

AUSTRALIA

TRADE SUMMARY

The U.S. trade surplus with Australia was \$6.7 billion in 2004, an increase of \$53 million from 2003. U.S. goods exports to Australia in 2004 were \$14.3 billion, up 9.0 percent from the previous year. Corresponding U.S. imports from Australia were \$7.5 billion, up 17.6 percent. Australia is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Australia were \$5.8 billion in 2003, and U.S. imports were \$3.2 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$14.6 billion in 2002 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$10.2 billion.

The stock of U.S. foreign direct investment (FDI) in Australia in 2003 was \$41.0 billion, up from \$34.4 billion in 2002. U.S. FDI in Australia is concentrated largely in the manufacturing, mining, and finance sectors.

FREE TRADE AGREEMENT (FTA)

The governments of the United States and Australia concluded an FTA on February 8, 2004, that entered into force on January 1, 2005. The FTA addressed many of the issues raised in the 2004 National Trade Estimate report. Under the FTA, more than 99 percent of U.S. exports of manufactured goods to Australia are now duty free and all U.S. agricultural exports to Australia, totaling nearly \$700 million, receive duty-free access as of January 1, 2005.

IMPORT POLICIES

Tariffs

Australia has been reducing its tariffs gradually since the 1970s, which has brought 86 percent of tariffs to between zero percent and five percent, with more than 99 percent of tariff rates applied on an *ad valorem* basis. More than 96 percent of Australia's tariff lines are bound in the World Trade Organization (WTO). Australia's simple average bound tariff rate is 10.5 percent and its average applied normal trade relations (NTR), also known as most favored nation (MFN), tariff is 4.3 percent. The average applied NTR/MFN rate for industrial products is 4.7 percent, with most bound rates ranging from zero percent to 55 percent. The average applied NTR/MFN tariff for agricultural products is less than one percent, with bound rates generally ranging from zero percent to 29 percent. Tariff-rate quotas are in place for five cheese items and non-manufactured tobacco. Australia retains two tariff peaks on textiles, clothing, and footwear (TCF) (maximum 25 percent) and passenger motor vehicle (maximum 15 percent).

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Under the FTA, 99 percent of U.S. manufactured goods and 100 percent of U.S. food and agricultural goods exports to Australia are now subject to zero duties. The FTA will also eliminate tariffs within four years in the automotive sector and within 10 years in the textiles sector. U.S. industry estimates the removal of tariffs affecting trade in textiles, autos, and auto components will lead to increases in U.S. exports to Australia of \$100 million to \$500 million in textiles and increases of \$100 million to \$500 million in exports of autos and components.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

The Australian government maintains an extremely stringent regime for the application of sanitary and phytosanitary (SPS) measures, resulting in restrictions and prohibitions on imports of many agricultural products. Key U.S. products currently prohibited under Australia's SPS regime include Florida citrus, stone fruit, poultry (fresh, cooked, and frozen), and apples. In 2004, Australia issued new import rules for pork. Under these new rules, the United States gained access to the Australian market and is now shipping processed pork to Australia. The U.S. government continues to underscore the need for Australia to comply with its obligations under the WTO SPS Agreement by conducting science-based import risk assessments and applying measures that are no more trade restrictive than necessary. The U.S. and Australian governments have held extensive and detailed consultations on these issues over the past three years, and these discussions have generated progress on specific issues. The FTA created a new mechanism for scientific cooperation between U.S. and Australian SPS authorities to resolve specific bilateral, animal, and plant health matters. This new mechanism is intended to facilitate engagement at the earliest appropriate point in each country's regulatory process to cooperate in the development of science-based measures that affect trade between the two countries.

Biotechnology

Commercial Release

The Gene Technology Act 2000 is the Commonwealth government component of a national regulatory scheme for gene technology and products produced through modern agricultural biotechnology. The Act regulates the use of all agricultural biotechnology products in Australia and requires that the Office of the Gene Technology Regulator license all biotechnology activities involving the intentional release of biotechnology products into the environment. Issues related to the marketability and trade implications of the commercialization of biotechnology crops do not fall within the scope of the evaluations provided in the Act. The Commonwealth, State, and Territory governments consider these matters both individually and through joint forums. Most of Australia's States and Territories restrict biotechnology products through planting moratoria or bans on plantings of food-related biotechnology products licensed by the Commonwealth Office of the Gene Technology Regulator. The United States has objected to

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these actions as they appear to be based on marketing and trade concerns rather than science. Such actions have held up the commercialization of biotechnology canola. It should be noted that biotechnology cotton, a non-food-related biotechnology product, has been successfully introduced and planting of this product now dominates the cotton industry in Australia.

