



The Royal Australian  
Institute of Architects

# Australia – China Free Trade Agreement

Submission to the  
Department of Foreign Affairs  
and Trade

June 2005

**SUBMISSION BY**

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**ABOUT THE RAI A**

The Royal Australian Institute of Architects (RAIA) is an independent voluntary subscription-based member organization with approximately 9200 members, of which 5400 are architect members.

The RAIA, incorporated in 1929, is one of the 96 member associations of the International Union of Architects (UIA).

At May 2005 the National Executive of the RAIA is:  
Robert Nation (National President)  
Carey Lyon (President-Elect)  
Warren Kerr (Immediate Past President)  
Alec Tzannes (Honorary Treasurer)  
Catherine Townsend (Honorary Secretary)

Requests for further information in relation to this submission should be directed to the CEO, David Parken.



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## 2. BACKGROUND

### 2.1 The Royal Australian Institute of Architects

- 2.1.1 The Royal Australian Institute of Architects (RAIA) has over 9200 members of which over 5400 are registered practising architects. RAIA seeks to advance the interests and professional development of the architectural profession, but also lead to positive ongoing benefits to the building and construction industry, and the community.
- 2.1.2 RAIA, as a guarantee company, incorporates two subsidiary companies, Archicentre and IBL Ltd, as well as an associated company Architecture Media Ltd. Each with its own specialisation contributes substantial research capability and an enormous volume of construction industry experience.

### 2.2 RAIA expertise and knowledge

- 2.2.1 RAIA promotes responsible and environmentally sustainable design, and vigorously lobbies to maintain and improve the quality of design standards in cities, urban areas, commercial and residential buildings.
- 2.2.2 RAIA has established the highest professional standards. Members undertake ongoing continuing education, and operate according to RAIA's Code of Professional Conduct. The Knowledge Services Unit offers an extensive program at national and state level, continuing to keep members informed about the latest ideas and technology in architecture and the construction industry.
- 2.2.3 RAIA represents the profession on numerous national and state industry and government bodies, advancing the issues and interests of the architectural profession, other building professionals and the construction industry.
- 2.2.4 Particular areas of expertise include:
- quality assurance and continuous improvement
  - industry indicators and outcomes
  - market analysis
  - risk management and insurance
  - marketing and communication
  - policy development and review
  - technical standards
  - environmental sustainability.
- 2.2.5 Through the Practice Services division, RAIA researches, collects and refines best practice information and offers a number of advisory and support services to architects and building industry professionals. Advisory literature related to the practice of architecture is published in hard copy and electronic format, including client and architect agreements, industry standard building contracts and reliable information on environmental matters as they impinge on architectural practice.

### 3. RAI A COMMENTS

- 3.1.1 RAI A welcomes the opportunity to comment on the issues relevant to the negotiation of a free trade agreement (FTA) between Australia and China.
- 3.1.2 RAI A has been closely monitoring developments since the announcement that a FTA was to be negotiated was made.
- 3.1.3 RAI A appreciates that the negotiations between the two Governments on the text for the FTA are still to occur. Consequently, without access to briefings from DFAT officials, and associated requests for comment from DFAT, it is difficult for RAI A to address issues in a detailed fashion. However, the following submission has been provided on the basis of the publicly released feasibility study into the FTA, and other general information that is publicly available.
- 3.1.4 RAI A would be pleased to provide additional information to DFAT, and support and assist the DFAT negotiating party as required.

#### 3.2 Content of this submission

- 3.2.1 This submission will:
- focus on the hurdles and barriers, opportunities and threats affecting Australian architects and architectural firms accessing and operating in China, and.
  - give details of the relevant regulatory systems and structures applying to the practice of architecture in both countries.
- 3.2.2 Please note that the comments raised in this submission refer to the practice of architecture in mainland China, and not to Hong Kong, China nor Macau, China.

