HD **Free trade agreement a catalyst for injecting Chinese investment capital into Australia**

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ChAFTAOn 17 November, Australia and China signed a Declaration of Intent formalising the conclusion of the China-Australia free trade agreement ("") negotiations. Both sides will now prepare legal texts of the Agreement for signature and go through their normal treaty-making processes. The agreement itself will be signed in 2015 after the draft is translated and legally reviewed.

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Much will be written about the impact that ChAFTA will have, upon entry into force, on Australia's two-way trade with China, which currently stands at around $150 billion. China is Australia's largest export market (for both goods and services), accounting for nearly a third of total exports. Australia's exports to China will certainly increase under ChAFTA. For example, New Zealand's free trade agreement with China, which it entered into in 2008, has seen New Zealand's exports to China rise almost 400% from NZD2.2 billion in 2008 to NZD 8.6 billion in 2012. New Zealand's dairy industry has been the primary beneficiary of the FTA, accounting for NZD2.8 billion of the export total in 2012, followed by the wood and meat industries.

ChAFTA certainly has good news for the Australian agriculture, resources, and services industries, but the focus of this article is on the impact that ChAFTA will have on China as a growing source of foreign investment in Australia. Chinese investment in Australia has risen from $3 billion ten years ago to around $32 billion today, but this still only accounts for 1.3% of total foreign investment in Australia.

With China's middle-class expected to reach 850 million people by 2030, China is eager to find ways to increase output from its key trading partners, including Australia. This will inevitably lead to greater Chinese investment in Australia as China seeks to increase the size of the pie. Chinese investment in Australia has been concentrated in the resources sector. We can expect to see greater diversification of Chinese investment in Australia into areas such as agribusiness, commercial property, healthcare and aged care services, retail, tourism and infrastructure.

FIRBChAFTA will promote further growth of Chinese investment into Australia, by raising the screening threshold at which investments in non-sensitive sectors by private sector entities from China are considered by the Foreign Investment Review Board ("") from $248 million to $1,078 million.

Australia will need to handle perceptions of mistrust and discrimination which have been held by Chinese investors in Australia. In the past, in response to public concerns, the Australian Government set out additional FIRB considerations when assessing applications by State-Owned Enterprises and Sovereign Wealth Funds. These included: the investor's independence from government; whether the investor has clear commercial objectives; corporate governance practices; and whether an investment may hinder competition or lead to undue concentration and control. These additional considerations have led to the imposition of conditions (or 'undertakings') by the Treasurer on Chinese (and other foreign) investors. Such conditions include: local listing requirements; the number of Australian-based directors; where meetings and decisions by directors are made; as well as specific requirements that contracts be made on an arm's length basis. These measures are aimed at preventing non-commercial behaviour and non-arm's length transactions.

Although all FTAs are 'living' documents, ChAFTA is expected to evolve over time. A sticking point in the decade-long negotiations was China's desire that its State-Owned Enterprises would be exempt from FIRB scrutiny for investments of $1 billion or less. The Australian Government has held firm on this, so under ChAFTA FIRB will continue to screen all investment by Chinese State-Owned Enterprises, regardless of the **transaction** size. ChAFTA does not change these arrangements in any way. That said, a final determination on this issue is expected to be negotiated in the future. **China** will no doubt urge the Australian Government to eventually allow its desired concession, since **China** wants its State-Owned Enterprises (which continue to represent more than half of **China**'s GDP) to be allowed to invest in Australian companies to hasten much needed technology and know-how transfer to **China**.

Further, the Australian Government has retained the ability to screen **Chinese** investments at lower thresholds for sensitive sectors, including: media, telecommunications and defence-related industries. And the Government will be able to screen investment proposals by private investors from **China** in agricultural land valued from $15 million and agribusiness from $53 million.

The investment obligations in ChAFTA can be enforced directly by Australian and **Chinese** investors through an Investor-State Dispute Settlement mechanism, which aims to promote investor confidence.

There can be little doubt that the unfolding of the ChAFTA will coincide with unprecedented **Chinese** investment in Australia in sectors where investment capital is very much in demand.

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