Australian Government

Department of Foreign Affairs and Trade

Australia – China Free Trade Agreement

Joint Feasibility Study











This study has been prepared by the Department of Foreign Affairs and Trade, Australia and the Ministry of Commerce, China.

This Joint Feasibility Study has been prepared by:

China FTA Study Taskforce
Department of Foreign Affairs and Trade

R. G. Casey Building
John McEwen Crescent
Barton ACT 0221
AUSTRALIA

Tel: +612 6261 1111
Fax: +612 6112 2468

Email: chinafta@dfat.gov.au

Internet: www.dfat.gov.au/geo/china/fta

and

Department of International Trade and Economic Affairs
Ministry of Commerce

No.2, Dong Chang An Street
Post Code 100731
Beijing
CHINA

Tel: +8610 6519 8114
Fax: +8610 6519 7213

Email: apecdiv@mofcom.gov.cn

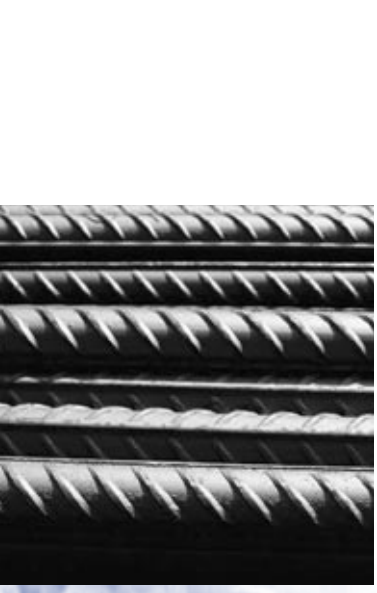
Internet: www.mofcom.gov.cn

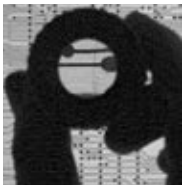
Australian Government

Department of Foreign Affairs and Trade

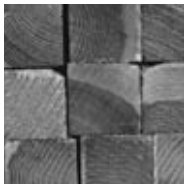
Australia – China Free Trade Agreement

Joint Feasibility Study

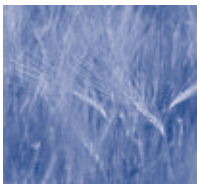











This study has been prepared by the Department of Foreign Affairs and Trade, Australia and the Ministry of Commerce, China.

March 2005

ISBN 1 920959 49 1

Table of Contents

Executive Summary

On 24 October 2003, the Australia-China Trade and Economic Framework was signed in the presence of the Australian Prime Minister John Howard and Chinese President Hu Jintao. The Framework sets out an agenda for the bilateral trade and economic relationship over the coming years and covers a wide range of activities aimed at strengthening commercial and policy linkages.

As an expression of the will of the two countries to build an even stronger economic and trade relationship, Australia and China committed as part of the Framework to undertake a feasibility study of a possible bilateral Free Trade Agreement (FTA) as a basis for a decision as to whether to enter into FTA negotiations.

The feasibility study shows that, while bilateral trade has grown strongly over recent years, significant barriers to further goods and services trade growth remain in place in both countries. The study demonstrates that these barriers take various forms, including:

- tariffs, tariff rate quotas, technical barriers to trade, sanitary and phytosanitary measures, import licensing registration procedures and customs procedures;
- national treatment, regulations governing ownership and commercial presence, business mobility, dispute resolution, electronic commerce and intellectual property rights; and
- transparency in administrative decision making at all levels of government.

A possible FTA between Australia and China would be expected to eliminate tariffs on substantially all trade between the two countries, while taking into account the domestic income and employment impacts on each sector. In addition, it would be important to ensure that non-tariff measures applied by both countries did not negate the trade and economic benefits of tariff elimination. At a minimum, an FTA should go beyond each country's commitments in the World Trade Organization (WTO) by addressing, to the extent possible, non-tariff measures and increasing transparency in goods trade.

Services liberalisation should also seek to remove barriers that impose additional costs to exporters and erode competitiveness, taking into account the income and employment impacts on each sector. A possible FTA would be expected to have substantial sectoral coverage and provide for the absence or elimination of substantially all discrimination between services and service providers of each country.

In relation to investment, the study demonstrates that Australia-China investment flows are modest relative to bilateral trade, reflecting both regulatory and other impediments and, to some degree, lack of awareness of business opportunities in the other country. A possible FTA could help to address this imbalance by removing – or reducing – existing restrictions in each country's foreign investment regimes; enhancing transparency of foreign investment regimes; streamlining investment regulations and application processes; and providing stronger protection to Australian and Chinese investors in the other country.

An FTA would be expected to intensify further bilateral trade and economic cooperation, including in the areas of trade and investment promotion, customs facilitation, sanitary and phytosanitary measures, technical regulations and standards, temporary entry, intellectual property rights, electronic commerce, small and medium size business cooperation, transparency, trade remedies, capacity building, government procurement and competition policy.

While recognising that nothing in the study pre-judges how particular issues might be addressed in the scope of a possible FTA, seven principles are considered of importance to achieve the objectives of accelerating sustainable economic growth, creating jobs and raising living standards in both countries.

- First, the two sides should negotiate as equal trading partners.
- Second, an FTA must be consistent with WTO rules, and take into account APEC's goals for trade and investment liberalisation and facilitation.
- Third, under a possible FTA negotiation, products across all sectors would be negotiable, involving liberalisation and facilitation of goods and services, and the issue of investment flows would also be addressed, with a view to achieving a balanced outcome through a single undertaking.
- Fourth, an FTA should be capable of delivering significant outcomes as soon as it enters into force.
- Fifth, the negotiation of a possible FTA should take into account that the two sides are at different stages of economic development and have different comparative advantages and adjustment costs.
- Sixth, an FTA needs to include arrangements to facilitate dispute settlement and consider including bilateral trade remedy measures.
- Seventh, recognising that an FTA would be developed over time to achieve full liberalisation between its parties, it should include a timetable for periodic review.

Independent economic modelling provides some insights into how an FTA might impact on bilateral trade and investment flows, economic welfare, specific sectors and employment. Among other things, however, the value of such modelling is limited by the assumptions made, quality of data used, and the particular techniques applied.

The results of the economic modelling suggest that an FTA would have a significant net positive impact on output and employment in both countries, with any structural adjustment expected to be minimal compared with adjustment processes already underway in response to domestic reform and globalisation. The modelling indicates that the greater the coverage, the deeper the liberalisation, and the faster the implementation, the greater the net benefit to both countries. The modelling also suggests that an Australia-China FTA would have a negligible impact on the rest of the world's real gross domestic product (GDP), and would be trade creating for the world as a whole.

In aggregate terms, the modelling indicates that the annual average real GDP growth rate for both countries could increase by around 0.04 per cent over the period 2005-2015 – in present value terms. This growth rate would mean that an FTA could boost Australia's and China's real GDP in the order of US$18 billion (A$24.4 billion) and US$64 billion (RMB529.7 billion) respectively over the period 2006-2015. The modelling suggests that an FTA covering goods, services and investment could boost total bilateral trade by US$5.4 billion in 2015.

The study demonstrates that there are significant impediments to trade and investment between Australia and China. An ambitious FTA that removed or reduced them would deliver significant trade and economic benefits to both countries, promote closer integration of the Australian and Chinese economies over the long term, and support and reinforce multilateral and regional trade reform.

Accordingly, the study concludes that an Australia-China FTA is feasible and, on balance, would substantially benefit both countries.

1 Introduction

Australia and China share a strong and rapidly growing trade and economic relationship. Further strengthening and deepening this relationship is a major priority for both countries, with both governments committed to sustaining the impressive trade and investment performance achieved in the past two decades. The signing of the *Trade and Economic Framework between Australia and the People's Republic of China* (the Framework) in Canberra on 24 October 2003, in the presence of Prime Minister John Howard and President Hu Jintao, was a re-affirmation of this commitment.

The Framework is a broad-based and forward-looking document, which has set a clear agenda for the bilateral trade and economic relationship over the coming years. It covers a wide range of activities aimed at improving commercial and policy linkages, and delivering improvements to the overall business environment to both countries' mutual benefit.

As part of the Framework, Australia and China agreed to undertake a joint feasibility study into the possible negotiation of a bilateral free trade agreement (FTA). This study explores the potential opportunities and challenges of a bilateral FTA, assesses how an FTA between our two countries could be approached and makes recommendations to both governments. The outcome of the study will be taken into account in the future decision by the two governments on whether they might proceed to negotiate an FTA.

1.1 Overview of the Bilateral Economic Relationship

The 1973 *Trade Agreement between the Government of Australia and the Government of the People's Republic of China* has served as the basis for the bilateral trade and economic relationship. This has been enhanced by the conclusion of further bilateral agreements (see Annex 1 - Summary of Existing Bilateral Trade and Economic Agreements/Arrangements), such as the 1988 *Agreement on the Reciprocal Encouragement and Protection of Investments*, and also by the active commitment of both Australia and China to the promotion of regional economic development through cooperation in the Asia Pacific Economic Cooperation (APEC) grouping. With China's accession to the World Trade Organization (WTO) in December 2001, the two countries' commitment to a strong multilateral trading system and to their respective rights and obligations under the WTO, has represented a further enhancement in the institutional basis for the commercial relationship.

Against this institutional background, the trade and investment relationship has witnessed impressive growth in recent years: China is now Australia's third-largest merchandise trading partner and Australia is China's ninth-largest.[1] The growth in two-way merchandise trade over the past five years has been almost 20 per cent per annum.

- China is Australia's fastest growing market for education and tourism, and Chinese firms are also increasingly active in selected Australian services markets.
- Two-way investment is growing significantly from a low base.

[1] Australia is China's eleventh-largest merchandise trading partner on the basis of Australian Statistics.

1.2 Trade and Economic Framework

The Framework enhances the strength of this commercial relationship. It reaffirms each country's commitment to the ongoing development of trade and investment, including within the context of the WTO and APEC, and strengthens bilateral economic cooperation and dialogue. It provides that Australia and China will, through all-round economic and trade cooperation, "achieve balanced and comprehensive trade and investment facilitation and liberalisation".

The Framework also provides for a wide range of specific steps to strengthen the trade and economic relationship, including:

- the enhancement of dialogue on trade and economic issues and the promotion of high-level two-way visits, in particular, the strengthening of the Australia-China Joint Ministerial Economic Commission;
- provision for consultations on national government measures affecting bilateral trade and investment, and consultations to exchange information and views on issues relating to the possible implications of agreements between either country and a third country or third countries that provide for preferential treatment of trade and/or investment;
- cooperative activities which will improve the commercial and policy linkages between the two countries in a range of industry sectors and areas (energy and mining; agriculture and quarantine inspection; textile, clothing and footwear; services; investment; information and communications technology and e-commerce; customs cooperation; food safety; health; technical barriers to trade; and intellectual property protection); and
- the commitment to undertake a joint feasibility study by October 2005 into a possible free trade agreement between Australia and China.

The joint FTA feasibility study injects a new dynamism into consideration of the liberalisation of trade and investment between Australia and China. In committing to this study, Australia and China recognise that multilateral trade negotiations are the most effective mechanism to achieve trade and investment liberalisation and thereby to promote national and regional economic development. Each country does, however, also recognise, through their existing bilateral free trade negotiations with other selected trading partners, the potential for WTO-consistent free trade agreements to deliver benefits at a more rapid pace. Such agreements can, in turn, support and reinforce multilateral liberalisation in the WTO.

Furthermore, both countries recognise that free trade agreement negotiations involving products across all sectors serve more broadly as instruments for demonstrating closer relations, and so enhancing mutual interests.

The implications of a possible FTA between Australia and China need to be considered in this broader context, as well as in terms of its direct effects on trade and investment.

1.3 Objectives and Structure of the Study

The terms of reference for the joint FTA feasibility study are set out in Annex II of the Framework, as follows:

- to provide an overview of recent trends in bilateral trade and economic relations;
- to assess recent international trade policy developments and the possible implications for Australia-China trade and investment;
- to identify and describe existing barriers to trade and investment flows, covering goods, services and investment and other issues that might be addressed in a free trade agreement;
- to identify possible cooperation measures to promote trade and investment liberalisation and facilitation between Australia and China;
- to assess the impact of the removal and/or reduction of existing barriers to goods and services trade and investment; and
- to make conclusions and recommendations as regards options for future action.

The core issue for any FTA study is the prospect for the liberalisation of bilateral trade and investment, considered against the minimum standards laid down by the WTO, including the requirements of Article XXIV of the General Agreement on Tariffs and Trade (GATT) for a free trade area for goods, and Article V of the General Agreement on Trade in Services (GATS) for an economic integration agreement covering trade in services. In addition, this study canvasses a wide range of other issues of mutual interest, highlighting options to enhance economic cooperation between Australia and China. The study addresses these issues fully with the intention of providing the broadest possible basis for consideration of future actions by the Governments of Australia and China. In so doing, the study is without prejudice to whether possible future FTA negotiations between Australia and China would take up all issues in the forms considered in this study.

The other chapters of the study have the following structure:

- Chapter 2 (Australia and China Trade and Economic Relations) reviews current trends in bilateral trade and investment and economic cooperation, and sets out the international context for the relationship;
- Chapters 3 to 5 (Impact of Trade Liberalisation on Goods; Impact of Trade Liberalisation on Services; Impact of Investment Liberalisation) provide an account of existing barriers to trade and investment between Australia and China; and analyse the scope for and potential impact of liberalisation, both broadly and in terms of specific industry sectors;
- Chapters 6 to 7 (Implications for Bilateral Cooperation; Other Matters for Exchange of Views) outline other sector-specific issues and broader horizontal topics of importance to the commercial relationship, and highlight possible areas for cooperation and facilitation to promote further bilateral trade and investment through an FTA;
- Chapter 8 (Economic Feasibility of an Australia-China FTA) looks at economy-wide opportunities and challenges of liberalisation in trade and investment; and
- the final chapter of the study (Conclusions and Recommendations) draws on the information and issues covered in the study and recommends a future direction for the economic relationship.

The study also includes two annexes:

- Annex 1 – Summary of Existing Bilateral Trade and Economic Agreements/ Arrangements; and
- Annex 2 – Australia's and China's Merchandise Trade Statistics.

2 Australia-China Trade and Economic Relations

Australia and China are important economies in the Asia-Pacific region as well as globally. China is the world's sixth-largest economy, Australia the fourteenth. Both are very substantial markets with combined imports of goods and services worth over US$0.7 trillion in 2004.

Australia and China have enjoyed remarkable economic success over the past decade, experiencing only modest disruptions from domestic, regional and global economic shocks such as the 1997 Asian Financial Crisis, the Severe Acute Respiratory Syndrome (SARS) epidemic, the Iraq War and drought. China's real GDP grew at an annual average rate of 8.1 per cent over the past five years fuelled by high levels of investment and sustained economic reform. Australia's five year average economic growth rate of 3.4 per cent is one of the strongest among developed economies and is the result of strong productivity growth following sweeping micro-economic and structural reforms since the early 1980s.

The Australia-China trade relationship has grown significantly in scale and depth over the past decade largely reflecting comparative economic strengths, economic complementarities, a strengthening investment relationship and, more generally, closer bilateral and economic cooperation. Looking ahead, the commercial relationship should continue to develop quickly because the strong factors driving the current increase in trade and investment are unlikely to abate. The extent to which a possible FTA could accelerate this process is discussed in Chapter 8.

2.1 The Australian and Chinese Economies

The Australian Economy

Australia has a highly stable economy, very low reliance on trade taxes, a fully floating exchange rate regime, and strong market-oriented policies. The near term outlook is for continued solid economic growth – official projections suggest GDP growth of 3.5 per cent in each of 2004-05 and 2005-06 – underpinned by firm domestic demand and improving global economic conditions. Over the long term, Australia's economy seems capable of continuing to grow at this rate, reflecting high productivity growth rates linked to sustained micro-economic reform.

The Chinese Economy

China began to adopt the policy of reform and opening to the outside world at the end of the 1970s, which marked the beginning of China's transition to a market economy. In 1993, China's revised Constitution explicitly stated that "the State adopts the socialist market economy mechanism", which has provided a legal basis for the development of a market economy in China. The process of China's entry into the WTO has made China's economic system more compatible with the international system. Following China's accession to the WTO in 2001, China has conducted a massive rectification and modification of its domestic legislation and introduced new legislation which provides China with a sound legal basis for governing its market economy.

Since the adoption of the reform and opening policy, China's economic development has been spectacular with GDP increasing at an average annual rate of 9.7 per cent in the 1980s and 10.7 per cent in the 1990s. Annual growth has continued in the 7-9 per cent range during the period 2000-2004 and has been associated with relatively stable prices, substantial increases in employment, a pegged exchange rate, and surging growth in foreign trade. China's total merchandise imports and exports reached US$1,154.7 billion in 2004, increasing by 36 per cent compared with the previous year and making China the third-largest merchandise importer in the world.

These economic successes are based on effective macro and micro-economic management, and China's transition to a market economy. Combined with strong growth in domestic consumption and investment and rapid integration into the world economy, these factors should continue to sustain China's rapid economic growth and development over the long term.

The Complementary Relationship Between the Two Economies

The Australia-China commercial relationship reflects comparative economic strengths. Australia predominantly exports unprocessed rural and resource commodities and some high-value manufactures and services to China. Australian businesses also invest in a variety of high-value manufacturing and services industries in China. China in turn predominantly exports labour-intensive or processing-derived manufactured goods to Australia and invests in a variety of Australian resource, processing, manufacturing and services ventures.

This expanding commercial relationship also is encouraging commercial interest in new areas. Australian firms are active in China in niche areas, including in architecture, medical and health services, agricultural consulting, technologies and machinery, minerals technology and environmental products and services. Chinese firms similarly are active in Australia in areas like agricultural and resource processing, tourism and technology supply. These developments demonstrate both countries' strengths outside traditional areas of trade and investment and highlight a broad new area of opportunity for the bilateral commercial relationship.

Australia and China are at markedly different stages of economic and social development (see Table 2.1):

- China's per capita GDP in 2003 was around 4.4 per cent of Australia's in current US dollar terms;
- over two-thirds of China's total population remain in rural areas and agriculture contributes around 15 per cent of China's GDP. In Australia, 3 per cent of the population are occupied in the agricultural sector producing around 4 per cent of GDP; and
- manufacturing is the key driver of China's economic growth and development and contributes around 35 per cent of GDP. In Australia, manufacturing accounts for 12 per cent of GDP and services for 71 per cent of GDP.

While such differences present challenges in the possible negotiation of an FTA, their presence, along with similarities – like the common commitment to economic and social reform and the openness of both economies – suggests that an FTA could increase the scope for trade creation and deliver benefits to each economy.

2.2 Trends in Bilateral Merchandise Trade

The Australia-China commercial relationship has boomed over the last decade. In 2004, two-way merchandise trade was valued at between US$21.1 billion[2] according to Australian statistics, and US$20.4 billion according to data from Chinese Customs.[3] This represents a doubling of trade since 1998 and highlights the dynamic commercial relationship between the two economies. China now is Australia's third-largest trading partner for goods,[4] and Australia is China's ninth-largest.[5]

Over the next few years, two-way trade should continue to grow at double-digit rates in response to the pace of economic growth in both countries, the general expansion of intra-industry trade within the Asia-Pacific region, and opportunities to build new areas of competitive strength in the bilateral relationship. Developing trade policies to support and reinforce bilateral trade and investment linkages will be a key part of enhancing this growth and moving towards closer integration of the Australian and Chinese economies.

Australia's Merchandise Exports to China

The high rate of economic growth achieved in China over the past two decades, as well as the complementary nature of the two economies, have generated huge opportunities for Australian exporters. China took over 9 per cent of Australia's merchandise exports in 2004, compared to 3-4 per cent in the first half of the 1990s, and is Australia's second-largest merchandise export market. China's merchandise imports from Australia reached US$8 billion[6] in 2004 and have increased at a trend growth rate of 20 per cent per year since 1998.

In 2004, primary commodities accounted for around two-thirds of the value of Australia's merchandise exports to China. Iron ore, alumina, wool and energy (including petroleum and coal) are Australia's largest exports (see Table 2.2). China also is an important market for wheat and barley.

Trade in resources, energy and agricultural commodities is expected to continue to grow rapidly in response to demand pressures generated by China's industrialisation. These trades are underpinned by sizeable long-term contracts, for example for iron ore and the sale of liquefied natural gas into the Guangdong market, and will remain the basis of Australia's export trade for many years to come.

China also is an important destination for Australian manufacturing exports. Over the past five years, Australian exports of simply transformed manufactures (STMs) and elaborately transformed manufactures (ETMs) like electrical machinery and telecommunications equipment have grown at around 20 per cent a year, driving growth in Australia's total manufacturing exports. Again, this area of trade with China seems set to increase substantially over the next few years. Strong Chinese economic growth will continue to underpin demand for STMs as key industrial inputs into the production process. Trade in ETMs will be driven by the increasing importance of intra-industry trade, regionally and globally; the growing sophistication of China's economy, which is creating new opportunities for niche products and services; and the expanding purchasing power of China's consumers.

---

2 The exchange rates used in this study are A$1= US$0.7364 and RMB1=US$0.1208 (average annual exchange rates for 2004).

3 Reasons for differences in Australian and Chinese trade statistics are provided at Annex 2: Australia's and China's Merchandise Trade Statistics.

4 Source: Australian Bureau of Statistics (ABS).

5 Source: China's Customs.

6 Source: China's Customs.

China's Merchandise Exports to Australia

Since 1999, Chinese merchandise exports to Australia have grown by 26 per cent per year, or over four times as fast as growth in total Australian imports during this period. Australia now takes about 1.5 per cent of China's total exports compared with about one per cent in the first half of the 1990s; Australia was China's ninth-largest merchandise export market in 2004.[7] Manufactured goods dominate Chinese exports to Australia, accounting for well over 90 per cent of total merchandise exports in 2004.[8]

China's manufactured exports to Australia are increasingly higher-value added products. While traditional exports like textiles, clothing, footwear, toys and furniture continue to grow solidly and still account for a significant share of exports, higher-value added products like computers and telecommunications equipment are growing even more rapidly (see Table 2.3). Other fast growing manufactured exports to Australia include sound and video recorders and televisions.

China's large, low-cost workforce means it is expected to retain its competitiveness in labour-intensive exports. At the same time, the proportion of skill- and technology-intensive merchandise in China's exports to Australia should continue to rise as China moves more into higher value-added manufacturing industries.

2.3 Trends in Bilateral Trade in Services

Trade in services is difficult to quantify. Official statistics tend to underestimate services trade but indicate that Australia-China services trade has grown rapidly over the past decade. In 2004, bilateral services trade was valued at almost US$1.2 billion. China is one of Australia's fastest-growing services export markets – annual growth has averaged around 26 per cent in the three years to 2004 – and China now ranks as Australia's seventh-largest export market for services. Education services and tourism dominate this trade. Chinese enterprises also are increasingly active in selected Australian services markets, predominantly in transportation and travel services. Chinese shipping companies and airlines are prominent, and Australian tourist numbers to China are growing rapidly.

Education is Australia's leading services export to China. Trade was valued at nearly US$250 million in 2003 – an amount that exceeds exports of major commodities like coal and aluminium (see Table 2.2).

The growth of two-way tourism also has been spectacular. In 2004, 251,200 Chinese travelled to Australia compared with 42,600 in 1995. Chinese visitors now make up nearly 5 per cent of overseas visitors to Australia. The Australian Bureau of Tourism forecasts that Chinese visitor numbers could rise to a maximum of one million by 2010, driven by growing disposable incomes, the priority given to international travel by prosperous Chinese, and government-to-government arrangements to facilitate group international travel such as the extension of *approved destination status* to more areas within China.

There also has been rapid growth (around 12 per cent per year) in the number of Australian tourists visiting China. According to the China National Tourism Administration, around 50,000 Australian tourists visited China in 1990, 130,000 in 1995, 234,000 in 2000 and nearly 300,000 in 2002. Again, this steeply rising trend seems set to continue in line with increasing global interest in China as a tourist destination and expected flow-on effects from the Beijing Olympics.

7 Source: China's Customs.

8 Source: China's Customs.

Beyond tourism and education, there have been significant increases in trade in services that are embodied in the movement of goods and generally in meeting the requirements of foreign companies operating in China and Chinese companies operating in Australia. They include, for example, financial services; professional services like legal, financial, accounting, engineering, and database services; communications services; air and maritime transport services; services linked to developing partnerships in energy and mining; and freight and logistics services. Trade also has been increasing in environmental, recreational and sports-related services, and scientific and technical consulting services.

2.4 Trends in Two-Way Investment

Chinese investment in Australia has increased rapidly in recent years, albeit from a low base. Chinese enterprises have invested in about 256 Australian projects up to the end of December 2004, with a cumulative contractual investment value of about US$0.7 billion and a direct investment value of US$0.46 billion.[9] Most of this investment is in resources, energy and processing commodities, but manufacturing and real estate also attract significant investment.

Australian investment in China has been rising since the 1980s and annual inflows now amount to several tens of millions of dollars, which is fairly modest given the size and rapid growth in Australia-China trade. The upward trend in investment clearly supports increased trade flows with investment on the ground, but more generally is a response to China's improving business environment and the impact of numerous relatively small investments by small and medium-sized Australian companies, chiefly in China's manufacturing sector. Large Australian companies have been making substantial investments in China for many years; the rising investment trend among smaller companies is a much more recent development.

The upward trend in bilateral investment is likely to continue and investment flows are expected to start to become a better indicator of the scale of the bilateral economic engagement.

2.5 Trends in Economic Cooperation

Over the past few years, new areas of regular dialogue have been established between Australia and China. This has been assisted by a strong program of high-level visits in both directions. Prime Minister Howard visited China in March 1997; October 2001 to attend the APEC Leaders' Meeting; and May 2002. Former President Jiang Zemin visited Australia in September 1999, the first ever visit by a Chinese head of state. Bilateral relations reached a new level of maturity with visits by Prime Minister Howard to China in August 2003 and by President Hu Jintao to Australia in October 2003.

The Australia-China Trade and Economic Framework, signed during President Hu's visit, sets the agenda for strengthening and expanding the relationship over coming years, identifying opportunities for closer cooperation and developing strategies to promote business opportunities in areas of high potential. The Framework builds upon other fora and areas for economic cooperation, such as the Joint Ministerial Economic Commission and Chinese recognition of Australia as a *designated tourist destination*.

[9] Source: China's statistics.

Cultural, legal, scientific and educational exchanges are also increasing people-to-people contacts, and since 1979 all Australian States and Territories have established twinning arrangements with various municipal and provincial governments in China.

2.6 International Context

This study was prepared against the background of the IMF expecting global growth of 3.4 per cent in 2005, down from 4.1 per cent in 2004. Downside risks to the outlook include: persistent global imbalances (in particular, record US budget and trade deficits), high oil prices, corporate governance concerns and terrorism.

These developments confirm the importance of further efforts at a number of levels to ensure sustainable long-term economic growth in both the Australian and Chinese economies. A strengthening of the trade and investment relationship can contribute to this goal.

The launch of a new round of multilateral trade negotiations at the Fourth Ministerial Conference of the WTO in Doha has been one crucial step towards this shared goal. These negotiations have the potential to deliver a major impetus to global economic growth. Australia and China are committed to them as the highest priority of their trade policy.

Australia and China enjoy a close and cooperative relationship in APEC. As a developing country, China attaches great importance to APEC's economic and technical cooperation agenda while taking a positive attitude to trade and investment liberalisation and facilitation. Australia and China work cooperatively to strengthen APEC's support of the multilateral trading system.

Australia and China are also developing or exploring other regional and bilateral approaches to expanding trade and investment, as part of a global shift towards consideration of such arrangements.

Table 2.1: Profile of Australian and Chinese Economies

	Australia	China
Surface land area (million km^2)	7.69	9.56
Population (million, 2003)	20	1,287
GDP (US$ billion, current prices, 2003)	509.6	1,464.3
Real GDP Growth (1998-2003 average annual, %)	3.7	7.9
Per capita GDP (US$/person, 2003, current price)	25,469	1,098
Agriculture (% share of GDP, 2002)	4	15
Manufacturing (% share of GDP, 2003)	12	35
Services (% share of GDP, 2003)	71	34
Export goods (US$ billion, 2003)	70.3	438.3
Import goods (US$ billion, 2003)	84.8	393.6
Export goods (% GDP, 2003)	13.8	31
Import goods (% GDP, 2003)	16.6	27.9
Export services (US$ billion, 2003)	21.2	46.7
Import services (US$ billion, 2003)	21.5	55.3
Export services (% GDP, 2003)	4.2	3.3
Import services (% GDP, 2003)	4.2	3.9
Current account balance (US$ billion, 2003)	-30.0	45.9

Sources: Australian Department of Foreign Affairs and Trade (DFAT), World Bank, Economist Intelligence Unit (EIU), IMF and China State Administration of Foreign Exchange.

Table 2.2: China's Top Ten Merchandise Imports from Australia US$ million, 2001 to 2004

	2001	2002	2003	2004
Iron ore	945	995	1,632	3,346
Alumina	523	589	998	1,103
Wool	639	682	588	900
Crude petroleum	154	242	445	467
Coal	28	146	208	387
Wheat	8	10	1	364
Gases	74	87	127	273
Aluminium	96	135	196	261
Barley	211	229	133	239
Manganese ores	46	56	104	227

Source: China's Customs.

Table 2.3: Australia's Top Ten Merchandise Imports from China, US$ million, 2001 to 2004

	2001	2002	2003	2004
ADP machines	303	476	735	1,273
Video and digital cameras	67	104	250	501
Women's or girls' suits	191	212	272	324
Office machines	100	169	229	298
Toys	177	205	246	297
TV and videos	47	74	122	280
Footwear	141	183	210	265
Travel goods	144	157	191	252
Furniture	69	102	156	245
T-shirts	119	123	163	219

Source: DFAT, STARS database.

3 Impact of Trade Liberalisation on Goods

This chapter outlines the impact of trade liberalisation on goods. It provides an overview of the structure of tariffs, tariff rate quotas and non-tariff measures that apply to goods in Australia and China, and highlights the opportunities and challenges of goods trade liberalisation through case studies and independent economic modelling results.

In accordance with relevant WTO provisions, a possible FTA between Australia and China would be expected to eliminate tariffs on substantially all trade between the two countries. In addition, it would be important to ensure that non-tariff measures applied by both countries not negate the trade and economic benefits of tariff elimination by unnecessarily restricting bilateral trade. Therefore, at a minimum, an FTA should also go beyond each country's commitments in the WTO by addressing, to the extent possible, non-tariff measures and increasing transparency in goods trade.

As outlined in Chapter 2, bilateral goods trade between Australia and China has grown rapidly over the past 10 years. Economic reforms in both countries, in particular following China's accession to the WTO, are enabling exporters and investors to exploit some of the commercial opportunities presented by the natural trade complementarities between the Australian and Chinese economies. Further liberalisation through a possible FTA would improve market access conditions and enhance commercial opportunities for both sides.

Other issues relevant to this chapter are discussed in more detail in Chapter 6 (Implications for Bilateral Cooperation), including customs facilitation, sanitary and phytosanitary measures, technical regulations and standards, transparency of laws and administration, intellectual property rights and trade remedies.

3.1 An Overview of Current Trade Policies and Barriers Applying to Trade in Goods

3.1.1 Tariffs

Australia

Australia had a low overall average applied tariff of 3.5 per cent as at 1 January 2005, with over 85 per cent of Australian tariff rates varying between zero and 5 per cent (see Table 3.1).[10] Where tariff rates exceed 5 per cent (mainly textiles, clothing and footwear and motor vehicles) policies are in place to reduce these levels to 5 per cent through future tariff reductions. All applied tariff rates are *ad valorem*, except 17 tariff lines covering the following products:

- cheese and curd – 5 tariff lines with specific tariffs of A$1.220/kg (US$0.9/kg);
- fruit juice – 4 tariff lines with alternate tariffs at 5 per cent, or if lower, A$0.45/kg (US$0.33/kg) TSS;[11] and
- used passenger motor vehicles – 8 tariff lines with compound tariffs at 10 per cent plus A$12,000 (US$8,837) each.

[10] Australian tariff rates and *Australian Customs Notices* are available on the internet at www.customs.gov.au.

[11] The notes accompanying Australia's customs tariff schedule define TSS as the total soluble solids as determined by the International Federation of Fruit Juice Producers analysis method No. 8B, 1968.

China

China's tariff policy is to promote economic reform and the opening of its economy. Currently, China employs three types of import duty rates: namely general rates, MFN rates and preferential rates. Preferential rates are applied to imports originating in countries and regions with which China has concluded reciprocal preferential tariff agreements, whereas MFN rates are applied to imports from WTO members and general rates are applied to imports from other sources.

Before entering the WTO in 2001, China's average tariff level was 15.3 per cent. It was reduced to 11 per cent in 2003, 10.4 per cent in 2004 and 9.9 per cent in 2005 (see Table 3.2). The average tariff level of industrial products was 14.8 per cent in 2001, 10.3 per cent in 2003, 9.5 per cent in 2004 and was further reduced to 9.0 per cent for 2005. The tariff on most mechanical products was reduced to 5 per cent for 2005, with some reduced to zero. China's current average tariff level for agricultural products is 15.3 per cent. All applied tariff rates are *ad valorem*, except specific rates on 46 items at the eight-digit level (covering chicken, beer and photographic film), and compound rates on 8 items (covering video recorders and image video cameras).

Table 3.1: 2005 Dispersion of Australia's Tariff Lines by Applied Tariff Rate[12]

APEC IAP Sectors	All Goods	trf=0%	0% to 5%	6% to 10%	11% to 15%	16% to 20%	21% to 25%	26% to 30%	> 30%	Specific or Mixed Tariff Lines	Simple Average Tariff	Ratio of Free Tariff Items to all Items
Agriculture	777	560	208	0	0	0	0	0	0	9	1.4%	72.4%
Fish and fish products	115	114	1	0	0	0	0	0	0		0.0%	99.1%
Wood, pulp, paper and furniture	433	110	319	4	0	0	0	0	0		3.8%	25.4%
Textiles and clothing	939	142	176	387	0	234	0	0	0		9.1%	15.1%
Leather, rubber, footwear and travel goods	214	38	113	59	0	4	0	0	0		5.6%	17.8%
Chemical and photographic supplies	944	602	330	11	0	1	0	0	0		1.9%	63.8%
Transport equipment	220	67	113	32	0	0	0	0	0	8	4.4%	30.5%
Non-electric machinery	614	269	308	37	0	0	0	0	0		3.1%	43.8%
Electric machinery	338	166	149	23	0	0	0	0	0		2.9%	49.1%
Manufactured articles n.e.s.	495	325	150	20	0	0	0	0	0		1.9%	65.7%
Mineral products, precious stones and metals	300	206	90	4	0	0	0	0	0		1.6%	68.7%
Petroleum oils	99	99	0	0	0	0	0	0	0		0.0%	100.0%
Metals	638	220	408	10	0	0	0	0			3.4%	34.5%
Total	6,126	2,918	2,365	587	0	239	0	0	0	17	3.5%	47.6%
Proportion of Lines	100%	48%	39%	10%	0%	3.9%	0%	0%	0%	0.3%		

Note: These statistics cover only those lines for which there are tariff rates, i.e. it excludes 131 seven-digit descriptive lines where no rates apply.

[12] Source: DFAT Tariff Database - Tariff dispersion is based on sectors used in APEC Individual Action Plans (IAP).

Table 3.2: 2005 Dispersion of China's Tariff Lines by Applied Tariff Rate[13]

APEC IAP Sectors	All Goods	0%	0-5%	6-10%	11%-15%	16-20%	21-25%	26-30%	>30%	Specific or Mixed Tariff Lines	Simple Average Tariff	Ratio of Free Tariff Items to all Items
Agriculture	1,085	81(1)	76	265(5)	273	215(2)	88	38	49	8	15.3%	7%
Fish and fish products	179	17	15	40	90	17	0	0	0		10.5%	9%
Wood, pulp, paper and furniture	347	130	70	132	1	14	0	0	0		4.6%	37%
Textiles and clothing	1,069	0	196	385	245	231	9	0	3		11.4%	0%
Leather, rubber, footwear and travel goods	219	1	15	98		42	27	0	0		13.1%	0%
Chemical and photographic supplies	1,253	9	568	625(13)	12	21(11)	9 (6)	1 (1)	8 (6)	37	6.9%	1%
Transport equipment	304	1	61	108	58	16	16	34	10		13.3%	0%
Non-electric machinery	880	100	149	495	112	12	5	5	2		8.0%	11%
Electric machinery	489	1,56(3)	33	164	62	22	10	31(3)	11(2)	8	9.1%	32%
Manufactured articles n.e.s.	596	71	64	151	137	97	73	3	0		11.8%	12%
Mineral products, precious stones and metals	363	40	141	80	45	17	25	0	15		8.8%	11%
Petroleum oils	19	1(1)	1	17	0	0	0	0	0	1	6.3%	5%
Metals	747	30	229	388	50	38	10	2	0		7.3%	4%
TOTAL (Specific or compound tariff lines)	7,550	637(5)	1,618	2,948(18)	1,121	742(13)	272(6)	114(4)	98(8)	54	9.9%	8%
Proportion of Lines	100%	8.4%	21.4%	39.0%	14.8%	9.8%	3.6%	1.5%	1.3%			

Note: The simple average applied tariff rate is calculated with out-quota rate for the agricultural products and chemical fertilizer applied for TRQ. The number in brackets indicates the specific or compound tariff lines.

[13] Source: China's Ministry of Finance: 2005 Tariff Schedule.

3.1.2 Other Aspects of Trade Policy

Apart from tariffs, Australia and China have implemented other policies to assist with foreign trade administration. These include rules of origin regimes (see 6.4, Rules of Origin), tariff rate quotas, import licensing regimes, customs evaluation and shipment inspection (see 6.2, Customs Facilitation), technical barriers to trade (see 6.4, Technical Regulations and Standards), sanitary and phytosanitary measures (see 6.3, Sanitary and Phytosanitary Measures) and trade remedies (see 6.10, Trade Remedies and Safeguards). Both countries, where appropriate, apply trade restrictions in accordance with relevant international agreements such as the *Convention on International Trade in Endangered Species* and the *Nuclear Non-Proliferation Treaty*.

3.2 Trade Policies and Barriers in Specific Sectors

3.2.1 Agriculture[14]

Australia and China enjoy a good relationship in agricultural trade. Since 1995 bilateral agricultural trade has increased at an average annual rate of 8.8 per cent. In 2004, bilateral trade in agricultural produce totalled US$2.65 billion.[15] China's imports from Australia totalled US$2.41 billion and consisted mainly of wool, wheat, barley, cotton, meat and dairy products (see Table 3.3). Australia's agricultural imports from China totalled US$233 million in 2004 and consisted mainly of fruit juice, sugar confectionery, biscuits, food preparations, cigars and cigarettes, pasta, nuts, frozen vegetables and sauces and condiments (see Table 3.4). Some of China's imports of Australian agricultural products are used as inputs in processing; with Australia importing some finished and processed agricultural goods from China.

Table 3.3: Tariffs/Tariff Rate Quotas Applying to China's Major Agricultural Imports from Australia[16]

Product	Value of Imports from Australia 2004 US$m	China's 2005 Applied Tariff	China's TRQ Volume	China's In-quota Tariff Rate
Wool, not carded or combed	900	38% (out of quota)	5101 & 5103 final TRQ volume in 2004 is 287,000 mt	1%
Wheat	364	65% (out of quota)	1001 final TRQ volume in 204 is 9,636,000 mt	1%
Barley	239	0% - 3%		
Cotton, not carded or combed	178	40% (out of quota)	5201 & 5203 final TRQ volume in 2004 is 894,000 mt	1%
Raw sheep or lamb	155	7% - 14%		
Raw cow or horse hides	121	5% - 8.4%		

(continued...)

[14] This report uses the WTO definition of agriculture which excludes forestry and fisheries. These two sectors are addressed under industrials.

[15] Source: ABS and China's Customs.

[16] Sources: China's Customs and China's WTO accession documents.

Table 3.3: Tariffs/Tariff Rate Quotas Applying to China's Major Agricultural Imports from Australia[16] (continued)

Product	Value of Imports from Australia 2004 US$m	China's 2005 Applied Tariff	China's TRQ Volume	China's In-quota Tariff Rate
Raw or rendered fats of cattle, sheep and goats	108	8%		
Live cattle	105	0% - 10%		
Guts, bladders and stomachs of animals	37	18% - 20% Includes one specific tariff RMB 1.4/kg (US$0.17/kg)		
Milk and cream, concentrated or sweetened	29	10%		

Table 3.4: Tariffs/Tariff Rate Quotas Applying to Australia's Major Agricultural Imports from China[17]

Product	Value of Imports from China 2004 US$m	Australia's 2005 Applied Tariff: MFN / Developing Countries (DCS)	Australia's Tariff Rate Quota Volume	Australia's In-quota Tariff Rate
Fruit juice	24	0% - 5%/0% - 5% 2009 includes 4 mixed tariffs: 5% or if lower A0.45/kg (US$0.33/kg) total soluble solids	n.a.	n.a.
Sugar confectionery	19	5%/5%	n.a.	n.a.
Biscuits, waffles and bakers' wares	17	0% - 5%/0% DCS preference	n.a.	n.a.
Miscellaneous food preparations	13	0% - 5%/0% - 4% DCS preference	n.a.	n.a.
Cigars and cigarettes	10	0% - 0%	n.a.	n.a.
Pasta	9	0% - 5%/0% - 4% DCS preference	n.a.	n.a.
Preserved fruit and nuts	8	0% - 5%/0% - 5% DCS preference	n.a.	n.a.
Frozen vegetables	7	0% - 5%/0% - 4% DCS preference	n.a.	n.a.
Other nuts	6	0% - 5%/0% - 4% DCS preference	n.a.	n.a.
Sauces and condiments	5	0%/0%	n.a.	n.a.
Shelled peanuts	5	5%/4% DCS preference	n.a.	n.a.

[17] Source: ABS.

Table 3.5 shows Australian production and exports as well as China's production and consumption of some agricultural products.

Table 3.5: Exports and Production of some Agricultural Products

Commodity	Unit	Australia's Total Production 2002-03[3]	Australia's Exports to China 2002-03[3]	China's Total Production[1] CY 2002	China's Total Consumption[2] CY 2002
Wool	kt	547	194	294	369
Barley	kt	3,865	1,230	2,470	4,376
Canola	kt	871	50	10,530	10,589
Raw sugar	kt	5,461	35	93,840	94,698
Cotton	kt	932	30	4,920	4,941
Wheat	kt	10,132	38	91,290	91,207
Live cattle	000 head	968	295	106	60
Sheep, lamb and goat	kt	610	8	3,044	3,074

Source: ABARE, Australian Bureau of Statistics, FAO Production Guide Volume 56, China's Customs Statistics.

Notes: The product/commodity coverage in this comparison is not exhaustive due to data constraints.

1. With the exception of wool, all China production statistics were drawn from the 2002 FAO Production Guide, Volume 56.
2. The consumption figure is an estimate based on China's total production combined with imports, less exports. China's import and export statistics for 2002 were drawn from China's Customs Statistics.
3. Financial years ending June 30.
4. Dead and fellmongered wool and wool exported on skins.
5. Mainly for breeding purposes.

