencies to enforce those standards without the Chinese government accusing Australia of erecting a technical barrier to trade.