

Advantages

Introduction

- 3.1 The China Australia Free Trade Agreement (ChAFTA) has been described as ‘transformative’ for Australian industry and the economy more generally.¹ The Export Council of Australia (ECA) acknowledges that it is ‘not perfect’, but still expects it to deliver significant commercial benefits for a wide range of sectors.² The Australian Chamber of Commerce and Industry (ACCI) sees it as a high quality agreement that will substantially enhance the economic and trade relationship between Australia and China.³
- 3.2 This chapter examines the potential China holds as a trading partner for Australian business and industry and explores the benefits identified by Australian stakeholders in ChAFTA. It also examines two features of the Agreement that have attracted favourable comment: the treatment of intellectual property and the review framework built into the Agreement.

Potential of China as a trading partner

- 3.3 The Chinese market is considered to present substantial potential for Australian businesses and industry. The increasing wealth of China’s burgeoning middle class is driving demand for high quality products, investment and services.⁴ China’s ageing population and concomitant
-

1 Business Council of Australia (BCA), *Submission 76*, p. 5; Australian Dairy Industry (ADI), *Submission 45*, p. 2.

2 Export Council of Australia (ECA), *Submission 61*, p. 3; Australian Food and Grocery Council (AFGC), *Submission 49*, p. 12.

3 Australian Chamber of Commerce and Industry (ACCI), *Submission 41*, p. 2.

4 Australia China Business Council (ACBC), *Submission 26*.

health problems require long-term, sustainable solutions for care. China is also an emerging market providing growth opportunities not present in the mature markets of many of Australia's existing trading partners such as the United States (USA), United Kingdom (UK) or the European Union (EU).⁵

- 3.4 Global food demand is expected to increase by 77 per cent by 2050 over 2007 requirements, and China is projected to account for 43 per cent of that demand.⁶ Increasing income correlates with increasing demand for protein and high value food products.⁷ Australia's reputation for premium quality, clean, green food is expected to benefit Australian producers in the Chinese market.⁸
- 3.5 The demand for services is also expected to significantly increase with the growth of disposable income.⁹ China's ageing population is considered to open up opportunities in a number of areas. Financial services will benefit from the need for pension and retirement savings products.¹⁰ Aged care services will benefit; not only from designing, developing and managing institutional infrastructure and facilities, but from providing professional staff, training and technology.¹¹

Economic benefits

- 3.6 Evidence to the Committee identified a number of specific benefits that are expected to accrue to Australian businesses and industry from the implementation of ChAFTA. The most significant is a competitive advantage in the global market place particularly with respect to countries that already have an FTA with China. This competitive position will be furthered enhanced by 'most-favoured-nation' (MFN) status.
- 3.7 The Agreement is expected to provide a much needed alternative market for many products and will provide certainty and confidence for a range of businesses. The increase in confidence – together with an anticipated

5 Mr Noel Campbell, President, Australian Dairy Farmers (ADF), *Committee Hansard*, Canberra, 17 August 2015, p. 5.

6 BCA, *Submission 76*, p. 11; AFGC, *Submission 49*, p. 4.

7 AFGC, *Submission 49*, p. 9.

8 Ms Deborah Kerr, General Manager, Policy, Australian Pork Limited (APL), *Committee Hansard*, Canberra, 7 September 2015, p. 18.

9 Westpac, *Submission 42*; Financial Services Council (FSC), *Submission 39*.

10 FSC, *Submission 39*.

11 Mr David Keith Lane, Chairman, ThomsonAdsett, *Committee Hansard*, Brisbane, 27 July 2015, p. 24; Ms Elizabeth Cameron, Chief Executive Officer, Leading Age Services Australia WA, *Committee Hansard*, Perth, 25 August 2015, p. 23.

investment boost – is predicted to generate increased employment, particularly in rural and regional areas.