3.2.1.1 Tariffs Applying to Agricultural Products

Australia

Most Australian agricultural tariffs are applied at rates of between zero and 5 per cent (the simple average applied tariff for agricultural goods is 1.35 per cent). All Australian agricultural tariff lines are bound under the WTO at rates from zero to 29 per cent (the average bound tariff rate is 4 per cent). Based on import levels in 2004, Chinese agriculture exporters would face a trade-weighted average applied tariff of 2.1 per cent.

Australia's WTO schedules contain only two tariff rate quotas (TRQs) on agricultural products – selected cheeses and tobacco. For selected cheese products, a TRQ of 11,500 tonnes applies. Within quota, the tariff is A$0.096/kg[18] (US$0.07/kg) and outside the quota a tariff of A$1.22/kg (US$0.9/kg) applies. The tobacco TRQ is no longer effective as the applied tariff rate on tobacco is currently zero. Based on 2004 data, none of Australia's agricultural imports from China are subject to TRQs.

China

Since China's accession to the WTO in 2001, the Chinese government has gradually reduced tariffs on agriculture according to its commitments. In 2005, the arithmetic average import tariff rate (MFN) on agricultural products was reduced to 15.3 per cent.

At the HS 8-digit level, among the 1,611 items of agricultural products that China imports, 1,554 have *ad valorem* tariffs, 8 have specific tariffs, and the other 49 are subject to TRQs.

[18] The rate for China as a DCS country is A$0.096 (US$0.07)/kg less 5 per cent of the customs value of the goods.

Among all the tariff items of agricultural products, 81 are exempt from duty, and the highest tariff rate is 65 per cent. Tariffs in the 5-20 per cent range are imposed on 73 per cent of all the imported agricultural products. The average tariff rate of the three main categories of agricultural products, namely, live animal and animal products (CH01-05, excluding fish and fish products), raw hides and skins (CH41-43, excluding leather and articles of leather), and vegetable products (CH06-14), are respectively 13.6 per cent, 11.5 per cent and 14.4 per cent.

Currently, China applies TRQs on a number of agricultural products, including wheat, corn, rice, edible vegetable oil (soybean oil, palm oil, rapeseed oil), sugar, wool and cotton (Table 3.6). Three of China's top 10 agricultural imports from Australia in 2004 (i.e. wool, wheat and cotton) are subject to TRQs. TRQ volumes are allocated to either state trading enterprises or to non-state trading entities/ end users.

Table 3.6 Tariff Rate Quotas Applying to China's Imports in 2005[19]

Products	Tariff No.	TRQ (10,000 ton)	Out-quota Tariff Rate(%)	In-quota Tariff Rate(%)
Wheat	[10011000]	963.6	65.0	1
	[10019010]		65.0	1
	[10019090]		65.0	1
	[11010000]		65.0	6
	[11031100]		65.0	9
	[11032010]		65.0	10
Maize(Corn)	[10051000]	720.0	20.0	1
	[10059000]		65.0	1
	[11022000]		40.0	9
	[11031300]		65.0	9
	[11042300]		65.0	10
Rice	[10061011]	532.0	65.0	1
	[10061019]		65.0	1
	[10061091]		65.0	1
	[10061099]		65.0	1
	[10062010]		65.0	1
	[10062090]		65.0	1
	[10063010]		65.0	1
	[10063090]		65.0	1
	[10064010]		65.0	1
	[10064090]		65.0	1
	[11023010]		40.0	9
	[11023090]		40.0	9
	[11031921]		10.0	9
	[11031929]		10.0	9
Soybean oil	[15079000]	358.7	19.9	9
	[15071001]		19.9	9

(continued)

[19] Source: *Customs Tariff of Import and Export of the People's Republic of China* (the legal text), 2005, compiled by the Office of Customs Tariff Commission of the State Council , the Tax Levy and Administration Department of the Customs General Administration of China, and the Tariff Department of the Ministry of Finance of China.

Table 3.6 Tariff Rate Quotas Applying to China's Imports in 2005[19] (continued)

Products	Tariff No.	TRQ (10,000 ton)	Out-quota Tariff Rate(%)	In-quota Tariff Rate(%)
Palm oil	[15111000]	316.8	19.9	9
	[15119010]		19.9	9
	[15119090]		19.9	9
Rape oil	[15141100]	124.3	19.9	9
	[15141900]		19.9	9
	[15149110]		19.9	9
	[15149190]		19.9	9
	[15149900]		19.9	9
Sugar	[17011100]	194.5	50.0	15
	[17011200]		50.0	15
	[17019100]		50.0	15
	[17019910]		50.0	15
	[17019920]		50.0	15
	[17019990]		50.0	15
Wool	[51011100]	28.7	38.0	1
	[51011900]		38.0	1
	[51012100]		38.0	1
	[51012900]		38.0	1
	[51013000]		38.0	1
	[51031010]		38.0	1
Cotton	[52010000]	89.4	40.0	1
	[52030000]		40.0	1

Australian agricultural exporters would face a trade-weighted applied average tariff of 3.7 per cent in 2005, with tariffs ranging from zero to 51 per cent.

3.2.1.2 Non-Tariff Measures Affecting Trade in Agricultural Products

Non-tariff measures relating to trade in agricultural products raised by Australian and Chinese exporters as part of consultations for this study and which could be considered in a possible FTA include:

- sanitary and phytosanitary measures (see Chapter 6.3);
- technical regulations and standards and conformance as they apply to agricultural products (see Chapter 6.4);
- customs administration, valuation and port clearance (see Chapter 6.2);
- intellectual property rights (see Chapter 6.6);
- transparency of administration and appeal and dispute resolution (see Chapter 6.9);
- import licensing registration procedures;
- state/provincial administrative arrangements; and
- state trading.

3.2.2 Industrials

3.2.2.1 Mining and Energy

Mining and energy exports are an important component of bilateral trade between Australia and China, and have been aided by strong economic growth, large-scale energy contracts and two-way sectoral investment. Since 1995, bilateral mining and energy trade has increased at an average rate of 19.7 per cent. In 2004, bilateral trade in mining and energy goods was worth US$8.27 billion. China's imports of mining and energy goods from Australia totalled US$6.70 billion in 2004, comprising iron ore, crude oil, coal, petroleum gases, aluminium, manganese ores and concentrates, nickel, copper ore, and zinc (see Table 3.7). Australia imported mining and energy goods worth US$1.57 billion from China in 2004, with key imports being crude oil, aluminium, iron and steel products and glass (see Table 3.8).

Table 3.7: Tariffs Applying to China's Major Mining and Energy Imports from Australia[20]

Product	Value of Imports from Australia 2004 US$m	China's 2005 Applied Tariff
Iron ores and concentrates, including roasted iron pyrites	3,346	0%
Crude oil	467	0%
Coal	387	3% - 6%
Petroleum gases and other gaseous hydrocarbons	274	0% - 11%
Unwrought aluminium	261	5% - 7%
Manganese ores and concentrates	227	0%
Unwrought nickel	186	3%
Copper ores and concentrates	157	0%
Unwrought zinc	136	3%
Copper waste and scrap	132	1.5%

Table 3.8: Tariffs Applying to Australia's Major Mining and Energy Imports from China[21]

Product	Value of Imports from China 2004 US$m	Australia's 2005 Applied Tariff: MFN / Developing Countries (DCS)
Crude oil	149	0%/0%
Aluminium bars and rods	118	5%/4% DCS preference
Stoves, ranges, grates and cookers	97	5%/5%
Articles of iron and steel nes	80	5% - 10%/4% - 10% DCS preference
Household ware of iron and steel	60	0% - 5%/0% - 5%
Base metal mountings, fittings and articles	57	5% - 10%/5% - 10%
Screws, nuts and bolts of iron or steel	43	5% - 10%/5% - 10%
Pig iron and spiegeleisen	40	0% - 5%/0% DCS preference
Safety glass	39	5% - 10%/4% - 10% DCS preference
Glazed ceramic pavers, flagstones and tiles	35	0% - 5%/0% - 4% DCS preference

[20] Source: China's Ministry of Finance 2005: Tariff Schedule.

[21] Source: DFAT Tariff database.

3.2.2.1 Tariffs Applying to Mining and Energy Products

Australia

Tariffs on mining and energy products in Australia are low, with the average applied tariff for metals, mineral products and oils being 3.4 per cent, 1.6 per cent and zero per cent respectively. Chalk, slate, marble, granite, sandstone, mica, steatite, other monumental and building stones, and some cements are subject to a 5 per cent import tariff, as are phenols, coal gas and bituminous mixtures. All other products are free of import duties.

Based on 2004 import levels, Chinese mining and energy exporters would face a trade-weighted average applied tariff of 3.6 per cent in 2005, with tariffs ranging from zero to 10 per cent.

China

Currently, China's import tariffs for coke coal and other coals are in the 3-6 per cent range, with the applied tariff rate on alumina being 8 per cent. As a net importer of iron ores and petroleum, the applied tariff rate for iron ore, crude oil and natural gases is zero.

Based on 2004 import levels, Australian mining and energy exporters would face a trade-weighted average applied tariff of 1.03 per cent in 2005, with tariffs ranging from zero to 35 per cent.

3.2.2.2 Non-Tariff Measures Affecting Trade in Mining and Energy Products

FTA study consultations in Australia and China have raised a number of other non-tariff measures to trade which could be considered by a possible FTA, including standards and technical regulations, quarantine administration, customs administration and valuation, transparency of administration and appeal and dispute resolution and intellectual property rights. Many of these non-tariff measures could be addressed through a possible FTA, including through enhanced bilateral cooperation (see Chapter 6).

3.2.3 Manufacturing

Manufactured products account for a large proportion of Australia-China bilateral trade. Since 1995, bilateral manufacturing trade has increased at an average rate of 16.8 per cent. In 2004, bilateral trade in manufactures totalled US$13.79 billion and comprised 30 per cent of China's total merchandise imports from Australia and 86 per cent of Australia's merchandise imports from China. China's manufactured imports from Australia totalled US$2.41 billion in 2004 with key imports comprising artificial corundum, colouring, repaired items, waste plastic, engines, paper, fibreboard, and leather (see Table 3.9). In 2004, Australia's imports of Chinese manufactures totalled US$11.38 billion, with key imports being ADP machines and parts, video cameras, clothing, toys, TVs and video receivers, leather footwear, leather bags, and medical, veterinary or barbers' furniture (see Table 3.10).

China was Australia's fourth most important seafood market in 2004, importing US$24 million of Australian seafood (mainly lobster, prawns and abalone). Australia imported US$49 million of Chinese seafood.

Table 3.9: Tariffs Applying to China's Major Manufacturing Imports from Australia[22]

Product	Value of Imports from Australia 2004 US$m	China's 2005 Applied Tariff
Artificial corundum, whether or not chemically defined; aluminium oxide; aluminium hydroxide	1,103	5.5% - 8%
Colouring matter nes	115	6.5% - 10%
Exports of repaired imports; imports of returned exports	71	n.a.
Waste plastic	67	9.7%
Spark-ignition reciprocating or rotary internal combustion piston engines	47	2% - 18%
Recovered (waste and scrap) paper or paperboard	40	0%
Fibreboard	39	4% - 7.5%
Cow or horse leather further prepared after tanning	38	5% - 8%
Tanned cow or horse hides	38	5% - 8%
Uncoated kraft paper and paperboard, in rolls or sheets	37	2% - 5%

Table 3.10: Tariffs Applying to Australia's Major Manufacturing Imports from China[23]

Product	Value of Imports from China 2004 US$m	Australia's 2005 Applied Tariff: MFN / Developing Countries (DCS)
ADP machines	1,273	0%/0%
Transmission apparatus and video cameras	501	0% - 5%/0% - 5%
Women's or girls' apparel	324	17.5%/17.5%
Parts for office machines	298	0%/0%
Toys	297	0% - 5%/0% - 5%
Reception apparatus for televisions, video monitors and projectors	280	0% - 5%/0% - 5%
Leather footwear	265	0% - 10%/0% - 10%
Cases, bags, wallets, purses etc	252	0% - 5%/0% - 4% DCS preference
Medical, veterinary or barbers' furniture	245	5%/5%
T-shirts	219	17.5%/17.5%

3.2.3.1 Tariffs Applying to Manufacturing Products

Australia

Since the 1980s, Australia has pursued successive rounds of unilateral tariff reductions for manufacturing. By 2001, Australia's simple average applied MFN tariff rate for all non-agricultural products had declined to 4.6 per cent, compared with a simple average WTO bound tariff rate of 11.0 per cent.

[22] Source: China's Ministry of Finance 2005 Tariff Schedule.

[23] Sources: ABS, DFAT Tariff Database.

Australia's tariff regime for manufactures comprises applied general tariffs at 5 per cent or zero, with the exception of passenger motor vehicles (PMV), including parts and components, for which tariffs are 10 per cent, and textiles, clothing and footwear (TCF), for which tariffs are at various levels currently ranging from 5 to 17.5 per cent. Australia is currently implementing a further program of significant tariff reductions for these sectors with tariffs falling to 5 per cent by 2010 for the PMV sector and 2015 for the TCF sector. A zero tariff applies to most seafood items, with the exception of a 5 per cent applied tariff on canned tuna.

Based on 2004 import levels, Chinese manufacturing exporters would face a trade-weighted average applied tariff of 5.6 per cent in 2005, with tariffs ranging from zero to 17.5 per cent.

China

In 2005, the average tariff rate applied to non-agricultural products was 9.3 per cent (the average tariff on fish and forest products is 10.5 per cent and 4.6 per cent respectively in 2005). The tariff on vehicles and automotive accessories will be reduced to 25 per cent and 10 per cent (average level) respectively on 1 July 2006. The WTO commitment to reduce tariffs on certain kinds of chemicals will be completed by the end of 2008.

Currently, China applies TRQs on a number of manufactured products, including wool tops and certain chemical fertilizers (Table 3.11).

Table 3.11 China's Tariff Rate Quotas in 2005[24]

Products	Tariff No.	TRQ (10,000 ton)	Out-quota Tariff Rate(%)	In-quota Tariff Rate(%)
Wool tops	51051000		38	3
	51052100		38	3
	51052900		38	3
Chemical fertilizer	31021000	280	50	4
	31052000	328.2	50	4
	31053000	656.4	50	4

Based on 2004 import levels, Australian manufacturing exporters would face a trade-weighted average applied tariff of 6.6 per cent in 2005, with tariffs ranging from zero to 45 per cent.

3.2.3.2 Non-Tariff Measures Affecting Trade in Manufacturing Products

Non-tariff measures which could be addressed by a possible FTA and that have been raised by Australian and Chinese exporters as part of consultations for this study include:

- sanitary and phytosanitary measures (see Chapter 6.3);
- technical regulations and standards and conformance (see Chapter 6.4);
- customs administration, valuation and port clearance (see Chapter 6.2);
- intellectual property rights (see Chapter 6.6);
- transparency of administration and appeal and dispute resolution (see Chapter 6.9);

[24] Source: China's Ministry of Finance 2005 Tariff Schedule.

- import licensing registration procedures;
- state/provincial administrative arrangements; and
- state trading.

3.3 Overall Impacts of Trade Liberalisation on Goods

Liberalising goods trade by addressing both tariffs and non-tariff measures will be a key component of a possible FTA between Australia and China. An FTA would be expected to eliminate tariffs on substantially all trade between the two countries as early as possible and ensure that non-tariff measures do not negate the trade and economic benefits of tariff elimination to the extent possible. While taking into account the domestic income and employment impacts on each sector, the net result, as confirmed by the results of economic modelling, would include lower prices and increased choice of consumer goods and inputs into production processes, and improved market access opportunities for exporters.

Earlier chapters have highlighted the natural complementarities in goods trade between Australia and China, the rapid growth in merchandise trade, as well as some of the tariff and non-tariff measures that currently impede trade.

- In Australia, the most significant of these tariff barriers apply to agricultural and food products, motor vehicles, and textiles, clothing and footwear. In China, the tariff level is relatively high compared with Australia, with the simple average tariff in 2005 being 9.9 per cent for all products and 15.3 per cent for agricultural products. In both countries, tariff escalation from raw material to finished product impacts on the profile of exports between the two countries.
- Both countries have a range of non-tariff measures that affect goods trade, including in the areas of sanitary and phytosanitary arrangements; technical regulations and standards; customs administration, valuation and port clearance; intellectual property rights; transparency of administration and dispute resolution procedures; import licensing registration procedures; state/provincial administrative arrangements; and state trading.

In addressing both tariffs and non-tariff measures in a possible FTA, the way in which trade flows expand would partly depend on the capacity and comparative advantage of industries in each economy to take advantage of new opportunities arising from an FTA. It would also depend on the significance of the industry adjustment issues and the way in which these were addressed in the context of possible FTA negotiations.[25]

Independent economic modelling suggests that the removal of tariffs and tariff rate quotas in 2006 would add 0.012 and 0.006 percentage points respectively to Australia's and China's average annual real GDP growth rate. In 2015, this would be equivalent in real terms to an additional US$944 million (A$1.3 billion) and US$1.6 billion (RMB13.3 billion) in output respectively for Australia and China.

The modelling demonstrates that bilateral trade would expand, with Chinese imports from Australia growing US$3.2 billion (A$4.3 billion) or 15 per cent, and Australia's imports from China increasing US$2.0 billion (RMB16.6 billion) or 7.3 per cent in 2015. Industry sectors that benefit most from an FTA are: in the case of Australia, cereal grains, wool, wool tops, sugar, dairy products, minerals and non-ferrous metals; and, in the case of China, manufacturing industries, especially wearing apparel, textiles, motor vehicles and parts and miscellaneous manufactures (toys and sporting equipment). The modelling also shows increased opportunities for two-way trade in chemical and plastics products and machinery and equipment.

[25] For example, previous FTAs negotiated by Australia and China with other parties have employed phasing of tariff reductions and the use of product-specific bilateral safeguards as measures to assist industry adjustment to the competitive challenges imposed by trade liberalisation.

Net employment growth is expected in Australia and China as a result of a possible FTA. The modelling demonstrates that any adjustment costs (e.g. falls in the level of employment relative to baseline), particularly for the Australian clothing and automotive industries and the Chinese agricultural and mining sectors, would be relatively small compared with the adjustment that is already underway as a result of domestic reform or globalisation.

Case studies on the automotive industry, chemicals and plastics, cotton, dairy, forest products, grains, horticulture, meat, rapeseed, seafood, sugar, textiles and clothing, wheat and wool (see below) illustrate some of the net benefits of expanding market access for goods between Australia and China, and highlight the importance of a possible FTA addressing non-tariff measures to ensure the flowthrough of reductions in tariff levels. The studies also identify challenges and industry adjustment associated with liberalising trade in goods, in particular the possible impact on some of China's agricultural industries and some of Australia's horticulture and manufacturing industries which would need to be taken into account in a possible FTA.

Case Studies Illustrative of the Impact on Individual Goods Sectors of Trade Liberalisation[26]

Cotton

Australia's annual cotton production averaged 0.5 million tonnes over the three years 2001-2003, accounting for 2.3 per cent of world production. The annual volume of Australia's total exports to the world averaged 0.7 million tonnes over the same period.[27] Generally, over 90 per cent of Australia's cotton production is exported.

China is the fourth-largest cotton producer in the world. Annual cotton production is 5-6 million tonnes accounting for approximately 25 per cent of world production. China's cotton production is mainly used for domestic consumption. Cotton imports fluctuate frequently. Imports were 208,000 tonnes in 2002 and 1,984,000 tonnes in 2004.

Australia is the fourth largest supplier of cotton to China with annual cotton imports over the period 2001-2003 averaging 23,222 tonnes, representing 6.3 per cent of China's total cotton imports and 0.5 per cent and 0.4 per cent of China's domestic production and consumption, respectively. Between 2001 and 2003 Australia's cotton exports to China averaged 3.6 per cent of total Australian cotton exports.

China's cotton imports are subject to a TRQ. The in-quota tariff is 1 per cent and the out-of-quota tariff 40 per cent. TRQ volumes increased from 818,500 tonnes in 2002 to 894,000 tonnes in 2004 (final bound level). There are no tariffs on cotton imports into Australia.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues. Given differences in competitiveness and levels of productivity between cotton production in Australia and China, a possible FTA could also take into account the impact of further liberalisation on the development of China's cotton production and farmers' incomes and Australia's capability of production and supply.

[26] Data sources for agriculture case studies, unless otherwise specified, are China's Customs (China's trade figures); China's Statistics Bureau (China's production); DFAT STARS database (Australian trade figures); USDA database (China and World's production and consumption figures); and ABARE, *Australian Commodities December Quarter 2004* (Australian production figures). In order to draw comparisons between Australian and Chinese production/trade data, figures are on a calendar year unless otherwise specified.

[27] Exports are higher than production reflecting in part carryover of stocks from one reporting period to the next.

Dairy

Australia's annual milk production averaged 10.7 million litres over the period 2000-01 to 2002-03. 80 per cent of Australia's whole milk production is used for processing into products such as butter and cheese. Australia exports 52 per cent of its dairy output.

With the rapid development of China's dairy industry, milk production has increased rapidly in recent years. The number of cows in China increased from 4.2 million head in 1990 to 8.9 million head in 2002, an average annual growth rate of 9.7 per cent. Milk output increased correspondingly from 4.2 million tonnes in 1990 to 17.5 million tonnes in 2003 (an average annual growth rate of 11.7 per cent).

The milk processing industry in China has also developed quickly. The output of dry milk products (including milk powder and cheese) increased from 0.3 million tonnes in 1990 to 1.4 million tonnes in 2003, with an average annual growth rate of 13.3 per cent. Aiming to promote the development of the dairy industry and to increase the unit production of milk, China imports breeding cattle from countries such as Australia and New Zealand. In 2003, China imported 50,000 head, with Australia accounting for 82.3 per cent of the total.

Australia is China's third-largest supplier of dairy products, after New Zealand and the United States. Australia's annual dairy exports to China averaged 43,170 tonnes over the period 2001-2003 (or 4.6 per cent of Australia's total dairy exports), representing 16.6 per cent of China's average annual dairy imports and 0.3 per cent of China's total production.

As a result of China's accession to the WTO, there have been considerable reductions in tariffs on all dairy lines. Today, most dairy products entering China face a tariff of less than 15 per cent (compared to 50 per cent in 2001).

Australia administers a TRQ on imports of certain types of cheese and curd. The tariff rate quota per annum is 11,500 tonnes, with an in-quota tariff of A$0.096 (US$0.07)/kg and an out-of-quota tariff of A$1.22 (US$0.9)/kg. Australia's tariffs on butter and skim/whey milk powder are bound at 1 per cent, with a current applied rate of zero per cent.

Independent economic modelling confirms tariff liberalisation in dairy products trade under a possible FTA has the potential to lead to an increase in imports of dairy products into China from Australia.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues. Given differences in competitiveness and levels of productivity between dairy production in Australia and China, a possible FTA could also take into account the impact of further liberalisation on the development of China's dairy production and farmers' incomes and Australia's capability of production and supply.

Horticulture[28]

Australian fruit and vegetable production averaged 6,693 kilotonnes per year over the three year period 2000-01 to 2002-03, comprising 3,712 kilotonnes of fruit and 2,981 kilotonnes of vegetables. Australia's fruit and vegetable exports (fresh and processed) averaged US$654 million per year over the same three-year period, with major fruit items including citrus, grapes and stonefruit. More fruit is exported than vegetables, with carrots, asparagus, onions and cauliflower being key vegetable exports.

China is the world's largest horticulture producer averaging 39.8 per cent of world production over the three years 2001-2003. The majority of China's horticulture production is for domestic consumption. Over the three years 2001-2003, China imported 3.2 million tonnes of horticulture

[28] Horticulture covers fruit, vegetables, flowers and plants.

products from the world. Over the same period China exported 20,483 tonnes of horticulture products.

Australia was the fifteenth-largest source of horticulture imports by volume into China over the period 2001-03, with China's annual imports from Australia over this period averaging 9,055 tonnes or 0.2 per cent of China's average annual imports over the same period. Australia's fruit and vegetable imports from China averaged 20,506 tonnes over the period 2001-2003.

China's WTO accession commitments have seen considerable reductions in tariffs on horticulture products. For example the tariff on oranges has been reduced from 40 per cent to 11 per cent, and mangoes reduced from 25 per cent to 15 per cent. The tariff on other horticulture products ranges between 10-30 per cent. Australian tariffs are applied at 5 per cent or less. Two-way trade is also affected by phytosanitary arrangements (refer Chapter 6.3 on Sanitary and Phytosanitary Cooperation for details).

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues, including transparency and cooperation on import risk assessment. Horticulture production in Australia and China is largely counter seasonal and there is scope for the development of a complementary trade that would benefit both Australian and Chinese horticultural producers by ensuring year-round availability of product. Given differences in competitiveness a possible FTA could take into account the impact on both countries' horticulture industries.

Seafood

Australia's annual seafood production averaged 0.24 million tonnes over the period 2000-01 to 2002-03. Total exports over the same period averaged 58,000 tonnes a year. China is the world's largest seafood producer accounting for 34 per cent of total world output. China is one of the world's largest seafood exporters averaging 1.5 million tonnes a year between 2001-2003 and a significant seafood importer averaging 1.4 million tonnes of seafood imports a year over the same period.

Australia exported to China on average 4,757 tonnes of seafood a year over the period 2001-2003, representing 0.3 per cent of China's average annual imports. Australia ranks 17th as an import source for China. Growing disposable income in China has led to an increasing demand for seafood and it is anticipated that seafood imports will grow strongly over the next decade. Australia's seafood imports from China averaged 6,386 tonnes between 2001 and 2003 – mainly prawns, fish, crab and frozen fish.

China's tariff rate for most seafood products ranges between 10-16 per cent. Australia has one remaining tariff, which is 5 per cent on canned tuna.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address more streamlined import administrative requirements.

Forest Products

Australia's forests produced an average of 25.2 million cubic metres of forest products and 2.9 million tonnes of paper products over the period 2000-01 to 2002-03. Australia is a net importer of forest products – exports averaged 11.8 million cubic metres of forest products and 0.8 million tonnes of paper and imports averaged 9.9 million cubic metres and 1.4 million tonnes of paper.

China's production of forest products (unprocessed logs) was 47.59 million cubic metres and 43 million tonnes of paper and paper board in 2003.

On average Australia's annual exports of forest and paper products to China over the period 2000-01 to 2002-03 consisted of: unprocessed logs (99,000 cubic metres); sawn wood (10,300 cubic metres); wood-based panels (105,300 cubic metres); paper and paper products (197,800 tonnes); and miscellaneous forest products.

Over the same period, average annual Chinese forest and paper exports to Australia consisted of: sawn wood (1,000 cubic metres); wood-based panels (6,900 cubic metres); and paper and paper products (44,400 tonnes).

For logs and woodchips, China's tariffs are currently less than 5 per cent with most set at 1 per cent. Tariffs on processed wood products currently range from 4-17 per cent, and paper products 0-11 per cent. Further tariff reductions will be phased in until 2010 under China's WTO accession commitments. Australia's tariffs on forest products, including paper products range between zero and 5 per cent.

In addition to tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could consider specific market access issues including tariff escalation.

Bilateral trade is expected to continue to grow in coming years. Australian forestry exports to China concentrate on specific niche markets where demand exceeds domestic supply. In particular, Australia expects expanding Chinese demand for sawn wood imports to meet growing housing construction needs and that there will be a continuing strong demand for higher valued and secondary processed wood products. The Australian and Chinese forestry industries have also entered into a number of joint cooperation projects to share their expertise and progress issues of mutual interest. Such industry activities could be supported by government-to-government cooperative initiatives. A possible FTA could take into account the potential impact on both countries' processed forestry products.

Meat

Beef and Veal

China is the third-largest beef producer in the world, with total cattle numbers over 130 million head compared to an Australian herd of 27 million.

Over the period 2001-2003, Australia's annual average production of beef and veal was 2.1 million tonnes, of which 43.9 per cent was exported. Australia's average annual exports to China were 3,128 tonnes over the same period, representing 27 per cent of China's total beef and veal imports, and met shortfalls in the production of high quality beef products. Australia's exports to China averaged only 0.05 per cent of China's annual production of beef and veal between 2001 and 2003. There have been no beef and veal exports from China to Australia to date.

Australia applies a zero tariff on bovine meat. China's applied tariffs for bovine meat range between 12-25 per cent.

Sheep and Goat Meat

Over the period 2001-03, Australia's annual average production of sheep meat was 0.6 million tonnes, of which 0.3 million tonnes was exported. China is the largest mutton and goat meat producer in the world. China imported on average 31,368 tonnes of sheep meat a year over the period 2001-03. During this period Australia was the second-largest source of sheep meat imports into China (after New Zealand). Average Australian exports over the period 2001-03 were 7,286 tonnes. This represents 23.2 per cent of total Chinese sheep meat imports and is equivalent to 0.4 per cent of annual Chinese sheep meat production over the same period. There have been no sheep meat exports from China to Australia to date.

Australia applies a zero tariff on sheep and goat meat. China's applied tariffs for mutton and goat meat range between 12 and 23 per cent.

Pork

China is one of the world's largest pork producers and exporters. Over the period 2001-03, China averaged annual production of 43.4 million tonnes of pork and exports to the world of 159,591 tonnes. Over the period 2001-03, Australia's annual average production of pork was 0.4 million tonnes, of which 57,576 tonnes were exported. Chinese imports of Australian pork over the period

2001-03 averaged 658 tonnes per annum, representing 0.5 per cent of total Chinese pork imports and 0.001 per cent of Chinese production. There have been no pork exports from China to Australia to date.

Australia applies a zero tariff on pork. China applies tariffs in the range of 12-20 per cent on pork products.

Poultry

China is the largest poultry producer in the world. Over the period 2001-03, it produced an average of 9.6 million tonnes. There have been no poultry exports from China to Australia to date. Over the period 2001-03, Australia's annual average production of poultry was 0.7 million tonnes, of which 22,111 tonnes were exported. Average Australian exports to China over the period 2001-03 were 1,101 tonnes per annum, representing 0.06 per cent of total Chinese poultry imports and equivalent to 0.03 per cent of China's poultry production over the same period.

Australia applies a zero tariff on poultry. China applies a 20 per cent tariff on poultry or a specific duty of RMB0.5 (US$0.06)-RMB1.4 (US$0.17)/kg for certain poultry products.

Independent economic modelling confirms tariff liberalisation in meat trade under a possible FTA has the potential to lead to an increase in imports of meat products from Australia into China. The modelling does not demonstrate any increase in imports to Australia from China because current imports from China are very low and tariffs are zero.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues. Given differences in competitiveness and levels of productivity between meat production in Australia and China, a possible FTA could also take into account the impact of further liberalisation on the development of China's meat production and farmers' incomes and Australia's capability of production and supply.

Barley

Australia is the second-largest barley producer in the world after the EU. Australia's average annual production over the three years 2001-2003 was 6.2 million tonnes. Average Australian exports to the world over the same period were 4.1 million tonnes, however there were significant fluctuations during this period due to severe drought.

In the period 2001-2003, annual barley production in China averaged 3.0 million tonnes with average domestic consumption of 4.9 million tonnes. The average annual shortfall of 1.9 million tonnes over this period was met by imports from Australia and a number of other countries.

China is currently the largest beer producer in the world and although the area sown to barley in China for beer production has increased as demand for beer has grown, China relies on imports which account for around one-third of consumption. China is the world's second-largest importer of barley, with annual imports averaging 1.9 million tonnes over the three years 2001-2003.

In the three-year period 2001-2003, Australia was China's largest source of barley imports, with other exporters including France, Canada and the United States. For the same period, Australian average barley exports to China of 1.1 million tonnes per annum represented 60.7 per cent of total annual Chinese barley imports and 38.3 per cent of total annual Chinese barley production.

As the largest supplier of barley imports to China, Australia has developed an important trading relationship with China servicing the expanding brewing industry.

Australia applies a zero tariff on barley imports. China currently applies a 3 per cent tariff. By removal of the tariff and addressing relevant non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could provide an incentive to enhance further an already strong relationship.

Wool

Australia is the world's second-largest sheep breeding country after China. The average size of the Australian flock over the period 2001-2003 was 100 million head. Merino is the main breed of sheep in Australia. Australia is the world's largest wool producer. Average annual production of wool over the three years 2001-2003 was 0.6 million tonnes (27 per cent of world wool production). Australia's annual exports to the world over the same period averaged 0.678 million tonnes.

China is the world's largest sheep producer with 157.3 million head in 2004, accounting for 15 per cent of world sheep production. China is also the third-largest wool producer in the world, outstripped only by Australia and New Zealand. Over the period 2001-2003 on average China produced 0.3 million tonnes of wool per annum. Over the period 2001-2003 China on average imported 0.2 million tonnes of wool per annum. At present, China is the world's largest importer of wool and Australia is China's major source of wool imports.

Over the three year period 2001-2003 Australia exported on average 0.15 million tonnes of wool to China annually. This represented 62.9 per cent of China's average annual wool imports and 48.7 per cent of China's average annual production. Australia has traditionally exported finer quality wool to China as an input into China's finer textiles and apparel wear.

Australia applies a zero tariff on wool. China maintains a TRQ on wool and wool tops. The tariff quota volume for wool has increased from 264,500 tonnes in 2002 to 287,000 tonnes in 2004 (and that of wool tops has increased from 72,500 tonnes to 80,000 tonnes in the same period of time). The in-quota tariff rates applied to wool and wool tops are respectively 1 per cent and 3 per cent. The out-of-quota tariff rate is 38 per cent.

Independent economic modelling confirms tariff liberalisation in raw wool trade under a possible FTA has the potential to lead to an increase in imports of wool from Australia into China. The modelling does not demonstrate any increase in imports to Australia from China because current imports from China are very low and the Australian tariff is zero.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues. Given differences in competitiveness and levels of productivity between wool production in Australia and China, a possible FTA could also take into account the impact of further liberalisation on the development of China's wool production and farmers' incomes and Australia's capability of production and supply.

Wheat

Australia is an important world wheat producer. The main type of wheat produced is white wheat (63 per cent) and hard wheat (19 per cent). Average wheat production over the three years 2001-2003 was 18.8 million tonnes. Average exports for the same period totalled 13.8 million tonnes, however there were significant fluctuations during this period due to severe drought. In normal years Australia is one of the world's largest wheat exporters, ranking second over the period 2001-2003, but well behind the United States.

China is the world's second-largest wheat producer after the EU. Annual production over the period 2001-2003 averaged 90.2 million tonnes, accounting for 15.9 per cent of total world production.

In the three-year period 2001-2003, Australia was on average China's third-largest source of wheat imports, behind Canada and the United States. For the same period, Australia's wheat exports to China averaged 43,964 tonnes per annum representing 7.7 per cent of China's total wheat imports and 0.05 per cent of China's total average annual wheat production.

Both Australia and China apply pest and disease restrictions which impact on wheat imports. There are no tariffs on wheat imports to Australia. Australia's bulk wheat exports are carried out by AWB Ltd. Chinese wheat imports are subject to a tariff quota arrangement. The in-quota tariff is 1 per cent and the out-of-quota tariff 65 per cent. China's TRQ volume for wheat is 9.6 million

tonnes. As part of its WTO accession commitments, China also agreed to allocate 90 per cent of in-quota imports through the state trading agency COFCO.

Independent economic modelling confirms tariff liberalisation in wheat trade under a possible FTA has the potential to lead to an increase in imports of wheat from Australia into China in 2015. The modelling does not demonstrate any increase in imports to Australia from China because current imports from China are very low and Australian tariffs are low.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues. Given differences in competitiveness and levels of productivity between wheat production in Australia and China, a possible FTA could also take into account the impact of further liberalisation on the development of China's wheat production and farmers' incomes and Australia's capability of production and supply.

Sugar

Over the period 2001-2003 Australia's annual average sugar cane production was 5.1 million tonnes, of which 3.7 million tonnes of raw sugar were exported worldwide. Australia does not produce sugar beet. China is the fourth-largest sugar producer in the world after Brazil, India and the EU. Average annual Chinese sugar cane production over the period 2001-2003 was 87.4 million tonnes. Sugar cane accounts for 93.6 per cent of China's production (beet accounts for the remainder).

Australian sugar exports to China averaged 0.1 million tonnes over the period 2001-2003. This represents 9.7 per cent of China's total average annual sugar imports, 0.1 per cent of China's average annual sugar cane production and 1 per cent of China's consumption over the same period.

China maintains a tariff rate quota on sugar. The tariff rate quota volume commitment in 2005 is 1.945 million tonnes. The in-quota tariff rate is 15 per cent and the out-of-quota tariff rate is 50 per cent. Tariffs on sugar imports into Australia range between zero and 5 per cent depending on the tariff line.

Economic modelling suggests tariff liberalisation in sugar trade under a possible FTA has the potential to lead to some increase in imports of sugar from Australia into China. The modelling does not demonstrate any increase in imports to Australia from China because current imports from China are very low and tariffs rates are low.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues, including TRQ administration. Given differences in competitiveness and levels of productivity between sugar production in Australia and China, a possible FTA could also take into account the impact of further liberalisation on the development of China's sugar production and farmers' incomes and Australia's capability of production and supply.

Rapeseed

Australia's average annual production of rapeseed over the three years 2001-2003 was 1.4 million tonnes. Average annual rapeseed exports for the same period totalled 1.1 million tonnes.

China is the world's major producer of rapeseed. Average annual production over the period 2001-2003 was 11 million tonnes, accounting for 30.8 per cent of world production. China imports rapeseed to fill the gap in domestic demand. China's average annual imports of rapeseed over the period 2001-2003 were 0.84 million tonnes. China imports rapeseed mainly from Canada, Australia and the EU.

In the three-year period 2001-2003, Australia's rapeseed exports to China averaged 0.2 million tonnes per annum, representing 25.2 per cent of China's total average annual rapeseed imports, 1.9 per cent of China's total average annual rapeseed production, and 1.8 per cent of China's consumption. Australia is China's second-largest source of rapeseed imports, well after Canada.

China currently maintains a tariff rate quota on rapeseed oil imports with a tariff quota volume of 1.24 million tonnes in 2005. In-quota tariffs are 9 per cent and out-of-quota tariffs are 19.9 per cent. Under WTO accession commitments the tariff quota on rapeseed oil will be eliminated from 2006 and all imports will then be subject to a single tariff rate of 9 per cent. Australia has a tariff on rapeseed oil of 5 per cent.

Independent economic modelling confirms tariff liberalisation in oilseeds trade under a possible FTA has the potential to lead to an increase in imports of oilseeds from Australia into China. The modelling does not demonstrate any increase in imports to Australia from China because current imports from China are very low and the Australian tariff is low.

In addition to the tariff and non-tariff measures affecting agricultural trade identified elsewhere in Chapter 3, a possible FTA could address specific market access issues. Given differences in competitiveness and levels of productivity between rapeseed production in Australia and China, a possible FTA could also take into account the impact of further liberalisation on the development of China's rapeseed production and farmers' incomes and Australia's capability of production and supply.

Textiles and Clothing

China is a major player in the global textiles and clothing industries, with total exports of clothing of US$61.6 billion in 2004 and total exports of textiles of US$21 billion in the same year. Total Australian clothing[29] and textile[30] exports are significantly lower (US$0.2 billion and US$0.05 billion respectively in 2003), in part reflecting ongoing industry structural adjustment (including the reallocation of investment from Australia to countries with lower labour costs such as China).

Chinese clothing accounted for 74 per cent of Australia's total clothing imports and more than 35 per cent of clothing consumption in 2003. Australia's textile exports to China seem to be used predominantly for making-up and re-exporting, and China is the fourth-largest destination for Australian textile exports (including wool tops) in 2003. Chinese imports represented around 23 per cent of Australia's total textile imports in 2003.

In 2004, China's export of clothing and textiles to Australia amounted to US$1.4 billion and US$0.4 billion respectively, while clothing and textile imports from Australia were respectively US$17.1 million and US$28.2 million.

Both Australia and China apply tariffs on textile and clothing products. As at 1 January 2005, Australian tariffs ranged from below 5 per cent up to 17.5 per cent, and China applied tariffs which ranged from 5 to 25 per cent. There are also non-tariff measures affecting trade in textile and clothing products including those listed in Chapter 3.2.

Independent economic modelling indicates that under a possible FTA Australia's wearing apparel industry would see both a fall in output and employment, but that this would be relatively small compared with the adjustment that is already underway as a result of domestic reform and globalisation. Imports from China would increase by US$516 million as a result of tariff liberalisation. Conversely the modelling indicates that China's wearing apparel industry would experience increases in both output and employment. Imports from Australia would increase by US$46 million as a result of tariff liberalisation.

The modelling also indicates that Australia's textiles industry would by 2015 experience both an increase in output and employment as a result of greater market access for wool tops, and that textile imports from China would increase by US$223 million. The modelling also suggests that China's textiles industry would by 2015 experience small increases in both output and employment. Imports from Australia would increase by US$359 million as a result of tariff liberalisation.

---

[29] For this analysis, clothing covers all tariff lines in HS Chapters 61 and 62.

[30] Textiles do not include tariff lines that fall within the agriculture sector as set out in the WTO Agreement on Agriculture, i.e. they cover HS 50-60 and 63 less clothing; and 5001-5003, 5101-5103, 5201-5203, and 5301-5302.

A possible FTA provides an opportunity for supporting further two-way trade through liberalisation in tariff and non-tariff measures.

For Australia, it may provide opportunities for exports of brand-name clothing products (as they become more price competitive relative to other imports). Investment liberalisation in China could lead to more Australian manufacturers increasing investment in China. For China, the removal of Australia's tariffs would lower the cost to consumers of Chinese manufactured clothing relative to other imports, resulting in increased Chinese production and associated investment. A possible FTA may lead to a change in China's share of imports into the Australian market.

For the textiles industry, goods trade liberalisation may result in new opportunities in supplying China's increasing demand for specialist textiles and result in increased Australian demand for more price-competitive textile products.

The impact of further tariff liberalisation on Australian textile and clothing output and employment could be taken into account in a possible FTA, although the impact is expected to be less than the structural adjustment already underway as a result of domestic reform and globalisation.

Automotive Industry

The Australian automotive industry is small by world standards – its four manufacturers produced 410,000 vehicles in 2003, of which over 120,000 were exported. Australia produces only large to medium-sized vehicles. There are also over 200 automobile component firms supporting vehicle producers and the aftermarket. China is currently the fifth-largest global market for vehicles. In 2003, China's more than 100 car makers produced 4.44 million vehicles across the full model range. China also has over 4,000 component producers. All major global vehicle and component producers are represented in China, mainly through joint-venture partnerships.

Bilateral trade in automotives and components has been growing steadily from a low base over the past decade reflecting in part continued tariff liberalisation in both countries. Chinese automotive imports from Australia have grown at an average annual rate of 14.9 per cent[31] over the last decade to reach US$46.3 million[32] in 2003-2004, and Australian automotive imports from China over the same period have grown by an annual average rate of 21 per cent to reach US$176.9 million.

