

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$10.6 billion in 2007, an increase of \$1.0 billion from \$9.6 billion in 2006. U.S. goods exports in 2007 were \$19.2 billion, up 8.0 percent from the previous year. Corresponding U.S. imports from Australia were \$8.6 billion, up 5.0 percent. Australia is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Australia were \$9.1 billion in 2006 (latest data available), and U.S. imports were \$4.8 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$18.7 billion in 2005 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$4.9 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was \$122.6 billion in 2006 (latest data available), up from \$115.6 billion in 2005. U.S. FDI in Australia is concentrated largely in the nonbank holding companies, manufacturing, mining, and finance sectors.

FREE TRADE AGREEMENT (FTA)

The United States and Australia concluded a free trade agreement (FTA) in May 2004, which entered into force on January 1, 2005. Since then, the U.S. and Australian governments have met annually to address issues that have arisen under the FTA. Since the FTA entered into force, trade in goods and services as well as foreign direct investment have continued to expand.

In addition to an FTA with the United States, Australia has a long standing Closer Economic Relations Agreement with New Zealand, FTAs with Thailand and Singapore, and is currently negotiating FTAs with Japan, China, Malaysia, the Association of South East Asian Nations (ASEAN) (along with New Zealand), and the Gulf States. Australia has expressed interest in pursuing FTAs with Mexico and Korea.

IMPORT POLICIES

Tariffs

Under the FTA, more than 99 percent of U.S. exports of manufactured goods and 100 percent of U.S. food and agricultural exports to Australia are now duty free. The Parties will also eliminate tariffs in the automotive sector in 2009 and within the next 7 years on textiles. Several working groups have been established under the FTA to facilitate further liberalization of services trade.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

The Australian government maintains a regime for the application of SPS measures that effectively bans or severely restricts imports of many agricultural products. However, in the FTA the Parties created a new mechanism for scientific cooperation between U.S. and Australian SPS authorities in an effort to resolve specific bilateral animal and plant health issues. This mechanism facilitates cooperation at the earliest appropriate point in each country's regulatory process where it affects trade between the two countries.

Biotechnology

Australia has a substantial risk assessment-based regulatory framework for dealings with biotechnology. Foods derived by the use of biotechnology must be assessed, determined to be safe, and be approved before being sold for human consumption. Imported foods using biotechnology can be offered for sale in Australia only after being assessed by the Food Standards Australia New Zealand (FSANZ) and being listed in the Food Standards Code. All foods with biotechnology content of over 1 percent must receive prior approval and be labeled. Meeting these biotechnology food labeling requirements can be onerous for manufacturers and others in the supply chain, particularly for processed food, which accounts for a large share of U.S. agricultural exports.

While the Australian federal government is supportive of biotechnology, a number of states have invoked moratoria on biotechnology plantings, which is slowing the commercialization and adoption of the technology in Australia. In November 2007, Victoria and New South Wales announced they would not renew their moratoria and all other moratoria are up for review in 2008.

To date, biotechnology cotton, carnations, and canola varieties are the only agricultural crops approved for commercial release into the environment. For genetically modified crops that have not received regulatory approval in Australia, U.S. export opportunities are restricted. For the United States, the commercial impact of this constraint is most pronounced for feed grain, *e.g.*, whole corn and soybeans.

GOVERNMENT PROCUREMENT

Australia is the only major industrialized country that is not a signatory to the plurilateral WTO Agreement on Government Procurement (GPA). However, under the FTA, the Australian government opened its government procurement market to U.S. suppliers and eliminated discriminatory preferences for domestic suppliers. Under the FTA, procuring entities must use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement.

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 Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations; and the Patent Cooperation Treaty. Consistent with its FTA obligation, Australia became a party to the 1996 WIPO Copyright Treaty and Performances and Phonograms Treaty in July 2007.

Australia amended its Copyright Act in December 2006 following extensive consultations with stakeholders, and the new Act entered into force in 2007. The amended Act also implemented FTA provisions concerning circumvention of technological protection measures (TPMs) used in connection with the exercise of copyright - a step forward in protection for copyrights in Australia. The United States will review implementation of these new provisions, including exceptions provided for in the law, to ensure consistency with FTA requirements.

