

# CHINA-AUSTRALIA

## FREE TRADE AGREEMENT



## China-Australia Free Trade Agreement (ChAFTA)

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More information on the China-Australia Free Trade Agreement is available at [www.dfat.gov.au/fta/chafta](http://www.dfat.gov.au/fta/chafta)



Australian Government



# China-Australia Free Trade Agreement (ChAFTA)

## Preamble

The Preamble recites the historical basis, bilateral context and broad aims for the China-Australia Free Trade Agreement.

## Chapter 1: Initial Provisions and Definitions

This Chapter establishes the definition of the China-Australia free trade area (consistent with World Trade Organization (WTO) rules) and sets out its relationship to other international agreements. It also provides general definitions to guide interpretation of ChAFTA.

## Chapter 2: Trade in Goods

This Chapter sets out rules for trade in goods between the Parties<sup>1</sup>, including annexes that specify the agreed tariff commitments and the means of administering country-specific agriculture tariff-rate quotas and special agriculture safeguard mechanisms. The Chapter affirms a number of World Trade Organization provisions that already govern trade in goods among the Parties and, in some cases, provides for more specific commitments, including a commitment not to use export subsidies between Australia and China. The Chapter establishes a mechanism to address non-tariff measures on a case-by-case basis, and the “Trade in Goods Committee” established under the Chapter will make recommendations on further addressing any such non-tariff measures within one year of entry into force.

## Annexes 2-A and 2-B

These annexes set out the rules for implementing the country-specific agriculture tariff-rate quotas and special agricultural safeguard mechanisms.

## Chapter 3: Rules of Origin and Implementation Procedures

This Chapter sets out the rules for determining whether products being traded between Australia and China will be eligible for preferential tariff treatment under ChAFTA. It also establishes the procedures to claim this preferential tariff treatment. The Chapter specifies the methodology for the production of certificates of origin by ‘authorised bodies’, and also the methodology for self-certification in certain specified circumstances.

## Annexes 3-A and 3-B

These annexes contain templates of the certificates of origin and declarations of origin – the required documents used by exporters and producers to claim preferential tariff treatment under ChAFTA.

## Chapter 4: Customs Procedures and Trade Facilitation

This Chapter establishes rules which provide greater predictability of customs procedures through, *inter alia*, improving transparency. It also ensures the availability of a review and appeal process to address decisions made by the customs administration of both parties. The Chapter obliges both parties to issue advance rulings on the treatment of goods under the Agreement, giving greater certainty to business. The Chapter also reflects several key provisions of the WTO *Trade Facilitation Agreement*.

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<sup>1</sup> For the purposes of this factsheet, ‘The Parties’ refer to the People’s Republic of China and Australia.

## Chapter 5: Sanitary and Phytosanitary Measures

The Chapter builds on existing commitments under the *WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures*. It provides for cooperation and mutual technical assistance and capacity building in the area of SPS, and supports work on equivalence, inspection and approval procedures. It establishes a Sub-Committee on SPS Cooperation. The SPS Chapter, and its sub-committee, is not designed to supplant the work of the existing Australia-China SPS High Level Dialogue on which the Department of Agriculture has the lead. Instead, the Chapter and Sub-Committee provide an extra avenue and trigger point to address SPS issues.

## Chapter 6: Technical Barriers to Trade

The Chapter on Technical Barriers to Trade (TBT) builds on existing commitments under the *WTO Agreement on Technical Barriers to Trade*. It includes provisions for enhanced cooperation, information exchange and consultation between the parties on TBT topics, and on Australia's side, provides for consultation with non-government standards bodies. The Chapter establishes a Sub-Committee on TBT which will provide additional avenues for Australia to address TBT issues with China, and will set a framework for potential cooperation projects.

## Chapter 7: Trade Remedies

This Chapter confirms business will continue to have full access to trade remedies under the WTO, including anti-dumping and countervailing measures. In addition it establishes a temporary bilateral safeguard measure which may be applied if either an Australian or Chinese domestic industry faces "serious injury" due to a surge in imports following a reduction in tariffs under ChAFTA.

## Chapter 8: Trade in Services

The Trade in Services Chapter includes modifications and additions to commitments made in the *WTO General Agreement on Trade in Services (GATS)* that extend the scope of commitments, subject regulators to enhanced disciplines, and address behind-the-border barriers to trade in services. Such 'GATS-plus' provisions were a priority for Australia in the ChAFTA negotiations. Specific provisions cover: transparency and licensing; telecommunications services; qualifications recognition; cooperation on bilateral taxation, accounting and Traditional Chinese Medicine (TCM)/complementary medicines; and a commitment to review and extend outcomes through a future work program taken forward by a Committee on Services.

