

AUSTRALIA

The U.S. trade surplus with Australia was \$7.4 billion in 1997, \$698 million lower than in 1996. U.S. merchandise exports to Australia were \$12.0 billion, up \$49 million (approximately 0.4 percent) from 1996. Australia was the United States fifteenth largest export market in 1997. U.S. imports from Australia totaled \$4.6 billion in 1997, a 19.4 percent increase over 1996. The stock of U.S. foreign direct investment in Australia was \$28.8 billion in 1996, 15.1 percent higher than in 1995. U.S. direct investment in Australia is largely concentrated in manufacturing and finance.

IMPORT POLICIES

Tariffs

Australia's trade-weighted average tariff, 4.1 percent in 1993-4, is projected to fall to 2.2 percent by 2000-1. With the completion of the Uruguay Round, Australia bound 95 percent of its industrial tariff lines, and the government's general tariff reduction program has seen most tariffs fall to 5 percent. Australia has committed to further reductions as part of its APEC Individual Action Plan (IAP).

However, in the Uruguay Round, Australia did not join most other OECD countries in agreeing to phase out tariffs on paper and plasterboard products. Nor did it adhere to the "zero for zero" agreement for distilled spirits (Australia is the third largest market for U.S. exports of distilled spirits). The tariff rate on passenger motor vehicles and their original equipment components, currently 20 percent will be reduced in stages to 15 percent by January 1, 2000. In 1997, the Government of Australia announced a freeze on automotive tariff reductions between 2000 and 2005, ignoring the advice of its own industry commission to continue tariff reductions post-2000. Replacement components for passenger vehicles will remain at 15 percent from July 1, 1996 until the year 2000. Under automotive arrangements, automobile manufacturers may import duty free dutiable imported components up to a value equal to 15 percent of their automobile production in a given year. Tariffs on textiles, clothing and footwear are also subject to a phasing schedule that will see tariffs on cotton sheeting and woven fabrics fall to 15 percent by July 1, 2000 (currently up to 19 percent), on apparel and finished textiles to 25 percent (currently up to 31 percent), on carpets to 15 percent (currently 19 percent), and footwear to 15 percent (currently 21 percent). Similar to its automotive decision, the Australian Government announced in 1997 a freeze on reductions in tariffs for textiles, clothing and footwear between 2000 and 2005.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Government of Australia limits livestock and poultry imports through quarantine and health restrictions. For some of these, the Australian Government has not completed a risk assessment that would provide the WTO-required scientific basis for imposing such restrictions. The Federal Government decided to lift the ban on cooked chicken imports from the U.S., Denmark and Thailand. The United States believes the recommended temperature/time requirements applicable to the treatment of processed cooked poultry meat are so extreme as to discourage imports. In general, Australia prohibits poultry imports without having completed the WTO-required risk assessments (with the exception of cooked poultry). While the Australian Government completed a risk assessment on cooked chicken meat in FY 1997 and issued implementing regulations in late

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1997, we remain concerned about their scientific basis. A WTO-inconsistent ban presently exists on cooked pork (except canned products). The United States has raised these issues at the highest levels of the Australian Government and will continue to do so at all levels and in all appropriate fora.

Prior to 1994, imported feed grains were restricted from entering Australia, ostensibly due to phytosanitary concerns. During the 1994-95 drought the U.S. obtained approval to export feed grains to Australia to supplement domestic production. Since then, the requirement that all feed grains be steam-treated or processed in an alternative satisfactory manner at the port of entry has made further importation commercially not viable. Australia permits the importation of specified feed grains for processing in metropolitan areas under strict quarantine conditions, although facilities are currently available only at the Port of Brisbane.

Phytosanitary regulations prohibit or severely limit the entry of many fruits from the United States, including Florida citrus, grapes, blueberries, stone fruit, apples and pears. After receiving U.S. cherries from California in 1996, the Australian Government decided to revisit the pest risk analysis because of the level of cherries which had to be treated upon arrival (no pests of quarantine significance were found). The U.S. has received informal word that U.S. cherries have been accepted this year. The United States is waiting for Australia's risk assessments, including on stone fruit.

