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Submission to DFAT for the five-year post implementation review of the China-Australia Free Trade Agreement (ChAFTA)

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Summary

The Australian Fair Trade and Investment Network (AFTINET) is a national network of 60 community organisations and many more individuals. We support fair trading relationships with all countries, based on human rights, labour rights and environmental sustainability. We recognise the need for regulation of trade through the negotiation of international rule. We support the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries. In general, non-discriminatory multilateral rules-are preferable to preferential bilateral and regional negotiations that discriminate against other trading partners.

We do not support the current US trade strategy of unilateral tariffs and building discriminatory walls against immigration that will not restore lost jobs. Nor do we believe that Australia should take sides in the US-China trade wars. Trade wars increase international tensions and undermine the essential international cooperation which is needed both to overcome the COVID-19 pandemic and rebuild economies.

Recently trade and diplomatic tensions between China and Australia have increased. However, some cooperation continues through international institutions. AFTINET will not be drawn into cold war rhetoric but will continue our criticism of the lack of human rights and labour rights in China, and of those provisions in the ChAFTA that are not in the interests of workers and communities in Australia and China.

Both governments have allowed preferential tariff and other market access arrangements without any enforceable commitments to implement the fundamental ILO Conventions on labour rights, including freedom of association, the right to collective bargaining, no forced labour, no child labour and no workplace discrimination.

The lack of commitments to labour rights is reflected in the lack of labour rights in China and the lack of effective rights of temporary migrant workers from China in Australia. ChAFTA included an unprecedented range of provisions to increase the scope and numbers of temporary workers who are vulnerable to exploitation because they can be deported if they lose their employment. In the context of the pandemic the government has compounded this exploitation by excluding those who cannot return from government assistance.

There are no enforceable obligations on the Chinese or Australian governments to improve their environmental standards, including actions to reduce carbon emissions.

The ChAFTA includes Investor-State Dispute Settlement (ISDS), which allows a single foreign investor to sue a government for compensation in an international tribunal if a change in law or policy can be claimed to harm their investment. ISDS rules could result in cases from global companies, including Chinese companies, claiming compensation for government actions during the pandemic that reduced their profits but were essential to save lives.

The ChAFTA commitments on investment and trade-in-services are lopsided. Australia has committed to a negative list structure which includes market access to everything that is not specifically excluded, whereas China has committed to a positive list. Commitments to reduce regulation of services also limit the scope of governments to respond to changes like privatisation failures, climate change and the pandemic. These chapters should be reviewed and Australia should use a positive list structure.

The ChAFTA provisions on product standards are ambiguous and there have been examples of substandard products entering Australia ranging from fabricated steel products, building materials containing asbestos, car components containing asbestos, and most recently faulty facemasks and faulty testing kits imported in the context of the COVID-19 pandemic. These provisions should be reviewed to ensure imports conform to Australian standards.

All trade agreements result in winners and losers. There has been no independent assessment of the economic costs and benefits of the ChAFTA. In terms of trade and investment flows, the ChAFTA has not met government expectations of "hundreds of thousands of jobs" from increased exports. The largest increases in Australian exports have come from mineral and energy exports that were already tariff-free or at very low tariffs before the ChAFTA came into force. There have been increases in some manufactured and agricultural exports, which have benefitted those sectors, but we lack evidence about the employment impacts of increased manufactured imports and the net economic impact in Australia.

There were also predictions of economic growth resulting from increased Chinese investment in Australia and Australian investment in China. In fact ,policy changes in both countries have resulted in a decline of Chinese investment in Australia each year since 2016, and Australian investment in China has sharply declined since 2017.The US-China trade wars and the trade and diplomatic tensions between China and Australia have had a greater influence on investment flows than ChAFTA itself.

Unintended consequences of ChAFTA include the import of substandard products outlined above and the exposure by the COVID-19 pandemic of Australia's overdependence on imports of essential medical products, many of which come from China. AFTINET supports policies to enable local manufacturing of essential health equipment, medicines, renewable energy infrastructure and other strategic products. Such initiatives could both assist in expanding employment in response to the economic crisis caused by the pandemic and could also address the climate crisis.

Recommendations

1. ***That the government review the ChAFTA to seek inclusion of legally enforceable labour rights.***
2. ***That these should be based on the ILO Conventions on basic labour rights including freedom of association and the right to organise, the right to collective bargaining, safe hours of work, health and safety standards, freedom from forced labour, freedom from child labour and freedom from discrimination in the workplace.***
3. ***Labour rights should be enforced through the same government-to-government dispute process as other chapters, whereby failure to implement commitments can result in trade penalties.***
4. ***That temporary workers who have lost their employment in Australia should have access to the same government assistance as other workers.***
5. ***That the MoU on Investment Facilitation should be cancelled.***
6. ***That the side letter removing mandatory skills assessment should be cancelled.***
7. ***That commitments to remove labour market testing for skilled or semi-skilled workers should be removed.***
8. ***That the government review the ChAFTA to seek to include commitments to the adoption and implementation of UN International Environment Agreements, including the Paris***

Climate Agreement, enforced through the government-to-government dispute processes contained in the agreement.

9. ***That Investor-State Dispute Settlement (ISDS) provisions should be removed.***
10. ***That the government change its services commitments in ChAFTA to a positive list rather than a negative list structure.***
11. ***That the government ensure that public services are clearly defined and clearly excluded from services commitments.***
12. ***That services commitments should not impede governments from regulating and re-regulating essential services, or from introducing new regulation to address challenges like climate change and the COVID-19 pandemic.***
13. ***That the relevant clauses in ChAFTA chapter 6, Technical Barriers to Trade, should be clarified to ensure that products exported to Australia meet Australian standards. Border inspection resources should also be increased to detect products which do not meet Australian standards.***
14. ***That the government support policies to reduce dependence on global production chains and enable local manufacturing of essential health equipment, medicines and other strategic industries. Such initiatives could both assist in expanding employment in response to the economic crisis caused by the pandemic and could also address the climate crisis.***

Introduction

AFTINET is a national network of 60 community organisations and many more individuals supporting fair regulation of trade, consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair trading relationships with all countries, based on the principles of human rights, labour rights and environmental sustainability. We recognise the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental sustainability. In general, AFTINET advocates that non-discriminatory multilateral rules are preferable to preferential bilateral and regional negotiations that discriminate against other trading partners.

Cooperative multilateral action has become even more important in the context of the COVID-19 pandemic, through institutions like the United Nations and the World Health Organisation.

AFTINET supports fair trading relationships with all countries. We do not support the current US trade strategy of unilateral tariffs and building discriminatory walls against immigration that will not restore lost jobs. Nor do we believe that Australia should take sides in the US-China trade wars. Trade wars increase international tensions and undermine the essential international cooperation which is needed both to overcome the COVID-19 pandemic and rebuild economies.

China is a one-party state, not a democracy. AFTINET and others criticised the lack of human rights and labour rights in China when the Australian government first proposed an FTA with China in 2005, and argued that these issues should be addressed before entering into a trade agreement. We also criticised the recent suppression of human and labour rights in Hong Kong in the context of the recent Hong Kong - Australia free trade agreement.

China is Australia's largest trading partner by some measures. The pandemic has exposed our over-dependence on global production chains, including those with China. We support the development of local industry policies in ways that can address the health crisis, the economic crisis and climate crisis. See our submission to the Joint Standing Committee on Foreign Affairs Defence and Trade inquiry on the pandemic and trade policy (AFTINET 2020).