Both Australia and China apply tariffs on automotive products. As at 1 January 2005, Australian tariffs applied to 11 automotive products and ranged from below 5 per cent to 10 per cent, and China's tariffs applied to 11 automotive products and ranged from 4 to 45 per cent. There are also non-tariff measures affecting trade in automotive products including those listed in Chapter 3.2.

Independent economic modelling indicates that under a possible FTA Australia's motor vehicle and parts industry would in 2015 experience small falls in both output and employment. Imports from China would increase by US$56 million as a result of tariff liberalisation. Conversely the modelling indicates that China's motor vehicle and parts industry would in 2015 experience small increases in both output and employment. Imports from Australia would increase by US$17 million as a result of tariff liberalisation.

A possible FTA provides an opportunity for encouraging growth in two-way trade through further liberalisation in tariff and non-tariff measures. The removal of tariffs will likely result in increased demand for Australian components and vehicles in China, and may lead to greater integration of Australian component producers in the supply chains of the Chinese vehicle producers. The FTA could also lead to Australian component producers further increasing their investment in China. Reducing Australian tariffs for Chinese imports could result in increased demand for Chinese-sourced vehicles and components, benefiting consumers through lower prices, including automotive manufacturers that use Chinese-sourced inputs for production. A possible FTA should take into account the potential impact on both countries' automotive industries, in particular Australia's automotive component producers.

[31] Source: China's Customs.

[32] Source: ABS.

Chemicals and Plastics[33]

Annual turnover of chemicals and plastics manufacturing in Australia was over US$15.9 billion or 9 per cent of total manufacturing in 2002-03, and the industry employed 81,300 people or over 8 per cent of the total manufacturing industry workforce in 2000-01. Annual imports of chemicals and plastics totalled around US$7 billion in 2002-03, and it is estimated that by 2010 imports will increase by US$11.8 billion and meet more than 50 per cent of domestic demand for chemicals and plastics.

China's turnover of chemicals and plastics manufacturing in 2004 was about US$188 billion, and the industry employed 4,050,700 people in 2004.

Bilateral trade in chemicals and plastics has grown significantly in recent years, reflecting growth in domestic demand and continued tariff liberalisation in the chemicals and plastics industry and other goods where chemicals and plastics are intermediary inputs. Imports of chemicals and plastics from Australia accounted for 2 per cent of China's imports of chemicals and plastics in 2004. Imports of chemicals and plastics from China accounted for 6 per cent of Australia's total merchandise imports in the same year.

Both Australia and China apply tariffs on chemicals and plastics products. Australian tariffs range between zero and 5 per cent and Chinese tariffs range from 5 to 15 per cent. There are also non-tariff measures affecting trade in chemicals and plastics products including those listed in Chapter 3.2.

Independent economic modelling indicates that both the Australian and Chinese chemicals and plastics industries would experience small increases in output as a result of tariff liberalisation. The modelling also indicates that in 2015 for Australia, imports from China would increase by US$259 million and for China, imports from Australia would increase by US$249 million.

A possible FTA provides an opportunity for increased two-way trade in chemicals and plastics products through further liberalisation of tariffs and non-tariff measures. As illustrated in the modelling, demand for chemicals and plastics products in each country is likely to increase as these products become more price competitive relative to other imports. Increased exports of other products as a result of goods trade liberalisation could also benefit chemicals and plastics production, given the high proportion of domestic production used as inputs in other manufacturing processes.

However, given the significant fixed costs associated with plastics and chemicals production, downward price pressures on domestic producers could lead to some firms exiting the industry. A possible FTA should take into account the potential impact on both countries' chemicals and plastics industries.

[33] Includes ANZIC Codes 253, 254 (less 2543 (Pharmaceuticals)), 255 and 256.

3.4 Rules of Origin

Preferential rules of origin (ROOs) are used to determine whether a good qualifies under an FTA for concessional entry. ROOs are necessary to restrict the benefits reciprocally negotiated under an FTA to the parties to that FTA. At a minimum such rules should ensure that goods that are transhipped or subject to only minimal processing in the FTA parties do not qualify for tariff preferences under the FTA.

Generally, a good is taken to originate in a given country if it was *wholly obtained* in that country or, where some inputs to production come from outside the FTA area or where some part of the production process took place outside of the FTA area, if the good resulted from *substantial transformation* in that country.

Wholly obtained is where a good is wholly produced or manufactured in one country from materials wholly originating in either FTA country. *Substantial transformation* can be defined either across all products or on a product-by-product basis, by applying one of the following methods or a combination of these:

- *Change in tariff classification (CTC) method:* under this method, a good after production is required to be classified under a different tariff classification from that of its component materials;
- *Value-added method:* under this method, a minimum percentage of the value of a good must have been added within the country or preferential area for which origin is being claimed; and
- *Specified process or manufacture operations method:* under this method, the origin is based on the country in which a specified manufacturing, or processing, operation for a specific product is undertaken.

Preferential rules of origin are negotiated separately for each FTA by the parties to that FTA in accordance with the specific circumstances of those parties. The following outlines the current approaches to rules of origin in Australia and China, and possible future directions in the context of a possible FTA.

3.4.1 Overview of Australia's Rules of Origin Regimes

Australia has a number of different ROOs regimes under various trade agreements and other preferential arrangements. These ROOs regimes can be broadly classified into two main groups: across-the-board based on factory cost and product-specific based on CTC.

Factory cost

Australia's factory cost ROOs are a variant on the value-added approach and have a two-fold requirement:

- the last process in the manufacture of the goods must be undertaken in the territory of the Party; and
- 50 per cent of the factory cost of producing the finished goods must be allowable costs, representing local content, incurred by the manufacturer of the goods.

The factory cost is calculated using a specified set of costs covering the materials used in production and certain overhead and labour costs.

This ROO, with some variation, forms the basis for Australia's trade agreements with New Zealand, Singapore, Papua New Guinea and the Forum Island Countries, the Australian Generalised Tariff

Preference (AGTP) system for developing countries and duty-free preference for Least Developed Countries, with some variations. A summary of the major differences are:

- the FTAs with New Zealand and Papua New Guinea apply the factory cost ROOs with no major change;
- the FTA with Singapore allows a lower 30 per cent of factory cost on some electrical and electronic goods and goods not made in Australia;
- the agreement with the Forum Island Countries allows costs of materials to be counted towards the 50 per cent requirement if they originate in any signatory to the Agreement, i.e. Australia, New Zealand or any Forum Island country;
- the AGTP allows costs of materials to be counted if they originate in any recognised developing country; and
- the Least Developed Countries preference allows 25 percentage points of the required 50 per cent to come from materials that originate in any recognised developing countries.

Australia's trade agreement with Canada also uses a variant of this ROO with a 75 per cent factory cost requirement for goods that are also made in Australia and 25 per cent for goods not also made in Australia.

Australia and New Zealand are currently working on moving from a factory cost ROO to a CTC for the *Australia-New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA). It is envisaged that Australia will be looking for more consistency in approaches to ROOs across other trade agreements.

Change of Tariff Classification

Product-specific ROOs based on change of tariff classification are used in Australia's FTAs with the United States and Thailand. These ROOs require imports to undergo a specified change in tariff classification, supplemented in some cases (largely the machinery and electronic equipment tariff chapters) by a regional value content (local content) requirement.

The ROOs in Australia's FTAs with the United States and Thailand are broadly similar with the major differences being:

- textiles and clothing:
    - the US agreement has a *yarn forward* ROO based on change of tariff classification, which requires most finished textile and clothing goods to be sourced from within the Parties from the yarn on (and sometimes fibre on);
    - the Thai agreement has a simpler transformation requirement, based on change of tariff classification, with an additional 55 per cent regional value content requirement. Up to 25 percentage points of the 55 per cent can come from materials that are the origin of other developing countries provided that they undergo the specified transformation.
- regional value content:
    - Australia's FTA with the United States uses three methods to calculate regional value content.
        - *build down* which is calculated as the share of non-originating content to the free on board (FOB) price of the finished good. The content level under this method ranges from 35 to 65 per cent;
        - *build up* which is calculated as the share of local materials to the FOB price of the finished good. The content level under this method ranges from 30 to 65 per cent; and
        - *net cost* which is calculated as 1 minus the share of non-originating materials to the net cost of producing the finished good; the net cost is roughly analogous to the factory cost. The net cost method only applies to automotive and automotive part goods. The content level under this method is 50 per cent.

The Australia-Thailand FTA uses the *build down* method only. The required content level ranges from 40 to 55 per cent.

The Thai and United States FTAs also provide that a good will be originating if it is produced in the FTA area exclusively from originating inputs to production (i.e. from originating materials), either wholly obtained or where they have met the relevant CTC. This means that if imported inputs to production have already passed the criteria for determining origin then when they are used with other originating materials, they do not have to again meet this criteria.

3.4.2 Overview of China's Rules of Origin Regimes

The *Provisional Rules of Origin for Imports of the General Administration of Customs of the People's Republic of China* provides China's basic rules for determining the origin of imports. Imports are sorted into two categories, *wholly obtained* and *partially obtained*. The latter is determined on the basis of substantial transformation.

Goods wholly obtained or produced in a given country shall be taken as originating in that country, which includes the following: (1) mineral products extracted from its soil or territorial waters; (2) vegetable products harvested or gathered from its soil or territorial waters; (3) live animals born and raised and products obtained from live animals in that country; (4) products obtained from hunting, trapping or fishing conducted on its soil or territorial waters; (5) sea-fishing products and other products taken from the high sea by a vessel of that country; (6) products obtained aboard a factory ship of that country solely from products referred to in (5) above; (7) scrap and waste collected in that country and fit only for the recovery of raw materials; (8) scrap and waste derived from manufacturing or processing operations in that country; (9) goods obtained or produced in that country solely from the products referred to in (1) to (8) above.

The criteria for making the determination of substantial transformation are: (a) change in tariff classification of a four-digit tariff line in the Customs Tariff; or (b) the value-added component constituting 30 per cent or more of the total value of a new product.

China promulgated new regulations on the origin of imports and exports in September 2004. From January 2005, the new criteria for the determination of substantial transformation are mainly based on change in tariff classification. The criteria for value-added component and processing operations will be as supplemented in the new Rules of Origin.

China is now participating in some regional economic cooperation mechanisms and has adopted the following preferential rules of origin regimes:

China-ASEAN Free Trade Area

The criteria applied for a product not wholly produced or obtained under the *China-ASEAN Free Trade Agreement* (ACFTA) are as follows:

- not less than 40 per cent of its content originates from any Party; or
- if the total value of the materials, part or produce originating from outside of the territory of a Party does not exceed 60 per cent of the FOB value of the product so produced or obtained, provided that the final process of the manufacture is performed within the territory of the Party.

A cumulative ROO is also applied, under which products used in the territory of a party as materials for a finished product eligible for preferential treatment under the Agreement shall be considered as products originating in the territory of the Party where working or processing of the finished product has taken place provided that the aggregate ACFTA content (i.e. full cumulation, applicable among all Parties) on the final product is not less than 40 per cent.

Product-specific ROOs under the Agreement are currently under negotiation.

Closer Economic Partnership Arrangement with Hong Kong, China and Macau, China

Pursuant to the *Mainland China and Hong Kong Special Administrative Region Closer Economic Partnership Arrangement* (SAR CEPA), goods not wholly obtained in one side are considered as originating in that side only if they have undergone substantial transformation in that side. The criteria for determining *substantial transformation* may include *manufacturing or processing operations*, *change in tariff heading*, *value-added content*, *other criteria* or *mixed criteria*.

- *manufacturing or processing operations* refers to the principal manufacturing or processing operations carried out in the area of one side which confer essential characteristics to the goods derived after the operations. Among a total of 273 Hong Kong goods at eight-digit tariff lines benefiting from tariff preference, 187 (about 68 per cent) use this criterion, such as textiles, clothes, jewellery etc.
- *change in tariff heading* refers to the processing and manufacturing operations of non-originating materials carried out in the area of one side and resulting in a product of a different four-digit tariff heading under the Product Description and Harmonized System Codes. Moreover, no production, processing or manufacturing operations will be carried out in countries or territories other than that side which will result in a change in the four-digit tariff heading. There are 46 goods compliant with this criterion, mainly electrical machines and parts, cameras, sound recorders and accessories.
- *value-added content* refers to the total value of raw materials, component parts, labour costs and product development costs exclusively incurred in one side being greater than or equal to 30 per cent of the FOB value of the exporting goods, and that the final manufacturing or processing operations should be completed in the area of that side.
- *other criteria* refers to methods agreed by both sides in determining origin, other than *manufacturing or processing operations*, *change in tariff heading* and *value-added content*.
- *mixed criteria* refers to the use of two or more of the above criteria in determining origin. It is basically the combination of *manufacturing or processing operations* and *value-added content*, and applied to 80 goods out of the total, mainly watches, electrical machines and parts.

Under the Mainland China and Macau SAR CEPA, the rules of origin are basically the same as that under the Mainland China and Hong Kong SAR CEPA.

Bangkok Agreement

As for the ROOs implemented by China under the Bangkok Agreement, where a product is not wholly obtained in a beneficiary country and the non-originating materials, parts or components used in the manufacturing or processing of the product is not more than 50 per cent of the FOB value of that product, the country of origin of the product shall be the beneficiary country where the last manufacturing or processing operation has been carried out. The value is 40 per cent for least developed countries.

3.4.3 Future Directions

Robust, coherent and predictable rules of origin are essential for goods traded under preference. In a possible bilateral FTA, Australia and China would wish to consider rules of origin that facilitate trade and are readily enforceable at the border.

4 Impact of Trade Liberalisation on Services

This chapter provides an overview of regulatory measures affecting trade in services between Australia and China, and highlights the opportunities and challenges of services trade liberalisation between Australia and China through a possible FTA. The supply of services through a commercial presence in both countries (Mode 3) are covered in this chapter and also cross-referenced to Chapter 5 - Impact of Investment Liberalisation.

In accordance with relevant WTO provisions, a possible FTA would be expected to have substantial sectoral coverage and provide for the absence or elimination of substantially all discrimination between services and services providers of the parties. At a minimum, an FTA would need to go beyond each country's commitments in the WTO to maximise economic integration between Australia and China.

Bilateral trade in services has expanded rapidly over the past 10 years from US$0.39 billion in 1993 to US$1.23 billion in 2003. Economic reforms in both countries, have encouraged Australian and Chinese enterprises to be increasingly active in a range of bilateral service based activities.

A number of other issues relevant to this chapter, are addressed in Chapter 5 on liberalising investment and Chapter 6 on bilateral economic cooperation, including trade and investment promotion, temporary entry, intellectual property rights, electronic commerce, transparency and capacity building.

4.1 Overview of Trade Policies and Barriers in the Services Sector

4.1.1 Australia

As a result of decades of autonomous regulatory reform, Australia's services sector comprised 80 per cent of GDP in 2003. This is reflected in the high proportion of services sectors covered by bound commitments under the WTO General Agreement on Trade in Services (GATS). Australia has made commitments in all 12 sectors listed[34] in the Service Sectoral Classification List (W/120).

China was Australia's eighth-largest services export market in 2003. Travel services (mainly education related travel) account for around two-thirds of Australian services exports to China. Transport services are the next largest services export to China. Transport services are also a significant element of China's service activities in Australia reflecting the fact that China accounts for a significant proportion of shipping and associated services involved in transporting Australian resources and energy to China.

4.1.2 China

In 2003, China's services sector contributed 31.8 per cent to GDP. Furthermore, China's trade in services has continued to maintain a steady rate of growth in recent years of approximately 15 per

[34] The 12 sectors are: Business (e.g. accounting, and legal services); Communication; Construction and Engineering; Distribution; Education; Environment; Financial; Health; Tourism and Travel; Recreational, Cultural and Sporting; Transport; and Other.

cent annually. WTO statistics indicate that in 2003, the total volume of China's services trade reached US$102 billion, of which, export (or revenue) accounted for US$46.7 billion, import (or expense) accounted for US$55.3 billion. Since accession to the WTO, China has taken many measures to liberalise its services market, and has already made significant commitments in 10 sectors with 97 sub-sectors listed in the Service Sectoral Classification List (W/120). At present, China is implementing its accession commitments. Further liberalisation on services in China is anticipated to continue in a progressive and manageable way.

The provisions in the *Protocol on the Accession of the People's Republic of China to the WTO* have established primary principles for China to legislate in the services sector, including detailed regulations on commercial presence and movement of natural persons.

4.2 Trade Policies/Barriers by Sector

4.2.1 Australia

Certain services sectors are regulated by the Commonwealth Government while others are regulated by State and Territory governments (some services are regulated at both the Commonwealth and State/Territory levels). Section 51 of the Australian Constitution expressly sets out matters for which the Commonwealth Government is vested with the power to make laws and regulations. Powers not enumerated under Section 51 are known as residual powers and reside with the States/Territories.

Australian States and Territories have broad rights to regulate a range of services sectors which are not regulated by the Commonwealth. In addition, State and Territory legislation often impacts service sectors where overall regulatory control is exercised at the Commonwealth level. As a result of this, it is noted in each of the individual service sectors discussed below whether key regulatory controls are exercised at the Commonwealth or State and Territory level or whether regulatory control is shared. The Commonwealth Government is responsible for Australia's international obligations, including any obligations taken on behalf of States and Territories.

Australia's current temporary entry commitments for Mode 4 apply to all services sectors (see Chapter 6.5, Temporary Entry/Mobility of Persons, for more details).

Domestic regulations limiting market access to services in Australia include professional, health, environmental, agricultural, distribution, financial, education, telecommunications, postal, audiovisual, construction and related engineering, tourism, recreational and sporting, mining and energy and transport services.

Professional Services[35]

Legal Services

The legal profession in Australia is regulated by the States and Territories through a combination of legislation and professional bodies. Professional recognition is based on transparent systems and procedures that are non-discriminatory as they do not, for example, have nationality or citizenship requirements and there are also no quotas nor quantitative limitations. An applicant's eligibility for

[35] In line with the WTO's classification guidelines (document W/120), the professional services sector includes the following sub-sectors: legal services; accounting; auditing and book-keeping services; taxation services; architectural services; engineering services; integrated engineering services; urban planning and landscape architectural services; medical and dental services; services provided by midwives, nurses, physiotherapists and paramedical personnel; and other services.

admission to practise Australian law is determined on the basis of prescribed examinations and prescribed areas of study and other criteria relating to practical legal training and an assessment of the applicant as a person of good character which allow applicants to qualify for registration by State and Territory Registration Boards.

The Law Council of Australia (www.lawcouncil.asn.au) is the peak national body representing the legal profession. Its role is to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues affecting the legal profession.

Although regulated at a regional level, a national legal services market is emerging with the agreement by all Australian States and Territories to adopt uniform legislation (i.e. a Model Bill – see text below and www.ag.gov.au) to create a single legal services market with nationally consistent regulations governing admission, professional standards, discipline and the administration of legal practices generally.

In March 2002 the Law Ministers of the Commonwealth and all Australian States and Territories made an in-principle agreement to create a national legal profession in Australia. This was formalised by the signing of a Memorandum of Understanding in July 2004 by the Commonwealth and each State and Territory under which each State and Territory will implement a Model Bill to regulate the legal profession across Australia in a uniform manner.

It is intended that the regulation of legal practice will remain a State and Territory responsibility, but have the result of creating a single legal services market with nationally consistent regulation governing admission, professional standards, discipline and the administration of legal practices generally.

The Model Bill includes provisions which will allow foreign lawyers to practise foreign law, freedom to voluntarily enter into commercial association with Australian lawyers and law firms, and the right to use their own firm name (provided the name does not cause confusion with existing legal practices in Australia). These conditions currently apply in most States such as New South Wales, Victoria, Western Australia and Tasmania as well as the Australian Capital Territory and the Northern Territory but legislation still needs to be effected in Queensland and South Australia. It is expected that the provisions in the Model Bill will be implemented by all States and Territories by the end of 2005.

For example, the Model Bill will permit Chinese lawyers to practice under their own or own firm name provided the name does not cause confusion with existing legal practices in Australia and the firm's letterhead identifies it as a foreign law practice only practising foreign law. Where a Chinese lawyer together with Australian lawyers are principals of an Australian law practice, the firm name shall include a reference to both Australian legal practitioners and Australian-registered foreign lawyers (for example, 'Solicitors and locally registered foreign lawyers' or 'Australian Solicitors and Chinese Lawyers'). Letterheads and other documents used by an Australian-registered foreign lawyer must indicate the fact that the lawyer is an Australian-registered foreign lawyer who is restricted to the practice of foreign law.

The principal regulatory instruments are:

- Commonwealth: *Judiciary Act 1903;*
- Victoria: *Legal Practice Act 1996*;
- New South Wales: *Legal Profession Act 1987;*
- Tasmania: *Legal Profession Act 1993;*
- South Australia: *Legal Practitioners Act 1981;*
- Western Australia: *Legal Practice Act 2003;*
- Queensland: *Queensland Law Society Act 1952*, *Legal Profession Act 2004* and *Legal Practitioners Act 1995;*
- Northern Territory: *Legal Practitioners Act; and*
- Australian Capital Territory: *Legal Practitioners Act 1970.*

Accounting, Auditing and Book-keeping Services:

A range of activities undertaken by accountants and auditors are subject to specific regulatory controls of several different federal statutory bodies including the Australian Securities and Investments Commission (www.asic.gov.au), the Australian Taxation Office (www.ato.gov.au) and the Australian Prudential Regulation Authority (www.apra.gov.au). Accountants generally are not subject to any licensing requirements, except in respect of company audits, liquidations, investment advice and dealing in investments. Accountants who wish to prepare income tax returns must also register as a tax agent in order to provide such services. Accountants may practise as sole practitioners, through trusts, partnership firms or through corporate entities (in respect of partnerships and corporate practices, at least one equity partner in a firm providing accounting, auditing and book-keeping services must be a permanent resident).

Relevant State and Territory legislation may also apply to services provided by accountants, including auditing and financial reporting, investment advice, taxation advice, financial planning, insolvency and liquidation.

Although membership of a professional association is not mandatory, the majority of accountants are members of the Institute of Chartered Accountants in Australia (www.icaa.org.au) or the CPA Australia (www.cpaaustralia.com.au). Both bodies are professional associations that undertake self-regulation of their members through issuance of professional codes, enforcement of professional standards and discipline of members. Members must meet certain academic and professional standards.

No specific restrictions apply to participation in the sector by foreign service providers other than horizontal restrictions generally applicable to foreign investment in Australia. All of the major international accountancy firms operate in Australia.

Architectural Services

Each State and Territory in Australia has separate but similar legislation covering the registration of architects. The legislation is administered by an Architects Registration Board in each State and Territory. Additional licensing requirements in the building and construction industry apply in some States and Territories. A mutual recognition scheme exists so that architects registered in one State or Territory in Australia may be recognised for registration in other States and Territories.

Each State and Territory generally allows only persons who have successfully completed an approved tertiary course, have at least two years' experience, have passed both an English language test and a practice examination administered by the relevant Architects Board and who adhere to standards of professional conduct, to use the title of 'architect' and describe the services they provide as 'architecture'. However, with some exceptions, all States and Territories allow anyone to compete with architects. Accordingly, while use of the title 'architect' is restricted, the provision of architectural services is not, although anyone providing such services must comply with the relevant regulatory standards required for building construction applicable in each State and Territory. The State and Territory legislation also contains general prohibitions on professional standards and misconduct. Professional standards are also set forth, and discipline of members enforced, by the Royal Australian Institute of Architects (RAIA) - refer www.architecture.com.au.

Architects may practise as individual sole practitioners, through trusts, partnership firms or through corporate entities. There are no residency requirements imposed. Minimum indemnity insurance cover is required in some States/Territories. In respect of partnerships and corporate practices, 'control' by registered architects is required in some Australian jurisdictions while other Australian jurisdictions require corporate entities/firms providing architectural services to be 'directed' by registered architects. No other specific restrictions apply to participation in the sector by foreign service providers other than horizontal restrictions generally applicable to foreign investment in Australia.

More information on the regulation and registration of architects may be found through the websites of the Architects' Registration Boards in each of the States and Territories:

- New South Wales: www.architects.nsw.gov.au/

- Victoria: www.arbv.vic.gov.au/
- Western Australia: www.architectsboard.org.au/
- Queensland: www.boaq.qld.gov.au/
- South Australia: www.archboardsa.org.au/
- Australian Capital Territory: www.actpla.act.gov.au/industry/architects-board.

Engineering Services

There is no single regulatory regime in Australia governing the engineering profession and no national legislative restrictions on the use of the title "professional engineer". Engineers do not need to be a member of a professional association in Australia in order to offer engineering services to the public.

In all States and Territories of Australia the principal instruments governing the practice of engineering include: self-regulation by Engineers Australia, the principal professional body for engineers in Australia which accredits engineering qualifications and sets national standards that are supported by the profession (see www.engineersaustralia.org.au); self and co-regulation by the National Engineering Registration Board which establishes and maintains national, voluntary, non-statutory registers such as the National Professional Engineers Register (see www.nerb.org.au); and government regulation in the State of Queensland by the Board of Professional Engineers, under the *Professional Engineers Act 2002* (see www.bpeq.qld.gov.au).

Most States and Territories in Australia have registration and/or licensing regimes for engineering practitioners in the building and construction industry, with differing education and experience requirements.

There are no specific nationality, citizenship or residency requirements for registration by the National Engineering Registration Board or membership of Engineers Australia to practice as a professional engineer in Australia. However, applicants must demonstrate awareness of national and local standards, rules and practices; and be assessed as meeting the National Competency Standards for Professional Engineers. An outline of these standards can be found at www.ieaust.org.au/membership/general.

Medical Services

Health professions are not regulated at a national level. Individual States and Territories are responsible for the regulation of health professions. Not all health professions are regulated in all States and Territories. By way of example, the table below indicates which of the major health professions are regulated in the states of New South Wales and Victoria.

Profession	Regulated in NSW	Regulated in Victoria
Medical Practitioner	Yes	Yes
Nurse	Yes	Yes
Pharmacist	Yes	Yes
Dentist	Yes	Yes
Physiotherapist	Yes	Yes
Clinical Psychologist	Yes	Yes
Optometrist	Yes	Yes
Occupational Therapist	No	No
Podiatrist	Yes	Yes
Audiologist	No	No
Social Worker	No	No
Dieticians	No	No
Speech Pathologist	No	No
Osteopath	Yes	Yes
Chiropractor	Yes	Yes
Traditional Chinese Medicine Practitioner	No	Yes

The recognition of overseas health qualifications and assessment of suitability to practice as a health professional in Australia is the responsibility of a number of different bodies, depending on the particular health profession and whether specialist training or qualifications are involved. In some cases, different bodies regulate different aspects of a profession. For example, the Australian Medical Council (www.amc.org.au) administers national examinations of overseas trained doctors seeking to practise medicine in Australia, and undertakes an initial assessment, while overseas trained specialists must have specialist qualifications and experience assessed by a relevant national Specialist Medical College.

There is no national registration system for any health profession in Australia. For example, medical doctors must be registered with the relevant State or Territory Medical Board where they intend to practise. Additionally, some health professions wishing to work in private practice need to meet the requirements of private health insurers and where relevant, Medicare, the national health insurance scheme. Under the terms of mutual recognition between the States and Territories, a medical practitioner who has full or unconditional registration in one State or Territory is generally eligible for registration to practise in another State or Territory. Additionally, professional bodies establish industry standards for practice in particular disciplines.

More information on the regulation and registration of medical practitioners in each of the Australian States and Territories may be found on the websites of the relevant State or Territory Medical Boards:

- New South Wales: www.nswmb.org.au/
- Victoria: medicalboardvic.org.au/
- Queensland: www.medicalboard.qld.gov.au/
- Western Australia: www.wa.medicalboard.com.au/
- South Australia: www.medicalboardsa.asn.au/
- Tasmania: www.medicalcounciltas.com.au/
- Australian Capital Territory: www.medicalboard.act.gov.au/
- Northern Territory: www.nt.gov.au/health/org_supp/prof_boards/prof_licensing_auth.shtml.

Health Services

Restrictions on who is able to own health professional practices, and how many they are permitted to own is governed by State and Territory legislation. For example, only pharmacists are permitted to own a pharmacy, and the number of pharmacies that a pharmacist is permitted to own varies amongst the States and Territories. There is some level of scrutiny of these arrangements through the National Competition Council (www.ncc.gov.au/index.asp).

Foreign service providers may establish and operate private hospitals, aged care and nursing home facilities as well as medical clinics in Australia, providing that the owners meet all relevant legislative requirements at Commonwealth and State/Territory level and subject to foreign investment approvals processes which apply to all sectors (www.health.gov.au). Individual States and Territories are responsible for licensing and/or registration of hospitals, and clinics. They may also impose requirements on aged care facilities, including in relation to building standards, staffing and food and drug handling. The Commonwealth Department of Health and Ageing (www.health.gov.au) has responsibility for declaring private hospitals and day hospital facilities for health insurance purposes following licensing by States/Territories. More information on licensing requirements and procedures may be obtained through the websites of the State/Territory health departments, as follows: www.health.nsw.gov.au, www.dhs.vic.gov.au, www.health.qld.gov.au, www.health.wa.gov.au, www.health.sa.gov.au, www.dhhs.tas.gov.au, www.health.nt.gov.au, www.health.act.gov.au.

Environmental Services

Regulations applicable to the environment services sector, including water for human consumption, sewerage services, refuse disposal services, sanitation and similar services, cleaning of exhaust gases, noise abatement services and nature and landscape protection, exist between the

Commonwealth, State and Territory, and local governments. No single piece of legislation covers all environmental services. State and Territory governments are responsible for passing legislation on many of the above quoted sectors and are responsible, together with local or municipal governments, for the application of this legislation.

Historically, many of these services, particularly the provision of water for human consumption, sewage services and the collection, transportation, processing, storing and disposal of garbage, are provided by local and/or State and Territory governments by corporatised entities in which they have a controlling interest. Generally, where the provision of these services has been privatised or put out to tender or contract by State and Territory owned utilities, there are no additional restrictions on the entry of foreign environmental service providers and national treatment applies with respect to Australian providers of environmental services.

Australia has undertaken commitments in the GATS for the full range of environmental services classified under the WTO Services Sectoral Classification List (W/120) and the corresponding United Nations Central Product Classification (CPC). Australia's schedule lists no limitation for Market Access except for Mode 4 where the commitment is unbound, except as indicated in its horizontal commitments. Australia has not taken any GATS most favoured nation (MFN) exemptions for the environment services sector.

Agriculture Services

The agricultural services sector is broad, covering a wide range of activities related to agriculture and forestry including, for example, farm and agricultural advisory services, drought and water management services, agricultural research and risk management services, livestock breeding (seed-stock development, semen and embryo sales and progeny testing) stock and station agents services, product marketing and sales services, rural credit and insurance services, aerial spraying services, quality analysis, inspection and testing services, intellectual property development and management services and export advisory services.

Due to the wide variety of activities which comprise the sector, a variety of Federal and State/Territory cross-sectoral bodies regulate different activities within the agricultural services sector. For example, the Australian Competition and Consumer Commission (ACCC) administers the *Trade Practices Act* (dealing with consumer protection and anti-competitive behaviour) and the *Prices Surveillance Act*, while at the State and Territory level departments of consumer affairs or fair trading are responsible for enforcing regulations on consumer protection against individuals and non-incorporated businesses. Other laws and regulations may impact specific sub-sectors.

Under the GATS, Australia has made commitments covering specified agricultural services and fully applies the principles of national treatment and MFN in such sectors. Together with our commitments in related service sectors including business services and financial services Australia offers broad market access in most agricultural service sub-sectors.

Distribution Services

Federal and State cross-sectoral bodies regulate the activities of the distribution sector (i.e. the wholesale, retail and franchising sectors).

Australia's distribution services sector is generally open to foreign competition. Under the GATS, Australia has made broad and liberal commitments covering all service delivery modes under each of the distribution service sub-sectors, namely Commission Agents' Services, Wholesale Trade Services, Retailing Services and Franchising Services. Only cross-border supply of retailing services (except mail order services) remains unbound in Australia's Schedule of Specific Commitments.

The Australian Competition and Consumer Commission administers the *Trade Practices Act* (dealing with consumer protection and anti-competitive behaviour) and the *Prices Surveillance Act*. The Australian Securities and Investments Commission (ASIC) administers corporate and securities law and regulates company takeovers.

At the State level, the departments of consumer affairs or fair trading are responsible for enforcing state regulations on consumer protection against individuals and non-incorporated businesses. Arrangements are generally open and the MFN principle applies.

Financial Services

The regulation of the Australian financial services sector is principally conducted by three independent Commonwealth statutory bodies.

The Australian Prudential Regulation Authority (APRA) is responsible for the prudential regulation of all deposit-taking institutions (both Commonwealth and State), general insurance, life insurance (including friendly societies) and superannuation.[36] APRA is established under the *Australian Prudential Regulation Authority Act 1998* for the regulation of the banking, insurance and superannuation sectors. More information about the regulatory functions of APRA is available on the APRA website (www.apra.gov.au).

The Australian Securities and Investments Commission (ASIC) is responsible for maintaining market integrity, consumer protection, and the supervision of companies and is established under the *Australian Securities and Investments Act 2001*. It regulates Australian corporations, financial markets, managed investments, registration of auditors and liquidators, and investigates and enforces corporate laws. Further information about ASIC's regulatory functions is available on the ASIC website (www.asic.gov.au).

The Reserve Bank of Australia (RBA) is responsible for maintaining overall financial system stability. As the task of ensuring systemic stability is closely linked with maintaining the integrity and efficiency of the payments system, the RBA is also the regulatory authority responsible for the Australian payments system. Further information about the functions of the RBA may be obtained on the RBA's website (www.rba.gov.au).

Banking Services

The legislation relevant for the banking sector are the *Banking Act 1959, Corporations Act 2001*,[37] *Financial Sector (Collection of Data) Act 2001* and *Financial Sector (Shareholdings) Act 1998*.

Foreign banks may undertake banking operations in Australia through locally incorporated subsidiaries and/or an authorised branch. The entry requirement is A$50 million (US$36.8 million) Tier 1 start-up capital for all locally incorporated banks.

A foreign bank located overseas is able to offer its services to Australian enterprises, but is prevented from raising funds in Australia or undertaking business within Australia unless it is an authorised bank (or establishes a money market corporation or subsidiary). That said, such banks may raise funds in Australia through the issue of debt securities, provided those securities are offered/traded in parcels of less than A$500,000 (US$368,200) and the securities and any associated information memoranda clearly state that the issuing bank is not authorised under the *Banking Act 1959*. Australian residents can place funds directly with foreign banks overseas or acquire securities issued by foreign banks in overseas markets.

Foreign exchange transactions within Australia (including foreign exchange derivations) may be effected through a licensed foreign currency dealer, however this is not necessary where the transaction is settled immediately or where the person is dealing on their own account. Foreign banks may undertake banking operations in Australia through an authorised branch, however, a branch may not accept "retail" deposits. A foreign bank wishing to accept "retail" deposits must seek authorisation as a locally incorporated subsidiary for that purpose. Foreign bank branches may

[36] The Australian Taxation Office (ATO) is responsible for regulation of self-managed superannuation funds, including compliance with the relevant requirements contained in the *Superannuation Industry (Supervision) Act 1993*.

[37] The *Corporations Act 2001*, as amended by the *Financial Services Reform Act 2001*, requires financial services businesses for financial products to meet the requirements of a harmonised licensing, conduct and disclosure regime. Financial services businesses in relation to financial products include those providing banking, insurance, managed investment and securities services.

accept deposits (and other funds) in any amount from incorporated entities, non-residents and their own employees. Deposits (and other funds) may only be accepted from other sources where the initial deposit (or other funds) is greater than A$250,000 (US$184,100). Deposit-taking outside of this is considered to be "retail" banking business.

Securities

Australia's primary legislation on securities and related investments is the *Corporations Act 2001*, *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997*.

While the *Corporations Act* requires providers of financial products and services and operators of financial markets to be licensed, a streamlined route is provided for financial markets regulated overseas under comparable regulatory regimes.

An A$5 million (US$3.7 million) capital requirement applies for licensed trustees of public offer superannuation funds.

Insurance

Key legislation for the Australian insurance sector comprises the *Insurance Act 1973*, *Insurance Contracts Act 1984*, *Life Insurance Act 1995*, *Corporations Act 2001*, *Insurance Acquisitions and Takeovers Act 1991* and the *Financial Sector (Shareholdings) Act 1998*. All this legislation is available at www.scaleplus.law.gov.au.

The minimum capital requirement for general insurers is A$5 million (US$3.7 million). Additional capital requirements for registered insurance businesses are determined on the basis of a three year business plan taking account of individual aspects of the insurance business, including risk.

Approval of non-resident life insurers is restricted to subsidiaries and must meet a minimum A$10 million (US$7.4 million) capital requirement. An authorised insurance company operating in Australia as a non-incorporated entity must appoint an Australian resident as agent of the insurer. The *Corporations Act* requires agents and brokers to be licensed by ASIC and to comply with disclosure requirements.

Most State and Territory governments maintain restrictions, by way of monopolies or licensing provisions and associated controls on premiums and other terms of policies, in some areas of insurance.

Education Services

Foreign education and training service providers are able to enter the market and supply services providing they comply with Australia's non-discriminatory regulatory requirements for establishment and operation including:

- Measures for provision of education and training services to overseas students studying in Australia under the *Education Services for Overseas Students (ESOS) Act 2000;*
- National Protocols for Higher Education Approval Processes, which provide the criteria and standards to assess applications for recognition of higher education institutions and courses; and
- Legislation for the provision of vocational education and training and for primary and secondary schooling within Australia, which is maintained by State and Territory Governments. All accredited vocational education and training within Australia must also conform to the Australian Qualifications Framework and the Australian Quality Training Framework.

Foreign owned private schools and vocational and training organisations can operate in Australia provided they meet Australian standards for registration.

Australia's schools sector is currently open and foreign providers are able to establish schools in Australia subject to meeting the relevant legislative requirements. The establishment and funding of primary and secondary schools in Australia is controlled by legislation of the Commonwealth

Government and State and Territory governments. The relevant legislation in relation to primary and secondary education is the *States Grants (Primary and Secondary Education Assistance) Act 2000*. Refer to www.austlii.edu.au for details of relevant Commonwealth legislation pertaining to education.

Telecommunications Services

The main legislative instruments governing Australia's telecommunications industry are the *Telecommunications Act 1997*, Part XIC of the *Trade Practices Act 1974*, Part XIB of the *Trade Practices Act 1974*, *Telecommunications (Consumer Protection and Service Standards) Act 1999*, *Telstra Corporation Act 1991*, *Telstra Corporation Regulations 2000* and the *Telecommunications (Low-Impact Facilities) Determination 1997*.

This legislation provides for open competition in the Australian telecommunications sector. The major regulatory features include no restrictions on the number of providers or installers of network infrastructure; ensured access rights for carriers and service providers; competitive safeguards; and the separation of regulatory and operational functions.

The Department of Communications, Information Technology and the Arts (DCITA) has policy responsibility for the telecommunications sector in Australia (www.dcita.gov.au). The Australian Communications Authority (ACA) is the industry specific regulator with responsibility for administering a range of technical and consumer issues relating to telecommunications, as well as managing the radiofrequency spectrum (www.aca.gov.au). Australia's national competition regulator, the Australian Competition and Consumer Commission (ACCC) is responsible for the competition and economic regulation of the telecommunications industry (www.accc.gov.au) as determined in Parts XIC and XIB of the *Trade Practices Act 1974*.

Australia's telecommunications regime is the responsibility of the Australian Government. The only responsibility of the States and Territories is to approve the installation of most telecommunications facilities, such as broadband overhead cables and the majority of mobile telecommunications towers. There are a limited number of exceptions including the installation of low-impact facilities, which can be installed without State or Territory approval.

Australia's telecommunications framework differentiates between 'carriers' and 'service providers'. Carriers are those entities that own and operate infrastructure and are subject to regulatory obligations and carrier licence fees. Carriage service providers are those entities that provide carriage or content services to the public by using this infrastructure. Service providers are not subject to licence fees.

Carrier licences are obtained from the ACA by written application. Carriers are individually licensed and subject to initial application and annual licence charges intended to recover the costs of regulating the industry. Further information is available from the ACA's website: www.aca.gov.au.

Participation in the market is dependent on a number of requirements being met. Australia maintains a universal service obligation, the cost of which is shared among carriers in proportion to their telecommunications revenue. Carriers are also required to meet minimum service standards such as timeframes for connection of services and repairs of faults and to maintain an Industry Development Plan (e.g. on how the business operates in Australia and research and development plans) approved by the Australian Government.

The Australian Government is required to hold at least 50.1 per cent of the issued shares in Telstra (the former monopoly carrier). Foreign ownership of Telstra is limited to 35 per cent of the privately held share capital. The maximum individual foreign ownership allowed in Telstra is 5 per cent of the privately held share capital. These thresholds are contained in the *Telstra Corporation Act 1991*.

Postal Services

The primary legislation relevant to the postal services sector is the *Australian Postal Corporation Act 1989* (the Act) and associated regulations. The Act provides Australia Post with the exclusive right to carry certain letters within Australia (whether or not they originated within Australia) subject to a number of exceptions. These exceptions are specified in section 30 of the Act, and include the

carriage of letters which weigh more than 250 grams or for which a charge of at least four times the standard postal rate is made.

The Department of Communications, Information Technology and the Arts has policy responsibility for postal services in Australia (www.dcita.gov.au). Postal services are the constitutional responsibility of the Australian Government.

With the exception of Australia Post's reserved services, the postal (including express postal) and courier markets are open to competition in Australia, and there are no specific requirements for entry.

Audiovisual Services

The main legislation relevant to Australia's audiovisual sector is contained in the *Broadcasting Services Act 1992*, the *Radio Communications Act 1992*, Divisions 10B and 10BA of the *Income Tax Assessment Act 1936*, and the *Income Tax Assessment Act 1997*.

Policy responsibility for Australia's audiovisual sector rests with the Department of Communications, Information Technology and the Arts (DCITA) (www.dcita.gov.au). DCITA has responsibility for Australia's local content quotas for television and radio, and for regulation of media ownership. DCITA and its portfolio agencies administer various measures for Australian films, the film and television co-production program, film tax incentives to encourage private investment in Australian films, and the refundable film tax offset which is an incentive for large budget film productions to locate in Australia. DCITA also administers the certification process for foreign actors entering into Australia for the purpose of employment in film and television productions.

Australia has an open audiovisual market and is a net importer of audiovisual products. In 2004, foreign films accounted for 95 per cent of all films screened in Australian cinemas and accounted for 98.7 per cent of gross Australian box office revenue. Foreign sourced new TV programming in Australia in 2003 was 76 per cent.

Sporting and Recreational Services

The recreation services sector in Australia encompasses a diverse range of activities. The Federal Government does not have legislative or regulatory involvement across the sector. Operational and licensing qualification requirements may therefore vary between Australian States and Territories, which may set their own requirements, and across the range of recreation services.

At the national level, sport program administration and policy advice is provided by the Department of Communications, Information Technology and the Arts (www.dcita.gov.au), the Australian Sports Commission (www.ausport.gov.au) and the Australian Sports Drug Agency (www.asda.org.au). The Australian Institute of Sport (AIS) is Australia's national elite sporting institute. Each State and Territory has its own elite sporting institute which works collaboratively with the AIS.