The Trade in Services chapter is structured to enable both countries to make market access commitments. Australia's commitments are made through a North American Free Trade Agreement (NAFTA)-style negative list approach. China's commitments are made through a GATS-style positive list approach, consistent with its precedents, and include a commitment to transition to a negative list over time. Australia extends Most-Favoured-Nation (MFN) treatment – where we will extend to China, any more beneficial treatment we provide to other trade partners in the future.- to commitments made in future FTAs, consistent with our FTAs with Japan and Korea. China's MFN commitments to Australia cover ten sectors, three more than the best commitments China has made in any other FTA, and cover major Australian services interests: education, construction, engineering and integrated engineering, tourism and travel, financial (securities), environmental services, forestry services, scientific and technical consulting services, and computer and related services.

A side letter on education services builds on China's market access commitment to list institutions on its official Ministry of Education "Study Abroad" (JSJ) website, improving the profile of Australian private higher education institutions with Chinese students. The side letter also sets out principles and priorities for the FTA's future work program on student and teacher mobility, and improved marketing and recruitment opportunities. China expresses its support for the New Colombo Plan. A side letter on legal services encourages future collaboration and cooperation to improve mobility for legal practitioners. A side letter on Traditional Chinese Medicine builds on cooperation in the chapter text and reflects Australia's existing regulatory practices.

## Annex 8-A: China's MFN commitments

Annex 8-A specifies the sectors to which China's MFN commitments apply.

## Annex 8-B: Financial Services

China has undertaken comprehensive treaty-level commitments on financial services, including agreement to provisions on transparency, regulatory decision-making and streamlining of financial services licence applications. China has also committed to a future work program to deliver ongoing market access in the financial services sector as it pushes ahead with its own program of economic reform and liberalisation. A Financial Services Committee will be established under the FTA, providing for regular engagement between Chinese and Australian financial regulators on issues of mutual interest and allowing issues arising in the bilateral financial services relationship to be addressed.

A side letter on financial services encourages greater cooperation and information-sharing on regulatory frameworks for over-the-counter derivatives (securities) and payment systems, to better manage risks and improve transparency. The letter also encourages cooperation on combating money laundering and the financing of terrorism, as well as cooperation to facilitate the participation of Australian mid-market size funds investment and Australia-China renminbi (RMB) fund partnerships in China.

## Chapter 9: Investment

The FTA takes a two-stage approach to investment: commitments on entry-into-force (stage one) and a forward work program (stage two). Stage one is a 'short-form' investment chapter that will apply on entry-into-force. The short form investment chapter includes basic market access provisions and establishes a committee on investment and a forward work program. As part of this, Australia has made its market access commitments, including the more liberal Foreign Investment Review Board (FIRB) screening threshold, in stage one. The forward work program (stage two) includes a commitment to commence negotiations for a future comprehensive investment chapter, including comprehensive investment protections and China's investment market access commitments, within three years of entry-into-force of the FTA.

This short-form Investment Chapter commits both Parties to non-discriminatory treatment of the other Party's investors and investments (national treatment). Australia's national treatment obligations apply at both the market access and post-establishment investment stages, subject to Australia's schedule of non-conforming measures (e.g. on FIRB screening). In the absence of investment schedules, China's national treatment obligation applies only to established investments. The chapter commits both Parties to MFN treatment at the market access and post-establishment stages. This means that Australian investors will be entitled to treatment no less favourable than that which China accords to other foreign investors under any future investment arrangements.

Australian and Chinese investors will be able to enforce the national treatment commitments through an investor-state dispute settlement (ISDS) mechanism. The mechanism excludes claims in relation to foreign investment screening (e.g. by FIRB) and includes modern safeguards and exceptions to retain policy space for legitimate public welfare regulation. Annex 9-A sets out the code of conduct applicable to arbitrators in ISDS proceedings, while Annex 9-B specifies the Parties' addresses for the service of documents.

## Chapter 10: Movement of Natural Persons

The Movement of Natural Persons Chapter describes the treatment of temporary entry of service suppliers, investors and business visitors. These commitments support increased trade and investment between the two countries, reduce barriers to labour mobility and improve temporary entry access within the context of each country's immigration and employment frameworks.

ChAFTA provides provide improved commitments for a range of Australian and Chinese skilled service providers, investors and business visitors, thereby providing business with certainty, building on the respective commitments made by both countries to the World Trade Organization.

China and Australia have committed to process expeditiously applications for immigration formalities, provide timely information on visa application progress, and ensure transparent procedures and requirements relating to the movement of natural persons of the other party. Both sides have made a commitment not to apply labour market testing to the categories where they have made specific commitments.