Some in the US and Australia are advocating complete decoupling of China from other economies, and using extreme cold war rhetoric about threats from China. This rhetoric has contributed to an increase in racist attacks on both Australians of Chinese descent and Chinese students and workers in Australia, which we oppose. Australia should defend its own national interests but avoid divisive rhetoric.

Recently trade and diplomatic tensions between China and Australia have increased. However, some cooperation continues through international institutions. Australia, China and the US supported the WHO resolution on the COVID 19 pandemic passed in April (World Health Organisation 2020).

Australia, the EU (representing 27 countries), Canada, China and 16 other countries are also supporting the temporary WTO Appellate mechanism which was set up to enable the WTO disputes

process to continue after the US refused to approve new appointments to the permanent WTO Appellate Body (European Commission 2020).

We encourage the government to continue co-operation through international institutions and to seek to solve trade disputes through agreed trade rules.

AFTINET will not be drawn into cold war rhetoric but will continue our criticism of the lack of human rights and labour rights in China, and of those provisions in the China - Australia FTA that are not in the interests of workers and communities in Australia and China.

AFTINET welcomes the opportunity to make this submission to the DFAT China-Australia five-year post implementation review and notes the terms of reference published by DFAT.

Our submission will begin with an overview of ChAFTA provisions and then focus on the following terms of reference:

- whether ChAFTA has delivered a net benefit to the Australian community;
- whether the outcomes of ChAFTA have met business and other stakeholder expectations;
- whether there have been any unintended impacts of ChAFTA (DFAT 2020).

Concerns about the ChAFTA text

The ChAFTA came into force in December 2015. There were provisions within the agreement for a review by both parties of certain aspects in the agreement within three years after entry into force.

These included the services and investment chapters and the associated Investment Facilitation Memorandum of Understanding (MoU). The intention was to complete aspects of the services and investment chapters which remained uncompleted. AFTINET made a submission to this review process in 2017 (AFTINET 2017). The review process involving both parties reportedly began but was never completed, and the original agreement has not been changed.

Lack of commitments by both China and Australia to internationally-recognised labour rights.

The trade policy model of global production chains encourages competition to provide the lowest labour and environmental costs for exports, which can erode workers' rights, especially in low-income countries. This often occurs in export processing zones or export industries where the workers have little or no effective labour rights to join a union or engage in collective bargaining. This model of global production chains suits the needs of global corporations but can have negative impacts on workers.

China's export processing industries now range from clothing and footwear to electronics equipment for global markets, including Australia. Despite labour law reforms in 2008 requiring a written employment contract, the *China Labour Bulletin* reported in 2020 that only 30% of employees have such contracts (China Labour Bulletin, 2020).

Most workers face precarious temporary employment, long hours of work and unsafe working conditions. These conditions occur not only in locally-owned enterprises, but in those under contract to global corporations like Apple, Mattel and Disney. Reports include underpayment, excessive work hours, and unsafe working conditions, including exposure to toxic chemicals (McKevitt 2018, Lazarus 2018, Taylor 2018).

To counter these trends, trade agreements should include commitments by governments not to reduce labour rights, and to implement internationally-agreed labour rights which are defined by the International Labour Organisation (ILO). These should be enforced by the government-to-government disputes process of the agreement. These rights include freedom of association, right to collective bargaining, no forced labour, no child labour and no discrimination in the workplace (ILO 1998).

The Korea-Australia Free Trade Agreement (KAFTA) included a Labour Chapter, in which parties made commitments not to reduce labour rights, to implement the ILO fundamental rights, and their own labour laws, but these commitments were not legally enforceable through the state-to-state dispute process in the agreement (KAFTA, Chapter 17). The Comprehensive and Progressive Agreement for Trans-Pacific Partnership also has a labour chapter, for which some aspects of labour rights are enforceable through a disputes process which is specific to that chapter, although the process is less enforceable than the government-to-government dispute process that applies to other chapters in the agreement (CPTPP 2018 Chapter 19).

In contrast, there is no Labour Chapter at all in the ChAFTA. This means both governments have allowed preferential tariff and other market access arrangements without any commitments not to reduce labour rights, nor to implement the fundamental International ILO rights.

The International Trade Union Confederation 2019 index of labour rights lists China amongst 40 countries with no guarantees for basic labour rights, including restrictions on rights to freedom of association and to collective bargaining, and with long hours of work and low health and safety standards (ITUC 2019: 12). There are reports of arrests of Chinese labour activists in 2018 and 2019 (China Labour Bulletin 2018, ITUC 2019:17).

In 2019 there were allegations of forced labour in Western China contributing to production chains for exports of clothing to Australia (McNeil *et al* 2019). The ChAFTA gives preferential zero tariff access for Chinese imports to Australia but has no commitments by either government about forced labour. If these allegations are proven to be accurate, there would be no means for the Australian government to raise the issue of whether such products should have preferential access to Australia, and there is no obligation on the Chinese government to take action to end forced labour.

Recommendations

- ***That the government review the ChAFTA to seek inclusion of legally enforceable labour rights.***
- ***That these should be based on the ILO conventions on basic labour rights including freedom of association and the right to organise, the right to collective bargaining, safe hours of work, health and safety standards, freedom from forced labour, freedom from child labour and freedom from discrimination in the workplace.***
- ***Labour rights should be enforced through the same government-to-government dispute process as other chapters, whereby failure to implement commitments can result in trade penalties.***

Temporary workers and labour rights

The lack of commitments to labour rights in the ChAFTA also applies to temporary migrant workers from China in Australia.

The inclusion in ChAFTA of clauses which increase the numbers of temporary overseas workers has contributed to downward pressure on labour rights for those workers in Australia. The vulnerability

of these workers, which has been exposed in recent years by a series of studies and reports, has been spotlighted by the COVID-19 pandemic, since the government has excluded them from income support and other assistance available to other workers.

Australia is a nation built on immigration and has a permanent migration scheme which has created a vibrant multicultural society. Permanent migrants have the same rights at work as other Australians. Their employment is not dependent on the sponsorship of one employer and they cannot be deported if they lose their employment.

Temporary work visas for overseas workers were originally designed to address specific skills shortages identified by employers, and were subject to local labour market testing to establish whether there was a skills shortage. However their use has expanded since the 1990s, and there are now many different forms of temporary work visas, including the Temporary Skill Shortage Visa, training visas, work and holiday visas, seasonal work visas and international student visas (the latter permit a limited number of working hours per week). The number of temporary workers utilizing these visas has greatly increased. The Migrant Workers' Task Force established by the Commonwealth government reported that there were over 800,000 temporary visa workers in Australia in 2018 (Fels and Cousins 2020: 16).

Temporary workers are in a weaker bargaining position than permanent migrants because they are often sponsored by a single employer, or dependent on the employer for extension of their visa, and loss of their employment can lead to deportation. This leaves them vulnerable to exploitation.

Academic studies comparing various recent trade agreements have demonstrated that removal of labour market testing and expansion of temporary work visas are a means of deregulating labour markets. Such arrangements create groups of workers with less bargaining power who are more vulnerable to exploitation because loss of their employment can lead to deportation (Rosewarne 2015).

A survey of temporary overseas workers in Australia published in 2017 by academics from the University of New South Wales and University of Sydney found they experienced widespread wage theft (Berg and Farbenblum 2017).

Similar evidence was provided in 2017 to the Joint Parliamentary Committee Inquiry into a Modern Slavery Act (Joint Standing Committee on Foreign Affairs, Defence and Trade 2017).