Foreign entry into the sport industry as recognised professionals requires the obtainment of qualifications acknowledged by the Industry. The Australian Coaching Council requires foreign coaches to obtain recognised qualifications and update their accreditation every four years upon establishment in order to maintain official coaching status in Australia.

Operation as a recognised/acknowledged recreation service provider in Australia generally requires accreditation with the relevant national recreation organisation. The provision of services by foreign suppliers would be subject to the procedures prescribed by the relevant national recreation organisation.

Construction and Related Engineering Services

The Australian building and construction industry is required to comply with regulations at the Federal, State and local government levels. The key regulations for building and construction that apply nationally include the *Building Code of Australia* (BCA), the relevant standards referenced by the BCA and State building regulations, which are administrative in nature. The BCA is a set of performance guidelines for the design and construction of new buildings and for new building work

in existing buildings such as additions and alterations (see www.abcb.gov.au). See also engineering services under professional services.

There is no Commonwealth legislation relating to the registration or licensing of building practitioners in Australia. Building practitioners are required to be registered at the State and Territory level. The requirements for registration are not limited to formal training and qualifications; they also include practical experience and financial capacity.

Further details can be found on the Builders Licensing Australia website (www.bla.net.au).

Under the GATS, Australia has made full commitments on all modes of supply that are technically feasible for five of the eight sub-sectors (under the UN Provisional Central Product Classification (CPC)) relating to construction and related engineering services. Australia has made no commitments to three sub-sectors, relating to: (a) pre-erection work at construction sites, (b) special trade construction work and (c) renting services relating to equipment for construction or demolition of buildings or civil engineering works with operator, (CPC items 511, 515 and 518 respectively).

Tourism and Related Services

Under Australia's schedule of GATS commitments, the cross-border supply of travel agents and tour operator services is limited by the requirement for a commercial presence. There are no sector-specific operational requirements which differentiate between domestic and foreign services suppliers.

The regulation of the tourism industry is largely the responsibility of the State and Territory Governments who have primary carriage for the administration of matters relating to licensing and operation. Regulatory requirements that apply at the State and Territory level to both domestic and foreign suppliers of tourism services mainly cover travel agents. At the national level, the Department of Industry Tourism and Resources is the administrative body which has overall responsibility for the tourism industry (see www.industry.gov.au). Tourism Australia is the Federal Government statutory authority responsible for international and domestic tourism marketing and delivery of research and forecasts for the tourism sector (see www.tourism.australia.com).

All State and Territory Governments with the exception of the Northern Territory participate in a national scheme for the regulation of travel agents. The scheme requires that agents meet licensing standards such as being 'a fit and proper person' and have sufficient resources to carry on business as a travel agent. Relevant legislation is administered by the Fair Trading portfolio in each State and Territory. Travel agents are also required to contribute to the Travel Compensation Fund to safeguard against the loss of money by consumers in the event of default by a travel agent. All individuals or bodies corporate who carry on business as travel agents must be licensed under the individual State and Territory travel agents acts.

Companies with a commercial presence in Australia, providing services to the inbound tourist market can sponsor skilled overseas workers to work in Australia for up to four years provided they meet the requirements as skilled workers under Australia's regulations. These occupations are published in a public gazette notice, together with minimum salaries that they must be paid.

Chinese tour leaders accompanying a tour group in the Approved Destination Status (ADS) scheme can apply for a short stay temporary business visa. This generally provides a single entry to Australia for a stay of up to 90 days, however tour leaders for ADS groups are only granted the same stay validity as the tour group they are supervising, usually around 10 days. If these tour leaders are frequent visitors to Australia, they can apply for a short stay temporary business visa that provides for multiple stays of up to 90 days over a one year period.

Companies with a commercial presence in Australia can sponsor skilled overseas chefs to work in Australia for up to four years. Chefs and cooks are required to have qualifications and experience that are comparable to those of Australian chefs and cooks. The requirement in Australia is to undertake a formal apprenticeship, completing a Certificate III or above qualification and three years on the job training under a qualified person.

Mining and Energy Services

All investment proposals by foreign investors in resource processing, oil and gas and mining sectors need prior approval where they exceed: A$50 million (US$36.8 million) for acquisitions of substantial interests in existing business; A$10 million (US$7.4 million) for establishment of new businesses; and A$50 million (US$36.8 million) for offshore takeovers.

Mining

States and Territories are principally responsible for the regulation of mining in Australia and each have their own mining legislation, regulating such issues as exploration licences, assessment leases, mining leases and mineral claims. The only Commonwealth legislation specifically applying to the mining sector is the *Offshore Mining Act 1994*, which outlines the management scheme and licensing system for the mining and exploration of offshore minerals. *The Environment Protection and Biodiversity Conservation Act 1999* also sets out arrangements for ensuring that proposals do not impact on matters of national environmental significance such as internationally important wetlands or nationally threatened species.

More information on regulation of Mining Technology Services (MTS) and mining services generally may be obtained on the website of the Department of Industry, Tourism and Resources (www.industry.gov.au). There are no specific restrictions on foreign investment in the MTS sector.

Energy

Regulations applying to energy services are principally a State/Territory government responsibility at present. However, as part of the National Energy Market Reform process currently being implemented by the Ministerial Council on Energy (www.mce.gov.au), there is intent to move towards national regulation of the energy market (apart from price regulation) by the Australian Energy Regulator (AER), with changes to the legislation to be administered by the Australian Energy Market Commission (AEMC). The AER and AEMC are expected to be operational by mid-2005. Regulatory functions currently undertaken by the States and Territories will be rolled into the AER progressively over the next few years. More information about the AER and AEMC is available through the website of the Ministerial Council on Energy (see above).

Features of Australia's regulatory approach to energy services at present are:

- The right to explore for energy resources is fully controlled by Government and regulated by State, Territory and Commonwealth legislation.
- Government ownership of monopoly or exclusive service providers or exclusive licences granted over services exist in some States and Territories in the core electricity service sectors of generation, transmission, distribution and retail.
- Under the *National Electricity Code*, each market participant must be resident in or have a permanent establishment in Australia while participating in the market.

More information on current energy services regulation may be obtained on the website of the Department of Industry, Tourism and Resources (www.industry.gov.au). More detailed information on energy market reform may be found on the website of the Ministerial Council on Energy (see above).

Petroleum

About 90 per cent of Australia's known petroleum resources are located in offshore areas. Regulation of offshore petroleum exploration and production activities is carried out principally under the *Australian Government's Petroleum (Submerged Lands) Act 1967* and associated legislation. The Australian States and Territories have broadly similar legislation that applies to the onshore areas. The legislation provides for the grant of petroleum titles (including exploration permits, production licences and pipeline licences) as well as approvals for exploration and development activities carried out under these titles. An important requirement is that all titleholders carry out their activities in a manner consistent with good oilfield practice.

The *Fuel Quality Standards Act 2000* (Commonwealth) sets national fuel quality and fuel quality information standards (see www.deh.gov.au/atmosphere/transport). The standards regulate the supply of fuel to consumers, reduce toxic vehicle emissions and ensure that, by using clean fuels, modern vehicles fitted with advanced emissions control technologies operate at peak performance. The fuel quality standards apply to the following fuels: petrol, diesel, bio-diesel and LPG (Autogas). The agency responsible for administering the Act is the Commonwealth Department of the Environment and Heritage. The program for administering the Act and development of new fuel standards draws on a number of service providers and professional consultants. The monitoring compliance and enforcement program involves a national sampling program which is carried out by inspectors sourced from State and Territory consumer affairs agencies who are appointed as inspectors under the Act.

Foreign service providers may establish fuel quality standards service offices within Australia. The provision of these services from overseas would be limited by the timeframe required for the turnaround of fuel samples and the need to have ready access to equipment at short notice. The provision of technical advice and professional consultancies for the fuel standards policy development program, however, could and does tap into international expertise. Technical expertise from overseas has been sourced on a number of occasions. For example, the US, European and Asian based offices of the International Fuel Quality Centre have been contracted to provide information on various issues relating to the development of fuel standards.

Coal

Coal is defined as a 'mineral' in most States and Territories and therefore mining leases and prospecting titles for coal are governed under the respective State and Territory mining acts. The only coal mining regulations administered at the Commonwealth level are the *Coal Excise Act 1949* (Commonwealth) and the *Coal Excise Regulations 1949*. The former provides licences for coal production and allows the government to impose an excise duty on coal removed from mines, while the latter provides standard forms for production licence applications and production licences.

Coal resources are managed by State and Territory governments. State and Territory legislation and regulations set out the conditions and procedures for exploration and development, safety, employment, environmental protection, royalties payable and transport of coal within Australia. State governments also levy taxes, charges for rail transport and sometimes for coal loading. In NSW an exploration licence, assessment lease or mining lease is required and can be obtained for exploration for coal within areas allocated under the *Mining Act 1992* (NSW). In Queensland a prospecting or exploration permit is administered by the Department of Natural Resources and Mines under the *Mineral Resources Act 1989* (QLD).

Natural Gas

The gas industry has undergone considerable reform over the past 10 years with the disaggregation and privatisation of many significant assets and the introduction of full retail competition in most jurisdictions. Through the Ministerial Council on Energy's energy market reform program, gas market development and regulation will be transferred to the Australian Energy Market Commission and the Australian Energy Regulator in the near to medium term. Other reforms include measures to facilitate a gas wholesale market and improve the gas access regime. Changes will be required to Commonwealth, State and Territory gas legislation to implement the current reform program.

Transport Services

This section includes freight logistics services which are intrinsic to transport services.

At the Commonwealth Government level, the Department of Transport and Regional Services (DOTARS) has carriage of transport related regulatory and policy functions, including national transport infrastructure planning, integration of transport and regional development and ensuring that the legislative regimes and systems of governance of Australia's States and Territories meet local and national transport needs. More information on DOTARS' regulatory and policy responsibilities is available on the DOTARS website (www.dotars.gov.au).

State, community and local transport services are regulated at the State/Territory government level. Additional information on the regulatory functions of the various State and Territory transport authorities is available from the following websites:

- New South Wales: www.transport.nsw.gov.au/
- Queensland: www.transport.qld.gov.au/
- South Australia: www.transport.sa.gov.au/index.asp
- Tasmania: www.transport.tas.gov.au/
- Victoria: www.doi.vic.gov.au/
- Western Australia: www.dpi.wa.gov.au/
- Northern Territory: www.ipe.nt.gov.au/
- Australian Capital Territory: www.transport.act.gov.au.

Key laws and regulations vary between different transport modes and are referred to in the different sections below.

Freight Logistics

There is no specific Commonwealth legislation regulating freight logistics services. Freight logistics providers must abide by the *Trade Practices Act 1974* and relevant Commonwealth, State and Territory legislation that relates to licensing, safety, the environment, and labour standards. Many of these laws are harmonised throughout all Australian jurisdictions. There is no discrimination in the application of relevant laws between local and foreign service providers. Industry and government initiatives have jointly been directed at creating an integrated, competitive and efficient 'whole of supply chain' approach to movement of freight.

Safety and environmental regulations apply to freight logistics (such as vehicle and driver requirements and licensing for road transport), and are administered in a non-discriminatory manner. The National Transport Commission (www.ntc.gov.au) works to make the transport system more innovative, efficient and safer, and to reduce transport's environmental impacts.

Road freight transport, arrangements for cargo handling, storage and warehousing, and freight forwarding and agency services are broadly open to foreign participation in Australia.

More information on regulatory and other developments affecting the freight logistics sector is available on the websites of industry associations such as the Australian Trucking Association (www.atatruck.net.au), the Australian Freight Council Network (www.freightcouncils.com.au), the Logistics Association of Australia (www.laa.asn.au), the Charted Institute of Logistics and Transport (www.ciltia.com.au) and the Australian Logistics Council (www.ozlogistics.org).

Rail Transport

At the Commonwealth level, Part IIIA of the *Trade Practices Act 1974* regulates access to rail services and infrastructure that would otherwise be a natural monopoly. In general, rail services are regulated separately by each State and Territory, and each has its own safety rules and licensing regulations, which operators must comply with. Work is being done by the Commonwealth and State Governments, the National Transport Commission and the Australasian Railway Association (www.ara.net.au) to develop a nationally agreed rail regulation regime, protocols for a national rail safety investigator and a nationally agreed rail access regime as well as to harmonise other relevant laws and regulations.

There are no additional market access requirements for foreign providers in the rail transport sector and no restrictions on foreign suppliers of railway services other than horizontal restrictions on foreign investment generally under the *Foreign Acquisitions and Takeover Act*.

Air Transport Services

International air transport services are covered by bilateral air services agreements. Aviation safety and security issues are the responsibility of the Commonwealth Government. Interstate domestic aviation is not subject to economic regulation, while the economic regulation of intra-state aviation is a state responsibility.

Domestically, key pieces of Commonwealth legislation include the following, as amended, the *Air Navigation Act 1920;* the *Air Services Act 1995;* the *Aviation Transport Security Act 2004;* the *Civil Aviation Act 1988;* the *Civil Aviation (Carriers Liability) Act 1959;* the *International Air Services Commission Act 1992* and the *Airports Act (1996).*

More information on air services regulation in Australia is available on the websites of the following government agencies:

- The Department of Transport and Regional Services: www.dotars.gov.au/avnapt/index.htm/
- Civil Aviation Safety Authority: www.casa.gov.au/
- Air Services Australia: www.airservicesaustralia.com/default.asp/
- Australian Transport Safety Bureau: www.atsb.gov.au/
- International Air Services Commission: www.iasc.gov.au/index.aspx.

In respect of foreign participation in the airline services industry, foreign persons (including foreign airlines) can generally expect approval from the Foreign Investment Review Board (FIRB) to acquire up to 100 per cent of the equity in an existing Australian domestic airline, or to establish a new domestic airline, unless FIRB deems any such acquisition to be contrary to the national interest.

Under the *Air Navigation Act 1920*, foreign persons (including foreign airlines) can generally expect approval to acquire up to 49 per cent of the equity in an Australian international carrier (other than Qantas) individually or in aggregate provided the proposal is not contrary to the national interest. In the case of Qantas, under the *Qantas Sale Act 1992*, total foreign ownership is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 per cent. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

Foreign investment proposals for acquisitions of interests in Australian airports are subject to case-by-case examination. In relation to the airports offered for sale by the Commonwealth, the *Airports Act 1996* stipulates a 49 per cent foreign ownership limit, a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports.

Supporting services such as ground handling are open to foreign participation in most cases.

Maritime Liner Shipping

International maritime activity is a Commonwealth responsibility and regulated principally under the *Navigation Act 1912,* as amended. This legislation provides the legal basis for many of the Commonwealth's responsibilities for maritime matters including ship safety, the investigation of marine accidents, coastal trade, employment of seafarers, and shipboard aspects of the protection of the marine environment. It also regulates wrecks and salvage operations, passengers, tonnage measurement of ships, and a range of administrative measures relating to ships and seafarers. Other key Commonwealth legislation includes the *Shipping Registration Act 1981*, and the *Maritime Transport Security Act (2003).*

The Australian Maritime Safety Authority maintains the register of ships in Australia. There are nationality requirements for registration of vessels as defined by the *Shipping Registration Act 1981.* Further information on the above legislation and information on shipping registration may be found on the Australian Maritime Safety Authority website (www.amsa.gov.au).

Part X of the *Trade Practices Act 1974* requires that every ocean carrier which provides international liner cargo shipping services to or from Australia shall, at all times, be represented for the purposes of the Act, by a person who is an individual resident in Australia, has been appointed by the ocean carrier as the ocean carrier's agent for the purposes of the Act, and is specified in the register of ocean carrier agents as the ocean carrier's agent.

Port facilities are regulated and operated at the State/Territory level and a registration scheme for small marine craft is also administered at the State/Territory level.

Carriage of coastal cargo is subject to compliance with legislation contained in the *Navigation Act 1912* requiring, inter alia, that the crews of licensed vessels engaging in coastal trades are paid Australian wage rates and that such vessels are not in receipt of subsidies from foreign governments. Unlicensed vessels are required to obtain a Coastal Trade Permit before being allowed to carry Australian domestic cargo. Such permits are issued only where no licensed ship is available, and where it is in the public interest. Crews operating on the coast are subject to normal migration rules. Ships are subject to normal importation rules. Both are subject to normal safety, marine environment protection and security rules.

Other than compliance with the legislation and registration requirements described above, there are no additional restrictions on market entry by foreign service suppliers in the maritime shipping sector. However, foreign service suppliers are subject to horizontal restrictions applicable generally to foreign investment projects.

4.2.2 China

In China, the National People's Congress and its Standing Committee exercise the legislative power of the State to amend and interpret the Constitution, to supervise the enforcement of the Constitution, and to enact and amend basic laws governing criminal offences, civil affairs, the state organs and other matters.[38] The State Council, that is, the Central People's Government, of the People's Republic of China enacts administrative rules and regulations and issues decisions and orders in accordance with the Constitution and the law.[39] Local people's congresses at various levels ensure the observance and implementation of the Constitution and the law and the administrative rules and regulations in their respective administrative areas. The people's congresses of provinces and municipalities directly under the Central Government and their standing committees may adopt local regulations, which must not contravene the Constitution and the law and administrative rules and regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record.[40]

Professional Services

Legal Services

The Ministry of Justice is in charge of the administration and supervision of legal services in China. The primary applicable laws and regulations include the *Lawyers Law of the People's Republic of China* and *Regulations on Representative Offices of Foreign Law Firms in China*.

According to relevant regulations, representative offices of foreign law firms in China can engage in the following business, excluding Chinese law practice, and charge their clients for services provided:

- provision of clients with consultancy on the legislation of the country/region permitted and on international conventions, commercial laws and practices;
- handling of legal affairs of the country/region permitted, when entrusted by clients or Chinese law firms;

[38] Article 58, 62 and 67 of the *Constitution of the People's Republic of China.*

[39] Article 85 and 89 of *Constitution of the People's Republic of China.*

[40] Article 99, 100 and 110 of *Constitution of the People's Republic of China.*

- entrusting, on behalf of foreign clients, Chinese law firms to deal with Chinese legal affairs;
- entering into contracts to maintain long-term entrustment relations with Chinese law firms for legal affairs; and
- provision of information on the impact of the Chinese legal environment.[41]

The representatives of a foreign law firm in China shall be practitioner lawyers who are members of the bar or law society in a WTO member and have practiced for no less than two years outside of China. The chief representative shall be a partner or equivalent (e.g. member of a law firm or a limited liability corporation) of a law firm of a WTO member and have practised for no less than three years.[42] All representatives shall be resident in China no less than six months each year.[43] The representative office shall not employ Chinese national registered lawyers.[44]

For more detailed information, please search the website www.legalinfo.gov.cn.

Accounting and Auditing Services

The Ministry of Finance is the primary administrative agency for accounting and auditing services, and the Chinese Institute of Certified Public Accountants (CICPA) is in charge of supervising CPAs in China.

The applicable laws and regulations include *The Law of the People's Republic of China on Accountants, The Law of the People's Republic of China on Certified Public Accountants*, and *The Audit Law of the People's Republic of China.*

The preamble of national treatment specifies the requirements for foreigners to become CICPA members and practice as CPAs with the following criteria: (1) at least two years' working experience as an auditor in China; (2) a permanent address in China and have stayed in China for at least one year cumulatively; (3) been recommended by the Chinese CPA firms for whom they work. Foreign nationals, like Chinese CPAs, must also practice in conformity with China's Independent Auditing Standards, General Standards on Professional Ethics, General Standards on Continuing Professional Education, General Standards on Quality Control, and other relevant regulations.

For detailed information see www.mof.gov.cn and www.cicpa.org.cn.

Architectural and Engineering Services[45]

The primary administrator of architectural and engineering services in China is the Ministry of Construction. The applicable laws and regulations include *Law of the People's Republic of China on Urban Planning, Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises, Regulations on the Management of Foreign-Funded Urban Planning Service Enterprises.*

At present, foreign nationals may only provide architectural and engineering services in the form of joint ventures, with foreign majority ownership permitted. From 2006, wholly foreign-owned enterprises will be permitted. Foreign service suppliers should be registered architects/engineers, or enterprises engaged in architectural/engineering/urban planning services, in their home country or jurisdiction.[46]

---

41 See Article 15 of the *Regulations on Representative Offices of Foreign Law Firms in China.*

42 See also Article 7 of the *Regulations on Representative Offices of Foreign Law Firms in China*, and Annex 9 of the *Protocol of the People's Republic of China on the Accession to the WTO.*

43 See Article 19 of the *Regulations on Representative Offices of Foreign Law Firms in China* and China's WTO commitments.

44 See also Article 16 of the *Regulations on Representative Offices of Foreign Law Firms in China*, Annex 9 of the *Protocol of the People's Republic of China on the Accession to the WTO*, and WTO documents named *Trade in Services - The People's Republic of China - Schedule of Specific Commitments – Corrigendum* (No.03-0922, GATS/SC/135/Corr.1).

45 Including architectural services (CPC 8671), engineering services (CPC 8672), integrated engineering services (CPC 8673), and urban planning services (CPC 8674, except general urban planning).

46 Annex 9 of the *Protocol of the People's Republic of China on the Accession to the WTO*; Article 13 of *Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises*; Article 6 of *Regulations on the Management of Foreign-Funded Urban Planning Service Enterprises.*

As to urban planning services, all foreign companies, enterprises, other economic entities or individuals that hope to specialise in urban planning services in China should apply for a *Certificate of Qualification of Foreign-Funded Enterprises for Urban Planning Services*.[47] In addition to meeting requirements set forth in pertinent Chinese laws and regulations on foreign-funded enterprises, the establishment of foreign-funded urban planning service enterprises is subject to the following requirements:

- the foreign party shall be an enterprise or professional specialising in urban planning services in its resident country or region;
- the applicant shall have more that 20 employees specialising in urban planning, architecture, road transportation, gardening and related disciplines, with foreign specialists accounting for no less than 25 percent of this total, and have at least one expatriate technician specialising in urban planning, architecture, road transportation, and gardening respectively; and
- the applicant shall have technical apparatus and a fixed work site as stipulated by the State.

Detailed policies and regulations are available at www.cin.gov.cn.

Medical Services

The Ministry of Health is responsible for enforcing laws and regulations on medical services. The associated legislation includes the *Law of the People's Republic of China on Practicing Physicians, Provisional Regulations for the Management of Short Term Medical Practice of Foreign Physicians in China.*

Foreign doctors with professional certificates issued by their home country can be invited or employed by Chinese medical institutions to provide short-term medical services in China after they obtain a *Temporary License for Foreign Physician to Practice Medicine in China* from the Ministry of Health.[48] The term of service is six months and may be extended to one year.

More information is available at www.moh.gov.cn.

Postal Services

The Ministry of Information Industry and the State Postal Bureau are responsible for the administration and supervision of postal services in China. The key legislation is the *Postal Law of the People's Republic of China.*

China Post has a monopoly on the delivery of letters and other articles of a similar nature. Other entities and individuals can be entrusted by China Post to provide an exclusive postal business.[49]

In accordance with WTO commitments, foreign service suppliers are permitted to establish joint ventures. Foreign majority ownership is permitted for courier service providers except for those currently specifically reserved to Chinese postal authorities by law. From 2005, foreign service suppliers will be permitted to establish wholly foreign-owned subsidiaries.[50]

In order to implement the above commitments, the Government has issued a supplementary notice which provides that, upon the entrustment of postal entities, international forwarding agency enterprises are allowed to handle the express delivery of outward letters and articles; excluding private letters and official correspondence of the Chinese Communist Party and political and army institutions at the county level and above. The notice also regulates simpler procedures for handling entrustment formalities.[51]

---

47 Article 4 of *Regulations on the Management of Foreign-Funded Urban Planning Service Enterprises.*

48 Article 3 and Article 4 of *Provisional Regulations For The Management of Short Term Medical Practice of Foreign Physicians in China.*

49 Article 8 of *Postal Law of the People's Republic of China.*

50 Annex 9 of the *Protocol of the People's Republic of China on the Accession to the WTO.*

51 "*The Supplementary Notice Concerning the Handling the Delivery Services of Inward-and-Outward Letters and Articles with the Letter Nature*" issued jointly by the Ministry of Information Industry, the Ministry of Foreign Trade and Economic Cooperation, and the State Post Bureau on September 5, 2002.

Telecommunication Services

The primary administrative and supervising department for telecommunication services in China is the Ministry of Information Industry. The applicable laws and regulations include the *Telecommunications Regulations, Provisions on Administration of Foreign-Invested Telecommunications Enterprises* and other related laws and regulations.

According to its WTO commitments, China will progressively open the telecommunications market to foreign participation. The State implements a system of licensing for the operation of telecommunications services, based on the categorisation of such services.[52] Foreign investment in the telecommunications services industry is permitted only through joint ventures with Chinese operators who meet certain conditions. At present, wholly foreign-owned enterprises are not permitted and the foreign capital proportion of the total registered capital is restricted to be generally no more than 50 per cent.[53] The regional (geographic) restrictions on foreign-invested enterprises will be removed gradually.[54]

More detailed information and regulations are available on www.mii.gov.cn.

Audiovisual Services

The Ministry of Culture and the State Administration of Radio Film and Television are in charge of the administration of audiovisual services in China. The applicable regulations include the *Regulations on Broadcasting and Television*, *Regulations on Audiovisual Products*, and *Regulations on Films*.

Foreign services suppliers are permitted to establish contractual joint ventures with Chinese partners to engage in the distribution of audiovisual products, excluding motion pictures, and to construct and/or renovate cinema theatres, with foreign investment in such joint ventures limited to no more than 49 per cent. China has also allowed the importation of motion pictures for theatrical release on a revenue-sharing basis. The number of such imports is limited to 20 on an annual basis.

In December 2004, China further opened its audiovisual market to foreign investment: the production, publishing and broadcasting of television programs and the production of films are permitted with a Chinese partner holding a majority of shares.

More detailed information is available at www.ccnt.gov.cn.

Construction and Related Engineering Services

The primary legislation regulating construction and related engineering services is the *Law of the People's Republic of China on Construction*, and other relevant laws and regulations include the *Regulations on Administration of Foreign–Invested Construction Enterprises*. The Ministry of Construction is responsible for the implementation of the above laws and regulations.

Foreign investment in construction and related engineering services is permitted in the forms of equity joint ventures, contractual joint ventures and wholly foreign-owned enterprises.[55] Wholly foreign-owned enterprises can undertake the following four types of construction projects:[56]

- Construction projects wholly financed by foreign investment and/or grants;
- Construction projects financed by loans of international financial institutions and awarded through international tendering according to the terms of loans;

---

[52] Article 6 of *Telecommunications Regulations of the People's Republic of China*.

[53] According to Article 6 of *The Provisions on Administration of Foreign-Invested Telecommunications Enterprises*, in foreign invested enterprises engaging in basic-telecommunication (except paging services), foreign investment should be no more than 49 percent. In foreign invested enterprises engaging in value-added telecommunication services (including paging services and basic-telecommunication services), foreign investment should be no more than 50 per cent.

[54] See also Annex 9 of the *Protocol of the People's Republic of China on the Accession to the WTO*.

[55] See also Article 2 of *Regulations on Administration of Foreign–Invested Construction Enterprises*.

[56] Article 15 of *Regulations on Administration of Foreign–Invested Construction Enterprises*.

- Chinese-foreign jointly constructed projects with foreign investment equal to or more than 50 per cent; and
- Chinese-foreign jointly constructed projects with foreign investment less than 50 per cent but technically difficult for Chinese construction enterprises to implement alone.

According to the *Regulations on Administration of Foreign–Invested Construction Enterprises*, the examination and approval of the establishment of foreign-invested construction enterprises and their qualifications are managed by a grading and categorisation system. Where an application is made to establish a contractor with *Super Grade* or *Grade A*, or to establish a specialised contractor with *Grade A*, the establishment shall be examined and approved by the Foreign Trade and Economic Cooperation Administration Department of the State Council and its qualifications shall be examined and approved by the construction administration departments of the State Council; where an application is made to establish a contractor or a specialised contractor with *Grade B* or lower qualifications or any other subcontractor qualifications, the establishment shall be examined and approved by the Foreign Trade and Economic Cooperation Administration Department of the government of the province, autonomous region or directly administered municipality, and its qualifications shall be examined and approved by the Construction Administration Department of the government of the province, autonomous region or directly administered municipality. Where the Chinese investor to a proposed Sino-foreign equity construction joint venture or a Sino-foreign cooperative construction enterprise is an enterprise administered by the Central Government, the establishment of the joint venture shall be examined and approved by the Foreign Trade and Economic Cooperation Administration Department of the State Council and its qualifications shall be examined and approved by the construction administration department of the State Council.[57] The criteria of grading of qualifications of foreign-invested construction enterprises shall be in accordance with the criteria of grading of construction enterprise qualifications formulated and issued by the construction administration department of the State Council.[58] Where a foreign-invested construction enterprise contracts for construction projects in the form of a consortium with other construction enterprises, the consortium shall contract for projects within the permitted scope of the lower qualification grade.[59]

More information is available on www.cin.gov.cn.

Distributional Services

The Ministry of Commerce is in charge of the establishment and operation of commercial companies in China. Principal regulatory instruments include *Provisions on Pilot Commercial Foreign-Investment Enterprises* and other relevant regulations.

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. More information is available at www.mof/com.gov.cn.

Educational Services

The primary administrative department for educational services is the Ministry of Education.

The key laws and regulations on educational services include the *Education Law of the People's Republic of China*, the *Compulsory Education Law of the People's Republic of China, Teachers Law of the People's Republic of China, Vocational Education Law of the People's Republic of China, Higher Education Law of the People's Republic of China, Regulations on Chinese-Foreign Cooperative Education*, and *Implementation Measures of the Regulations on Chinese-Foreign Cooperative Education*.

[57] Article 6 of *Regulations on Administration of Foreign–Invested Construction Enterprises*.
[58] Article 17 of *Regulations on Administration of Foreign–Invested Construction Enterprises*.
[59] Article 19 of *Regulations on Administration of Foreign–Invested Construction Enterprises*.

Joint schools are permitted with foreign majority ownership.[60] In addition, foreign institutes and enterprises, representative offices of international organisations in China and foreign nationals residing in China legally are permitted to establish wholly foreign-owned schools to provide secondary and other lower level education services for children of foreign nationals residing in China.

In the areas of primary education services[61], secondary education services[62], higher education services, adult education services and other education services, foreign individual education service suppliers are permitted to enter into China to provide education services[63] when invited or employed by Chinese schools and other education institutions provided they are in possession of a Bachelor's degree or above and an appropriate professional title or certificate and have two years' professional experience. The principal or primary administrator of a Chinese-foreign cooperative educational institution should be a national of the People's Republic of China.[64] More information is available on www.moe.edu.cn. The foreign employees in Chinese-foreign cooperative educational institutions should comply with the relevant regulations on the employment of foreigners in China.[65] Detailed information in this regard is set out in *Regulations on the Management of Employment of Foreigners in China*. Please also refer to the website www.molss.gov.cn.

Environmental Services

The State Environmental Protection Administration is responsible for the administration and supervision of environmental services in China. The primary legislation is *Law of the People's Republic of China on Environmental Protection*.

Foreign services suppliers engaged in environmental services are permitted to provide services in the form of joint ventures, with foreign majority ownership permitted.[66] More information is available at www.zhb.gov.cn.

Financial Services

Banking

The China Banking Regulatory Commission is the administrator and supervisor for foreign invested financial institutions. Primary legislation relevant to banking includes the *Law of the People's Republic of China on the People's Bank of China, Commercial Banking Law of the People's Republic of China, Law of the People's Republic of China on Banking Regulation and Supervision, Regulations on the Administration of Foreign-Funded Financial Institutions* and the detailed *Implementing Rules for the Regulations on the Administration of Foreign-Funded Financial Institutions*.

According to *Regulations on the Administration of Foreign-Funded Financial Institutions*, foreign financial institutions that meet the following conditions are permitted to establish a subsidiary of a foreign bank in China:

- the applicant has set up a representative office for more than 2 years;
- the applicant has total assets of more than US$10 billion at the end of the year prior to filing the application; and
- a sound and effective financial supervision regime exists in the home region or country of the applicant.

[60] Annex 9 of the *Protocol of the People's Republic of China on the Accession to the WTO*.

[61] Excluding national compulsory education in CPC 92190.

[62] Excluding national compulsory education in CPC 92210.

[63] Excluding special education services e.g. military, police, political and party school education.

[64] Article 25 of *Regulation of the People's Republic of China on Chinese-Foreign Cooperative Education*.

[65] Article 28 of *Regulation of the People's Republic of China on Chinese-Foreign Cooperative Education*.

[66] Annex 9 of the Protocol of the People's Republic of China on the Accession to the WTO.

The requirements for foreign financial institutions applying to establish a branch of a foreign bank in China are the same as those set out above except that the total assets should be more than US$20 billion at the end of the year prior to filing the application.[67]

Foreign financial institutions that meet the following conditions are permitted to establish a Chinese-foreign joint bank in China:

- both parties cooperating to form the joint venture should be financial institutions;
- the foreign investor should have total assets of more than US$10 billion at the end of the year prior to filing the application;
- the foreign investor has established a representative office in China;
- a sound financial supervision regime exists in the home region or country of the applicant.[68]

The registered capital of subsidiaries of a foreign bank and Chinese-foreign joint banks should be no less than RMB 300 million (US$36.2 million) or equal value in freely exchangable currency, in which paid-up capital should be no less than 50 per cent.[69]

The operational scope of subsidiaries of a foreign bank, Chinese-foreign joint banks and branches of foreign banks is regulated by the People's Bank of China. Detailed requirements are set out in Article 17 of the *Regulations on the Administration of Foreign-Funded Financial Institutions*.

In the WTO context, China will revoke various kinds of restrictions on the foreign and local currency business of foreign invested banks as well as operational licences gradually from 2001 to 2006.

Related laws and regulations are available at www.cbrc.gov.cn.

Insurance

The China Insurance Regulatory Commission is responsible for the administration and supervision of insurance services in China. The *Insurance Law of the People's Republic of China* and the *Revised Regulations on Insurance Companies* are the key legislation on insurance services in China.

Foreign non-life insurers are permitted to establish as a wholly-owned subsidiary - i.e. with no form of establishment restrictions. Foreign life insurers are permitted 50 per cent foreign ownership in a joint venture with the partner of their choice. There is no geographic restriction.

According to *The Regulations on Foreign Insurance Companies*, the requirements for market entry for foreign insurers are:

- insurance business experience of over 30 years;
- having a representative office in China for 2 consecutive years; and
- having total assets of more than US$5 billion at the end of the year prior to the application.

Securities

China's Securities Regulatory Commission (CSRC) is responsible for the supervision of the securities market in China. The primary legislation on securities in China is the *Law of the People's Republic of China on Securities Investment Funds*.

According to the place of issue and the type of investor, stocks are classified as "A" shares, "B" shares, and "others". "A" shares, the formal name of which is RMB ordinary shares, are ordinary shares issued by enterprises in China, subscribed and exchanged by institutions, organisations and

[67] Article 6 of *Regulations of the People's Republic of China on the Administration of Foreign-Funded Financial Institutions*.

[68] Article 8 of *Regulations of the People's Republic of China on the Administration of Foreign-Funded Financial Institutions*.

[69] Article 5 of Regulations of the *People's Republic of China on the Administration of Foreign-Funded Financial Institutions*.

individuals in China (excluding investors from Taiwan province, Hong Kong SAR and Macau SAR). "B" shares, also named RMB special shares, the par value of which is quoted in RMB, are subscribed and exchanged in foreign currencies in domestic stock exchanges, the investors include natural persons, legal persons and other organisations in both China and abroad.

Requirements for establishing representative offices of securities companies and fund management companies in China are as follows:

- the country or region where the applicant resides shall have sound securities laws and regulations;
- the applicant shall be eligible for engaging in securities business according to the laws of the country/region where the applicant resides; and
- the applicant shall operate legally, have a good reputation, and have a profit record in each of the past three years before lodging an application.

Requirements for establishing Sino-foreign JV investment banks are as follows:

- the applicant shall have engaged in investment banking for more than 20 years;
- the applicant shall have established a representative office in China;
- the applicant shall have net capital of no less than US$200 million at the end of the year prior to application;
- the country or region where the applicant resides shall have sound securities laws and regulations; and
- the applicant shall have a good reputation, prudential operation, and no serious sanctions applied to it in the past three years before application.

Requirements for foreign shareholders of securities companies with foreign shareholding:

- the country or region where the foreign institution resides shall have sound securities laws and regulations, and the securities regulatory authorities should have signed bilateral MOUs with CSRC;
- the applicant shall be eligible to engage in the securities business, having engaged in financial business for more than ten years, and in the past three years shall not have been subject to serious sanctions imposed by home securities regulators or judicial organisations;
- in the three years prior to making an application, the applicant's risk management system accords with laws in its home jurisdiction and the requirements of its home securities regulator;
- the applicant shall have a sound internal control system;
- the applicant shall have a good reputation and good operational performance in international securities markets; and
- the applicant shall be subject to other prudential terms specified by the CSRC.

Requirements of foreign shareholders of fund management companies with foreign shareholding:

- have a legal identity, and in the previous three years have not been subject to sanctions imposed by home securities regulators or judicial organisations;
- the country or region where a foreign institution resides shall have sound securities laws and regulations, and the securities regulatory authorities should have signed MOUs with the CSRC;
- paid-in capital should be convertible currency, and equivalent to no less than RMB 300 million (US$36.3 million); and
- other prudential terms specified by the CSRC.

Related laws and regulations are available at www.csrc.gov.cn.

Tourism

The primary administrative department for tourism services in China is the China National Tourism Administration. The key regulations for tourism services are the *Regulations on the Management of Travel Agencies* and the *Temporary Regulations on Establishing Foreign Majority-Owned and Wholly Foreign-Owned Travel Agencies*.

Hotels and Restaurants

Foreign services suppliers may construct, renovate and operate hotel and restaurant establishments in China in the form of joint ventures or wholly foreign-owned subsidiaries. There are no special geographic restrictions on foreign invested hotels and restaurants. Foreign managers, specialists including chefs and senior executives who have signed contracts with joint venture hotels and restaurants in China are permitted to provide services in China.

Travel Agencies and Tour Operators

Foreign services suppliers were permitted to provide services in the form of joint venture or wholly foreign-owned travel agencies and tour operators in the holiday resorts designated by the Chinese Government and in the cities of Beijing, Shanghai, Guangzhou, Shenzhen and Xi'an upon accession to the WTO.[70] The registered capital of joint venture travel agency/tour operator shall be no less than RMB 4 million (US$483,308).[71]

Foreign majority ownership in travel agencies is subject to satisfaction of the following five requirements. The applicant must:[72]

(a) be a travel agency and tour operator mainly engaged in travel business;

(b) have annual world-wide turnover in excess of US$40 million;

(c) be a member of the local tourism community;

(d) have an excellent credit standing in the world and advanced experience in travel agency operations; and

(e) comply with Chinese laws and related regulations in the tourism sector.

As to foreign investors in wholly foreign-owned travel agencies, in addition to the above requirements set forth in items (a), (c), (d) and (e), their annual world-wide turnover must exceed US$500 million.[73]

Joint ventures or wholly foreign-owned travel agencies and tour operators are not permitted to engage in the provision of services to Chinese citizens travelling abroad and to Hong Kong China, Macau China and Chinese Taipei.[74]

More information is available at www.cnta.gov.cn.

Transport Services

The primary administrative departments for transport services in China are the Ministry of Communications and the Civil Aviation Administration of China. The key regulations include the *Regulations on International Maritime Transportation, Civil Aviation Law of the People's Republic of China, Provisions on the Administration of Foreign-Funded Transport Services, Provisions on Foreign Investment in Civil Aviation*. More detailed information is available at www.moc.gov.cn.

---

70 Article 7 of *Temporary Regulations on Establishing Foreign Majority-Owned and Wholly Foreign-Owned Travel Agencies*.

71 Article 6 of *Temporary Regulations on Establishing Foreign Majority-Owned and Wholly Foreign-Owned Travel Agencies* and Article 28 of *Regulations on the Management of Travel Agencies*.

72 Article 3 of *Temporary Regulations on Establishing Foreign Majority-Owned and Wholly Foreign-Owned Travel Agencies*.

73 Article 4 of *Temporary Regulations on Establishing Foreign Majority-Owned and Wholly Foreign-Owned Travel Agencies*.

74 Article 33 of *Regulations on the Management of Travel Agencies* and Article 10 of *Temporary Regulations on Establishing Foreign Majority Owned and Wholly Foreign-Owned Travel Agencies*.

Maritime Transport Services

Foreign service suppliers are permitted to establish joint venture shipping companies. Foreign investment shall not exceed 49 per cent of the total registered capital of the joint venture. The chairman of the board of directors and the general manager of the joint venture should be appointed by the Chinese side.

Air Transport Services

Foreign service suppliers are permitted to establish joint venture aircraft repair and maintenance enterprises in China. The Chinese side shall hold controlling shares or be in a dominant position in the joint ventures. Licenses for the establishments of joint ventures are subject to an economic needs test.[75]

Rail Transport Services

Foreign majority ownership is permitted and from 2007, wholly foreign-owned subsidiaries will be permitted.

Freight Forwarding Agency Services

Foreign freight forwarding agencies which have at least three consecutive years experience are permitted to set up freight forwarding agency joint ventures in China, and foreign majority ownership is permitted. Wholly foreign-owned subsidiaries will be permitted from 2005.

Road Transport Services

Foreign investment is permitted to provide transport services in the following forms:

- joint ventures engaging in road passenger transport services;
- equity joint ventures, contractual joint ventures and wholly foreign-owned enterprises engaging in road cargo transport, storage, cargo handling, and transport related services.[76]

To engage in road passenger transport, foreign investors shall also meet the following conditions[77]:

- at least one of the main investors must be an enterprise with more than 5 years of experience in road passenger transport services in China;
- foreign equity participation in the capital of the enterprise shall not be more than 49%;
- 50 per cent of the registered capital of the enterprise shall be used in the construction and renovation of passenger transport infrastructure; and
- vehicles put into operation shall be coaches of middle and above classifications.

Health Services

The primary legislation is *Interim Measures for the Administration of Sino-Foreign Equity Joint and Cooperative Joint Medical Institutions*. The Ministry of Health is responsible for the enforcement of the above regulation.

Foreign services suppliers are permitted to establish joint venture hospitals or clinics with Chinese partners with quantitative limitations in line with China's needs, with foreign majority ownership permitted.

The equity joint venture or cooperative joint medical institutions should meet the following requirements[78]:

---

75 Annex 9 of the *Protocol of the People's Republic of China on the Accession to the WTO*.

76 Article 3 of *Provisions on the Administration of Foreign-Funded Transport Services*.

77 Article 6 of *Provisions on the Administration of Foreign-Funded Transport Services*.

78 Article 8 of *Interim Measures for the Administration of Sino-Foreign Equity Joint and Cooperative Joint Medical Institutions*.

