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**Committee on Regional Trade Agreements**

**FACTUAL PRESENTATION**

**FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND CHINA  
(GOODS AND SERVICES)**

*Report by the Secretariat*

This report, prepared for the consideration of the Free Trade Agreement between Australia and China, has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The factual presentation reproduces as closely as possible the terminology used in the Agreement and in the comments provided and does not imply official endorsement or acceptance by the Secretariat of such terminology. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671) and thus does not imply any value judgement by the Secretariat regarding the contents of the Agreement.

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### Key Facts

<b>Parties to the Agreement:</b>	Australia and China
<b>Date of Signature:</b>	17 June 2015
<b>Date of Entry into Force:</b>	20 December 2015
<b>Date of Notification:</b>	26 January 2016
<b>Full implementation:</b>	1 January 2029 <sup>1</sup>

## 1 TRADE ENVIRONMENT<sup>2</sup>

1.1. The Free Trade Agreement between Australia and China, (hereinafter referred to as "the Agreement") is Australia's 11<sup>th</sup> free trade agreement<sup>3</sup> and China's 14<sup>th</sup> free trade agreement.

1.2. In 2014, with a population of 23 million, Australia's GDP was estimated at US\$1,454 billion, while that of China, with a population of 1,364 million, was US\$10,360 billion. Averaged over the period 2012-2014, the Parties' trade (goods and services) to GDP ratio was 41.1 for Australia and 46.9 for China.

### 1.1 Merchandise trade

1.3. In 2014 Australia's merchandise exports amounted to US\$241 billion (1.27% of global exports) and imports amounted to US\$237 billion (1.24% of global imports). In the same year China's merchandise exports amounted to US\$2,342 billion (12.33% of global exports) and imports US\$1,959 billion (10.26% of global imports). Australia was the world's 16<sup>th</sup> largest exporter and 17<sup>th</sup> largest importer of merchandise, while China was the largest exporter and 3<sup>rd</sup> largest importer. The structure of the Parties' merchandise exports and imports are different, with Australia exporting mainly fuels and mining products (representing 63% of its total exports) while mainly importing manufactures (71% of its total imports). China's exports and imports are largely manufactures (representing 94% of its total exports and 60.1% of its total imports).

1.4. Developments in global and intra-Party trade are presented in Chart 1.1 (A and B) over the period 2000-2014. Data reported to the UNSD Comtrade database show diverging pictures. A bilateral trade deficit is reported for Australia until 2009 when Australia's exports to China are reported to substantially outnumber its imports from China, while data reported for China show a trade deficit for China's trade with Australia during the whole period (2000-2014).<sup>4</sup> At the global trade level, Australia experienced a trade deficit until 2008 since when it has registered a trade surplus. In the case of China a constant trade surplus is observable, with a momentary setback for both exports and imports in connection with the financial crisis in 2009.

<sup>1</sup> The final implementation date of the special agricultural safeguard measures for beef products as listed in Annex 2-B of the Agreement is, however, 1 January 2031.

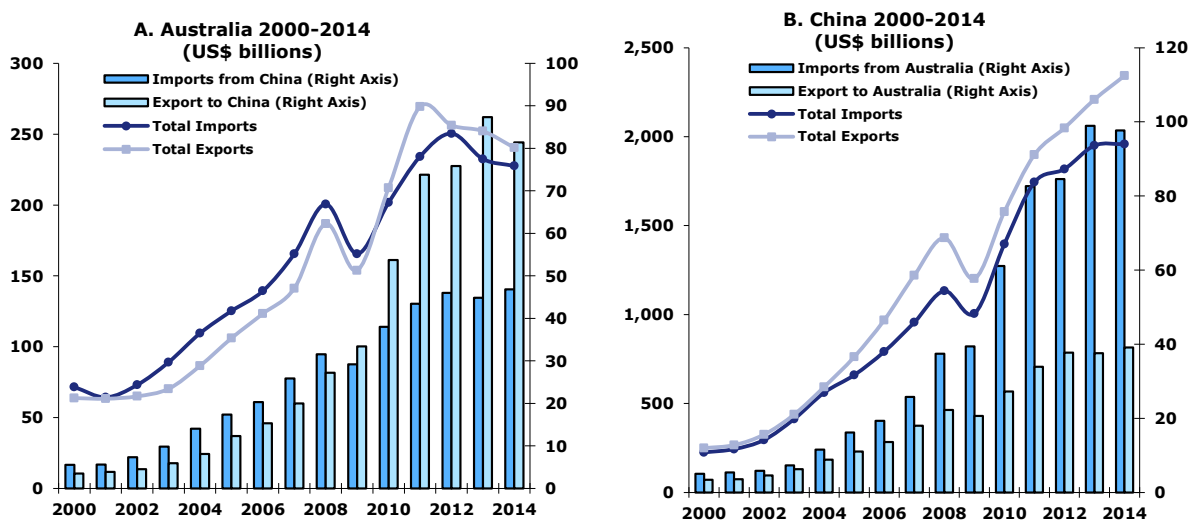
<sup>2</sup> Source for this section, unless otherwise indicated: WTO Trade Profiles, September 2015 (2014 figures).

<sup>3</sup> Australia does not count SPARTECA and PACTRA as free trade agreements, although they have been notified to the GATT/WTO.

<sup>4</sup> According to the Parties, there are a number of possible explanations for the differing data, including trade trans-shipped through third parties, timing and valuation differences. Other factors could include exchange rate variations and differences in customs reporting.

1.5. Based on 2014 trade data<sup>5</sup>, China was Australia's largest source of imports<sup>6</sup> and largest destination for exports<sup>7</sup>, while Australia was China's 7<sup>th</sup> largest source of imports<sup>8</sup> and 12<sup>th</sup> largest export destination.<sup>9</sup>

**Chart 1.1 Australia-China: Merchandise bilateral trade and with world (2000-2014)**



Source: UNSD Comtrade database.

1.6. The commodity structure of trade between Australia and China, and between each Party and the world, during the period 2011-2013, is shown in Chart 1.2, on the basis of Harmonized System (HS) Sections. Machinery (41.5%), textiles (11.8%), and miscellaneous manufactured products (10.1%) together accounted for 63.4% of Australia's imports from China, while these three sectors were Australia's 1<sup>st</sup>, 9<sup>th</sup> and 10<sup>th</sup> global imports representing overall only 31.4% of Australia's total imports to the world (representing respectively 24.7%, 3.6% and 3.1% of Australia's global imports). These three categories of products corresponded respectively to China's 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> largest global exports (corresponding together to 60.5% of China's global exports).

1.7. Mineral products represented almost three quarters of China's imports from Australia (74.7%). Minerals also represents Australia's top global export (57.4% of Australia's export to the world), and China's 2<sup>nd</sup> largest global import (representing 24.1% of China's imports from the world).

<sup>5</sup> Source: UNSD Comtrade database (excluding intra-EU trade). The national statistics of the Parties may slightly differ from the, also official, sources systematically used in the preparation of factual presentations.

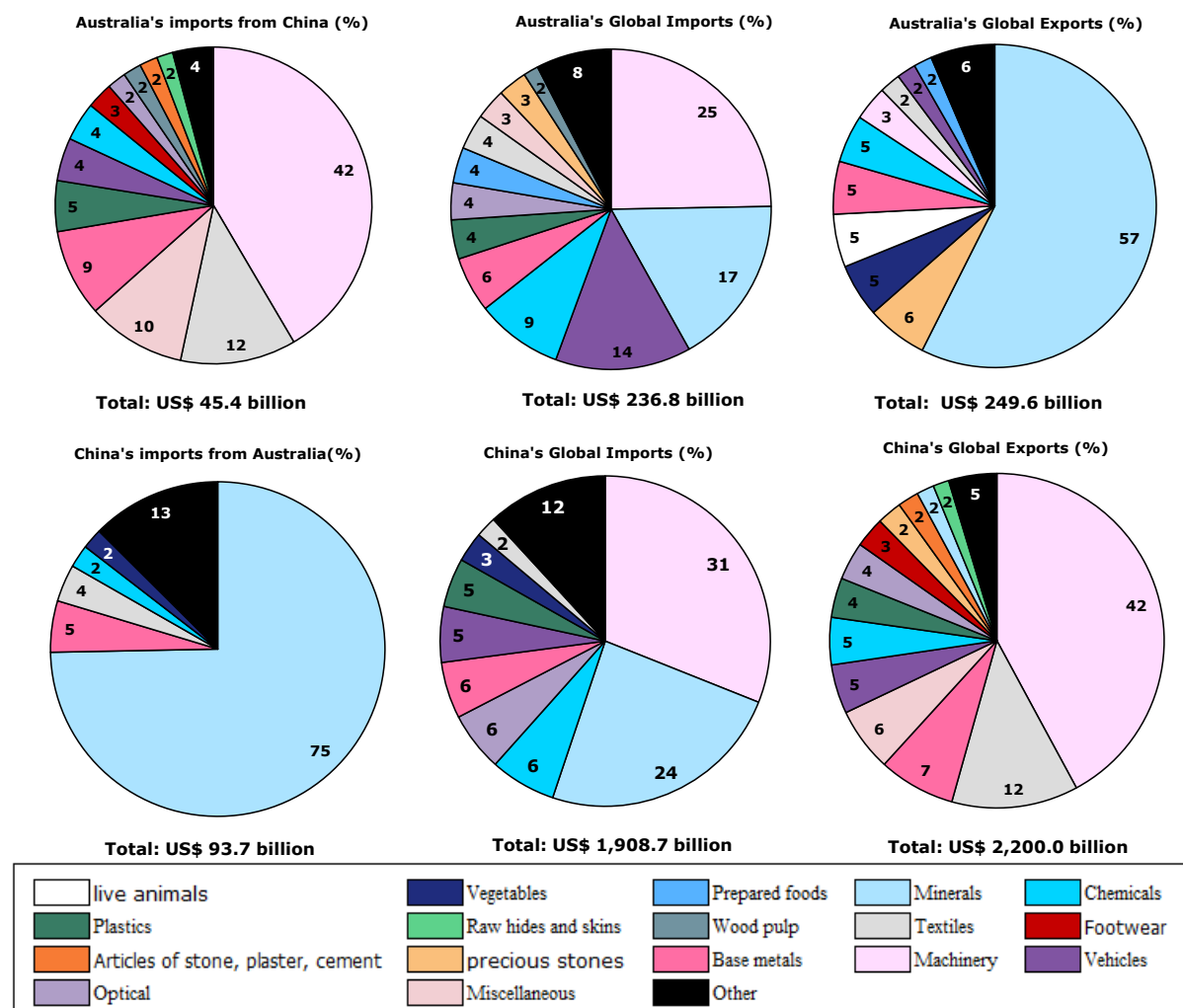
<sup>6</sup> In 2014, the five top sources of imports for Australia were: China (20.6%); the EU(28) (17.6%); the US (10.6%); Japan (6.8%); and Singapore (5%). Source: UNSD, Comtrade database.

<sup>7</sup> In 2014, the five top destinations for Australia's exports were: China (33.9%); Japan (17.9%); Korea (7.4%); the EU(28) (4.4%); and the US (4.1%). Source: UNSD, Comtrade database.

<sup>8</sup> In 2014, the five top sources of imports for China were: the EU(28) (12.4%); Korea (9.7%); Japan (8.3%); the US (8.2%); and other Asian n.e.s. (7.8%). Source: UNSD, Comtrade database.

<sup>9</sup> In 2014, the five top destinations for China's exports were: the US (17%); the EU(28) (15.8%); Hong Kong, China (15.5%); Japan (6.4%); and Korea (4.3%). Source: UNSD, Comtrade database.

**Chart 1.2 China and Australia: product composition of merchandise trade, annual average (2012-2014)**



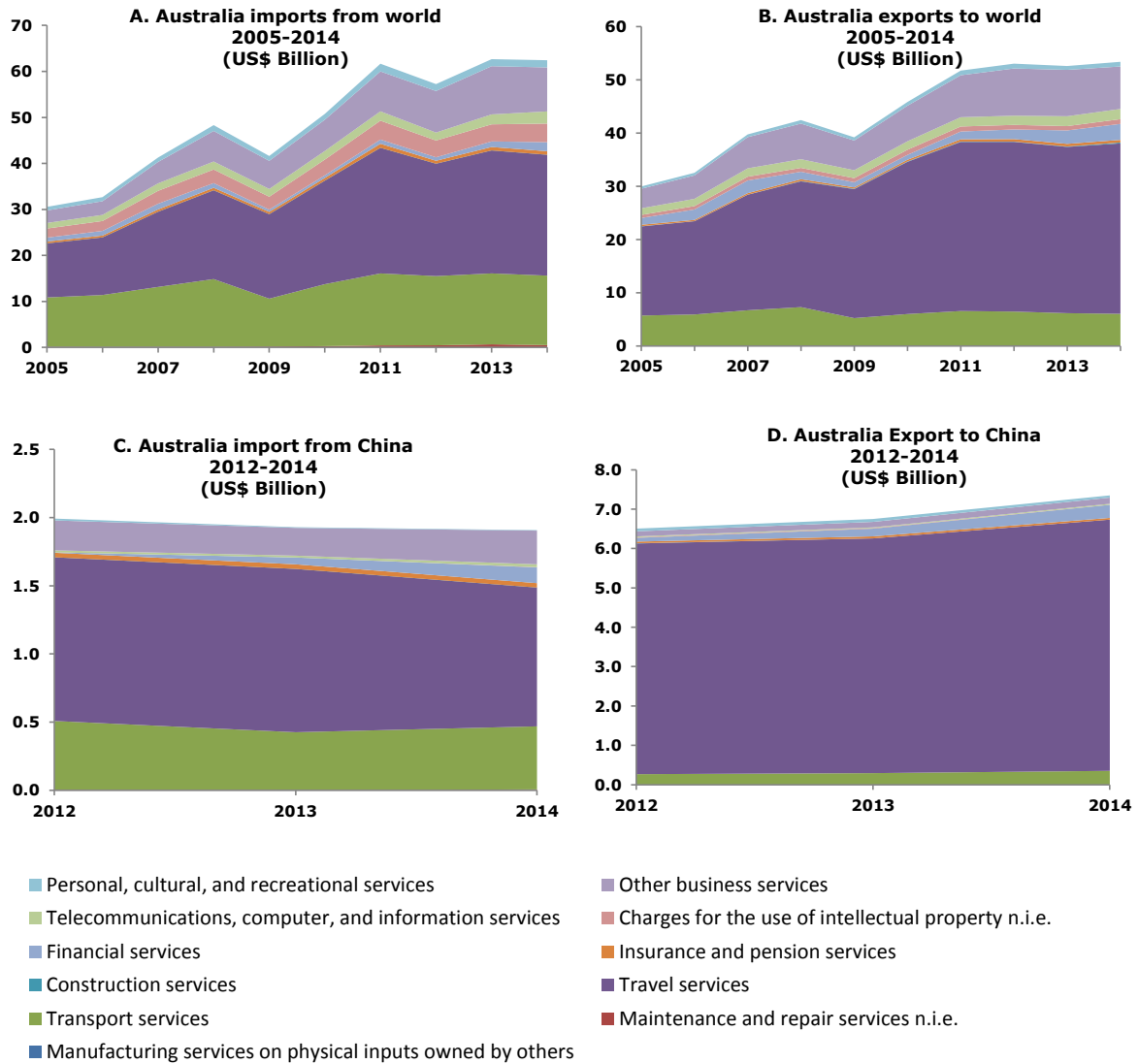
Source: UNSD Comtrade database.

## 1.2 Trade in services and investment

1.8. In 2014, Australia's shares of total commercial services exports and imports were 1.08% and 1.30% respectively, while China's share was 4.71% of world exports and 7.98% of world imports of services. With total commercial services exports of US\$53 billion, and imports of US\$62 billion, Australia was the world's 14<sup>th</sup> largest exporter and importer of commercial services. China was both the 3<sup>rd</sup> largest exporter (US\$232 billion) and importer (US\$382 billion).

1.9. Charts 1.3 and 1.4 below show global trade in commercial services for Australia and China (based on the period 2005-2014). For both Parties, the available sets of data show an overall deficit in trade in commercial services with the world. In the case of Australia, Travel, transport and other business services represent the three mainly traded services, in terms of both exports and imports. While this is also the case for China, services classified under charges for the use of intellectual property and insurance and pension services also represent an important proportion of China's overall global exports. Based on data provided by Australia, Charts 1.3C and 1.3D show Australia's bilateral trade in services with China during 2012-14. Australia's major imports include transport and travel services while exports are mainly classified under travel services. During the three year period before entry into force of the Agreement Australia ran a stable surplus in its services trade with China.

