

Roberts Gray Lawyers

Submission

General Review of the China-Australia Free Trade Agreement (ChAFTA)

A practitioner submission on operability, implementation and commercial usability

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Department of Foreign Affairs and Trade
By Email: FTAModernisation@dfat.gov.au

Dear Sir/Madam,

Thank you for the opportunity for Roberts Gray Lawyers to contribute to the General Review of the China-Australia Free Trade Agreement (ChAFTA).

Our firm has been directly involved in advising on cross-border transactions, partnerships, investment structures, commercial disputes, regulatory strategy and market entry between Australia and China since the inception of the Agreement. This submission reflects practical experience over that period.

This submission is made by Roberts Gray Lawyers in its own capacity and reflects the firm's practical experience advising on Australia-China commercial matters. References to the author's external appointments are included for context only and do not indicate that this submission is made on behalf of any other organisation.

Over its first decade, ChAFTA has delivered substantial and measurable benefits to Australia. Bilateral trade has grown strongly since the Agreement entered into force, tariff barriers have been progressively reduced, and the Agreement has provided an important institutional framework for commercial engagement through periods of both expansion and strain. The balance of evidence indicates that ChAFTA has worked, and that its net benefits have been real.

At the same time, the environment in which the Agreement operates has changed materially. The central issue is no longer whether market access exists in principle, but whether that access can be used effectively in practice. Increasingly, trade and investment outcomes are shaped not by tariff schedules alone, but by regulatory clarity, administrative efficiency, implementation capability, and the capacity to navigate a more complex geopolitical and commercial environment.

This submission proceeds from two propositions. First, ChAFTA has been an important success and should be recognised as such. Second, the next phase of its value will depend less on additional formal market opening and more on improving operability: reducing friction, increasing predictability, and ensuring that businesses can convert market access into actual commercial outcomes. The task of this review is not to reopen ChAFTA's foundations, but to modernise its operation so that existing access can be converted into reliable commercial outcomes.

The review is therefore best understood not as a rescue exercise, but as an exercise in modernisation, implementation and practical improvement.

Australia should approach this review not merely as an opportunity to reaffirm ChAFTA's past success, but as an opportunity to ensure that the Agreement remains commercially usable, strategically relevant and institutionally effective in a more demanding decade ahead.

Yours sincerely,



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SUBMISSION TO THE GENERAL REVIEW OF ChAFTA

1. EXECUTIVE SUMMARY

Roberts Gray Lawyers has been closely engaged with ChAFTA since its inception, supporting cross-border transactions, partnerships, investment structures and market entry between Australia and China over the past decade.

ChAFTA has been a successful agreement. Over its first decade it has supported substantial growth in bilateral trade, delivered improved tariff treatment for Australian exporters, and provided a rules-based framework that retained practical value even during periods of pronounced bilateral tension. Bilateral trade grew strongly over the decade following entry into force, and the weight of evidence supports the view that ChAFTA delivered positive economic outcomes for Australia.

But the environment in which ChAFTA operates has shifted.

The tariff gains of the early years have largely been realised. The principal challenge now is not market access in theory, but operability in practice. Business outcomes are increasingly shaped by non-tariff frictions: regulatory complexity, administrative delay, compliance burdens, approval uncertainty, data and localisation requirements, sector-specific controls, and the broader overlay of geopolitical risk. In practical terms, this can be understood as a contemporary compliance high wall around trade and investment.

This matters because, in modern trade, delay and uncertainty can function as de facto tariffs. Access that cannot be used reliably, predictably and efficiently is of diminished practical value.

Market access that cannot be reliably used is not, in commercial terms, market access.

The next phase of ChAFTA should therefore focus on implementation, execution and commercial usability. In practical terms, that means reducing avoidable delay, improving regulatory clarity, strengthening escalation pathways for recurring non-tariff impediments, and making approvals, inspections, certifications and licensing processes more predictable for business. That does not require abandoning the Agreement's original logic. Rather, it requires building on its success by adapting it to a more contested, regulated and risk-managed environment.