- the joint venture must have independent legal person status;
- total investment value should be no less than RMB 20 million (US$2.4 million);
- the proportion of stock or equity of Chinese investors or co-operators should be no less than 30 per cent in the equity of the joint venture or cooperative joint medical institution;
- the term of operation of the joint venture should be no longer than 20 years; and
- the joint venture will be subject to other requirements stipulated by sanitation administrative departments at the provincial level and above.

Detailed information is available at www.moh.gov.cn.

Mining and Energy Services

The Ministry of Land and Resources is responsible for the administration and supervision of mining and energy services in China. The following laws and regulations are applicable:

- *Mineral Resources Law of the People's Republic of China:* including the administration rules on registration and approval of mineral resources exploration and exploitation, and administration rules on mineral enterprises;
- *Regulations on the Exploitation of Land Petroleum Resources in Cooperation with Foreign Enterprises;* and
- *Regulations on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises.*

According to the above laws and regulations, the ownership of mineral resources belongs to the whole country; the State Council exerts the ownership on behalf of the country. To explore or exploit mineral resources, enterprises must apply for the right of exploration and exploitation respectively, and go through registration legally.[79]

Offshore oil-field services: foreigners can provide services only in the form of petroleum exploitation in cooperation with Chinese partners.[80]

Onshore oil-field services: foreigners can provide services only in the form of petroleum exploitation in cooperation with China National Petroleum Corporation (CNPC) in the designated areas approved by the Chinese government. In order to carry out petroleum contracts, foreign service suppliers should establish a branch, subsidiary or representative office within the territory of the People's Republic of China and go through registration formalities in accordance with relevant laws. The domiciles of the said offices should be determined through consultation with CNPC. Foreign service suppliers should open bank accounts with a bank approved by the Chinese authorities to engage in foreign exchange business within the Chinese territory.[81]

Detailed information is available at www.mlr.gov.cn.

Recreational and Sporting Services

The General Administration of Sport and The Ministry of Culture are responsible for the administration and supervision of recreational and sporting services in China.

The related foreign services are regulated by the *Law of the People's Republic of China on Physical Culture and Sports*, and the *Provisions of the Ministry of Culture on the Administration on the Foreign-Related Culture and Art Performance and Shows*. The former covers general principles and administration rules and regulations on physical culture and various kinds of sports activities, while the later covers the basic principles and detailed administration rules, responsible departments or approval procedures on foreign-related culture, arts performances and shows.

More information is available at www.sport.gov.cn, www.ccnt.gov.cn.

[79] Article 3 of *Mineral Resources Law of the People's Republic of China.*

[80] Annex 9 of *the Protocol of the People's Republic of China on the Accession to the WTO.*

[81] Annex 9 of *the Protocol of the People's Republic of China on the Accession to the WTO.*

4.3 Overall Impact of Trade Liberalisation in Services

Liberalising services trade will be an important and necessary component of a possible FTA between Australia and China. Chapter 2 highlights that both countries have a mutual interest in expanding existing strong trade in education and tourism services, and, reflecting complementarities, trade in other services is becoming more important.

An FTA could inject new competition in each other's domestic economy, lower prices for consumers and producers and shift factors of production to more efficient uses. Services trade liberalisation should seek to remove barriers that impose additional costs to exporters and erode competitiveness, taking into account the income and employment impacts on each sector.

In the context of a possible FTA, this could include addressing a number of cross-sectoral and sectoral issues, such as minimum capital requirements, restrictions on wholly foreign-owned enterprises and other foreign ownership restrictions, licence and market access restrictions, intellectual property rights, responsibilities and variations in implementing laws between central and state/provincial levels of government, transparency in decision-making processes, the repatriation of funds and national treatment.

A possible FTA could seek to facilitate enhanced mutual recognition of professional qualifications between Australia and China, particularly in the professional services area, where greater mutual recognition of, for example, educational qualifications, examinations and experience is needed to strengthen trade and more closely integrate the two economies. A possible FTA could also seek to address inconsistent and opaque visa regulations.

Independent economic modelling shows that liberalisation of restrictions on commercial presence (Mode 3) would deliver net economic gains for Australia and China through improved productivity and increased capital inflows. Average annual real GDP growth rates in Australia and China are expected to increase by 0.016 percentage points (or US$1.2 billion in 2015) and 0.021 percentage points (or US$5.9 billion in 2015) respectively. The modelling also demonstrates the flow-on effects of rising productivity in the services sector on other sectors of the two countries. Manufacturing in particular would benefit from liberalising services because of the lower cost of services inputs.

- Note that the net economic gains for both countries could be greater if the modelling included the effects of liberalising the other three modes of services delivery: that is, if it included liberalisation of cross-border supplies of services (Mode 1), consumption of services abroad (Mode 2) and the movement of natural persons (Mode 4) between the two countries.

Case studies (see below) confirm the benefits and challenges of expanding market access for services between Australia and China through a possible FTA. The studies highlight restrictions on services and identify challenges associated with liberalising trade in services, which would need to be taken into account in a possible FTA. The case studies are not intended to be inclusive of all services but provide examples of the economic and trade impact of a possible FTA on education, telecommunications, freight logistics, legal, financial, and construction and engineering.

Case Studies Illustrative of the Impact on Individual Services Sectors of Trade Liberalisation

Education Services

Education is an important and expanding sector in bilateral services trade and provides many benefits for both countries. The number of Australian students studying in China has risen over the past decade, and totalled around 1,000 in 2003.[82] China was the top source country for international enrolments in Australian education institutions in 2003 with a total of 57,579 Chinese nationals enrolled in courses in all sectors of Australian education in Australia. For 2004, the estimated number of students studying Australian programs in China was 30,000.

The *Memorandum of Understanding on Cooperation in Education and Training 2002* between Australia's Department of Education, Science and Training (DEST) and China's Ministry of Education (MoE) formalises the education and training relationship between Australia and China and includes information sharing, the promotion of personnel and student mobility, personnel development and educational exchanges, and the facilitation of the recognition of higher education qualifications and enhanced cooperation in all sectors of education and training. The Memorandum of Understanding also facilitates cooperation in activities such as conferences, meetings and symposia.

There are numerous activities that strengthen linkages between Australia and China, including China's setting up of the Confucius Institute and testing places for the Chinese Proficiency Test (developed by the HSK Centre at the Beijing Language and Culture University) in Sydney and Melbourne, and Australian institutions participation in major Chinese education exhibitions in Chinese cities, joint research, educational conferences, forums and seminars. A number of Australian education providers also work closely with Chinese education institutions in the form of cooperative programs, providing education through partnerships and twinning programs.

Australia has made substantial commitments in the WTO on education services in relation to private secondary schooling, private higher/tertiary education, and other (English language) education.

Recognising the importance and value of the education sector in national development, the Chinese government is supportive of international education activities and cooperation which will contribute to national education development. China's existing GATS commitments, while qualified in some modes of service supply, have broad sectoral coverage, including in primary, secondary, higher/tertiary, adult and other education services. Foreign individual education service suppliers meeting qualification requirements may enter into China to provide education services if they are invited or employed by Chinese schools and other education institutions. At present, the Ministry of Education and other examination and approval authorities have approved 859 Chinese-foreign cooperatively-run schools or institutions.

An FTA between Australia and China could provide considerable scope for further cooperation and mutual benefit. In particular, a possible FTA could seek to remove regulatory or other barriers that restrict cross-border supply, commercial presence and the movement of educational professionals. A possible FTA could also seek to facilitate further the mutual recognition of professional and academic qualifications.

Financial Services

The financial system is an essential component of international trade, commerce and investment across borders. As such, growth and diversification of the overall bilateral economic relationship between Australia and China will be facilitated through the expansion of financial services and increased competitive efficiencies as well as enhanced bilateral financial system cooperation.

[82] Source: PRC Ministry of Education.

The main areas of bilateral cooperation in financial services are banking and insurance.

In the case of banking, the Australian and New Zealand (ANZ) Banking Group has branch operations in Shanghai and Beijing with the ANZ Shanghai branch authorised to conduct limited local currency (RMB) business activities.

The Commonwealth Bank of Australia (CBA) has representative offices in Beijing and Shanghai and in late 2004 secured approval from the China Banking Regulatory Commission (CBRC) for an approximate 11 per cent equity interest in Jinan City Commercial Bank (JCCB), with options to acquire up to 20 per cent of JCCB. National Australia Bank and Westpac Banking Corporation each have representative offices in Beijing. Macquarie Bank also has a presence in China.

The Bank of China (BOC) has three branches in Australia which are registered with the Australian Prudential Regulation Authority (APRA) as Authorised Deposit-taking Institutions (ADIs). The Industrial and Commercial Bank of China (ICBC) has a representative office located in Sydney.

Cooperation between Australian and Chinese companies to offer insurance services is expanding. China Life CMG Insurance Co. Ltd, which was established in Shanghai in 2000, is the first life insurance joint-venture between China and Australia. It was set up by the China Life Insurance Company Co. Ltd and the CBA. The company offers insurance products, including participating insurance, foreign currency insurance for tourists, life insurance, and accident insurance.[83]

A description of Australia's and China's financial sector policies and regulatory arrangements is provided in Chapters 4.2 and 5.1.

Independent economic modelling confirms investment liberalisation under a possible FTA in the financial services sector has the potential to deliver sustainable trade and economic benefits to both countries.

A possible FTA provides an opportunity for encouraging growth in two-way trade through further liberalisation in financial services including increasing transparency in approval processes and addressing other barriers identified in Chapter 4.3. In addition, a possible FTA could encourage cooperation on regulatory reform. It is noted, however, China is still in the process of implementing its WTO financial services commitments. The impact of further liberalisation on China's financial services could be taken into account in a possible FTA.

Telecommunications Services

It is widely acknowledged that no modern economy can be developed and sustained without an efficient telecommunications infrastructure. Improvements in the competitive efficiency of telecommunications services have a substantial positive impact on the performance of most other sectors of the economy. Competition has the potential to dramatically improve efficiency and quality of service in the telecommunications industry and to result in a dramatic expansion of the sector's share of GDP. There are a number of benefits to increasing the cooperation and strengthening the trade relationship between Australia and China in telecommunications, thus improving the economic benefit to both countries.

For Australia, reforms made to the telecommunications regulatory regime since 1997 have led to substantial ongoing benefits to consumers and small business. A study recently done for the Australian Communications Authority has estimated that the Australian economy is currently US$9.6 billion larger than it would have been without these reforms. Additionally, industry revenue has almost doubled during this period. The full effects of telecommunications liberalisation have still to flow through to some domestic markets but progress so far is very encouraging.

For China, reform and development of the telecommunications industry has occurred over the last ten years. At the end of 2004, there were 6 backbone enterprises operating basic telecommunications services, and more than 12,000 enterprises operating paging and value-

[83] Data resource: China CMG Life Insurance Company Ltd. http://www.chinalifecmg.com/cmg.asp?type=1

added telecommunications services. The Ministry of Information Industry has issued more than 30 ministerial regulations in the form of ministerial decrees, providing a legal guarantee for strengthening government regulation, safeguarding market order and promoting fair competition. In addition, the *Telecommunication Act* is currently being drafted.

Bilateral trade and investment in telecommunications services is currently modest, although there is increasing interest, particularly with activities around the Beijing Olympic Games in 2008.

Australia has a liberal telecommunications regime, although there are some barriers to trade in the telecommunications sector (see Chapters 4.2 and 5.1). In China, the telecommunications market is still in the process of opening up. At this stage telecommunications services suppliers are required to meet requirements in relation to operating basic telecommunications services, value-added telecommunications services and foreign equity (see Chapters 4.2, 5.1 and refer www.mii.gov.cn).

Independent economic modelling confirms investment liberalisation under a possible FTA in the telecommunications sector has the potential to deliver sustainable trade and economic benefits to both countries.

An FTA between Australia and China could potentially bring sustainable economic benefit for both countries in telecommunications services through removing market access barriers, encouraging competition and facilitating infrastructure development. Currently, China is still in the process of implementing its WTO telecommunications commitments, and the impact of further liberalisation on China's telecommunications enterprises could be taken into account in a possible FTA.

Transport Services

Trade in transport services between Australia and China has doubled over the past decade to US$383 million in 2003-04. The growth in transport services reflects in large part the fact that two-way goods trade between Australia and China has more than quadrupled over the same period. The more rapid growth in bilateral trade suggests that there is scope for further expansion in transport services between Australia and China in the future.

Freight logistics services, which are intrinsic to transport services, cover the movement, storage, and management of freight from the point of production to point of consumption. Such services have a wide scope and include integrated 'whole-of-supply-chain' services as well as road and rail services. Policy attention in Australia and China is aimed at enhancing efficiency throughout the supply chain.

Freight logistics services underpin economic activity and trade by enabling movement of goods from point of production to point of consumption. Total logistics costs are often 20 per cent or more of total production costs in developed countries and usually more in developing countries. Reflecting the strong complementarities between Australian and Chinese transport services, improvements in freight logistics services in Australia and China would enhance efficiencies in both economies leading to greater efficiencies in the sourcing of inputs to production; better market access for goods traded between Australia and China and improved integration between the Australian and Chinese economies.

Australian freight logistics arrangements have been substantially upgraded over recent years. The establishment of a national rail network is a prime example. In 1997 Australia's Federal and State governments agreed to establish a national system for access for all rail operators on the national rail network. Prior to this there were quite separate arrangements in each State and there were significant legislative and practical barriers to private sector and foreign involvement.

Since China's accession to the WTO, foreign market access conditions in transport and logistics service sectors have begun to be liberalised. China is placing significant policy emphasis on creating new and better connections between suppliers and buyers. China has established a logistics authority, the National Committee for Standardization of Logistics Information Management.

In the field of container ocean shipping, China Ocean Shipping Co (Group) Company (COSCO) and China Shipping Group are two of the largest Chinese-registered sea-freight companies ranking 7th and 9th in the world respectively. International container shipping has developed rapidly in recent years. In 2002, China's container exports accounted for 47 per cent of the East-bound cargo on the Pacific Line, and 48-50 per cent of the West-bound cargo on the Asia-Europe line. The volume of goods transported is still increasing at two-digit percentage rates. In 2003, the container handling capacity of China accounted for 16 per cent of the world's capacity.

In the field of airfreight, according to the statistics of the International Civil Aviation Organisation, the turnover volume of China's domestic air transportation in 2003 ranked the 5th place in the world, following the United States, Germany, Britain and Japan. With the sustained growth of China's economy and the deepening reform of the civil aviation sector, China's air transportation market is expected to achieve a rapid growth in the future.

In recent years, strong complementarities between the Australian and Chinese transport and logistics industries have become evident, with Australian high technology and supply chain management know-how able to play a key role in developing industry capacity in China, while China's strength in ocean shipping capabilities helps meet Australian needs. Linfox, one of Australia's largest transport and logistics management companies, has operated in China through a joint venture since 1984, and provides a wide range of freight logistics and warehousing services. Australian operators are taking advantage of transport and logistics opportunities associated with the 2008 Beijing Olympic Games.

An Australia-China Joint Working Group for Transport (JWGT) between Australia's Department of Transport and Regional Services and China's State Development and Planning Commission is focussed on improving bilateral cooperation in freight logistics and transport.

A free trade agreement has the potential to contribute to and maintain the momentum of improving trade in transport services by reducing existing barriers, promoting competition, enhancing transparency and consistency with respect to licensing and permits, enabling access across internal borders and encouraging appropriate use of technologies such as in paperless trading.

Construction and Related Engineering Services

Construction and related engineering services in China and Australia are strongly complementary. Australia has comparative advantages in design and project management, while China possesses a comparative advantage in construction management and related resources.

In 2003, the total value of the Australian construction industry was US$50.1 billion, accounting for 5 per cent of Australian GDP.[84] Total construction industry employment was 716,200 persons in 2003, accounting for 7.6 per cent of the total labour force in Australia. Drawing on experience from the 2000 Sydney Olympic Games, the Australian construction industry has become increasingly competitive at an international level. Many Australian construction companies are participating in construction work in China for the 2008 Olympic Games.

By 2003, the total assets of Chinese construction enterprises amounted to US$284.4 billion, total revenue was US$266.3 billion with net profits of US$6.3 billion[85]. China's construction industry contributed 6.9 per cent to GDP[86], and has become a key source of national economic growth.

Australia and China have existing substantial bilateral cooperation in construction and related engineering services. For example, the Leighton Group, one of Australia's largest construction, project development and civil engineering groups has participated in a number of projects in China. Currently, the Group is building the railroad between Guangzhou and Kowloon, in Hong Kong, and is involved in a range of other construction projects in Hainan Island, Shenzhen and Shanghai.

---

84 Private Sector Construction Industry, Australia 2002-03 (catalogue number 8772.0) ABS and 6202,0,55,01. Labour Force, Australia, Spreadsheets Table 3. Labour Force Status by Sex, ABS.

85 The yearbook "Chinese large-scale real estate and construction enterprises 2004".

86 China Statistic Yearbook 2004.

Bytecraft Pty Ltd, an Australian lighting system design and construction company, is supplying equipment and technology for the National Opera Theatre in Beijing. There is limited investment in Australia by Chinese construction companies.

Regulations and policies regarding the construction sector for Australia and China are discussed in Chapter 4.2 and Chapter 6.5 outlines regulations concerning Temporary Entry/Mobility of Business People.

In addition to generic issues identified at the beginning of Chapter 4.3, a possible FTA could further enhance bilateral cooperation in construction and engineering by addressing a number of barriers including mobility of natural persons, market access issues and recognition of professional qualifications.

Legal Services

Legal business services underpin international trade and investment. They involve professionals skilled in business services of the countries or jurisdictions involved in the investment, trade or transaction – not just one country or jurisdiction. Together with other business services like accountancy, management consultancy, and computer and information technology services, they are increasingly critical to the growth of trade and investment across borders. Legal services are therefore becoming increasingly important as bilateral trade between Australia and China broadens and deepens.

Australia has substantive WTO commitments in the area of legal services and is continuing to liberalise its regulation, particularly in relation to foreign lawyers. Currently there are 13 foreign law firms registered in New South Wales and 15 registered foreign lawyers. There are a substantial number of foreigners, including Chinese, who have studied at Australian law schools and who have been licensed to practice Australian law.

China has been liberalising its regulatory regime for legal services involved in trade and investment following its accession to the WTO. As at September 2004, there were 114 foreign law offices in China, approved by the Chinese Ministry of Justice.[87] Of this total, seven Australian law firms have licences to operate in China and have set up eight representative offices[88] offering legal services in Beijing and Shanghai.

There is an opportunity to develop a more open legal market and explore through a possible FTA the benefits to both China and Australia of removal of unnecessary regulatory or other barriers to trade in legal and other business services between the two countries. Such barriers may presently include restrictions on joint partnerships and other forms of commercial association between local and foreign firms, scope of practice issues, ability of a law firm to employ local or foreign lawyers, and to admit partners from other jurisdictions, minimum experience and/or post-qualification requirements, residency requirements and prudential requirements relating to professional indemnity insurance.

[87] For details see http://www.legalinfo.gov.cn/moj/lsgzgzzds/2004-11/18/content_152221.htm.

[88] Including Mallesons Stephen Jaques Beijing Office, Lintang & CO. lawyers Beijing Office and Allens Arthur Robinson Shanghai Office. For details see: http://www.legalinfo.gov.cn/moj/lsgzgzzds/2004-11/18/content_152221.htm.

5 Impact of Investment Liberalisation

Foreign investment is recognised by both Australia and China as a key to economic growth and an important basis for deepening and broadening the bilateral economic relationship. This chapter provides an overview of policies and barriers that affect the investment flow between Australia and China, and highlights the opportunities and challenges, for both sides, of investment liberalisation through a possible FTA.

A key objective of investment liberalisation in a possible bilateral FTA should be to address, where possible, barriers to investment flows between both countries. Central to meeting this objective are three outcomes:

- negotiated concessions which remove existing restrictions in each country's foreign investment regimes;
- enhanced transparency of each country's foreign investment regimes, including procedural transparency in the processing of applications and implementation of decisions, and streamlined investment regulations and application processes; and
- stronger protection afforded to Australian and Chinese foreign investors including but not limited to the right to repatriate profits and capital, compensation for expropriation and improved mechanisms for handling post-establishment disputes.

As outlined in Chapter 2, two-way foreign direct investment is modest, notwithstanding an increasing trend of bilateral investment. Economic analysis suggests that investment would expand strongly, with net benefit to welfare, if the regulations and other limitations on investment flows were eliminated or reduced further.

A number of other issues relevant to this chapter are discussed in more detail in Chapter 3 (Impact of Trade Liberalisation on Goods), Chapter 4 (Impact of Trade Liberalisation on Services) and Chapter 6 (Implications for Bilateral Cooperation), including trade and investment promotion, temporary entry, intellectual property protection, small and medium-size business cooperation, transparency and capacity building. As well as liberalising investment regulations, flows of foreign investment will also be increased by closer cooperation on trade and investment promotion between the relevant Australian and Chinese agencies, including through mechanisms provided for in the Memorandums of Understanding on bilateral investment promotion concluded in 2004 (additional measures to promote trade and investment are set out in Chapter 6).

While not within the scope of an FTA, as an additional measure to encourage bilateral investment, consideration could be given to enhancing the coverage of the existing double taxation treaty between Australia and China to include taxes on the profits of companies.

5.1 Investment Policy and Measures

5.1.1 Overview of Australia's Investment Framework

Australia encourages foreign investment and has established a transparent and relatively liberal foreign investment regime. Australia maintains a pre-establishment foreign investment screening process to ensure that foreign investments in Australia are not contrary to the national interest.

Under Australia's foreign investment policy,[89] the types of investment proposals by foreign interests that require prior notification and approval from the Australian Government are as follows:

- acquisitions by *foreign persons*[90] of *substantial interests*[91] in existing Australian businesses, or prescribed corporations, the value of whose total assets exceeds A$50 million (US$36.8 million);
- proposals by *foreign persons* to take over offshore companies whose Australian subsidiaries or total Australian assets are valued in excess of A$50 million (US$36.8 million);
- proposals by *foreign persons* to establish new businesses in Australia involving a total investment of A$10 million (US$7.4 million) or more;
- direct (i.e. non-portfolio) investments by foreign governments or their agencies, or companies with greater than a 15 per cent direct or indirect holding by a foreign government or agency, irrespective of size;
- portfolio investments in the media sector of 5 per cent or more and all direct (i.e. non-portfolio) investments, irrespective of size;
- acquisitions of interests in urban land (including interests that arise via leases, financing and profit-sharing arrangements and the acquisitions of interests in urban land corporations and trusts) that involve the:
    - acquisition of developed non-residential commercial real estate, where the property is subject to heritage listing, valued at A$5 million (US$3.7 million) or more;
    - acquisition of developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at A$50 million (US$36.8 million) or more;
    - acquisition of accommodation facilities irrespective of value;
    - acquisition of vacant urban real estate irrespective of value; or
    - acquisition of residential real estate irrespective of value; and
- proposals where any doubts exist as to whether they are notifiable (funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment).

Australia's foreign investment policy operates under the presumption that foreign investment proposals are generally in the national interest and should go ahead. However, where the Treasurer considers the matter is "contrary to the national interest", he may reject applications to control an Australian business or acquire an interest in urban land under the provisions of the *Foreign Acquisitions and Takeovers Act 1975*. Notified investment may also be subject to interim orders and/or approved subject to compliance with certain conditions. Investment referred to above for which no notification is received may be subject to orders under Sections 18, 19, 20, 21 and 21A of the *Foreign Acquisitions and Takeovers Act 1975*. In 2002-03, there were 5,112 applications considered and only 79 rejections, all of which were in the real estate sector. Over the past 5 years, there have only been 4 non-real estate rejections.

---

[89] Australia's foreign investment policy is defined by the following documents: the *Foreign Acquisition and Takeovers Act 1975*; Foreign Acquisitions and Takeovers Regulations and associated Ministerial Statements.

[90] A *foreign person* is defined in Section 5 of the *Foreign Acquisitions and Takeovers Act 1975* as:

- a natural person not ordinarily resident in Australia;
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

[91] A *substantial interest* is defined in Section 9 of the *Foreign Acquisitions and Takeovers Act 1975* as occurring when a single foreigner (and any associates) has 15 per cent or more of the ownership or several foreigners (and any associates) have 40 per cent or more in aggregate of the ownership of any corporation, business or trust.

The Foreign Investment Review Board, in preparing its advice to the Treasurer on national interest issues, considers whether the proposal is inconsistent with:

- existing government policy and law (for example, environmental regulations and competition policy);
- national security interests; and
- economic development.

Where national interest concerns are identified, the Foreign Investment Review Board may seek to formulate conditions that address these concerns.

Urban Land

Proposed acquisitions of real estate for development, including vacant residential real estate and *off-the-plan* newly constructed residences, and developed non-residential commercial real estate are normally approved.

Proposed acquisitions of developed residential real estate are subject to restrictions. Approval may be granted for certain acquisitions by foreign nationals who are temporarily resident in Australia and hold a visa valid for more than 12 months.

Proposed acquisitions of residential real estate are exempt from examination in the case of:

- Australian citizens living abroad purchasing either in their own name or through an Australian corporation or trust;
- foreign nationals purchasing (as joint tenants) with their Australian citizen spouse; and
- foreign nationals who are holders of permanent resident visas or are holders, or are entitled to hold, a 'special category visa' purchasing either in their own name or through an Australian corporation or trust.

Banking

Foreign investment in the banking sector needs to be consistent with the *Banking Act 1959*, the *Financial Sector (Shareholdings) Act 1998* and banking policy, including the Government's 1997 announcement regarding the application of the *Foreign Acquisitions and Takeovers Act 1975* to foreign ownership in the banking sector. Any proposed foreign takeover or acquisition of an Australian bank will be considered on a case-by-case basis.

Australian Domestic Airlines

Proposals by *foreign persons* (including foreign airlines) to acquire up to 100 per cent of the equity in an Australian domestic airline are notifiable, in accordance with the standard notification requirements set out in Australia's foreign investment policy, and are normally approved, unless the proposal is contrary to the national interest.

Australian International Airlines

Under the *Air Navigation Act 1920 foreign persons* (including foreign airlines) can generally expect approval to acquire up to 49 per cent of the equity in an Australian international carrier (other than Qantas) individually or in aggregate, provided the proposal is not contrary to the national interest. Under the *Qantas Sale Act 1992*, total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate foreign ownership by foreign airlines limited to 35 per cent. The Chairperson and a majority of directors of Qantas must be Australian citizens and Qantas is required to maintain its head office, main base of operations and place of incorporation in Australia.

Airports

Foreign investment proposals for acquisitions of interests in Australian airports are subject to case-by-case examination in accordance with the standard notification requirements. The *Airports Act 1996* stipulates a 49 per cent foreign ownership limit in airports offered for sale by the Commonwealth, a 5 per cent airline limit and cross-ownership limits between the Sydney airport and Melbourne, Brisbane and Perth airports.

Media

All direct investment proposals by *foreign persons* in the media sector require prior approval under the Government's foreign investment policy, irrespective of size. Proposals involving portfolio interests of 5 per cent or more must also be submitted for examination.

Broadcasting

Proposals for a *foreign person* to acquire an interest in an existing broadcasting service or to establish a new broadcasting service are subject to case-by-case examination under Australia's foreign investment policy and must be consistent with the *Broadcasting Services Act 1992*. The Act stipulates that foreign investment in commercial television be restricted to 15 per cent for individuals and 20 per cent in aggregate, a *foreign person* may not be in a position to exercise control and no more than 20 per cent of directors may be *foreign persons*. For subscription television broadcasting services, *foreign persons* are limited to a shareholding of 20 per cent per individual and 35 per cent in aggregate.

Newspapers

All proposals to acquire a 5 per cent or greater interest in an existing newspaper or to establish a new newspaper in Australia require prior approval. The maximum aggregate foreign direct investment/involvement (i.e. non-portfolio) in national and metropolitan newspapers is 30 per cent with any single foreign shareholder limited to a maximum interest of 25 per cent. Aggregate foreign direct investment in provincial and suburban newspapers is limited to less than 50 per cent. Foreign investment in newspapers is predominantly covered by Australia's foreign investment policy; however, it would also have to be consistent with Australia's cross-media rules.

Telecommunications

The Australian Government is required to hold at least 50.1 per cent of their issued shares in Telstra. The maximum aggregate foreign ownership allowed in Telstra is 35 per cent of the privately held share capital. The maximum individual foreign ownership allowed in Telstra is 5 per cent of the privately held share capital. Foreign investment in Telstra is governed by the *Telstra Corporation Act 1991*. The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

In accordance with the standard notification requirements of Australia's foreign investment policy, prior approval is required for foreign involvement in the establishment of new entrants to the telecommunications sector or investment in existing business in the telecommunications sector. Proposals in this sector are normally approved provided they are not contrary to the national interest. Refer to Chapter 4.2.1 for further details on Australia's telecommunication services trade policies.

Shipping

The *Shipping Registration Act 1981* requires that, for a ship to be registered in Australia, it must be majority Australian-owned (i.e. owned by an Australian citizen, a body corporate established by or under the law of the Commonwealth or of a State or Territory of Australia), unless the ship is designated as chartered by an Australian operator.

Resident Directors

Under the *Corporations Act 2001*, at least two of the directors of a public company must be ordinarily resident in Australia.

5.1.2 Overview of China's Investment Framework

China encourages foreign investment and has established an integrated policy framework to attract foreign investment. The Chinese Government has earnestly implemented its WTO investment commitments as part of its ongoing efforts to provide a more attractive environment for the foreign investors.

Foreign Investment Forms

Foreign investment in China is usually categorised into direct investment and other investment. Direct investment through foreign-invested enterprises falls into three major categories: Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and wholly foreign-owned enterprises. Other investment categories include cooperation development and processing and assembling.

Legal Framework

Since 1979, the Chinese Government has gradually set up a relatively comprehensive legal framework on foreign investment to create a favourable investment environment and to encourage overseas firms to invest. At present, the basic laws and regulations of China concerning foreign investment are the *Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures,* the *Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures,* the *Law of the People's Republic of China on Wholly Foreign-Owned Enterprises* and their implementing regulations. These laws have been reviewed and revised to reflect WTO and China's own commitments since 2000, and restrictions, such as requirements on the balance of foreign exchange, export performance, localization of supplies and notification of production plans, have been removed.

The *People's Republic of China Income Tax Law Concerning Foreign-Invested Enterprises and Foreign Enterprises*, and its implementing regulations, as well as the *Company Law of the People's Republic of China*, *Contract Law of the People's Republic of China* and other relevant laws and regulations also form part of the legal framework for foreign investors.

Establishment Approval

The Chinese Government adopts a system of registration and approval on a case-by-case basis. Proposals should be approved by the Ministry of Commerce with an approval certificate. Provinces, Autonomous Regions, Municipalities directly under the central jurisdiction, and cities with independent planning status are authorized to examine and approve those foreign-invested enterprises in the encouraged and permitted categories of the *Catalogue for Guiding Foreign Investment in Industry.* The Ministry of Commerce and its authorized agencies are required to approve or disapprove a proposal within three months of submission.

Equity Restriction

According to the *Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures,* the *Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures* and their implementing rules for foreign-invested enterprises, the shares of registered capital subscribed and held by foreign investors shall be no less than 25 per cent in general.

Industry Policy

In order to guide the orientation of foreign investment in line with the national economic and social development strategy of China, and to further protect the lawful rights and interests of investors,

the revised version of the *Regulations on Guiding Foreign Investment* and the *Catalogue for Guiding Foreign Investment in Industry* came into effect from 1 December 2004, according to which all the foreign-invested projects fall into four categories, namely encouraged, permitted, restricted and prohibited. For more details, refer to www.fdi.gov.cn. China's regulations concerning outward investment are outlined at hzs.mofcom.gov.cn/zcfb/zcfb.html.

Regional Policy on Foreign Investment

The Chinese Government will continue to make full use of the eastern region's advantages in opening-up and utilization of foreign capital, and support the development of capital and technology-intensive industries as well as export-oriented industries in the area. Effective measures will be taken to guide foreign capital to invest in the mid-west region and north-east region. For example, the conditions may be eased for permitted and restricted foreign investment projects that can encourage the economic development of the mid-west region. Encouraged projects listed in the *Catalogue of Dominant Industries with Foreign Investment of the Mid-West Region* may also enjoy preferential treatment.

Taxation Policy

The tax categories imposed on foreign-invested enterprises and foreigners include: corporate income tax, individual income tax, value-added tax, consumption tax, business tax, tariffs and house-property tax. Taxation reform has unified the circulation tax regimes applying to foreign-invested and local enterprises.

Corporate Income Tax

The normal corporate income tax rate is 33 per cent. However, the corporate income tax rate on production-oriented foreign-invested enterprises located in the old parts of cities of open coastal economic zones, special economic zones or state economic and technological development areas are reduced to 24 per cent. Furthermore, the corporate income tax rate of production on high-tech oriented foreign-invested enterprises located in special economic zones, national economic and technological development areas and national new and high-tech industrial zones is only 15 per cent.

Production-oriented foreign-invested enterprises that have an operation period exceeding 10 years can be exempted from corporate income tax for the first and the second years from the first profit-making year and allowed a 50 per cent reduction in the third to the fifth years.

Circulation Tax

From 1 January 1994, enterprises with foreign investment began to pay circulation tax (including value-added tax, consumption tax and business tax) at the same rate as other enterprises.

Tariffs

The import of self-use machinery as part of foreign investment falling into the encouraged category of the *Catalogue on Guiding Foreign Investment in Industry* is exempted from tariffs and value-added tax.

Purchasing and Selling

Restrictions on the requirement of export performance, localisation of supplies and notification of production plans have been abolished. In its purchase of required machinery, equipment, raw materials, fuel, parts, means of transport and items for office use, an enterprise with foreign investment has the right to decide whether to buy them in China or from abroad. Joint ventures are treated equally with domestic enterprises when purchasing in the Chinese market.

Land Use

All land in the People's Republic of China is state-owned. Use of land by enterprises and individuals is subject to the following maximum term limitations:

- 70 years for residential purposes;
- 50 years for industrial purposes;
- 50 years for the purpose of education, science, culture, public health and physical education; and
- 40 years for commercial, tourist and recreational purposes.

Repatriation and Convertibility

China has undertaken significant reforms of its foreign exchange administration system since 1994. Convertibility of RMB under current account was approved in 1996, and restrictions on the requirement of balance of foreign exchange have been abolished. The *Rules on Foreign Exchange Control* govern matters concerning foreign exchange for enterprises with foreign investment in China. Foreign employees and the employees from Hong Kong and Macao may remit outside China the remaining foreign exchange after they pay the income tax on their salaries and other legitimate incomes.

Entry and Sojourn of Personnel

Foreigners, who enter, transit or reside in China, should follow procedures according to the *Law of the People's Republic of China on the Administration of Entry and Exit of Foreigners*. For foreign employees, applications should be submitted for employment approval according to the *Administrative Provisions on Employment of Foreigners in China*.

5.2 Overall Impact of Liberalisation on Bilateral Investment

Liberalising regulatory barriers that limit investment flows will be an important and necessary component of a possible FTA between Australia and China. With bilateral foreign investment currently modest relative to the growth in bilateral trade, the certainty gained from a possible FTA would enhance investment linkages, which in turn would assist to sustain and entrench the trading relationship.

Australian and Chinese investors in the goods and services sectors have raised a number of concerns regarding bilateral investment in the course of consultations for this study. These include takeover restrictions, enforcement of intellectual and other property rights, shareholding and other joint venture requirements, profit repatriation and associated tax and foreign exchange rules, the transparency of approvals processes, certainty of rules and criteria, agency responsibilities in investment authorisation, consistency between state/provincial laws and regulations and overlapping responsibilities with central governments, mobility of business people and availability of domestic procedures for prompt review and correction of government administrative actions.

The scope for addressing these investment issues in an FTA is dependant on: the actual negotiations, should they proceed; domestic economic and social reform; and interactions between other bilateral, regional and multilateral trade negotiations.

In addition, the impact of a possible FTA on the incentives to invest will vary with each sector. For example:

- removal or simplification of specific investment provisions in a possible FTA could increase Australian exploration and mining investment in China and enhance Australia's attractiveness as a destination for Chinese mining and energy investment (see mining and energy resources case study below). Investment liberalisation is also important to facilitating trade in services (as discussed in Chapter 4);

- better protection, transparency and dispute resolution mechanisms could be expected to encourage increased investment in agriculture in both countries, including in the food processing, dairy and live cattle industries; and
- freeing up of trade in goods and services could increase bilateral investment in the textiles, metals, chemicals, communications and financial services industries.

Independent economic modelling confirms that both countries would benefit from investment liberalisation based on the assumption that a possible FTA would: simplify foreign investment screening procedures; enhance transparency in Australian and Chinese investment regimes; and provide for better protection of bilateral investments. The modelling estimates that Australia's and China's average annual real GDP growth rate would increase by 0.011 and 0.016 percentage points respectively as a result of investment liberalisation. These economic gains stem from both increases in the capital stock and improved productivity that in turn induce bilateral investment and investment from the rest of the world. An FTA covering liberalisation of trade in goods, services and investment would be expected in 2015 to increase Australian direct investment in China by US$477 million (A$647.8 million) and Chinese direct investment in Australia by US$318 million (RMB2632 million).

Case studies (see below) highlight restrictions on investment and identify the benefits and challenges associated with liberalising investment in the context of a possible FTA. The case studies are not intended to be inclusive of all areas of investment, but provide examples of the economic and investment impact of a possible FTA on the mining and energy resources, agriculture and manufacturing sectors.

Case Studies Illustrative of the Impact on Individual Sectors of Investment Liberalisation

Minerals and Energy Resources

Resources exploitation is currently one of the major areas of investment between China and Australia and there is great potential for strengthening investment in mining and mining services.

China is already a major market for Australian iron ore, alumina, copper ore, nickel, manganese and zinc, with exports of other resources including coal growing strongly (despite competition between Australian and Chinese coal exports on world markets). Australia imports a growing number of resources from China, including aluminium. A possible FTA could support the expansion of this trade by addressing existing tariff and non-tariff barriers (see Chapter 3).

Australia is also a world leader in the development and provision of mining technology services (MTS) (including information technology, engineering and construction). Australian companies are leading technological innovation in this area, with over 60 per cent of the world's mining operations now utilising software developed by Australian companies. With China looking to meet competing development requirements and meet stricter environmental conditions and safety standards, liberalisation of barriers to MTS provision (see Chapter 4) through a possible FTA will be of significant benefit to both countries.

As at June 2003, 15 Chinese resources mining companies had invested US$328 million in Australia. In December 2004, China National Offshore Oil Corporation signed an agreement to purchase equity in the Australian Northwest Shelf Natural Gas Project. China Huaneng Group has also purchased shares in OzGen, a major power company in Australia. China is also investing in the mining of copper and iron ores and manufacture of aluminium in Australia, with key investment projects including Channar Joint Venture, Portland aluminium smelter, BaoHI Ranges Joint Venture, and Shougang Steel's investment in Hi Smelt in Kwinana.

Australia has also invested in mining and exploration in China, and in the provision of mining services. Sinogold is a significant foreign investor in China's mining industry, including the recently approved Jinfeng gold mine in southern China (which is the largest single foreign mining investment in China). Australia is also a significant supplier of mining services, including in the areas of mine safety, geological surveying, servicing maintenance and information technology.

Both Australia and China encourage foreign investment in mining, oil and natural gas. In the case of China, foreign wholly-owned enterprises are permitted in the mining sector, and exploration and exploitation of oil and natural gas are encouraged under the Catalogue on Guiding Foreign Investment and can be invested in the form of contractual cooperation. Australia's policy operates under the presumption that foreign investment should go ahead unless foreign investment proposals are not consistent with the national interest.

According to modelling analysis in the mining sector, investment liberalisation under a possible FTA in the resources sector has the potential to deliver sustainable trade and economic benefits to both countries. These results reflect the productivity gains induced by liberalisation and the associated attraction of investment flows resulting in capital creation.

Investors in the mining industries of Australia and China raised a number of generic investment issues (see Chapter 5.2) as well as specific mining investment issues which could be considered in the context of a possible FTA, including transparency of approval processes (including for exploration licences), certainty of mining exploration and exploitation, and access to geological data.

Agriculture

Agriculture plays an important role in Australia and China. The two countries signed an agriculture cooperation agreement in 1984 and since then there has been an expanding and strengthening two-way relationship including through technical cooperation and investment.

As at June 2003, 19 Chinese enterprises engaged in agriculture had invested in Australia, with the sum of that investment totalling US$13.48 million. There is increasing interest in investing in China by Australian companies, although the level of investment is currently modest.

Each country has specific advantages in agricultural production based on geography, climate, resources and levels of technology. Australia is one of the leading countries in developing new technologies in plant breeding, livestock breeding and production and pasture improvements. In addition, Australia has advanced technology in grape planting and wine production. China also has advanced technologies in rice, horticulture and aquaculture production as well as other resource advantages.

While Australia has no agricultural specific foreign investment policies, China has a range of agricultural specific policies to attract foreign investment, including planting technologies, development of new varieties and breeds, improving yields, addressing environmental protection and traditional medicines.

Current impediments to investment in the agriculture sector that could be considered and addressed in the context of a possible FTA are listed at the beginning of Chapter 5.2.

Independent economic modelling confirms investment liberalisation under a possible FTA in the agriculture sector has the potential to deliver sustainable trade and economic benefits to both countries.

In a possible FTA, the two countries can further encourage and promote investment in agriculture through liberalisation of investment together with liberalisation of goods and services trade. There are substantial opportunities for investment in dairy, wool, fish and aquaculture, processed food, wine, horticulture, forestry, livestock production and rice production. An FTA could also encourage investment in agricultural services such as marketing, distribution and agricultural sciences.

Manufacturing

Manufacturing investment between China and Australia is complementary. China's industries are generally labour-intensive, while Australia's industries are mostly capital-intensive. Australia enjoys technologically-advanced and globally-competitive manufacturing, with highly-developed management skills and experience in efficient manufacturing processes of high value-added goods. Building on its traditional comparative advantage, China is rapidly expanding its advantage in production of high-technology and high value-added goods.

As at June 2003, 66 Chinese enterprises engaged in manufacturing had invested in Australia, including in the clothing, wool processing, and electrical wire and cable industries, with the total value of investment amounting to US$60 million. Manufacturing is the second-largest area of investment for China in Australia after resource-exploitation related investment. Investments in manufacturing accounted for about 38 per cent of overall Australia investment in China, including investments in electronics, light industry, chemicals, furniture and footwear. Specific investment projects include ACI Shanghai Glass Company and Pacific Brands. Air International and PBR International have also established joint ventures in China to manufacture automotive components.

Both Australia and China welcome sustainable foreign investment in manufacturing. Current impediments to investment in the manufacturing sector that could be considered and addressed in the context of a possible FTA are listed at the beginning of Chapter 5.2.

Independent economic modelling confirms investment liberalisation under a possible FTA in the manufacturing sector has the potential to deliver sustainable trade and economic benefits to both countries.

Opportunities exist for investment in a large number of manufacturing sectors in which the two countries have a comparative advantage, including niche products. In a possible FTA, the two countries could further encourage and promote investment in manufacturing through liberalisation of investment together with liberalisation of goods and services.

