

AUSTRALIA

TRADE SUMMARY

The U.S. trade surplus with Australia was \$6.6 billion in 2002, an increase of \$2.2 billion from \$4.5 billion in 2001. U.S. goods exports in 2002 were \$13.1 billion, up 19.7 percent from the previous year. Corresponding U.S. imports from Australia were \$6.5 billion, up \$347,000. Australia is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Australia were \$4.7 billion in 2001 (latest data available), and U.S. imports were \$3.3 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$14.9 billion in 2000 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$8.7 billion.

The stock of U.S. foreign direct investment (FDI) in Australia in 2001 was \$34.0 billion, down from \$35.4 billion in 2000. U.S. FDI in Australia is concentrated largely in petroleum, finance, and manufacturing sectors.

IMPORT POLICIES

Tariffs

Australia has been reducing its tariffs gradually since the 1970s, and currently 86 percent of tariffs stand between zero and five percent. Over 99 percent of tariff rates are applied on an *ad valorem* basis, with import duty calculation based on free-on-board value. The vast majority (96.1 percent) of tariff lines are bound in the World Trade Organization (WTO), and the simple average bound tariff rate is 10.5 percent. The average applied most favored nation (MFN) tariff currently is 4.3 percent. The average applied MFN rate for industrial products is 4.7 percent, with bound rates generally ranging from zero to 55 percent. The average applied MFN tariff for agricultural products is about 1.2 percent, with bound rates generally ranging from zero to 29 percent. Tariff rate quotas are in place on five cheese items and for non-manufactured tobacco. Australia retains two domestic tariff peaks, which apply to the textiles, clothing and footwear (TCF) and passenger motor vehicle sectors. Applied tariffs for both of these sectors are legislated to be further reduced in 2005.

Applied tariff rates are set at a maximum of 25 percent for apparel and certain finished textiles, 15 percent for cotton sheeting and fabrics, carpet and footwear and 10 percent for sleeping bags, table linen and footwear parts. These rates will be reduced to 17.5 percent, 10 percent and 7.5 percent respectively in 2005. The automotive sector is covered by tariffs of 15 percent on passenger motor vehicles (PMV) and components and 5 percent on light commercial and sports utility vehicles and components. Second hand vehicles are subject to the standard *ad valorem* tariff plus a fixed \$A 12,000 per vehicle tariff, (\$A 1.00 equals approximately \$US 0.56) where the vehicle is not covered by exemptions under the Low Volume Scheme for specialist and enthusiast vehicles. From 2005, tariffs for passenger vehicles and components will fall to 10 percent, but no changes are scheduled for second hand vehicles.

Given the current U.S. share in Australia's textile, clothing and footwear market, economic modeling indicates that the removal of barriers affecting trade in these goods would lead to increases in U.S. exports to Australia of between \$100 million and \$500 million. The removal of barriers to trade in PMV and components also is estimated by U.S. industry to result in an increase in U.S. exports of between \$100 million and \$500 million.

Australia did not support the "zero for zero" agreement on paper and paperboard items in the Uruguay Round, but it has since supported tariff elimination in the entire forest products sector through the Accelerated Tariff Liberalization initiative in the WTO.

Australia did not adhere to the "zero for zero" agreement for distilled spirits. Approximately 99 percent of the whisky consumed in Australia is imported. Australia assesses a duty of 5 percent *ad valorem* on imports of distilled spirits, with the exception of rum, which is bound at 13 percent. Australia is the third largest market for U.S. exports of distilled spirits, with sales of \$54.8 million in 2001, more than 82 percent of which consisted of Bourbon and other whiskies.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

The Australian Government maintains an extremely stringent regime for the application of

AUSTRALIA

sanitary and phytosanitary (SPS) measures, resulting in restrictions on and prohibitions of many agricultural products. Since June 1999, the quarantine and inspection process has involved the application of an import risk analysis (IRA) to potential agricultural imports. The IRA aims to determine the associated risk of introducing pests and diseases into Australia, as well as how that risk can be managed. U.S. products affected by Australia's stringent SPS regime include Florida citrus, stone fruit, chicken (fresh, cooked and frozen), pork, apples, pears and corn. The U.S. Government continues to underscore the need for Australia to conduct timely, science-based IRAs and to comply with its obligations under the WTO Agreement on SPS Measures. The U.S. and Australian Governments have held extensive and detailed consultations on these issues throughout the past year, and these discussions have generated progress on specific issues.