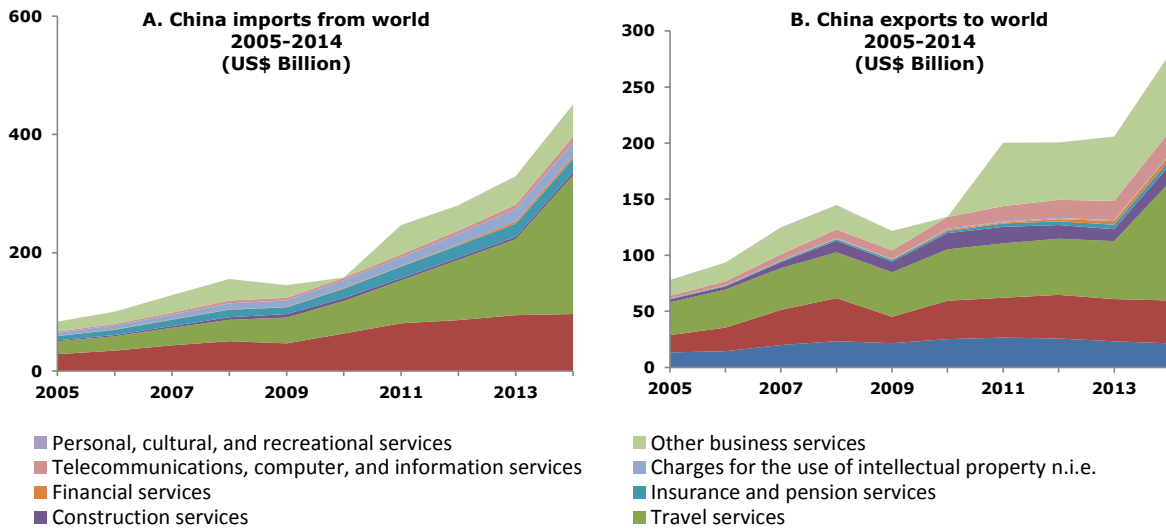
**Chart 1.3 Australia: Trade in commercial services with world (2005-2014) and China (2012-2014)**



**Note:**

- No imports from world on Manufacturing services on physical inputs owned by others (2006-2014) and Construction (2005-2014).
- No imports from China on Construction services and Manufacturing services on physical inputs owned by others (2012-2014); Charges for the use of intellectual property n.i.e. (2012, 2013).
- No Exports to China on Manufacturing services on physical inputs owned by others (2012-2014); Construction services (2014).

Source: WTO Statistics database (2005-2011), Australian authorities (2012-2014) based on BMP6.

**Chart 1.4 China: Trade in commercial services with world, 2005-2014**

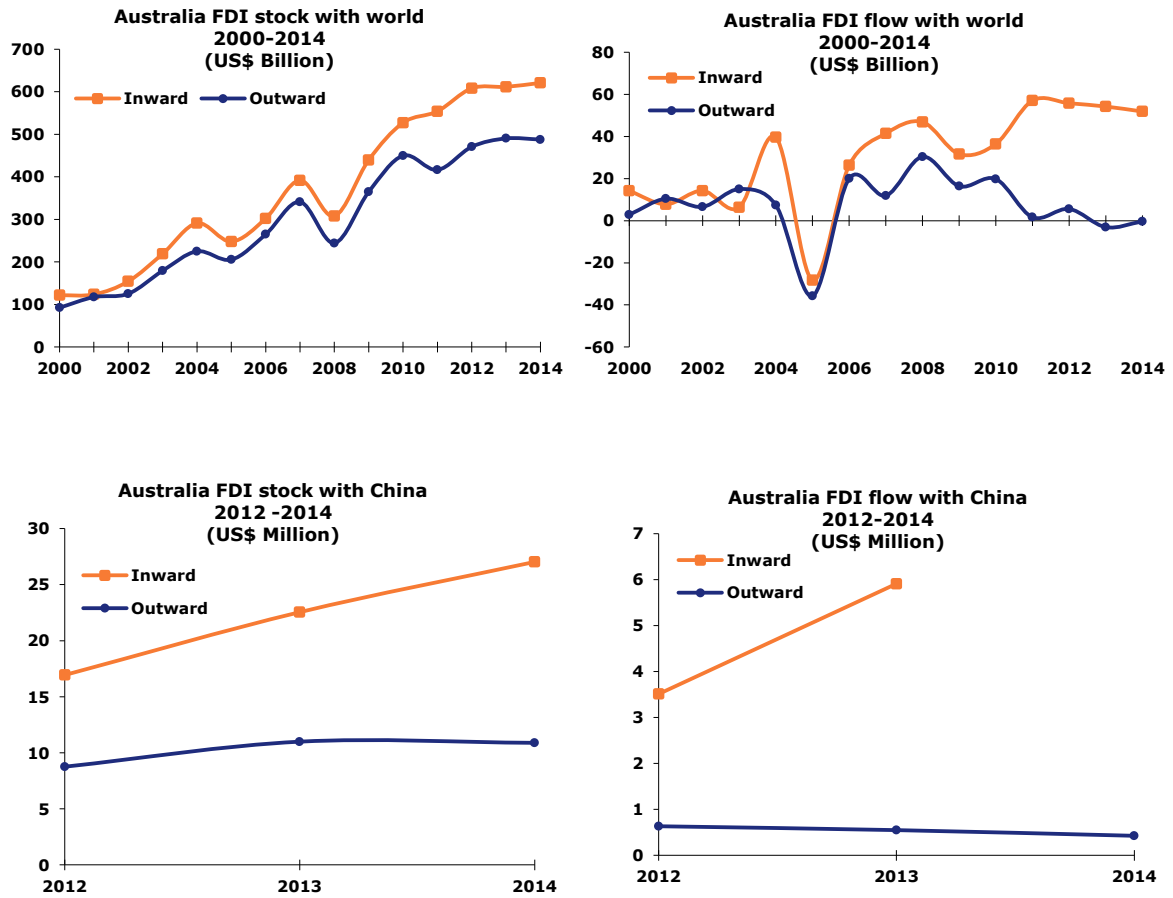
Note: For other business services the data (import and export) is missing for 2010.

Source: WTO Statistics database based on BMP6.

1.10. Charts 1.5 and 1.6 below depict each Party's foreign direct investment stocks and flows with the world during the period 2000-2014. FDI flows of both Parties with the world has grown steadily in the case of China, while fluctuating during the period for Australia, with however a major setback (in both inward and outward FDI flows) reported in 2005. Based on data reported by Australia, it was a net recipient of FDI for the period considered. The same trend can be observed based on data reported by China, though the order of magnitude differs. Complete data on bilateral FDI are not available.



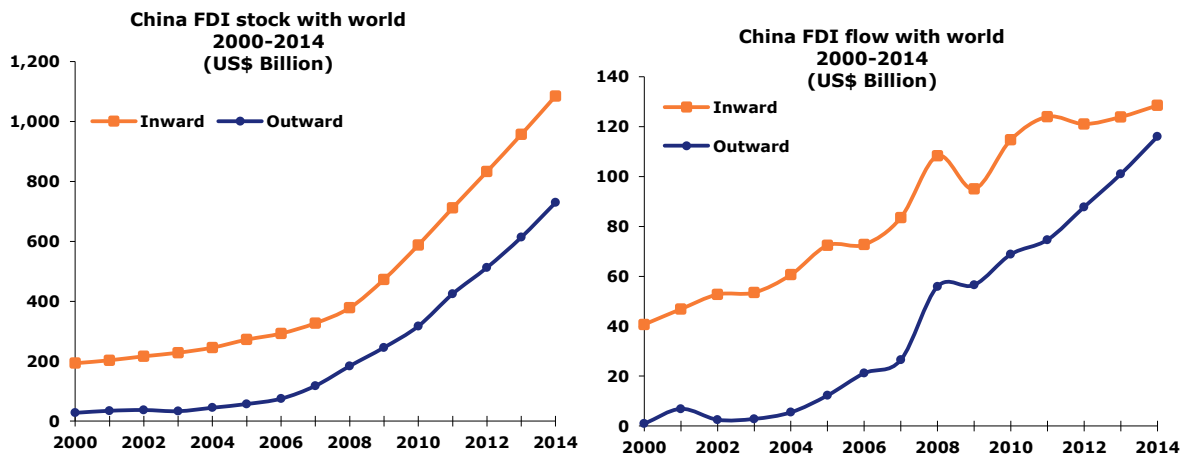
**Chart 1.5 Australia: FDI stock and flow with world (2000-2014) and with China (2012-2014)**



Note: Australia FDI in-flow with China in 2014 is not published.

Source: UNCTAD; World Invest Report 2014 and Australian Authorities (2001-2013).

**Chart 1.6 China: FDI stock and flow with the world (2000-2014)**



Source: UNCTAD (2000-2014).

## 2 CHARACTERISTIC ELEMENTS OF THE AGREEMENT

### 2.1 Background Information

2.1. The Agreement was signed on 17 June 2015 and notified on 26 January 2016 under Article XXIV:7(a) of GATT 1994 and Article V:7(a) of GATS (see document WT/REG369/N/1 - S/C/N/858). Its conclusion follows the Trade and Economic Cooperation Framework between China and Australia, adopted in 2003, and is also consistent with the APEC goals and principles.

2.2. The Agreement establishes a free trade area (Article 1.1). The text of the Agreement, together with its annexes, is available on the Parties' official websites:

**Australia:** <http://dfat.gov.au/trade/agreements/chafta/official-documents/Pages/official-documents.aspx>

**China:** [http://fta.mofcom.gov.cn/Australia/australia\\_special.shtml](http://fta.mofcom.gov.cn/Australia/australia_special.shtml)

2.3. The Agreement is composed of 17 Chapters. Table 2.1 below summarizes the structure of the Agreement. A number of Annexes, including the Parties' tariff elimination schedules and the lists of reservations on cross-border supply of services and establishment (non-conforming measures) and of specific commitments on trade in services also form part of the Agreement. Side letters on specific issues complement the text of the Agreement. The Agreement also includes memoranda of understanding on an investment facilitation arrangement, and on a work and holiday visa arrangement.

2.4. The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, within three years of the date of entry into force of the Agreement and at least every five years thereafter (Article 16.5).

**Table 2.1 Structure of the Agreement**

<b>Titles, Chapters (including Annexes) and Protocols</b>	<b>Title/description</b>
Preamble	
Chapter 1	Initial provisions and definitions
Chapter 2	Trade in goods
Chapter 3	Rules of origin and implementation procedures
Chapter 4	Customs procedures and trade facilitation
Chapter 5	Sanitary and phytosanitary measures
Chapter 6	Technical barriers to trade
Chapter 7	Trade remedies
Chapter 8	Trade in services
Chapter 9	Investment
Chapter 10	Movement of natural persons
Chapter 11	Intellectual property
Chapter 12	Electronic commerce
Chapter 13	Transparency
Chapter 14	Institutional provisions
Chapter 15	Dispute settlement
Chapter 16	General provisions and exceptions
Chapter 17	Final provisions
Side Letters (6)	- on skills assessment and licensing; - on financial services - on education - on legal services - on transparency rules applicable to investor-State dispute settlement - on traditional Chinese medicine
Memoranda of understanding (2)	- on investment facilitation arrangement - on a work and holiday visa arrangement

Source: WTO Secretariat based on the Agreement.

### 3 PROVISIONS ON TRADE IN GOODS

3.1. Chapter 2 of the Agreement covers trade in goods. It is complemented by Chapters 3 through 7, which also contain disciplines applicable to trade in goods.<sup>10</sup>

3.2. Chapter 2, *inter alia*, governs the elimination of customs duties according to the Parties' Schedules. It also confirms the applicability of Article VII of the GATT 1994 and the WTO Customs Valuation Agreement (Article 2.6), and prohibits the Parties from adopting or maintaining a measure that is inconsistent with the WTO Import Licensing Agreement (Article 2.8).

3.3. A Committee on Trade in Goods is established to address tariff and non-tariff barriers to trade in goods between the Parties (Article 2.15). It shall, among other functions, review Parties' non-tariff measures in certain circumstances to ensure that unnecessary obstacles to trade are not created (Article 2.7). The Committee shall submit an initial progress report on its work relating to non-tariff measures, including any recommendations, within one year of the date of entry into force of the Agreement. The Committee shall also review the implications of each periodic Harmonized System amendment and promptly recommend any necessary amendment to the Parties' Schedules of tariff concessions under the Agreement and/or the Annex containing the product specific rules of origin.

#### 3.1 Import duties and charges, and quantitative restrictions

##### 3.1.1 General provisions

3.4. The Parties agree to apply national treatment to each other's imports in accordance with Article III of GATT 1994, which is incorporated into and made part of the Agreement, *mutatis mutandis* (Article 2.3).

3.5. Neither Party shall adopt or maintain any prohibition or restriction or measure having equivalent effect, including quantitative restrictions, on the import of any good of the territory of the other Party, except as provided in the Agreement or in accordance with the WTO Agreement (Article 2.7).

3.6. With respect to administrative fees and formalities, the Agreement builds on the provisions of Article VIII of GATT 1994 (Article 2.8). It also foresees that each Party shall make available on the internet details of fees and charges it imposes in connection with importation and exportation.<sup>11</sup> Consular transactions, including related fees and charges, shall not be required in connection with the importation of any good of either Party.

##### 3.1.2 Liberalization of trade and tariff lines

3.7. The Parties shall eliminate customs duties on originating goods of the other party in accordance with their Schedules, contained in Annex I to the Agreement. Moreover, neither Party shall increase any existing customs duty, or adopt any new customs duty<sup>12</sup>, on an originating good of the other Party other than in accordance with the Agreement (Article 2.4).

##### 3.1.3 Liberalization schedule

3.8. Annex I to the Agreement contains the Parties' respective tariff elimination programmes. Part 1 of Annex I contains general notes applicable to the Parties' Schedules. Part 2 refers to Australia's Schedule, and Part 3 contains China's tariff concessions.

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<sup>10</sup> Chapters 3 through 7 contain disciplines on rules of origin; customs administration and trade facilitation; technical barriers to trade; sanitary and phytosanitary measures; and trade remedies.

<sup>11</sup> Australia-related information can be found at <https://www.border.gov.au/Busi/cost-recovery>. China-related information is not provided on a single portal website. The fees and charges can be found on the official websites of the following related government agencies of China: the General Administration of Customs; the General Administration of Quality Supervision, Inspection and Quarantine; the Ministry of Commerce; and the Ministry of Finance.

<sup>12</sup> A Party may, however, raise a customs duty to the level established in its Schedule to Annex 2-A following a temporary unilateral reduction.

3.9. The base rates of customs duty are set out in both Parties' Schedules. They reflect the MFN applied rates.

### 3.1.3.1 Australia

3.10. Australia's applied tariff in 2015 consisted of 6,184 lines at the HS eight-digit level (HS 2012). 99.73% of the tariff rates were *ad valorem* and 17 lines had non-*ad valorem* tariffs.<sup>13</sup>

3.11. Three staging categories apply to the elimination of customs duties by Australia:

- Customs duties for goods in category "0" were eliminated or were already duty free on the date of entry into force of the Agreement (20 December 2015);
- Customs duties for goods in category "3" shall be reduced to an bound at zero over three equal annual stages beginning from the entry into force of the Agreement. The goods shall be duty-free on 1 January 2017;
- Customs duties for goods in category "5" shall be reduced to an bound at zero over five equal annual stages beginning from the entry into force of the Agreement. The goods shall be duty-free on 1 January 2019.

3.12. Table 3.1 shows tariff elimination commitments by Australia under the Agreement. In 2015, 2,943 lines were duty free on an MFN basis, representing 47.6% of Australia's total tariff, corresponding to 37.3% of its imports from China during 2012-2014. Immediately following the entry into force of the Agreement, an additional 2,719 lines (44% of Australia's tariff) also became duty-free for imports from China. This resulted in 91.6% of Australia's tariff becoming duty free, corresponding to 81.6% of Australia's total imports from China (during 2012-2014). Further tariff lines will become duty free in 2017, and 2019, which corresponds to Australia's full implementation of its tariff elimination programme. As a consequence, four years after the entry into force of the Agreement, and at the end of the implementation period, the entirety of the Australian tariff will be duty free for imports from China.

**Table 3.1 Australia**  
**Tariff elimination commitments under the Agreement and corresponding average trade**

Duty phase-out period	Number of lines	% of total lines in Australia's tariff schedule	Value of Australia's imports from China (2012-2014) US\$ million	% of Australia's total imports from China 2012-2014
2015 (MFN)	2,943	47.6	16,919.5	37.3
2015	2,719	44.0	20,115.6	44.3
2017	427	6.9	7,543.5	16.6
2019	95	1.5	780.5	1.7
Remain dutiable	-	-	-	-
<b>Total</b>	<b>6,184</b>	<b>100.0</b>	<b>45,359.1</b>	<b>100.0</b>

Note: For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included.  
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from Australia and WTO-IDB.

3.13. Table 3.2 shows Australia's tariff elimination, by HS section. No tariff line will remain subject to duties once implementation is completed (in 2019).

<sup>13</sup> Eight lines were compound duties, five lines consisted in specific duties, and 4 lines were mixed duties.

**Table 3.2 Australia: Tariff elimination under the Agreement, by HS Section**

HS Section	MFN Average %	No. of lines	Duty-free lines under the MFN 2015	Number of duty-free lines under the Agreement			Remain dutiable	Avg. Final Tariff (Dutiable)
				2015	2017	2019		
I	0.0	339	332	7				
II	0.7	314	270	42	2			
III	1.8	49	31	18				
IV	2.6	287	139	144	4			
V	0.4	198	184	14				
VI	1.4	872	625	245	2			
VII	4.5	238	24	155	48	11		
VIII	3.4	92	29	60	2	1		
IX	3.3	143	50	93				
X	3.7	283	72	204	4	3		
XI	4.1	911	160	513	187	51		
XII	2.5	60	30	10	20			
XIII	3.4	161	50	103	5	3		
XIV	1.0	53	42	11				
XV	3.5	583	171	335	66	11		
XVI	2.9	953	405	505	33	10		
XVII	3.5	238	72	117	48	1		
XVIII	0.9	240	196	40	2	2		
XIX	1.6	19	13	6				
XX	3.6	144	41	97	4	2		
XXI	0.0	7	7					
<b>Total</b>	<b>2.6</b>	<b>6,184</b>	<b>2,943</b>	<b>2719</b>	<b>427</b>	<b>95</b>	<b>-</b>	<b>-</b>

Note: For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included.  
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from Australia and WTO-IDB.