Australia prohibits the importation of all fresh, chilled, and frozen salmon for alleged health-related concerns. The United States joined Canada in consultations with Australia on this matter under Article XXII of the GATT 1947. In November 1995, the United States requested separate consultations under the WTO. The Australian Government announced in December 1996 that no changes would be made to its salmon importation restrictions. The United States is currently a third party participant in Canada's WTO dispute with Australia.

As the result of an independent review of its animal and plant quarantine policies, Australia has announced a formalized process for conducting import risk assessments. Specific guidelines are still to be released. The new process calls for extensive industry consultations and categorizes assessments into either routine or non-routine pathways. The extensive provision for consultations and appeals could extend the period to conduct a review over several years. The U.S. is concerned that many commodities that have been discussed previously would have to start the review process all over again under the new rules.

GOVERNMENT PROCUREMENT

The United States continues to urge Australia to join and adhere to the WTO agreement on government procurement. Since 1991, foreign information technology (IT) companies with annual sales to the government of Australia of less than \$40 million have been "invited" to enter into fixed-term arrangements (FTAs), and those with sales greater than \$40 million into partnerships for development (PFDs). Although companies are not required to join, there is strong pressure to join in order to do business. Companies are encouraged to undertake an agreed level of strategic activities in Australia, including research and development, training, technology transfer, capital investment, and the facilitation of export market opportunities for Australian companies. When the PFD program was first implemented, the main incentive for companies to join was to avoid offset obligations.

Following the abolition of offsets in 1992, the Australian Government prohibited its agencies from purchasing IT-related goods and services from companies who dropped out of the program. In February 1995, the Bureau

of Industry Economics published an evaluation of the PFD and FTA programs. It recommended that both the PFD and FTA programs be continued, but that their "unwarranted emphasis on the information technology and telecommunications sector's trade balance outcome" should cease.

In 1995, the Australian Government established the "information technology services common use contract panel" (ITSCUCP), which determines which companies will be used as a source for commonwealth information technology requirements involving systems integration activity (excluding purchases of less than \$1 million). Any information technology company may join upon demonstrating "acceptable levels" of Australian product development, investment in capital equipment, skills development and/or services support, and local sourcing. Potential members of the ITSCUCP also will be evaluated on their Australian R&D activities, export orientation, and development of relationships with Australian and New Zealand suppliers and consumers. The ITSCUCP has a much broader membership than its predecessor, which was limited to 15 private companies.

After a recent review of its purchasing practices, the Australian Government announced its commitment to source at least 10 percent of its purchases from Australian small- to medium-size enterprises. The government will continue to require tenderers to include industry development objectives in tender documents, with model guidelines to be developed in consultation with industry during 1998. The two envelope tendering system and the requirement for industry impact statements to accompany all procurements of more than A\$10 million was abolished in 1997. The elimination of this requirement is a significant step forward. It is a requirement that has been the subject of U.S.-Australia bilateral discussions.

EXPORT SUBSIDIES

Australia maintains several programs intended to enhance Australian exports. These include the following:

- **Export Market Development Grants (EMDG):** This scheme aims to encourage Australian exporters to seek out and develop overseas markets for goods, services, tourism, industrial property rights and technology that is substantially of Australian origin. EMDG scheme grants are provided partially to reimburse Australian residents who have incurred eligible expenditures while developing overseas markets for Australian products and services. Grant recipients are reimbursed for 50 percent of their eligible expenditures above A\$15,000, with a general annual grant limit of A\$200,000. Funding for the EMDG scheme was recently extended to the 2001-02 fiscal year automotive Export Facilitation Scheme (EFS).
- **EFS:** Under the terms of an EFS, manufacturers of automotive vehicles and components receive subsidies based on the level of exports of specified automotive products. The subsidies are in the form of duty rebate "credits" which recipients can, in turn, use to offset their duty liability on imports of specified automotive products. In general, the level of subsidy is determined based on the sales value of the eligible exports, but the calculation is also done in a way which rewards domestic value-added. The greater the value of any qualifying exported product, the greater the import credit granted. Significantly, however, there is no requirement that the imported products be consumed in the production of exported products, as there normally is in a duty drawback system. Indeed, imports of finished vehicles for consumption on the Australian market are fully eligible for duty rebates under this scheme. The subsidy benefits are freely transferable and may be sold among participants in the program. The EFS is scheduled to remain in force until December 31, 2000.