Competitive advantage

- 3.8 The greatest benefit from ChAFTA, apart from tariff reductions, is seen as the competitive advantage that it will give Australian producers. This is most noticeable in relation to major competitors that already have an FTA in place with China, including New Zealand and Chile. Chile's FTA came into effect in 2006 and New Zealand's in 2008. Wine exports from Chile to China have increased seven fold and New Zealand dairy eight fold since implementation of their FTAs.¹² New Zealand red meat producers will achieve a zero per cent tariff reduction on their product from 1 January 2016.¹³
- 3.9 Witnesses stress that early implementation of ChAFTA is essential if Australia is to regain and retain its competitive advantage. If the Agreement comes into effect before the end of calendar year 2015, Australian producers will receive a tariff cut upon implementation and a subsequent reduction on 1 January 2016. The Australian Dairy Industry estimates that any delay in implementing the Agreement will cost the industry an estimated \$20 million in tariff savings, with the potential to cost \$60 million.¹⁴
- 3.10 The Red Meat Industry exemplifies the plight of many producers if the Agreement does not come into effect before the end of 2015:
- The New Zealanders got their FTA in 2008, and their tariff goes to zero next year – 2016. So it would be 1 January 2016. By delaying us another year, we will have a 12 per cent tariff on our beef for an extra year while they are at zero – we will have a 12 per cent tariff on our sheep meat for an extra year while they are at zero. Then we are still 10 tariff cuts behind – nine years behind – in catching up to zero. Particularly now, we have the opportunity for a double catch up. So then we will only be eight cuts behind them. Whereas, if we do not get it now, we will be 10 cuts behind and a year behind. So we are losing time every day.¹⁵
- 3.11 As well as countering the existing advantages enjoyed by such competitors as New Zealand and Chile, ChAFTA will provide a
-

12 Mr Campbell, ADF, *Committee Hansard*, Canberra, 17 August 2015, p. 4; Australian Grape and Wine Authority (AGWA), *Submission 71*.

13 Teys Australia Pty Ltd, *Submission 32*; Fletcher International Exports Pty Ltd, *Submission 43*.

14 ADI, *Submission 45*, p.2.

15 Mr Michael Finucan, General Manager, International Markets, Meat and Livestock Australia, *Committee Hansard*, 31 July 2015, pp. 23–24.

significant competitive advantage over countries currently preparing to enter into FTAs with China, including the USA, Canada and the EU.¹⁶ However this advantage may be short-lived. The Australia China Business Council (ACBC) told the Committee that, in its estimation, Australia has approximately five years to take advantage of the opportunities provided by ChAFTA. China has taken a strategic approach to negotiating FTAs and is already developing agreements with other advanced economies:

... China has been very deliberate in the way it has planned its free trade agreements. It started with the smaller economies. It has now moved on to a medium-sized economy like Australia because it is also testing the ground for how it is opening up its markets and services and other things, and Australia was the next test case. I believe we probably have about a five-year window to reap the greatest benefits from this before China moves on to some of the larger economies which are highly competitive. The Europeans and the Americans are already highly competitive on a number of things like innovation and services. It is a relatively small window.¹⁷

- 3.12 Overall, there is a distinct sense of urgency for quick implementation of ChAFTA to improve Australia's competitive trading position.¹⁸

Most-favoured-nation status

- 3.13 The inclusion of MFN provisions in ChAFTA will further enhance and protect Australia's competitive advantage in the Chinese market. MFN status ensures that if China grants greater market access to other trading partners, the conditions will be extended to Australian businesses and investors.¹⁹ With the expected expansion of China's FTA program and the imminent conclusion of agreements with the USA and EU, this is seen as extremely beneficial.²⁰

Business confidence

- 3.14 Exporters emphasised that the certainty engendered by ChAFTA is already influencing business confidence, encouraging investment and promoting employment. For the Western Australian Fishing Industry

16 ECA, *Submission 61*, p. 3.

17 Ms Martine Letts, National Chief Executive Officer, Australia China Business Council (ACBC), *Committee Hansard*, Melbourne, 28 August 2015, p. 9.

18 Winemakers Federation of Australia (WFA), *Submission 11*, p. 5; Australian Lot Feeders' Association (ALFA), *Submission 17*; Minerals Council of Australia (MCA), *Submission 28*; Australian Nut Industry Council (ANIC), *Submission 50*.

19 BCA, *Submission 76*, p. 7; ANZ, *Submission 16*; Westpac, *Submission 42*.

20 BCA, *Submission 76*, p. 7.

Council (WAFIC) the flow on effect created by the opportunities for increased market demand are permeating the industry:

We believe that the FTA is a major opportunity ... the certainty that it signifies to the strategic management and planning of the state's fisheries. Increased certainty regarding markets has strong potential to drive research, development and extension; to drive marketing priorities, including branding; to help determine the best way to reinvest money into supporting fishers; and to further enhance trade and development links.²¹

- 3.15 In expectation of the finalisation and implementation of ChAFTA, the Seafood Trade Advisory Group (STAG) has invested in facilities in China and set up a Chinese company to handle the projected increase in demand:

In anticipation of the free trade agreement, our company has secured a bonded warehouse at Baiyun Airport, Guangzhou, which has a direct link from Australia – an eight-hour flight with direct connections to all major cities within China. We are also setting up a Chinese company in China and we are going to have a local representative who will, potentially, be an expat from here.²²

- 3.16 The Committee inspected the Lion Cheese Factory in Burnie in Tasmania and were told that the company has invested \$150 million in the factory over the past five years to position itself to take full advantage of the Asian market. This is indicative of the dairy processing sector generally, which has committed almost \$1 billion in upgrading existing capacity and establishing further capacity.²³ This commitment is only possible if there is certainty over market access and growth:

The China market certainly gives us that; it certainly gives us access to a growing market that allows our farmers to make those investment choices to grow their businesses and, therefore, employ more people on farm, put more infrastructure and jobs in factories, and help the Australian community generally.²⁴

- 3.17 The Australian Nut Industry Council (ANIC) reports that ChAFTA has provided the confidence for almond growers and investors to expand

21 Mr John Harrison, Chief Executive, Western Australian Fishing Industry Council (WAFIC), *Committee Hansard*, Perth, 25 August 2015, p. 28.

22 Mr Matthew Rutter, General Manager, Marketing and Business Development, Geraldton Fishermen's Co-operative, on behalf of Seafood Trade Advisory Group (STAG), *Committee Hansard*, Perth, 25 August 2015, p. 51.

23 ADI, *Submission 45*, p. 3; Mr Andrew Lester, Dairy Council Chairman, Tasmanian Farmers and Graziers Association (TFGA), *Committee Hansard*, Devonport, 27 August 2015, pp. 12–13.

24 Mr Campbell, ADF, *Committee Hansard*, Canberra, 17 August 2015, p. 5.

existing orchards by 50 per cent. Nursery stock has been ordered for the planting of 14 000 new hectares of almonds over the next three years and export will increase from a value of \$468 million to over \$1 billion by 2020:

These new orchards will require an investment of about \$A500 million over the next seven years. The investment phase will employ many people along the Murray Valley between Loxton in South Australia, through Sunraysia in Victoria and the MIA [Murrumbidgee Irrigation Area] in NSW.²⁵

Branding and marketing

3.18 Another source of confidence for Australian producers is the opportunity provided by ChAFTA to exert greater control over their product and over branding and marketing. The Agreement will allow Australian exporters to capitalise on Australia's reputation for clean, green, sustainable food production:

The biggest issue in China for food is food safety. It is a substantial concern amongst many of their consumers. When you talk to people in China, they look at what you can do in meeting that particular demand itself ... They are looking for a product that is packaged in Australia, freighted to them, with the traceability that we can provide and the food safety that we can provide as a nation.²⁶

3.19 Under current conditions Australian produce often enters the Chinese market indirectly making the 'chain of custody' difficult to control.²⁷ This can lead to abuse of 'Brand Australia' labelling, hampering producers' ability to capitalise on the Australian reputation. ChAFTA will change this by making it possible for producers to export directly into China:

In the current system that we operate under, Australian exporters struggle to promote or control their brands into China. They are reliant upon Chinese importers, who then on sell their product to downstream customers through an opaque local distribution chain. This limits market transparency and penetration for Australian products to a small number of provinces. Direct access to the market will enable Australian companies to build long-term supply relations with downstream food and beverage customers

25 ANIC, *Submission 50*.

26 Ms Kerr, APL, *Committee Hansard*, Canberra, 7 September 2015, p. 18; Treasury Wine Estates (TWE), *Submission 19*, p. 3; AFGC, *Submission 49*, p. 8.

27 Mr Rutter, STAG, *Committee Hansard*, Perth, 25 August 2015, p. 53.

and grow market share in new markets, including China's burgeoning second and third tier cities.²⁸

Alternative market

3.20 China is also seen as an important alternative market for Australian producers. Reliance on a single large market can be damaging for producers during a downturn. Wellard Group Holdings Pty Ltd reminded the Committee that when beef prices slumped during the 1970s, heavy reliance on the US market forced many producers to liquidate their stock. However, the Chinese market will cushion producers from such future market shocks, encouraging investment:

Now, a farmer can actually go out with confidence and put some more infrastructure into his places. He can go and put some more water in and he can go and put some more fences in, because they are saying the price that the Australian farmer is getting at the moment is very close to parity to the rest of the world. That is going to drive investment in farming. Guys are going to hold back their cows, they are going to put some more water in and put some more fencing in, they are going to put irrigation in where they can. Based on what is happening, we are going to have a herd of somewhere between 35 and 40 million cattle. What this does is provide a very competitive market for both live and slaughtered cattle here that is an alternative to the US.²⁹