A study of the horticultural industry published in 2019 by Professor Joanna Howe and others showed widespread exploitation and wage theft. The industry is entirely dependent on temporary workers, the majority on work and holiday visas and seasonal work visas (Howe et al 2019).

The evidence from all these studies shows gross violations of Australian minimum work standards including failure to pay even minimum wages, long hours of work, and lack of health and safety training leading to workplace injuries, as well as lack of effective freedom of association and collective bargaining rights.

The COVID-19 pandemic has meant that thousands of temporary workers have lost their jobs but have been excluded from government payments. The government has abandoned responsibility and told them to return to their home countries, but many lack the means to do so. These workers now have no employment and no income, which threatens their basic rights to food, shelter and health (Gibson and Moran 2020).

In summary, the inclusion of arrangements for increased numbers of temporary workers driven by employer demands in trade agreements without effective protection of their labour rights treats these workers as commodities and creates a pool of workers vulnerable to exploitation in the workplace and whom the government can exclude from social supports available to other workers.

Temporary movement of people provisions in ChAFTA

The ChAFTA provisions on Temporary Movement of People are unprecedented, compared with any previous Australian trade agreement.

In addition to the Memorandum of Understanding (MoU) on Investment Facilitation, there are references to movement of people in two different sections of the text, one in Chapter 10 and one in a side letter to the agreement. There is also a second MoU on Work and Holiday Visa arrangements. The four different aspects of these provisions are complex and must be read in conjunction with each other to be properly understood.

The scale and scope of these arrangements for Chinese temporary workers in Australia are greater than in any previous agreement. In contrast, provisions for Australian nationals to work in China are quite restricted, contained only in the Trade in Services chapter, and mainly apply to senior managers and other specifically skilled workers in specific service industries (ChAFTA Chapter 8 and Annex III, Schedule 2).

Memorandum of Understanding (MoU) on Investment Facilitation

The Investment Facilitation MoU is an arrangement which removes mandatory local labour market testing, skills assessment, and limits on numbers and occupations of temporary workers for infrastructure projects with a relatively low investment threshold of $150 million, and which have between 15% and 50% of Chinese investment (ChAFTA text, MoU on Investment Facilitation 2015)**.**

The MoU is not part of the text of the agreement itself, but was negotiated at the same time. It is not legally enforceable through government-to-government disputes in the same way as the trade agreement, but is an agreement between the governments “through diplomatic channels,” and changes can be made at any time by agreements between the parties (MoU Clause 9).

The MoU establishes special arrangements between the Department of Immigration and Border Protection of Australia or its equivalent, and a project company eligible for such arrangements. The project company will be eligible where either a single Chinese enterprise owns 50 per cent or more of the project company, or, where no single enterprise owns 50 per cent or more of the project company, a Chinese enterprise holds a substantial interest in the project company. A footnote defines a “substantial interest” as defined in Australia’s foreign investment policy, which occurs when “a single foreign person has 15 per cent or more, or several foreign persons and any associates have 40 per cent or more, of the issued shares, voting power, or potential voting power of the corporation” (MoU Clause 2a). This means that a project could qualify with 15 per cent to 50 per cent of Chinese investment.

The project company must be involved in a proposed infrastructure development project with an expected capital expenditure of A$150 million over the term of the project. The project must be related to infrastructure development in food and agribusiness, resources and energy, transport, telecommunications, power supply and generation, environment or tourism (MoU Clause 2b and c). This is a very low threshold which would include most building and infrastructure projects in a wide range of industries.

Twenty days after advice from the project company, DFAT will assess that the project meets the relevant criteria .The Department of Immigration and Border Protection will negotiate the occupations to be covered, English language requirements, qualifications and experience, and calculation of the terms and conditions of the Temporary Skilled Migration Income Threshold. The Temporary Skilled Migration Income Threshold is currently $53,900 (Department of Immigration and Home Affairs 2020). This has not changed since 2015 and is well below the rates paid to local skilled workers in infrastructure projects.

This means that the minimum wage to be paid to the temporary workers will be the subject of negotiation between the project company and the Department of Immigration and Border Protection before the workers arrive in Australia and that the workers will be excluded from the basic right to collective bargaining under the Fair Work Act. The rate paid may not be equivalent to the rates paid to local workers in the industry (MoU Clause 4).

Investment Facilitation Agreements between the Department and the project company will set out occupations and the terms and conditions against which overseas workers can be nominated for a temporary skilled visa for the purposes of the eligible project, valid for four years with the possibility of extension. The agreement will record any requirements and conditions that the project company must comply with. There will be no mandatory requirement for local labour market testing (MoU Clauses 6-8).

The projects are intended to comply with Australian laws including workplace law, work safety law and licensing regulation and certification standards, but it is not clear how this compliance would be enforced, given the current widespread exploitation of foreign temporary workers discussed above.

The removal of skills assessment for the 10 occupations in the side letter discussed below means there is no clear way of assessing whether occupational licensing and skills standards will be met.

In summary, the MoU enables investment projects meeting the low threshold of $150 million to bypass the local workforce and employ unlimited numbers of temporary workers who will be tied to one employer, with no clear means of skills assessment, including health and safety skills, and who may be paid a minimum rate below the rates of equivalent local workers. They will not have the right to collective bargaining under the Fair Work Act, will be isolated from the local workforce and extremely vulnerable to exploitation.

We are not aware that any investment facilitation agreements have been approved since ChAFTA came into force in December 2015. The pandemic has severely restricted travel and temporary migration since March 2020, and such movement is likely to be restricted for some time. Given both the shortcomings of the MoU and the lack of demand for its use, and that the MoU is not a legally binding part of ChAFTA and can be cancelled through diplomatic action, the government should take action to cancel the MoU.

Commitments on movement of people in the text of the agreement

a) Chapter 10, Movement of Natural Persons: removal of local labour market testing

The Australian Government has made the explicit commitment that there will be no labour market testing or economic needs test for any categories of temporary skilled workers in Chapter 10, Movement of Natural Persons. This means there is no requirement for employers to check whether local skilled workers are available to do the work (ChAFTA: p. 113, Article 10.4.3b).

This includes contractual service suppliers, many of whom come to Australia under Temporary Skills Shortage Visa provisions (formerly Visa 457) (ChAFTA: p.118, Annex 10a, Articles 10-11).

Since finalising ChAFTA, the Australian Government has a stated policy to restore labour market testing. It would be consistent with this policy for the Government to remove the commitments to remove labour market testing in the ChAFTA.

b) Side letters removing mandatory skills assessment for 10 key skilled occupations, including licensed occupations like electricians.

There is a separate exchange of side letters on skills assessment "which constitute an integral part of the agreement" in which the parties agree to "streamline relevant skills assessment processes for temporary skilled labour visas, including through reducing the number of occupations currently subject to mandatory skills assessment for Chinese applicants for an Australian Temporary Work (Skilled) Visa (subclass 457)" (ChAFTA Side Letter on Skills Assessment: 1-2).

The side letter states:

> "Australia will remove the requirement for mandatory skills assessment for the following 10 occupations on the date of entry into force of the Agreement.
> Automotive Electrician
> Cabinet Maker Carpenter
> Carpenter and Joiner
> Diesel Motor Mechanic
> Electrician (Gen)
> Electrician (Special Class)
> Joiner
> Motor mechanic (Gen)
> Motor and Motorcycle Mechanic" (ChAFTA Side Letter on Skills Assessment: 1).