This submission recommends that the review give priority to the following practical areas of focus:

- improving the operability of ChAFTA through clearer and more consistent regulatory and administrative pathways
- addressing non-tariff friction in a more systematic and commercially grounded way
- strengthening business capability, particularly in compliance, market navigation and cross-border execution
- adopting a more targeted approach in sectors where bilateral opportunity is strongest and where reduced friction would have the greatest commercial payoff
- using ChAFTA's institutional architecture more actively to support implementation, escalation and problem-solving

- drawing lessons from subsequent trade agreements and more recent regional trade architecture
- reviewing and quantifying SME utilisation and benefit in order to improve practical uptake and future success

This submission reflects practical experience and focuses on how the Agreement can better support real-world outcomes.

In short, ChAFTA has succeeded as a market access agreement. Its second decade should focus on ensuring that it also succeeds as an implementation, resilience and commercial usability framework.

2. CHAFTA HAS DELIVERED AND THAT SHOULD BE EXPLICITLY RECOGNISED

Any general review should begin with a clear acknowledgement that ChAFTA has achieved a great deal. Roberts Gray Lawyers has supported clients under the Agreement since its inception and has been directly involved in cross-border transactions between Australia and China over the past decade.

The evidence indicates that over its first decade the Agreement was associated with strong growth in bilateral trade and with a material expansion of Australia's exports into the Chinese market. Bilateral trade rose substantially over the period following ChAFTA's commencement, with export growth to China outperforming growth to the rest of the world. The Agreement also continued to provide value during periods of acute bilateral tension, including through the continuation of scheduled tariff reductions and the eventual reactivation of institutional mechanisms under the Agreement.

ChAFTA also helped establish the conditions for a deeper and more diversified commercial relationship than would otherwise have existed. It improved exporter confidence, supported longer-term investment thinking, strengthened the practical value of bilateral engagement, and contributed to the expansion of trade across a wider range of sectors than a purely tariff-based reading might suggest.

This matters for two reasons.

First, it grounds the review in reality. ChAFTA is not an agreement that failed and now requires rescue. It is an agreement that has delivered meaningful benefits and remains strategically important.

Second, it frames the task correctly. The question for the next decade is not whether ChAFTA has value. It does. The question is how that value can be made more usable, reliable and commercially effective in a changed environment.

That distinction allows the review to move beyond a binary discussion of success or failure and toward the more useful task of practical improvement.

3. THE REAL SHIFT: FROM MARKET ACCESS TO OPERABILITY

The defining issue for ChAFTA's second decade is operability.

At the time of its negotiation and entry into force, ChAFTA was rightly understood primarily as a market-opening agreement. Tariff schedules, quota access and improved services commitments were central. Over time, however, the nature of the challenge has changed.

Our experience advising firms at the transaction, regulatory and market-entry level suggests that the tariff dividends of the early period have largely been realised, and that businesses now operate in an environment more strongly defined by regulatory tightening, compliance demands, administrative complexity and geopolitical risk.

That shift can be understood through three changes.

3.1 From formal barriers to practical friction

The key question is no longer whether barriers have been reduced, but whether friction has been reduced.

For many firms, the practical impediments to trade and investment now lie in unclear approval pathways, inconsistent administrative practice, regulatory complexity across multiple jurisdictions, data and compliance obligations, delays in inspections, certifications or licensing, and uncertainty regarding timing, process and likely outcomes.

These frictions do not always appear in tariff schedules or market access tables, but they have real commercial consequences. Delay erodes competitiveness. Uncertainty deters investment. Compliance costs materially affect entry decisions and margins. In practice, these factors can function as de facto trade barriers. Regulatory delay, administrative uncertainty and compliance complexity now operate as de facto tariffs, often with effects more distortive than formal border measures. In contemporary trade, delay erodes competitiveness as surely as cost. Uncertainty deters investment as effectively as prohibition. Where approvals, inspections, certifications or licensing processes lack clarity or predictability, market access exists in theory but not in practice. In this context, operability should be understood to include not only formal legal access, but also clarity of process, consistency of administration, timeliness of decision-making and the practical usability of regulatory pathways.

