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Practice Group:

Energy Infrastructure and Resources

Australia and China Free Trade Agreement

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This week, following the successful hosting of the G20 summit, the Australian Federal Government signed a declaration of intention with China to bring into force a China-Australia Free Trade Agreement (ChAFTA). The agreement comes after a decade of negotiations between the two countries and is expected to be worth up to AUD18 billion to the Australian economy over the next few years. The agreement will ensure 85% of all Australian exports will enter the Chinese market tariff-free, rising to 93% within four years and 95% once it is fully operational.

Elimination of Tariffs and the Facilitation of Trade

Resources Energy and Manufacturing

One of the key outcomes disclosed, is the elimination of tariffs on mineral commodities and energy products such as alumina, zinc, titanium oxide, nickel, copper, coking coal and other mineral substances, many of which are set to be eliminated on ChAFTA's entry into force, with the 6% tariff on thermal coal to be phased out within two years. Similarly, iron ore, gold, crude petroleum products and liquefied natural gas are also set to have zero tariffs.

Manufacturing products and pharmaceuticals will also benefit, with tariffs over products like car engines, diamonds, aluminum plates and vitamins (among others) to be removed either on entry into force or phased out over four years.

Agriculture and Processed Foods

Agricultural exports will also benefit from the agreement, as horticulture, seafood and wine tariffs will be eliminated within four years. Other agricultural sectors that will benefit include the dairy sector and the beef industry with the current tariffs of 10%to 20% and 14% to 24%, respectively, set to be phased out. In the case of dairy, it will be over the next four to 11 years and for beef products, over the next nine years.

Services

In what is being heralded as one of its best ever free trade commitments, China will also allow Australian service suppliers to provide consulting services in the areas of coal bed methane and shale gas extraction, as well as the extraction and exploitation of iron, copper, manganese and oil and gas. The key outcomes statement also indicated that ChAFTA will allow Australian ship management enterprises to establish operations in the Shanghai Free Trade Zone (SFTZ).

The deal is also expected to allow direct investment by Australians into Chinese hotel, tourism, hospitals and aged-care facilities. A memorandum of understanding has also been signed between China and Australia designating an official RMB clearing bank in Sydney to facilitate the trading of Chinese currency in Australia.

China has also granted Australian companies, investing in value-added telecommunications services, access to the SFTZ. This access will allow Australian owned companies to supply domestic multi-party communication services, application store services, store and forward services and call-centre services.

In the construction sector, Australian companies will be exempt from business scope restrictions and have been granted market access to undertake joint construction projects with Chinese parties in Shanghai. To support the growth of investment in the infrastructure industry, new Investment Facilitation Arrangements will also be introduced under Australia's existing visa system, for projects above AUD150 million, to assist companies to respond to economic and labor market challenges. Finally, legal firms will be able to establish commercial operations in the SFTZ that will be allowed to service the whole of China.

Outstanding Issues

Australia has maintained its requirement that all investments by Chinese state-owned enterprises be examined by the Foreign Investment Review Board (FIRB), despite China's request for an exemption.

An investor-state dispute settlement mechanism is also set to be put in place to provide both governments with the ability to regulate investments in the public interest, particularly where public health, safety and the environment are affected.

China allegedly has responded by maintaining its stance against increased access for Australian rice, sugar, wheat and cotton. These issues are to be revisited in three years when the deal is reviewed by each government.

It is also important to note that changes may still be made to the substance of the arrangements. The text of the agreement is not yet available to the public and once fully agreed, it will be reviewed and translated to both English and Mandarin before it is signed by both nations. At this stage, it is estimated that the agreement will be signed in 2015.

Review by the Foreign Investment Review Board

In line with Australia's free trade deals with the US and New Zealand, Australia is set to lift the threshold for FIRB review of investment by privately held Chinese firms from AUD248 million to AUD1.078 billion. However, the Australian Federal Government has retained its discretion to screen Chinese investments in the areas of media, telecommunications and defense related industries at lower thresholds.

Higher levels of scrutiny for agricultural land are to continue, with the threshold for FIRB review decreasing from AUD200 million to AUD15 million and an AUD53 million threshold introduced for the purchase of agribusiness.[1]

Conclusion

The ChAFTA represents a major step forward in the already close relationship between China and Australia, and may, when signed, herald changes that other countries may seek to implement in broadening their free trade agreements. The breadth and scope of this agreement will provide major changes into the industries impacted, in particular in the energy, infrastructure and resources sectors. Businesses should consider how to maximise the benefits, and be aware of the

[1] http://www.abc.net.au/worldtoday/content/2014/s4130043.htm

consequences, as they plan for these changes and the subsequent reality that goods, services, and supplies will all face new market entrants and changing market dynamics going forward.

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