The Chapter 10 articles quoted above and the side letter provisions together mean the Government agreed to both the removal of local labour market testing and the removal of skills assessment for temporary workers in skilled occupations. This assessment is essential to ensure skill levels but also to ensure occupational and public health and safety. There is no indication in the side letter of any process by which the Australian Government or government agencies have assessed that the skills and qualifications to be recognised in these particular occupations are in fact equivalent to those required in Australia.

The licensing for these 10 occupations takes place at a state government level. It is not clear whether or how relevant licenses are being granted.

It appears that these occupations were chosen because the licensing occurs at state government level. The Commonwealth has simply agreed to recognise paper qualifications for the purposes of granting visas, and has left any assessment to the state licensing bodies.

This could lead to a situation where there is no guarantee that temporary workers will have the same level of skills, health and safety knowledge and qualifications as are required for local workers, potentially endangering themselves, other workers and the public.

The Memorandum of Understanding on Work and Holiday Visa Arrangements

This document commits Australia to grant annually up to 5,000 multiple entry "Work and Holiday" visas for young people with tertiary education and a level of proficiency in English, to stay in Australia for a period of 12 months for the purposes of a working holiday (MoU Clause 1). There is no equivalent commitment for work and holiday arrangements for Australians in China.

The work is supposed to be incidental to the holiday, and visa holders are not supposed to work for the full 12 months, but there is no upper limit on the total period of employment. They may not be employed by any one employer for more than six months (MoU Clause 2).

There is no mention in the Work and Holiday MoU of compliance with applicable Australian laws and workplace standards. This is surprising, given that current lack of enforcement of these standards for workers on working holiday visas has been widely documented as discussed above on p.4 (Howe *et al* 2019).

The evidence of violations of Australian standards included failure to pay even minimum wages, lack of compliance with maximum hours of work and lack of health and safety training and standards leading to workplace injuries.

Temporary Worker outcomes under ChAFTA since entry into force

The provisions for increased temporary workers in the ChAFTA, and evidence of exploitation of such workers have been outlined above.

A case study of conditions for temporary workers granted visas under ChAFTA occurred in Melbourne in early 2016.

Seven workers were flown in to undertake the installation of a car lift on a building site in Melbourne, under an accelerated visa process specified in the ChAFTA to employ skilled workers with skills not available locally on short-term contracts. The workers were employed by the lift manufacturing subcontractor based in China for 10 weeks' work in Australia.

They were paid A$10 per hour, which was less than a quarter of the $42 per hour for skilled lift installation work. They had no adequate health and safety training and were working under unsafe conditions. The unsafe work practices were reported and the workers returned to China after several weeks. The work was completed by local skilled workers who were available (Ferguson and Danckert 2016).

This case study reinforces the evidence from the more comprehensive studies cited above of the conditions of temporary overseas workers, including Chinese workers. These were conducted by academics from the universities of UNSW, Sydney and Adelaide, and by a parliamentary inquiry from 2016-19 (Joint Standing Committee on Foreign Affairs, Defence and Trade 2016, Berg and Farbenblum 2017, Howe *et al* 2019).

Moreover, as a result of the pandemic, there are thousands of temporary workers from China and other countries who have lost their employment but cannot return home because of travel restrictions and/or lack of resources, and have been refused any government support (Gibson and Moran 2020).

Data on temporary workers

Table 1 below shows Department of Home Affairs data on Chinese workers with Temporary Skills Shortage Visas in Australia after ChAFTA came into force. These numbers peaked at 6,553 in 2014-15 at the height of the mining boom. They remained relatively steady at 5,616 in 2015-16 and 5,472 in 2016-17 before declining to 3,463 in 2017-18, then rising slightly to 3,911 in 2018-19. The cumulative numbers increased to a peak of 11,843 in 2015-16 and declined to 8,422 in 2018-19.

Table 1: Chinese Temporary Skill Shortage Visas, Granted and Total Present, 2010-2019

Year	Temporary Skill Shortage Visas granted	Total Temporary Skill Shortage Visas present
2009-10	2,916	5,857
2014-15	6,653	11,647
2015-16	5,616	11,834
2016-17	5,472	11,214
2017-18	3,463	9,739
2018-19	3,911	8,422

Source: Australian Government, Temporary Work (skilled) visa program: https://data.gov.au/data/dataset/2515b21d-0dba-4810-afd4-ac8dd92e873e.

There have been no reports of the use of the ChAFTA provision for Investment Facilitation Agreements for large infrastructure projects of $150 million or more that allowed for an employer to import an entire workforce from China, on terms negotiated with the Department of Immigration and Border Protection.

It appears that changes in market demand conditions resulting from the decline of the mining boom had more impact on numbers of temporary skilled visas than the specific clauses in ChAFTA.

Conclusions

Studies show that temporary workers in Australia, including Chinses workers, have been exploited because their visa depends on a single employer and they can be deported if they lose the job. The studies show gross violations of Australian minimum work standards including failure to pay even minimum wages, long hours of work, and lack of health and safety training leading to workplace injuries.

Many temporary workers have now lost their jobs because of the pandemic, and cannot return home, but have been denied government assistance. These workers have been treated as commodities to be discarded when no longer needed, with no regard to their basic rights to food and shelter, or their rights as workers. The government should ensure that these workers have the same access to assistance as other workers.

Despite the unprecedented series of different provisions in the ChAFTA for entry of temporary workers, the most controversial provisions in the Investment Facilitation MoU have not been used. These and other provisions were negotiated in 2015 at the height of the mining boom in Australia, which declined after 2015. The decline in employer demand from 2016 has influenced the declines in numbers shown above.

The COVID-19 pandemic and the resulting closure of borders means that there is little prospect of more temporary workers being able to enter Australia in the immediate future.

Given the combination of evidence of continued exploitation of these workers and the declining use of the special visa provisions in the ChAFTA, such provision should be removed from the agreement.

Recommendations

- ***Temporary workers who have lost their employment should have access to the same government assistance as other workers.***
- ***The MoU on Investment Facilitation should be cancelled.***
- ***The side letter removing mandatory skills assessment should be cancelled.***
- ***Commitments to remove labour market testing for skilled or semi-skilled workers should be removed from the text.***

No Commitments to Environmental Standards

Trade agreements should include commitments by governments to implement agreed international environmental agreements which should be enforced by the government-to-government disputes process of the agreement. The KAFTA included an Environment Chapter, in which parties made commitments not to reduce environmental protections, and to implement multilateral environmental agreements, but it was not enforceable (KAFTA Chapter 18). The CPTPP also has an environment chapter, but its provisions are mostly non-enforceable. For some provisions, there is a disputes process which is specific to that chapter, although the process is less enforceable than the government-to-government dispute process that applies to other chapters in the agreement (CPTPP 2018 Chapter 20).

The ChAFTA has no environmental chapter at all, which means that neither government has made any commitment to implement agreed international environmental standards, including the 2015 Paris Climate Agreement.

Despite recent central government policies aimed at reducing pollution, and increased use of renewable energy, China still has very high levels of industrial pollution which harms both the environment and public health, and which have raised concerns amongst its own citizens. Recent reports show continued issues with heavy industrial pollution (Wood 2019), impacts on rates of respiratory illness (Mokoena *et al* 2019), and local protests by concerned citizens (Griffiths 2019).

Lack of compliance with environmental standards reduces costs for both local Chinese firms and firms subcontracting in China, cost reductions which may not be available to local Australian firms. The ChAFTA places no obligations on the Chinese or Australian governments to improve their environmental standards, including actions to reduce carbon emissions.