3.2 From comparative advantage to execution capability

A decade ago, many firms could rely on straightforward economic complementarity: Australian supply, Chinese demand, and the tariff preferences created by ChAFTA. That remains part of the story, but it is no longer enough.

Increasingly, firms compete not simply on price, product or scale, but on compliance capability, operational resilience, partner quality, regulatory preparedness and the ability to execute under conditions of uncertainty.

Market opportunity still exists, but capturing it now requires a much higher level of execution capability.

3.3 From economics alone to economics under geopolitical constraint

The period from 2020 to 2022 made clear that political disputes can override or disrupt commercial expectations, even where a trade agreement remains in force.

In our experience, geopolitics has become a core business risk in the bilateral relationship, and firms increasingly need to integrate political and regulatory risk into their commercial planning.

That does not mean ChAFTA ceased to matter. On the contrary, it continued to provide an institutional and rules-based framework of real value. But it does mean that the review should recognise that trade now operates in a risk-managed, not purely liberalised, environment.

4. THE CENTRAL CONSTRAINT: THE COMPLIANCE HIGH WALL

For many firms, bilateral trade and investment are now constrained less by tariffs than by a cumulative “compliance high wall”: a dense layering of regulatory, administrative, security and reporting requirements that materially shape commercial viability.

This captures the reality that, for many businesses, the principal constraints now arise from a dense web of non-tariff and implementation-related factors, including:

- national security and investment screening concerns
- data localisation and privacy requirements
- tax and reporting obligations
- labour, environmental and ESG compliance
- product certification, customs and inspection processes
- sector-specific regulatory approvals
- inconsistent interpretation or application of rules

For government, these may appear as discrete regulatory issues. For business, they present as an accumulated operating burden.

That is why the next phase of ChAFTA should place greater emphasis on implementation quality. The issue is not simply whether rules exist, but whether businesses can navigate them with reasonable clarity, predictability and timeliness.

This is especially relevant for SMEs and mid-market firms. Large multinationals can often absorb long timeframes, retain specialist advisers and manage layered compliance regimes. Large firms may be able to absorb regulatory friction. For SMEs and mid-market firms, accumulated compliance uncertainty can be prohibitive in itself.

5. CAPABILITY MATTERS AS MUCH AS ACCESS

A further lesson of the last decade is that access without capability does not automatically translate into commercial outcomes.

Capability gaps arise in several forms:

5.1 Regulatory literacy

Businesses often underestimate the complexity of operating across different legal, regulatory and administrative systems.

5.2 Commercial and market-entry capability

Many firms misjudge partner expectations, negotiation styles, channels to market, or the time and investment required to build a durable presence.

5.3 Institutional navigation

Success increasingly depends on understanding how to work with regulators, local authorities, service providers, industry bodies and intermediaries across both markets.

5.4 Risk management capability

In a more contested environment, firms need stronger capacity to assess exposure, diversify channels, plan for disruption and adapt to policy shifts.

This is not a peripheral issue. In a mature and regulated trading relationship, capability is not ancillary to access; it is the mechanism through which access is realised. In practical terms, compliance capability, geopolitical intelligence and operational resilience are now core strategic capabilities for firms operating under ChAFTA.

For policy, the implication is clear: implementation support and capability-building should be treated as part of trade policy, not as an afterthought.

6. RELATIONSHIPS, TRUST AND LOCALISATION REMAIN COMMERCIAL REALITIES

Cross-border trade and investment continue to be shaped by trust, local institutional understanding and relationship quality. These factors should not be treated as intangible or secondary. In practice, firms with credible local partners, capable local terms, stronger institutional understanding and sustained market engagement are more likely to convert opportunity into durable commercial outcomes.