#### 3.3 Comments in detail

- 3.3.1 China is experiencing rapid and exponential growth in its building and construction sector. In support of that growth, the Chinese national government has made a number of significant structural reforms in recent years to ‘open-up’ its construction sector to overseas architectural service providers. A key reform came with measures enacted in order to meet World Trade Organization (WTO) accession requirements and criteria.
- 3.3.2 China’s construction sector has long been viewed as a market of significant economic potential. According to China’s National Bureau of Statistics, the total construction sector accounts for as much as 6.6% of the country’s GDP, with the sector being the fourth largest in China. ([www.stats.gov.cn/english/](http://www.stats.gov.cn/english/)) However, the many opportunities also need to be considered in light of the significant risks. In large measure the risks are a result of history, principally that mainland China has only existed in its current

political form for approximately 56 years, and only in the last 25 years or so have systematic ‘market-economic’ reforms been implemented that have rejuvenated domestic economic growth. The ‘fast-track’ approach to introducing market economy reforms brings with it significant risk (and potential instability) particularly as China has yet to fully develop a robust best practice commercial regulatory compliance and enforcement system. Particular risk issues identified across the services sector include:

- the lack of best practice governance and regulatory transparency and consistency of interpretation across the country and vertically through the political system;
- the ‘low-fixed’ US dollar pegged value of the *yuan* (which provides a significant unfair advantage to Australian architects accessing the market);
- lack of enforceable protections of intellectual property rights (IPRs); and
- inconsistent application and interpretation of central government industry policies among and within provinces (sub-national level).

3.3.3 Despite these macro concerns, the RAIAs views the proposed FTA as an important trade policy initiative for both countries that will offer significant trade advantages and benefits.

3.3.4 However, the overall cost benefit analysis of the final terms and conditions of the FTA must uphold and reinforce the economic stability and position of the Australian architectural sector.

3.3.5 With this in mind, the fact that no deadline applies to successfully concluding the FTA negotiations provides ample opportunity for the Australian government, in co-operation with Australian industry, to fully consider and weigh the threats and costs of suggested provisions in a FTA, and measure precisely impacts and affects on Australia’s domestic economy and on Australian export providers.

3.3.6 In the context of architectural services, working through the fine detail of any FTA with China is fundamentally important given the current background to penetration of the Chinese market by the Australian architecture profession.

3.3.7 Since the 1990s, a small number of Australian architectural firms and architects have been involved in designs of sporting centres and stadia, commercial offices, shopping centres, hotels and residential housing in China. Typically, Australian architectural firms enter the mainland market via joint venture arrangements. Owing to the effort required to establish joint ventures, and the relatively high costs incurred to access the market, a number of Australian firms operate by applying for individual project licences. In addition, most Australian architectural firms have

concentrated activities in coastal provinces and in larger cities such as Beijing and Shanghai.

- 3.3.8 A conservative estimate of the current annual market size of the Australian architectural design and related services sector is approximately AUD\$870 million. (Productivity Commission, 2000, RAIA 2005) Over a third of Australian architects work as sole practitioners, and a further third work as directors or partners in small firms or as employees in small firms (Productivity Commission, 2000, RAIA 2004).
- 3.3.9 The economic impact of the proposed FTA (both directly and indirectly) on the practice of architecture in Australia is difficult to quantify owing to insufficient information concerning the net export/import activity between the two countries concerning architectural services. In 2004, RAIA conducted a survey (unpublished) of its members exploring a range of activities concerning export activity. According to the results generated by the survey, China was considered by 27% of responding architectural firms to be the most attractive market for the export of architectural services over the next five years (2003-04 to 2008-09). By way of comparison, the next two largest economies ranked behind China were Europe (19%) and India (17%).
- 3.3.10 As highlighted in the joint feasibility study, while recognising the significant potential of a FTA between the two countries, there remain significant barriers and difficulties particularly affecting Australian architects and architectural business, especially ownership restrictions, joint venture provisions, licensing provisions, protections of intellectual property, administrative and bureaucratic transparency, national treatment and repatriation of profits. (DFAT, p. 132)
- 3.3.11 Consequently, RAIA's view is that the FTA with China should be structured to be an overall net positive for Australian architecture with the potential to further open a rapidly developing and sophisticated building and construction sector to Australian architecture professionals.