Recommendation

- ***That the government review the ChAFTA to seek to include commitments to the adoption and implementation of UN International Environment Agreements, including the Paris Climate Agreement, enforced through the government-to-government dispute processes contained in the agreement.***

Investor-State Dispute Settlement processes (ISDS)

Background on ISDS

The ChAFTA includes ISDS. ISDS allows a single foreign investor to sue a government for compensation in an international tribunal if a change in law or policy can be claimed to harm their investment. ISDS provisions have been included in the text of some trade agreements but do not require changes to Australian law and have not been debated or voted on by parliament.

ISDS is a separate process from the government-to-government dispute process found in all trade agreements. It is highly controversial and is only included in some agreements. ISDS was so controversial that the Howard Coalition government did not agree to include it in the AUSFTA in 2004, and the Productivity Commission recommended against its inclusion in trade agreements in 2010 (AUSFTA 2004, Productivity Commission 2010:274).

ISDS has been rejected by the low-income majority of countries in the 164-member WTO, but has been included in some preferential regional trade agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership between 11 countries, and some bilateral trade and investment agreements. But ISDS has been excluded from the current negotiations for the Australia-EU Free Trade Agreement and from negotiations for the 15-member Regional Comprehensive Economic Partnership between Australia, New Zealand, Japan, China, South Korea and the 10 ASEAN countries (Ranald 2019).

ISDS tribunals are staffed by practising advocates, not independent judges, and there are no precedents or appeals, leading to inconsistent decisions (French 2014, Kahale 2014).

There are now over 1,000 ISDS cases, many against low-income countries (UNCTAD 2020), with costs awarded against governments amounting to hundreds of millions or even billions of dollars (Transnational Institute 2017, Tienhaara 2019).

The US Philip Morris tobacco company could not use ISDS in the US-Australia FTA because community opposition had kept it out of that agreement. The company shifted some assets to Hong Kong and used ISDS in a Hong Kong - Australia investment agreement to claim billions in compensation from the Australian government for Australia's plain packaging legislation. Defeating this case took a total of seven years, cost the Australian government $12 million in legal costs, and other countries delayed similar regulation pending the result (Ranald 2014, Ranald 2019).

There are increasing numbers of ISDS cases against government regulation to reduce carbon emissions and combat climate change. For example, the US Westmoreland Coal Company is suing Canada over a decision by the Alberta province to phase out all coal-powered energy (Tienhaara 2018).

ISDS rules could result in cases from global companies, including Chinese companies, claiming compensation for government actions during the pandemic that reduced their profits but were essential to save lives.

Peru cancelled road tolls to facilitate internal transport of essential goods during the pandemic, and has been threatened with an ISDS case by private road toll operators (Sanderson 2020).

Legal firms specialising in ISDS are already advising corporations on possible cases. An international arbitration law firm has told its clients:

> While the future remains uncertain, the response to the COVID-19 pandemic is likely to violate various protections provided in bilateral investment treaties and may bring rise to claims in the future by foreign investors…While States may invoke *force majeure* and a state of necessity to justify their actions, as observed in previous crises that were economic in nature, these defences may not always succeed (Aceris Law 2020).

Legal scholars critical of ISDS have confirmed that after the pandemic governments could face claims for compensation from global corporations. They have called for all governments to withdraw consent from ISDS rules to avoid an avalanche of cases relating to the pandemic (International Institute for Sustainable Development 2020).

UNCTAD, the UN body which monitors ISDS cases, has also acknowledged this danger (UNCTAD 2020: 11-12). Prominent global economists and lawyers led by Jeffrey Sachs have called for a moratorium on ISDS claims relating to government actions during the pandemic (Columbia Centre on Sustainable Investment 2020). Six hundred and thirty civil society groups have written to governments about the dangers of such cases, asking them to withdraw from ISDS arrangements (Civil Society Organisations 2020).

ChAFTA ISDS provisions unfinished

The ISDS section in ChAFTA is unfinished, with important definitions of the criteria that can be used to sue governments to be determined by a review process in 2017 which has not taken place (ChAFTA p. 90, Article 9.9). The unfinished clauses include two of the most controversial aspects of ISDS, the definition of indirect expropriation and the definition of minimum standard of treatment for foreign investors. These are provisions often used to sue governments under other agreements.

There is a "safeguard" clause to protect public interest measures from ISDS, but because the clauses are so far unfinished, it is not clear how this would interact with future clauses on indirect expropriation and minimum standard of treatment (ChAFTA p. 92, Article 9.11.4). In any case, as discussed above, all safeguard clauses are limited by the fact that the tribunals have enormous discretion in interpreting them.

The procedures for ISDS cases in ChAFTA are less transparent than other agreements, notably the Korea-Australia FTA (KAFTA). ChAFTA p.101, Article 9.17.2 says parties "may" not "shall" agree to make ISDS hearings and documents public. This is a backward step compared with the equivalent clauses in KAFTA, which state that both documents and hearings "shall" be open to the public (KAFTA Articles 11.21.1 and 11.21.2). A side letter referred to in ChAFTA Article 9.12.9 says neither government will apply the UNCITRAL new rules on transparency, which do require hearings and documents to be made public.

Given the issues discussed above, including the danger that Chinese investors could sue the Australian government over actions taken during the pandemic, the Australian Government should seek to remove ISDS clauses from ChAFTA.

Recommendation

- ***That Investor-State Dispute Settlement (ISDS) provisions should be removed.***

Lopsided market access in the investment chapter

The ChAFTA investment chapter is lopsided, in that Australia has given Chinese investors far more favourable access to invest in Australia than Australian investors have in China. Combined with the incomplete ISDS provisions, this suggests there was pressure to finish the agreement on the part of the Australian Government. As discussed above, the intention was to review these clauses two years after implementation, but this has not occurred.

ChAFTA p. 86, Articles 9.3.1-9.3.4, states that Australia is obliged to give national treatment and non-discrimination to the establishment and acquisition of Chinese investment, as well as to ongoing investments. China does not have this general obligation for establishment and acquisition of Australian investment. This means there can still be limitations like requirement for joint ventures for new Australian investments in China, except for some specific service sectors which are discussed below. This difference in the levels of basic commitments to national treatment is very unusual. For example, KAFTA has the same levels of commitment to national treatment (KAFTA, Article 11.3).

ChAFTA p. 88, Article 9.5.2 states that China has also exempted from the Investment Chapter all its other existing limitations on investment measures (known as nonconforming measures) across the economy.

However, there is some relaxation of these limitations listed in its positive list of commitments for Chapter 8 on Trade in Services. This list is in Annex III of the agreement. A positive list means China includes only those services which it has decided to include in the agreement. Some of the services included in the list have less limitations for foreign investors in some sectors. Some examples of the removal of restrictions for investment in services are in transport, tourism, hospitals, aged care, education and financial and insurance services. These are the “breakthroughs” in market access for services which the Australian Government promoted in the agreement.

Australia has used a negative list for Annex III for both investment and services, which means everything is included (including future measures) unless specifically excluded, and its nonconforming measures are therefore far fewer than China’s.

Trade in services provisions lopsided

Trade agreements should not undermine the ability of governments to regulate in the public interest, particularly regarding essential services like health, education, social services, water and energy.

Australia’s commitments in the ChAFTA trade-in-services chapter use a negative list structure, which means that all services are included unless specifically exempted as “non-conforming measures”. The standstill and ratchet structure of these commitments mean that future Australian government are restricted from introducing new regulation of services unless those services are listed as specific exceptions.

China has made its services commitment though a positive list structure, which specifies only those services it wishes to include in the agreement.