6 Implications for Bilateral Cooperation

Enhanced bilateral cooperation between the Australian and Chinese governments on trade and economic issues provides the opportunity to address a number of existing non-tariff measures and reduce the transaction costs associated with trade and investment.

An FTA would be expected to further intensify bilateral trade and economic cooperation, including in the areas of trade and investment promotion, customs facilitation, sanitary and phytosanitary measures, technical regulations and standards, temporary entry, intellectual property rights, electronic commerce, small and medium size business cooperation, transparency, trade remedies and safeguards and capacity building. Possible areas for enhanced bilateral cooperation in these areas are outlined below.

6.1 Trade and Investment Promotion

International trade and investment are becoming more and more important for economic development. In recent years, trade and economic relations between China and Australia have made great progress, but the volume of bilateral trade and investment is relatively small compared with the real demands and potential of both countries. Strengthening cooperation in trade and investment promotion will play an important role in stimulating two-way trade and investment flows.

The following provides an overview of Australia's and China's trade and investment promotion strategies, recent efforts to enhance bilateral cooperation and areas for further cooperation.

6.1.1 Overview of Australia's Trade and Investment Promotion Framework

Trade and investment promotion in Australia is undertaken by Austrade and Invest Australia.

Austrade operates as a statutory authority within the Foreign Affairs and Trade portfolio. The Minister for Foreign Affairs has overall portfolio responsibility, with the Minister for Trade having direct responsibility for Austrade. Austrade's pieces of enabling legislation are:

- *Australian Trade Commission Act 1985*: Austrade was established by this Act, which sets out the organisation's functions and powers as well as issues relating to administration, the Board and other matters;
- *Export Market Development Grants (EMDG) Act 1997*: The EMDG Act provides for a financial assistance scheme for small to medium-sized Australian enterprises committed to, and capable of, seeking out and developing export business; and
- *Commonwealth Authorities and Companies Act 1997*: This Act establishes core financial, accountability and corporate governance requirements for Commonwealth authorities, including Austrade.

Austrade delivers:

- export and outward investment services and international business opportunities to Australians;
- administration of the Export Market Development Grants (EMDG) scheme;
- programs to improve community awareness of, and commitment to, trade and investment;
- advice to the Federal Government and coordination of its export and international business facilitation activities; and
- consular, passport and immigration services in certain locations.

Invest Australia's mission is to attract productive foreign direct investment into Australia to support sustainable industry growth and development. It achieves this by promoting Australia as an internationally competitive investment destination and facilitating investments in Australia. In particular, its role is to:

- connect investors with the right industry and government contacts;
- provide information on investment regulations and government programs;
- arrange site visits and link with potential joint venture partners;
- offer expert advice from industry specialists on Australia's industry capabilities and strengths;
- assist investors to identify potential investment opportunities in Australia;
- provide information on business costs, skills availability, taxation and research and development opportunities; and
- streamline project approvals processes to facilitate major projects.

The Australian Government provides a range of programs to encourage industry development and investment in Australia, including support for research and development, innovation and export activities. Invest Australia advises on all areas of government assistance and administers the following services:

- Invest Australia Supported Skills Program: Fast track immigration for senior management, technicians and eligible staff of companies seeking to invest in Australia;
- Major Project Facilitation: High-level assistance for projects of major strategic significance to Australia; and
- Strategic Investment Coordination: This process is designed to attract to Australia, on a case-by-case basis, projects with significant net economic or strategic benefit, that would otherwise be located elsewhere.

Invest Australia works closely with State and Territory investment agencies in promoting and facilitating foreign direct investment into Australia.

Invest Australia's investment strategy for China is targeted towards minerals, energy and biotechnology (especially in the area of pharmaceuticals). Agribusiness is also of great interest to China.

6.1.2 Overview of China's Trade and Investment Promotion Framework

Trade and investment promotion in China are mainly undertaken by the Executive Bureau of Investment Promotion and the Trade Development Bureau under the guidance and administration of the Ministry of Commerce.

The aim of the Trade Development Bureau is to develop a trade promotion system which can provide a full range of public services in an efficient and timely manner for companies through various channels at different levels to promote trade. The Bureau's main tasks are as follows:

- Provide public import and export information and consulting services;
- Organise official trade promotion activities (e.g. exhibitions, trade fairs and seminars both at home and abroad);
- Exchange information and cooperate with foreign trade promoting organisations;
- Encourage international marketing activities by Chinese companies to promote trade flows and cooperation between domestic companies and foreign companies; and
- Establish and maintain a system to ensure the credibility of foreign trade companies and conduct investigations on behalf of Chinese companies of the credibility of their domestic and foreign partners.

The functions of the Executive Bureau of Investment Promotion are as follows:

- Organise and implement foreign investment promotion strategies and offer guidance and opinions on the work of investment promotion nation wide; guide and engage the Federation of Investment Promotion Agencies of China; and guide the work of sub-national investment promotion agencies;
- Attend the conferences of the World Association of Investment Promotion Agencies on behalf of the Ministry of Commerce; implement cooperation and exchange with the World Association of Investment Promotion Agencies and other world economic organisations, foreign investment promotion agencies, chambers of commerce and associations; and organise and implement the activities of bilateral investment promotion agencies;
- Implement the annual investment promotion programs of the Ministry of Commerce; carry out detailed organisational work for the annual China International Investment & Trade Fair hosted by the Ministry of Commerce; carry out research related to investment subjects; edit and print publicity materials and investment promotion publications; take care of the daily operation of the website of *Invest in China*; provide relevant investment information to domestic and international enterprises; and accept and handle complaints from foreign-invested enterprises that operate across provinces, cities, regions and industries; and
- Plan and organise large investment promotion activities at home and abroad; organise investment activities such as training programmes, seminars, conferences and exhibitions; provide services like consultation, information, market analysis, credit investigation and investment promotion planning; and assist foreign-invested enterprises through relevant legal procedures.

As a national industry association, the China Council for the Promotion of International Trade (CCPIT), which comprises enterprises and organisations that represent economic and trade sectors in China, also plays a complementary role.

With the approval of the Chinese Government, the CCPIT adopted a separate name – China Chamber of International Commerce (CCOIC) – in 1988, which is used simultaneously with the CCPIT. The CCPIT admits new members from among enterprises in all parts of China and promotes trade through information consultations, exhibitions, and the provision of legal assistance.

The China Export Commodities Fair, China Trade and Investment Fair and China New and High Technologies Fair, which are all held annually, constitute a national-level framework for trade and investment promotion. Furthermore, organisations at the provincial level have been established to implement trade and investment promotion activities in accordance with the need of local economic development.

As an APEC member, China has always been an active supporter of the activities of the APEC Trade Promotion Working Group, such as hosting or participating in trade fairs, exchanging information on trade and investment with other member economies, and strengthening communication between business sectors in China and other APEC economies.

6.1.3 Opportunities for Future Cooperation

After the signing of the *Australia-China Trade and Economic Framework* (TEF), memorandums of understanding were signed that are designed to promote and accelerate two-way investment in key sectors of mutual interest. The areas identified for enhancing cooperation between the two countries are as follows:

- information exchange and potential investor referral;
- investment promotion; and
- priority industry sectors.

The *Australia-China Bilateral Dialogue Mechanism on Resources Cooperation* under the *Australia-China Trade and Economic Framework* is a bilateral cooperation activity that develops trade and investment in mining and energy by enhancing the development of the long-term minerals and energy partnership between Australia and China.

Australia and China also cooperate on trade promotion through the Asian Trade Promotion Forum and the APEC Trade Promotion Working Group (including in capacity building initiatives between Austrade and CCPIT).

The establishment of a possible Australia-China FTA could further enhance bilateral cooperation on trade and investment promotion by allowing the two countries to better share their successful experiences in this field. In the context of a possible FTA, further cooperation could be explored, building on the existing agreements and mechanisms for trade and investment promotion, including:

- encouraging the application of information technology to promote trade and investment between China and Australia;
- encouraging communication and exploring future cooperation between the guilds and chambers of commerce of the two countries;
- encouraging further cooperation between investment and trade promotion agencies, especially providing assistance to small and medium enterprises (SMEs) and targeted priority sectors; and
- creating opportunities for business to benefit from trade and investment promotion activities, such as trade fairs and investment marts.

6.2 Customs Facilitation

Trade facilitation is one of the priorities for international economic cooperation. As a key link in the international circulation of commodities, customs procedures play an important role in promoting the development of trade facilitation processes. This chapter examines areas for cooperation to simplify and harmonise customs procedures and to ensure their proper application in relation to bilateral trade.

Both Australia and China are members of the World Customs Organization, and are signatories to the *WTO (Customs) Valuation Agreement*, the I*nternational Convention on the Harmonized Commodity Description and Coding System*, and the revised *Customs Kyoto Convention*. The following provides an overview of Australia's and China's customs frameworks and possible areas where an FTA could facilitate cooperation based on the current MoU between the Australian Customs Service and China's General Administration of Customs.

6.2.1 Overview of Australia's Customs Facilitation Arrangements

The Australian Customs Service (Australian Customs) is responsible for managing Australia's customs framework. It works closely with industry to facilitate legitimate trade and travel, while detecting and deterring unlawful movement of goods and people across the Australian border.

The main roles of Australian Customs are:

- to facilitate trade and the movement of people across the Australian border while protecting the community and maintaining compliance with Australian law; and
- to collect customs revenue and trade statistics efficiently.

Australian Customs works closely with other Australian government and international agencies to manage the security and integrity of Australia's borders. Protecting the Australian community through intercepting illegal drugs and firearms is a high priority and sophisticated techniques are used to target high-risk air and sea cargo, postal items and travellers. This includes intelligence analysis, computer-based analysis and profiling, detector dogs and other technologies such as container x-rays and ionscans. Equally important are Australian Customs' responsibilities for revenue collection, including customs duties, and detecting attempts to avoid paying duty. Compliance checks of traders and collecting trade statistics are also essential roles.

Australian Customs derives its authority principally from the Australian Constitution, which provides for the levying of customs duties and for laws about trade and commerce. Australian Customs was established in its present form on 10 June 1985 by sub-section 4(1) of the *Customs Administration Act 1985*. The constitutional authority of Australian Customs is given legislative expression through the *Customs Act 1901*, the *Customs Tariff Act 1995* and related legislation. Australian Customs also administers legislation on behalf of other government agencies, in relation to the movement of goods and people across the Australian border.

6.2.2 Overview of China's Customs Facilitation Arrangements

On 1 January 2002, China Customs started full implementation of the *WTO (Customs) Valuation Agreement* across the country. On the same day, the 2002 version of the Harmonised System was implemented. Training courses for customs officers were carried out nationwide. In meeting the challenges brought about by globalisation and the rapid progress of science and technology, China has made great efforts to accelerate the modernisation process of customs administration. For example, on the infrastructure side, China Customs is equipped with 42 container scanning systems, 372 electronic platform balances, 189 vehicle plate identification systems, 488 electronic gates and 40 container code identification systems. On the systems side, the H833 EDI system was upgraded to H2000 at the end of 2004 in order to achieve paperless trading. China's E-port system, which deals with on-line processing of duty payments (electronic fund transfer), drawbacks and the submission of documents, was put into operation in 2001. Risk management systems have also been established in all customs houses since 2001. Furthermore, the integrated clearance system has also been enhanced to improve effectiveness and to streamline customs procedures.

6.2.3 Opportunities for Increased Cooperation

Customs cooperation in a possible free trade agreement would assist to expedite trade between Australia and China. The strong relationship and existing cooperation between Australian Customs and China's General Administration of Customs is reflected in a memorandum of understanding on customs cooperation, which was signed on 19 April 2004. Areas of current cooperation and current practice between the two administrations, which could be reflected in the text of a free trade agreement, include:

- agreement to determine the customs value of goods traded between Australia and China in accordance with WTO rules;
- commitment to maintaining customs procedures that are transparent and reflect international standards;
- agreement to advise one another of changes in relevant customs laws and procedures;
- establishment of contact points in both countries to respond to customs-related inquiries; and
- commitment to exchange information on technical customs matters such as domestic customs legislation, relevant technologies and examination methods.

Australia and China could, in the context of a possible FTA, consider the following:

- cooperation on providing advance rulings on the tariff classification of goods being imported into one country from the other;
- cooperation on implementing paperless trading initiatives;
- more formal cooperation on issues such as commercial fraud and drug trafficking;
- improved channels for information exchange on intelligence issues, including more timely provision of information for the prevention, investigation and combating of customs offences;
- working together to encourage cooperation with other regional customs administrations, including actively supporting the World Customs Organization; and
- promoting increased dialogue between Australian and Chinese customs administrations and businesses to improve communication and understanding.

6.3 Sanitary and Phytosanitary Measures

China and Australia are major agricultural producers and exporters. Both countries have quarantine regimes in place to minimise the risk of entry, establishment or spread of exotic pests and diseases that could damage human health, animal or plant life or the environment. In accordance with WTO rules, decisions on quarantine and food safety matters are made on the basis of scientific assessments of the risks involved in the commercial movement of animals and plants and their products.

There is a long history of bilateral cooperation in the agriculture sector, including in relation to sanitary and phytosanitary (SPS) measures, under the *Australia–China Agricultural Cooperation Agreement*, signed in 1984. The bilateral relationship has been further strengthened by the signing in 2003 of a *Memorandum of Understanding on Cooperation on Sanitary and Phytosanitary Matters*. An FTA would provide further opportunities for building on the already strong cooperation in the quarantine area.

6.3.1 Overview of Australia's SPS Regime

Australia adopts a scientifically-based, managed-risk approach to quarantine controls to provide the appropriate level of quarantine protection.

Australia is free of many of the serious pests and diseases affecting other countries and gives a high priority to maintaining that status, which underpins many of our export industries.

Where appropriate, Australia bases its quarantine measures on international standards, including those developed by the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). However, in some cases, international standards do not exist or do not deliver the level of protection required by Australia to protect its disease-free status. In such cases, the Australian quarantine measures are based on a rigorous risk analysis.

Australia's import risk analysis (IRA) process is transparent and science-based. It is consistent with WTO rights and obligations and specific guidelines and standards on risk analysis developed by the OIE and IPPC. All interested parties, including other countries, if they wish, are kept informed of developments via regular stakeholder notification procedures. The process is clearly documented, including through the Internet. When a number of countries request access for a similar commodity, a generic risk analysis looking at all potential sources may be undertaken rather than on a country-by-country basis.

The length of time taken to complete an import risk analysis depends on whether a review of existing conditions can be undertaken or whether a completely new risk analysis is required. Other considerations include the availability of data, the need for new research, the complexity of the issues and the extent of stakeholder interest. Each stage of the import risk analysis process is set out in Biosecurity Australia's Import Risk Analysis Handbook.

Australia's approach to managing pest and disease risk is set out in the Import Risk Analysis Handbook. It is designed to keep the risk of entry, establishment or spread of exotic pests and diseases to an appropriately low level, in the least trade restrictive way.

In terms of the administration of Australia's quarantine system:

- the Department of Agriculture, Fisheries and Forestry (DAFF) is responsible for plant and animal quarantine and has a role in food safety;
- the Australian Quarantine and Inspection Service (AQIS), as an operating group within DAFF, is responsible for implementing and administering strict quarantine controls at Australia's borders, to minimise the risk of exotic pest and disease incursions;
- Biosecurity Australia (a prescribed agency within DAFF) is responsible for undertaking Australia's import risk analyses, usually in response to requests from other countries for import into Australia of animals, plants and/or their related products. The IRA process is a key element in Australia's strategy for ensuring that the risks of pests and diseases of concern are reduced to a very low level; and
- at the Commonwealth level, Food Standards-Australia New Zealand (FSANZ), within the Department of Health and Ageing, is responsible for developing and reviewing mandatory standards (i.e. technical regulations) for food available in Australia and New Zealand, and for a range of other functions, including coordinating national food surveillance and recall systems. Imported foods must comply with the *Imported Food Control Act 1992* and the Food Standards Code developed under *Food Standards Australia New Zealand Act 1991*. Under the *Imported Food Control Act 1992,* AQIS may inspect, sample, hold and test imported foods for compliance with the Food Standards Code.

6.3.2 Overview of China's SPS Regime

From the date of China's accession to the WTO, China has established a SPS notification authority and a SPS enquiry point. China has committed to comply with the WTO's SPS Agreement and ensure conformity with the SPS Agreement of all its laws, regulations, decrees, requirements and procedures relating to SPS measures. At present, China has set up a science-based quarantine control and risk management mechanism.

With the large increase in China's import of agricultural products, the Chinese Government is further strengthening quarantine inspection measures to prevent any disastrous attack of exotic quarantinable infectious diseases from happening. The State General Administration for Quality Supervision and Inspection and Quarantine (AQSIQ) is the government authority responsible for phytosanitary inspection and quarantine.

AQSIQ is a law-enforcement administrative organ of the State Council in the field of quality, metrology, entry-exit commodities inspection, entry-exit health quarantine, entry-exit animal and plant quarantine, certification and accreditation and standardisation. It is the key government authority in charge of entry-exit animal and plant quarantine and food safety, which are the three main issues covered by the WTO's SPS Agreement. China's national SPS enquiry point has been established under AQSIQ.

The China National Regulatory Commission for Certification and Accreditation (CNCA) is responsible for the unified management and supervision of the hygiene registration assessment of manufacturing and processing establishments for the import and export of food, and the actual registration thereof. Under the *Administration of the Registration of Foreign Producers of Imported Foodstuffs Provisions*, CNCA is authorized to register foreign enterprises that produce, process or store foodstuffs destined for importation to China. Foreign food enterprises exporting food listed on the Imported Food Catalogue for Enterprise Registration must apply for registration with CNCA. Unregistered foreign exporters of food listed on the catalogue are not allowed to export to China.

The Standardisation Administration of the People's Republic of China (SAC) is in charge of the drafting, amendment and public promulgation of China's national SPS standards.

AQSIQ is also responsible for the risk analysis of imported and exported plants and animals and for food safety. Based on risk analysis, AQSIQ is authorized to draft the requirements for inspection and quarantine entry and exit procedures, and coordinate with the relevant government authorities of other countries and negotiate agreements on general SPS issues or detailed inspection and quarantine requirements on specific products. To standardize the risk analysis procedure, AQSIQ has drafted detailed administrative regulations on the risk analysis on animal and plant quarantine entry and exit procedures. Due to its important position in the WTO's SPS Agreement, countries all over the world attach great importance to risk analysis.

Several international organisations, including OIE, IPPC and the Codex Alimentarius Commission (Codex), have developed international standards. Where appropriate China uses these standards in undertaking import risk analysis. Each import risk analysis is based on science and involves a range of unique pest and disease circumstances. The duration of the risk analysis is dependent upon the complexity of analysis required to assess adequately the risk.

China's SPS risk analysis procedures and related administrative policies are formulated by the central government and promulgated as laws or mandatory regulations. Any related local regulations must accord with national laws and regulations.

6.3.3 Opportunities for Increased Cooperation

The 2003 *Memorandum of Understanding on Cooperation on Sanitary and Phytosanitary Matters* provides a sound basis for building on and enhancing the already strong quarantine cooperation between Australia and China.

In the context of a possible FTA, Australia and China will have an opportunity to:

- deal with sanitary and phytosanitary issues in a framework of enhanced consultation and cooperation;
- improve understanding of each other's measures and regulatory systems;
- work together to improve quarantine operations and associated regulatory practices and to address problems as they arise;
- review relevant inspection, testing and certification procedures to see whether they are reasonable and necessary;
- work together to ensure that, if isolated incidents of non-compliance with SPS measures or other standards occur, these do not result in unjustifiable restrictions on trade;
- explore arrangements to address issues of consistency and transparency;

- respond to each others' requests for consideration of equivalence of SPS measures and related processes; and
- continue close cooperation between Australia and China in enhancing China's sanitary and phytosanitary capacities.

6.4 Technical Regulations and Standards

Increasing globalisation has made technical regulations and standards an important component of the international trade policy framework. A widely accepted international standards system will play a key role in protecting fair market competition, expediting transactions of commodities and thus promoting international trade. Excessively strict or unreasonable regulations on technical standards, however, may act as technical barriers and inhibit international trade.

As WTO members, both Australia and China are bound by the *WTO Agreement on Technical Barriers to Trade* (TBT). This agreement provides a broad framework governing the preparation and application of technical regulations, standards and conformity assessment by governments, with the aim that these "not create unnecessary obstacles to international trade". Both countries are also actively involved in the development of international standards through bodies such as the ISO and IEC.

At the regional level, both Australia and China have significant links in relation to technical regulations and standards, particularly in the APEC context.

A free trade agreement would offer further opportunities to develop closer cooperation on standards and conformance issues between Australia and China.

6.4.1 Overview of Australia's Technical Regulations and Standards

Australia has developed an extensive framework for addressing standards and conformance issues.

Under Australia's federal constitutional system, legislative, executive and judicial powers relating to technical regulations (mandatory standards) are shared between the Commonwealth Government and State and Territory governments.

Commonwealth (national) regulators have responsibility for making technical regulations in pharmaceuticals, medical devices and therapeutic goods, food, product safety, agricultural and veterinary chemicals, telecommunications and radio communications, aviation, marine and road safety, and measurement. State and Territory regulators are responsible for making technical regulations in areas such as food, power, water, public health, occupational health and safety, road transport and the environment. In some areas under State/Territory control, such as occupational health and safety and building codes, Commonwealth and State/Territory authorities collaborate on the development of national standards and guidelines, which form the basis of relevant technical regulations in each jurisdiction.

A 1992 Commonwealth/State *Agreement on Mutual Recognition* allows a product that is in conformity with requirements of at least one State or Territory (i.e. legally saleable) to be sold throughout Australia. This mechanism provides a powerful vehicle to overcome most regulatory differences between jurisdictions.

The newly-established National Measurement Institute is responsible for primary measurement standards, legal metrology and pattern approval as a result of the merger of the former National Measurement Laboratory and the National Standards Commission.

Standards Australia International (SAI), the peak non-government standards writing body, is responsible for the formulation and publication of voluntary standards. In addition to SAI, there are at least 16 private sector bodies that prepare industry standards, codes and guides. Two of these bodies, the Australian Gas Association (AGA) and the Australian Communication Industry Forum (ACIF), are accredited by SAI's Standards Accreditation Board to prepare Australian Standards in specific areas. In addition to SAI and the Australian Communications Authority, the ACIF, AGA and the Australian Forestry Standard Steering Committee, three non-governmental standardising bodies, have accepted the Code of Good Practice annexed to the WTO TBT Agreement.

Standards enforcement is the responsibility of different regulatory agencies, including the Therapeutic Goods Administration, the Australian Quarantine and Inspection Service, the Department of Transport and Regional Services and bodies accredited by the National Association of Testing Authorities (NATA), and the Joint Accreditation System of Australia and New Zealand (JAS-ANZ). NATA accredits the competence of calibration and testing laboratories and inspection bodies; and JAS-ANZ accredits the competence of certification bodies for the certification of management systems, products and personnel.

6.4.2 Overview of China's Technical Regulations and Standards

China has been making great efforts in recent years to remove the technical and regulatory barriers to trade, especially in the areas of standards and conformance, by taking measures consistent with the WTO's TBT and SPS agreements. China's adoption of international standards has been increasing rapidly.

To better carry out the responsibilities of accreditation and standardisation, the Chinese Government established the China National Regulatory Commission for Certification and Accreditation (CNCA) and the China National Management Commission for Standardisation under AQSIQ in 2001 to undertake conformance and standards work respectively. To honour the commitments under China's accession to the WTO, AQSIQ and CNCA merged the former two compulsory certification systems and the two former CCIB and Great Wall marks into a new *CCC Mark* in 2002 which applies equally to imported and domestic products. In addition, China amended and adopted new laws and regulations on technical regulations, standards and conformity assessment procedures so as to better implement its obligations under the WTO. Furthermore, technical regulations will be reviewed and assessed every 5 years to ensure they are consistent with Article 2.4 of the TBT Agreement. So far, more than 32 per cent of national standards in China have been aligned with international standards.

While encouraging harmonisation to international standards in the domestic market, China is also looking to strengthen bilateral and multilateral cooperation on standards and conformity. China is a full member of ISO, IEC, ITU CAC, IAF, ILAC, and IATCA and actively participates in the activities of these organisations. China has also signed 11 bilateral agreements on cooperation in the field of conformity assessment.

China implements a unitary regulatory system for certification and accreditation activities.

To be established, a certification body may engage in certification activities within the approved scope only after it is approved by the certification and accreditation regulatory authorities of the State Council and acquires the status of a legal person according to the relevant laws and regulations. To be established, a certification body shall meet the following requirements:

- having fixed premises and necessary facilities;
- having a management system that meets the requirements for certification and accreditation;
- having a registered capital of not less than RMB3 million (US$0.36 million); and
- having not less than ten full-time certification personnel in relevant fields.

A foreign-funded certification body must meet the following requirements, in addition to the requirements prescribed above:

- the foreign investor being accredited by an accreditation body in its home country or region; and
- the foreign investor having engaged in certification activities for not less than three years.

The principle certification rules and specific certification rules and procedures are formulated by the certification and accreditation regulatory authorities of the State Council. With regard to products subject to compulsory certification, the State Council applies one product catalogue, one set of technical regulations and standards and conformity assessment procedures, one obligatory mark and one structural fee chart. The unitary product catalogue is formulated and adjusted by the certification and accreditation regulatory authorities of the State Council jointly with the relevant ministries of the State Council, and then announced and implemented by the certification and accreditation regulatory authorities of the State Council jointly with relevant parties. Products listed in the catalogue must be subject to certification by the certification bodies designated by the certification and accreditation regulatory department of the State Council. Where products listed in the catalogue come under the catalogue of import-export commodities subject to inspection, the inspection procedures follow the stipulations of the *Law of the People's Republic of China on Commodity Inspection*.

According to the *Law of the People's Republic of China on Standardisation*, China's standards system consists of national standards, industrial standards, local standards and enterprise standards. Local standards are formulated by bureaux at the provincial level. Local bureaux also take part in formulating national and industrial standards and supervising the enforcement of standards including national and industrial standards.

6.4.3 Opportunities for Increased Cooperation

To facilitate trade and ensure that technical regulations and standards do not become unnecessary obstacles to trade both sides have agreed in the TEF to a number of specific work plans and mechanisms to promote further cooperative activities on technical barriers to trade.

A free trade agreement between Australia and China would seek to build on the initiatives already in place in the TEF in order to help reduce transaction costs resulting from different standards, conformity assessment requirements and surveillance systems.

In the context of a possible FTA Australia and China would have an opportunity to:

- improve information-exchange mechanisms between the related government authorities of the two countries and to enhance transparency in the regime of technical regulations and standards;
- explore the role of contact points in facilitating TBT cooperation and the terms of reference for such a role;
- encourage wider application of international standards through bilateral cooperation;
- identify and eliminate existing technical barriers to promote bilateral trade through the FTA mechanism;
- strengthen cooperation and exchange information on mutual recognition of conformity assessment; and
- carry out bilateral cooperation on human capacity building in the field of technical regulations and standards, such as training programs for officials of related government institutions and professional personnel.

6.5 Temporary Entry/Mobility of Business People

Along with the development of international trade and investment, the trans-national movement of business people becomes more and more frequent. Facilitating the mobility of business people promotes international trade and investment. Therefore, improvement of the administration and management of factors impacting on the mobility of business people, including the simplification of visa-issuing procedures, has become an important component of trade facilitation.

In line with the temporary movement of natural persons outlined in the GATS, this chapter considers areas for commitment and cooperation in a possible FTA for temporary entry for business in Australia and China, and provides an overview of the current temporary entry arrangements in Australia and China.

6.5.1 Overview of Australia's Temporary Entry Framework

Each year, more than 10 million people travel to and from Australia. This includes Australian citizens travelling overseas as well as migrants, tourists, temporary residents, working holiday makers, overseas students and diplomats.

The *Migration Act 1958* and the Migration Regulations are administered by the Department for Immigration and Multicultural and Indigenous Affairs (DIMIA). The Department is responsible for maintaining the integrity of Australia's borders by ensuring that only those foreign nationals who have authority are allowed to enter and stay in Australia. Australia has a universal visa system, requiring all non-citizens to have a visa for entry and stay in Australia.

By using efficient systems and new technologies with a universal visa system, Australia has developed a highly sophisticated electronic entry processing system, which enables immigration clearance for most passengers to be completed in less than a minute. DIMIA is responsible for action against people who try to enter Australia unlawfully and those who fail to comply with the terms and conditions of their visas. It locates people who have overstayed their visas and become "unlawful non-citizens" and ensures that they depart Australia if there is no legal reason for them to remain.

Australia's Temporary Entry Arrangements

Australia has a broad range of visa options available for the temporary entry of China's citizens seeking to enter for business purposes. The three key visa options for business people are outlined below.

Subclass 456 Short Stay Business Visa: People intending to visit Australia on business for three months or less may obtain a Subclass 456 Short Stay Business Visa. This Visa is for business people who wish to:

- explore business opportunities in Australia;
- conduct business negotiations, site visits, equipment inspections;
- sign business contracts; and/or
- attend conferences or meetings in relation to their field of employment.

APEC Business Travel Card (ABTC): Frequent Business Visitors who are citizens of participating APEC economies, may be eligible to apply for an ABTC through their own government.

- ABTC entry and stay conditions are identical to those of the subclass 456 visa.
- No separate visa application is required.

- No visa label is required in the ABTC holder's passport.

Subclass 457 Business Temporary Entry Visa: People intending to enter and work in skilled employment in Australia on business for periods up to four years may obtain a subclass 457 Business Temporary Entry Visa. Under this visa, arrangements have been streamlined, including offshore processing and a single application process, to ensure entry procedures are efficient, expeditious and transparent for business people and companies. This visa is based on sponsorship by the employer, who will be responsible for their nominee. China-based companies are able to sponsor personnel to establish an operation in Australia. Australian companies are able to sponsor professional and skilled personnel as needed. The subclass 457 Business Temporary Entry Visa provides permission to enter and work for an initial period of up to four years. Australian-based businesses may apply for further periods of up to four years at a time. Under this visa, spouses and dependants are granted work rights. There is no upper limit for the number of subclass 457 Business Temporary Entry Visas. Australia has put in place a number of streamlining measures for skilled temporary entrants including:

- development of e-business solutions for processing applications for long term temporary business entry;
- implementation of a simple regime involving a minimum salary level (average annual salary) and minimum skill thresholds; and
- access to comprehensive information on regulations and procedures relevant to entry and stay, including Australia's Gazette Notice setting out minimum salaries and occupations which constitute *skilled* persons under subclass 457 (Gazette Notice No. 6 of 2004) available on the internet at: www.immi.gov.au/legislation/gazettals/gazettals04/040211_salary.pdf.

6.5.2 Overview of China's Temporary Entry Framework

In recent years, China has made great efforts to improve the regulations and policies on temporary entry of foreign business people in order to facilitate their visits to China. China provides different types of visa and convenient visa-extension procedures for foreign business people's short trips to China or for stay of more than one year. Since 2001, a multiple entry visa has been issued to qualified scientists and technicians, high-level management personnel, and foreign nationals engaged in inter-governmental aid agreements who need to make multiple temporary visits to China in a period of time. At the same time, electronic means have been applied to visa administration and passenger clearance procedures, which have led to a great reduction of the time for entry at Chinese ports. As an APEC member, China has always participated actively in APEC's cooperation on business mobility. In 2002, China joined the APEC Business Travel Card Scheme.

Foreign people may apply for Visa F, if they wish to make a business temporary entry to China for periods of up to one year. For those foreign business people who come to China to take up posts or employment, they may apply for a Visa Z. The applicant should submit an Employment Permit (provided by his employer) and a letter or telegram from an authorized Chinese organization. Accompanying family members can work if they have been granted an Employment Permit. A business person entering China with Visa Z should apply for an Alien Residence Permit if they wish to stay in China for one year or more, or an Alien Temporary Residence Permit may be applied for by those wishing to stay in China for less than one year.

In accordance with the *Law of the People's Republic of China on the Administration of the Entry and Exit of Foreigners*, foreigners who would like to enter China should apply for visas through Chinese diplomatic missions or consular posts or other agencies abroad authorized by the Ministry of Foreign Affairs. The entry of nationals of a country having a visa agreement with the Chinese Government shall be dealt with in accordance with the said agreement. In cases where a country has special regulations regarding the entry and transit of Chinese citizens, the competent authorities of the Chinese Government may take corresponding measures contingent on the circumstances. The processing time is 5-10 working days. In specific situations, such as being invited to China to enter a bid or to sign formally an economic or trade contract or being invited to China for scientific

or technological consulting services, and in compliance with the stipulations of the State Council, foreigners may apply for visas through visa agencies authorized by the Ministry of Public Security at ports. *Port Visas* can be obtained immediately. While in China, foreign businesspersons may apply for visas and residence permits to the Entry-Exit Administration Department of the local Public Security Organs. The processing time is 1-5 working days. To facilitate business mobility, half of all the immigration channels across the country are equipped with OCR readers.

6.5.3 Opportunities for Increased Cooperation

In the context of a possible FTA, Australia and China could consider the following commitments to:

- enhance transparency on information and policies. Immigration and visa-issuing authorities should make information on their regulatory and visa regimes more conveniently available to enterprises and business people. Mechanisms should also be established for enhancing communications between relevant authorities of the two countries;
- establish arrangements to ensure the quick and timely granting of entry visas for important enterprises and organisations of the two countries;
- increase the application of electronic methods, especially the Internet, in managing business entry;
- enhance the cooperation and coordination on the APEC Business Travel Card scheme and other mechanisms to facilitate the mobility of business people;
- ensure that procedural arrangements for visa application, processing and granting of visas and/or temporary entry rights are transparent and administered in a timely and uniform manner;
- facilitate the entry and stay for work purposes of skilled employees and their immediate families of companies with a commercial presence;
- ensure that contractual service suppliers and skilled people of an enterprise of one party of the possible FTA are granted entry to allow them to enter, stay and work in the other party for a reasonable period of time. Multiple entries within the period of stay could also be considered; and
- consider providing favourable and equitable treatment in terms of visa application and approval procedures for business visitors for their entry and stay.

6.6 Intellectual Property

Intellectual property (IP) law protects the property rights in creative and inventive endeavours and gives creators and inventors certain exclusive economic rights, generally for a limited time, to deal with their creative works or inventions.

China and Australia are Parties to the *WTO Agreement on Trade Related Aspects of Intellectual Property Rights* (TRIPs). Both countries recognise the significance of effective protection of intellectual property as a key element in fostering creativity, invention and technological reform and thus promoting sound economic development.

The following provides an overview of Australia's and China's IP frameworks and outlines possible areas for enhanced bilateral cooperation through an FTA.

6.6.1 Overview of Australia's IP Framework

Australia is a signatory to a variety of international IP conventions. These provide mechanisms for registering Australian patents, trade marks, and plant varieties in other signatory countries. International protection for copyright and circuit layouts is achieved under the conventions through the principle of *national treatment*. Broadly speaking, each convention member country gives the same rights to the nationals of other convention countries as it gives to its own nationals. The laws of members of the treaties must conform with the minimum standards specified in the treaties.

Two Commonwealth Government departments have primary policy and administrative responsibility for IP issues:

- responsibility for policy development and administration of the patent, trade mark and design and plant breeder's rights systems rests with IP Australia; and
- the Attorney-General's Department (AGD) has responsibility for policy development, the administration of the *Copyright Act* and the *Circuit Layouts Act*.

In addition Australian Customs enforces specific provisions under the *Trade Marks Act* and *Copyright Act* in relation to the importation of goods which may infringe IP rights.

Australia has specific laws covering patents, trade marks, designs, plant breeder's rights, copyright and circuit layouts.

- The *Patents Act 1990* established a legislative framework for granting a patent and for maintaining a register of patents. A patent is available to protect any device, substance, method or process which is new, inventive and useful. The registered owner of a patent has the exclusive right to exploit commercially the invention generally for the 20 year life of the patent.
- The *Trade Marks Act 1995* established a legislative framework for assessing applications to register a trade mark and for maintaining a register of trade marks. A trade mark can consist of, for example, words, symbols, pictures, sounds and/or smells, or any combination of these, which are used to distinguish the goods and services of one trader from another. The registered owner of a trade mark has the exclusive right to exploit commercially the trade mark. Initial registration lasts 10 years, but registration may be renewed for successive periods of 10 years on payment of the renewal fee.
- The *Designs Act 2003* established a legislative framework for registering a design and for maintaining a register of designs. Registration protects the visual appearance of designs which have an industrial or commercial use. Designs which are essentially artistic works are protected by copyright and are not eligible for design registration. The registered owner has the exclusive right to exploit commercially the design. Initial registration lasts for 5 years, but registration can be renewed for one further 5 year period.
- The *Plant Breeder's Rights Act 1994* established a system for assessing applications to register a plant variety and for maintaining a register of plant varieties. New varieties of all plant, fungal, algal species and transgenic plants are eligible for protection. The registered owner has the exclusive right to commercially exploit that plant variety. In tree and vine varieties, this right continues for 25 years from the date of granting, and in all other varieties, for 20 years from the date of granting.
- The *Copyright Act 1968* provided copyright owners with certain exclusive rights in relation to original artistic, dramatic, musical and literary works (including computer programs), films, broadcasts, performances and sound recordings. These rights include the rights to reproduce and to communicate to the public. It also provides for the protection of non-economic rights known as moral rights. There is no registration process. The term of protection varies between some categories of copyright material. Literary, artistic, dramatic and musical works were generally protected for the life of the author plus 50 years. This term was extended to life plus 70 years from 1 January 2005.

- The *Circuit Layouts Act 1989* provided protection to owners of the layout-designs of integrated circuits (also known as computer chip designs or semi-conductor chips) against unauthorised copying. There is no registration process. The maximum possible protection period is 20 years.
- The *Australian Wine and Brandy Corporation Act 1980* provided the legislative framework for protection and administration of geographical indications (GIs). The Act vests power in the Australian Wine and Brandy Corporation to establish a committee to deal with applications for the determination of GIs for wine in relation to regions and localities in Australia.

Some types of IP do not have special statutory protection:

- confidential information and trade secrets are protected through contract and the common law action for breach of confidence; and
- business reputation and goodwill in unregistered trade marks or trade names may be protected by the common law action of passing off or an action for misleading or deceptive conduct under the *Trade Practices Act 1974* or equivalent State or Territory legislation.

Enforcement of intellectual property rights (IPR) refers to the mechanisms used to assert or defend a right or to test its validity. IPR are enforced through a variety of mechanisms, including opposition processes, warning letters, commercial negotiations, alternative dispute resolution, customs seizures and litigation.

Australia provides a well-developed system for enforcing IPR through both administrative and judicial processes.

- Administrative authorities such as the Commissioner for Patents, the Registrar of Trade Marks and Registrar of Designs may make various decisions as to the granting of patents, trade marks and designs. The Copyright Tribunal is a specialist administrative body dealing with disputes regarding statutory licences. Administrative decisions can be appealed to the Administrative Appeals Tribunal (AAT) or the Federal Court. Appeals from decisions of the AAT can also be made to the Federal Court.
- Courts determine substantive disputes regarding IPR. Proceedings under IP legislation may be commenced in any State or Territory court or in the Federal Court of Australia. Copyright proceedings can also be brought in the Federal Magistrates' Court. It is most common for proceedings to commence in the Federal Court of Australia. The High Court of Australia will hear appeals on IP matters that, on its determination, raise particularly important issues of law.

The Federal Government has developed *IP Access,* a web-site offering an integrated access point for information relating to IP and is accessible at http://www.ipaccess.gov.au.

6.6.2 Overview of China's Intellectual Property Framework

China regards the protection of IPR as an important component of its reform and opening policies as well as an important component of legal construction. Since the 1980s, China has promulgated and amended several laws and regulations for IPR protection including the: *Trademark Law of the People's Republic of China* (promulgated in 1982, amended in 2001); *Supplementary Regulations for Penalizing Trademark Counterfeiting* (1993); *Rules for Implementing the Trademark Law* (amended in 2002); *Patent Law of the People's Republic of China* (1984, amended in 1992 and 2000); *Copyright Law of the People's Republic of China* (1990, amended in 2001); *Regulations for Implementing International Copyright Treaties* (1992); *Implementing Measures of Administrative Punishment in the Field of Copyright* (1997); *Rules for Implementing the Patent Law* (amended in 2002); *Regulations for Implementing the Copyright Law* (amended in 2002); *Regulations for Protection of Computer Software* (1991,amended in 2002); *Regulations for Penalizing Anti-IPR Crimes* (1994); and *Customs Regulations of the People's Republic of China for Protection of IPR* (1995, amended in 2004), *Judicial Interpretation for Implementing the Criminal Law on Anti-IPR Crimes* (2004). Based on these laws a comprehensive IPR legal framework has been preliminarily established.

Apart from the improvement of the legislative framework, administrative means have also been strengthened in China's IPR regime. With the approval of the State Council, the Patent Office (CPO), was founded in 1980 to protect IP, encourage invention and creation, help popularise inventions and their exploitation, promote progress and innovation in science and technology, in an effort to meet the needs of socialist modernisation. In 1998, with the restructuring of government agencies, CPO was renamed the State Intellectual Property Office (SIPO) and became a government institution directly under the control of the State Council. It is the competent authority in charge of patent affairs and the coordinating authority for foreign-related IP issues. The General Administration of Press and Publication/National Copyright Administration was established in 1987.
As a twin ministerial institution directly under the control of the State Council, it shares the responsibility of copyright protection and administration under the name of National Copyright Administration.

For the benefit of effective enforcement of the *Copyright Law of the People's Republic of China* , copyright authorities were also created across provinces, autonomous regions, municipalities, and other major cities. As stipulated in the Trademark Law, all trademarks are registered at the central level and managed by local authorities according to the relevant administrative grading.

Meanwhile, in June 1995 the General Administration of Customs (GAC) set up a Division for Border Protection of IPR, and customs offices across China have designated their own teams and contact persons for IPR protection within their respective precincts. So far, the GAC has established 20 agent companies involved in enforcing foreign-related copyright.

Considering the highly technical nature and special expertise involved in handling IPR cases, China began to set up IPR Trial Chambers or Tribunals within the Supreme People's Court and the local people's courts at different levels from 1992. So far, all of the 31 provincial people's courts of China have established IPR courts. The basic task of IPR courts is to protect the legal right of the owner of the IP, to push forward the progress of science and technology as well as culture and art following the principle of basing decisions on facts and taking the law as the key criterion.

IPR courts have jurisdiction over the following cases:

1) Cases involving disputes of patent rights:
    - cases relating to an exploitation fee after a patent application is published but before the patent right is granted;
    - cases relating to patent infringement including the act of passing off a patent where the circumstances do not constitute a crime;
    - cases involving disputes arising from a patent application and the ownership of patent right; and
    - cases relating to transfer of a patent application right or patent right.

2) Cases involving disputes of trademark right:
    - cases relating to trademark infringement, including unlawfully using registered trademarks, unlawfully making or selling symbols of registered trademarks or any act which causes harm to a proprietary right of registered trademark;
    - cases relating to contract disputes concerning assignment of trademarks and the license of trademarks; and
    - other cases involving disputes of trademark rights.

3) Cases involving disputes of copyright:
    - cases involving disputes of copyright or other rights including related rights; and
    - cases relating to computer software copyright disputes.

