

China Business Focus

关注中国商业

22 May 2005

Ms Kathleen Dermody
The Secretary
Senate Foreign Affairs, Defence and Trade References Committee
Suite SG.57
Parliament House
CANBERRA ACT 2600

Dear Ms Dermody,

China Business Focus is a group of businesses that seek a positive result for Australian business from the negotiation of an Australia China free trade agreement. The group's activities include advocacy, communication, research and representation.

The group believes an Australia China Free Trade Agreement should stand to increase trade and investment between Australia and China. It should provide tangible benefits for business in both countries over normal matter of course.

With a view to communicating these interests, the group provides the attached short submission to the current Senate inquiry in to Australia-China relations being held by the Foreign Affairs, Defence and Trade References Committee. A representative of the China Business Focus group will also be available to provide oral evidence, should this be of interest to the committee.

China Business Focus Members include Alcoa, Australian Food and Grocery Council, Australian Industry Group, Australian Wool Innovation, BHP Billiton, BlueScope Steel, Dairy Australia, Fonterra, Holden, Minerals Council of Australia, News Limited and Qantas.

Regards,


Alan Oxley
Director, China Business Focus

Submission to the
Senate Foreign Affairs, Defence and Trade Committee's
Inquiry in to Australia's relations with China

Introduction

The following submission from the China Business Focus business group seeks to provide the Australian Senate Committee on Foreign Relations, Defence and Trade with a perspective on one specific aspect of Australia's commercial relationship with China. The group, representing 12 companies and peak bodies, has an interest in seeing the conclusion of a pro-business, pro-national interest Australia China Free Trade Agreement (FTA). The issues raised here deal specifically with this interest.

The Australian Government has indicated its intention to negotiate a free trade agreement with China. China is the world's fastest growing economy. Economic growth in Australia will rely, in part, on our ability to maintain a pro-growth institutional relationship with China.

China Business Focus

China Business Focus is a group of businesses that seek a positive result for Australian business from the negotiation of an Australia China free trade agreement. The group's activities include advocacy, communication, research and representation. A positive result for business in an Australia China free trade agreement is one in accordance with Australia's national interest.

Free trade agreements (FTAs)

Free trade agreements (FTAs) provide an opportunity to reduce the cost of doing business and expand business opportunities. They can increase certainty of trade and investment and lower commercial risk by providing rights enforceable in international law for foreign companies to trade, invest and operate in foreign markets. Advanced free trade agreements today do far more than reduce border controls on imports. They can provide legal rights of establishment in foreign markets, provide rights to compete, protect foreign investment, reduce and eliminate regulatory discrimination and protect intellectual property. The breadth of coverage in an FTA depends on the willingness of the negotiating parties.

Trade agreements only enhance prospects for business if business is fully involved in the negotiating process. Business is most familiar with the costly barriers in its markets. If business is not adequately consulted then trade agreements can be negotiated that do not sufficiently comprehend or prioritise business interests. This represents a competitive opportunity lost.

What a successful agreement should look like

An Australia China FTA should stand to increase trade and investment between Australia and China. It should provide tangible benefits for business beyond the normal matter of course.

The group will strive for an FTA that legally enshrines reductions to trade barriers and will also seek inclusion of beyond the border measures that improve opportunities for business. An agreement should also create opportunities for Australia and China to support institution building in non-trade areas, such as research and development and technical co-operation.

More specifically, interests are concentrated in three key areas. These are

- Post-border measures,
- Investment related issues, and
- Traditional border measures.

These will be dealt with in turn.

Post-border measures focus broadly on enhancing business cooperation, with a view to reducing the risk for Australian exporters in the Chinese market through codified and agreed mechanisms. Post-border measures include trading and distribution rights and infrastructure, government procurement, procedures and protocols intra-industry cooperation on harmonisation of standards for food products and wool.

Investment measures. These should cover national and sub-national governments. Provisions on investment can cover domestic content requirements, performance requirements, domestic sourcing requirements, trade balancing, product mandating and requirements for technology transfer. Specifically, rights and activities involve:

- the right to national treatment,
- the right to defend national treatment;
- removal of discriminatory performance requirements,
- various rights relating to taxation, similar but not limited to those covered in a double taxation agreement,
- lowering of restrictions on nationality requirements for senior management and boards of directors;
- rules on the transfer of funds internationally and the repatriation of capital, and
- limitations on technology transfer requirements and rights to geo-prospect;

Traditional measures include into the Chinese market (including tariffs on goods that Australian business import as inputs in further production), import licensing and product approval processes.