Discussions with U.S. exporters affected by the Australian IRA process indicate that a removal of Australia's SPS restrictions would increase U.S. exports by a figure in the \$100 million to \$500 million range.

Biotechnology

GM Food Approvals

In mid-1999, a mandatory standard for foods produced using gene technology came into effect. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by Food Standards Australia New Zealand (ANZFA) and listed in the food code standard. A transitional exemption to the general prohibition on the sale of bioengineered foods was added to the food standard which allowed imported GM foods to stay on the market where: (1) an application was made to ANZFA for its approval before April 20, 1999; and (2) evidence existed that the food item in question was permitted to be sold by a food regulatory agency, such as the Food and Drug Administration, in another country excluding New Zealand. ANZFA has received 23 applications for safety assessments of bioengineered foods as of December 31, 2002. Of these, 20 have been approved, two applications for approval were withdrawn, and one remains in the approval process.

Food Labeling

On December 7, 2000, the ANZFA approved

amendments to Standard 18 of the Food Standards Code that requires mandatory labeling for foods produced using gene technology. These labeling requirements went into force on December 7, 2001. With a few exceptions, the amendments require labeling if a food in its final form contains detectable DNA or protein or has altered characteristics resulting from genetic modification (GM). Flavorings derived from modern biotechnology which are present in the final product do not need to be labeled if: (1) the concentration is no more than 1gm/kg (0.1 percent); or (2) an ingredient or processing aid in the food unintentionally has a GM presence of no more than 10gm/kg (1 percent) per ingredient. A food derived from an animal or other food-producing organism that has been fed on bioengineered feed does not need to be labeled (i.e., meat). Also, highly refined oils, where the processing has eliminated the detectable DNA derived from biotechnology, does not require labeling. Businesses (including importers) must exercise due diligence in meeting the standard, which means retaining a paper or audit trail or, in some cases, testing by an accredited lab (accredited by the state or federal health authority). The importer must pay for the testing. The States and Territories are responsible for enforcement. The U.S. Government is seeking to ensure that these programs are implemented in a manner that does not impede trade.

GOVERNMENT PROCUREMENT

Australia is the only major industrialized country that is not a signatory to the Plurilateral WTO Agreement on Government Procurement (GPA). As such, Australia is not bound by the GPA's rules on open and non-discriminatory policies in government procurement. At both the Commonwealth and State/Territory level, requirements for offsets and similar GPA-inconsistent arrangements are systemic. Domestic supplier price preferences are common at the State/Territory level. Under the Australia and New Zealand Government Procurement Agreement, New Zealand suppliers are afforded domestic supplier treatment. The Australian Government has participated in the WTO Working Group on Transparency in Government Procurement and supports the launch of negotiations on an Agreement on Transparency in Government Procurement at the Fifth WTO Ministerial in September 2003.

Australia's government procurement is explicitly

AUSTRALIA

directed toward industrial development, social or economic objectives. Government procurement is also used to promote foreign participation in the industrial development of the Australian information technology and telecommunications industry. The Australian Government procurement market is estimated to be worth more than 20 percent of GDP annually, about \$76 billion in 2001. Of this, around 80 percent is defense and defense-related. The non-defense procurements are valued at about \$15.3 billion annually.

EXPORT SUBSIDIES

The Australian Government uses the Export Market Development Grants scheme (EMDG) to encourage Australian exporters to develop overseas markets for its goods, services, tourism, industrial property rights and technology. These grants are available only to small- and medium-sized Australian firms to reimburse partially (up to 50 percent) eligible expenditures (primarily marketing costs) while they are developing overseas markets. In August 2000, the Australian Government committed to continue the scheme until 2005. Automotive and textile, clothing and footwear (TCF) producers benefit from industry specific grants which replaced schemes that previously provided export-contingent benefits. Automotive and automotive parts producers benefit from the Automotive Competitiveness and Investment Scheme (ACIS) which currently provides around \$A 600 million per year in the form of import duty credits designed to promote production, investment, and research and development. This scheme was originally scheduled to run from January 1, 2001 to December 31, 2005. However, the Australian Government decided to compensate for planned additional tariff reductions by extending the program for the ten years after 2005. The grant program that benefits TCF producers is the TCF Strategic Investment Program (SIP), which provides funding for research and development, innovation, restructuring and investment, to assist firms to restructure and achieve efficiency gains prior to legislated tariff cuts in this sector in 2005. The U.S. Government is monitoring the WTO consistency of these programs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Australia is a member of the World Intellectual

Property Organization (WIPO) and is a party to most multilateral IPR agreements, including: the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works; the Universal Copyright Convention; the Geneva Phonogram Convention; the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations; and the Patent Cooperation Treaty. Australia has not yet fully enacted the legislation necessary to enable Australia to accede to the 1996 WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The Copyright Amendment (Digital Agenda) of Act 2000 was a step toward aligning Australian copyright laws with the obligations imposed by the two WIPO treaties. Australian authorities have said that they hope to complete the remaining steps in 2003.