### 3.1.3.2 China

3.14. China's applied tariff in 2015 consisted of 8,238 lines at the HS eight-digit level (HS 2012). 99.53% of the tariff rates were *ad valorem* and 39 lines had non-*ad valorem* tariffs.<sup>14</sup>

3.15. Thirteen staging categories apply to the elimination of customs duties by China:

- Customs duties for goods in category "0" were eliminated or were already duty free on the date of entry into force of the Agreement (20 December 2015);
- Customs duties for goods in eight other categories have started to be removed on the date of entry into force of the Agreement. They shall be eliminated in, respectively, 3, 5, 6, 8, 9, 10, 12, and 15 equal annual stages beginning on 1 January 2015. For category "3" the goods shall be duty-free on 1 January 2017 and the goods in category "15" shall be duty free on 1 January 2029;
- Customs duties for goods in categories "C-10\*" and "C-12\*" have started to be reduced on the date of entry into force of the Agreement. They shall be eliminated in, respectively, 10 and 12 equal annual stages beginning on 1 January 2015. The goods shall therefore be duty-free on, respectively, 1 January 2024 and 1 January 2026. In addition, the special agricultural safeguard mechanism in Article 2.14 shall apply for products contained in both categories.

<sup>14</sup> Thirty-four lines were specific duties, and 5 lines consisted in other duties.

- For customs duties for goods in category entitled "country tariff quota", the country-specific tariff quota in Article 2.13 shall apply for products of Australian origin, with the in-quota duty rate being zero and the base rate of duty remaining as out-quota duty rate
- Customs duties for goods in category "D" remain at the base rate, as indicated in China's Schedule of tariff concessions (Part 3 of Annex I).

3.16. Table 3.3 shows tariff elimination commitments by China under the Agreement. In 2015, 692 lines were duty free on an MFN basis, representing 8.4% of China's total tariff, corresponding to 71.4% of its imports from Australia during 2012-2014. Immediately following the entry into force of the Agreement, an additional 1,710 lines (20.8% of China's tariff) also became duty-free for imports from Australia. This resulted in 29.2% of China's tariff becoming duty free, corresponding to 85.4% of China's total imports from Australia (during 2012-2014). Further tariff lines will become duty free in 2017, 2019, 2020, 2023, 2024, 2026 and 2029, which corresponds to China's full implementation of its tariff elimination programme. As a consequence, ten years after the entry into force of the Agreement, 7,970 lines or 96.6% of the tariff will have become duty free. At the end of implementation, fourteen years after the entry into force of the Agreement, 96.8% of China's tariff will be duty free for imports from Australia<sup>15</sup>, corresponding to 95.1% of China's total imports from Australia. 3.2% of China's tariff will remain dutiable, corresponding to 263 tariff lines and representing 4.9% of China's total imports from Australia.

**Table 3.3 China**  
**Tariff elimination commitments under the Agreement and corresponding average trade**

Duty phase-out period	Number of lines	% of total lines in China's tariff schedule	Value of China's imports from Australia (2012-2014) US\$ million <sup>a</sup>	% of China's total imports from Australia 2012-2014
MFN (2015)	692	8.4	61,958.7	71.4
2015	1710	20.8	12,163.3	14.0
2017	2	0.0	4,728.0	5.4
2019	5418	65.8	2,154.9	2.5
2020	2	0.0	6.4	0.0
2022	18	0.2	487.8	0.6
2023	60	0.7	338.9	0.4
2024	63	0.8	594.3	0.7
2026	5	0.1	115.2	0.1
2029	5	0.1	0.2	0.0
Remain dutiable	263	3.2	4,275.3	4.9
<b>TOTAL</b>	<b>8238</b>	<b>100.0</b>	<b>86,823.0</b>	<b>100.0</b>

a Import coverage from HS chapter 1 to 97. Some of the import from Australia has been recorded outside the chapter 1 to 97. In particular, under the tariff line 98010010, there is an import volume of 6,931.4 million (2012-2014 Average) which is not included under the table above.

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included. Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from China and WTO-IDB.

3.17. Table 3.4 shows China's tariff elimination, by HS section. The 263 lines that will remain subject to duties once implementation is completed (in 2029) are found in sections I (Live animals and animal products); II (Vegetables); III (animal or vegetable fat and oils); IV (prepared foodstuffs, and beverages); VI (chemicals); IX (wood and wood products); X (pulp of wood); XI (textiles); and XVI (machinery), with final average tariffs at between 6.7% and 50%, the duties for the remain dutiable rates set at the same level as MFN rates as illustrated by Chart 3.1 below. The highest average tariffs for lines remaining dutiable are found in HS 10 (some cereals at 62.2%); 17 (some sugars and sugar confectionery at 50%); and 31 (some fertilizers at 50%).

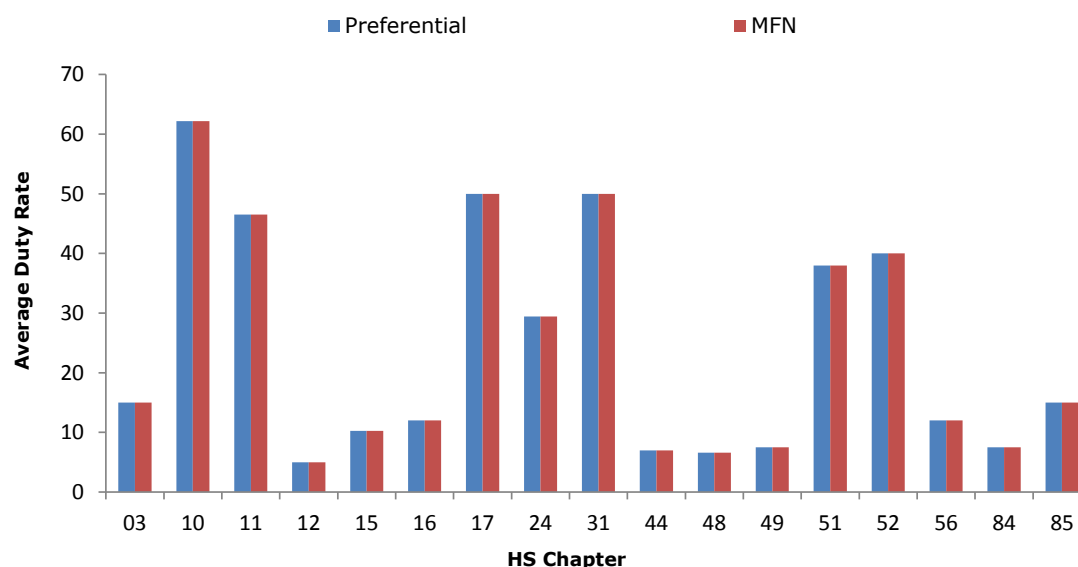
<sup>15</sup> Ten years after the entry into force of the Agreement, 95% of China's imports from Australia will be duty free.

**Table 3.4 China: Tariff elimination under the Agreement, by HS Section**

HS Section	MFN Average %	No. of lines	Duty-free lines under the MFN 2015	Number of duty-free lines under the Agreement									Remain dutiable	Avg. Final Tariff (Dutiable)
				2015	2017	2019	2020	2022	2023	2024	2026	2029		
I	11.6	488	63	8		379		2	9	21	5		1	15.0
II	14.3	510	54	38		379			7				32	46.6
III	13.0	56		1		25							30	10.2
IV	17.7	304	1	45		234		3					21	34.6
V	3.8	201	37	117	1	46								
VI	6.5	1,282	9	663		607							3	50.0
VII	9.4	271	1	6		264								
VIII	12.3	106		9	1	81	2	13						
IX	4.4	207	75	40		49							43	7.0
X	5.3	161	35			8							118	6.7
XI	11.4	1,141		171		914			44				12	36.2
XII	17.9	71				71								
XIII	13.5	194	1	6		187								
XIV	10.6	87	32	10		45								
XV	7.3	764	4	258		502								
XVI	8.3	1,496	280	204		1,005						4	3	10.0
XVII	13.1	351	1	60		248				42				
XVIII	9.9	334	34	74		225						1		
XIX	13.0	21				21								
XX	11.6	184	63			121								
XXI	9.6	9	2			7								
<b>Total</b>	<b>9.7</b>	<b>8,238</b>	<b>692</b>	<b>1,710</b>	<b>2</b>	<b>5,418</b>	<b>2</b>	<b>18</b>	<b>60</b>	<b>63</b>	<b>5</b>	<b>5</b>	<b>263</b>	<b>16.1</b>

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included.  
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from China and WTO-IDB.

**Chart 3.1 China: Average of dutiable rates, by HS Chapter**

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included. Based on the HS 2012 nomenclature.

Source: WTO estimates based on data provided by China and IDB, WTO.

### 3.1.4 Tariff rate quotas

3.18. With respect to Country Specific Tariff Quota (Article 2.13), China's tariff rate quotas (TRQs) to certain goods originating in Australia are specified in its Schedule to Annex I (Category entitled "country specific tariff quota). China grants duty-free treatment to imports of such products of Australian origin up to the quantity for each year as summarized below. Imports of Australian products in excess of the specified quantity in Annex 2-A shall be subject to the MFN applied rate. The quantities of the CSTQ beyond the last stage specified in Annex 2-A shall remain at the same level as the last stage.

**Table 3.5 Products covered by China's country specific tariff quota commitments under the Agreement**

HS Code	Product description
51011100	Greasy shorn wool, not carded or combed
51011900	Greasy wool (excl. shorn), not carded or combed
51012100	Degreased shorn wool, not carbonised, not carded or combed
51012900	Degreased wool (excl. shorn), not carbonised, not carded or combed
51013000	Carbonised wool, not carded or combed
51031010	Noils of wool, not garneted stock

Source: WTO Secretariat based on the Agreement (Annex 2-A).

**Table 3.6 Quantity of the Country Specific Tariff Quota**

Stage	Quantity of the Country Specific Tariff quota (tonnes)
1	30,000
2	31,500
3	33,075
4	34,729
5	36,465
6	38,288
7	40,203
8	42,213
9	44,324

Note: The specified quantities are expressed in terms of clean equivalent weight.

Source: WTO Secretariat based on the Agreement (Annex 2-A).



3.19. China shall operate the CSTQ in a transparent manner and, on request of Australia, provide information on the quantity of the CSTQ issued. Unless otherwise agreed, the rules applying to the administration of the CSTQ for the products of Australian origin will be consistent with the Detailed Rules for Implementation of Administration on Import Tariff Quotas of Wool and Wool Tops in 2015<sup>16</sup> or any successor rules in force in any given calendar year.

### 3.2 Rules of origin

3.20. Chapter 3 contains provisions on rules of origin and is supplemented by Annexes II (Product Specific Rules Schedule); 3-A (Certificate of origin); and 3-B (Declaration of origin).

3.21. A good qualifies as originating in a Party if it:

- is wholly obtained or produced, as defined in Article 3.3, in a Parties;
- is produced entirely in the territory of one or both Parties, exclusively from originating materials;
- is produced in the territory of one or both of the Parties, using non-originating materials, complies with the applicable product specified rule contained in Annex II to the Agreement, and meets the other applicable provisions of Chapter 3.

3.22. Annex II contains product specific rules of origin and the conditions that need to be fulfilled for products to qualify as originating in case the goods are processed in one or both Parties. While a change in tariff classification (Article 3.4), at the 2, 4, or 6-digit levels, as indicated in Section C of Annex II, constitutes the main criteria used to determine origin in cases of substantial transformation of goods, the regional value content (RVC) can be used as an alternative criterion in a number of cases.<sup>17</sup> The RVC is calculated according to the methods defined under Article 3.5 (Regional value content). When the RVC is used as an alternative method to determine the origin of a good, this means that the good must have a RVC of between 30% and 60%, as indicated in Annex II. Specific rules applicable to the chemical chapter (HS Chapters 27 to 40 that is the product of a chemical reaction) are contained in Section B to Annex II. If the chemical reaction occurred in the territory of a Party, the product of such chemical reaction shall be considered to be an originating good of a Party. Chemical reactions are defined in Section B of Annex II.

3.23. Non-originating products, whose value does not exceed 10% of the value of the good, may nonetheless be considered an originating good.

3.24. Chapter 3 contains, under Articles 3.8 through 3.13, disciplines on accessories, spare parts and tools; fungible materials; packing, packages and containers; neutral elements; minimal operations or processes; and direct consignment.

3.25. Cumulation of origin is governed by the provisions of Article 3.6. Originating goods of a Party used in the production of a good in the territory of the other Party shall be considered to originate in the territory of the other Party.

3.26. Section B of Chapter 3, complemented by Annexes 3-A<sup>18</sup> and 3-B<sup>19</sup>, contains disciplines on implementation procedures, covering in particular: certificate of origin; declaration of origin; claims for preferential tariff treatment; minor errors or discrepancies; waiver or certificate of origin or declaration of origin; amendments to certificates or declarations of origin; retention of origin documents; verification of origin; denial of preferential tariff treatment; goods transported *en route* after exportation; and review.

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<sup>16</sup> China's Ministry of Commerce Announcement No. 65 of 2014.

<sup>17</sup> This is particularly the case for goods classified under HS Chapters 09 (coffee, tea, mate and spices); 17 (sugars and sugar confectionery); 18 (cocoa and cocoa preparations); 35 (casein products); 70 (glass mirrors); 78 (lead articles); 79 (zinc articles); 80 (tin articles); 84 (some mechanical appliances and machines); 85 (electrical appliances); 87 (vehicles); 89 (ships, boats and floating structures); 90 (some optical and photographic equipment); and 95 (sport equipment).

<sup>18</sup> Annex 3-A lists the data elements and give instructions on the content of certificates of origin.

<sup>19</sup> Annex 3-B provides for a model format of a declaration of origin.

### **3.3 Export duties and charges, and quantitative restrictions**

3.27. Neither Party shall adopt or maintain any prohibition or restriction or measure having equivalent effect, including quantitative restrictions, on the exportation of any good destined for the territory of the other Party, except as provided in the Agreement or in accordance with the WTO Agreement (Article 2.7).

### **3.4 Regulatory provisions on trade in goods**

#### **3.4.1 Standards**

3.28. Chapter 5 covers sanitary and phytosanitary measures (SPS) and Chapter 6 addresses technical barriers to trade (TBT).

##### **3.4.1.1 Sanitary and phytosanitary measures**

3.29. Under the Agreement, SPS matters are regulated through Chapter 5. The Parties affirm their rights and obligations with respect to the other under the WTO Agreement on SPS (Article 5.4). In particular, provisions of the WTO Agreement on SPS relating to regionalisation and equivalence shall be accepted by each Party (Article 5.7). Moreover, each Party shall implement its control, inspection and approval procedures in accordance with its rights and obligations under that agreement (Article 5.8). Transparency provisions contain disciplines on notification; the use of international standard, guidelines or recommendations; procedures to be followed where urgent problems of health protection arise; and notification of non-compliance (Article 5.5). The Parties shall explore opportunities for further cooperation and collaboration on SPS matters at the bilateral, regional and multilateral levels (Article 5.6). The Parties' mutual commitments with respect to the provision of technical assistance and capacity building are covered by Article 5.9.

3.30. A Committee on Sanitary and Phytosanitary Measures is established under the Agreement and each Party shall designate a contact point responsible for coordinating the implementation of Chapter 5 (Article 5.11).

3.31. Article 5.10 provides that the dispute resolution mechanism set out in Chapter 15 does not apply to Chapter 5.

##### **3.4.1.2 Technical barriers to trade**

3.32. Chapter 6 covers TBT and applies to all standards, technical regulations, and conformity assessment procedures of the central level of government that may affect trade in goods between the Parties. The Parties affirm their rights and obligations under the WTO Agreement on TBT (Article 6.4).

3.33. Building on WTO TBT disciplines, the Agreement establishes joint disciplines for the use of international standards, guides and recommendations (Article 6.5); positive consideration to be given to accepting technical regulations of one Party as equivalent to the other Party's own (Article 6.6); and conformity assessment procedures (Article 6.7). The Parties also agree to work cooperatively in the fields of standards, technical regulations and conformity assessment procedures to facilitate trade between them (Article 6.9). Article 6.8 elaborates on transparency requirements; Article 6.10 covers information exchange between the Parties; and Article 6.11 addresses how the Parties shall consider further cooperation and technical assistance programs in the TBT field.

3.34. A Committee on Technical Barrier to Trade is established under the Agreement (Article 6.13).

3.35. Article 6.12 provides that the dispute settlement provisions set out in Chapter 20 on dispute resolution mechanism does not apply to Chapter 6.

