



Australian
Conservation
Foundation

Submission to the Department of Foreign Affairs and Trade Concerning Negotiating Priorities for the Proposed Australia- China FTA

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The Australian Conservation Foundation (ACF) is one of Australia's leading non-government environmental organisations. For forty years, we have voiced the desire of Australians to conserve the natural environment, uniting progress and environmental protection. Recently, ACF, along with civil society worldwide, has given increasing attention to the complex relationship between international trade liberalisation on the one hand and ecologically sustainable development on the other. ACF welcomes this opportunity to make a submission to the Department of Foreign Affairs and Trade (DFAT) to assist in formulating Australia's negotiating priorities for the proposed Australia-China free trade agreement (the China FTA).

The Narrow Economic Focus of the Feasibility Study

Before providing our recommendations, we wish to comment briefly on the narrow focus of the China FTA feasibility study. We note in particular, the failure of the study to assess the benefits and costs of the FTA with respect to environmental and social issues. Instead, the feasibility study looks at the benefits and costs of the FTA purely in economic terms. ACF is concerned by this omission, particularly in light of China's well documented failings in the area of environmental protection, record on human rights abuses and poor labour standards. Any study into Australia's trade relationship with China that does not address such issues is, quite simply, incomplete.

The narrow economic focus of the feasibility study reflects the federal government's current policy on international trade which is characterised by a continual failure to recognise any significant link between trade liberalisation and environmental/ social issues. The government's policy failure in this area is out of step with the concept of sustainable development which calls for the integration of economic development, social development and environmental protection as interdependent and mutually reinforcing pillars. It is also inconsistent with Australia's commitments made at the 2002 Johannesburg World Summit on Sustainable Development (WSSD). The WSSD plan of implementation at paragraph 51 commits Australia and other nations to:

Strengthen regional trade and cooperation agreements consistent with the multilateral trading system, among developed and developing countries and countries with economies in transition, as well as among developing countries, with the support of international financial institutions and regional development banks, as appropriate with a view to achieving the objectives of sustainable development.

Recommended Negotiating Priorities

Consistent with Australia's WSSD commitments, ACF recommends the following priorities be adopted by Australia for the China FTA negotiations:

Promoting Sustainable Development

1. That the FTA be used to strengthen the capacity of Australia and China to promote sustainable development. This requires the promotion of environmental protection, human rights and labour standards along side the traditional economic considerations of trade. To achieve this, specific chapters relating to the environment, labour standards and human rights should be included in the FTA. To be effective, the environment chapter must set measurable and enforceable targets addressing such issues as: reductions in greenhouse gas emissions; improvements in water quality and river health; and improvements in the health of terrestrial and marine biodiversity. We note that a precedent of including environment and labour chapters was set in the Australia-U.S Free Trade Agreement.

The environment chapter could also be used to identify and establish areas of environmental cooperation. One area of potential cooperation is the promotion of renewable energy within China and Australia. Both countries are still heavily reliant on electricity produced from coal fired power stations, which in turn account for a significant proportion of greenhouse emissions produced by the two nations. Further cooperative work in this area would build upon prior Australian aid assistance to China. For example, between 1998 and 2003, the Australian government contributed 4.5 million dollars to China through a UNEP/GEF project designed to increase investment in renewable energy technologies;

2. To eliminate practices and policies in Australia and China that unduly threaten sustainable development, such as environmentally harmful subsidies;

Safeguarding Environmental and Human Rights Standards

3. That the FTA contain specific and unambiguous wording to ensure the trade agreement does not result:
 - (i) in the lowering of environmental standards and the weakening of environmental laws in Australia and China; and
 - (ii) in the erosion of human rights and labour standards in Australia and China;
4. To reserve the right of Australia to prohibit trade in certain products that represent a biosecurity or other environmental threat and products manufactured according to poor environmental standards;

5. That the China FTA includes specific and unambiguous wording to ensure that in the event the trade agreement is in conflict with an environmental or human rights treaty, the latter takes precedence;
6. Not to fetter the capacity of Australian governments to make laws to protect the natural environment and promote sustainable development;

Dispute Settlement Process and Rights to Compensation

7. To ensure the FTA does not provide foreign investors with greater rights to compensation than those currently enjoyed by Australians under Australian law. This is particularly relevant to negotiations surrounding the investment chapter and, more specifically, provisions relating to compensation arising from “expropriation” of covered investments. Any right to compensation arising from “expropriation” under the FTA should be no greater than the right to compensation traditionally recognised under Australian law which has been confined to circumstances when property has been acquired or “effectively sterilized;”
8. To ensure the state parties (the governments of Australia and China) have the exclusive right to enforce the provisions of the FTA. In other words, the China FTA should not include an investor-state dispute settlement procedure. We note that the Australia-U.S FTA did not include an investor-state dispute settlement procedure; and
9. To ensure that the FTA’s state dispute settlement procedures accord to the commonly accepted judicial traditions of Australia (i.e. reflecting a system that is open, transparent and presided over by impartial decision-makers);

Environmental and Social Impact Assessment

ACF also recommends that DFAT carry out an assessment of the potential environmental impacts of the China FTA and develop recommendations designed to minimise identified impacts. Attention should be paid to the potential impact the FTA (particularly the provisions dealing with investment and services) may have on Australian environmental laws and public health measures. Furthermore, attention should be paid to the potential impact increased trade between Australia and China will have on the environment, such as impacts arising from increased energy use, water consumption and land disturbance in both countries. The federal government’s failure to conduct an environmental impact assessment of the Australia- U.S FTA (AUSFTA) was noted by the Joint Standing Committee on Treaties. Recommendation 22 of its report on the inquiry into AUSFTA states as follows:

The Committee recommends that the Government undertake a review of the environmental impact of the Agreement and that legislation be introduced which will ensure that all future free trade agreements contain results of an environmental impact assessment prior to final agreement.

ACF agrees with this recommendation and strongly encourages DFAT to ensure the same deficiencies in the AUSFTA negotiation process are not repeated with respect to the proposed China FTA.

In addition to the environmental impact assessment, ACF recommends that a social impact study be conducted into the China FTA. The potential impacts of the FTA on

labour standards and human rights in both Australia and China should be a central focus of this study

Should DFAT require further advice from ACF on matters relating to the China FTA, we would most willing to cooperate. We also authorise DFAT to make this submission publicly available on the DFAT website.