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Briefing on the China FTA 2015

Unbalanced Agreement

China is Australia's largest trading partner and the second largest economy in the world. This unequal bargaining power means that Australia has granted far greater market access in many areas than has China, and has made unacceptable concessions in a rush to finish the agreement. Almost all Australian tariffs are reduced to zero, but Australia's market access to Chinese markets is much more limited, with selected gains for some farm products and service industries.

Increased numbers of temporary workers, lower pay and conditions

A recent [study](#) by Dr Joanna Howe from the University of Adelaide, an international expert on the rights of temporary migrant workers, shows that the ChAFTA provisions on Temporary Workers are unlike any previous Australian trade agreements. They will have less rights than local workers, leaving them vulnerable to exploitation.

Chapter 10 of the text of the agreement removes the requirement for local labour market testing for temporary skilled workers, to check if local workers are available. A side letter removes skills assessment for 10 skilled trades occupations without a clear means of assessing whether Australian occupational licensing and skills standards will be met.

The Memorandum of Understanding on Investment Facilitation Projects 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 of \$53,900, well below the market rates of equivalent local skilled workers. They will be isolated from the local workforce, and extremely vulnerable to exploitation.

The report concludes that the agreement could greatly increase the numbers of temporary migrant workers "without sufficient regard for the necessary regulatory framework to protect those workers from exploitation or to safeguard Australian job opportunities, wages and conditions."

The report recommends that the Parliament pass amendments to the Migration Act to require the application of labour market testing and market salary rates for all temporary workers and a substantial increase in the enforcement capacity and powers of the Fair Work Ombudsman. This legislation could apply to ChAFTA and all future trade agreements.

Foreign Investor rights to sue governments over domestic legislation

The inclusion of Investor-State Dispute Settlement (ISDS) in the ChAFTA gives foreign investors the right to sue governments over changes in domestic legislation which they can argue are harmful to their investments. The Philip Morris tobacco company is currently using ISDS in an obscure Hong Kong investment agreement to sue the Australian government over its tobacco plain packaging legislation.

Many [experts](#), including [Australia's High Court Chief Justice French](#) and the [Productivity Commission](#), have noted that ISDS is not independent or impartial and lacks the basic standards of national legal systems. ISDS has no independent judiciary. Arbitrators can continue to practice as investment law advocates. In Australia judges cannot continue to be practising lawyers because of obvious conflicts of interest. ISDS has no system of precedents or appeals, so the decisions of arbitrators are final and can be inconsistent.

Recent ISDS “safeguards” for health, environment and other public welfare measures have not [prevented cases](#). The US-Peru FTA has similar general “safeguards” but this has not prevented the [Renco](#) lead smelting company from suing the Peruvian government over a court decision which ordered it to clean up and compensate for lead pollution. The US pharmaceutical company [Eli Lilly](#) is currently suing the Canadian government over a court decision which refused a patent for a medicine which was not sufficiently more medically effective than existing medicines. The US [Lone Pine](#) mining company is suing the Canadian government because the Québec provincial government conducted a review of environmental regulation of gas mining. The French [Veolia company](#) is suing the Egyptian government over a contract dispute in which they are claiming compensation for a rise in the minimum wage.

The ChAFTA investment chapter spells out a detailed procedure for these disputes. But the ISDS section is unfinished, with important definitions of the criteria that can be used to sue governments to be determined by a review process in three years time. These are provisions often used to sue governments under other agreements. The Australian Parliament is being asked to vote for the implementing legislation for this agreement without having the details of what these future provisions may be. This is like asking Parliament to sign a blank cheque for an agreement which has been badly negotiated.

No mention of, or commitments to labour rights or environmental standards

Unlike some recent trade agreements, there are no chapters on Labour and Environment. This means that neither the Australian nor the Chinese government have made any commitments not to reduce labour and environmental standards, nor to implement basic labour rights and environmental standards. China has a poor record in both of these areas. Australia will be giving preferential access to Chinese products based on lower standards.

Uncertainty about safety standards of imported products

The imported contaminated frozen berries scandal shows there is a need for stricter assessment of imported food and other products. Industry bodies like the Australian Industry Group have provided [evidence](#) about substandard imported products like electrical cables, and called for stricter assessment to check if imports comply with Australian safety standards. Despite this, the agreement is not clear about how the increased numbers of imports will be assessed to ensure they match Australian health and safety standards.

No evidence of more growth or jobs

While some farmers and service exporters will export more into China, there is no evidence that this will make up for the job losses from lower tariffs and other changes in the economy as a whole. The report from the Centre for International Economics uses economic modelling which the Productivity Commission has concluded overestimates the economic gains from trade liberalisation and underestimates the losses. The modelling includes the Japan and Korean FTAs as well as the ChAFTA, and actually provides no specific modelling of the effects of the ChAFTA.

Even with the inclusion of the other two agreements, the modelling estimates very small increases in annual economic growth (GDP) of 0.05%-0.11% after 20 years, which is almost zero. [Peter Martin](#), the economics editor of the Melbourne Age, has shown that the government’s claim of 178,000 additional jobs from the China FTA after 20 years is false. The true figure shown in the CIE economic study is 5,434.

A bad example for the India FTA and other possible agreements

The China FTA should not be used as an example for the India FTA and the Regional Comprehensive Economic Partnership between Australia, NZ, Japan, India, Korea, China, and 10 ASEAN countries, both now being negotiated.