### 3.4 Key provisions expected in the FTA

- 3.4.1 In terms of progressing a FTA with China, RAIA encourages the Australian government to address and negotiate for the inclusion of the following key provisions. (3.4.2 to 3.4.10)
- 3.4.2 China must provide for a reduction in the number of barriers encountered by Australian architects and architectural firms when accessing the Chinese architectural market. This includes removing unnecessary access impediments imposed on Australian architects by business licensing requirements, standards or other regulations in China.
- 3.4.3 At a national regulatory level, the Chinese Ministry of Commerce (MOFCOM) and the Ministry of Construction (MOC) monitor and issue regulations or ‘decrees’ concerning the construction and the architectural design industry.
- The primary barriers at present are the requirements under the *Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises*, and in particular the Ministry of Construction and The Ministry of Commerce issuance of two regulations, Decree 113 and 114, which took effect on 1 April, 2004. The regulations govern foreign company participation in China’s construction and design sectors, principally Decree 113 regulating construction companies, and Decree 114 regulating construction design companies. Both regulations require foreign companies to establish a permanent presence in China and restrict them from participating on a project-by-project basis. (The American Chamber of Commerce in 2004 published advice it received that the Chinese government would not enforce the provisions contained in Decree 113 for an ‘...unspecified period of time’. And as pointed out by the Chamber, “...the lack of formal clarification on this issue has created a great deal of uncertainty in the market’.) (American Chamber of Commerce, 2004)
  - In addition, Decree 78 provides that foreign architectural firms must forward their detailed design drawings and plans for actual construction to Chinese ‘design institutes’. These design institutes in turn are licensed (at their discretion) to sign or stamp approval on construction drawings. Design institutes are state owned and managed enterprises. In recent years (attributable to China’s accession to the WTO) there has been considerable restructuring and merger activity in the design institute sector. The typical structure of a design institute is that they are multi-disciplined firms that can provide both architectural and engineering services. Design institutes are

classified in terms of A, B, C, D classes. Class A design institutes do not have any limitations on building types or areas. Class B institutes are only permitted to design projects within their own province, while Class C and D institutes are restricted to within their city and district, respectively. Class D institutes cannot design underground structures.

- The regulations further provide that the foreign service supplier by default must provide as a minimum 75% of the registered capital (Article 14 of *Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises*). Article 15 further states that the foreign service providers must provide “1/8” or the equivalent of 12.5% of architectural staff. Article 16 further provides that certified architects and “...key technical personnel of the foreign service provider” must reside in China for a minimum cumulative period of 6 months per annum.
- Under China’s schedule of specific commitments to accession to the WTO, wholly foreign owned entities can only undertake four types of construction projects and which protect significant barriers to entry into the Chinese construction market:
  - “Construction projects wholly financed by foreign investment and/or grants.
  - Construction projects financed by loans from international financial institutions and awarded through international tendering according to the terms of the loans.
  - Chinese-foreign joint construction projects with foreign investment equal to or more than 50%, but technically difficult for Chinese construction enterprises alone.
  - Chinese invested construction projects that are difficult to implement by Chinese construction enterprises alone can be jointly undertaken by Chinese and foreign construction enterprises with the approval of a provincial government.” (WTO)

3.4.4 RAI considers that as a condition of the FTA agreement, China must improve safeguards, control, policing and penalty regimes to protect the intellectual property of Australian architects and firms operating in China, in particular as it concerns copyright, and trade marks. A small number of Australian architects and firms have expressed to RAI experiences of their own and that of other non-Chinese architects and firms of tendering for projects and/or submitting designs as part of contract negotiation processes, only to have the tender or negotiations terminated and later discover

that their designs have either been stolen, resold and or used without the original architect's authority, permission or payment of compensating royalty or fee.

- 3.4.5 China must reduce/remove restrictions placed on professionals and Australian owned business entities concerning the transfer of capital and profits out of China. Evidence is mixed as to the ease or difficulty in repatriating profits out of China. It appears that circumstances vary between individual firms, industry sectors, and jurisdiction.
- 3.4.6 A further issue concerns the method of taxation. China is still experimenting with taxation administrative systems for foreign owned joint venture and wholly owned foreign entities. As a result, a number of anomalies exist in terms of periodic payment, documentation and receipting of taxation payments/credits that satisfy both Chinese taxation authorities and Australian Taxation Office company income tax provisions. (Article 15 of *Income Tax Law Of The People's Republic Of China For Enterprises With Foreign Investment And Foreign Enterprises* provides that income tax on enterprises and local income tax shall be calculated on an annual basis and paid in advance in quarterly instalments. Such payments are to be made within 15 days from the end of each quarter and the final settlement shall be made within 5 months from the end of each tax year. Any excess payment shall be refunded and any deficiency shall be repaid). However, RAI has received advice that the black letter of Article 15 is not consistently applied, with instances of taxation required to be remitted on an irregular basis.
- 3.4.7 Australia must obtain commitments to 'open access' to Chinese Government (national, provincial and local level) procurement programmes. The Chinese national government's procurement regulations currently provide a stated preference to source goods and services from domestic providers, which at face value provides a trade discriminatory application of policy for Australian service providers.
- 3.4.8 China must improve provisions guaranteeing and enforcing security of payment. A number of architects and architectural practices have cited security of payment as a significant operating risk. Architects have relayed their experiences of either non-payment, and/or where clients have 'suggested' that architects roll the outstanding amount into the fee for the next project. Architects and firms have sought recourse through legal channels in China to redress outstanding payment issues, with varying levels of success. This leaves the architect with the difficult choice of either boycotting future work in order to protest the non-payment, or subject themselves to further financial risk by 'rolling-up' outstanding claims into future work/contracts. Some architects have sought recourse through legal channels in China to redress outstanding payment issues, with varying levels of success.