The United States continues to express concern about Australia's removal of restrictions on parallel imports, copyright piracy issues, and with Australia's limitations on its protection of test data for certain chemical entities. Australia has allowed the parallel importation of sound recordings since 1998 and of branded goods (clothing, footwear, toys, and packaged food) since 2000. On February 28, 2001, the Attorney General introduced legislation in Parliament to implement a Cabinet decision to remove the parallel import restrictions on books, periodicals, enhanced CDs, sheet music, computer software and some electronic games. The bill was referred to a Senate Committee, which tabled its report in May 2001. The Majority Report supported the bill but expressed concern over several aspects of the proposed legislation. Before debate on the bill resumed Parliament was dissolved, pending the 2001 election, and the bill lapsed. The legislation was subsequently reintroduced on the same terms in March 2002, passed through the House of Representatives in December 2002 and will be considered by the Senate in 2003.

Video cassettes copied from VCDs and DVDs, parallel imported Zone 1 DVDs (DVDs that are programmed for playback and distribution in North America only) and pirated VCDs continue to be the major threat to Australia's otherwise low rate of piracy. Counterfeit DVDs imported from Asia also are an emerging problem.

The U.S. motion picture industry is increasingly concerned about the unauthorized installation of decrypting technology in DVD players. This

AUSTRALIA

enables playback of parallel imported Zone 1 DVDs from the United States. These Zone 1 DVDs are released in Australia three to six months prior to the local Australian video release and frequently coincide with the Australian theatrical release. It is estimated that 20 percent of the DVDs in Australia are parallel imports, adversely affecting the theatrical and video markets in Australia. The Australian Government has not taken action against entities selling or providing decryption microchips. The U.S. motion picture industry estimated annual losses due to audiovisual piracy in Australia at \$21 million in 2001.

A relatively low priority is assigned to intellectual property enforcement at both the State and Federal levels. The Australian Copyright Act, its interpretation by Australian courts in certain instances, and the position taken by the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, have created costly and burdensome obstacles to enforcement. Civil remedies have not proven an effective deterrent to piracy. U.S. copyright holders remain concerned over recent actions by the Australian Competition and Consumer Commission (ACCC) that equate the holding of a copyright with "market power." While that decision is currently under appeal, the high degree of uncertainty generated by this action has significantly raised costs and risks faced by copyright holders.

In December 2000, the Australian House of Representatives' Standing Committee on Legal and Constitutional Affairs released its report entitled "Cracking Down on Copycats: Enforcement of Copyright in Australia". The Committee recommended amendments be made to the Copyright Act to make it easier for copyright holders to defend their rights in civil actions and to increase the criminal penalties for commercial infringement. The Australian Government has not yet proposed any legislation to implement these recommendations.

In August 1999, the Australian Parliament enacted legislation permitting limited software decompilation. The U.S. Government continues to monitor the potentially serious impact of this action.

In April 1998, Australia implemented a regime to protect test data submitted to regulatory authorities for marketing approval of pharmaceuticals. In 1999, the Australian Parliament enacted legislation

providing five years of protection of test data for the evaluation of a new active constituent for agricultural and veterinary chemical products. However, no protection is provided for data submitted in regard to new uses and formulations.

The Australian Government is considering allowing "springboarding," allowing generic pharmaceutical manufacturers to begin trials and production of pharmaceuticals so that these drugs can receive immediate patent approval and can be sold immediately after a patent expires.

SERVICES BARRIERS

Telecommunications

Serious U.S. industry concerns have been raised about the apparent inability of Australia's telecommunications regulator to curb alleged anticompetitive conduct by the majority government-owned Telstra Telecom, including delays in access to its network and the inflated pricing of its wholesale services. Through its effective monopoly over the copper wire network, Telstra is able to maintain market dominance over local access. Such conduct limits U.S. carriers' ability to compete effectively in this market. The United States continues to urge the Australian Government to privatize its 51 percent share of Telstra.

