



**Australia China Business Council
Victorian division**

Report

to the

Department of Foreign Affairs and Trade

on the

Proposed Free Trade Agreement

with the

Peoples Republic of China.

Prepared based on input from ACBC Victoria's membership
by
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ACBC charter:

The Australia China Business Council (ACBC) charter is to enhance trade and investment between Australia and China and improve business links between the two countries generally.

The ACBC represents a diverse range of business interests that are actively or considering doing business with China. For that reason the ACBC often plays an overarching (non sectoral) role in furthering trade and improving relations with China.

The basis of ACBC's submission:

The Department of Foreign Affairs and Trade (DFAT) has sought the input and advice of the ACBC on the possible creation of a Free Trade Agreement (FTA) between Australia and China for a scoping study it is conducting on the subject.

The ACBC has circulated a DFAT questionnaire (developed for the purpose) to its members, on attitudes to, and possible effects of an FTA with China. ACBC has received fourteen responses which have been summarized and contribute to this submission.

The ACBC has also conducted a roundtable discussion on the FTA with a structured agenda for purposes of:

- Exploring the findings of the questionnaire in more detail
- Canvassing new issues
- Achieving consensus of opinion across a diverse range of businesses in numerous product and service sectors all of whom have a first hand experience in doing business in China.
- Thinking through the scenarios of possible impacts of an FTA with China.

The product and service sectors that contribute to this submission:

Membership responses included a diverse range of product sectors as follows

- Professional services
- Manufacturing
- Mining & exploration
- Education
- Migration services
- Agricultural exports – wool, flowers
- Tourism
- Aviation services
- Gambling



Typical size of respondent organizations

- Mostly SME's
- Two MNC's
- Three large Australian corporations

Economic modeling:

The ACBC recommends that DFAT conduct a comprehensive economic modeling study independently of the one being conducted in partnership with China. This is necessary to ensure all ramifications for the Australian economy are fully explored and the final decision by government to proceed or abandon negotiations will be formed by what is in Australia's national interest.

Economy status recognition:

“Market economy” versus “Economy in transition”

Some division exists in ACBC's membership on Market Economy Status (MES) ie: whether Australia should recognize China as a market economy.

It is generally accepted that China is not a market economy yet and that it has further to go in the privatization of State Owned Enterprises and deregulation of some sectors.

Members of ACBC who are importers or large commodity exporters support the granting of MES to China. There are others, however, who wish to retain economy in transition status because it assists local industry in dealing with dumped goods from China. . Still others believe that if MES is granted it will make the anti-dumping arrangements more transparent and equitable. Anti-dumping is seen as the main issue regarding MES.

That said the ACBC recognizes that anti dumping laws (as a result of our current recognition of China as an “economy in transition”) have on occasion been used by Australian companies to fight the import of cheaper product produced at realistic Chinese production costs. This has the effect of protecting Australian producers.

Different treatment of SOE's over other forms of enterprises and the fact that certain sectors of the economy remain effectively closed (particularly services such as finance, law, insurance and status of education as a business) are concerns which have implications for MES. Australia should receive clarification, and/or negotiate proposed changes (and time frames) in these areas as a pre condition of MES.



ACBC recognizes that the USA and the EU have established their own criteria for China to meet before MES will be granted.

Recommendation:

That DFAT;

- *after consultation with Australian industry, develop Australia's criteria for China to meet before Market Economy Status will be granted,*
- *seek clarification and where necessary negotiate competition endearing changes to the treatment of SOE's and the freeing up of sectors that are closed.*

Barriers encountered or issues to resolve:

- **Elimination of Tariffs**
- **Elimination of quotas**
 - Quotas remain a major strategy to artificially control supply of raw materials and products. These lead to price distortions and growth of secondary (and 'black') markets. In China's case, the administration of a quota has not been transparent and has contributed to market uncertainty and inefficiency.
 - Elimination of quota scheme for wool.
 - This has previously involved separating the quota for internal and export purposes although the respective 'sub-quotas' have not been made public – compounding uncertainty and price distortions.
- **Repatriation of profits**
- **Adequate laws to protect Intellectual Property.**
- **Internal non-tariff barriers.**
 - Largely caused by varying laws in different provinces, and local authorities, and their uneven application. This was seen as one of the biggest hurdles to a successful FTA as it could deter trade and investment in China. Further: Without satisfactory overarching legislation to deal with this issue, tariff reductions by both countries may create an unfair advantage to Chinese companies because Australia's barriers are all removed while many of China's (non tariff) barriers remain.
 - Chinese regulatory network is considered embryonic given that it is moving toward a market economy, yet is still predominantly centrally planned.