Advice received by RAI A from members is that security of payment problems, are in large part due to the cultural business precepts of the Chinese, where business arrangements are structured on ‘relationship’ terms, not contractual or transactional terms as in Western cultures. Successful resolution of security of payment issues has been in understanding and working through these cultural precepts.

- 3.4.9 China must institute plans to revalue the *yuan* (also known as the *renminbi*). While RAI A understands that exchange rates and currency valuation mechanisms are unlikely to be a part of the formal FTA negotiations, the need to appreciate the value of the *yuan* is fundamentally overdue. At present the *yuan* is artificially pegged at 8.28 to the US dollar. A range of economic forecasts suggest that the Chinese currency could be as much as 40% undervalued per the US dollar. China appears to have made some indications that it is aware of the issue. Over recent years, media reports have suggested that the Chinese have or are exploring pegging the *yuan* to a trade weighted index system. Some reports suggest the index could include the currencies of China’s top ten trading partners.
- 3.4.10 Experience of Australian architects operating in China is that design fees structured by Chinese clients are based on the *yuan*, with little to no consideration of the project-life costs incurred by Australian architects. For example, a traditional and still popular method of payment in Australia is by pre-agreed percentage scale of the total building construction cost. This method is rarely used in China. In addition, Chinese clients operate to a fixed fee system, which is structured to cater for domestic costs, but does not take into account the significantly higher entry and servicing costs experienced by Australian architects and firms. Thus on conversion, the fees generated from like-to-like projects are significantly lower than they would be if undertaken in other countries including Australia. The end result is that the system makes it difficult for the majority of Australian architects to generate sufficient net profit to warrant ongoing activity in the country.

### **3.5 RAI A Supports findings in DFAT study**

- 3.5.1 RAI A fully supports the finding in the feasibility study report (*Australia – China Free Trade Agreement: Joint Feasibility Study*, DFAT) that a possible FTA should consider and wherever possible resolve ‘...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.’” (DFAT, p.70)

- 3.5.2 In addition, RAI A provides qualified support to the statement in the feasibility study that: “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.” (DFAT, p. 70). While RAI A supports this statement in principle, there is clearly a significant education and experiential training and skills gap in general between Chinese and Australian registered architects. In seeking to move towards mutual recognition, appropriate provisions need to be incorporated that ensure the high technical skills sets required for practice as an architect in Australia are preserved.
- 3.5.3 RAI A holds a firm view that China would gain significantly by providing greater access to the supply of Australian architectural services. This should be a priority objective for Australia in an FTA with China. Further, RAI A believes that Australian firms and service providers would benefit from more liberal access to the Chinese architectural market where supply through commercial presence and movement of suppliers to China is currently quite restricted. Importantly, Australian firms in these areas are not so large as to provide a significant challenge to their Chinese counterparts, but are likely to provide niche services important to China’s economic development.

### **3.6 FTA Positive to Australian architectural service exporters**

- 3.6.1 Given the difference in the magnitude of economic growth of the two countries, a future FTA, as it affects architectural practice, should not have a significant impact within Australia. Rather, an FTA in terms described above should continue to ‘open’ a significant market for Australian architectural service providers. Australia has over 11,000 registered architects, while China has 30,000 architects. To reflect these numbers by population, Australia has 1 architect for every 2015 residents, whilst China has 1 registered architect for approximately 42,500 residents. (COAC, *Architectural Practice Around the World*, 2002)
- 3.6.2 When China’s internal economic expansion, coupled to increased urbanisation and internal migration flows (rural to city/coastal) is considered, the Chinese internal architectural market is poised to escalate over the medium to longer term, requiring increased numbers of highly skilled architectural practitioners and firms to provide the necessary architectural design solutions to accommodate such unprecedented building and construction growth.
- 3.6.3 In general terms, the regulation and professional management of the architectural profession in China is similar to the Australian

system. The Chinese *Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises*, provides particular compliance issues for foreign architects and firms, such as a certification grading system, capital requirements, joint venture provisions, and staff residency and staff numbers.