Biotechnology Food Approvals

Imported foods using biotechnology can be offered for sale and consumption in Australia only after being assessed and approved by Food Standards Australia New Zealand (FSANZ) and being listed in the Food Standards Code. As of November 2004, there were 23 products on the FSANZ-approved list of “food produced using gene technology.”

Biotechnology Food Labeling

The joint Australia-New Zealand regulatory regime for food, which includes mandatory labeling requirements for certain foods produced using biotechnology, became effective in December 2001. Biotechnology labeling is required if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. Meeting these biotechnology food labeling regulations may be burdensome for manufacturers, packers, importers, and retailers, particularly involving U.S. agricultural exports, a large share of which are processed food.

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. Under the FTA, Australia will open its government procurement market to U.S. suppliers and eliminate discriminatory preferences for most domestic suppliers.

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. Under the FTA, Australia is obligated to accede and become a party to the 1996 WIPO Copyright Treaty and Performances and Phonograms Treaty.

Australia permits the parallel importation of computer software, electronic versions of books, periodicals, sheet music, sound recordings, branded goods (clothing, footwear, toys, and packaged food), and some electronic games. The Australian government continues to prohibit

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the parallel importation of films. An estimated 20 percent of the DVDs in Australia are illegal parallel imports. Locally replicated DVD-Rs, videocassettes copied from VCDs and DVDs, illegally parallel-imported DVDs, and pirated VCDs continue to be the major threat to Australia's otherwise low rate of piracy of audio-visual materials. Counterfeit DVDs imported from Asia also are an emerging problem. U.S. copyright holders remain concerned over past decisions by the Australian Competition and Consumer Commission (ACC) that equate the holding of a copyright with "market power."

Due to the FTA, Australia now provides copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The FTA also clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. In addition, the FTA obligates Australia to criminalize by 2007 the sale, distribution, and use of devices to defeat technological protection measures. Australia also agreed to obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks.

Under the patent provisions of the FTA, Australia confirms that its law makes patents available for any invention, subject to limited exclusions, and confirms the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation, Australia will limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent; fraud is also grounds for revocation. Under the FTA, Australia also will make patent term adjustments to compensate if there are unreasonable delays that occur while granting the patent, or if there is unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products. The FTA protects test data that a company submits in seeking marketing approval for pharmaceutical and agricultural chemical products by precluding other firms from relying on the data. It also requires measures to prevent the marketing of pharmaceutical products that infringe patents.

The trademark and geographical indication provisions of the FTA establish that trademarks must include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. Australia also will provide protection for marks and geographical indications, as well as efficient and transparent procedures governing the application for protection of marks and geographical indications. The FTA also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

The FTA establishes strong penalties for piracy and counterfeiting. The Agreement criminalizes end-user piracy and requires Australia to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. Australia also must empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint.

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The United States government raised concerns that Australia's FTA implementing legislation, which Australia's parliament approved in August 2004, did not fully implement a number of the FTA commitments on intellectual property. The United States and Australia subsequently addressed those concerns in an exchange of letters in November 2004, through which Australia agreed to take steps, including making legislative and regulatory changes, to implement several IP commitments. Australia's parliament approved related legislation in December 2004. Concerns remain, however, about the Australian government's implementation of its FTA commitments with respect to pharmaceutical patent protection and satellite piracy.

SERVICES BARRIERS

Telecommunications

U.S. industry remains concerned about the ability of the majority government-owned telecommunications firm, Telstra, to abuse its monopoly power. This has included delays in making an acceptable public offer for access to its network, and the inflated pricing of its wholesale services such as leased lines and interconnection with its mobile network. Australia's government has made significant progress in addressing some of these issues by approving a reference interconnection offer and proposing a schedule of mobile termination rates that would introduce significant price reductions (termination rates in Australia are among the highest in Asia). Telstra has provided evidence that its leased line rates are now comparable with other competitive markets, and companies seeking to challenge these rates have the opportunity to do so under Australia's rules. The Australian government has submitted legislation to permit it to sell off all of its 51-percent share of Telstra; the legislation was rejected once, but is expected to be re-submitted. The Australian government has not, however, addressed the issue of foreign equity limits in Telstra, now limited to 35 percent. The FTA includes several important new obligations for major suppliers, including resale, provisioning of leased circuits and co-location, ensuring access for U.S. firms.