Trusted commercial relationships, continuity of engagement and local institutional understanding should be recognised as part of the enabling infrastructure of trade. They reduce transaction risk, support compliance, improve execution and help businesses resolve ambiguity earlier and more effectively. They can also help preserve commercial continuity where national-level conditions become more strained.

In practical terms, this means:

- trusted intermediaries reduce transaction risk
- capable local partnerships strengthen compliance and execution
- ongoing engagement helps firms manage ambiguity and resolve issues earlier
- sub-national and industry-level connections can help preserve continuity even when national-level politics becomes strained

This is particularly relevant in sectors where market entry is complex, regulation is dense, or long-term collaboration is necessary.

7. WHERE THE BILATERAL OPPORTUNITY IS HEADING NEXT

The review would benefit from being explicit not only about today's constraints, but also about where reduced friction and better operability would matter most over the next decade of the bilateral relationship. The strongest future opportunities are increasingly concentrated in sectors where market access alone is insufficient and where commercial outcomes depend on clearer pathways, implementation quality and institutional predictability. That is especially true in energy transition industries, services, digital and technology-enabled trade, and higher-value agriculture and consumer sectors. This is particularly relevant in sectors where commercial success depends not only on nominal access, but on coordinated approvals, reliable administrative handling, compliance certainty and the ability to move efficiently through multiple regulatory steps.

Looking ahead, the most significant areas of opportunity are likely to include green transition industries, technology-enabled sectors, services, education and more sophisticated forms of value co-creation. These areas are commercially significant because they move beyond a simple buyer-seller model and require more intensive coordination, clearer regulatory pathways and stronger implementation capability.

In particular, clearer pathways and reduced friction would be especially valuable in:

7.1 Energy transition and related supply chains

This includes critical minerals, low-carbon processing, clean energy inputs and associated services. These sectors are strategically important, commercially promising, and typically regulatory-intensive.

7.2 Services

Education, professional services and other knowledge-based exports remain important parts of the relationship. These sectors depend heavily on regulatory certainty, trusted accreditation, smoother mobility settings and clearer market pathways.

7.3 Digital and technology-enabled trade

Even where full digital trade liberalisation is difficult, there is value in improving rule clarity, reducing uncertainty around data and compliance issues, and creating more predictable operating conditions.

7.4 Higher-value agriculture and consumer sectors

The experience of health products, wine and premium food demonstrates both the scale of opportunity and the vulnerability that comes with regulatory and political

disruption. Better operability matters greatly in sectors where timing, approvals and channel access are commercially decisive.

The point is not that ChAFTA should attempt to solve every emerging issue. It is that the Agreement's next phase should be more targeted toward sectors where implementation quality has the highest economic return.

8. RECOMMENDATIONS

The review should remain disciplined and practical. With that in mind, the following recommendations are offered.

8.1 Prioritise operability alongside formal market access

The review should explicitly recognise that the next phase of ChAFTA is not only about additional commitments in principle, but about making existing commitments more usable in practice.

8.2 Address non-tariff friction in more practical terms

The review should identify the principal sources of delay, uncertainty and compliance burden affecting businesses and treat them as central to trade outcomes, not ancillary issues.

8.3 Develop clearer pathways in priority sectors

One practical illustration of improved operability would be clearer, more consistent regulatory and administrative pathways in sectors of growing bilateral importance, including energy transition industries, services, digital and technology-enabled trade, and high-value agriculture. Where commercial outcomes depend heavily on approvals, inspections, certifications, data-related compliance or licensing, process clarity and predictability matter.