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Although benefits are progressively reduced each year in line with the annual reduction of 2.5 percentage points in the tariff applicable to passenger motor vehicles, the level of duty rebate would still be significant in the year 2000, when Australia's duty on imported vehicles and components will be at least 15 percent.

- Textiles, clothing and footwear (TCF) import credit scheme: Similar to the automotive export facilitation scheme, the TCF import credit scheme grants duty rebate credits to Australian exporters of TCF products. These import credits entitle the participating TCF exporters to a reduction in import duties on eligible TCF imports. The value of import credits granted is calculated as a percentage (currently 25 percent, falling to 15 percent in 1999) of the domestic value-added in TCF exports. Import credits are freely transferable and may be sold among participants in the program. The scheme is scheduled to remain in force until June 30, 2000.
- Leather: The Australian government has committed to provide its leading automobile leather exporter a grant worth up to A\$30 million and a \$25 million, 15-year, preferential loan with a five-year repayment holiday. The United States has initiated WTO dispute settlement proceedings with regard to this package.

LACK OF INTELLECTUAL PROPERTY PROTECTION

With a few notable exceptions, Australia provides world class intellectual property protection for copyrights, patents, trademarks, designs and integrated circuits copyrights, and plant breeders' rights. Issues of particular concern are:

- Software Decompilation: In mid-1995, the copyright law review committee (CLRC) released its report on computer software protection. The report recommended against changing copyright law to allow the parallel importation of computer software. However, the CLRC's report also contained recommendations which would allow software decompilation for interoperability purposes. As of this writing, the Australian government has not decided whether to allow decompilation. The U.S. Government has advised the Australians of its continuing serious concerns with decompilation.
- Protection of Test Data: In 1997, the Australian government announced a new regime governing the protection of test data for pharmaceuticals (to come into effect on January 1, 1998). However, legislation setting out these changes has not been introduced into Parliament. The Australian Government took the narrow approach to this issue by allowing protection for "new chemical entities" for five years from the date of registration of the originator product. For industry, especially the agricultural chemical industry, this narrow approach offers limited practical protection, as "new uses and formulations" and not "new chemical entities" are the areas that require attention. Furthermore, the new regime's five-year period of protection for test data is insufficient in the case of test data submitted for marketing approval of agricultural chemicals.
- Parallel Importation: At this moment, Australia allows the parallel importation of books under limited circumstances. When foreign publishers do not make available in Australia editions of new works within 30 days of original publication abroad, or when an Australian edition becomes unavailable and

remains so for 90 days, parallel importation is allowed. The Australian government has introduced legislation to allow the parallel importation of sound recordings. This legislation is, at the time of writing, still before the Senate.