Table 1 – Specific interests in reducing traditional barriers

Product	Barrier
Wool	Tariff, tariff rate quota, distribution
Alumina	Tariffs
Dairy products	Tariffs, quarantine, harmonisation of standards
Mineral products	Tariffs, tariff escalation, import licensing system
PMVs* and components	Tariffs, luxury car taxes, harbour maintenance taxes
Food and groceries	Tariffs, product safety and labelling, harmonisation of standards, quarantine, import/customs procedures and or protocols

*Passenger motor vehicles

Potential avenues for economic cooperation in concert with an FTA

Negotiation of a bilateral FTA is an opportunity to review the bilateral relationship. It is opportunity to consider bilateral cooperation as well.

Agreements to liberalize trade achieve their goals by creating legal agreements to remove barriers to participation by business entities in each other's economies. The economic benefit comes from a more efficient use of economic resources in each economy, arising from the removal of barriers to trade or investment.

Agreements to *liberalize trade* were traditionally kept distinct from agreements for *trade promotion and trade cooperation*. However, increasingly, trade facilitation is included in trade liberalization agreements. Trade facilitation most commonly means improving the administration of trade controls, frequently customs.

Trade liberalization agreements do not normally cover *general matters of economic cooperation* among economies. Such activities are normally left to bilateral arrangements among specialist ministries – for example, those dealing with taxation or payment of social security benefits.

Governments negotiating trade liberalizing agreements commonly arrange cooperation in areas of policy that they perceive will support economic integration of their economies.

It is also common for governments when negotiating FTAs to agree on "side arrangements" to promote policy cooperation, but to set out these commitments in an exchange of letters outside the trade agreement, so that they are not legally an integral part of the agreement. This might be done for convenience. Sometimes, with sensitive issues, it is a way of dealing with an issue that was not appropriate for inclusion in the agreement.

A review of recent Free Trade Agreements shows in what areas governments seek economic cooperation within in the terms of agreements. These can be generally categorized as:

- trade facilitation,
- areas for deeper economic integration, and
- others areas for cooperation as covered in side arrangements.

General cooperation

Most FTAs create formal processes for regular consultation between parties on general trade issues. Most FTAs create some ongoing commitments that need to be monitored as well as a process to resolve disputes between parties over implementation of obligations. It is usual to create some sort of joint mechanism to do this. It often creates a standing instrument for regular consultation on trade and other economic issues covered by the Agreement.

Trade facilitation

As quantitative barriers to trade have been reduced, it has been increasingly recognized that important gains in trade can be achieved through working to ensure transaction costs of regulation are reduced. In Customs Administration this can entail agreement on procedures to reduce processing time. Use of common formats in electronic administration is becoming commonplace.

Management of Sanitary and Phytosanitary Measures is another area of common cooperation. Most trade agreements do not seek to substitute obligations assumed under the WTO for SPS administration, but some provide bilateral processes for consultation on administration of SPS barriers and processes for import risk assessments.

In the area of Technical Barriers to Trade, it is also common to agree procedures supplemental to those pre-existing under WTO rules. Work programs can be established to advance commitments to provide for recognition of conformance processes and cross recognition of standards or even harmonization of standards.

Deeper Economic Integration

Advanced Free Trade Agreements today cover a wider range of issues than simple removal of barriers to trade in goods. Liberalization of services is a recent addition to the processes of trade liberalization and multilateral commitments under the WTO have not advanced far.

Bilateral and regional FTAs offer opportunities for countries to go further than is possible in the WTO to remove barriers to trade and investment.

The WTO does not provide for removal of barriers to investment other than as part of the process or commitments to remove restrictions to right of establishment to foreign services providers. In FTAs, commitments to extensive removal of investment barriers are common. Exceptions to those commitments are common and commitments to work together to reduce them further are common.

So are commitments to remove barriers in investment-related areas. The Australian US FTA includes side letters to consider how trades in securities and collaboration between stock exchanges can be improved and to examine tax questions impacting on investment.

It is common for parties to make far-reaching commitments in FTAs to open services markets. In some areas this requires commitments to lengthy processes of joint consultation and collaboration. For example, the US Australia FTA provides for this to secure cross recognition of professional qualifications. Recognition of professional qualifications is invariably a lengthy process, one that could have delayed finalization of the FTA, perhaps indefinitely, were it required as a condition of the FTA's entry into force.

Freer movement of business personnel is a common provision in Free Trade Agreements. They can be connected to provisions on services, or be addressed as a free standing question. These are areas where commitments to collaborate in the future to ease further restrictions on travel and residency are common.

An option in some FTAs (e.g. between Australian and New Zealand) is to forego the right to apply anti-dumping duties and instead agree on common approaches to Competition policy. This is only possible in economies where systems and business cultures are similar. The Singapore US Free Trade Agreement includes commitment (principally by Singapore) to introduce competition policy. Governments can agree to collaborate on developing competition policy laws.

FTAs will include provisions on intellectual property which go beyond the terms of the WTO agreements. Provisions usually relate to enforcement and the terms of protection on areas of common interest.

Conclusion

The China Business Focus group seeks an FTA with China that will address all its interests, producing an overall package that is positive for business and the Australian economy.