8.4 Support more timely and predictable administrative processes

A further practical step would be greater focus on process predictability. Defined service standards, clearer points of contact, better guidance and stronger issue-escalation channels would help reduce the commercial cost of delay and uncertainty. Consideration should also be given to more structured business-facing escalation pathways for recurring non-tariff impediments, particularly where delays in approvals, inspections, certifications or licensing have material commercial consequences. Practical examples could include clearer guidance on process requirements, more reliable administrative timeframes, designated points of contact for recurring issues, and faster escalation of matters where delay has material commercial consequences. Predictable process is itself a form of market access. Consideration should also be given to more efficient use of digital documentation, certification and compliance processes where this would improve, speed, clarity and practical usability for business.

8.5 Use ChAFTA's institutional mechanisms more actively

ChAFTA's institutional mechanisms should be used proactively as implementation tools, tasked with identifying recurring bottlenecks, escalating commercially material delays, and supporting resolution rather than simply recording outcomes. The Agreement should be used not only as a legal framework, but as a practical platform for implementation, escalation and review. Where appropriate, these mechanisms should also support more regular reporting and review of priority implementation issues affecting bilateral trade and investment. A more structured implementation approach could include periodic review of recurring bottlenecks, clearer identification of priority issues, and more regular business-informed feedback into bilateral problem-solving channels.

8.6 Strengthen business capability

Governments and peak bodies should place greater emphasis on helping firms build the capabilities now most relevant to success: regulatory literacy, market navigation, partner identification, compliance readiness and geopolitical risk awareness.

8.7 Shift from broad promotion to targeted facilitation

General promotion has value, but the next phase requires more precision. In mature and complex markets, targeted support, sector-specific intelligence and better partner alignment are more likely to generate commercial outcomes than broad-based enthusiasm alone.

8.8 Recognise that trust and relationship infrastructure matter

Sub-national dialogue, business-to-business engagement and trusted intermediary channels should be seen as part of the practical architecture that supports trade continuity, especially in periods of geopolitical strain.

8.9 Maintain a dynamic and adaptive framework

The review should treat ChAFTA as an agreement operating in a changing environment. A successful modern framework must be capable of adapting to new forms of friction, new sectors of opportunity and a more risk-managed trading environment.

8.10 Adopt a lessons-learned approach from subsequent agreements

Since the signing of ChAFTA, Australia has entered into a number of additional free trade agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. The review should consider whether features of those agreements have affected the relative value of ChAFTA, exposed areas where ChAFTA now lags behind contemporary trade practice, or offer useful models for its future development. In that sense, the review should assess ChAFTA's future efficacy against a changing regional and international trade architecture.

8.11 Review and quantify SME utilisation and benefit

The review should assess more closely how SMEs have used and benefited from ChAFTA in practice. Better understanding SME utilisation, barriers to uptake and sector-specific patterns of use would help inform more targeted measures to improve awareness, increase practical utilisation and support the next phase of commercially meaningful participation under the Agreement.

9. CONCLUSION

ChAFTA has delivered real benefits for Australia and should be recognised as an important success.

It has not only reduced barriers, but also helped create confidence, continuity and commercial depth in one of Australia's most important bilateral economic relationships.

Its first decade showed that trade agreements still matter: they create frameworks, confidence, access and institutional continuity. Evidence suggests that ChAFTA produced material gains in bilateral trade and continued to provide value even under difficult circumstances.

But the next decade will be judged differently.

The central challenge now is not simply whether access exists, but whether access can be used effectively. In a more regulated, more contested and more complex environment, commercial outcomes will depend increasingly on clarity, predictability, capability and trust.

In practical terms, success is shifting from competing on price and formal access to competing on compliance, resilience and execution.

That is why the next phase of ChAFTA should focus on reducing friction as much as reducing barriers.

If the review succeeds in improving operability, addressing non-tariff friction more practically, strengthening implementation pathways, and supporting businesses to navigate the modern trading environment more effectively, then ChAFTA's second decade can build meaningfully on the achievements of its first and remain a genuinely useful framework for bilateral trade and investment.

The next test of ChAFTA is not whether access exists, but whether access works.

SUBMITTED BY

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