

In the Shadow of the China-Australia FTA Negotiations: What Australian Business Thinks About IP

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November 2007

Background...

- ▶ Negotiations between China and Australia aimed at a 'comprehensive' Free Trade Agreement (10th round of negotiations October 2007)
- ▶ Assuming IP is to be included—what kind of IP obligations should be sought?
- ▶ Range of possibilities: from 'cooperation' through to significant substantive legal commitments.

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- ▶ Assuming IP is to be included—what kind of IP obligations should be sought?
- ▶ Range of possibilities: from 'cooperation' through to significant substantive legal commitments.

- ▶ Some 'horse-trading' across sectors is inevitable.
- ▶ Complicating factors:
 - ▶ Australia as *demandeur*.
 - ▶ The impact of 'most favoured nation' requirement
- ▶ Thus two further questions:
 - (1). Just how important is IP protection to Australian business dealing in China? Is it *more* important than other issues in the trade relationship?
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 - International Reports (e.g., OECD Report The Economic Impact of Counterfeiting and Piracy, June 2007)
 - Industry submissions. . .
 - AiG 2006 Survey. . .
- ▶ Aim therefore to provide broad, unbiased analysis directed at the following questions:
 1. How many Australian companies are doing business with China? What are their characteristics?
 2. How important are IP issues for these companies?
 3. What are the particular IP issues experienced by these companies?
 4. Which of these IP issues are important and for what industries?

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Survey sample and method...

- ▶ Telephone survey conducted in June–July 2006 .
- ▶ Stratified random sample survey of 5,330 enterprises.
- ▶ 2,125 valid responses.

Sample selected for the survey

Strata	(1) Estimated population	(2) Sample selected	(3) Sampling rate % (1)/(2)	(4) Responses	(5) Response rate % (4)/(2)
General (Yellow pages)	1,034,658	3,956	0.4	1,451	36.7
Large (IBISWorld)	1,831	1,195	65.3	549	45.9
Deal with China (AiG)	216	179	82.9	125	69.8
TOTAL	–	5,330	–	2,125	39.9

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▶ This survey defined 'doing business with China' as

1. exporting
2. licensing technologies / brands
3. outsourcing manufacturing
4. providing fee-based consultancy services
5. owning production facilities
6. having offices or distribution outlets

▶ Caveat: self selection?

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Industries covered. . .

Industry	This survey		All Australian	
	Number	%	Number	%
Agr., forestry & fishing	52	2.5	74,111	8.9
Mining	31	1.5	2,731	0.3
Manufacturing	665	31.3	61,888	7.4
Elec., gas & water supply	13	0.6	599	0.1
Construction	192	9.0	113,426	13.6
Wholesale Trade	133	6.3	46,800	5.6
Retail Trade	206	9.7	126,160	15.1
Accomm., cafes, restaurants	3	0.1	39,342	4.7
Transport and storage	76	3.6	37,374	4.5
Communication Services	10	0.5	8,089	1.0
Finance and Insurance	74	3.5	51,708	6.2
Property & business services	277	13.0	171,182	20.4
Govt. admin. & defence	63	3.0	–	–
Education	31	1.5	6,880	0.8
Health & community services	155	7.3	49,008	5.9
Cultural and rec. services	66	3.1	17,300	2.1
Personal and other services	78	3.7	30,480	3.6
All industries	2,125	100.0	837,078	100.0

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How many...

	Number	% Enterprises
<i>Enterprises doing business with China</i>		
Unweighted sample counts	396	18.6
Unweighted population counts	74,801	9.0
Pop. counts weighted by turnover	74,801	40.8
Pop. counts weighted by employment	74,801	18.4
<i>Enterprises planning to do (but not currently doing) business with China</i>		
Pop. counts weighted by annual turnover	82,907	18.3
Total ABS population of enterprises	837,078	100.0

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Deal vs no-deal by industries. . .

(weighted by annual turnover)

Industry	Deal with China %	No dealings %	column 2 to column 3 columns 2 + 3
Agr., forestry & fishing	2.6	0.8	76.5
Mining	6.1	3.0	67.0
Manufacturing	45.2	17.5	72.1
Elec., gas & water supply	0.1	4.6	2.1
Construction	3.6	5.5	39.6
Wholesale Trade	19.6	19.4	50.3
Retail Trade	1.6	9.3	14.7
Accomm., cafes & restaurants	0.1	0.1	50.0
Transport and storage	4.2	7.5	35.9
Communication Services	0.6	0.1	85.7
Finance and Insurance	2.5	12.9	16.2
Property & business services	8.0	8.1	49.7
Education	4.5	0.2	95.7
Health & community services	0.0	3.2	0.0
Cultural and rec. services	0.6	2.4	20.0
Personal and other services	0.0	1.0	0.0
Total	100.0	100.0	-

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Construction	3.6	5.5	39.6
Wholesale Trade	19.6	19.4	50.3
Retail Trade	1.6	9.3	14.7
Accomm., cafes & restaurants	0.1	0.1	50.0
Transport and storage	4.2	7.5	35.9
Communication Services	0.6	0.1	85.7
Finance and Insurance	2.5	12.9	16.2
Property & business services	8.0	8.1	49.7
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Personal and other services	0.0	1.0	0.0
Total	100.0	100.0	-

Deal vs no-deal by size. . .

