

CHINA- AUSTRALIA

FREE TRADE AGREEMENT



Factsheet: Investment and Investor-State Dispute Settlement (ISDS)

The China-Australia Free Trade Agreement (ChAFTA) improves opportunities for investors in both countries. Moreover, China's commitments on investment in ChAFTA protect the competitive position of Australian businesses in China into the future.

Chinese investment in Australia

The total stock of Chinese investment in Australia reached \$65 billion at the end of 2017. This means China currently accounts for 2 per cent of the stock of total foreign investment in Australia.

ChAFTA promotes further growth of Chinese investment into Australia, in particular by liberalising the screening threshold at which private Chinese investments in non-sensitive sectors are considered by the Foreign Investment Review Board (FIRB), increasing it from \$252 million to \$1,094 million.

Under ChAFTA, the Government will continue to screen Chinese investments at lower thresholds for agricultural land and agribusiness, and in sensitive sectors including media, telecommunications and defence-related industries.

FIRB also continues to screen all direct investments, new business proposals and acquisitions of interests in land (including agricultural land), by Chinese state-owned enterprises, regardless of transaction size. ChAFTA does not change these arrangements in any way, consistent with the Government's practice in other FTAs.

Australian investment in China

Australia's stock of investment in China totaled \$77.1 billion at the end of 2017.

A range of China's services commitments in the FTA allow for the delivery of services in China through the establishment of a commercial presence. These include the sectors of health, aged care, shipping, architecture and urban planning, legal and mining services, as well as financial services including banking, insurance and funds management sectors. This represents a significant improvement in the investment environment for Australian services firms. See our [factsheets](#) on Trade in Services and Financial Services for more details.

The Investment Chapter of ChAFTA provides a basis to deepen and diversify the bilateral investment relationship. Under ChAFTA, Australia and China committed to commence negotiations for further investment protections and increased market access in the future.

Under most-favoured nation treatment (MFN) provisions, China committed to extend to Australian investors and their investments any more favourable treatment it provides to other foreign investors under future investment arrangements. These provisions protect Australia's competitive position in China into the future.



Investor-State Dispute Settlement (ISDS)

The China-Australia Free Trade Agreement (ChAFTA), which entered into force on 20 December 2015, contains an Investor-State Dispute Settlement (ISDS) mechanism, under which Investment Chapter obligations can be enforced directly by Australian and Chinese investors. This mechanism promotes investor confidence.

An ISDS claim under ChAFTA can only be made on the basis of a breach of either Party's obligation to provide non-discriminatory ("national") treatment to established investments of the other Party. An ISDS claim cannot be based on a breach of commitments in another chapter of ChAFTA. ISDS does not apply to decisions made concerning investments which are subject to review under Australia's Foreign Investment Framework.

The ChAFTA Investment Chapter and ISDS provisions contain explicit safeguards to protect legitimate government regulation in areas such as public health and the environment. These include:

- the exclusion of government measures that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order;
- general exceptions, including for measures to protect human health and the environment;
- schedules of 'reservations' which allow Australia to maintain existing measures and reserve policy space to maintain or adopt new measures in sensitive areas including with respect to security, human health, agricultural land and creative arts; and
- procedural safeguards built into the ISDS mechanism, such as an expedited procedure to promptly dismiss frivolous claims.

Australian investors in China can use the ISDS mechanism to protect their investments from discriminatory treatment compared with Chinese domestic investors.

For more details on ISDS more generally, please see: <http://dfat.gov.au/trade/topics/pages/isds.aspx>