STATEMENT OF WHY THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT IS IN THE INTERESTS OF U.S. COMMERCE

INTRODUCTION

President Bush notified Congress of his intent to enter into the United States-Australia Free Trade Agreement (FTA or Agreement) on February 13, 2004. Negotiations conducted over the previous year resulted in an agreement that is clearly in the interests of U.S. commerce.

On the day this FTA enters into effect, tariffs that currently average 4.3 percent will be eliminated on more than 99 percent of the tariff lines for U.S. manufactured goods exports to Australia. Exports of these goods account for 93 percent of total U.S. goods sales to Australia's market, and reducing these tariffs will create new export opportunities for America's manufacturers. With virtually all U.S. manufactured exports becoming duty-free immediately, the National Association of Manufacturers (NAM) estimates that the manufacturing sector could sell $2 billion more per year to Australia and that U.S. national income could grow by nearly that much.

This is the most significant immediate reduction of industrial tariffs ever achieved in a U.S. free trade agreement and will provide immediate benefits for America's manufacturing workers and companies. However, the FTA affords substantial benefits in a broad range of other sectors as well. Markets for services such as life insurance and express delivery will be opened; intellectual property will be better protected; and investments will be treated in a fair and predictable manner. American firms will be allowed to compete for Australia's government purchases on a nondiscriminatory basis for the first time. All U.S. farm exports—nearly $700 million in 2003—will go duty-free to Australia, benefiting many sectors such as processed foods, fruits and vegetables, corn, and soybeans. The FTA also makes advances in e-commerce and improved transparency and processes in the regulation of pharmaceutical prices.

Although the United States has a goods and services trade surplus of $9 billion, the FTA will make the Australian market even more attractive to U.S. exporters. The public attention the FTA has drawn will act as a spur to both U.S. exporters and Australian buyers to pursue untapped opportunities in U.S.-Australian trade.

As a developed country market with familiar business norms and a common language, Australia is a relatively easy market for small U.S. companies to enter. U.S. small and medium sized enterprise (SME) exports to Australia increased by nearly $1 billion, or 65 percent between 1992 and 2001. Australia's sophistication and stable political and legal foundations reduce the risks to SMEs. Elimination of tariff and non-tariff measures through the FTA and additional information on market opportunities in Australia should increase the attractiveness of this market, which appears tailor-made for SMEs entering the broader international market.

WHY AUSTRALIA?

Australia is already a significant market – America's 14th largest export market in 2003. The United States exported over $13 billion worth of goods to Australia last year. Sophisticated manufactured goods comprise most exports, supporting high-paying jobs in the United States. Australia, like the United States, offers sophisticated and discerning wholesale and consumer markets. Its population of 20 million is relatively small, but Australia's high per capita income and advanced industrial base generate substantial purchasing power.

The FTA will strengthen links between the U.S. and Australian economies at a time when Australia is increasing its economic ties to Asian markets. The United States-Australia FTA will also serve as a catalyst for expanded regional trade, as both the U.S. and Australia have completed FTAs with Singapore, and the United States is also about to begin negotiations with Thailand. Australia has recently completed an FTA with Thailand and entered into preliminary discussions with China and Japan.

Finally, the FTA supports the economy of a steadfast ally, further cementing the long-standing U.S.-Australia strategic relationship, while simultaneously benefiting U.S. commerce.

BEST PROSPECTS FOR INCREASED MARKET GROWTH FOR GOODS

U.S. trade figures indicate an impressive market for high-tech goods such as aircraft and computers. Outside of these areas, U.S. trade with Australia extends across a broad range of goods and services. The FTA comes at a time when Australia continues to enjoy a rate of economic growth that outpaces most other OECD countries. Tariff reductions coupled with domestic demand will make it more worthwhile for companies manufacturing high-end products, easily substitutable products, products with very thin margins, or with high freight costs due to bulk or weight to sell products in the Australian market. In addition, government procurement is a significant part of the Australian economy. Gaining greater access to this market will create new opportunities across many sectors.

Industries poised to gain from the FTA include, but are not limited to: oil and gas sector equipment; professional services; broadcasting and media and film production; construction; telecommunications; biotechnology; mining equipment; information technology; broadband technologies; aerospace; electric motors and generators; and automotive parts.

As noted, the Agreement eliminates nearly all tariffs on industrial goods immediately. It also establishes a Committee on Trade in Goods to address barriers, especially non-tariff barriers. The following is the Administration's analysis of trade opportunities in major goods sectors upon implementation of the Agreement.

Civil Aircraft Equipment

Civil aircraft equipment accounted for 24 percent of total U.S. exports to Australia in 2003, totaling $3 billion. The top U.S. exports in this sector were airplanes, radar equipment and aircraft parts including engines. Australia's tariffs range between zero and 15 percent with an average of 5.2 percent in 2003. Australia will eliminate all tariffs on civil aircraft equipment covered by the Agreement, providing a significant stimulus for U.S. exports in a sector where U.S. firms already have enjoyed success, but continually face European competition.

U.S. tariffs in this sector are already at zero.

Capital Goods

Capital goods accounted for 14 percent of total U.S. exports to Australia in 2003, totaling $1.8 billion. The top U.S. exports in this sector are engines, compressors, and railway equipment. Australia's tariffs range between zero and 15 percent with an average of 3.2 percent in 2003. Australia will eliminate all tariffs immediately, benefiting manufacturers of these equipment items as well as exporters of oil and gas sector equipment.