(weighted by annual turnover)

	Deal with China %	No dealings %	Total %
SMEs	27.5	72.5	100
Large enterprises	46.1	53.9	100
Total	40.8	59.2	100

Note: SME = employing less than 200 people.

By type of activities. . .

(weighted by annual turnover)

Type of activity	% enterprises
Export to China	24.7
License technologies	7.7
Outsource manufacturing	11.4
Provide fee-based consultancy	6.7
Have production facilities in China	11.8
Have offices or distribution facilities in China	19.3
Total (any of the above)	40.8

Note: Column does not add up because some enterprises undertake more than one activity.

Logistic regression. . .

Dependent variable: Doing business with China (1=yes)				
Variable	Parameter estimate	Std. err.	z-stats.	Marginal effect
Sales	0.0032**	0.0010	3.1	0.0003
Employment	0.8604**	0.2411	3.6	0.0929
<u>Industry dummies</u>				
–manufacturing	0.6610**	0.1882	3.5	0.0690
–wholesale	0.1731	0.2612	0.7	0.0169
–retail	-0.4183	0.3410	-1.2	-0.0338
–property & business serv.	0.3828	0.2400	1.6	0.0394
–health	-1.2762*	0.6253	-2.0	-0.0776
<u>IP interest dummies</u>				
–patents	0.3176	0.2060	1.5	0.0320
–trade marks	0.7654**	0.2016	3.8	0.0825
–copyright	0.0566	0.2016	0.3	0.0053
–design	0.6324**	0.1956	3.2	0.0672
–plant breeder's rights	0.5086	0.3155	1.6	0.0564
–trade secrets	0.5829**	0.1840	3.2	0.0628
Constant	-3.2021**	0.1690	-19.0	–
Number of obs.	1,858			
log-likelihood	-609.25			
Pseudo R ²	0.274			

Significance levels: †: 10% *: 5% **: 1%

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Issues that matter...

(among those doing business with China)

	Mean rating	% weighted enterprises with rating ≥ 4	sample count with rating ≥ 4
Chinese regulations	5.6	87.3	313
Tax system	3.9	57.9	192
IP rights	4.7	71.1	260
Legal transparency	5.3	85.2	295
Infrastructure	4.8	81.6	290
Skilled workers	4.4	67.3	261
Sample count (deal with China)	396		

1 (= not important) to 7 (=extremely important)

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IP experiences...

(among those considered IP important)

Type of IP experience (last twelve months)	% weighted enterprises
Patents infringed by Chinese exports	5.4%
Trade marks infringed by Chinese exports	5.2%
Designs infringed by Chinese exports	6.1%
Total (any of the above)	9.1%
Applied for patent/trade mark in China (last 2 years)	11.6%
Number enterprises considered IP important	260

How important/frequent were IP infringements. . . (among those considered IP important)

Rating	Frequency IP rights infringed	Impact of this infringement on profits last year	How often do enterprises try to enforce IP rights
Not important/frequently	78.3	89.4	88.8
Somewhat important/frequently	20.1	10.2	10.0
Very important/frequently	1.6	0.4	1.2
Number considered IP important	224	260	260

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How successful were IP rights enforcements. . .

	%
Never or rarely successful	42.7
Somewhat successful	28.4
Very successful	28.9
Number tried to enforce IP rights	46

Compare to Australian courts,

- ▶ success rates of 56% in patents (Weatherall and Jensen, 2005)
- ▶ 62% in trade-marks (Bosland, Weatherall and Jensen, 2006).

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Responses to IP challenges...

(among those considered IP important)

	%
Lobbied the Chinese Government	12.8
Made deals with infringers	8.0
Lobbied the Australian Government	13.4
Reduced exports of affected products	6.6
Used different brands/labels for China	15.6
Enforced property rights in third markets	7.9
Done nothing	50.6
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Rating of Australian government assistance. . .

(among those dealing or planning to deal with China)

Types of assistance	mean rating
Seek stronger IP laws in China	5.0
Encourage China to enforce IP more	5.2
Assist companies with specific infringement complaints	4.8
Establish better bi-lateral cooperation in law enforcement	5.1

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Evidence from the survey:

1. Across all industries, among firms doing business with China, IP was rated of 'moderate' importance, ranking below other aspects of the business environment.
2. 71.1% of the firms having dealings with China considered IP important.
3. 10.2% of firms considered infringement to have an 'important' impact on profit: 'very' important for 0.4%.
4. Overall, IP enforcement issues are at least 'somewhat' important for about 8% of enterprises currently having business dealings with China.
5. Response of most firms to infringement was to do nothing.
6. Asked to what government should do, 2 most common answers were to encourage enforcement and strengthen bilateral cooperation on enforcement.

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Implications?

- ▶ There is no evidence to support any argument that IP issues should be of the highest priority in Australia's FTA negotiations with China.
- ▶ To the extent that IP is to be addressed, the results suggest the need to be creative with direct, practical assistance on enforcement: which would target industry concerns without triggering the additional 'cost' of MFN for China.

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