- Eg: A total of 12 different regulatory authorities exist for the mining industry alone. 2 levels of government issue exploration licenses & 4 levels mining licenses – This creates confusion and a general lack of standard rules.
- **Import Licensing requirements**
 - Often arduous, beaurecratic and superfluous – adds a significant cost to doing business in China and makes us less competitive.
- **Internal taxes and duties**
 - Vary by province and local authority in rate, interpretation and enforcement – tend to favor local producers
- **Legal framework to resolve anti-competitive behavior.**
 - Particularly common practice by SOE's (dealt with earlier)
- **Transparency in tendering**
- **Customs procedures**
 - Eg: Mandatory re-inspection of Australian wool – already tested to international standards but required to be re-tested to domestic standards. This leads to confusion and disputes about which results should be used in contractual disputes. Many of the issues relating to wool imports were addressed through the development of a Model Wool Contract involving Australia and China but there should be more done to promote its adoption.
- **Quarantine conditions**
 - Eg: Compulsory testing of livestock for diseases we don't have – cumbersome beaurecratic and reduces competitiveness.
 - Eg: Iron ore is a compulsory inspection product at import to China.
 - Quarantine is often used to protect local industry rather than stopping the spread of disease for which it was intended.
- **Banking & foreign exchange**
 - Credit worthiness and lack of transparency of banks
 - Ability to use AUD accounts in China
 - Convertibility of RMB with AUD direct is seen as a distinct advantage – readily and easily.
- **Laws preventing WOFE's from having import export license**
 - A wholly owned foreign enterprise (WOFE) cannot have a full import/export license. They must rely on Chinese agents for this which limits business scope / flexibility and increases transaction costs.



- **Easing of Financial requirement for WOFE's**
- **Local content regulations**
 - Need to be clearly defined and relatively open (particularly in education)
- **Dispute resolution**
 - Need for consistent arbitration processes and systems throughout China (not just main centres)
 - More effective enforcement procedures to support arbitration (and court) awards.
- **Inefficient risk assessments made by Chinese companies**
- **Valuation of SOE's for purchase**
 - A difficulty occasionally experienced with prospective purchase of SOE assets is access for independent valuations.
- **Lack of transparency in Chinese market.**
 - Due to:
 - Much of the economy being government or part government owned with little annual reporting
 - Reporting and auditing not to international standards
- **Allowing foreign companies to compete on equal terms with PRC entities**
 - particularly professional services
- **Less restrictive Joint Venture regulations**
- **Agreed principles of pricing and cost structure determination**
- **Ability to group tax losses**
 - Particularly relevant in exploration
- **Double tax agreement**
- **Mining exploration values assessments**
 - Conducted by Ministry of Land Resources
 - Necessary but ignores market value
 - Needs Supply & Demand based system
 - Some minerals restricted for FDI, others are not
 - Too many regulatory authorities involved in approving mining projects
- **Education services**
 - Some concerns that there could be unrealistically high expectations of future student inflows into Australian higher education. Need to



consider more opportunities for delivery of courses in (or partly in) China.

- Educational services need to be treated as a 'business' in terms of pricing and repatriation of profits.
- Restrictions (such as full course fee deposits required for Chinese students in Australia) be removed in both countries.
 - If more Australian Higher Education institutions can look at the options of delivery in China, Australia can get both a bigger share of the market and increased revenues from this sector.
- Notwithstanding the above point ie the need to expand the higher education market in China with delivery of courses there, it is recognized that many positive long term benefits accrue to Australia generally, of large numbers of Chinese students studying in Australia. This leads to an “Australian orientation” for many Chinese who will become the captains of industry and so further build the links between our two countries. A phase in period for course delivery in China and/or some Australian based study requirements should be maintained for some courses to maximise this “Australian orientation” while still increasing our slice of the Higher Education market.
- Greater emphasis should be directed towards ‘niche’ programs and TAFE level educational opportunities in future.
- Issues associated with student visas.

As signaled in several instances above, an overriding concern is to ensure consistent adoption and implementation of market liberalization and related agreements by China at the provincial and municipal government level – not just Central government – to avoid regional protectionism.

In addition, the time frame for implementation should be realistic and manageable without being excessive.

Benefits:

- All respondents saw benefits outweighing costs. However, negative impacts are expected in light manufacturing compared with, for example, energy and resources. This will have implications for different States and regions throughout Australia. For example, Victoria’s automotive and textile, clothing and footwear industries will most likely be disadvantaged relative to W.A’s resources and agriculture sectors. This might highlight the need for different policies and strategies including greater emphasis on joint ventures and other collaborative arrangements between Australian firms in those sectors with counterparties in China.



- Some specific benefits:
 - Preference over competitors from other foreign nations in China
 - Greater understanding of Australian business by the Chinese

Future investment decisions:

- Heavily dependent on final outcome of FTA
- A mixed response
- Generally very favorable
- Some respondents believed they would see up to A\$5 million trade increase (for their respective businesses).