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# Why fears over the Australia-China FTA are overblown

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After 10 years of negotiations and the official signing in June 2015, the Australia–China free trade agreement (FTA) still isn't a done deal. A coalition of Australian trade unions is seeking to 'stop the China FTA' at the final hurdle, a vote in federal parliament.

The union's main claim is that the FTA locks out Australian workers by making it easier for Chinese companies investing in Australia to import Chinese labour. In response, the Australian Labor Party opposition leader, Bill Shorten, has committed the party to 'fight' to amend the agreement. Of course, to do so after it has been signed would amount to reopening negotiations. This would be an unprecedented step that would open up the possibility of China also seeking changes to the agreement.

At the outset it's useful to remember what Australia does not give up.

The FTA doesn't make it easier for Chinese investors to buy Australian residential real estate, Australian rural land or agribusinesses. There's no change in the rules for Chinese government-owned companies wanting to buy Australian assets either.

Private Chinese investors will be able to buy assets in non-sensitive sectors with a value up to AU$1.1 billion (approximately US$804 million) without needing approval from the Foreign Investment Review Board (FIRB). That's up from the current value of AU$252 million (approximately US$184 million).

But this is hardly a big concession. Australia gave investors from the US, New Zealand and Chile the higher threshold years ago. And more recently Japan and South Korea have been added to the list. There will also be some small tariff cuts such as getting rid of a 5-per-cent duty on clothes made in China. But again, the same small tariff cuts have already been given to Australia's other big trading partners.

And then there's what Australia gains.



China is offering to slash tariffs by up to 30 per cent on goods made in Australia. No wonder the National Farmers Federation were effusive in their praise that the deal would '…provide billions of dollars in export value to Australian farmers'.

China is also giving Australian businesses best-ever access to its rapidly growing services sector.

There's also a most favoured nation clause thrown in for good measure. This means if China strikes a better deal with another country in the future then Australian producers will receive the same benefits.

Now back to the objections.

Union anger is mostly directed at a memorandum of understanding (MOU) oninvestment facilitation arrangements (IFAs). But IFAs only set up the possibility of bringing in skilled labour on large scale infrastructure projects in certain economic sectors. For example, IFAs do not apply to residential real estate projects.

In June 2015 critics of the FTA claimed it was a fact that IFAs meant there was no need for companies to prove they couldn't find skilled Australian workers before bringing them in from China.

But it's right there in the MOU: 'A labour agreement will … set out the number, occupations and terms and conditions with the terms of the IFA … including any requirements for labour market testing'.

So now they've switched to a different objection: '[T]he interpretation of what constitutes sufficient labour market testing is entirely left up to the department [of Immigration and Border Protection]'.

The key consideration is that it will be the Australian government, answerable to the voting public, that will set the bar on labour market testing, not the Chinese government or Chinese companies.

There's another reason why Australian workers will be favoured. The MOU adds: 'All direct employers under an IFA and workers granted visas under an approved IFA labour agreement will be required to comply with applicable Australian laws, including workplace law, work safety law and relevant Australian licensing, regulation and certification standards'.

That means if Australian workers are available there's nothing to be gained by bringing them in from China.

Some fear that employers may try to skirt these rules. But in that case the solution is to enforce the rules that the agreement clearly sets out, not seek to renegotiate the agreement itself.

Another union complaint is a side letter to the FTA that removes a mandatory skills assessment for temporary workers from China in 10 professions, including electricians. But this requirement was only introduced in 2009 and applied to just 10 countries. Temporary workers from the world's other 150 plus



countries never had to worry. The skill level needed to get a visa won't change. And if the Australian authorities want further assessment, they reserve the right to ask under the Australia–China FTA.

Finally, there are fears that an Investor State Dispute Settlement mechanism included in the agreement could allow Chinese companies to sue the Australian government if it introduced policy measures that damaged their commercial interests. But legal experts emphasise two points. First, the ISDS is two-way: it acts to protect Australian companies in China just as it does Chinese companies in Australia. Second, the protections covered by ISDS in the Australia–China FTA are limited compared with other trade agreements and only extend to 'national treatment'. All this means is that policy measures cannot discriminate between Australian and Chinese firms. For example, there's nothing stopping the Australian government from introducing a tax as long as the tax applies to both Australian and Chinese companies.

Writing in *The Australian* newspaper recently Rowan Callick was right to say that the cost of eroding the Australia–China FTA is too big. Even in the detail the objections don't stack up.