#### **3.4.2 Safeguard mechanisms**

3.36. Chapter 7 refers, *inter alia*, to the use of bilateral and global safeguard measures, while Article 2.14 establishes the applicable disciplines for the special agricultural safeguard measures under the Agreement.

### 3.4.2.1 Global safeguards

3.37. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. The Agreement shall not confer any additional rights or impose any additional obligations on the Parties with respect to measures applied under them.

### 3.4.2.2 Bilateral safeguards

3.38. Disciplines on bilateral safeguard measures are contained in Articles 7.2 through 7.7. During the transition period<sup>20</sup>, a Party may apply a bilateral safeguard measure. Such a measure may consist of either (i) a suspension of the further reduction of the customs duty on the good provided for under the Agreement, or (ii) an increase in the rate of customs duty on the good to a level not to exceed the lesser of the MFN applied rate of duty in effect at the time the safeguard measure is applied, and the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of the Agreement. Neither tariff rate quotas nor quantitative restrictions would be permissible forms of bilateral safeguard measures.

3.39. A bilateral safeguard measure may be applied for such period of time as may be necessary to prevent or remedy serious injury pursuant to Article 7.2 of the Agreement. The total period of application of a bilateral safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years. Such measure shall be terminated in any case at the end of the transition period. A bilateral safeguard measure shall not be applied again on a product which has been subject to such a measure for a period of time equal to that during which the previous bilateral safeguard measure had been applied, provided that the period of non-application is at least two years. Where the expected duration of a bilateral safeguard measure is over one year, the applying Party shall progressively liberalize it at regular intervals.

3.40. According to Article 7.4, bilateral safeguard measures may only be applied following an investigation in accordance with the procedures and requirements provided for in Articles 3 and 4.2 of the WTO Safeguard Agreement. These two articles are incorporated into and made part of the Agreement, *mutatis mutandis*. Investigations shall be completed within one year of initiation. No bilateral safeguard measure or provisional safeguard measures (governed by Article 7.5) shall be applied against a particular good while a global safeguard measure under Article XIX of GATT 1994 and the WTO Safeguard Agreement in respect of that good is in place. Similarly a bilateral safeguard measure may not be maintained on a product that would become subject to a general safeguard measure.

3.41. A Party initiating a bilateral safeguard investigation, taking a decision to apply or extend a bilateral safeguard or taking a decision to liberalize a bilateral safeguard taken shall immediately notify the other Party. Such Party shall provide adequate opportunity for prior consultations with a view to reviewing the information, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation.

3.42. Consultations regarding appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure shall begin within 30 days of the application of the bilateral safeguard measure (Article 7.7). If the Parties are unable to agree on compensation, the Party against whose originating good the safeguard measure is applied may suspend the application of concessions that have trade effects substantially equivalent to the safeguard measure. The obligation to provide compensation and the corresponding right to suspend concessions shall terminate on the date of the termination of the safeguard measure.

### 3.4.2.3 Special agricultural safeguard measures

3.43. A special agricultural safeguard mechanism is established by Article 2.14. It is only available to China as specified in Annex 2-B to the Agreement in accordance with Article 2.14. The possibility of

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<sup>20</sup> The terms "transition period" in relation to a particular product means the three-year period from the date of entry into force of the Agreement. For any product for which the date on which the customs duty on that product is to be eliminated in accordance with Annex I (Schedules of tariff concessions) is more than three years, "transition period" shall mean the tariff elimination period for that product.

imposing a (safeguard) duty is granted to China when the aggregate volume of imports of certain Australian products<sup>21</sup>, listed in China's Schedule in Annex 6-A, exceeds the trigger quantity set out in the Annex. The sum of the (safeguard) additional duty and any other customs duties applied to the products in question shall not exceed the lesser of the MFN applied rate of customs duty in effect on the date on which the special agricultural safeguard measure is applied, or the base rate.<sup>22</sup> In the last stage of the application of a trigger level for the respective products as set out in Annex 2-B, the Committee on Trade in Goods will conduct a review of the special agricultural safeguard measure. In case the Committee determines that serious injury has occurred, then a further review will take place six years later, and every six years thereafter as required.

3.44. Agricultural safeguard measures may not be maintained beyond the end of the calendar year in which it they are applied. Moreover, they may not be maintained if the period specified in the agricultural safeguard provisions of the Schedule to Annex 2-B has expired. This period ranges from 15 years (for beef products) to 17 years (for milk powder) from entry into force of the Agreement.

3.45. Agricultural safeguard measures may not be applied or maintained, on the same good, at the same time a bilateral safeguard, or a global safeguard, based on Article XIX of the GATT 1994 and the WTO Agreement on Safeguard is also applied.

3.46. Transparency disciplines are also contained in Article 2.14, in connection to the application of the special agricultural safeguard measure.

#### **3.4.2.4 Measures to safeguard the balance-of-payments**

3.47. Restrictive import measures to safeguard the balance-of-payment, as well as those taken in serious external financial difficulties, may be taken in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994.

#### **3.4.3 Anti-dumping and countervailing measures**

3.48. Article 7.9 covers antidumping while Article 7.10 addresses, *inter alia*, countervailing measures.

3.49. Each Party retains its rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures with regard to the application of antidumping and countervailing measures and under the WTO Agreement on Implementation of Article VI of the GATT 1994.

3.50. Articles 7.9 and 7.10 reiterate notification obligations and underline the Parties' commitments to afford reasonable opportunities to enhance dialogue<sup>23</sup>, and to consult with a view to clarifying the factual situation and to arriving at mutually agreed solutions.

#### **3.4.4 Subsidies and State-aid**

3.51. Article 7.10 contains some disciplines on subsidies. While it confirms that each Party retains its rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures, it also states that the Parties shall ensure transparency of subsidy measures by exchanging their notifications to the WTO pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.

3.52. Each Party retains its rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures with regard to the application of antidumping and countervailing measures.

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<sup>21</sup> Annex 2-B sets out the goods originating in Australia that may be subject to agricultural safeguard measures under Article 2.14. The products concerned are: (a) some beef products (HS 02011000; 02012000; 02013000; 02021000; 02022000; and 02023000); and b) some milk powder (HS 04022100 and 04022900). Annex 2-B also contain, for each stage, the applicable quantity trigger level.

<sup>22</sup> The "base rate" is meant to be the starting point of elimination of customs duties as indicated in the Parties' Schedules to Annex 1-A.

<sup>23</sup> For instance, in matters of antidumping, through the regular holding of a High Level Dialogue on Trade Remedies.

### 3.4.5 Customs-related procedures

3.53. Chapter 4 covers customs administration and trade facilitation. It applies to customs procedures applied to the goods traded and the movement of means of transport between the Parties (Article 4.1). The Parties agree on transparency disciplines, including the establishment of enquiry points, (Article 4.7); use of information technology to support customs operations in a paperless trading context (Article 4.6); enhancing the use of risk management techniques in the administration of customs procedures (Article 4.5); and simplification of customs procedures for the efficient release of goods (Article 4.10). Chapter 4 also contains rules on review and appeal of decisions taken by customs administration and advance rulings (Articles 4.8 and 4.9); and customs cooperation (Article 4.4), including through consultation between the customs administrations of the Parties (Article 4.14). Specific disciplines are set in relation to the treatment of perishable goods (Article 4.11); for the temporary admission of goods (Article 4.12); acceptance of copies of supporting documents required for imported goods (Article 4.13).

3.54. With respect to the administration of trade regulations, Article 2.10 builds on Articles X and VIII of the GATT 1994.

## 4 PROVISIONS ON TRADE IN SERVICES AND INVESTMENT

4.1. Chapter 8 contains disciplines on trade in services, while Chapter 9 covers investment.<sup>24</sup> Annex III to the Agreement constitutes an integral part of the Parties' commitments under these two Chapters. For Australia, it includes market access commitments scheduled on a negative list basis. For China, it includes market access commitments scheduled in a positive list basis.

4.2. Chapter 10 complements the rules and disciplines on trade in services and investment as applied to measures affecting the movement of natural persons of a Party into the territory of the other Party.

4.3. A review clause is contained in Article 8.24. The Parties shall consult within two years of the date of entry into force of the Agreement and every two years thereafter, to review the implementation of Chapter 8 and consider other trade in services issues of mutual interest, with a view to the progressive liberalization of the trade in services between them. In case of unilateral liberalization by a party, the other party may request consultations to discuss the measure. As mentioned below, after the entry into force of the Agreement, at a time to be mutually agreed by them, the parties shall initiate a next round of negotiations on trade in services.

4.4. The Agreement established a Committee on trade in services (Article 8.20), as well as contact points (Article 8.21). It also established a Committee on investment (Article 9.7).

### 4.1 Scope and definitions

4.5. Chapter 8 applies to measures of a Party affecting trade in services, which is defined as the supply of a services through any of the four modes of supply, as identified under the GATS. Chapter 8 does not apply to all measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights and air traffic control and air navigation services.<sup>25</sup> Also excluded from the coverage of Chapter 8 are: government procurement; services supplied in the exercise of governmental authority; subsidies or grants; and measures affecting natural persons seeking access to the employment market.

### 4.2 Denial of benefits

4.6. In relation to trade in services, subject to prior notification and consultation, a Party may deny the benefits of chapter 8 to a service supplier of the other Party if the service supplier is a juridical person owned or controlled by persons of a third-party or of the denying Party, and has no

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<sup>24</sup> The term "investment" covers every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Investments may take a variety of forms.

<sup>25</sup> The following air-transport related measures are however covered by Chapter 8: aircraft repair and maintenance services; the selling and marketing of air transport services; computer reservation system services; airport operation services; and also: ground handling services; and specialty air services.

substantive business operations in the territory of the other Party (Article 8.17). In relation to investment however, the Agreement authorizes a Party to deny the benefits of Chapter 9 to an investor of the other Party and to investment of that investor if the investor is an enterprise owned or controlled either by persons of a third-party or of the denying Party, and that has no substantive business operations in the territory of the other Party. The benefits of Chapter 9 may also be denied by a Party to an investor that is an enterprise of the other Party and to investments of that investor if persons of an third-party own or control the enterprise and the denying Party adopts or maintains measures with respect to the third-party or a person of the third-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of Chapter 9 were accorded to the enterprise or its investments (Article 9.6).

### **4.3 General provisions on trade in services**

#### **4.3.1 Market access**

4.7. In relation to trade in services, and according to Article 8.6, China shall accord services and service suppliers of Australia treatment no less favourable than that provided for under the terms, limitations and conditions specified and for the sectors or sub-sectors listed in China's Schedule of specific commitment contained in Annex III. For Australia, measures of the types defined in Article 8.11 shall not be adopted or maintained in relation to access to its market by Chinese services or service providers, unless such existing measures are listed in Section A of Australia's Schedule of specific commitments in Annex III. Possible future non-conforming measures by Australia are listed in Section B its Schedule in Annex III.

4.8. Chapter 9 on investment does not contain a discrete market access article along the lines of GATS Article XVI, but Article 9.3 on national treatment in relation to investment provides for market access through the coverage of the national treatment provision with respect to investment is not exactly the same for Australia and for China, as underlined below.

#### **4.3.2 National treatment and MFN**

4.9. In relation to trade in services, Articles 8.5 and 8.7 contain national treatment and MFN rules binding China (using the positive listing approach) with respect to measures applicable to Australian services and service providers. MFN treatment is granted by China to Australian services and service providers in respect of the services sectors listed by China in Annex 8-A and subject to any conditions and qualifications set out therein.<sup>26</sup> The Agreement also clarifies that China's commitment to grant MFN treatment to Australian services and service providers does not cover possible preferential treatment granted by China to investors of Hong Kong, China; Macao, China; and the Separate Customs Territory of Taiwan, Penghu, Kinsmen and Matsu (Chinese Taipei).

4.10. The corresponding disciplines on national treatment and MFN binding Australia (using the negative listing approach) with respect to measures applicable to Chinese services and service providers are contained in Articles 8.10 and 8.12. Preferential treatment granted to third-parties through free trade agreements or multilateral international agreement in force prior to the entry into force of the Agreement are reserved, while, in the case of similar agreements concluded after the entry into force of the Agreement, a consultation mechanism is foreseen to discuss the possibility of extending, under the Agreement, such preferential treatment.

4.11. In relation to investment, similar provisions on national treatment and MFN treatment are contained in Articles 9.3 and 9.4 with respect to the Parties' investors and their investments when those are related to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. It should be noted nevertheless that China does not commit, unlike Australia with respect to Chinese investors, to accord national treatment with respect to the establishment or acquisition of investment in its territory by Australian investors.

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<sup>26</sup> The sectors contained in Annex 8-A cover all or parts of environmental services; constructions and related engineering services; services incidental to forestry; engineering services; integrated engineering services; computer and related services; tourism and travel related services; some scientific and technical consulting services; securities services; and some education services.



4.12. With respect to MFN disciplines<sup>27</sup> in connection with investment, the Agreement clarifies that China's commitment to grant MFN treatment to Australian investors does not cover possible preferential treatment granted by China to investors of Hong Kong, China; Macao, China; and the Separate Customs Territory of Taiwan, Penghu, Kinsmen and Matsu (Chinese Taipei). Both Parties reserve the right to adopt or maintain preferential treatment to investors of third-parties in accordance with any bilateral or multilateral international agreement involving aviation; fisheries; or maritime matters, including salvage. Bilateral or multilateral international agreements in force prior to the entry into force of the Agreement are also reserved, with respect to the application of the MFN treatment (for both trade in services and investment). For investment, this reservation also extends to "any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement".<sup>28</sup>

4.13. The Parties' commitments on national and MFN treatment do not, however, apply to the existing non-conforming measures which they list (positively or negatively) concerning the obligation of national and MFN treatment in Annex III to the Agreement.<sup>29</sup>

#### 4.3.3 Commercial presence

4.14. The Agreement does not have specific provisions concerning commercial presence other than what is covered implicitly by commitments related to the supply of services through mode 3, covered by Chapter 8 (trade in services).<sup>30</sup> Some non-conforming measures listed in Annex III (either through positive or through negative lists) have nationality and/or residence requirements for senior managers and/or board of directors that may affect the ability of service providers to establish commercial presence.

#### 4.3.4 Performance requirements

4.15. The Agreement does not have specific provisions on performance requirements. However, some non-conforming measures listed in Annex III (either through positive or through negative lists) contain specific requirements related to the performance of service providers that may affect the ability of service providers to benefit from a Party's specific commitment. Moreover, in relation to the future work programme addressed in Article 9.9, an Article, to be added in Chapter 9, should cover, *inter alia*, performance requirements.

#### 4.3.5 Senior Managers and Boards of Directors

4.16. The Agreement does not have specific provisions on senior managers and boards of directors. Some non-conforming measures are nevertheless listed in Annex III (in particular in the case of Australia as a negative lists approach is used) contain specific requirements applicable to senior managers and/or boards of directors that may affect the ability of service providers to fully benefit from a Party's specific commitment. Moreover, the Parties agree that the future work programme addressed in Article 9.9, an Article, to be added in Chapter 9, should cover, *inter alia*, senior managers and boards of directors.

#### 4.3.6 Movement of natural persons

4.17. Chapter 10 applies to measures affecting the movement of natural persons of a Party into the territory of the other Party under any of the categories referred to in Annex 10-A.

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<sup>27</sup> The Agreement clarifies that the MFN treatment does not encompass Investor-State Dispute Settlement procedure or mechanisms.

<sup>28</sup> See footnote 3.

<sup>29</sup> The Parties clarify that Australia has adopted a negative list approach for services and investment and that China has commitments, for services only, and in a positive list approach. China has not listed its investment commitment. Article 9.5 (non-conforming measures) says, for China, only that Articles 9.3 and 9.4 don't apply to "any existing non-conforming measures maintained within the territory ...". The Parties also note that the Future Work Program (Article 9.9) includes negotiations on scheduling of investment commitments by China on a negative list basis.

<sup>30</sup> The Parties clarify that, under the Agreement, mode 3 is covered exclusively in the Chapter 8 (trade in services). That means that mode 3 is carved out from Chapter 9 (investment), as confirmed in Article 9.2.2.

4.18. While requirements and procedures relating to citizenship, nationality, immigration, residence or permanent employment policies, as well as to immigration formalities remain within the sphere of competence of each Party and out of the scope of Chapter 10, the Agreement establishes some principles in relation to expeditious application procedures (Article 10.3); grant of temporary entry (Article 10.4); and transparency in relation to movement of natural persons (Article 10.5).

4.19. Australia's specific commitments in relation to movement of natural persons, contained in Annex 10-A, are undertaken in relation to Chinese business visitors; intra-corporate transferees, including certain types of executive or senior managers, specialists, or managers; independent executives; contractual service suppliers; installers and servicers; and accompanying spouses and dependants. China's corresponding specific commitments are contained in its Schedule of specific commitments in Annex III and cover comparable categories of Australian natural persons.<sup>31</sup>

4.20. Resolution of matters that might affect the operation of Chapter 10 shall be made through cooperation and consultations between the Parties. The dispute settlement procedures provided in Chapter 15 shall not apply to Chapter 10 unless the matter involves a pattern of practice, and all administrative remedies regarding the particular matter have been exhausted (Article 10.7).