4) Cases involving controversies over the infringement of invention rights, discovery rights and rights for any other science and technology progress.

5) Cases involving controversies over a technology contract:

- cases of disputes over technology development contracts, technology consultancy contracts, technology service contracts and contracts for transfer of technology, of which the disputed amount of the subject are not less than RMB500,000 (US$60,400);
- cases relating to a license contract for implementation of an invention patent;
- cases relating to a technology transfer contract during the patent application period; and
- cases of disputes over technology contracts relating to parties from Hong Kong, Macau, Taiwan and other foreign countries or areas.

6) Cases involving unfair competition.

7) Other cases within the scope of the protection of IP.

In case of tort, the IPR Court may enjoin the violator to undertake civil remedies to stop the acts of violation, redress the effect, apologise, or pay damages. On top of that, it may impose other penalties such as confiscation of illegal income, fine, and detention, etc. Criminal sanctions will be pursued where the violation constitutes a crime.

China also attaches great importance on enhancing public awareness of IPR protection through holding seminars, producing TV programs, publishing books and so on. The relevant authorities also provide training on IPR protection for officials, managers and technicians.

Since its accession to the WTO in November 2001, China has placed a high priority on intellectual property rights in conformity with its obligations as a member of the WTO. More stringent penalties for intellectual property infringement have been implemented together with a large-scale campaign against piracy and counterfeiting.

While making great efforts to improve the domestic legal framework for IPR protection, China has also engaged actively in activities of related international organisations and strengthened cooperation and exchange with other countries in the field of IPR protection.

6.6.3 Opportunities for Future Cooperation

In the context of a possible FTA, Australia and China could consider the following areas for furthering IP cooperation:

- reaffirm commitments and obligations under the various multilateral treaties and organisations to which they are both parties to i.e. World Intellectual Property Organization (WIPO), TRIPs and the APEC Intellectual Property Rights Experts Group (IPEG);
- both parties give positive consideration to signing other multilateral IP treaties;
- create opportunities through cooperative arrangements to foster dialogue on IP issues and consider arrangements to address any issues that may arise;
- cooperative mechanisms to settle the problems identified in the IPR area;
- reaffirm and strengthen cooperative arrangements between respective government agencies, educational institutions and other organisations, including in relation to the protection, enforcement and development of IPR; and
- information exchanges to assist in developing a greater understanding of the operation of their respective IP systems, including enforcement and administration.

6.7 Electronic Commerce

The increasing use of digital communications systems, such as the Internet, in both Australia and China indicates that bilateral electronic commerce (e-commerce) has the potential to grow further at both a business and household level. This potential is currently recognised by the *Joint Statement on the Online Economy and Electronic Commerce* signed on 8 September 1999 and the *Memorandum of Understanding on Cooperation in the Information Industries* signed on 1 November 1999.

The following outlines the state of e-commerce in Australia and China, and outlines possible areas for further cooperation to assist the continued development of this form of commercial engagement.

6.7.1 Overview of Australia's Electronic Commerce Arrangements

Australian Internet communication systems are world standard and adoption rates by both businesses and householders consistently rank among the lead nations of the world. The 2004 E-readiness Rankings produced by the Economist Intelligence Unit, ranked Australia highly (12th out of 64 countries) in terms of providing an environment conducive to the emergence of e-business. Other e-commerce statistics show that at September 2003:

- 84 per cent of the adult population (16 years and over) had Internet access (from home, work or somewhere else) and 33 per cent of these Internet users had purchased goods or services online in the previous 6 months; and
- 71 per cent of Australian businesses had Internet access. Of these online businesses, 39 per cent were ordering goods and services online and 19 per cent were accepting online orders for goods and services. Revenue from e-commerce over the Internet grew from US$2.9 billion at June 2000 to US$15.9 billion at June 2003.

Accordingly, a high proportion of Australian individuals and businesses are accessible via Internet communications channels.

Australia views the growth of e-commerce as primarily private sector driven, with clear beneficial effects for the economy and citizens generally. In putting in place relevant regulatory settings, the Government has focused on removal of unnecessary barriers to e-commerce, while regulating specific aspects, such as content, on their merits as required by the public interest.

Australia's *Electronic Transactions Act 1999* (the Act) removes legal obstacles to the use of electronic materials by allowing individuals to deal with Commonwealth departments and agencies electronically and making clear the general principle that a person can enter into contracts electronically. The Act is based on the *United Nations Commission on International Trade Law Model Law on Electronic Commerce* and was developed in consultation with the States and Territories to facilitate a national approach to the success of electronic commerce in Australia (the Act is complemented by similar legislation in the States and Territories to have similar effect in those jurisdictions).

The Act identifies four types of requirements that can be met in electronic form (give information in writing, provide a signature, produce a document, and record or retain information); and is based on the key principles of technological neutrality (the legislation does not prefer one form of electronic signature technology over any other) and functional equivalence (paper documents and electronic transactions should be treated equally).

Australia encourages private sector and public sector adoption of authentication technologies to facilitate trusted e-commerce across the economy. Consistent with the APEC paper *Achieving*

Interoperability in Public Key Infrastructure (PKI), it promotes the adoption of digital signature certificates as a PKI solution. The Australian Government Information Management Office (AGIMO) has responsibility for managing the accreditation of organisations and service providers under the Gatekeeper® PKI framework. Accreditation criteria
for which include:

- compliance with Commonwealth Government procurement policy;
- security policy and planning;
- physical security;
- technology evaluation;
- Certification Authority policy and administration;
- personnel vetting;
- legal issues; and
- privacy considerations.

AGIMO has developed a cross-recognition policy to encourage PKI interoperability, both domestically and internationally. The implementation of this policy is currently being developed with relevant Australian Government agencies, other nations and international communities of interest.

In relation to privacy and online data protection, the Australian Government acknowledges that privacy is important to the community and that many people are concerned about the way that personal information collected from them or about them from third parties is used by the private sector and elsewhere, particularly on the internet. The *Privacy Act 1988* is the principal piece of legislation providing protection of personal information in the federal public sector and in the private sector. The *Privacy Act* provides eleven Information Privacy Principles for the federal public sector and ten National Privacy Principles for private sector organisations. These Privacy Principles deal with all stages of the processing of personal information, setting out standards for the collection, use, disclosure, quality and security of personal information. They also create requirements of access to, and correction of, such information by the individuals concerned.

Under the *Broadcasting Services Act 1992,* the *Interactive Gambling Act 2001*, and the *Spam Act 2003* Parliament has established systems for regulating offensive, illegal and unwanted online content and online gambling services.

- Schedule 5 to the *Broadcasting Services Act 1992* (BSA) establishes a regulatory scheme for the management of Internet content to restrict access to Internet content that is likely to offend a reasonable adult and to protect children from Internet content that is unsuitable for them.
- The *Interactive Gambling Act (IGA) 2001* targets the providers of interactive gambling services, not their potential or actual customers, by making it an offence to provide an interactive gambling service to a customer physically present in Australia. Interactive gambling services include those that are often described as *online casinos* and usually involve using the Internet to play games of chance or games of mixed chance and skill. The Act applies to all interactive gambling service providers, whether based in Australia or offshore, whether Australian or foreign owned.
- The *Spam Act 2003* came into force on 10 April 2004, and provides a balanced approach to permitting responsible direct marketing and other business activities whilst providing a strong response to spamming activities. The legislation includes a ban on the sending of commercial electronic messaging without explicit or inferred consent; civil sanctions for unlawful conduct; and a requirement for all commercial electronic messaging to contain accurate details of the sender. Australia's anti-spam strategy includes working together with international organisations to develop global guidelines and cooperative mechanisms to combat the global spam problem (Australia has signed an MOU with South Korea on spam).

6.7.2 Overview of China's Electronic Commerce Arrangements

With the development of necessary infrastructure, human resources, technology and electronic commerce applications, China is in a position for further exploring the use of electronic commerce.

Since 1993, China has gradually carried out the Gold Bridge Project, which is aimed at establishing a national economic information website, the Gold Customs Project for online foreign trade administration and the Gold Card Project for electronic financial transactions.

By the end of 2003, internet users in China exceeded 80 million while the number of computers linked to the internet reached 30.89 million. Most enterprises in China have established their own enterprise resource planning systems and have been carrying out network marketing, supply-chain management and customer relationship management.

The model for conducting e-commerce among Chinese enterprises varies and includes setting up websites for online expositions, online trans-national project fairs, continuous online fairs and information portals. Chinese companies have been exploring markets through online negotiations, online sales promotions and online trading. Online purchasing, online auction and online bidding in China have experienced a rapid increase.

The draft *Electronic Signature Law of the People's Republic of China* has been submitted to the Standing Committee of the National People's Congress for consideration. This law would for the first time authorise the use of electronic signatures for commercial transactions.

From 2003, China began to try out an electronic port system in Beijing, Guangzhou, Shanghai and Tianjin. The new system enables companies to conduct import and export business online and also enhance the government's supervision over ports and help crackdown on smuggling, arbitrage and cheating on export tax rebates. Twelve national trade administration agencies, including the GAC, MOFCOM, the State Administration of Taxation, the State Exit-Entry Inspection and Quarantine Bureau and the State Administration of Foreign Exchange, worked together in developing the system. The new system will link these agencies and combine their respective data on imports and exports, capital and goods flows. Companies connected to public telecommunications networks will be able to complete various procedures with unified electronic data and enjoy one-stop government services. Firms will be able to procure intermediary services such as transportation, stock, banking and insurance through the network as well. The system is part of the Government's efforts to improve online government procurement and the infrastructure for e-commerce and paperless trade.

As an important application of e-commerce, the electronic quarantine and inspection system has become popular quickly in China in recent years. Under the guidance of AQSIQ, China has invested more than US$70 million on Wide Area Network construction in the field of quarantine and inspection since 2001. By the end of 2003, an electronic process of application, quarantine and inspection supervision, SPS e-certification, and customs clearance has been realized in the provincial administrations directly under the control of AQSIQ and 440 branch institutions. More than 40,000 enterprises engaging in import and export trade have established direct linkages to the network. The application of electronic quarantine and inspection processes have greatly expedited customs clearance procedures, and shortened the processing time of each operation of import and export by 2-3 days on average. At present, more than 80 per cent of applications for quarantine and inspection in China are made through the Internet, with several cities and provinces including Beijing and Guangdong having realized a 100 per cent electronic application rate.

However, the development of e-commerce in China is still suffering from imbalance such as regional and application discrepancies. Creating a legal environment for e-commerce still has a long way to go.

6.7.3 Opportunities for Increased Cooperation

The *Joint Statement on the Online Economy and Electronic Commerce* and the *Memorandum of Understanding on Cooperation in the Information Industries* focus on a number of areas of e-commerce cooperation including:

- encouraging the exchange of information about policies and strategies, including legal and regulatory matters, to foster the maximum spread of benefits from development of information industries within each country;
- encouraging exchange of information and strategies on the effective use of information technology and telecommunications within Government and in the support of Government service delivery;
- fostering the effective use of electronic commerce between the two countries; and
- the principles of no barriers to trade conducted electronically; the retention of each country's ability to regulate for public policy purposes; and encouragement of trade and investment through further facilitating electronic commerce.

A possible FTA between Australia and China would provide an opportunity to enhance further e-commerce cooperation, including through:

- maintaining the current moratorium on customs duties on electronic transmissions between the two countries;
- making publicly available electronic versions of trade administration documents;
- encouraging the acceptance of electronic trade administration documents;
- cooperation on appropriate frameworks governing e-commerce that minimise the regulatory burden, support industry-led development, provide protection for consumers equivalent to that provided for consumers of other forms of commerce, and enable each country to tackle problems unique to electronic commerce (such as online gambling and email spam);
- cooperation on appropriate electronic authentication and work towards the mutual recognition of digital certificates, based on internationally accepted standards;
- taking appropriate measures to protect the personal data of people using electronic commerce;
- cooperation to enhance the acceptance of paperless trading bilaterally and internationally;
- cooperation to combat the spam problem; and
- working towards the mutual recognition of electronic signatures and encourage the interoperability of digital certificates by business.

6.8 Small & Medium Enterprise Cooperation

Small and medium sized enterprises (SMEs) in Australia and China are becoming increasingly involved in international business activities, and accordingly could be expected to take advantage of the opportunities presented by a possible bilateral FTA.

The following outlines the contribution that SMEs make to the Australian and Chinese economies, provides an overview of measures taken to promote SME development in each country, and outlines areas for cooperation between Australia and China to assist in ensuring that SMEs embrace the benefits of an FTA.

6.8.1 Overview of Australia's SME Regime

Australia defines Small to Medium Enterprises (SMEs) as businesses with 200 or less employees.[92] They represent over 97 per cent of all businesses in Australia. Importantly, SMEs are a major contributor to employment and economic growth. Approximately 41 per cent of all Australian exporters are SMEs.[93]

A large number of programs and initiatives to assist SMEs are delivered at the Commonwealth and State Government level. Key Australian (Commonwealth) Government SME initiatives focus on reducing regulatory and compliance burdens and include assessing impacts on SMEs when reviewing existing or new regulations; providing exemptions from overly burdensome legislative requirements; protection from unconscionable conduct by large business; and promoting the internet in reducing transaction costs and providing electronic access to information and business assistance.

Other Australian Government initiatives are designed to ensure SMEs have access to Australian Government procurement, global supply chains and major investment projects. The Australian Government also provides assistance for the development and commercialisation of new technologies, engagement with export markets, and development and expansion of indigenous enterprises.

6.8.2 Overview of China's SME Cooperation

SMEs have grown very fast in recent years in China and have become an important part of the national economy. By the end of 2003, the number of SMEs had reached 10 million, accounting for 99 per cent of the total number of China's enterprises. The value of final products and services created by SMEs accounts for more than 50 per cent of China's GDP. SME exports constitute the bulk of China's exports to Australia demonstrating that cooperation between the SMEs of Australia and China is of great significance and has great potential.

To promote Sino-foreign SME cooperation, China established the International Coordination Centre for SMEs in 1985 and the International Cooperation Association of SMEs in 1990. A close cooperative relationship has already been established between these two institutions and corresponding Australian organisations for SMEs development. Besides institutional construction, the Chinese government has also enhanced SME development through legislation. The *Law of the People's Republic of China on the Promotion of Small and Medium Enterprises* was promulgated in June 2002 and came into force on 1 January 2003. This law aims to promote the healthy development of SMEs by establishing mechanisms to promote fair market competition and encouraging SMEs to actively participate in international cooperation activities.

In the context of APEC, China has made great contributions for SME cooperation in the Asia-Pacific region by hosting an APEC SMEs Technology Exchange Exposition and APEC SMEs Business Forum.

6.8.3 Opportunities for Increased Cooperation

A possible FTA would not only create more business opportunities for the SMEs of Australia and China to enter each other's domestic market, but also provide a wider scope for future bilateral SME cooperation. To help ensure that SMEs embrace the benefits of an FTA, Australia and China could consider exploring opportunities to promote cooperation and further information exchange. These opportunities would be in addition to areas for possible cooperation identified in Chapter 6.1 (Trade and Investment Promotion), and could include:

- exchanging information between government institutions, chambers of commerce, and industry associations to assist in facilitating trade and investment opportunities for SMEs;

[92] ABS definition of small business.

[93] ABS Catalogue No 8154.0, *Portrait of Australian Exporters*, 1997-98.

- identifying areas for capacity building and training to assist SMEs' development; and
- exploring ways and means for the development of SMEs.

6.9 Transparency

Transparency is an important factor in assessing the business environment. It not only has a direct influence on macro governance mechanisms such as legislation, judicial administration, disclosure and the publication of information, but also plays a key role in promoting community/market supervision of business enterprises.

Transparency in Government decision-making processes and commitments to abide by appropriate transparency provisions in a FTA fulfil a number of important objectives. This includes providing traders and investors with confidence in relation to business transactions and investment decisions; providing each Party with information in a timely manner about future measures which may impact on business transactions or investment; protecting the principles of natural justice and due process; encouraging the use of electronic technologies to disseminate information; enhancing the promotion of transparency; and enhancing bilateral cooperation.

6.9.1 Overview of Australia's Transparency Provisions

Transparency is a general principle in Australia, which is implemented throughout its law, regulations and administrative practices.

Australian laws, regulations, administrative guidelines and policies are publicly available through the Internet, as displayed on sites such as the Attorney-General's Australian Law Online (www.law.gov.au), the Australian Legal Information Institute (www.austlii.edu.au). These websites also enable access to State and Territory Government websites where the laws and other legal information published by those Governments can be found.

Transparency is also important during the course of making new laws, and amending existing laws.

New federal Acts must be introduced into the Australian Parliament and proceed through both Houses of that Parliament before they can be passed and come into operation. The proceedings of the Houses of Parliament are open to the public, and are broadcast on public radio. Draft legislation is also made available to members of the public.

A number of federal Acts also authorise the making of subordinate legislation which does not have to be debated in the Parliament. That subordinate legislation is of two main types: regulations which are made, tabled before both Houses of the Parliament and which the Parliament has 15 sitting days to consider and may disallow; and other legislative instruments.

On 1 January 2005, the *Legislative Instruments Act 2003* commenced operation. This Act requires all legislative instruments to be subject to the same process of tabling and disallowance before the Parliament as regulations are. There are a few exemptions to the *Legislative Instruments Act* where, for example, commercial uncertainty would result if disallowance was allowed, however all such exemptions must be approved by the Parliament. The *Legislative Instruments Act* also provides for a process of expiry of legislative instruments after they have been in force for approximately 10 years, unless specific action is taken to preserve them. By this means legislative instruments are regularly reviewed and kept up-to-date.

Administrative action taken under legislation is also subject to scrutiny in a number of ways. For example, many decisions can be reviewed on their merits by independent tribunals, such as the Administrative Appeals Tribunal and similar bodies exist in the States and Territories. There are

also various forms of action that can be taken in courts to review administrative decisions and the processes undertaken to arrive at those decisions.

Australia, and a number of Australian States and Territories, also have legislation designed to allow members of the public access to records held by Government Departments. Under this freedom of information legislation, Australian citizens have the right to access documents in possession of Government Ministers and their Departments. This information is limited by a number of exceptions designed to protect essential public interests and the private and business affairs of persons.

6.9.2 Overview of China's Transparency Provisions

The Chinese government basically completed developing the framework of a transparency regime in 1992, ensuring the timely publication of information on the laws and regulations related to foreign trade and investment. Making good use of electronic technologies, the Government Online Project started in 1999. With the help of the Internet, a prompt and efficient communication and feedback mechanism has been established between the government and the public, which is of great significance for improving transparency. The *Legislation Law of the People's Republic of China*, which came into force on 1 July 2000, prescribed that the timely public availability of new laws and administrative regulations must be part of legislative procedures. On 1 July 2004, the *Law of the People's Republic of China on Administrative Permission* came into force, in which the procedures of administrative permission have been specifically spelled out.

To make government affairs transparent, effective measures have also been taken to establish or improve a range of processes including administrative decision-making systems, consultation systems, public hearing systems, and administrative supervision systems. While beneficial to implementation of the transparency principle, these efforts have also promoted rationalization of the government administrative management system.

After China's accession to the WTO, the Chinese government attached much importance to further enhancing transparency. The Ministry of Commerce has set up a special agency in charge of consultation and notification. The responsibilities of the agency include fulfilling more than 100 kinds of notification obligations required by the WTO, giving authoritative answers to other WTO members' enquiries on China's trade policies, and providing consultation services on WTO-related foreign trade issues.

6.9.3 Opportunities for Increased Cooperation

With the establishment of an FTA, Australia and China could carry out an all-directional information exchange on trade and investment laws, regulations and policies. The enhancement of cooperation between Australia and China in the area of transparency would play a positive role in promoting bilateral economic intercourse.

With this in mind, Australia and China could, in the context of a possible FTA, consider the following areas for cooperation:

- both sides should ensure publication of relevant laws, regulations, administrative decisions, or other appropriate publications in a timely manner;
- a contact point should be established to facilitate communications between the two countries on any matter covered by an FTA;
- efforts should be made to ensure the consistent application of laws, regulations and administrative decisions across all jurisdictions; and
- both sides should ensure the availability of domestic procedures for prompt review and correction where necessary of administrative actions.

In the context of an FTA between WTO Members, transparency is also an important cross-cutting issue and it is standard practice to reflect the spirit of transparency in relevant chapters. Accordingly, transparency references are also included in other chapters of this study.

6.10 Trade Remedies

Under WTO rules, Members have recourse to trade remedies (anti-dumping, countervailing duty measures and safeguard measures) in certain situations which cause or threaten to cause injury to the domestic industry in the importing country and allow for emergency action to assist industry adjustment. Australia and China are both members of the WTO and are subject to the WTO rules relating to trade remedies. In response to increasing bilateral trade both countries have commenced a bilateral dialogue on these issues as part of the Trade and Economic Framework.

The following provides an overview of Australia's and China's policies and programs on anti-dumping, countervailing and safeguard measures and outlines possible areas for enhanced bilateral cooperation through an FTA.

6.10.1 Anti-Dumping

Australia

In Australia, investigations of alleged injurious dumping are carried out in accordance with legislation that conforms to the provisions of GATT Article VI and the WTO Anti-Dumping Agreement.[94] Australian legislation does not prohibit the sale of imported products at less than "normal value" (i.e. domestic price), but permits anti-dumping remedies to be applied where this sale causes or threatens material injury to domestic industry.

Australian anti-dumping investigations are initiated following the receipt by the Australian Customs Service of a duly documented application (or petition) from Australian industry. Anti-dumping measures may only be applied after a formal investigation has demonstrated that:

- the goods under investigation are dumped;
- there has been, or threatens to be, material injury to the Australian industry producing like goods and dumped imports would result in a continuation of the material injury; and
- there is a causal link between the dumping and the material injury (that is, the dumped goods caused the material injury).

In setting the requirements for anti-dumping applications and the administration of anti-dumping procedures, the Australian Government seeks to preserve an appropriate balance between the rights of domestic firms and those exporting to the Australian market.

A finding that there is material injury requires clear evidence that Australian industry has suffered a loss in terms of indicators such as sales, market share, profits, employment and wages.

Australia's anti-dumping legislation ensures that investigations are carried out promptly, that all interested parties have appropriate opportunities to provide information and comment on findings of fact, and that there are appropriate avenues for appeal.

[94] The two key pieces of legislation are the *Customs Act 1901* (which sets out the general inquiry process) and the *Customs Tariff (Anti-Dumping) Act 1975* (which makes provision for the imposition of anti-dumping and countervailing duties).

To prevent anti-dumping measures becoming a *de facto* instrument of long-term industry protection, any duties or undertakings which are imposed as a result of an investigation are subject to a five year "sunset clause". That is, measures automatically expire five years from the date of their imposition. Extension of measures beyond five years requires a further investigation by the Australian Customs Service, in accordance with the same procedures that apply to initial investigations.

Under the *Australia New Zealand Closer Economic Relationship Trade Agreement* (ANZCERTA), anti-dumping action cannot be taken in relation to New Zealand goods. However, under ANZCERTA, New Zealand industry can lodge an application against alleged dumping of goods from a third country in the Australian market that would injure New Zealand industry, and Australian industry can lodge applications that New Zealand investigate alleged dumping within their market that would injure Australian industry. In such eventuality, the country in which the application is made must initiate an investigation. This arrangement is consistent with the WTO Anti-dumping Agreement. To date, no applications by New Zealand industry alleging dumping against a third country's imports into Australia have been made.

Under Australia's anti-dumping legislation China is currently an "economy in transition" (EIT). Australia's EIT provisions enable authorities to examine questions of government price influence when determining the normal value for goods exported from China and other EIT countries.

Over the period 1995–2004, Australia completed a total of 18 anti-dumping investigations on goods exported from China. Twelve of the 18 anti-dumping investigations on products from China over the past nine years have not resulted in the imposition of anti-dumping measures. In six cases anti-dumping measures were imposed. These include the five products in the table below plus polyvinyl choloride, which was imposed in October 1997 and revoked in October 2002. A further investigation on silicon was initiated in May 2004 and on 7 October 2004 securities were imposed, pending finalisation of this case.

Product	Date Measures First Imposed	Date Measures Expired or Revoked
Hot rolled steel plate	02.04.04	02.04.09
Dichlorophenoxy-acetic acid (2 4 D)	24.03.03	23.03.08
Sodium metabisulfite	04.06.02.	04.06.07
Shelving kits, steel	03.10.01	03.10.06
Glass, clear float	03.11.92[95]	03.11.07

China

China's main legislation[96] covering the application of antidumping measures are the *Foreign Trade Law of the People's Republic of China* and the *Antidumping Regulations*. The Ministry of Commerce is responsible for investigation and determination of dumping and injury, and imposing anti-dumping measures.

According to Article 41 of the *Foreign Trade Law of the People's Republic of China*, where a product from other countries or regions is dumped into the domestic market at a price less than its normal value so as to cause or threaten to cause material injury to established domestic industries, or materially retard the establishment of domestic industries, the State may take anti-dumping measures to eliminate or mitigate such injury, threat of injury or retardation. The preconditions for the Chinese government to take anti-dumping measures are listed in Article 43 of the *Foreign Trade Law of the People's Republic of China* which contains the same provisions as GATT Article VI.

[95] While the measure applying to clear float glass was first imposed in 1992 it is still a current measure and that is why it is included in the table.

[96] The legislation mentioned in this section is available on www.mofcom.gov.cn.

Over the period December 1997 – when China initiated the first anti-dumping investigation on imported news-printing paper – to September 2004, China has initiated anti-dumping investigations on a total of 33 imported products. Up to now, China has not initiated any anti-dumping investigation on products originating in Australia.

6.10.2 Countervailing Measures

Australia

Australia's approach to the use of countervailing measures is similar to its approach on anti-dumping issues. Australia's legislative and administrative framework on the use of countervailing measures is consistent with GATT Articles VI and XVI and the WTO *Agreement on Subsidies and Countervailing Measures*.[97]

Investigations on alleged injurious subsidisation are initiated through application (or petition) by the relevant Australian industry to the Australian Customs Service. The application must *prima facie* demonstrate that there is a subsidy and that the industry has suffered material injury as a result of these subsidised imports. A countervailable subsidy must be specific and not an excluded subsidy.

The Australian Government can only take action against subsidised goods that cause, or threaten to cause, material injury to an Australian industry producing like goods. There must be a direct and identifiable relationship between the impact of the subsidy and any alleged material injury suffered, or threatened to, the Australian industry.

Australia's legislation ensures that investigations are carried out promptly, that all interested parties have appropriate opportunities to provide information and comment on findings of fact, and that there are appropriate avenues for appeal.

Australia has not initiated or imposed any countervailing measures against China.

China

China's main legislation covering countervailing measures are the *Foreign Trade Law of the People's Republic of China* and the *Countervailing Regulations*.

According to Article 43 of the *Foreign Trade Law of the People's Republic of China,* where the price of an imported product is directly or indirectly affected by any specific subsidy granted by the exporting country or region so as to cause or threaten to cause material injury to established domestic industries, or materially retard the establishment of related domestic industries, the State may take countervailing measures to eliminate or mitigate such injury or threat of injury or retardation. The preconditions for the Chinese Government to take countervailing measures are listed in Article 43 of the *Foreign Trade Law of the People's Republic of China* in accordance with GATT Articles VI and XVI and the WTO Agreement on Subsidies and Countervailing Measures.

Amended *Countervailing Regulations* came into force on 1 June 2004, in which detailed provisions on the definition of subsidy, the characteristic of special orientation, injury, the causal link between subsidy and injury, the procedure of investigation, and specific countervailing measures are clearly specified.

According to the *Countervailing Regulations*, MOFCOM is responsible for the investigation on and determination of subsidy and injury. A domestic industry or a natural person, legal person or relevant organization representing a domestic industry may file a written application with MOFCOM in accordance with the present *Countervailing Regulations*.

Up to now, China has not initiated any countervailing investigation concerning imported products.

[97] The two key pieces of legislation are the *Customs Act 1901* (which sets out the general inquiry process) and the *Customs Tariff (Anti-Dumping) Act 1975* (which makes provision for the imposition of anti-dumping and countervailing duties).

6.10.3 Safeguards

Australia

Australia's safeguards procedures are consistent with the WTO *Agreement on Safeguards*.

There is no specific legislation for the imposition of safeguard measures in Australia. Investigations are initiated by the Treasurer, through a reference to the Productivity Commission and following the Australian Government's agreement that such action is warranted.

Following a decision by the Australian Government to initiate a safeguard investigation, the Productivity Commission will conduct a safeguard inquiry in accordance with the published general procedures for inquiries by the Productivity Commission. The Productivity Commission is required to report on:

- whether the conditions are such that the safeguard measures will be justified under the WTO rules;
- if so, what measures would be necessary to prevent or remedy serious injury and facilitate adjustment in the domestic industry; and
- whether the measures would be implementable, having regard to the regulatory impact of the measures.

Safeguard measures, if imposed, must be liberalised progressively in order to facilitate industry adjustment to import competition. Safeguard measures can be put in place only for the period of time that is necessary to prevent or remedy serious injury and to facilitate adjustment. This period is for a maximum of four years, but can extend for up to eight years if circumstances are such that action is still warranted.

While historically a major user of safeguard action, this has not been the case for Australia since the mid 1970s. Since entry into force of the WTO Agreements in 1995, Australia has conducted only one safeguard inquiry, which was initiated in 1998 into frozen pig meat (no safeguard measures were imposed).

Under ANZCERTA and SAFTA imports from New Zealand and Singapore are, respectively, exempt from safeguard measures. This means that should Australia initiate a safeguard action, imports from New Zealand and Singapore would be excluded from the safeguard inquiry. If the Government subsequently decided as a result of the inquiry that safeguard measures were warranted, no safeguard measures would be applied to imports from New Zealand and Singapore.

See Chapter 3.3 on the overall impact of liberalisation of goods trade for a discussion on Australia's use of bilateral safeguards in FTAs to facilitate adjustment of industry to increased competition from imports through tariff reductions.

China

China's main legislation on safeguard measures are the *Foreign Trade Law of the People's Republic of China* and the *Safeguard Measures Regulations*.

According to Article 44 of the *Foreign Trade Law of the People's Republic of China*, where a product is being imported in substantially increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products, the State may take safeguard measures as necessary to eliminate or mitigate such injury or threat of injury and provide the industry concerned with necessary support. The legal basis for the Chinese government to take safeguard measures pursuant to Article 44 of the *Foreign Trade Law of the People's Republic of China* is in accordance with GATT Article XIX and the WTO *Agreement on Safeguard Measures*.

According to the *Safeguard Measures Regulations*, MOFCOM is responsible for investigation on and determination of a substantial increase of an imported product and injury. A domestic industry or a natural person, legal person or relevant organization representing a domestic industry may file a written application with MOFCOM in accordance with the present *Safeguard Measures Regulations*.

China initiated its first safeguard investigation (on imports of certain steel products) in May 2002 upon application by a relevant domestic industry. On 20 May 2002, China decided to impose provisional safeguard measures on certain imported steel products. According to the final determinations of the safeguard investigation, China decided to impose definitive safeguard measures on five categories of imported steel products in November 2002. On 26 December 2003, China announced the termination of the safeguard measures on imported steel products.

6.10.4 Opportunities for Future Cooperation:

In the context of a possible FTA, Australia and China could consider the following areas for further cooperation, which were identified at the first meeting of the China- Australia High Level Meeting on Trade Remedies, held in April 2004:

- informal consultations and dialogue on trade remedy issues in the Doha round;
- technical exchanges, including the exchange of officials between respective trade remedy authorities; and
- encouragement of dialogue and cooperation between industries concerning possible trade remedy cases.

6.11 Capacity Building

Facing the opportunities and challenges brought about by globalisation, more and more countries have realized the significance of capacity building in helping them to build up their resistance to potential economic crisis, to strengthen their economic basis for healthy and sustainable economic development, and thus benefit more from the globalisation process.

6.11.1 Australia

Australia and China share a mutual interest in China achieving sustainable development. To underpin this mutual interest, the Australia-China bilateral development cooperation program, for over 23 years, has contributed some US$0.96 billion to China's development, through projects in many provinces and a wide range of sectors, including governance, agriculture and rural development, health and education. Capacity building has been an important aspect of the program.

In 1981, the Australian and Chinese governments signed an *Agreement on a Program of Technical Co-operation for Development*. The Agreement was subsequently amended on 16 February 1987.

AusAID and MOFCOM sign an individual memorandum of understanding for each development cooperation activity that takes place under the Agreement. These memoranda of understanding stipulate, in greater detail, the respective obligations of the Chinese and Australian governments in implementing individual development cooperation activities.

The program is delivered under a Country Program Strategy, agreed by the two Governments, which evolves as the China-Australia relationship further matures, and as new priorities emerge.

A new version of the Country Program Strategy will be developed during 2004, with a view to endorsement by the Australian and Chinese Governments in mid 2005. Future development cooperation activities will fit within the new strategy.

There is considerable cooperation between Australia and China in the agricultural services area, including technical assistance and capacity building through the Australian Centre for International Agricultural Research (ACIAR). Food Standards Australia New Zealand also provides technical assistance and capacity building in food safety and food standards.

6.11.2 China

China attaches great importance to capacity building and regards it as a powerful driving force for deepening reform, and promoting the sound development of its national economy. Great efforts have been made by China to strengthen capacity building in recent years through institutional reform, enhancing the function of markets, infrastructure improvement, human resource development and technological innovation. China's *Agenda 21* has set the goal of achieving sustainable development in the 21st century, in pursuit of enhancing economic growth, promoting human and social development and protecting the environment as interdependent objectives. The population of China accounts for more than 20 per cent of the total world population. In this sense, the sustainable development of China's economy could be regarded as a significant contribution to the world economy.

6.11.3 Opportunity for Future Cooperation:

The establishment of a China-Australia FTA may increase the demand for capacity building and suggests this demand is best addressed through the range of current economic and technical cooperation mechanisms, not only the bilateral development cooperation program.

It is envisaged that a major component of the new Country Strategy will be capacity building activities to support China's reforms and improvements in the selected areas of cooperation. For the Governance area this will be coordinated through the China-Australia Governance Program (CAGP). The program is to be implemented from September 2004 through to mid 2010. The goal is to support China's governance reform and development agenda in areas of mutual interest to China and Australia. CAGP will address a number of key priorities, including:

- two themes of particular importance to China's governance reforms, namely fiscal management and trade related reform;
- assisting China to effectively implement policy, including at the sub-national level; and
- developing and supporting strategic engagement between Australia and China on governance issues, including Australian whole-of-government priorities.

Capacity building associated with a possible Australia-China FTA could be considered through this program. This could include areas such as the development of long term partnerships in relevant sectors, capacity of personnel to implement any future FTA and specific technical exchanges.

7 Other Matters for Exchange of Views

7.1 Government Procurement

Governments at all levels are big purchasers of goods and services of all kinds. Much of this purchasing is conducted on an open and non-discriminatory basis. For developing countries government procurement policies usually have a direct linkage to their objectives of industrial development. Nevertheless, preferential government procurement policies may affect potential trade.

Multilaterally agreed rules governing fair trade under the GATT and WTO arrangements generally, do not apply to purchases by governments. Both Australia and China have not acceded to the plurilateral WTO Agreement on Government Procurement which specifically sets out rules, procedures and requirements for government purchasing.

Both Australia and China are, however, members of the APEC Government Procurement Experts' Group (GPEG) which promotes transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination in government procurement.

The following outlines government procurement frameworks in both Australia and China, provides an overview of Australian government approaches to government procurement cooperation in bilateral trade agreements, and provides suggestions for enhancement of future bilateral cooperation.

7.1.1 Overview of Australia's Government Procurement Framework

Australian Government arrangements for the management and accountability of its entities distinguish between departments and agencies subject to the *Financial Management and Accountability Act 1997* (the FMA Act) and independent government authorities and companies subject to the *Commonwealth Authorities and Companies Act 1997* (the CAC Act).

As Australian State and Territory Governments are independent governments their departments and agencies are not subject to the policies or regulations of the Australian (federal) Government in respect of resource management, including procurement.

The FMA Act covers all Australian Government departments of state, including legal departments and departments supporting Parliament, and their agencies. The FMA Act provides the framework for the proper management of public money and public property by the executive arm of the Australian Government. Public money and public property is money and property in the custody or control of the Australian Government.

The Minister for Finance and Administration, under Regulation 7(1) of the FMA Regulations, has the power to issue guidelines relating to procurement. On 7 December 2004 the Australian Government released revised *Commonwealth Procurement Guidelines* (CPGs) incorporating requirements from the recent *Australia-United States Free Trade Agreement* (AUSFTA).

The procurement framework created by the CPGs follows the devolved resource management model of the FMA Act. That is, each Australian Government department or agency is responsible for managing its procurements, in terms of the processes and the outcomes, within a centrally prescribed framework of procurement policies as issued by the Minister for Finance and Administration.

This requires Chief Executives to apply the efficient, effective and ethical use of the Commonwealth resources for which they are responsible. Chief Executives mainly discharge this responsibility for procurement by ensuring that their officials have appropriate policies, procedures and guidelines in place to achieve value for money in procurement processes, in an accountable and transparent manner and that the officials conduct procurements in an ethical manner.

Value for money is the core principle governing Commonwealth procurement, and is usually assessed on price and non-price criteria to ensure that the government gets the best performance outcome for what it buys. Officials buying goods and services need to be satisfied that the best possible outcome has been achieved taking into account all relevant costs and benefits over the whole of the procurement cycle.

Consistent with the core principle of value for money, the Australian Government procurement framework is generally non-discriminatory between domestic and foreign suppliers. Exceptions to this non-discrimination are specific policies to assist small and medium enterprises and, in limited circumstances, policies to assist indigenous Australians.

The CPGs now also apply to the procurement of a number of agencies governed under the CAC Act and listed in the government procurement chapter of AUSFTA. These bodies are covered only in respect of procurements of over A$400,000 (US$295,000) in value or A$6 million (US$4.4 million) in the case of construction services.

Departments and agencies covered by the FMA Act are required to gazette publicly all contract awards over A$10,000 (US$7,400) in value. For the financial year 2003-04, these departments and agencies gazetted over 186,000 contracts with a total value of US$12.8 billion. Defence accounts for almost 60 per cent of these contracts by value.

Government Procurement and Australian Bilateral Trade Agreements

While not acceding to the WTO Agreement on Government Procurement, Australia is a party to a number of international bilateral trade agreements which feature a chapter on government procurement as a means of enhancing trade and reducing economic barriers.

Whilst the structure of the government procurement chapter may vary for each agreement – depending on the government and economy that Australia is negotiating with – there are key features of the Australia Government Procurement Framework that Australia prefers to retain. Such as:

- devolved responsibility for the management of procurement by the heads of agencies, in accordance with the FMA Act;
- maintaining the principles-based procurement framework, with value for money as the single most important principle;
- recognition of external accountability by the procuring agency to the responsible Minister, to the Australian Parliament, to the Australian National Audit Office and to other external bodies; and
- the efficient, effective and ethical use of resources.

Australia has a flexible approach to managing government procurement, based on the above features, and has been able to retain them in the:

- *Australia New Zealand Agreement on Government Procurement* (ANZGPA);
- *Singapore-Australia Free Trade Agreement* (SAFTA); and
- AUSFTA and the *Thai-Australia Free Trade Agreement* (TAFTA).

ANZGPA

ANZCERTA (or CER) has been in operation since 1983.

Whilst government procurement is mentioned in CER, the operational details are expressed through the separate document – ANZGPA.

Value for money is recognised as the key principle and is supported by non-discrimination requirements. The Agreement states the objective of creating and maintaining a single government procurement market to maximise opportunities for Australian and New Zealand suppliers.

All Australian Federal, State and Territory Governments and the New Zealand Government are covered by ANZGPA and treated equally.

SAFTA

SAFTA came into force on 25 June 2003. The government procurement chapter (Chapter 6) reflects Australia's principles-based government procurement framework. That is, the chapter details requirements for non-discrimination, equal opportunity to bid for government tenders, the preservation of confidential information and intellectual property, and recognition of industry development policies.

The chapter recognises Australia's policies for providing opportunities for indigenous persons. Only the Australian Government's FMA Act agencies are covered.

AUSFTA

The core objective of the government procurement chapter of AUSFTA (Chapter 15) is an agreement to provide non-discriminatory access to the government procurement market of each country.

The approach taken for Chapter 15 is to safeguard non-discriminatory access through rules, procedures and transparency standards to be applied in the conduct of tendering.

Implementing the government procurement chapter of AUSFTA required significant, but not fundamental, change to the procurement framework as it previously existed.

Australian Government departments and agencies governed under the FMA Act are currently individually responsible for determining the procurement methods and procedures within a general principles-based procurement policy framework.

AUSFTA obliges the Australian Government to ensure that departments and agencies listed in the government procurement chapter comply with specific rules and procedures.

Value for money will remain as the core principle for government procurement and agencies will maintain control and responsibility for conducting their own procurement.

Chapter 15 also applies to a number of bodies subject to the *Commonwealth Authorities and Companies Act 1997* and legislation is before Parliament to amend the CAC Act to enable the Minister for Finance and Administration to apply the CPGs to these bodies.

Chapter 15 also stipulates value thresholds, such that any procurement valued at, or above the threshold, is subject to the disciplines of the chapter.

All Australian FMA Act agencies, 33 CAC Act bodies and Australia's States and Territories are covered.

TAFTA

Government procurement (Chapter 15 of the TAFTA) is recognised in the context of a framework with the agreed intention of undertaking further work to develop a comprehensive chapter by a predetermined time. The chapter states that each government will recognise the APEC non-binding principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.

The chapter states that no later than one month after entry into force, the governments will enter into negotiations to develop a government procurement chapter.

7.1.2 Overview of China's Government Procurement Framework

Though China's government procurement system began only in 1995, the government procurement market has been growing very fast during the past few years. According to the statistics of the Ministry of Finance, government procurement spending in China was US$12.1 billion in 2002, and increased to a record high of US$20.1 billion in 2003.

Since the adoption of a formal government procurement system, great efforts have been made in establishing a nationwide mechanism to ensure procurement is transparent and effective.

Administrative institutions for government procurement have now been set up at all levels of government in China, which are responsible for making policies on government procurement. Most provinces have also established government procurement centres in charge of centralized purchasing. During this process, emphasis has been laid on human resources capacity building, and effective measures have been taken to improve the professional ability of the institutional staff and to ensure the effectiveness of supervision.

The timely, precise and open publication of information plays a key role in the process of government procurement. Consequently, the Chinese Government attaches great importance to enhancing the transparency of government procurement activities. An effective information system has been established, with three media designated by the Ministry of Finance for publishing government procurement information: China Financial and Economic News, China Government Procurement Network (www.ccgp.gov.cn), and the Magazine of China's Government Procurement. Taking advantage of the Internet, the China Government Procurement Network now has the most timely and comprehensive government procurement information in China. It also has links to the 31 provincial and hundreds of city government procurement websites in China. Many of these government procurement information sources are still under construction. The emphasis of present work is to expand their audience, develop channels for gathering information and enhance the timeliness of releasing the information.