Audiovisual Trade Barriers

Broadcast Quotas:

The Australian Broadcasting Authority's (ABA) Content Standards require that 55 percent of all free-to-air television programming broadcast between 6:00 a.m. and midnight be of Australian origin. This quota dates to 1960, when it was set at 40 percent. It was subsequently raised to 50 percent in 1965, and in 1973 the measurement of local content was changed from an overall quota to a complicated point system with additional sub-quotas for program type. In 1990, the overall quota was reintroduced at 35 percent with an annual five percentage point increase until the quota reached a cap of 50 percent in 1993 (the sub-quotas and the point system in varying forms remained in place). In 1998, the quota was raised again to its present level of 55 percent.

In addition to broadcast quotas on television programming, the Australian television advertising

AUSTRALIA

quota stipulates that at least 80 percent of total commercial television advertising time in a year, between the hours of 6:00 a.m. and midnight, must be occupied by Australian produced advertisements. Australia's Broadcasting Services Amendment Act requires pay television channels, which include more than 50 percent drama programs in their schedules, to spend 10 percent of their programming budget on new Australian drama programs. Australian music quotas require that up to 25 percent of all music broadcast between 6.00 a.m. and midnight is performed by "predominantly" Australian residents.

INVESTMENT BARRIERS

All potential foreign investors in Australia are required to submit to a screening process through the Foreign Investment Review Board for investment approval. Application of Australia's foreign investment law provides discretion for the government to deny specific foreign investment based on "national interest." Proposals are evaluated according to their consistency with existing government policy and law, where these are taken to define important aspects of national interest. In addition, economic development priorities are considered. It is the Federal Treasurer who ultimately decides whether or not an investment is contrary to the national interest, however. The United States has objected to the continued use of this screening mechanism, with its relatively broad national interest test. Australia's commitments under the General Agreement on Trade in Services Agreement of the WTO are limited as a result of Australia's screening program.

ELECTRONIC COMMERCE

Australia's Copyright Amendment (Digital Agenda) Act, which brings Australia closer to meeting the WIPO Copyright Treaty requirements, took effect in March 2001. The Act is weak in its treatment of technological protection measures and Internet service provider (ISP) liability. The WIPO Treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their property from theft and mutilation. A legal framework that permits content owners to provide for the security of their property online is essential for successful electronic commerce. The U.S. Government will continue to urge the Australian government to strengthen its anticircumvention measures and to continue to take the necessary steps to ratify the

WIPO treaties.

OTHER BARRIERS

Commodity Boards and Agricultural Support

The export of almost all wheat, barley, rice, and sugar remains under the exclusive control of commodity boards. The privatization of the Australian Wheat Board (AWB) in July 1999 saw its export controls transferred to the Wheat Export Authority (WEA), with veto rights over bulk export requests retained by the grower-owned former subsidiary of the AWB, AWB International Ltd. After review during 2000, the Federal government extended the WEA's export monopoly until 2004.

Having terminated export support payment schemes and internal support programs for dairy producers, the Australian Government has made a Dairy Industry Adjustment Package available to dairy producers. This package has been available since June 2000, with payments scheduled over eight years. Also, in 2002, the Australian Government announced an \$A150 million (over four years) sugar industry assistance package to support regional adjustment, diversification and industry rationalization. The package also includes interest rate subsidies to support replanting and short-term income support measures. A levy on domestic sugar sales was intended to fund a large proportion of the package.

Pharmaceuticals

Research-based U.S. pharmaceutical firm are disadvantaged by several Australian Government policies. These include a reference pricing system that ties the price of an innovative U.S. medicine to the lowest priced medicine in the same therapeutic or chemical group, regardless of patent status of the medicines. The lack of transparency of the government's pharmaceutical listing and reimbursement decision-making process, including the absence of an appeals process, is also problematic.

Blood Products

Imported blood plasma products face substantial barriers in the Australia market. First, foreign-sourced blood plasma-derived products must display "clinical superiority" over Australian products in order to be registered. Second, hospitals are reimbursed only for blood plasma

AUSTRALIA

products produced in Australia, establishing a prohibitive price disadvantage for foreign products. The Australian Government is currently drafting a new bill relating to this issue. As it does so, the U.S. Government has strongly urged Australia to eliminate its discriminatory policies toward foreign blood plasma, which would serve to increase the supply and range of blood-plasma products available to Australian patients and help lower the Australian Government's health care expenditures.