4.21. In relation to Chapter 10, but also to Chapter 8 (trade in services), the Parties exchanged side letters on cooperation to streamline relevant skills assessment processes for temporary skilled labour visas. Such cooperation includes reducing the number of occupations currently subject to mandatory skills assessment for Chinese applicants for an Australian Temporary Work (Skilled) visa (subclass 457). Australia also agrees to remove the requirement for mandatory skills assessment for ten occupations<sup>32</sup> at the date of entry into force of the Agreement. The remaining occupations will be reviewed within two years of the date of entry into force of the Agreement, with the aim of further reducing the number of occupations, or eliminating the requirement within five years. The Parties also undertake to cooperate to encourage the streamlining of relevant licensing procedures and to improve access to relevant skills assessments. The areas of cooperation mentioned in the side letters, shall be reviewed within two years of the date of entry into force of the Agreement. Avenues for further cooperation in the areas of skills recognition and licensing shall also be discussed.

4.22. The Agreement establishes a Committee on movement of natural persons to meet within two years of entry in operation of the Agreement to review the implementation and operation of Chapter 10 and identify and recommend measures to promote increased movement of natural persons between the Parties and to improve the commitments undertaken by the Parties.

#### **4.4 Liberalization commitments**

4.23. The Agreement foresees two possible approaches to scheduling of specific commitments. Section A of Part II of Chapter 8 establishes the rules applicable when specific commitments are scheduled through a positive listing approach<sup>33</sup>, while Section B contains the disciplines and modalities applicable when electing a negative listing approach. While in the Agreement China lists its commitments using a GATS-like positive approach and Australia uses a negative listing approach, the Agreement establishes that, at a time to be mutually agreed by the Parties, the Parties shall initiate the next round of the negotiation on trade in services in the form of a negative listing approach (Paragraph 3 of Article 8.24). Similarly, the Parties shall commence negotiations on a comprehensive investment chapter, and, in the case of China, the adoption of investment commitments via a negative list, immediately after the review foreseen in Article 9.9 is completed (Paragraph 3c of Article 9.9).

4.24. The sections below compare the Parties' liberalization commitments under the Agreement and their GATS commitments. Each Party's GATS schedule is compared to Annex III to the Agreement. After recalling GATS MFN exemptions and identifying horizontal limitations in the GATS and in the

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<sup>31</sup> The following categories of natural persons are covered in China's Schedule (horizontal commitments): business visitors; managers, executives and specialists; contractual service suppliers, limited to some specific sectors only; installer and maintainers; and accompanying spouses and dependants.

<sup>32</sup> The ten occupations mentioned in the side letters are: automotive electrician; cabinetmaker; carpenter; carpenter and joiner; diesel motor mechanic; electrician (general); electrician (special class); joiner; motor mechanic (general); and motorcycle mechanic.

<sup>33</sup> In case the positive listing approach is used (China), additional commitments may also be scheduled in Annex III, as described in Article 8.8.



Agreement, Tables 4.3 and 4.4 summarize specific commitments under the Agreement, by main sectors and sub-sectors and compare them with GATS commitments. Improvements over existing GATS commitments may take the form of a reduction of the limitations to market access and/or national treatment, a relaxation of the form of establishment under mode 3, and/or additional commitments and increased coverage. However, horizontal limitations in the GATS Schedule of Specific Commitments and reservations covering all sectors are not included. Moreover, mode 4 commitments and limitations are, to a large extent, excluded. Furthermore, in relation to specific commitments undertaken by Australia, as commitments reflected in negative lists are difficult to compare with GATS types of commitments, the following sections are to be read in conjunction with the Parties' schedules of commitments under the Agreement.

4.25. The Parties' Schedules of specific commitments may be modified or commitments withdrawn at any time after three years have elapsed from the date on which that commitment entered in to force provided notification is made and consultations conducted to reach agreement on the appropriate compensatory adjustment (Article 8.22 on modification of Schedules).

#### **4.4.1 Australia**

##### **4.4.1.1 MFN and horizontal commitments**

4.26. In the GATS, Australia took commitments in 103 out of 155 services sectors. It did not make commitments, *inter alia*, on certain specific business services; postal and courier services, as well as audiovisual services; some education services (primary and adult education services); sanitation and similar services; hospital and social services; entertainment services and libraries, archives, museums and other cultural services; and internal waterways, space and rail transport services. Under the Agreement, as a negative list approach is chosen, as a principle, all the sectors are covered, though a number of non-conforming measures are listed in Annex III to the Agreement. The coverage of Australia's commitments under the Agreement is expanded to cover sectors and subsectors that were unbound under the GATS. This is in particular the case for some communication services (postal and courier services); adult education services; hospital and social services; some recreational services; and some transport services (in particular internal waterways transport, space transport and rail transport services). The degree of coverage expansion is however impacted by the introduction of two relatively broad horizontal carve-outs to exclude cultural industries (covering for instance audiovisual services as well as museum, archives, and cultural services) and to exclude public and social services (covering for instance some education services, aspects of health and social services; as well as some public transport services).

4.27. Under the GATS, Australia scheduled MFN exemptions for audiovisual services. The reserved areas cover co-production and/or actions taken to respond to any unreasonable measures imposed on Australian services or service suppliers by another WTO Member. Under the Agreement, MFN treatment commitments<sup>34</sup> for investment are referred to in Article 9.4, and, for trade in services, are governed by Article 8.12, while MFN-non-conforming measures are listed in Annex III. Through a broad cultural industries carve-out, and as under the GATS, Australia reserves MFN non-conforming measures that might be taken in the audiovisual sector. It also registers other MFN exemptions for existing measures (for example in connection to the activity of migration agent, or with regard to the provision of postal services, in principle exclusively reserved to Australia Post), and to cover measures that may be adopted in the future in relation to the necessity to protect Australia's essential security interests; in connection with investment screening for land ownership or activities of the agribusiness; with respect to the enforcement of laws maintained for public purpose; with respect to public education as well as the supply of education services though commercial presence; and with respect to human health as part of the broad public services carve-out. Under the Agreement, Australia also reserves the right to adopt or maintain any measures that accord more favourable treatment to the service suppliers or investors of third-parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Agreement. It moreover reserves the right to derogate from the MFN principle in relation to advantages that might be granted under any future bilateral or multilateral international agreement involving aviation, fisheries, or maritime matters, including salvage.

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<sup>34</sup> Not encompassing ISDS procedures.

4.28. Under the GATS, Australia makes horizontal reservations for establishment (mode 3) and in connection with the Foreign Acquisitions and Takeovers Act of 1975. Some residency requirements are also listed and preferential measures in favour of indigenous persons or organisations are unbound.<sup>35</sup> Under the Agreement, Australia replicates most of these reservations, though for reservations with respect to mode 4, Australia's specific commitments are contained in Annex 10-A (and not in Annex III as it is the case for China). Moreover, Australia improves the applicable conditions for movement of natural persons, as compared to its commitments under the GATS. While the coverage of commitments is expended through the negative listing approach, Australia also introduces horizontal reservations to cover preferences to indigenous persons<sup>36</sup> or organization; the acquisition of urban land; and the devolution to the private sector of services provided in the exercise of governmental authority at the time the Agreement entered into force. Australia also reserves the right to adopt or maintain any measures at the regional level of government that is not inconsistent with its Revised Services Offer of 31 May 2005, made in the context of the WTO Doha Development Agenda negotiations.<sup>37</sup>

#### 4.4.1.2 Sector specific commitments

4.29. The following section identifies some of the main differences, by sector, between Australia's GATS schedule and its sector-specific commitments under the Agreement. It should also be read in conjunction with Annex III of the Agreement.

**Table 4.1 Australia: comparison between the GATS and Agreement specific commitments**

Sectors / Sub-sectors	GATS	FTA		
		Compared to the GATS	Commitments on existing Measures	Commitments on future Measures
<b>1. Business services</b>				
A. Professional Services	Partial	Similar	Partial	Full
B. Computer and Related Services	Partial	Improved	Full	Full
C. Research and Development Services	Partial	Improved	Partial	Full
D. Real Estate Services	Partial	Similar	Partial	Full
E. Rental/Leasing Services without Operators	Partial	Improved	Full	Full
F. Other Business Services	Partial	Similar	Partial	Partial
<b>2. Communication services</b>				
A. Postal services	---	New	Partial	Full
B. Courier services	---	New	Full	Full
C. Telecommunication services	Partial	Similar	Partial	Full
D. Audiovisual services	---	New	Full	Partial
E. Other	---	New	Full	Full
<b>3. Construction and related engineering services</b>				
A. General construction work for buildings	Full	Similar	Full	Full
B. General construction work for civil Engineering	Full	Similar	Full	Full
C. Installation and assembly work	Full	Similar	Full	Full
D. Building completion and finishing work	Full	Similar	Full	Full
E. Other	---	New	Full	Full
<b>4. Distribution services</b>				
A. Commission agents' services	Partial	Improved	Partial	Full
B. Wholesale trade services	Partial	Improved	Partial	Partial
C. Retailing services	Partial	Improved	Partial	Partial
D. Franchising	Full	Similar	Full	Full
E. Other	---	New	Full	Full
<b>5. Education services</b>				
A. Primary education services	---	New	Full	Partial
B. Secondary education services	Partial	Similar	Full	Partial
C. Higher education services	Partial	Similar	Full	Partial
D. Adult education	---	New	Full	Partial
E. Other education services	Partial	Similar	Full	Partial
<b>6. Environmental services</b>				
A. Sewage services	Full	Similar	Full	Full
B. Refuse disposal services	Full	Similar	Full	Full
C. Sanitation and similar services	Full	Similar	Full	Full
D. Other	---	New	Full	Full
<b>7. Financial services</b>				
A. All insurance and insurance-related services	Partial	Similar	Full	Partial
B. Banking and other financial services	Partial	Similar	Partial	Partial

<sup>35</sup> Mode 4 commitments and reservations are handled in a separate section of this factual presentation.

<sup>36</sup> The term "indigenous" covers Aboriginal and Torres Strait Islander peoples.

<sup>37</sup> See WTO document TN/S/O/AUS/Rev.1.

Sectors / Sub-sectors	GATS	FTA		
		Compared to the GATS	Commitments on existing Measures	Commitments on future Measures
<b>8. Health related and social services</b>				
A. Hospital services	---	New	Partial	Partial
B. Other Human Health Services	Partial	Similar	Partial	Partial
C. Social Services	---	New	Full	Partial
D. Other	---	New	Full	Partial
<b>9. Tourism and travel related services</b>				
A. Hotels and restaurants (including catering)	Full	Similar	Full	Full
B. Travel agencies and tour operators services	Partial	Similar	Partial	Full
C. Tourist guides services	Full	Similar	Full	Full
D. Other	---	New	Full	Full
<b>10. Recreational and cultural and sporting services</b>				
A. Entertainment services	---	New	Full	Full
B. News agency services	Full	Similar	Full	Full
C. Libraries, archives, museums and other cultural services	---	New	Full	Partial
D. Sporting and other recreational services	Partial	Improved	Partial	Full
E. Other	---	New	Full	Partial
<b>11. Transport services</b>				
A. Maritime Transport Services	Partial	Similar	Partial	Partial
B. Internal Waterways Transport	---	New	Full	Partial
C. Air Transport Services	Partial	Improved	Partial	Partial
D. Space Transport	---	New	Full	Partial
E. Rail Transport Services	---	New	Full	Full
F. Road Transport Services	Partial	Improved	Partial	Partial
G. Pipeline Transport	Full	Similar	Full	Full
H. Services auxiliary to all modes of transport	Partial	Improved	Full	Full
I. Other Transport Services	---	New	Full	Full

General Note: MFN and Horizontal limitations, as well as Mode 4 commitments/limitations not considered.

Partial: Specific commitments subject to some limitation(s) under market access or national treatment, under any of the three modes.

Full: Specific commitments not subject to limitation(s) under market access or national treatment, under any of the three modes.

---: No specific commitment.

New: New commitments under the Agreement (full or partial, with or without limitations) which can, in most but not all cases, be seen as "improved". In some cases, a broad carve-out may diminish, or even nullify, the possible improvement represented by a "new" commitment.

Improved: Overall improved commitments made under the Agreement compared to those under the GATS.

Similar: Similar commitments (Agreement vs GATS); though possibly, in individual cases, with limited improvements and/or limited additional reservations.

Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/AUS), prepared by the Secretariat (in 2003) and Australia's Schedules annexed to the Agreement.

#### 4.4.1.2.1 Business services

4.30. No reservation is made for new measures that Australia may take in the future, except if preferential treatment involving fisheries are granted through future bilateral agreements with third-parties. However, a number of existing measures are listed as non-conforming measures. Australia improves the coverage of its commitments by virtue of using a negative list, as compared to its commitments under GATS. This is in particular the case for computer and related services and rental and leasing services without operators, for which it has full commitments without limitations under the Agreement. Reservations made for the other sub-sectors of business services (some professional services; research and development services with respect to bio-discovery; some real estate services; and different types of other business services, including in connection with fishing, pearling, and mining, mirror the reservations contained in Australia's commitments under the GATS.

4.31. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of commercial legal services. They also exchanged side letters in relation to services by Traditional Chinese Medicine (TCM) practitioners.

#### **4.4.1.2.2 Communication services**

4.32. Full commitments are made in the Agreement for postal and courier services, which are unbound under the GATS. However, Australia clarifies that certain activities undertaken by Australia Post, a wholly-owned government entity, are performed under exclusivity rights conferred with respect to issuing postage stamps and carrying of letters within Australia. With respect to telecommunication services, restrictions under the GATS are, in essence, mirrored by the Agreement, while audiovisual services, unbound under the GATS, are subject to a number of limitations and conditional specific commitments forming part of a broad carve-out covering cultural industries.

#### **4.4.1.2.3 Construction and related engineering services**

4.33. As under the GATS, full commitments without limitation are made.

#### **4.4.1.2.4 Distribution services**

4.34. As a result of using a negative list approach, the coverage under the Agreement is expanded, as compared to under the GATS. Existing reservations are nevertheless listed with respect to (sub-federal level) some licensed agents; some marketing arrangements for rice and potatoes; and in relation to the distribution of firearms, tobacco, and wine. Reservations for possible future non-conforming measures in relation to the distribution of the above-mentioned goods are also registered. As under the GATS, franchising is fully covered without any limitation or restriction.

#### **4.4.1.2.5 Educational services**

4.35. Australia reservation of its right to adopt or maintain any measure with respect to the supply of education services through commercial presence reflects the different approach to the scheduling of its education commitments adopted under the Agreement as compared to the one used under GATS. The broad public services carve-out cover public education and public training. Moreover, a specific education services entry is contained in Section B of Annex III, which states that Australia may maintain existing, or adopt new or more restrictive measures that do not conform with its national principle and MFN principle commitments.

4.36. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of education services.

#### **4.4.1.2.6 Environmental services**

4.37. As under the GATS, full commitments are made without limitation.

#### **4.4.1.2.7 Financial services**

4.38. Australia's commitments under the agreement are largely based upon its GATS commitments. While non-conforming measures with respect to financial services are listed in Sections A and B of Annex III Australia's commitments (for existing and possible future measures) are subject to the limitations and conditions set forth in Annex 8-B. Prudential regulations apply in connection with Australia's commitments and Australia reserves the right to require the non-discriminatory licensing or registration of cross-border financial service suppliers of China and of financial instruments in accordance with domestic regulation provisions applicable to financial services. Under the Agreement, Australia reserves the right to adopt or maintain any measure regarding solicitation in its territory. Specific limitations are set under the Agreement in relation to the provision of certain services through mode 1. Moreover, existing non-conforming measures with respect to some banking services are registered under the Agreement, in particular in relation to authorisation to undertake banking business as a deposit-taking institution, and related-conditions; the coverage of liabilities of the previously Commonwealth Government-owned by transitional guarantee arrangements; some local requirements applicable (at provincial level) in relation to the provision of credit, debt collection or operation as a finance broker, as well as in the context of operation by second-hand dealer or pawnbroker.

4.39. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of financial services.

#### **4.4.1.2.8 Health related and social services**

4.40. While all health related sub-sectors are covered by virtue of the negative list approach, the public service carve-out cover any measure with respect to health and child care, thus essentially offering a similar level of coverage as under the GATS.

#### **4.4.1.2.9 Tourism and travel related services**

4.41. Australia's commitments under the Agreement, offering full and almost unrestricted coverage (with the exception of travel agents operating in one Province) largely mirror its GATS commitments.

#### **4.4.1.2.10 Recreational, cultural and sporting services**

4.42. Australia builds on its GATS commitments, improves its coverage in particular in relation to entertainment services, sporting and other recreational services, though these activities are also subject to the carve-out for communication services and recreational, cultural and sporting services. It registers a limitation on gambling and betting related services. The broad carve-out applicable to cultural industries also covers libraries, archives, museums and other cultural services.

#### **4.4.1.2.11 Transport services**

4.43. While replicating some of the limitations contained under its GATS Schedule and expanding the coverage of specific commitments through the negative list approach, Australia improves the scope and depth of its commitments as compared to under the GATS. This in particular done for space transport. While specific existing non-conforming measures are registered with respect to some maritime transport services (cargo-shipping for instance), the provision of some airline services, and some activities connected to road transport (taxi in particular) are subject to a reservation. Maritime cabotage is completely excluded and a general reservation is made for vessel registration, investment in activities of federal airports, matters covered by existing bilateral agreements with third-parties and/or future agreements that may be concluded on maritime matters, including salvage. Moreover, the broad public services carve-out also covers public transport.