## Annex 10-A

This annex sets out the details of Australia's and China's commitments on temporary entry of service suppliers, investors and business visitors.

## Chapter 11: Intellectual Property

The intellectual property (IP) chapter is consistent with Australia's current IP settings and includes a commitment to implement effective intellectual property enforcement systems with a view to eliminating trade in goods and services infringing intellectual property rights. This includes the provision of criminal procedures and penalties in appropriate circumstances. The chapter also includes commitments to continue to work to enhance IP examination and registration systems, to provide border measures in relation to counterfeit trademark or pirated copyright goods, and on the protection of undisclosed information.

## Chapter 12: Electronic Commerce

The Electronic Commerce Chapter includes a commitment to maintain the practice of not imposing customs duties on electronic transmissions between the two countries (subject to the WTO *Work Programme on Electronic Commerce*). It also includes a commitment to protect electronic commerce consumers in a manner at least equivalent to protections for consumers engaged in other forms of commerce and provisions to promote cooperation in relation to online consumer protection and the regulation of unsolicited commercial electronic messages (spam).

## Chapter 13: Transparency

This Chapter requires the prompt publication of all laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by ChAFTA. Australia and China have committed to notify each other, where possible, of any proposed or actual law, regulation, procedure or administrative ruling of general application that might materially affect the operation of ChAFTA or otherwise substantially affect the other Party's interests under ChAFTA.

The Chapter requires Australia and China to ensure that all laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by ChAFTA are administered consistently, impartially, objectively and reasonably, and sets out minimum requirements. Australia and China must provide impartial and independent review and appeal processes for final administrative actions regarding matters covered by ChAFTA.

## Chapter 14: Institutional Provisions

This Chapter establishes an overarching Joint Commission, consisting of representatives of both Australia and China, to be convened annually and otherwise at either country's request. The Joint Commission will oversee implementation and operation of ChAFTA, and supervise and coordinate the work of all subsidiary bodies.

## Chapter 15: Dispute Settlement

This Chapter includes a binding government-to-government dispute settlement mechanism modelled on previous free trade agreements and the WTO system. Most substantive obligations in ChAFTA will be subject to this mechanism except those in the Chapters on Electronic Commerce; Sanitary and Phytosanitary Measures; Technical Barriers to Trade; and the Movement of Natural Persons Chapter (save for disputes meeting certain criteria).

### Annexes 15-A and 15-B

These annexes outline additional rules on the implementation of the dispute settlement mechanism, including a code of conduct for arbitrators and model rules of procedure for the arbitral tribunal.

## Chapter 16: General Provisions and Exceptions

This Chapter sets out a number of WTO-style general and security exceptions which apply to several chapters of ChAFTA. Such exceptions ensure FTA obligations do not unreasonably restrict government action in key policy areas, including to protect essential security interests, the environment and health. The Chapter also carves out application of ChAFTA to a Party's taxation measures except in certain circumstances, and enables the adoption of measures to safeguard the balance of payments in certain circumstances.

The Chapter provides that nothing in ChAFTA shall require Australia or China to furnish or allow access to confidential information that would impede law enforcement, be contrary to the public interest or prejudice legitimate commercial interests of public or private enterprises. Where Australia or China discloses confidential information to the other side, the Chapter provides for protection of that information.

The Chapter also references the importance of cooperation, particularly with respect to competition and consumer welfare, and sets out the means by which such cooperation should occur. The Chapter contains a mechanism for Australia and China to commence future negotiations on government procurement following the conclusion of negotiations on China's accession to the WTO Agreement on Government Procurement.

Under this Chapter, Australia and China shall review ChAFTA to further its objectives within three years of entry into force and thereafter at least every five years, unless otherwise agreed.

## Chapter 17: Final Provisions

This Chapter governs the way in which ChAFTA operates as a treaty. It establishes the processes by which ChAFTA will enter into force, how it may be amended and the conditions under which it may be terminated.

## Summary of Annexes to the text of the Agreement

### Annex I

Contains the schedules of tariff reduction commitments from Australia and China, with products classified according to their Harmonised System (HS) code.

### Annex II

Contains the Product Specific Rules of Origin requirements to determine whether a product is classified as originating in Australia or China, and is therefore eligible for preferential tariff treatment under ChAFTA.

### Annex III

Annex III contains Australia's and China's commitments on investment and services. Part 1 contains Australia's non-conforming measures, while China's GATS-style positive list commitments are in Part 2.

### Annex IV

Annex IV contains the treaty-level side letters on skills assessment and licensing, financial services, education, legal services, and the application of the UNCITRAL Transparency Rules to Investor-State Dispute Settlement.