Australia should seek to change its services commitments in ChAFTA to a positive list rather than a negative list system. A positive list allows governments and the community to clearly understand what is included in the agreement, and therefore subject to the limitations on government regulation under trade law. It avoids the problem of inadvertently including in the agreement future

service areas, which are yet to be developed. It also means that governments retain their right to develop new forms of regulation needed when circumstances change, as has occurred with the need for financial regulation following the Global Financial Crisis, governments' responses to climate change and the COVID-19 pandemic (United Nations 2009).

The inclusion of essential services like health, water and education in trade agreements limits the ability of governments to regulate these services by granting full 'market access' and 'national treatment' to transnational service providers. This means that governments cannot specify any levels of local ownership or management, and there can be no regulation regarding numbers of services, location of services, numbers of staff or relationships with local services, unless the particular services are carefully excluded. Governments should maintain the right to regulate to ensure equitable access to essential services, service standards and staffing levels, and to meet social and environmental goals.

If hospitals or vocational training services are opened up to private foreign investment, and the privatisation fails, trade-in-services rules make it more difficult for governments to re-regulate the service or to resume provision of public services. The recent failure of deregulation and privatisation of Australian vocational education services resulted in government re-regulation of those services late in 2016 (Conifer 2016). Without very specific exclusions for private vocational education services in trade agreements, trade-in-services rules could have been an obstacle to such re-regulation of foreign owned services.

Public services should be clearly excluded from the ChAFTA and must be clearly defined. AFTINET is critical of the definition of public services in many trade agreements which defines a public service as "a service supplied in the exercise of governmental authority … which means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers." This definition results in ambiguity about which services are covered by the exemption. In Australia, as in many other countries, some public and private services are provided side-by-side.

Even when essential services are not publicly provided, governments need clear rights to regulate to ensure equitable access and to meet other social and environmental goals.

Recommendation

- ***That the government change its services commitments in ChAFTA to a positive list rather than a negative list structure.***
- ***That the government ensure that public services are clearly defined and clearly excluded from services commitments.***
- ***That services commitments should not impede governments from regulating and re-regulating essential services, or from introducing new regulation to address challenges like climate change and the COVID-19 pandemic.***

Product Standards not guaranteed or enforced

The ChAFTA Technical Barriers to Trade (TBT) Chapter, dealing with product standards and labelling, commits to World Trade Organisation obligations and dispute settlement (ChAFTA p. 44, article 6.12.2).

The Australian Industry Group on October 27, 2014, stated that a survey of its members found that many manufactured goods imported from China do not meet Australian safety and quality

regulations, citing an example of dangerously faulty electrical cables which could have affected up to 40,000 homes and businesses (AIG 2014: 29). It concluded that:

> "Conformity of Chinese imports with Australian safety and quality standards needs to be strengthened and a process developed for legal enforcement of insurance claims and contract breaches" (AIG 2014:4).

Despite this evidence, ChAFTA appears to reduce the possibility of strengthening the process of assessing the conformity of imports with Australian safety and quality standards by accepting existing Chinese technical regulations and conformity assessment bodies.

ChAFTA p. 45, Article 6.7.5 on p. 44 reads:

> "Each Party shall accredit or otherwise recognise conformity assessment bodies in the territory of the other party on terms no less favourable than those it accords to conformity assessment bodies in its territory."

This appears to be inconsistent with article 6.7.7 which states that "this article shall not preclude a party from undertaking conformity assessment solely within specific government bodies located in its own territory or in the other party's territory, subject to its obligations under the TBT agreement".

In summary, despite evidence from industry bodies that some manufactured goods imported from China do not meet Australian safety and quality standards, the agreement appears to allow for current conformity assessment bodies in China to assess these goods and is ambiguous about further Australian assessment of whether they conform to Australian standards.

The examples below show that Chinese products imported since the implementation of ChAFTA do not always meet Australian certification of safety and quality standards, and that there appears to be a lack of resources for border inspection to ensure that such faulty products do not enter Australia.

Faulty Steel fabrication imports

Late in 2015 the Australian steel industry issued a warning about the safety standards of steel products being imported from China. The Australian Steel Institute and the Welding Technology Institute of Australia said some of the fabricated steel entering the country had serious quality defects.

The Steel Institute raised concerns about three footbridges installed at Busselton, Western Australia, that were manufactured in China. Steel Institute Spokesman James England said the bridges would need significant maintenance to repair rust, welding mistakes and deflection to ensure they did not collapse. Australian Steel Institute chief executive Tony Dixon argued for third party accreditation to be conducted on steel manufacturers and fabricators overseas (Cooper 2015).

Asbestos in imported in building materials

Asbestos is a serious health hazard and is a prohibited import in Australia. It is illegal to import building materials or other products containing asbestos.

The Minutes of the Commonwealth Asbestos Interdepartmental Committee meeting for October 24, 2016, obtained under Freedom of Information regulation, noted that that imports from China of building materials containing asbestos were causing concern.

Mr Peter Tighe from the Asbestos Safety and Eradication Agency noted that imported asbestos in building materials from China was finding its way into new buildings. These products had been incorrectly approved for export to Australia and had not been detected by border inspections.

Mr Tighe advised that addressing this problem required improved inspection capacity in the Department of Immigration and Border Protection. He recommended greater targeting especially for manufactured goods from specific Chinese provinces and work with the Department of Foreign Affairs and Trade to develop intelligence. The department should also produce guidance for importers and Customs Brokers to support them in meeting their importation assurance responsibilities.

The Departmental representative at the meeting acknowledged the problem and noted that the Government had an outreach program with China and other countries (Department of Immigration and Border Force, Asbestos Interdepartmental Committee 2016).

Asbestos in Freight Wagons imported to WA

In 2017 the Fortescue Metals Group (FMG) imported 3,384 rail wagons from China, which were found to have asbestos in their brake systems, and did not meet Australian health and safety standards. It appears that the rail wagons were incorrectly accredited for export to Australia and there was no border inspection.

FMG reported the breach to Worksafe WA. and was directed to remove and dispose of the asbestos by September 2019 (Australian Mine Safety Journal 2019).

Faulty COVID-19 facemasks and testing Kits

In April 2020 the ABC reported that the Australian Border Force (ABF) had seized 800,000 Chinese-made faulty face masks and other protective clothing that was being exported to Australia. The ABF official said that not all Chinese products were considered faulty, and other imports of PPE from China were still passing Australian regulations (Greene 2020).

In March 2020 the ABF intercepted a consignment of 200 units of COVD-19 test kits that originated from China and arrived in Perth as air cargo via Singapore The Therapeutic Goods Administration confirmed that the test kits were not registered for use in Australia and the importers did not have approval to import them (SBS News 2020).

Conclusion

The ChAFTA clauses on product standards are ambiguous and there have been examples of substandard products entering Australia ranging from fabricated steel products, building materials containing asbestos, railway components containing asbestos, and most recently faulty facemasks and testing kits imported in the context of the COVID-19 pandemic.

Recommendation:

- ***That the relevant ChAFTA clauses in chapter 6, Technical Barriers to Trade should be clarified to ensure that products exported to Australia meet Australian standards. Border inspection resources should also be increased to detect products which do not meet Australian standards.***

Whether ChAFTA has delivered a net benefit to the Australian community.

Most trade agreements have both winners and losers. Tariff reductions can deliver lower prices for consumers, but can also contribute to the demise of local industries and employment. All of these trends must be taken into account to calculate net economic benefits.

There was no independent economic cost benefit study commissioned by the government based on the actual outcomes of the ChAFTA alone, before it came into force.