The Australian government continues to prohibit the parallel importation of legitimate copies of films, but an estimated 20 percent of the digital video discs (DVDs) in Australia are illegal parallel imports. Locally replicated recordable DVDs (DVD-Rs), videocassettes copied from video compact discs (VCDs) and DVDs, illegally parallel-imported DVDs, and pirated VCDs continue to be the major challenge to

Australia's otherwise low rate of piracy of audio-visual materials. Pirate DVDs imported from Asia also are an emerging problem.

As a result of commitments it made in the FTA, Australia now provides copyright protection for the life of the author plus 70 years (where the term of protection is measured by a person's life), or 70 years (where the term of protection is not measured by a person's life, *i.e.*, for corporate works). It also clarified that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. Australia also is implementing its FTA commitments regarding 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 confirmed 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 limits the grounds for revoking a patent to those that would have justified a refusal to grant the patent. Fraud is also grounds for revocation. Under the FTA, Australia also committed to patent term adjustments to compensate patent owners for unreasonable delays in the issuance of patents, or if there is unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products. In addition, the Australian government is implementing its commitment to protect 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, as well as measures to prevent the marketing of pharmaceutical products that infringe patents.

The trademark and geographical indication provisions of the FTA established that trademarks must include marks in respect of goods and services, collective marks, and certification marks. Geographical indications are eligible for protection as marks. Australia is implementing its commitment to provide protection for marks and geographical indications, as well as to provide efficient and transparent procedures governing the application for protection of marks and geographical indications. Australia has rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy, as it was required to provide under the FTA.

SERVICES BARRIERS

Telecommunications

The Australian government is now a minority shareholder in Telstra with a 17 percent share, helping reduce concerns about the government's conflicting roles as both regulator and owner of the dominant operator. However, Australia has not addressed continuing concerns about foreign equity limits in Telstra, which remain capped at 35 percent. U.S. industry remains concerned about the ability of Telstra to abuse its monopoly power and its aggressive use of litigation to delay regulatory outcomes. Alleged abuses include delays in making an acceptable public offer for access to its network and inflated pricing of wholesale services such as leased lines and interconnection with both its fixed and mobile network. Up to 40 disputes with competitors over access to Telstra's network are reportedly subject to ongoing regulatory or judicial proceedings. In 2006, the Australian government rejected a proposal by Telstra to significantly raise certain network access rates, but final decisions on such rates and the access Telstra will provide when it introduces its "Next Generation Network" over the next 3 years to 5 years remain to be resolved. The United States will continue monitoring developments to ensure that Telstra's introduction of a new network architecture does not undermine the ability of competitors to obtain reasonable access to services and customers where Telstra is dominant.

Audiovisual Trade Barriers

The Australian Communications and Media Authority 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 specific minimum annual sub-quotas for Australian (adult) drama, documentary, and children's programs. Also, 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 (with flexibility, under certain circumstances to increase this up to 20 percent allowed under the FTA) 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 allowed existing restrictions to remain, but limits or prohibits their extension to other media or means of transmission. In September 2007, the Australian government reduced local (as opposed to "Australian") content requirements for rural radio stations from 4.5 hours per day to 3; for license areas with populations under 30,000, the requirement is 30 minutes.

Media

Media remains a sensitive sector, and foreign investment proposals in the media sector, irrespective of size, are subject to prior approval by Australia's Treasurer. A 2006 law opened up two reserved digital channels for new digital services such as mobile television or new in-home services, permitted commercial free-to-air television stations to broadcast one standard definition multi-channel from 2009, and allowed full multi-channeling no later than the time of the digital switchover (2010-2012). It also relaxed restrictions on cross-media ownership, with some restrictions in smaller media markets.

INVESTMENT BARRIERS

Pursuant to Australia's Foreign Investment Law, its 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. Under the FTA, Australia exempted all new "greenfield" U.S. investments from FIRB screening entirely. Australia also raised 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

Agriculture

Australia's applied agricultural tariffs are relatively low, with an unweighted average of less than 1 percent. Under the FTA, all U.S. agricultural products enter Australia duty free. While Australian agriculture receives relatively little traditional assistance, such as producer subsidy equivalents, Australia maintains a conservative and restrictive quarantine regime that effectively limits the openness of its market. This regime results in an effective import ban on many agricultural products and restricts access for many other products through strict import measures. As a result, there is low-to-zero import penetration into many of Australia's agricultural sub-sectors. The United States is continuing to seek access for a number of products including apples, stone fruit, raspberries, and fresh, frozen, and cooked poultry meat. In December 2007 the government of New Zealand requested the establishment of a WTO dispute panel to review Australia's import conditions for New Zealand apples. Many of the same issues raised in the New Zealand complaint will apply to the outstanding U.S. request to Australia for access of Pacific Northwest apples. In October 2007, the Australian government self-initiated a global safeguard investigation on imports of frozen pork meat. An accelerated report issued in December 2007 by

Australia's safeguards authority found no basis to apply provisional safeguard measures, given its preliminary findings that there was no clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry, and that factors other than increased imports appear to be more important causes of any such injury. A final report is expected in spring 2008.