SERVICES BARRIERS

Local Content Requirements for Broadcasting and Advertising

The Australian Broadcasting Authority (ABA), the broadcasting regulator for radio and television in Australia, liberalized rules governing local content in television advertising effective January 1, 1992. Under current rules, up to 20 percent of the time used annually for paid advertisement during the hours of 6:00 a.m. and midnight can be filled with messages produced by non-Australians. For broadcasts, 55 percent of a commercial television station's average annual broadcasts between the hours of 6:00 a.m. and midnight must be dedicated to Australian programs. The impact of the content regulation on the amount of U.S.-sourced programming sold to Australian broadcasters is difficult to determine, as the mix of programming is driven by the market's preference for Australian themes. The U.S. Government has reiterated U.S. opposition to quotas in the context of the ABA's 1995 review of the Australian content standard. The regulatory framework for pay television also contains a local content provision which mandates that channels carrying mostly drama programs (not sports or music channels) must allocate 10 percent of their program acquisition expenditures on new Australian dramas. A 1995 amendment to the Broadcasting Services Act 1992 provides for a ministerial review of Australian content on pay TV by July 1, 1997, with this review to include consideration of the feasibility of increasing the Australian drama expenditure requirement to 20 percent. A decision has not yet been made.

Telecommunications

In recent years, the Australian government has significantly liberalized its telecommunications sector the culmination of which occurred on June 30, 1997. On that day, the Australian Government removed the restriction on the number of licensed carriers. However, the Australian Government restricted total foreign investment to 35% in the one third of the state-owned telecommunications carrier Telstra which the government privatized in November 1997. Foreign investment restrictions applicable to Optus Communications (Telstra's sole competitor in fixed services) and Vodafone (Australia's third cellular phone carrier), were relaxed in 1997, and are now subject only to the national interest provisions of the foreign investment approvals process. There are no industry-specific foreign investment limitations on resellers and value-added service providers.

INVESTMENT BARRIERS

All potential foreign investors in Australia are required to submit to a screening process for investment approval. Application of Australia's foreign investment law provides discretion for the government to deny specific foreign investment based on "national interest". Australia's commitments under the GATS Agreement of the WTO are limited as a result of Australia's screening program.

Foreign ownership of commercial television stations is limited. A foreign person may not be in a position to exercise control over a commercial television license or have company interest in such a license exceeding 15

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percent. The aggregate foreign ownership that may be held in television stations is limited to 20 percent. Legislation stipulates that no more than 20 percent of the directors of a broadcasting licensee company may be foreign nationals. Foreigners are also restricted to 20 percent ownership interest in any single subscription television license. Aggregate foreign ownership in a subscription television license is limited to 35 percent.

Foreign airlines flying to Australia may acquire up to 25 percent of the equity in an Australian domestic carrier individually, or up to 40 percent in aggregate. All other foreign investors (including those that do not operate an airline service to Australia) may acquire up to 100 percent of a domestic carrier, or establish a new aviation business. Foreign ownership in Qantas (which was privatized in 1995) is capped at 49 percent; no single entity is allowed to own more than 25 percent.

The purchase of urban real estate by foreign interests is closely regulated. All proposals by foreign investors to acquire developed real estate are examined. Such applications are normally not approved except in the cases of foreign companies buying temporary residences for company executives and foreign nationals temporarily resident in Australia.

OTHER BARRIERS

Bounties

Bounties in some product sectors were originally provided in lieu of tariff protection to assist domestic manufacturers to compete with foreign suppliers. The only remaining bounty provided by the Australian government is for shipbuilding, scheduled to expire on June 30, 1999. Bounties for book printing and computer and circuit board manufacture were abolished in 1997.

Commodity Boards

Several national and state commodity boards control the marketing and export of certain Australian agricultural products. Activities for these marketing authorities are financed by the producers, but some boards enjoy export monopoly powers conferred by the federal or state government. While some of the boards' domestic activities have been deregulated, the export of wheat and rice remains under the exclusive control of commodity boards. The Australian Government has indicated that the Australian Wheat Board (which strictly regulates wheat marketing abroad) will retain its export monopoly until at least 1999. The export of barley from certain states likewise remains strictly regulated. Approximately 95 percent of dairy exports are made by the private sector and about 5 percent by an arm of the Australian Dairy Corporation. Australia terminated its export support payment scheme for dairy producers on June 30, 1995, but instituted a new internal support program on July 1, 1995. The United States is closely monitoring this new program for compliance with Australia's Uruguay Round commitments.