3.21 Market choice for producers could also be beneficial for the domestic market. Increasing access to external markets provides growers and producers with more leverage when dealing with the Australian supermarket duopoly, forcing supermarket chains to offer more realistic prices.³⁰

Employment opportunities

3.22 The increased confidence generated by ChAFTA ultimately leads to increased employment opportunities. Food producers believe that while there are short term benefits from the implementation of ChAFTA, the substantial benefits will come over time, particularly with regard to employment.

28 Mr Harrison, WAFIC, *Committee Hansard*, Perth, 25 August 2015, p. 28.

29 Mr Scot Braithwaite, Chief Operating Officer, Wellard Rural Exports Pty Ltd, *Committee Hansard*, Perth, 25 August 2015, p. 18.

30 Mr Matthew Ryan, Board Director, Tasmanian Farmers and Graziers Association (TFGA), *Committee Hansard*, Devonport, 27 August 2015, p. 14; Mr Balzarini, Wellard Group Holdings Pty Ltd, *Committee Hansard*, Perth, 25 August 2015, p. 21.

- 3.23 The dairy industry conservatively expects 1.5 per cent annual growth in employment on farm going forward, which translates to 600 to 700 jobs each year.³¹ Wellard Holdings Group Pty Ltd estimates 50 or 60 people will be needed to cope with increased production.³²
- 3.24 As many primary industries will directly benefit from ChAFTA, the expectation is that rural and regional areas will benefit most from increased employment opportunities. The beef, dairy, seafood and wine industries all stressed the opportunities for employment in rural and coastal areas. The wine industry in Western Australia is currently facing economic challenges and Wines of Western Australia (WWA) pointed out that the opening up of the Chinese market and increasing profitability of wine producers is critical for regional employment:
- With that comes jobs in regional areas where there is not really a great deal that would take over if wine were to fail. You can only imagine what Margaret River would be like, as an example of just one region, if it were not for the wine industry, and that will roll out, and is doing so, throughout the South West.³³

Intellectual property rights

- 3.25 The Intellectual Property (IP) provisions in previous free trade agreements have been criticised for being too prescriptive and constraining future reform. They have also been seen as unbalanced and failing to protect the general public interest. There has been criticism too, of the lack of economic modelling to demonstrate their impact.³⁴ In contrast, the IP provisions in ChAFTA have been praised for their approach and suggested as a precedent for future agreements.³⁵
- 3.26 Associate Professor Weatherall explained the need for generality and abstraction in the IP provisions included in free trade agreements:

31 Mr David Losberg, Senior Policy Manager, Australian Dairy Farmers (ADF), *Committee Hansard*, 17 August 2015, p. 7.

32 Mr Mauro Balzarini, Chief Executive Officer and Managing Director, Wellard Group Holdings Pty Ltd, *Committee Hansard*, Perth, 25 August 2015, p. 15.

33 Mr Larry Jorgensen, Chief Executive Officer, Wines of Western Australia (WWA), *Committee Hansard*, Perth, 25 August 2015, p. 33.

34 Associate Professor Kimberlee Gai Weatherall, *Committee Hansard*, Sydney 31 July 2015, p. 27; See also Joint Standing Committee on Treaties (JSCOT), *Report 142: Treaty tabled on 13 May 2015*, September 2014, pp. 27–31.

35 Associated Professor Weatherall, *Submission 38*; Ms Anna George, *Committee Hansard*, Perth, 25 August 2015, p. 45.

When it comes to treaties, the basic point is that intellectual property is concerned with innovation. It is concerned with technology that is constantly changing and an economic environment and business models that are constantly changing. We frequently – repeatedly – review and change our IP law as technologies change and as economic models and business models change. The more detailed an IP treaty is, the harder it becomes to make those necessary changes when we need to in order to encourage innovation. The more detailed it is, the more it locks in particular models, particular thinking about IP. Frankly, you cannot do that for 20 years. We do not know what technology is going to look like 20 years from now. That is why it is so critical that we keep these things general ...³⁶