Australia currently prohibits the importation of bovine products from countries that have reported one or more indigenous cases of Bovine Spongiform Encephalopathy (BSE). Such countries are classified by Australia as "Category D risk countries." In November 2007, Australia reported that, since it deems the United States to be a Category D country, it would not restore market access for many U.S. beef products. The U.S. Government will continue to press Australia to provide full access for its beef in accordance with the World Organization for Animal Health (OIE) BSE guidelines.

Commodity Boards and Agricultural Support

While Australian government intervention in the agricultural production sector is limited, wheat is exported through statutory marketing arrangements. The Australian Wheat Board (AWB) currently holds the monopoly export rights for all bulk wheat exported from Australia. In January 2006, the Cole inquiry, set up by the Australian government, began hearings on allegations of improprieties by AWB in connection with the U.N. Oil-For-Food Program. The final report of the Cole inquiry was made public in November 2006 and concluded that some AWB officials were aware of inappropriate payments. In response, in June 2007, Parliament passed the Wheat Marketing Amendment Bill implementing the changes to Australia's wheat marketing that were announced by then Prime Minister Howard in May 2007. AWB International (AWB (I)) will manage and export the 2007/08 wheat crop. Growers have until March 1, 2008 to establish a new entity to manage the single desk. If growers are unable to meet this deadline, the government of Australia will propose other wheat marketing arrangements that could include deregulation. The Agriculture Minister's veto over bulk exports has been extended until June 30, 2008. The Wheat Export Authority's (WEA) consent for exports of bagged and containerized wheat is no longer required. The U.S. Government will continue to closely monitor this issue.

Textile Clothing and Footwear (TCF) Sector Support

The Australian government provides assistance to the TCF industry through tariff protection as well as significant budgetary assistance. In 2005 under terms of the 2004 Customs Tariff Amendment (Textile, Clothing and Footwear post-2005 Arrangements) Act, TCF tariffs were reduced from 25 percent to 17.5 percent on imports of clothing, and certain other finished textiles goods; from 15 percent to 10 percent on imports of cotton sheeting, fabrics, footwear, and carpet; and from 10 percent to 7.5 percent on imports of sleeping bags, table linen, and footwear parts. TCF tariffs are scheduled to remain at their new rates until 2010 when they will be reduced to 5 percent until 2015. For apparel and certain finished textile goods, the tariff will be reduced to 10 percent in 2010, and then to 5 percent in 2015.

Automotive Sector Support

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.

Pharmaceuticals

The FTA includes commitments on transparency and addresses regulatory concerns in addition to establishing an independent review process for innovative medicines. The Parties also established a

Medicines Working Group that has helped facilitate a constructive dialogue between the United States and Australia on health policy issues.

In November 2006, the Australian government announced a major reform to the pricing of pharmaceutical products listed on its Pharmaceutical Benefits Scheme (PBS), its national drug formulary. Under the plan, beginning August 1, 2007, different pricing arrangements apply to drugs for which there is only a single brand listed and those for which there are multiple brands. Over time the Australian government intends to move to a system of price disclosure where the actual price at which the medicine is being sold will become the price the government pays.

Blood Plasma Products and Fractionation

Foreign companies face substantial barriers to the provision of blood plasma products in the Australian market. While foreign blood products may be approved for sale in Australia, the monopoly contract granted by the Australian government to an Australian company 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. In late 2006, Australia completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. The United States raised concerns about whether the review's recommendation that Australia not pursue overseas fractionation of blood plasma products adequately considered the significant potential cost savings from introducing competition in the provision of blood fractionation services. Although the Australian government recommended that states adopt the tendering process prescribed in the Government Procurement chapter of the FTA, state health ministers, in March 2007, decided to keep the current monopoly arrangement.