One study was conducted in 2015 on the combined predicted impacts of the Japan, China and Korea FTAs. Even with the usual favourable assumptions of such studies, this predicted very small economic gains after 20 years of 0.05% of GDP, and net employment gains of only 5,434, described by *The Age* economics editor as "hardly any jobs" (CIE 2015: 29, Martin 2015).

This study did not attempt to deal with any environment, health or other non-economic impacts of the three agreements.

Trade flows

The graph below shows changes in trade flows before and after the ChAFTA came into force.

Australian goods exports to China were on an increasing trend with some fluctuations before the ChAFTA and have steadily increased since 2016. Australian services exports have also increased, but at a slower rate.

Source: Dept of Foreign Affairs and Trade, Statistics Section, Trade & Investment Economics Branch, Office of the Chief Economist, Australia's directions of Goods & Services Trade Financial Years.

But the composition of Australian exports tells a more complicated story about whether ChAFTA tariff reductions drove these increases. Table 2 below shows that 73% of the value of Australia's

total merchandise exports are unprocessed iron ore, coal, natural gas and gold exports. The value of these exports can fluctuate with price changes, but volumes have also been rising.

This sector is overwhelmingly dominated by iron ore which in 2018-19 comprised $63.12 bn or 63.8% of all mineral and gas exports. There were no tariffs on iron ore, gold or natural gas exports which together comprise 85.7% of all mineral and gas exports. This means that ChAFTA has had no direct impact on the continued rise in value of these exports.

ChAFTA did eliminate low tariff levels of 3% on coking coal and of 6% on thermal coal in 2017, which could have contributed to the growth of coal exports to $14.12 bn in 2018 19.

Table 2: Australian Selected and Total Merchandise Exports to China, 2004-05 – 2018-19, A$ billions

Year	**2005-06**	**2009-10**	**2014-15**	**2018-19**
Iron Ore & Concentrates	6.82	25.17	42.10	63.12
Coal	0.59	5.07	7.51	14.12
Natural Gas	0.013	0.52	1.42	16.64
Gold	0.019	1.00	0.87	5.07
Sub-Total	**7.44**	**31.76**	**51.90**	**98.95**
Total Merchandise Exports	**18.14**	**46.52**	**75.40**	**134.70**
Iron, Coal, Gas and Gold % of Total	41.01%	68.27%	68.83%	73.45%

Source: DFAT publication 'Composition of Trade Australia 2018-19', Country and SITC Pivot Table 2005-06 to 2019-19 (DFAT2020).

Some agricultural exports have received tariff reductions under ChAFTA, including sorghum, wheat, beef, sheep, goat and pork meat, processed foods, wine and spirits, hides, nuts, fruits, and seafoods. These industries have increased their exports as a result of ChAFTA (DFAT 2016).

In 2018 China initiated an anti-dumping dispute against Australia barley imports, claiming they are unfairly subsidised, and imposing a tariff under WTO rules (Ministry of Commerce, Peoples' Republic of China 2018). This dispute is ongoing in 2020 and will be heard by a WTO disputes panel if not resolved. Such disputes are not unusual. Australia has previously initiated 18 similar anti-dumping actions against Chinese imports, including steel, paper and solar panels .(Department of Industry, Science, Energy and Resources, 2020) However the barley action and recent Chinese claims that Australian meat exports do not meet labelling standards mark an escalation in trade tensions.

Chinese exports to Australia

The ChAFTA reduced Australia's remaining tariffs of 5% on most manufactured goods to zero from 2017-19, and all are now at zero.

The trade data shows a steady increase in value of manufactured imports into Australia from China since the ChAFTA came into force. This continues the trend for increased Imports over the last two decades, as Australian tariffs were reduced to 5 per cent

Table 3: Main Chinese Exports to Australia, A$ Billions

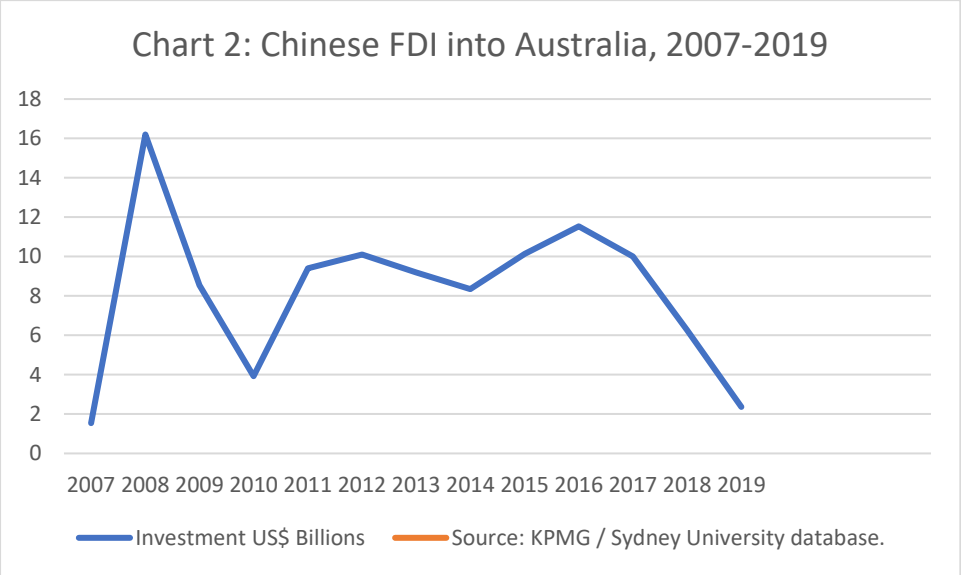
Product	2016-17	2017-18	2018-19
Telecom equipment & parts	7.005	7.663	8.866
Computers	5.070	5.873	6.625
Furniture, mattresses & cushions	2.615	2.995	3.415
Refined petroleum	1.294	1.200	2.770
Prams, toys, games, & sporting goods	2.261	2.469	2.608
Plastic articles, nes	1.746	1.903	2.185
Other textile clothing	1.883	1.919	2.070
Electronic integrated circuits	0.715	1.598	1.823
Manufactures of base metal, nes	1.288	1.435	1.669
Women's clothing (excl knitted)	1.286	1.336	1.603

Source: Based on ABS Trade data on DFAT STARS database (ABS catalogue 5368.0) and unpublished ABS data. https://www.dfat.gov.au/sites/default/files/cot-2018-19.pdf.

Investment

Chinese investment in Australia

A KPMG and University of Sydney study shows from 2007-19 shows China's direct investment per year in Australia valued in US dollars peaked in 2008 but has been declining in value each year since 2016 as shown by Graph 2 below



Source: KPMG / University of Sydney database (KPMG 2020: 7)

This reflects a wider global trend in Chinese overseas direct investment, which fell after Chinese domestic policy changes and stronger screening by industrialised economies (KPMG 2020: 6).

This study shows that the ChAFTA has not changed these broader trends towards lower levels of direct investment from China to Australia.