Audiovisual Trade Barriers

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 (with subquotas and point systems applying to various content genres). In addition, the television advertising quota stipulates that at least 80 percent of total commercial television advertising during that same period must be Australian produced. Australia's Broadcasting Services Amendment Act requires pay television channels with significant drama programming to spend 10 percent of their programming budget on new Australian drama programs. Australian radio industry quotas require that up to 25 percent of all music broadcast between 6:00 a.m. and midnight be "predominantly" Australian in origin/performance. The FTA allows existing

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restrictions to remain, but limits or prohibits their extension to other media or means of transmission.

INVESTMENT BARRIERS

Pursuant to Australia's foreign investment law, the government's Foreign Investment Review Board (FIRB) screens in advance potential foreign investments in Australia above a threshold value of A\$50 million. The FIRB may deny approval of particular investments above that threshold on "national interest" grounds. The FTA, however, exempts all new "greenfield" U.S. investments from FIRB screening entirely. The FTA also raises the threshold for screening of most U.S. acquisitions of existing investments in Australia from A\$50 million to A\$800 million (indexed annually).

OTHER BARRIERS

Commodity Boards and Agricultural Support

The export of almost all wheat, barley, rice, and sugar remains under the monopoly control of commodity boards. The privatization of the Australian Wheat Board, Ltd., (AWB) in July 1999 saw its export controls transferred to the Wheat Export Authority (WEA), and the AWB retained veto rights over containerized export requests. After a review during 2000, the Australian government extended the WEA's export monopoly until 2004. In 2000, the Australian government launched an eight-year adjustment assistance package for the dairy industry. In 2002, it initiated a four-year, A\$150 million sugar industry package; this package was increased by A\$440 million in 2004. Both programs support regional adjustment, diversification and industry restructuring. Depending on the program, assistance includes sustainability grants, income support, crisis counseling, interest rate subsidies, and short-term income support.

Automotive and Textile, Clothing, and Footwear (TCF) Sector Support Programs

Automotive producers benefit from import duty credits designed to promote production, investment, and research and development. In 2002, the program was extended to 2015 with declining benefits to compensate for planned additional tariff reductions. The TCF industry receives grants under the Australian government's Strategic Investment Program for research and development, restructuring, and investment to assist firms to restructure prior to legislated tariff cuts in 2005. In November 2003, the Australian government announced a tariff reduction schedule and a reduced and final assistance scheme for the period 2005 through 2015.

Pharmaceuticals

The U.S. pharmaceutical industry has raised concerns that the Australian government's policies regarding the pharmaceutical sector do not appropriately value innovation and diminish the contribution of Australia to research and development of innovative pharmaceutical products.

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The lack of transparency of the Australian government's pharmaceutical listing and reimbursement decision-making process, including the absence of an appeals process, also is problematic. The FTA partially addresses these transparency concerns and requires establishment of an independent review process. The two governments also established a Medicines Working Group that will provide for continued dialogue between the two governments on emerging health care policy issues.

The industry also has raised concerns about a proposal of Australia's government to require a 12.5 percent cut in the reimbursement price of pharmaceuticals in a therapeutic drug class when a generic drug in that class comes onto the market. Some consultation on this proposal between industry representatives and Australian health officials has occurred, but the U.S. government remains concerned about the lack of transparency of the process to implement this proposal and the potential impact of the proposal on the innovative and generic pharmaceutical sectors.

Blood Plasma Products

Foreign companies face substantial barriers to the provision of blood plasma products in the Australian market. Hospitals are reimbursed only for blood plasma products produced by an Australian company under a monopoly contract granted by the government. While foreign blood products may be approved for sale in Australia, the exclusive contract makes it virtually impossible for foreign firms to sell their products in Australia except to fill shortages or provide products not otherwise available in Australia. The FTA commits Australia to review its arrangements for the supply of blood fractionation services by no later than January 1, 2007. The Commonwealth government will recommend to Australia's States and Territories that future arrangements for the supply of blood plasma products be conducted through an open tender process.