### **4.4.2 China**

#### **4.4.2.1 MFN and horizontal commitments**

4.44. In its GATS schedule, China took commitments in 93 out of 155 services sectors. While partial commitments are made for many sectors, real estate as well as rental and leasing services, postal and courier services, the entire education sector, some environmental services, the entire health related and social services sector and recreational and cultural and sporting services, and some transport services (internal waterways transport, space, rail and pipeline transport services) are unbound under the GATS. Under the Agreement, the scope of China's commitments is improved essentially by expanding the commitments' coverage to some professional and other business services, some health related services (hospital services, and other human health services), and to some transport services (particularly air transport services and some aspects of road transport services).

4.45. China's limited MFN exemptions under the GATS are circumscribed to some transport services (maritime, international transport, and freight and passengers) and make reference to bilateral agreements that China may conclude with respect to certain forms of natural persons that may engage in business in China in the specified sectors. Agreements of cargo sharing are also reserved.

4.46. Under the Agreement, as under the GATS, China has horizontal reservations on the purchase of land, in relation to establishment. Another horizontal reservation under the GATS is on the movement of natural persons (mode 4) and is addressed in another section of this factual presentation. The horizontal limitation on foreign portfolio investments in certain Chinese stocks listed under the GATS is reflected under some restrictions scheduled by China under the Agreement (under Annex III). Like Australia, China reserves the right to adopt or maintain any measures that accord more favourable treatment to the service suppliers or investors of third-parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Agreement. It moreover reserves the rights to derogate from the MFN principle in relation to advantages that might

be granted under any future bilateral or multilateral international agreement involving aviation, fisheries, or maritime matters, including salvage.

#### 4.4.2.2 Sector specific commitments

4.47. The following section identifies some of the main differences, by sector, between China's GATS schedule and its sector-specific commitments under the Agreement, using a positive listing approach. It should also be read in conjunction with Annex III of the Agreement.

**Table 4.2 China: comparison between GATS and Agreement specific commitments**

Sectors / Sub-sectors	GATS	FTA	
		Compared to the GATS	Specific commitments under the Agreement
<b>1. Business services</b>			
A. Professional Services	Partial	Improved	Partial
B. Computer and Related Services	Partial	Similar	Partial
C. Research and Development Services	---	New	Partial
D. Real Estate Services	Partial	Similar	Partial
E. Rental/Leasing Services without Operators	---	Similar	---
F. Other Business Services	Partial	improved	Partial
<b>2. Communication services</b>			
A. Postal services	---	Similar	---
B. Courier services	Partial	Similar	Partial
C. Telecommunication services	Partial	Improved	Partial
D. Audiovisual services	Partial	Similar	Partial
E. Other	---	Similar	---
<b>3. Construction and related engineering services</b>			
A. General construction work for buildings	Partial	Similar	Partial
B. General construction work for civil Engineering	Partial	Similar	Partial
C. Installation and assembly work	Partial	Similar	Partial
D. Building completion and finishing work	Partial	Similar	Partial
E. Other	Partial	Improved	Partial
<b>4. Distribution services</b>			
A. Commission agents' services	Partial	Similar	Partial
B. Wholesale trade services	Partial	Similar	Partial
C. Retailing services	Partial	Similar	Partial
D. Franchising	Full	Similar	Full
E. Other	Full	Improved	Full
<b>5. Education services</b>			
A. Primary education services	Partial	Similar	Partial
B. Secondary education services	Partial	Similar	Partial
C. Higher education services	Partial	Similar	Partial
D. Adult education	Partial	Similar	Partial
E. Other education services	Partial	Similar	Partial
<b>6. Environmental services</b>			
A. Sewage services	Partial	Improved	Partial
B. Refuse disposal services	Partial	Improved	Partial
C. Sanitation and similar services	Partial	Improved	Partial
D. Other	Partial	Improved	Partial
<b>7. Financial services</b>			
A. All insurance and insurance-related services	Partial	Improved	Partial
B. Banking and other financial services	Partial	Improved	Partial
<b>8. Health related and social services</b>			
A. Hospital services	---	New	Partial
B. Other Human Health Services	---	New	Partial
C. Social Services	---	Similar	---
D. Other	---	Similar	---
<b>9. Tourism and travel related services</b>			
A. Hotels and restaurants (including catering)	Partial	Similar	Partial
B. Travel agencies and tour operators services	Partial	Similar	Partial
C. Tourist guides services	---	Similar	---
D. Other	---	Similar	---
<b>10. Recreational and cultural and sporting services</b>			
A. Entertainment services	---	Similar	---
B. News agency services	---	Similar	---
C. Libraries, archives, museums and other cultural services	---	Similar	---
D. Sporting and other recreational services	---	Improved	Partial
E. Other	---	Similar	---

Sectors / Sub-sectors	GATS	FTA	
		Compared to the GATS	Specific commitments under the Agreement
<b>11. Transport services</b>			
A. Maritime Transport Services	Partial	Improved	Partial
B. Internal Waterways Transport	Partial	Similar	Partial
C. Air Transport Services	Partial	Improved	Partial
D. Space Transport	---	Similar	---
E. Rail Transport Services	Partial	Similar	Partial
F. Road Transport Services	Partial	Improved	Partial
G. Pipeline Transport	---	Similar	---
H. Services auxiliary to all modes of transport	Partial	Similar	Partial
I. Other Transport Services	---	Similar	---

General Note: MFN and Horizontal limitations, as well as Mode 4 commitments/limitations not considered.

Partial: Specific commitments subject to some limitation(s) under market access or national treatment, under any of the three modes.

Full: Specific commitments not subject to limitation(s) under market access or national treatment, under any of the three modes.

---: No specific commitment.

New: New commitments under the Agreement (full or partial, with or without limitations) which can, in most but not all cases, be seen as "improved".

Improved: Overall improved commitments made under the Agreement compared to those under the GATS.

Similar: Similar commitments (Agreement vs GATS); though possibly, in individual cases, with limited improvements and/or limited additional reservations.

Source: Draft Consolidated GATS Schedule of Specific Commitments (S/DCS/W/CHN and Corr.1), prepared by the Secretariat (in 2003 and 2005) and China's Schedules annexed to the Agreement.

#### 4.4.2.2.1 Business services

4.48. While essentially mirroring its GATS commitments, China registers additional conditional commitments in relation to the activity of Australian law firms registered in the (Shanghai) Pilot Free Trade Zone. Partial commitments are also made in relation to some research and development services, unbound under the GATS. New Partial commitments are also made in connection with some other business services, including project management services other than for construction; some services incidental to mining; some services incidental to manufacturing; building-cleaning services; and some printing services.

4.49. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of commercial legal services. They also exchanged side letters in relation to services by Traditional Chinese Medicine (TCM) practitioners.

#### 4.4.2.2.2 Educational services

4.50. Under the Agreement, China mirrors the commitments made under the GATS with unchanged conditions and limitations. It also agrees to list within one year, through its examination and evaluation procedures<sup>38</sup>, the 77 Australian CRICOS<sup>39</sup>-registered higher education institutions that are set up in accordance with Australian laws and eligible to confer diplomas or degrees recognised by Australian education authorities.

4.51. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of education services.

<sup>38</sup> On the website <http://www.jsi.edu.ch>.

<sup>39</sup> CRICOS refers to the Commonwealth Register of Institutions and Courses for Overseas Students.



#### **4.4.2.2.3 Environmental services**

4.52. The whole sector is unbound under the GATS. Under the Agreement, China makes commitments, limited to commercial presence with some conditions, for hospital services and social services for the aged.

#### **4.4.2.2.4 Financial services**

4.53. While China's commitments under the Agreement mirror most of those in the GATS, some additional commitments are made with respect to Australian providers of banking and other financial services. In particular, for financial leasing services, financial leasing corporations of Australia are permitted to provide financial leasing service at the same time as domestic corporations. Relaxed conditions are also applicable for financial institutions of Australia who meet certain conditions to establish a subsidiary of a bank of Australia in China.

4.54. In relation to insurance services, Australian insurance providers access to China's third-party liability motor vehicle insurance market, is granted without form of establishment or equity restrictions.

4.55. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of financial services.

#### **4.4.2.2.5 Health related and social services**

4.56. China has removed its requirement for joint ventures applicable under the GATS to the sector.

#### **4.4.2.2.6 Recreational and cultural and sporting services**

4.57. The whole sector is unbound under the GATS. Under the Agreement, China makes full commitment for some sporting and other recreational services.

#### **4.4.2.2.7 Transport services**

4.58. China's GATS commitments are reproduced under the Agreement with additional commitments made for sectors not previously covered such as some air transport services (selling and marketing of air transport services; airport operation services; ground handling services; and speciality air services); and some road transport services (passenger transportation).

#### **4.4.2.2.8 Communication services; construction and related engineering services; distribution services; and tourism and travel related services.**

4.59. For the above-mentioned sectors, under the Agreement, China mirrors the commitments made under the GATS with unchanged conditions and limitations. It can nevertheless be mentioned that the somewhat horizontal market access commitments applicable to the Shanghai Free Trade Zone (SFTZ) may be seen as a market access improvement, as compared to China's GATS commitments. For example, Australian companies established in the SFTZ that are undertaking joint construction projects with Chinese counterparts in Shanghai are granted improved market access.

### **4.5 Regulatory provisions**

#### **4.5.1 Domestic regulation**

4.60. Article 8.13 replicates the disciplines relating to qualification requirements, and procedures, technical standards and licensing requirements contained in Articles VI.1 through VI.6 of the GATS. A Party shall also permit service suppliers of the other Party to use the enterprise names under which they trade in the territory of the other Party.



## **4.5.2 Recognition**

4.61. Under Article 8.14, the Agreement mirrors the provisions in paragraphs 1 through 3 of Article VII of the GATS. It also states that the MFN provisions (Articles 8.7 and 8.12) shall not be construed to require a Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party, where recognition is granted autonomously in favour of or by agreement with a third-party.

4.62. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of professional and vocational qualifications to strengthen cooperation and to explore possibilities for mutual recognition of respective professional and vocational qualifications (Article 8.15).

## **4.5.3 Subsidies**

4.63. Subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance are specifically excluded from the coverage of Chapter 8 (trade in services) and of Chapter 9 (investment).

## **4.5.4 Safeguards**

### **4.5.4.1 Measures to safeguard the balance-of-payments**

4.64. In the case of trade in services, restrictive import measures to safeguard the balance-of-payment, as well as those taken in serious external financial difficulties, may be taken in respect of which a Party has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. In the case of investments, a Party may adopt or maintain restrictions on payments or transfers related to covered investments (Article 16.6, letters b and c).

## **4.5.5 Other**

### **4.5.5.1 Monopolies and exclusive service suppliers**

4.65. In Article 8.23, on monopolies and exclusive service suppliers, the Agreement essentially replicates Article VIII of the GATS.

### **4.5.5.2 Bilateral taxation arrangement**

4.66. The Parties shall review their bilateral taxation arrangement, having regard to mutual economic objectives and international taxation standards (Article 8.25, paragraph 1).

### **4.5.5.3 Investment**

4.67. Investment is specifically addressed in Chapter 9. It applies to measures by a Party relating to investors of the other Party and covered investment. Chapter 9 does not apply to government procurement and subsidies. Moreover, it does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of the Agreement.

4.68. Chapter 9 (on investment) does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (trade in services) or Chapter 10 (movement of natural persons).

4.69. In addition to the above-mentioned provisions on national treatment; MFN treatment; denial of benefits; and to disciplines on general exceptions (Article 9.8), Chapter 9 also contains a future work program (Article 9.9). The Parties agree to conduct a review of the investment legal framework between them no later than three years after the date of entry into force of the Agreement. The review shall include consideration of Chapter 9 but also of the Agreement between Australia and China on the *Reciprocal Encouragement and Protection of Investments*. Unless the Parties otherwise agree, they shall commence negotiations on a comprehensive investment chapter, reflecting outcomes of the review immediately after such review is completed. Article 9.9 identifies some elements that the

negotiations shall include.<sup>40</sup> Section B of Chapter 9 establishes an investor-State dispute settlement (ISDS) mechanism which is summarized below under the dispute settlement section.

#### **4.6 Sector specific provisions on trade in services**

4.70. Six sets of side letters have been exchanged between the Parties in parallel to and as part of the adoption of the Agreement. They are mentioned below in the sector specific sections and cover the following areas: skills assessment and licensing; financial services; education; legal services; transparency rules applicable to investor-State dispute settlement; and traditional Chinese medicine.

##### **4.6.1 Legal services**

4.71. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of commercial legal services. The Parties agree to meet within 12 months of the date of entry into force of the Agreement, with a view to developing measures to enhance and support strengthened cooperation between lawyers registered in Australia and in China; increased mobility for Australian and Chinese lawyers; and closer cooperation between commercial law firms from both Parties in the effective provision of transnational legal services. Such cooperation shall take place through the "peak legal professional bodies"<sup>41</sup> in each country.

##### **4.6.2 Telecommunication services**

4.72. Article 8.19 contains additional disciplines applicable to telecommunication services. In particular, it incorporates the Annex on Telecommunications of the GATS and the Reference Paper on Telecommunications that form an integral part of the Agreement.

4.73. Each Party shall also ensure that licensing requirements for suppliers of telecommunications networks or services of the other Party are applied in the least trade restrictive manner and are not more burdensome than necessary. Consultations shall be facilitated with suppliers of public telecommunications networks or services operating in the development of telecommunications policy, regulations and standards. Advance notice shall also be provided, as well as an opportunity to comment, to suppliers of public telecommunications networks or services in connection with the preparation of regulatory decisions of general application that a Party's telecommunications regulatory body proposes. Encouragements are provided for reducing the international mobile roaming rates.

##### **4.6.3 Financial services**

4.74. Annex 8-B provides for some disciplines additional to Chapter 8 in relation to financial services, provided through any of the four modes of supply. It essentially builds upon the GATS' Annex on financial services. It confirms the Parties' rights to adopt or maintain reasonable measures for prudential reasons.

4.75. The Agreement establishes a Committee on financial services (Article 7 of Annex 8-B) to, *inter alia*, supervise the implementation of Annex 8-B and its further elaboration and consider issues regarding financial services referred to it.

4.76. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of financial services. Such cooperation may include discussions about the development of prudential frameworks, as they apply to both branches and locally-incorporated subsidiaries; the expeditious processing of all applications made for the establishment of subsidiaries, branches and sub-branches; efforts to strengthen cooperation and information sharing on payments system oversight; the confirmation by Australia that Chinese institutions are currently eligible to provide payment services (including clearing payments) in Australia on a national treatment basis; etc.

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<sup>40</sup> It is anticipated that additional Articles, to be included in Chapter 9, cover, *inter alia*, minimum standard of treatment; expropriation; transfers; performance requirements; senior management and board of directors; investment-specific State to State dispute settlement; and the application of investment protections and ISDS to services supplier through commercial presence. In the context of these future negotiations, investment commitments by China shall be scheduled on a negative list basis.

<sup>41</sup> The "Peak legal professional bodies" are, for Australia, the Law Council of Australia, and, for China, the All China Lawyers Association.

#### 4.6.4 Education services

4.77. The Parties exchanged side letters on their shared understanding to strengthen cooperation in the field of education services. Noting China's commitment in its Schedule of Specific Commitments in Annex III to list within one year of entry into force the 77 Australian CRICOS<sup>42</sup> registered higher education institutions, Australia agrees to provide details of regulatory decisions made by the Australia Tertiary Education Quality and Standards Agency (TEQSA); to make available to China the related public report; and to provide to China the courses that listed institutions are accredited to deliver, and the dates by which the institutions will have to apply for TEQSA and CRICOS registration or course re-accreditation. Australia and China also agree to make joint efforts to ensure the smooth implementation of the Agreement and to continue to discuss listing on the website <http://www.jsj.edu.ch> of additional CRICOS-registered institutions. The Parties will maintain programs facilitating teacher and student exchanges and ensure the legal rights and interests of students from the other country in accordance with their respective laws and regulations. The Parties competent authorities will discuss options for marketing and recruitment opportunities for Australian education suppliers in China.

#### 4.6.5 Traditional Chinese medicine services (TCM)

4.78. The Parties agree to cooperate on matters relating to trade in TCM services. Examples of such cooperation are mentioned in Article 8.25 (paragraph 3). Moreover, in connection with discussions in relation to Chapter 8 (trade in services), but also Chapter 6 (technical barriers to trade), they exchanged side letters on their shared understanding in the field of TCM, as well as trade in TCM and complementary medicines. In particular, they agree to cooperate to exchange information and discuss policies, regulations and actions related to TCM services in order to find opportunities for further cooperation; to encourage and support engagement between relevant professional bodies and registration authorities for TCM practitioners in both countries; and to encourage and support cooperation on TCM research and development.

### 5 GENERAL PROVISIONS OF THE AGREEMENT

#### 5.1 Transparency

5.1. Chapter 13 contains general transparency disciplines. Articles 13.2 through 13.5 list requirements on publication; notification and provision of information; administrative proceedings; and review and appeal.

5.2. The rules applicable to disclosure and confidentiality of information are contained in Article 16.1 and replicate some of the corresponding rules under the WTO Agreement.

