

### China – Australia FTA: relationship to the existing bilateral investment treaty

17 June 2015

Investors will be interested to know that the China-Australia FTA (ChAFTA) does not replace the 1988 bilateral investment treaty between Australia and China which was the first such treaty signed by Australia. The *Agreement between the Government of Australia and the Government of the People's Republic of China on the Reciprocal Encouragement and Protection of Investments* (the BIT) continues to be in force and continues to apply to both existing and future investments.

China and Australia have agreed to review the relationship between ChAFTA and the bilateral investment treaty as part of a future work program. The Parties may have decided to preserve the BIT as ChAFTA does not contain the standard investment protections such as expropriation or fair and equitable treatment (for more on the scope of the ChAFTA Investment Chapter see here). The negotiation of these provisions is also left for the future work program.

The 1988 BIT does contain an obligation of fair and equitable treatment and protection against uncompensated expropriation and so these protections will continue to apply to Australian investments in China and Chinese investments in Australia. Significantly though, the scope of the investor-State dispute settlement (ISDS) in the BIT is very limited, applying only to disputes related to the amount of compensation payable in the event of an expropriation. It seems that any broader protection for investments will have to wait for the outcome of the further ChAFTA negotiations under the future work program.

The full text of ChAFTA and further information is available on DFAT's website.



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