- 3.6.4 RAlA believes the impact of a FTA will be most evident concerns issues such as temporary entry of skilled professionals, export of educational services (architecture for example), mutual recognition of registration, skills and experience, and the cross border trade in architectural services particularly into the Chinese building and construction market.

### **3.7 Conclusion**

- 3.7.1 An Australia-China FTA will, as outlined above, be of mutual benefit. To China, improved access for Australian architects will help to support China's building and construction growth pattern. For Australia, it gives greater potential for its architects to add meaningfully to export earnings without significant risk of a trade imbalance in this industry sector. As noted, RAlA would be pleased to provide any further information and assistance if requested

## 4. APPENDIX: ARCHITECTURAL SERVICES & REGULATION COMPARED

- 4.1.1 There are approximately 11,600 registered architects in Australia, of which approximately half are members of the RAIA.
- 4.1.2 Architects provide a significant and wide range of services in the building design and construction sector. The range of services include: building design, building site analysis, construction project management and feasibility services, planning management, contract documentation and administration, energy conservation, and town planning.
- 4.1.3 Architects operate across a wide range of building and construction segments such as in the provision of residential housing, commercial buildings, industrial facilities, hospitals, schools, tourist facilities such as hotels and resorts, sporting facilities such as sports centres and stadia, and in heritage and conservation.
- 4.1.4 Table 1 illustrates the services offered by Australian architectural firms.

**Table 1:** Project work undertaken by Australian architectural firms

	<i>All Firms</i>
Residential (construction value up to \$500,000)	11%
Residential (construction value over \$500,000)	14%
Alterations and Renovations	7%
Commercial (e.g. offices, shops)	22%
Industrial (e.g. warehouses, storage)	5%
Health (e.g. hospitals, nursing homes)	12%
Education (e.g. schools, universities)	14%
Tourism (e.g. hotels / motels, theme parks)	3%
Heritage / conservation / restoration	4%
Recreation (e.g. sports centres, pools)	2%
Other	6%
<b>Total</b>	<b>100%</b>

*Source:* RAIA, 2003, *Architectural Office Profile & Financial Benchmarking Report*

### 4.2 Regulation - Australia

- 4.2.1 Each Australian state and territory operates a statutory certification system regulating the architectural profession.
- 4.2.2 An architect's board operates in each state and territory which oversees the regulation of architects. To practice as an architect, a person must:
- have a recognised academic qualification in architecture or a pass in the National Program of Assessment (NPrA), or a pass in the relevant Registration Board Prescribed Examinations where offered;

- have a period of training through experience followed by successful completion of the AACA Architectural Practice Examination (APE); and
- apply for registration to the Architects' Board in the State or Territory in which registration is sought. (Architects Accreditation Council of Australia Inc.)

### 4.3 Regulation - China

4.3.1 Architects in China are required to be licensed (registered) as per the provisions of the National Administration Board of Architectural Registration, and comply with the Law of the People's Republic of China on Urban Planning. This includes a licensing regime requiring:

- a professional degree in architecture;
- a period of practical training or internship; and
- successful completion of relevant examinations. (COAC, 2002)

### 4.4 Mutual recognition -Australia (Internal)

4.4.1 At present, mutual recognition of Australian architects applies across all Australian states and territories, inclusive of New Zealand architects.

### 4.5 Regulation & Registration Comparison

4.5.1 In broad terms, both countries operate similar regulatory frameworks applying to architects, reflecting the federal government structure of both countries, and the linking of educational and professional training requirements for licensing or registration.

4.5.2 The similarities are illustrated in table 2.

**Table 2:** Chinese & Australian Registration Minimums

Requisites	Australia	China
Architectural qualification/proof of equivalent	YES	
Academic record	YES	
Proof on Internship/experience	YES	YES
Successful completion of examinations	YES	YES
Have title recognized	YES	
Registration/ licensing	YES	YES

**Source:** COAC, 2002, *Architectural Practice Around the World*

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*Law of The People's Republic of China On Foreign Capital Enterprises* (Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986, promulgated by Order No. 39 of the President of the People's Republic of China and effective as of April 12, 1986)