5.3. Further to Chapter 13, the Agreement also establishes specific transparency requirements in Articles 2.7 and 2.12 (non-tariff measures); 4.7 (customs administration and trade facilitation); 5.5 (SPS measures) 6.8 (TBT measures); 7.6 (trade remedies); 7.10 (subsidies); 8.18 (trade in services); 11.6 (intellectual property rights); 5 of Annex 8-B (financial services); 9.17 (transparency of arbitral proceedings in relation to the investor-State dispute settlement); 10.5 (movement of natural persons); and 12.4 (electronic commerce).

5.4. Moreover, the Parties shall establish a number of enquiry points (on customs matters) and contact points (on trade in services; and dispute settlement). Moreover, for the purpose of facilitating communication between the Parties on any matter covered by the Agreement, each Party has designated a specific Contact Point (Article 14.3).

5.5. Unless otherwise provided for in Article 16.4, nothing in the Agreement shall apply to taxation measures. The Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under the WTO Agreement. Moreover, the MFN principle does not apply to advantages accorded pursuant to a tax convention. Furthermore, non-conforming provisions of any taxation measure maintained on the date of entry into force of the Agreement, continued or renewed, or an amendment to it that does not

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<sup>42</sup> Commonwealth Register of Institutions and Courses for Overseas Students.

decrease the conformity with the Agreement are not covered either to the Agreement. Nothing in the Agreement shall affect the rights and obligations of either Party under any tax convention.

## 5.2 Current payments and capital movements

5.6. Articles 8.16 foresee that each Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments, except in presence of BOP measures. Rights and obligations of the Parties as members of the IMF are also reserved.

## 5.3 Exceptions

5.7. Exceptions are contained in Articles 16.2 through 16.4. In addition, Article 9.8 contains exceptions applicable to investment.

### 5.3.1 General exceptions

5.8. With respect to trade in goods<sup>43</sup>, Article XX of GATT 1994, including its interpretive notes, is incorporated into and made part of the Agreement, *mutatis mutandis*. With respect to trade in services<sup>44</sup>, Article XIV of GATS, including its footnotes, is incorporated into and made part of the Agreement, *mutatis mutandis*. In connection with disciplines on investment, Article 9.8 (letters a and b) replicates the wording of Article XIV(b) and XIV(c) of GATS and makes it applicable to measures covered by Chapter 9.

### 5.3.2 Security exceptions

5.9. Articles XXI of GATT 1994 and XIV *bis* of GATS are incorporated into and made part of the Agreement, *mutatis mutandis*.

## 5.4 Accession and Withdrawal

5.10. The Agreement does not contain any accession provisions. Termination is, however, governed by Article 17.4. It foresees that the Agreement shall remain in force unless either Party notifies the other Party in writing to terminate the Agreement. Such termination shall take effect 180 days following the date of receipt of the notification.

## 5.5 Institutional framework

5.11. A (FTA) Joint Commission is established, *inter alia*, to consider matters relating to the implementation of the Agreement (Article 14.1).

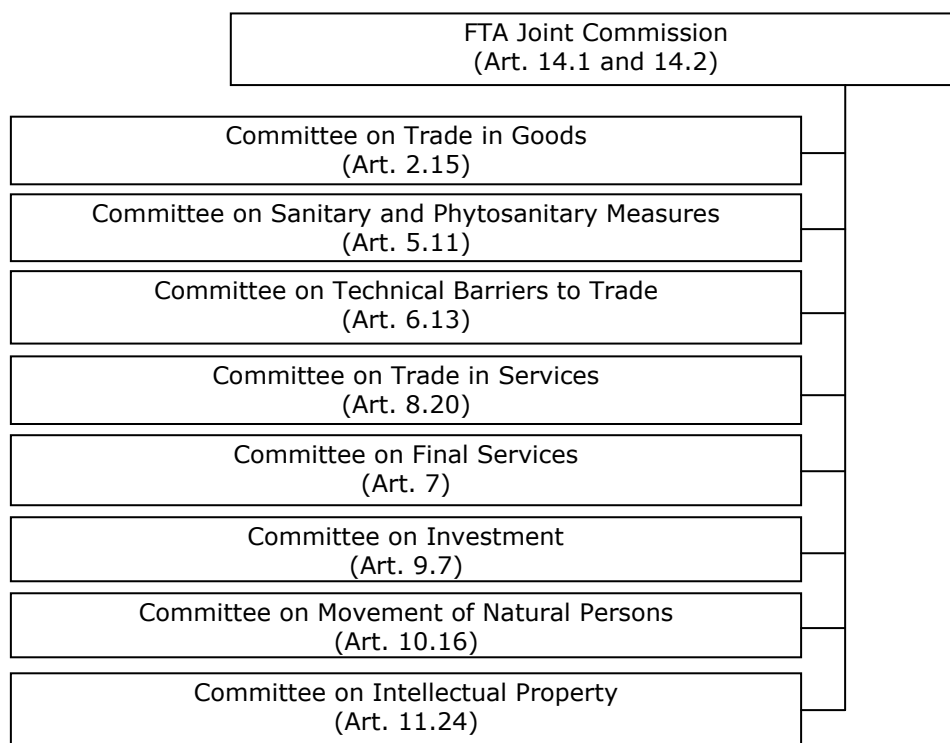
5.12. Each Party shall designate a contact point or points to facilitate communications between the Parties on matters covered by the Agreement. A number of addition contact points are also established by the Agreement on specific matters.

5.13. The institutional framework established by the *Agreement* is summarized by Chart 5.1 below.

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<sup>43</sup> For the purposes of Chapters 2 (trade in goods); 3 (rules of origin and implementation procedures); 4 (customs procedures and trade facilitation); 5 (SPS measures); 6 (TBT measures); and 12 (electronic commerce).

<sup>44</sup> For the purposes of Chapters 8 (trade in services); 10 (movement of natural persons); and 12 (electronic commerce).

**Chart 5.1 Institutional Framework**

Source: WTO Secretariat based on the Agreement.

## 5.6 Dispute settlement

5.14. Chapter 15 governs dispute settlement for matters covered under the Agreement, with the exception of Chapters 5 (SPS); 6 (TBT); 10. (movement of natural persons); and 12 (electronic commerce).

5.15. Recourse to the dispute settlement mechanism established by Chapter 15 is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both parties, including under the WTO. The Agreement provides for the choice of the dispute settlement forum (Article 15.4). However, when a dispute settlement forum has been elected, the forum selected shall be used to the exclusion of the other.

5.16. The Parties endeavour to agree on the interpretation and application of the Agreement through cooperation (Article 15.1) and/or consultations with the aim of reaching a mutually agreed solution (Article 15.5). A Party may at any time agree to good offices, conciliation or mediation (Article 15.6).

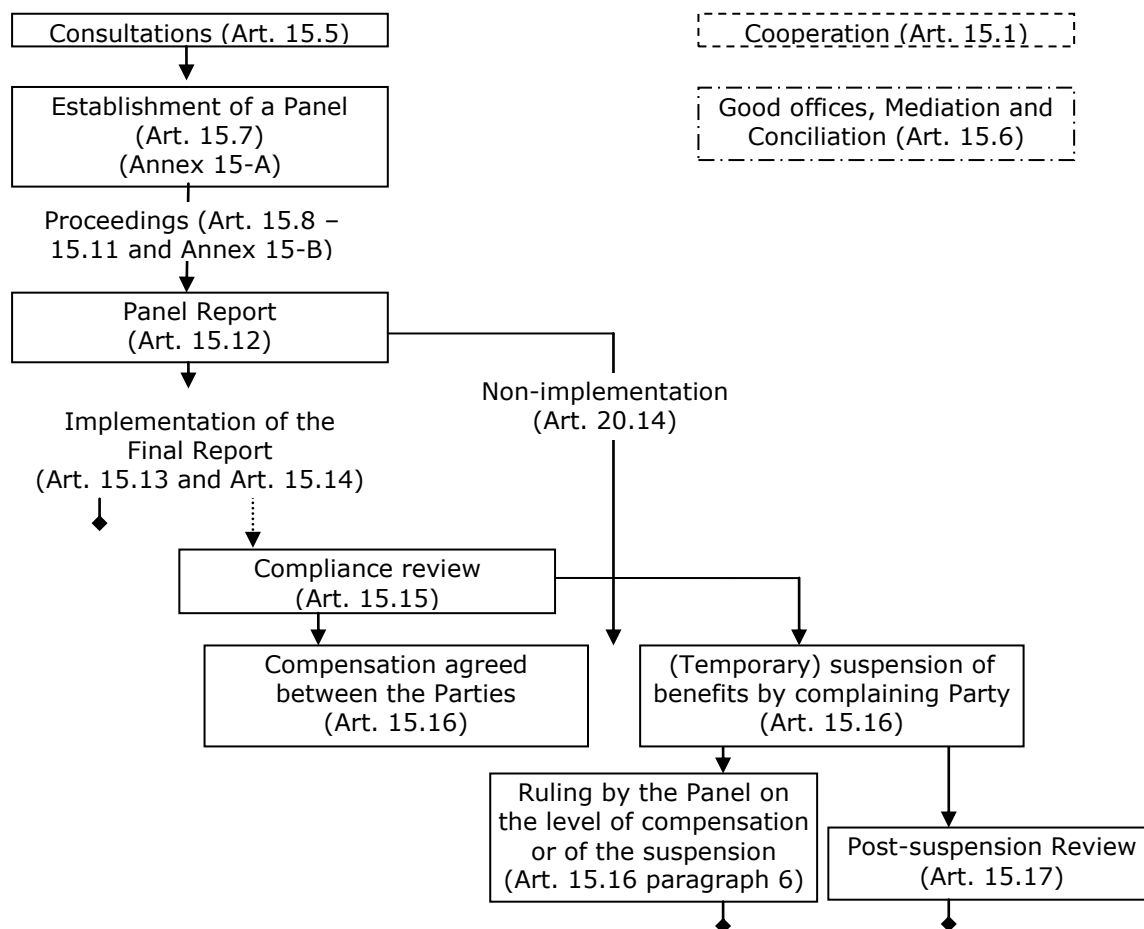
5.17. In case the consultations fail to resolve a dispute, recourse to an arbitral tribunal is possible and the applicable procedures and disciplines are described in Articles 15.7 through 15.17. The disciplines and procedural steps established under the Agreement, mainly modelled on the WTO dispute settlement modalities, cover the establishment and composition of an arbitral tribunal<sup>45</sup>; functions of arbitral tribunals; rules of interpretation; rules of procedure of an arbitral tribunal<sup>46</sup>; suspension or termination of proceedings; report of the arbitral tribunal; implementation of the final report; reasonable period of time for the implementation of the final report; and compliance review. Rules on compensation and suspension of concessions and obligations are also possible as defined by Article 15.16. A post-suspension review is also envisaged and applicable rules are contained in Article 15.17.

<sup>45</sup> A Code of Conduct applicable to arbitrators is contained in Annex 15-A.

<sup>46</sup> Annex 15-B contains model rules of procedure for the arbitral tribunal. An indicative timetable for the arbitral tribunal is contained in an Attachment to Annex 15-B.

5.18. Chart 5.2 below summarizes the main steps of the dispute settlement mechanism established by the Agreement.

**Chart 5.2 Specific Dispute Settlement Mechanism established by the Agreement**



Source: WTO Secretariat based on the Agreement.

5.19. With respect to investment, and in the event of an investment dispute, an investor-State dispute settlement mechanism (ISDS) is established in Section B of Chapter 9 (investment). Articles 9.10 through 9.25 govern the proceedings of the ISDS and cover consultations; submission of a claim to arbitration; consent of each party to arbitration; conditions and limitations on consent of each Party; constitution of the tribunal; conduct of the arbitration; transparency of arbitral proceedings; governing law; interpretation of Annexes; expert reports; consolidation; awards; appellate review; annexes and footnotes; and service of documents. In connection with the signing of the Agreement, the Parties have exchanged side letters on the common understanding reached during the negotiations of Chapter 9 in relation to arbitrations initiated pursuant to Section B of Chapter 9. The Parties agree to enter into consultations within 12 months of the date of entry into force of the Agreement on the future application of the UNCITRAL<sup>47</sup> Rules on Transparency in Treaty-based Investor-State Arbitration to arbitration initiated pursuant to Section B of Chapter 9. Unless the parties otherwise agree, the UNCITRAL transparency rules shall not apply to such arbitrations.

<sup>47</sup> UNCITRAL refers to the United Nations Commission on International Trade Law.

## 5.7 Relationship with other agreements concluded by the Parties

5.20. Article 1.1 states that the Agreement is consistent with Article XXIV of GATT 1994 and Article V of GATS.

5.21. The Parties also affirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both are a party, including the WTO Agreement (Article 1.2). Nothing in the Agreement derogates from the existing rights and obligations of the Parties under the WTO or any other multilateral or bilateral agreement to which both Parties are a party. In the event of inconsistency between the Agreement and other agreements to which both Parties are a party, consultations are foreseen between the Parties to find a mutually satisfactory solution.

5.22. Table 5.1 below shows the Parties' RTAs, notified and non-notified, other than the Agreement.

**Table 5.1 Australia and China: Participation in other RTAs (notified and non-notified in force), as of 24 May 2016**

RTA Name	Date of entry into force	Coverage	GATT/WTO Notification	
			Year	WTO Provision
<b>AUSTRALIA</b>				
Japan - Australia	15-Jan-15	Goods & Services	2015	GATT Art. XXIV & GATS Art. V
Republic of Korea - Australia	12-Dec-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
Malaysia - Australia	01-Jan-13	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
ASEAN - Australia - New Zealand	01-Jan-10	Goods & Services	2010	GATT Art. XXIV & GATS Art. V
Australia - Chile	06-Mar-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Thailand - Australia	01-Jan-05	Goods & Services	2004	GATT Art. XXIV & GATS Art. V
United States - Australia	01-Jan-05	Goods & Services	2004	GATT Art. XXIV & GATS Art. V
Singapore - Australia	28-Jul-03	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
Australia - New Zealand (ANZCERTA)	01-Jan-83 01-Jan-89	Goods & Services	1983 1995	GATT Art. XXIV & GATS Art. V
South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)	01-Jan-81	Goods	1981	Enabling Clause
Australia - Papua New Guinea (PATCRA)	01-Feb-77	Goods	1976	GATT Art. XXIV
<b>CHINA</b>				
China - Republic of Korea	20-Dec-15	Goods & Services	2016	GATT Art. XXIV & GATS Art. V
Iceland - China	01-Jul-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
Switzerland - China	01-Jul-14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
China - Costa Rica	01-Aug-11	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
Peru - China	01-Mar-10	Goods & Services	2010	GATT Art. XXIV & GATS Art. V
China - Singapore	01-Jan-09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
China - New Zealand	01-Oct-08	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Pakistan - China	01-Jul-07 10-Oct-09	Goods & Services	2008 2010	GATT Art. XXIV & GATS Art. V
Chile - China	01-Oct-06 01-Aug-10	Goods & Services	2007 2010	GATT Art. XXIV & GATS Art. V
ASEAN - China	01-Jan-05 01-Jul-07	Goods & Services	2005 2008	Enabling Clause & GATS Art. V
China - Macao, China	17-Oct-03	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
China - Hong Kong, China	29-Jun-03	Goods & Services	2003	GATT Art. XXIV & GATS Art. V
Asia Pacific Trade Agreement (APTA) - Accession of China	01-Jan-02	Goods	2004	Enabling Clause
Asia Pacific Trade Agreement (APTA)	17-Jun-76	Goods	1976	Enabling Clause



RTA Name	Date of entry into force	Coverage	GATT/WTO Notification	
			Year	WTO Provision
The Cross-Straits Economic Cooperation Framework Agreement (ECFA)	12-Sep-10	Goods & Services	Not notified	
APTA - Accession of Mongolia	26-Oct-13 <sup>a</sup>	Goods	Not notified	

- a The Standing Committee of the APTA reached a consensus officially welcoming Mongolia as the 7<sup>th</sup> member of the Agreement. This was done on the occasion of its 42<sup>nd</sup> session, which was held from 25 to 26 October 2013.

Source: WTO Secretariat.

## 5.8 Government procurement

5.23. The Parties shall commence negotiations on government procurement as soon as possible after the completion of negotiations on the accession of China to the Agreement on Government Procurement, contained in Annex 4 to the WTO Agreement, with a view to concluding, on a reciprocal basis, commitments on government procurement between the Parties (Article 16.8).

## 5.9 Intellectual property rights

5.24. Chapter 11 covers intellectual property rights. The Parties reaffirm their rights and obligations under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both Parties are party.

5.25. The Parties commit to grant national treatment for the protection of intellectual property, subject to the exceptions provided under the TRIPS Agreement and those multilateral agreements concluded under the auspices of WIPO to which the Parties are party. Additional derogations to national treatment are also indicated in paragraph 3 of Article 11.5.

5.26. In relation to certain public health measures (Article 11.7), the Agreement refers to the 2001 *WTO Declaration on the TRIPS Agreement and Public Health* (Doha Declaration) and the Parties reaffirm the *Decision of the WTO General Council (2003)* on paragraph 6 of the Doha Declaration, as well as the *Protocol amending the TRIPS Agreement (2005)*.