- 3.27 The IP provisions in ChAFTA comply with these requirements. The chapter is drafted ‘at a high level of generality’ avoiding detailed IP provisions that would lock in certain forms of IP law. Professor Weatherall provides two examples:
- Article 11.13 requires protection of collective and certification trade marks without specifying in any detail how such protection should be provided; and
 - Article 11.20 which notes that parties may take appropriate measures to limit the liability of internet service providers, without specifying any details regarding how that should be done.³⁷
- 3.28 The IP chapter endorses a balanced view of IP protection. It promotes effective protection and enforcement for rights holders and users on the one hand,³⁸ and supports appropriate measures to prevent abuse by rights holders on the other.³⁹ It recognises that protecting IP rights will promote economic and social development and liberalise international trade⁴⁰ while acknowledging that IP rights can be used to restrain trade.⁴¹
- 3.29 The provisions reflect existing multilateral IP standards and will require no changes to existing Australian IP law.⁴² Additionally, the provisions

36 Associate Professor Weatherall, *Committee Hansard*, Sydney, 31 July 2015, p. 28.

37 Associate Professor Weatherall, *Submission 38*.

38 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China* (ChAFTA), Article 11.1(a).

39 ChAFTA, Article 11.1(f).

40 ChAFTA, Article 11.1(c).

41 ChAFTA, Article 11.1(f).

42 Associate Professor Weatherall, *Submission 38*.

focus on cooperation; establishing a mechanism for reviewing and monitoring implementation.⁴³

- 3.30 Professor Weatherall submits that the IP provisions in ChAFTA demonstrate that ‘it is possible to conclude a modern trade agreement *without* descending to significant detail on questions relating to intellectual property’.⁴⁴

Framework for review

- 3.31 ChAFTA contains an in-built framework for review. This framework provides for review periods and implementation committees designed to encourage further trade liberalisation and market access expansion.⁴⁵ Article 16.5 provides for an overarching general review of the Agreement within three years of the date of entry into force and further reviews at least every five years.⁴⁶ There are also review periods specified in individual chapters of the agreement including rules of origin and implementation procedures (Article 3.24), trade in services (Article 8.24), and investment (Article 9.9).
- 3.32 Chapter 14 of ChAFTA establishes a Joint Commission to oversee the implementation of the Agreement.⁴⁷ The Joint Commission will be composed of senior officials and will meet annually.⁴⁸ In addition, specific sub-committees are established to review implementation for Trade in Goods (Article 2.15), Sanitary and Phytosanitary Measures (Article 5.11), Technical Barriers to Trade (Article 6.13), Trade in Services (Article 8.20), Financial Services (Annex 8B, Article 7), and Investment (Article 9.7).
- 3.33 This framework for review has been welcomed. Many sectors stress the importance of the review mechanism in obtaining future consideration of further tariff reductions. Like other sectors, GrainGrowers have not achieved as much as they had hoped from ChAFTA but the review process allows them to continue to pursue their goals:

GrainGrowers had hoped to achieve specific review of grains concessions, in particular the wheat tariff. Despite ChAFTA not including this, it does include a general agreement review,

43 Associate Professor Weatherall, *Submission 38*.

44 Associate Professor Weatherall, *Submission 38*.

45 BCA, *Submission 76*, p. 7.

46 ChAFTA, Article 16.5: Review of Agreement.

47 ChAFTA, Chapter 14: Institutional Provisions.

48 ChAFTA, Article 14.2.2 and 14.2.3. The meeting can be convened at Ministerial level if requested by either Party.

including on market access, three years after the agreement comes into force. This is a key element of the agreement that GrainGrowers hopes is a meaningful basis on which ChAFTA may become an increasingly beneficial agreement to both China and Australia, over time.⁴⁹

- 3.34 As well as providing a mechanism for further tariff reductions, the Business Council of Australia (BCA) indicates it will play a crucial role in reducing non-tariff barriers:

[The review framework] also provides Australian authorities with a direct channel to work closely with Chinese counterparts to tackle specific non-tariff barriers that impede trade. For example, developing regulatory consistency through a range of mutual recognition of qualifications, skills and experience would benefit Australian business across a range of sectors.⁵⁰

- 3.35 Telstra suggests that ‘these forward-looking tools’ built into ChAFTA will prove more important to the telecommunications sector over time than the limited commitments currently included in the Agreement.⁵¹ It also argues for industry input to the ChAFTA committee process through regular consultation between business and industry and the relevant Australian representatives.⁵²

49 GrainGrowers, *Submission 59*, pp. 4–5.

50 BCA, *Submission 76*, p. 7.

51 Telstra, *Submission 62*.

52 Telstra, *Submission 62*.