Australian Investment in China

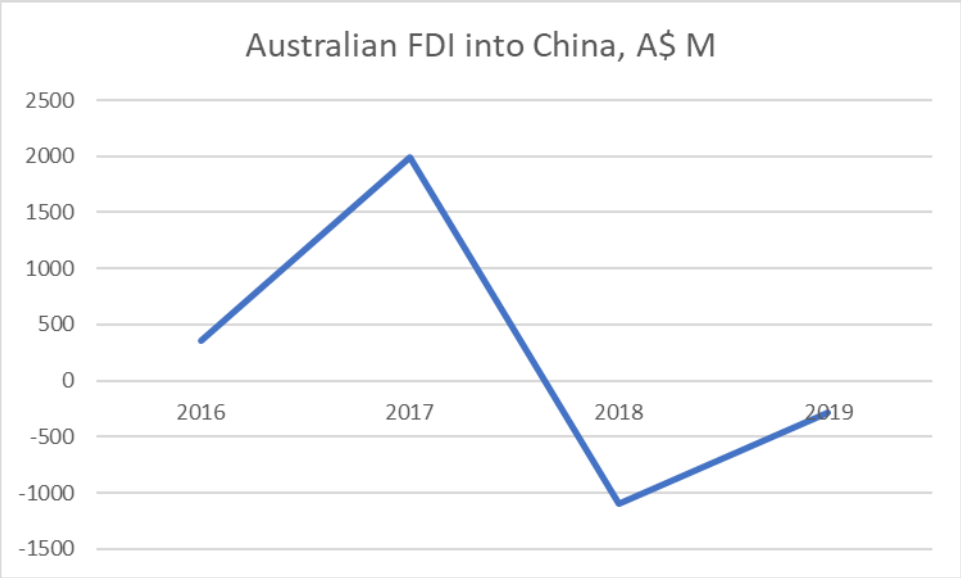
A shorter series of Australian Bureau of Statistics (ABS) figures for Australian direct investment into China from 2016-19 shows that Australian investment rose to 2016-17 but fell from 2017-19.

See table and graph below.

Table 4: Australia FDI into China, Annual, 2016-19, A$M

	2016	2017	2018	2019
Australian FDI into China	359	1,992	-1,093	-258

Source: ABS Catalogue 5352.0 - International Investment Position, Australia: Supplementary Statistics, 2019.



Source: ABS Catalogue 5352.0 - International Investment Position, Australia: Supplementary Statistics, 2019.

This shows that ChAFTA has not resulted in an ongoing increase in Australian direct investment into China.

Conclusion

We are not aware of specific studies of the impacts of the ChAFTA that show the net economic outcomes for Australia. Nor have there been any studies of the health and environmental, gender or other social impacts of the agreement.

Overall, the trade and investment flow data show a continuation of trends that were in process before ChAFTA. Australia's largest value exports to China are iron ore, natural gas, coal and gold. These comprise 73% of total merchandise exports, with iron ore comprising 63.8% of all mineral and gas exports. There were no tariffs on iron ore, natural gas and gold before ChAFTA, so ChAFTA has not affected their growth.

ChAFTA did eliminate low tariff levels of tariffs on coal in 2017, which likely contributed to the growth of coal exports from $7.51 B in 2014-15 to $14.12 B in 2018-19.

Some agricultural exports have received tariff reductions under ChAFTA. Most of these tariffs are still being reduced up to 2022 and 2024. These industries have increased their exports as a result of ChAFTA.

The ChAFTA reduced Australia's remaining tariffs of 5% on most manufactured goods to zero from 2017-19, and all are now at zero.

The trade data shows a steady increase of manufactured imports into Australia from China since the ChAFTA came into force and tariffs were reduced from 5% to zero. This continues the trend for increased Imports over the last two decades. Increased levels of imports may have reduced local investment and employment levels in relevant sectors.

KPMG investment data shows that Chinese investment in Australia has declined since 2016. The ChAFTA has not changed the broader trends towards lower levels of direct investment from China to Australia caused by changes in Chinese domestic policy and of increased screening of foreign investment into Australia.

The ABS data for Australian direct investment into China from 2016-19 shows that Australian investment rose from 2016-17 but fell sharply from 2017-19.

Overall, the trade and investment data show that ChAFTA provisions have had modest impacts. Most Australian merchandise exports are mineral and natural gas exports that have not been affected by tariff reductions. There have been increases in market access for those agricultural and manufactured exports that have benefited from ongoing tariff and reductions. But local manufacturing has faced increased import competition. Direct investment levels in both countries have declined in both countries.

Whether the outcomes of ChAFTA have met business and other stakeholder expectations

Overall, the trade flow data show that outcomes have been far more modest than expectations expressed by the government at the time of the ratification of the agreement, when there were predictions of "hundreds of thousands of jobs" by the then Minister for Trade, Andrew Robb (ABC 2015b).

The trade data summarised above shows that the largest increases in Australian exports have come from minerals exports that were already tariff-free before the ChAFTA came into force. There have been increases in some manufactured and agricultural exports, but we lack evidence about their net economic impact in Australia.

There were also predictions of increased Chinese investment in Australia and Australian investment in China that would contribute to economic growth (DFAT 2015). Contrary to these expectations, Chinese investment in Australia has declined each year since 2016, and Australian investment in China has sharply declined since 2017.

The US-China trade wars, domestic policy changes in both countries and trade and diplomatic tensions between China and Australia have influenced the investment relationship more than has ChAFTA.

Unintended outcomes from ChAFTA

ChAFTA has contributed to overdependence on global manufacturing production chains exposed by the COVID-19 pandemic

Flaws in Australia's trade policies have been exposed by the COVID-19 pandemic. Trade Minister Senator Simon Birmingham has noted that Australia has become overly dependent for manufactured imports of medical equipment and needs to develop more local manufacturing capacity:

> …the challenge is to get the balance right for Australia by having domestic capacity in key certain areas, while not engaging in a wholesale retreat from the openness that underpins our prosperity.
>
> We need to better interrogate how certain supply chains work and whether factors to do with public health, national security, or market concentration mean we need to take steps to make some more resilient (Birmingham 2020: 2-3).

China is Australia's largest trading partner and imports from China have risen as a result of ChAFTA.

The pandemic has also raised the more general issues of the role of government in developing local industry policies, and how active industry policy relates to trade policies.

The realities of the pandemic have forced the Australian government to act against some aspects of its previous trade policy. For example, the government has actively assisted firms to develop local manufacturing capacity for facemasks and ventilators (Tobin 2020, ABC 2020).

AFTINET does not advocate for a return to high tariffs. We support policies to enable local manufacturing of essential health equipment, medicines and other strategic industries. Such initiatives could both assist in expanding employment in response to the economic crisis caused by the pandemic and could also address the climate crisis (Sas and Exposito 2020, Stanford 2020, Nahum 2020).

Recommendation

- ***That the government support policies to reduce dependence on global production chains and enable local manufacturing of essential health equipment, medicines and other strategic industries. Such initiatives could both assist in expanding employment in response to the economic crisis caused by the pandemic and could also address the climate crisis.***

Possible pandemic related state-to-state or ISDS disputes

There is a danger that Australia could face trade penalties under government-to-government dispute processes in bilateral agreements like ChAFTA for taking actions to encourage local industries. Australia should review ChAFTA to remove provisions that could restrict such actions.

Since ChAFTA also contains ISDS, the Australian government could also face claims for compensation from Chinese investors if they could argue that actions taken during the pandemic amounted to indirect expropriation or unfair treatment under the terms of the ISDS clauses. As recommended above, the government should seek removal of ISDS from the agreement.

Product standards

ChAFTA has resulted in increased volumes of imports from China. There may have been an expectation that ChAFTA would improve the conformity of imports to Australian product standards.

As discussed above, the TBT chapter is ambiguous about responsibility for ensuring that China's exports meet Australian product standards. There have been continuing examples of failure to meet Australian product standards ranging from steel fabrication, asbestos in building products and railway components, to faulty facemasks and medical testing equipment.

As recommended above, the government should revise the ChAFTA TBT chapter to ensure that Australian product standards can be met and should also ensure that there are sufficient resources for effective for effective border inspection of imported products.

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