5.27. The Agreement contains specific provisions on matters otherwise covered under the TRIPS Agreement. This is particularly the case with respect to patents (Articles 11.10 and 11.11 on amendments, corrections and observations on patent applications; and on publication of patent for invention application 18 months after the filing date); and on trademarks (Articles 11.12 through 11.14 on types of signs as trademarks; certification and collective trademarks; and well-known trademarks). Each Party also recognises that geographical indications may be protected through a trademark or *sui generis* system or other legal means (Article 11.15). Article 11.16 foresees cooperation between the Parties to encourage and facilitate the protection and development of plant breeder's rights. Protection of genetic resources, traditional knowledge and folklore is addressed by the Agreement (Article 11.17). Further discussion between the Parties on the matter is also anticipated by the Agreement. The agreed disciplines on collective management of copyrights are contained in Article 11.19.

5.28. The Parties retain their freedom to determine whether, and under what conditions, the exhaustion of intellectual property rights applies. Further discussion shall take place between the Parties on exhaustion (Article 11.8). The procedures on acquisition and maintenance of intellectual property rights are governed by Article 11.9.

5.29. Article 11.21 addresses enforcement of intellectual property rights. It establishes modalities applicable to criminal procedures and penalties in accordance with the TRIPS Agreement. A framework for the application of border measures in connection with intellectual property rights is established in Article 11.22. Undisclosed information are protected along the principles established in Article 11.18, while limits to liability of, or remedies available against, internet service providers for copyright infringement by the users of online services or facilities, are addressed in Article 11.20.



5.30. A Committee on Intellectual Property is established in Article 11.24, *inter alia*, to review, monitor and assesses the implementation of Chapter 11. Cooperation between the Parties with respect to intellectual property policies is foreseen under Article 11.23.

## **5.10 Other**

### **5.10.1 Electronic commerce**

5.31. Chapter 12 contains disciplines applicable to electronic commerce. Its objective is to promote electronic commerce between the Parties, including by encouraging cooperation on electronic commerce. The Parties shall endeavour to ensure that bilateral trade through electronic commerce is not more restricted than other forms of trade (Article 12.1).

5.32. The Agreement specifies that neither Party shall impose customs duties on electronic transmissions between the Parties (Article 12.3), subject to the WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce. Moreover, each Party shall adopt or maintain measures regulating electronic commerce taking into account the *UNCITRAL Model Law on Electronic Commerce* and, as appropriate, other international standards.<sup>48</sup> Chapter 12 also contains disciplines and/or commitments on electronic authentication and electronic signatures (Article 12.6); online consumer protection (Article 12.7); online personal data protection (Article 12.8); and paperless trading (Article 12.9).

5.33. Transparency disciplines and the Parties' commitments on encouraging cooperation on electronic commerce are contained in Articles 12.4 and 12.10.

5.34. The provisions in Chapter 15 (on dispute settlement) are not applicable to the disciplines on electronic commerce.

### **5.10.2 Competition**

5.35. Under Article 16.7 (on competition cooperation), the Parties agree to cooperate and coordinate, as appropriate, in enforcing competition laws and policies subject to each Party's confidentiality requirements.

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<sup>48</sup> Regulatory burden on electronic commerce shall be minimized and measures regulating electronic commerce shall support industry-led development of electronic commerce.

## ANNEX 1

## INDICATORS OF TRADE LIBERALIZATION UNDER THE AGREEMENT

## Australia

1. Table A1.1 shows tariff liberalization by Australia in relation to China's imports (by total, agricultural and non-agricultural products). In 2015, Australia's average applied MFN rate was 2.6% overall (2.8% for non-agricultural products and 1.3% for agricultural products). 47.6% of Australia's tariff was duty free on an MFN basis; 43.6% of non-agricultural products and 73% of agricultural products were duty free. At the time of entry into force of the Agreement (2015), Chinese exporters enjoyed a relative margin of preference of 88.5% *vis-à-vis* the prevailing MFN tariff; 85.7% for non-agricultural goods and 100% for agricultural products. The share of duty free lines applicable to imports from China immediately at the entry into force of the Agreement was 91.6% (99.3% for agricultural products and 90.3% for non-agricultural products). During the following years, this share will further increase to reach 100% in 2019, at the time Australia will have fully implemented its tariff elimination programme.

**Table A1.1 Australia: Indicators of MFN tariff rates and preferential rates for imports from China**

Origin of goods	Year	ALL PRODUCTS			Agricultural products <sup>a</sup>			Non-agricultural products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN China	2015	2.6	5.0	47.6	1.3	5.0	73.0	2.8	5.0	43.6
	2015	0.3	4.1	91.6	0.0	3.3	99.3	0.4	4.1	90.3
	2016	0.2	2.7	91.6	0.0	1.7	99.3	0.3	2.7	90.3
	2017	0.0	2.8	98.5	0.0	0.0	100.0	0.0	2.8	98.2
	2018	0.0	1.4	98.5	0.0	0.0	100.0	0.0	1.4	98.2
	2019	0.0	0.0	100.0	0.0	0.0	100.0	0.0	0.0	100.0

a WTO Definition.  
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from Australia.

2. Table A1.2 gives an indication of additional market access in Australia resulting from the entry into force of the Agreement for China's top 25 global exports, which accounted for 29.9% of its global exports in 2012-2014; these corresponded to 53 lines of Australia's tariff at the six-digit level (using the HS 2012). In 2014, prior to the entry into force of the Agreement, 36 of these tariff lines already had (MFN) duty free access to Australia's market. With the entry into force of the Agreement, in 2015, 15 of the 17 tariff lines, which were (MFN) dutiable, became duty free for exports from China. The 2 remaining dutiable tariff lines became duty-free in 2017.

**Table A1.2 Australia: Market access opportunities under the agreement for China's top 25 exports to the world**

China's top export products in 2012-2014		Access Conditions to Australia's import markets						
HS number and description of the product	Share in global exports (%)	MFN 2015			No. of duty free lines under the agreement		Remain Dutiable	
		Average MFN applied rate (%)	No. of dutiable lines	No. of duty free lines	2015	2017		
847130	Some data-processing machines, automatic, portable, weighing ≤ 10 kg, consisting of at least a central processing unit, a keyboard and a display	5.1	0.0		1			
851712	Telephones for cellular networks "mobile telephones" or for other wireless networks	4.4	0.0		1			
851770	Parts of telephone sets, telephones for cellular networks or for other wireless networks and of other apparatus for the transmission or reception of voice, images or other data, n.e.s.	2.0	2.5	1	1	1		
901380	Liquid crystal devices, n.e.s. and other optical appliances and instruments not elsewhere specified in chapter 90	1.6	0.0		1			
711319	Some articles of jewellery and parts thereof, of precious metal other than silver, whether or not plated or clad with precious metal	1.5	5.0	1		1		
854231	Electronic integrated circuits as processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits	1.4	0.0		1			
847330	Parts and accessories of automatic data-processing machines or for other machines of heading 8471, n.e.s.	1.3	0.0		1			
851762	Some machines for the reception, conversion and transmission or regeneration of voice, images or other data, incl. switching and routing apparatus	1.2	0.0		1			
890190	Some vessels for the transport of goods and vessels for the transport of both persons and goods	0.9	2.5	1	1	1		
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel, n.e.s.	0.9	0.0		12			
640299	Some footwear with outer soles and uppers of rubber or plastics	0.8	2.5	1	1		1	

China's top export products in 2012-2014		Access Conditions to Australia's import markets						
HS number and description of the product		Share in global exports (%)	MFN 2015			No. of duty free lines under the agreement		Remain Dutiable
			Average MFN applied rate (%)	No. of dutiable lines	No. of duty free lines	2015	2017	
854140	Some photosensitive semiconductor devices, incl. photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes	0.8	0.0		1			
847170	Storage units for automatic data-processing machines	0.8	0.0		1			
850440	Static converters	0.8	2.5	1	1	1		
854232	Electronic integrated circuits as memories	0.8	0.0		1			
847150	Some processing units for automatic data-processing machines, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units	0.6	0.0		1			
853400	Printed circuits	0.6	0.0		1			
852580	Television cameras, digital cameras and video camera recorders	0.6	2.5	1	1	1		
854239	Some electronic integrated circuits	0.6	0.0		1			
950300	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size "scale" recreational models, working or not; puzzles of all kinds	0.6	3.5	7	3	7		
852872	Reception apparatus for television, colour, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, designed to incorporate a video display or screen	0.6	5.0	1		1		
844331	Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network	0.5	0.0		1			
711590	Articles of precious metal or of metal clad with precious metal, n.e.s.	0.5	0.0		1			

China's top export products in 2012-2014		Access Conditions to Australia's import markets						
HS number and description of the product		Share in global exports (%)	MFN 2015			No. of duty free lines under the agreement		Remain Dutiable
			Average MFN applied rate (%)	No. of dutiable lines	No. of duty free lines	2015	2017	
852990	Some parts suitable for use solely or principally with transmission and reception apparatus for radio-broadcasting or television, television cameras, digital cameras, video camera recorders, radar apparatus, radio navigational aid apparatus or radio remote control apparatus, monitors and projectors, n.e.s.	0.5	2.5	2	2	2		
611030	Some jerseys, pullovers, cardigans, waistcoats and similar articles, of man-made fibres, knitted or crocheted	0.5	5.0	1			1	
<b>TOTALS</b>		<b>29.9</b>	<b>1.3</b>	<b>17</b>	<b>36</b>	<b>15</b>	<b>2</b>	

Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from Australia; WTO-IDB and UNSD, Comtrade database.

## China

3. Table A1.3 shows tariff liberalization by China in relation to Australia's imports (by total, agricultural and non-agricultural products). In 2015, China's average applied MFN rate was 9.7% overall (8.9% for non-agricultural products and 15% for agricultural products). 8.4% of China's tariff was duty free on an MFN basis; 8.5% of non-agricultural products and 7.8% of agricultural products were duty free. At the time of entry into force of the Agreement (2015), Australian exporters enjoyed a relative margin of preference of 25.8% *vis-à-vis* the prevailing MFN tariff; 28.1% for non-agricultural goods and 17.3% for agricultural products. The share of duty free lines applicable to imports from Australia immediately at the entry into force of the Agreement was 29.2% (13.3% for agricultural products and 31.8% for non-agricultural products). During the following years, this share will further increase to reach 96.7% in 2024, following ten years of implementation and 96.8% in 2029 (97.5% for non-agricultural products and 92.3% for agricultural products), when China will have fully implemented its tariff elimination programme.

**Table A1.3 China, Republic of: Indicators of MFN tariff rates and preferential rates for imports from Australia**

Origin of goods	Year	ALL PRODUCTS			Agricultural products <sup>a</sup>			Non-agricultural products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2015	9.7	10.6	8.4	15.0	16.3	7.8	8.9	9.7	8.5
Australia	2015	7.2	10.2	29.2	12.4	14.3	13.3	6.4	9.3	31.8
	2016	5.6	7.9	29.2	10.0	11.5	13.3	4.9	7.1	31.8
	2017	3.9	5.6	29.2	7.6	8.7	13.4	3.3	4.9	31.8
	2018	2.3	3.2	29.2	5.2	6.0	13.4	1.8	2.7	31.8
	2019	0.6	12.8	95.0	2.8	21.1	87.0	0.3	8.1	96.3

Origin of goods	Year	ALL PRODUCTS			Agricultural products <sup>a</sup>			Non-agricultural products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
	2020	0.6	12.3	95.0	2.7	20.8	87.2	0.3	7.6	96.3
	2021	0.6	11.8	95.0	2.6	20.2	87.2	0.3	7.0	96.3
	2022	0.6	11.7	95.2	2.5	22.3	88.7	0.2	6.5	96.3
	2023	0.5	13.2	95.9	2.5	24.8	90.1	0.2	7.2	96.9
	2024	0.5	15.7	96.7	2.4	30.0	91.9	0.2	8.2	97.5
	2025	0.5	15.7	96.7	2.4	29.9	91.9	0.2	8.2	97.5
	2026	0.5	15.9	96.7	2.4	31.6	92.3	0.2	8.2	97.5
	2027	0.5	15.9	96.7	2.4	31.6	92.3	0.2	8.1	97.5
	2028	0.5	15.9	96.7	2.4	31.6	92.3	0.2	8.1	97.5
	2029	0.5	16.1	96.8	2.4	31.6	92.3	0.2	8.2	97.5

a WTO Definition.

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included. Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from China and WTO-IDB.

4. Table A1.4 gives an indication of additional market access in China resulting from the entry into force of the Agreement for Australia's top 25 global exports, which accounted for 74.3% of its global exports in 2012-2014; these corresponded to 62 lines of China's tariff at the six-digit level (using the HS 2012). In 2015, prior to the entry into force of the Agreement, 12 of these tariff lines already had (MFN) duty free access to China's market. With the entry into force of the Agreement, in 2015, 18 of the 50 tariff lines, which were (MFN) dutiable, became duty free for imports from Australia. 28 of the remaining dutiable tariff lines will become duty-free in 2017 (1 tariff line), 2019 (13 lines) and 2024 (14 lines). Four tariff lines<sup>49</sup> will remain dutiable after the full implementation by China of its tariff elimination programme with applied MFN tariffs in 2015 ranging from 9% to 65%.

**Table A1.4 China, Republic of: Market access opportunities under the agreement for Australia's top 25 exports to the world**

Australia's top export products in 2012-2014			Access Conditions to China's import markets							
HS number and description of the product	Share in global exports (%)		MFN 2015			No. of duty free lines under the agreement				Remain Dutiable
			Average MFN applied rate (%)	No. of dutiable lines	No. of duty free lines	2015	2017	2019	2024	
260111	Some non-agglomerated iron ores and concentrates	24.5	0.0		3					
270112	Bituminous coal, whether or not pulverised, non-agglomerated	15.4	4.5	2		1	1			
271111	Natural gas, liquefied	5.9	0.0		1					
710813	Gold, incl. gold plated with platinum, in semi-manufactured forms, for non-monetary purposes	5.3	0.0		1					

<sup>49</sup> HS 100199 (some wheat and meslin); 520100 (some cotton products); 510111 (some wool products); and 120510 (some barley).

Australia's top export products in 2012-2014		Access Conditions to China's import markets								
HS number and description of the product		Share in global exports (%)	MFN 2015			No. of duty free lines under the agreement				Remain Dutiable
			Average MFN applied rate (%)	No. of dutiable lines	No. of duty free lines	2015	2017	2019	2024	
270900	Petroleum oils and oils obtained from bituminous minerals, crude	4.0	0.0		1					
100199	Some wheat and meslin	2.4	65.0	1						1
281820	Some aluminium oxide	2.1	8.0	1		1				
260300	Copper ores and concentrates	2.0	0.0		1					
020230	Frozen, boneless meat of bovine animals	1.4	12.0	1					1	
740311	Copper, refined, in the form of cathodes and sections of cathodes	1.2	2.0	3		3				
300490	Some medicaments consisting of mixed or unmixed products for therapeutic or prophylactic purposes, put up in measured doses "incl. those in the form of transdermal administration" or in forms or packings for retail sale	1.0	3.6	10		9		1		
760110	Aluminium, not alloyed, unwrought	1.0	5.0	2		2				
520100	Cotton, neither carded nor combed	0.9	40.0	1						1
510111	Greasy shorn wool, incl. fleece-washed wool, neither carded nor combed	0.9	38.0	1						1
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel, n.e.s.	0.9	6.5	11				11		
020130	Fresh or chilled bovine meat, boneless	0.8	12.0	1					1	
120510	Low erucic acid rape or colza seeds "yielding a fixed oil which has an erucic acid content of < 2% and yielding a solid component of glucosinolates of < 30 micromoles/g"	0.7	9.0	1	1					1
100390	Some barley	0.6	3.0	1		1				
260800	Zinc ores and concentrates	0.6	0.0		1					
220421	Some wine of fresh grapes, incl. fortified wines, and grape must whose fermentation has been arrested by the addition of alcohol, in containers of ≤ 2 l	0.5	14.0	1				1		
260200	Manganese ores and concentrates, incl. ferruginous manganese ores and concentrates, with a manganese content of ≥ 20%, calculated on the dry weight	0.5	0.0		1					

Australia's top export products in 2012-2014		Access Conditions to China's import markets								
HS number and description of the product		Share in global exports (%)	MFN 2015			No. of duty free lines under the agreement				Remain Dutiable
			Average MFN applied rate (%)	No. of dutiable lines	No. of duty free lines	2015	2017	2019	2024	
870323	Some motor cars and other motor vehicles principally designed for the transport of persons, incl. station wagons and racing cars, with spark-ignition internal combustion reciprocating piston engine of a cylinder capacity > 1.500 cm <sup>3</sup> but <= 3.000 cm <sup>3</sup>	0.5	25.0	12					12	
260700	Lead ores and concentrates	0.4	0.0		1					
261690	Some precious-metal ores and concentrates	0.4	0.0		1					
880330	Some parts of aeroplanes or helicopters, n.e.s.	0.4	1.0	1		1				
<b>TOTALS</b>		<b>74.3</b>	<b>9.9</b>	<b>50</b>	<b>12</b>	<b>18</b>	<b>1</b>	<b>13</b>	<b>14</b>	<b>4</b>

Note: For the calculation of averages, specific rates are excluded and the *ad valorem* parts of alternate rates are included.  
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data from China and UNSD-Comtrade database.