The establishment of the legal framework for procurement is also an important task for the Chinese Government. The *Government Procurement Law of the People's Republic of China* was promulgated on 29 June 2002 and took effect on 1 January 2003. The Law contains 9 chapters, with 88 provisions on key issues including basic principles and patterns of government procurement, the format and enforcement of contract, suppliers' queries and complaints, and the responsibilities of administrative supervision.

- In regard to basic principles, the Law prescribes that government procurement should protect the public interest, and the legitimate rights of procurement parties, and help to build on an honest and clean civil service with the principles of justice, honesty and credibility.
- To protect fair competition in the government procurement market, the Law prescribes that no region or industry should impede the free access of suppliers to its market. Centralised procurement institutions should be separate from financial departments, and the latter cannot participate in commercial procurement activities but should take responsibility for administrative supervision.
- Concerning patterns of procurement, the Law prescribes that open bidding is the major method of procurement, but other methods, including invited bidding and competitive negotiation, may also be chosen by procurement personnel subject to prior approval of financial departments. The ceiling levels for open bidding by central government departments are as follows: RMB0.8 million (US$0.097million) for goods and services, and RMB3 million (US$0.37million) for construction projects.
- To protect fully the rights of suppliers, the Law prescribes that in situations where the interests of the supplier are damaged, the supplier may query the procurement personnel within a prescribed period, and the procurement personnel should reply in written form within 7 working days. Suppliers can complain to the finance department if they are not satisfied with the reply

or the procurement personnel do not reply in the prescribed time, and the finance department should reply within 30 working days. If suppliers are not satisfied with responses using the above processes or a response is delayed, the supplier may apply for administrative reconsideration or file a lawsuit in the People's Court.

- According to China's Government Procurement Law, there should be preference for the purchase of domestic products, but the purchase of foreign products is not completely excluded. Under some circumstances, foreign products may be purchased to satisfy specific needs.

7.1.3 Future Cooperation

Noting the progress in development of China's government procurement system and recent reforms to Australian government procurement arrangements, there appears to be scope for enhanced bilateral cooperation between the two countries on government procurement. This cooperation could build upon the APEC-GPEG principles of transparency, fair dealing, accountability and due process and non-discrimination as a starting point for further discussions.

7.2 Competition Policy

Broadly the role of competition policy in FTAs is to ensure the promotion of competitive markets, and to ensure that market access improvements are not frustrated by over or under regulation in the domestic economy. The following outlines Australia's and China's competition policy regimes, Australia's recent approach to competition policy in bilateral FTAs and suggestions for the enhancement of future bilateral cooperation.

7.2.1 Overview of Australia's Competition Policy Regime and Approach to Bilateral Free Trade Agreements

Australia's Competition Policy Regime

During the early 1990s microeconomic reforms undertaken by Australian Governments (Federal, State and Territory) to establish a more outward-looking economy led governments to focus on a range of matters including, for example, the performance of their business enterprises, the harmonisation of regulations among jurisdictions and the creation of competitive energy markets.

In 1995, the Council of Australian Governments agreed to introduce the National Competition Policy (NCP) in anticipation of the benefits that it would bring. CoAG emphasised that the competition policy reform package would enhance the national economic interest by improving Australia's international competitiveness as well as enhancing the interests of Australian consumers. Consumers would benefit from lower prices for government services as a result of the implementation of the package over time.

The aim of NCP is to enhance the living standards of all Australians by promoting competition to encourage businesses to use resources more effectively, reduce prices and be innovative. A fundamental principle of NCP is that arrangements that detract from competition should be retained only if they can be shown to be in the public interest. The principles and processes for NCP are contained in three intergovernmental agreements, the 1995 *Competition Principles Agreement, Conduct Code Agreement* and *Implementation Agreement*.

The NCP framework includes:

- the review and, where necessary, reform of legislation that is anti-competitive. Where such legislation is to be retained or introduced it must be demonstrably in the public interest;
- the implementation of competitive neutrality for all significant government business activities operating in a contestable market, which requires that such businesses not benefit commercially simply by virtue of their public ownership;
- the structural reform of public monopolies, where their markets are to be opened to competition or they are to be privatised, to ensure they have no residual advantages over potential competitors;
- the provision of access arrangements to services provided by significant infrastructure facilities (such as electricity grids, airports and communications networks) that would be uneconomic to duplicate, to promote competition in upstream and downstream markets. This is now legislated in Part IIIA of the *Trade Practices Act 1974* (TPA);
- independent oversight by State and Territory governments of the pricing policies of government business enterprises, to ensure that price rises are not excessive;
- the application of competition laws across all jurisdictions (including the scope for exceptions in certain circumstances), centrally administered by the Australian Competition and Consumer Commission (ACCC); and
- ensuring commitment to related reforms in the key infrastructure areas of electricity, gas, water and road transport with a view to improving efficiency, implementing nationwide markets and standards, and protecting the environment.

Governments' reform objectives and targets (based on these principles) are subject to annual assessment by the National Competition Council (NCC). Incentives for reform are provided by annual competition payments to the States and Territories by the Commonwealth. The payments are reduced where the Commonwealth Government accepts recommendations from the NCC for penalties to be imposed on payments to the States and Territories for lack of progress with NCP related reforms. These payments represent the States and Territories' share of the additional revenue raised by the Commonwealth as a result of effective competition reform, and are worth approximately US$3.1 billion (between 1997-98 and 2005-06).

Competition reforms have delivered significant benefits for Australia. For example, lower domestic production costs arising from NCP reforms enhance Australia's export competitiveness. The Productivity Commission estimated in its 1999 modelling that export volumes would be 3.4 per cent higher than would otherwise occur in the absence of the reforms.[98]

As a result of the NCP, the ACCC was formed in 1995 by the merger of the Trade Practices Commission and the Prices Surveillance Authority. As an independent regulator, the ACCC is charged with enforcing the primary piece of competition law in Australia, the TPA, and is also involved in compliance and educational activities. Private actions under the TPA are also available. The TPA covers all business activity in the Australian economy, including government business activity, and deals mainly with:

- third-party access to nationally significant essential facilities such as electricity grids (Part IIIA);
- anti-competitive practices (Part IV);
- consumer protection (Part V);
- authorisation and notification (Part VII);
- international liner cargo shipping (Part X); and
- anti-competitive conduct and regulated access in the telecommunications sector (Parts XIB and XIC).

[98] Productivity Commission 1999, *Impact of Competition Policy Reforms on Rural and Regional Australia*, Report No 8, AusInfo, Canberra, p. 299.

The TPA is designed to support competitive and efficient markets and prohibits the following anti-competitive practices under Part IV:

- anti-competitive agreements and exclusionary provisions, including primary or secondary boycotts (Section 45);
- misuse of market power (Section 46);
- exclusive dealing (Section 47);
- resale price maintenance (Section 48); and
- mergers which would have the effect or likely effect of substantially lessening competition in a substantial market (Sections 50, 50A[99]).

The authorisation and notification processes in Part VII of the TPA allows the ACCC to grant immunity on public benefit grounds from legal action for certain conduct that might otherwise breach the anti-competitive practices provisions of the TPA.

The Council of Australian Governments is scheduled to review NCP by the end of 2005.

Australia's Approach to Bilateral Free Trade Agreements

Australia has included competition policy chapters in its FTAs with Singapore, Thailand and the United States.

SAFTA

The competition policy chapter of SAFTA commits the Australian and Singapore governments to address anti-competitive business practices and to consult with each other upon request in relation to anti-competitive practices of particular concern. They undertake to ensure that government-owned businesses will be subject to competitive neutrality disciplines.

At the time SAFTA negotiations commenced, Singapore did not have a competition regime. As part of SAFTA, Australia sought a commitment from Singapore to make progress towards the implementation of a competition policy. Singapore has recently commenced the process of developing a general competition regime. It has released a draft competition law for public consultation which the ACCC has commented on. SAFTA explicitly provides for further consultations between Australia and Singapore on matters of competition policy, including regulatory cooperation and mutual assistance.

TAFTA

The competition policy chapter of TAFTA is intended to facilitate trade and investment through promoting competition and the curtailment of anti-competitive practices. Thailand and Australia have agreed to cooperate on competition law enforcement. Either country may seek consultations with the other with a view to eliminating anti-competitive practices that may be affecting trade and investment. The two sides have agreed to make publicly available their laws promoting fair competition and their laws addressing anti-competitive practices. A review of the scope of the commitments on competition will take place within three years of entry into force of TAFTA.

AUSFTA

The competition policy chapter of AUSFTA commits the United States and Australia to maintain a policy and legal framework that condemns anti-competitive conduct, and protects consumers from being subject to fraudulent and deceptive types of behaviour. While many of the measures reflect legislation already in place, AUSFTA provides additional certainty to both countries that such measures will be maintained, and addresses cross-border dimensions of competition and consumer protection more directly. It also provides for a process of ongoing dialogue and cooperation on

[99] Section 50A applies to overseas acquisitions.

competition-related issues, which should ensure that firms operating in either the United States or Australia, and consumers purchasing goods and services from each country, are protected from unfair dealings. AUSFTA aims to advance closer cooperation between the two countries on competition and consumer protection matters.

7.2.2 Overview of China's Competition Policy Regime

Recognizing the important role of fair competition in creating an orderly market and defending the lawful rights and interests of operators and consumers, China has made great efforts over the past two decades to improve its legislation and enforcement of competition laws and regulations to provide a transparent and fair competition environment.

The *Law of the People's Republic of China for Countering Unfair Competition* and the *Anti-Monopoly Law of the People's Republic of China* are two major laws in China's competition policy regime. The former, the *Law of the People's Republic of China for Countering Unfair Competition*, was promulgated on 2 September 1993, and the latter, the *Anti-Monopoly Law of the People's Republic of China,* is currently being drafted. In addition, there are some provisions regulating unfair competition in other economic laws and regulations, including in the *Price Law of the People's Republic of China, Advertisement Law of the People's Republic of China, Product Quality Law of the People's Republic of China, Trademark Law of the People's Republic of China, Patent Law of the People's Republic of China, Company Law of the People's Republic of China, Law of the People's Republic of China on Protection of Consumers' Rights and Interests, Law of the People's Republic of China on Bids and Tenders, Regulations on Telecommunications*, and *Regulations on Prohibition of Implementation of Regional Blockage on Market Economic Activities*.

As the most important specific law on competition in China at present, the *Law of the People's Republic of China for Countering Unfair Competition* aims to encourage and protect fair competition, defend the lawful rights and interests of operators and consumers, and safeguard the healthy development of the socialist market economy. The law regulates not only unfair competitive practices which violate the principles of honesty and trust, but also some practices restricting competition. The law specifies 11 categories of anti-competitive behaviour:

- transactions adopting counterfeit or obscure means (Article No.5);
- transactions involving commercial bribery (Article No.8);
- transactions involving the issuing of false or misleading advertisements (Article No.9);
- transactions involving the infringing of others' commercial secrets (Article No.10);
- certain kinds of sales with prizes attached (Article No.13);
- transactions involving commercial slander (Article No.14);
- transactions that force consumers to purchase goods designated by public enterprises or other operators with monopolistic positions (Article No.6);
- restrictive practices impacting on market competition by abusing administrative power (Article No.7);
- transactions involving predatory pricing (Article No.11);
- transactions involving a tie-in sale or sale attaching unreasonable conditions (Article No.12); and
- transactions involving bid rigging (Article No.15).

According to the *Law of the People's Republic of China for Countering Unfair Competition*, the Administrations for Industry & Commerce (AICs) are the competent authorities responsible for law enforcement. AICs, at the three levels of province, city and county, have been established by the State Administration for Industry & Commerce (SAIC), an authority directly under the State Council at the central level. To improve the enforcement of the Law for Countering Unfair Competition, the Fair Trade Bureau was established in the SAIC in l994. Since then, the local AICs have also established corresponding law enforcement bodies, in charge of the enforcement of the Law for Countering Unfair

Competition, in their jurisdictions. In order to improve the SAIC's authority and status, the State Council decided to upgrade the SAIC to ministry level in March 2001.

The SAIC and local AICs have endeavoured to prevent transactions involving unfair competition and to investigate and deal with relevant cases. Since the Law for Unfair Competition came into effect in December l993, AICs have dealt with about 130,000 cases involving unfair competition. The SAIC and the local-level AICs have also taken a series of measures to counter administrative monopolies and enterprises with a monopolistic position abusing their power. Such actions have promoted market forces and improved the economic environment.

Since China's accession to the WTO in November 2001, the Government has taken effective measures to protect further fair competition and prevent monopolies, and several new laws and regulations have been promulgated:

- the *Law of the People's Republic of China for the Promotion of Small and Medium Enterprises* came into force on 1 January 2003, aiming to promote the healthy development of small and medium enterprises by establishing a fair competition mechanism;
- *Temporary Provisions on the Prohibition of Price Monopoly Activities* was put into effect on 1 November 2003, with the main purpose being to promote fair competition by prohibiting price monopoly activities; and
- *Temporary Provisions on Foreign Investors' Merging with Domestic Enterprises*, came into force on 12 April 2003, and contains anti-monopoly provisions.

While making great efforts to improve relevant legislation and the enforcement of competition laws and regulations, China has also established a relatively comprehensive administrative system related to market competition. The Ministry of Commerce takes charge of research and policy making to regulate the market, break monopolies and regional blockages in order to promote an open, competitive and orderly market system. The Ministry of Commerce and the General Administration on Customs are the executive agencies for implementing measures on antidumping, subsidies and countervailing, and relevant reviews. SAIC is responsible for enforcing the *Law on Countering Unfair Competition*. The National Development and Reform Commission is responsible for price supervision and control.

7.2.3 Future Cooperation

Australia and China actively participate in the APEC Competition Policy and Deregulation Group (CPDG), which is a forum for discussion and information exchange on competition policy in APEC economies. Australia and China can use the information exchanged in the APEC context, as well as the experience gained in other relevant fora, as a basis for further discussion of opportunities for bilateral cooperation.

8 Economic Feasibility of an Australia-China FTA

The decision to proceed with a possible Australia-China FTA will hinge on judgements by the Australian and Chinese governments about its potential to deliver trade and economic benefits (relative to adjustment costs) to both countries in a timeframe that is substantially shorter than could be achieved through multilateral liberalisation.

Economic modelling prepared by independent experts from both Australia and China provides some insights into how an FTA might impact on bilateral trade and investment flows, economic welfare, specific sectors and employment. In view of the limitations of all these models, however, at best their results provide only an indicative guide to likely net impacts.

Modelling depends heavily on the specific assumptions which underpin it, the quality of the data on barriers and restrictions and the limitations of equations underlying the modelling to describe behavioural responses. For example, the modelling for this study simulates the effects of removing barriers only for the third mode of services trade (i.e. establishing commercial presence in another country), leaving to one side the direct effects of removing barriers to cross-country supplies of services (e.g. international telephone services), consumption of services abroad (e.g. tourism), and movement of natural persons between countries (e.g. restrictions on business activity resulting from non-recognition of academic and professional qualifications).

Further, the modelling does not fully capture the dynamic effects of increased competition following coordinated trade and investment liberalisation. Nor does it address the advantages to both countries from the removal of non-tariff barriers or improved bilateral cooperation on matters like sanitary and phytosanitary issues, customs administration and technical barriers to trade (discussed in Chapter 6). Progress here could be expected to reduce the transaction and other costs of bilateral trade.

These kinds of limitations in modelling usually result in substantial under-estimation of the impact of liberalisation, especially as the dynamic effects of increased competition are imperfectly captured. The total net benefits of an Australia-China FTA may well therefore be much greater than reported here. Details of modelling assumptions are provided in the independent report prepared for the Australia-China FTA Feasibility Study *Modelling the Potential Benefits of an Australia-China Free Trade Agreement*.

8.1 Key Conclusions

Five major conclusions can be drawn from the modelling and the qualitative analysis presented throughout this report.

First, Australia and China stand to achieve substantial economic gains from an FTA, though in different ways and possibly to different extents, reflecting differences in their levels of development, comparative advantages and levels of border protection.

Second, the positive impact of an FTA on output and employment is significant in both countries, with any structural adjustment expected to be minimal compared to adjustment processes already underway.

Third, the magnitude of real GDP and welfare-enhancing benefits from an FTA will depend critically on its scope and coverage: the greater the coverage and the clearer the commitment to liberalisation, the greater the net benefit.

Fourth, faster implementation of liberalisation across goods, services and investment will deliver greater net economic benefits than slower implementation.

Fifth, the modelling suggests that an Australia-China FTA would have a negligible impact on the rest of the world's real GDP and welfare, and would be trade creating for the world as a whole (with only some evidence of minor trade diversion).

8.2 Aggregate Economic Impact

A broad-based FTA involving the liberalisation of tariffs, non-tariff measures, services and investment would benefit both economies. The linkages between trade in goods and services and investment flows are close and highly significant. Wide sectoral coverage in an FTA would be needed to maximise the gains from an FTA.

If fully implemented in 2006, the modelling suggests that the annual average GDP growth rate for both countries would increase by around 0.04 percentage points over the period 2005-2015. In present value terms, an FTA could boost Australia's and China's real GDP by up to US$18 billion (A$24.4 billion) and US$64 billion (RMB529.7 billion) respectively in the period to 2015.

Reflecting the relative openness of both economies to trade in goods, the great bulk of these gains would come from liberalising trade in services and removing barriers to investment flows. Tariff and tariff rate quota liberalisation was estimated to increase Australia's and China's average annual real GDP growth rate by 0.012 and 0.006 percentage points respectively. However, the combined effect of liberalising services and investment was estimated to increase Australia's and China's average annual real GDP growth rate by 0.039 and 0.042 percentage points respectively.

Goods, services and investment liberalisation were found to be welfare enhancing for both countries individually and collectively. In net present value terms, Australia's and China's real GNP were estimated to rise by around US$22 billion (A$29.9 billion) and US$52 billion (RMB430 billion) respectively between 2006 and 2015. The lower outcome for China (compared to estimated increases in GDP) reflects a small projected decline in its terms of trade following an FTA; given higher border protection, China would be required to reduce its tariffs by more than Australia in order to eliminate border protection.

The modelling also demonstrates that slower implementation of liberalising policies would produce smaller economic benefits for both countries than faster implementation. Compared to immediate liberalisation in 2006, the gradual phasing-in of liberalising measures between 2006 and 2010 would reduce anticipated benefits, expressed in net present value terms, by around 25 per cent for both countries over the period 2006-2015.

8.3 Impact of Removing Tariffs and Tariff Rate Quotas

Australia and China would benefit from removing bilateral border protection on goods. In broad terms, growth in GDP would be driven by:

- trade liberalisation-induced productivity improvements linked to increasing competition and opportunities to exploit economies of scale in the larger market;

- re-allocation of resources between industries associated with increasing product specialisation in line with comparative advantage; and
- increased capital investment. Since investment goods tend to be import intensive, reductions in bilateral tariffs would lower the price of capital creation and lead to higher rates of return on capital.

The modelling demonstrates that an FTA would expand bilateral trade in areas where both countries have a comparative advantage – agriculture, energy and resources and a range of manufactures in the case of Australia, and labour-intensive manufactures and increasingly some capital and technology-intensive manufactures in the case of China. The modelling also shows increased opportunities for two-way trade in chemical, rubber and plastic products (including basic and elaborately transformed products) and machinery.

China's merchandise imports from Australia were estimated to increase by around US$3.2 billion (A$4.3 billion) or 15 per cent in 2015 above baseline, mostly as a result of strong growth in exports of manufactures like lightly processed wool; non-ferrous metals; chemical, rubber and plastic products; and machinery and equipment. Australia's merchandise imports from China were estimated to increase by a little over US$2 billion (RMB16.6 billion) or 7.3 per cent in 2015 above baseline, the strongest growth occurring in wearing apparel; textiles; chemical, rubber and plastic products; machinery and equipment; and miscellaneous manufactures like toys and sporting equipment.

- Chinese imports of Australian agricultural commodities, resources and manufactures were estimated to be 16 per cent (US$663 million), 7 per cent (US$301 million) and 20 per cent (US$2,282 million) respectively above their baseline levels in 2015.
- Australian imports of Chinese manufactures were estimated to be 8 per cent (US$1,977 million) above their baseline level in 2015.

8.4 Impact on Liberalising Trade in Services

Modelling suggests that Australia's average annual real GDP growth rate would increase by around 0.016 percentage points following liberalisation of services; China's average annual real GDP growth rate is estimated to increase by 0.021 percentage points. Economic gains following services trade liberalisation would be driven by increases in two-way investment flows; increases in productivity across both countries' services sectors and more generally across their economies (productivity improvements in the services sector lowers the cost of services inputs for businesses in all areas); and larger capital inflows from the rest of the world attracted by higher prospective rates of return on investments linked to rising productivity in the Australian and Chinese services sectors.

8.5 Impact of Investment Liberalisation

Australia and China would benefit substantially by improving the transparency, certainty and protection provided by rules governing foreign investment under an FTA. Modelling suggests that investment liberalisation would increase Australia's average annual real GDP growth rate by 0.011 percentage points, and China's average annual real GDP growth rate by 0.016 percentage points.

The greater simulated benefit accruing to China from investment liberalisation – and the possibility that real world benefits would be much greater – is in line with strong empirical evidence that China has benefited greatly from large inflows of foreign direct investment over the past 20 years.

Modelling also suggests that increased capital inflow and associated improvements in productivity would underpin increases in output across all industries in both countries as firms that invest abroad generally have high levels of technical and economic efficiency. Rising productivity in turn would attract much larger volumes of foreign investment and associated technology and skill transfers from the rest of the world. An FTA therefore could have significant implications for the quality of long-term economic growth and trade expansion for both countries.

8.6 Structural Adjustment

The net impact of an FTA would be to increase net output (relative to baseline values) in the Australian and Chinese economies. For Australia, liberalisation would increase net output (relative to baseline values) across the economy, especially in the agriculture, resources, food processing, lightly processed wool, and metals sectors, with the exceptions being wearing apparel, motor vehicles and parts, and miscellaneous manufactures. For China, liberalisation would increase net output (relative to baseline values) across the economy, particularly in manufacturing, with the exception of some agriculture products such as wool, dairy products and sugar.

The modelling demonstrates that any additional adjustment costs from removing border protection would be relatively small compared with adjustment that is already underway in response to domestic reform and globalisation. While an FTA would accelerate job losses in some industries (especially in wearing apparel and motor vehicles and parts in Australia, and in agriculture, mining and food processing in China), this would be offset by total FTA-related employment growth. In Australia, net employment growth would occur in industries like agriculture, mining, processed food, and non-ferrous metals; in China, it would be concentrated in textiles, clothing, chemicals, metals, and the auto sector.

While the removal of border protection is the main factor driving structural change, the modelling shows that the combined impacts of liberalising goods, services and investment would lift output above baseline values in the services sector in both countries as a result of rising productivity, although with some slowdown in employment growth.

8.7 Impact on the Rest of the World

The modelling suggests that an Australia-China FTA would have a negligible impact on the rest of the world's real GDP and welfare. It would be mildly trade creating, with some evidence of minor trade diversion.

8.8 Economic Feasibility of an Australia-China FTA

The economic modelling suggests that an Australia-China FTA (i.e. covering goods, services and investment) would deliver significant trade and economic benefits to both countries in a timeframe that is substantially shorter than could be achieved through multilateral liberalisation.

Industries that would benefit in Australia in terms of higher output include agriculture; resources; processed foods; chemical, rubber and plastic products; ferrous metals; non-ferrous metals; machinery and equipment; communications; and financial services. In China, the main industries to benefit include: meat products; food products; textiles; wearing apparel; chemical, rubber and plastic products; ferrous metals; motor vehicles and parts; machinery and equipment; miscellaneous manufactures; and some services industries.

Given the two countries' complementarities, an FTA would tend to speed up the natural course of structural change that is underway in response to domestic reform and globalisation. In Australia, the largest structural adjustment pressures could be expected to occur in the wearing apparel and automotive industries; in China, in mining and, to some degree, agriculture.

9 Conclusions and Recommendations

In accordance with the terms of reference set out in the *Trade and Economic Framework between Australia and the People's Republic of China* (2003), the following conclusions and recommendations are presented on future action based on the findings of the study.

9.1 Key Conclusions

Australia and China have a substantial bilateral economic relationship which could be strengthened and developed further through an FTA. This study demonstrates that an ambitious FTA that encompasses goods, services and investment, and is consistent with WTO rules and APEC goals and principles for liberalising regional trade and investment, would:

- deliver significant net trade and economic benefits in both countries in a short timeframe;
- support and reinforce bilateral trade and investment linkages, and play an important part in the closer integration of the two economies over the long term; and
- be trade creating for the world as a whole, thereby strengthening each country's multilateral and regional trade policy objectives.

9.1.1 Aggregate Benefits

The linkages between trade in goods and services and investment flows are close and highly significant. Wide sectoral coverage in an FTA would be needed if liberalisation in one sector were not to be limited by lack of progress in another.

If fully implemented in 2006, independent economic modelling suggests that comprehensive liberalisation would increase Australia's and China's annual average real GDP growth rate for both countries by around 0.04 per cent over the period 2006-2015. In present value terms, an FTA could boost Australia's and China's real GDP by up to US$18 billion (A$24.4 billion) and US$64 billion (RMB529.7 billion) respectively in the period 2006-2015. The modelling also indicates that an FTA would enhance welfare in both countries.

The modelling demonstrates that slower implementation of liberalising policies would produce smaller economic benefits for both countries than faster implementation. Compared to immediate and comprehensive liberalisation in 2006, gradual phasing-in of liberalising measures between 2006 and 2010 would reduce by over 25 per cent the present value of GDP gains for both countries over the period 2006-2015.

9.1.2 Trade in Goods

Tariffs and non-tariff measures hinder growth in bilateral trade. In Australia, the most significant tariff barriers apply to food products, motor vehicles, and textiles, clothing and footwear. China's tariff levels are higher than Australia's and apply to more products. In both countries, tariff escalation from raw material to finished product impacts on the profile of exports across sectors. Both countries also have a range of non-tariff measures – from sanitary and phytosanitary arrangements and

administrative transparency to intellectual property rights and technical regulations and standards – that can affect goods trade.

A possible FTA between Australia and China would be expected to eliminate tariffs on substantially all trade between the two countries, while taking into account the domestic income and employment impacts on each sector. In addition, it would be important to ensure that non-tariff measures applied by both countries did not negate the trade and economic benefits of tariff elimination. At a minimum, an FTA should go beyond each country's commitments in the WTO by addressing, to the extent possible, non-tariff measures and increasing transparency in goods trade.

The economic modelling indicates that removing or reducing border protection through an FTA would expand bilateral trade in areas where both countries have a comparative advantage. Australian merchandise exports to China are estimated to increase by around US$3.2 billion (A$4.3 billion) or 14.8 per cent in 2015 as a result of the FTA, reflecting further growth in agricultural and resources exports and strong increases in exports of manufactures such as: lightly processed wool; non-ferrous metals; chemical, rubber and plastic products; and machinery and equipment. Chinese merchandise exports to Australia were estimated to increase by over US$2 billion (RMB16.6 billion) or 7.3 per cent in 2015, with the largest increase occurring in wearing apparel; textiles; chemical, rubber and plastic products; machinery and equipment; and miscellaneous manufactures (like toys and sporting equipment).

The economic modelling indicates that a possible FTA would have a positive net impact on output and employment in both countries, and that any additional industry adjustment costs from removing border protection would be relatively small compared with the adjustment that is underway in response to domestic reform and globalisation. The modelling suggests that total FTA-related employment growth would offset job losses in some industries (including wearing apparel and motor vehicle and parts industries in Australia, and agriculture and mining industries in China).

9.1.3 Trade in Services

The study has demonstrated a wide range of impediments to Australia-China services trade both in specific industries and across the sector. These include ownership restrictions, licence restrictions, intellectual property rights, administrative transparency, national treatment and repatriation of profits.

Services liberalisation should seek to remove barriers that impose additional costs to exporters and erode competitiveness, taking into account the income and employment impacts on each sector. A possible FTA would be expected to have substantial sectoral coverage and provide for the absence or elimination of substantially all discrimination between services and service providers of each country.

Economic modelling suggests that Australia's real GDP would increase by US$1.2 billion (A$1.6 billion) or 0.15 per cent in 2015 following liberalisation of services in an FTA; China's real GDP is estimated to increase by US$5.9 billion (RMB48.8 billion) or 0.19 per cent in 2015.

9.1.4 Investment Liberalisation

Australia-China investment flows are modest relative to bilateral trade. This reflects both regulatory and other impediments to investment and, to some degree, lack of awareness of business opportunities in the other country. A possible FTA could help to address this imbalance by removing – or reducing – existing restrictions in each country's foreign investment regimes; enhancing transparency of foreign investment regimes; streamlining investment regulations and application processes; and providing stronger protection to Australian and Chinese investors in the other country.

Modelling suggests that Australia and China would benefit significantly by broadening the economic relationship in this way. Investment liberalisation is estimated to increase Australia's real GDP by US$0.9 billion (A$1.22 billion) or 0.11 per cent in 2015, and China's real GDP by US$4.6 billion (RMB38.1 billion) or 0.15 per cent in 2015.

9.1.5 Bilateral Cooperation

Enhanced bilateral cooperation between the Australian and Chinese governments on trade and economic issues provides the opportunity to address a number of existing non-tariff measures and reduce the transaction costs associated with trade and investment.

An FTA would be expected to intensify further bilateral trade and economic cooperation, including in the areas of trade and investment promotion, customs facilitation, sanitary and phytosanitary measures, technical regulations and standards, temporary entry, intellectual property rights, electronic commerce, small and medium size business cooperation, transparency, trade remedies and safeguards, and capacity building. Estimates of the potential economic gains from facilitating additional trade and investment through a possible FTA are not included in the economic modelling results.

Australia and China can use information exchanges and cooperation in the context of APEC on competition policy and government procurement, as well as experience gained in other relevant fora, as a basis for further discussion of opportunities for bilateral cooperation.

9.2 Objectives and Principles of an FTA

The study recommends that the objective of a possible Australia-China FTA should be to accelerate sustainable economic growth, create jobs and raise living standards by:

- encouraging greater trade and investment flows as well as economic cooperation bilaterally;
- creating a larger market, thereby promoting productivity through greater competition and economies of scale;
- realising more fully the complementarities in the economic relationship by removing tariff and non-tariff barriers;
- adding momentum to regional and multilateral trade liberalisation efforts; and
- providing a framework for closer economic cooperation and addressing trade problems and barriers, including through commitments on transparency.

While recognising that nothing in the study pre-judges either the scope of a possible FTA nor how particular issues might be addressed, seven principles are of paramount importance to achieve these objectives in an Australia-China FTA.

First, the two sides should negotiate as equal trading partners.

- The two sides agreed in the *Trade and Economic Framework* that a joint decision by the two sides to negotiate an FTA would take account of the results of the feasibility study and follow a decision by Australia to recognise China's full market economy status, that is to treat China the same as other WTO trading partners.

Second, an FTA must be consistent with WTO rules, and take into account APEC's goals for trade and investment liberalisation and facilitation.

- Australia and China are strong supporters of the multilateral trading system and have common interests in many areas of the Doha Round where ambitious outcomes are sought. Similarly, APEC's goals and principles for liberalising and facilitating regional trade are important elements of both countries' trade policies. Both countries, therefore, have an interest in developing an FTA that would complement and support these wider efforts.

- Decisions on the possible content of an FTA, along with the depth and breadth of commitments, need to conform to WTO rules and obligations and go beyond each country's WTO commitments. An FTA should, therefore, eliminate tariffs on substantially all trade in goods as per GATT Article XXIV. An FTA should also cover substantially all trade in services as per GATS Article V.
- An FTA should go beyond trade in goods and services to include also impediments to investment flows.
- An FTA should also address non-tariff measures such as customs procedures, rules of origin, standards and technical regulations, sanitary and phytosanitary matters, transparency, intellectual and other property rights, institutional arrangements, and responsibility in implementing laws between central/federal and provincial/state levels of government. In addition, non-tariff measures applied by both countries should not negate the trade benefits of tariff elimination by unnecessarily restricting trade.

Third, under a possible FTA negotiation, products across all sectors would be negotiable, involving liberalisation and facilitation of goods and services, and the issue of investment flows would also be addressed, with a view to achieving a balanced outcome through a single undertaking.

Fourth, to gain credibility and acceptance in the wider community, an FTA should be capable of delivering significant outcomes as soon as it enters into force.

Fifth, the negotiation of a possible FTA should take into account that the two sides are at different stages of economic development and have different comparative advantages and adjustment costs, particularly in relation to sensitive products and industries.

Sixth, an FTA needs to include arrangements to facilitate dispute settlement and consider including bilateral trade remedy measures.

Seventh, recognising that an FTA will be developed over time to achieve full liberalisation between its parties, it should include a timetable for periodic review.

Ultimately, the purpose of the negotiations is to achieve a commercially valuable package for both parties.

9.3 Recommendation

This study concludes that an Australia-China FTA is feasible and, on balance, would substantially benefit both countries. Should both governments decide to enter into FTA negotiations covering goods, services, investment and bilateral cooperation as outlined in the study, it is recommended that the negotiations should begin as soon as possible.

Annex 1:
Summary of Existing Bilateral Trade and Economic Agreements/Arrangements[100]

- Agreement between the Government of Australia and the Government of the People's Republic of China relating to Air Services 2004.
- Memorandum of Understanding on Two Way Investment Promotion Cooperation Between Austrade, Invest Australia, and the Investment Promotion Agency, MOFCOM of China 2004.
- Memorandum of Understanding on Investment Promotion Cooperation between the National Development and Reform Commission of the People's Republic of China and Invest Australia, the inwards investment agency of the Commonwealth of Australian Government 2004.
- Memorandum of Understanding on Customs Cooperation and Mutual Assistance between Australian Customs and the General Administration of Chinese Customs 2004.
- Trade and Economic Framework between Australia and the People's Republic of China 2003.
- Arrangement on Higher Education Qualifications Recognition between Australia and the People's Republic of China 2003.
- Memorandum of Understanding on the Management and Implementation of the Australia-China Natural Gas Technology Partnership Fund between the Commonwealth, Western Australia and the ALNG consortium, and China's National Development Reform Commission 2003.
- Memorandum of Understanding on Scientific and Technological Cooperation in Food Safety between Food Standards Australia and the Ministry of Science and Technology of the People's Republic of China 2003.
- Protocol on Australian Wheat and Barley Exports to China between Australia's Department of Agriculture, Fisheries and Forestry and China's Administration of Quality Supervision Inspection and Quarantine 2003.
- Memorandum of Understanding on Sanitary and Phytosanitary Cooperation between Australia's Department of Agriculture, Fisheries and Forestry and China's General Administration of Quality Supervision Inspection and Quarantine 2003.
- Memorandum of Understanding on Cooperative Activities in Water Resources between Australia's Department of Agriculture, Fisheries and Forestry and China's Ministry of Water Resources 2003.
- Memorandum of Understanding relating to Air Services between Australia and the People's Republic of China 2003.
- Memorandum of Understanding on Cooperation on Animal and Plant Quarantine and Food Safety for the 2008 Beijing Olympic and Paralympic Games between Australia's Department of Agriculture, Fisheries and Forestry and China's General Administration of Quality Supervision Inspection and Quarantine 2002.

[100] This annex only includes major bilateral trade and economic agreements/arrangements between agencies of the Australian Government and China's Central Government. The annex does not include more technical agreements, including for projects under technical cooperation programs, or records of discussion, joint announcements or implementation programs or arrangements that simply amend or implement previous agreements and other arrangements. The number at the end of each entry represents the year in which the agreement/arrangement entered into force or was last amended.

- Memorandum of Understanding on Cooperation in Education and Training between Australia's Department of Education, Science and Technology and China's Ministry of Education 2002. MOU also signed in 1999 and 1995.
- Memorandum of Understanding between the Department of Transport and Regional Services of Australia and the State Development Planning Commission of the People's Republic of China on Cooperation in the Transport Sector 2001.
- Memorandum of Understanding between the Department of Transport and Regional Services of Australia and the Ministry of Communications of the People's Republic of China on Cooperation in Highway and Waterway Transport 2001.
- Memorandum of Understanding between the Department of Transport and Regional Services of Australia and the Ministry of Railways of the People's Republic of China on Cooperation in Rail Transport 2001.
- Memorandum of Understanding between the Australian Department of Industry, Science and Resources and the State Development Planning Commission of the People's Republic of China on the establishment of a Bilateral Dialogue Mechanism on Resources Cooperation 2000.
- Memorandum of Understanding on Cooperation in the Mining Sector between Australia's Department of Industry, Tourism and Resources and China's Ministry for Land and Resources 1999.
- Memorandum of Understanding between the Department of Communications, Information Technology and the Arts of Australia and the Ministry of Information Industry of the People's Republic of China concerning Cooperation in the Information Industries 1999.
- Exchange of Letters on Approved Destination Status (ADS) Group Tourism Arrangements between Australia and the People's Republic of China 1999.
- Exchange of Letters between the Australian Embassy, Beijing, and the China National Tourism Administration concerning Outward Bound Travel by Chinese Citizens to Australia 1999.
- Memorandum of Understanding between the Department of Industry, Science and Resources of Australia and the State Development Planning Commission of the People's Republic of China on Cooperation on Trade and Investment in the Mining and Energy Sectors 1999.
- Memorandum of Understanding between the Department of Industry, Science and Resources of Australia and the Ministry of Land and Resources of the People's Republic of China on Cooperation in the Mining Sector 1999.
- Memorandum of Understanding between the Department of the Environment, Sport and Territories of Australia and the National Environment Protection Agency of the People's Republic of China on Environmental Cooperation 1995.
- Exchange of Notes constituting an agreement to amend Article 3 of the Agreement between the Government of Australia and the Government of the People's Republic of China on a Program of Technical Cooperation for Development of 2 October 1981 (1990).
- Agreement between the Government of Australia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income 1990.
- Agreement on Fisheries between the Government of Australia and the Government of the People's Republic of China 1988.
- Agreement with the People's Republic of China on the Reciprocal Encouragement and Protection of Investments 1988.
- Exchange of Notes constituting an arrangement between the Department of Primary Industry of Australia and the Ministry of Forestry of the People's Republic of China on Forestry Cooperation 1987.

- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the People's Republic of China to amend the Trade Agreement of 24 July 1973 (1986).
- Agreement between the Government of Australia and the Government of the People's Republic of China for the Avoidance of Double Taxation of Income and Revenues Derived by Air Transport Enterprises and International Air Transport 1986.
- Joint Announcement on the formation of the Sino-Australia Joint Ministerial Economic Commission (JMEC) 1986: JMEC meetings were held annually from 1987 to 1993. The 8th meeting was held in 1995, 9th meeting in 1999 and 10th meeting in 2004.
- Memorandum of Understanding between the Government of Australia and the Government of the People's Republic of China regarding Wool Cooperation 1985.
- Joint Communiqué of the Australia-China Joint Agricultural Commission - Inaugural Session 1984.
- Memorandum of Understanding on the establishment of a Legal Exchange Program between Australia's Attorney-General's Department and China's Ministry of Justice 1984.
- Protocol between the Government of Australia and the Government of the People's Republic of China on a Program of Cooperation in Agricultural Research for Development 1984.
- Agreement between the Government of Australia and the Government of the People's Republic of China Relating to Civil Air Transport 1984.
- Agreement between the Government of Australia and the Government of the People's Republic of China on Agricultural Cooperation 1984.
- Understanding relating to Quarantine and Health Requirements for Cattle Exported from Australia to the People's Republic of China 1983.
- Agreement between the Government of Australia and the Government of the People's Republic of China on a Program of Technical Co-operation for Development 1981.
- Protocol on Economic Cooperation with the Government of the People's Republic of China 1981.
- Agreement between the Government of Australia and the Government of the People's Republic of China on Cooperation in Science and Technology 1980.
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Registration of Trademarks 1974.
- Trade Agreement between the Government of Australia and the Government of the People's Republic of China 1973.

Annex 2:
Australia's and China's Merchandise Trade Statistics

Currently both Australia and China produce their own merchandise trade statistics. For Australia these statistics are produced by the Australian Bureau of Statistics (ABS) and for China by China's Customs Service.

An analysis of both sets of merchandise trade statistics, as illustrated in the table below, shows that differences exist, even at the total export and import level.

Table A2.1: Summary of China/Australia Trade Statistics

Australia's Merchandise Trade with China – US$ billion, 2003	ABS Trade Statistics	China's Customs Statistics
Exports (a)	6.0	7.3
Imports	9.3	6.3

(a) China Customs import data (Australia's exports) is on a c.i.f. basis, while ABS data is on a f.o.b. basis.

China's Merchandise Trade with Australia – US$ billion, 2003	ABS Trade Statistics	China's Customs Statistics
Exports	9.3	6.3
Imports (b)	6.0	7.3

(b) China Customs import data is on a c.i.f. basis, while ABS data is on a f.o.b. basis.

As with any bilateral comparison of trade statistics it is recognised that coverage, valuation and timing differences will lead to differences in each countries' trade statistics.[101]

With regard to Australia and China trade statistics these differences are compounded further by trade through entrepots in the region such as Hong Kong and to a lesser extent Singapore. These entrepots act as distribution centres, with little or no transformation of the goods that are shipped through them. In this regard, China's Customs Service and ABS export statistics do not accurately record the *country of final destination*, with a large proportion of exports being reported on a *port of unloading* (i.e. Hong Kong), rather than *country of final destination* basis. Accordingly, exports shipped through Hong Kong are not being fully covered in both countries' export statistics.

- For 2003, US$565 million of Australia's exports to China were shipped via Hong Kong, while US$2.1 billion of China's exports to Australia were shipped via Hong Kong.[102]

Further, confidentiality requirements in Australia limit the level of commodity detail on Australian exports to China (for example alumina and barley). For these confidential commodities, the ABS aggregates them into one category called *confidential items*.

[101] For more details on the types of differences that can occur in comparing different countries' trade statistics, please refer to the ABS publication, *International Merchandise Trade, Australia Concepts, Sources and Methods, 2001* pages 88-90.

[102] Source: ABS for Australia's trade data; *World Trade Atlas* for trade data relating to China (and Hong Kong).

- In 2003, the ABS classified US$1.3 billion of Australian exports to China and US$147 million of imports from China as confidential items.

Furthermore, the approach to statistical valuation is different. For example, Australia import statistics are based on an f.o.b. valuation, while in China import statistics are based on c.i.f. valuation.

These factors account for most of the differences in Australian and Chinese trade statistics. A bilateral reconciliation for China/Australia trade statistics was not attempted for this study as it is beyond the scope and resources.

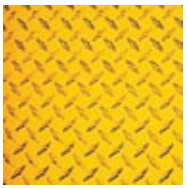
List of Tables

Notes

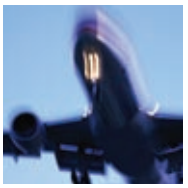












For more information, contact the
China FTA Study Taskforce
Department of Foreign Affairs and Trade, Australia
- email: chinafta@dfat.gov.au
- or visit our website: **www.dfat.gov.au/geo/china/fta**

Department of International Trade and Economic Affairs
Ministry of Commerce, China
- email: apecdiv@mofcom.gov.cn
- or visit our website: **www.mofcom.gov.cn**