Prospects are good for increased exports in this sector. The Association of Equipment Manufacturers stated in testimony before the U.S. International Trade Commission that the U.S. equipment manufacturing sector will derive significant benefits from the Agreement due to lower costs to consumers, a level playing field with Australian competitors, and a cost advantage vis-à-vis international competitors. The NAM also believes U.S. manufacturers of a range of machinery products could increase their market share against European Union and Japanese companies.

Major U.S. companies supplying the market are Caterpillar, Case, John Deere, and Ingersoll-Rand. Japan is the main competitor for U.S. machinery suppliers, followed by Germany and the United Kingdom.

Caterpillar has stated that elimination of duties will improve the competitiveness of its manufacturing operations in both Australia and the United States. Also, following elimination of tariffs on raw materials and components, Caterpillar's factories in Australia will have reduced costs allowing the company to better compete in the global marketplace.

The United States applies tariffs on capital goods of 0 to 14 percent, with an average of 1.8 percent. These tariffs will be eliminated when the Agreement enters into effect.

Electronics and Instrumentation

Electronics and instrumentation goods accounted for 17 percent of total U.S. exports to Australia in 2003, totaling $2.1 billion. The top U.S. exports in this sector are computer equipment, telecommunications equipment and radar apparatus. Australia's tariffs range between zero and 15 percent with an average of 1.5 percent in 2003. Australia will eliminate all tariffs immediately.

U.S. telecommunications products, including advanced network equipment like ATM switches, call processing and managing equipment, modems, and routers, will become even more competitive in Australia. U.S. manufacturers will also be able to better exploit growth areas including wireless technologies, fiber optics, and communications and applications software.

The United States will eliminate all tariffs immediately on electronics and instrumentation products except reception apparatus for radiotelegraphy, radiotelephony, radio broadcasting (HS 85279095). U.S. tariffs on these products will be removed in equal annual stages over a four-year period.

Transportation Equipment

Transportation equipment accounted for 8.4 percent of U.S. exports to Australia in 2003, totaling $1 billion. The top U.S. exports in this sector are auto parts including engines, passenger motor vehicles, and machinery for assembling motor vehicles. Australia's tariffs range between zero and 15 percent with an average of 8.4 percent in 2003. Tariffs on passenger vehicles will be reduced from 15 percent to 10 percent next year.

Australian exports of transportation equipment to the United States totaled $424 million in 2003 or 7.2 percent of Australia's total exports to the United States. Australia's top exports are motor vehicles, auto parts and miscellaneous auto equipment. U.S. tariffs applied to the transportation sector range from zero to 25 percent, with an average of 2.4 percent.

The United States will immediately eliminate tariffs on all products except for taxi meters (HS 90291040). Tariffs on taxi meters will be eliminated in equal annual stages over a four-year period.

Australia will eliminate its tariffs in this sector using two staging categories: immediately and by January 1, 2010. All of the products with the latter staging are used motor vehicles. These products account for less than one percent of U.S. exports to Australia.

Chemicals

Chemicals accounted for 10.5 percent of total U.S. exports to Australia in 2003, totaling $1.3 billion. The top U.S. exports in this sector are fertilizer, organic chemicals and plastics. The United States will eliminate immediately all tariffs on chemical products except aromatic pesticides (HS 29189020), which will be eliminated by January 1, 2010. Tariffs on this product will be removed in equal annual stages from the date the Agreement enters into force until 2010, when it will be duty free. Australia will eliminate all tariffs immediately except on other pesticides (HS 29189000), which will be eliminated by January 1, 2010 using the same phaseout schedule as the United States is using for aromatic pesticides.

Consumer Goods

Consumer goods accounted for 5.3 percent of total U.S. exports to Australia in 2003,

totaling $663 million. The top U.S. exports in this sector are motorcycle engines and parts, sporting and exercise equipment, and small personal appliances. Australia's tariffs range between zero and 15 percent with an average of 2.5 percent in 2003. Australia will eliminate all tariffs on these products immediately upon entry into force of this Agreement.

Australian tariffs ranging from 4 to 5 percent on nutritional and personal care products currently constitute a significant barrier; thus the immediate elimination of duties under the Agreement could result in an increase in exports of millions of dollars, according to one company's testimony.

U.S. tariffs on consumer goods range from zero to 109 percent, with an average of 3.6 percent.

Paper and Paper Products

Paper and paper products accounted for 2.2 percent of total U.S industrial exports to Australia in 2003, totaling $278 million. The top U.S. exports in this sector are periodicals, personal paper items and miscellaneous paper products. Australia's tariffs, which will be eliminated when the FTA enters into force, range between zero and 5 percent, with an average of 3.2 percent in 2003. The United States already applies zero duties on these products.

Energy Products

Energy products accounted for 1.2 percent of total U.S. exports to Australia in 2003, totaling, $149 million. The top U.S. exports in this sector are industrial machinery generators, and various machinery parts. Australia's tariffs range between zero and 15 percent with an average of 3.5 percent in 2003. Australia will eliminate all tariffs immediately upon implementation of the Agreement, while the United States will stage the reduction of tariffs on condensers for steam or other vapors (HS 8404200) over a four-year period. U.S. tariffs on other products in this sector will be eliminated when the FTA enters into force.

The United States applies tariffs on energy products of zero to 6.5 percent, with an average of 1.2 percent for the sector.

Environmental Goods

Environmental goods accounted for 0.57 percent of total U.S. exports to Australia in 2003, totaling $70 million. The top U.S. exports in this sector are scientific instrumentation, laboratory furnaces and ovens, and surveying equipment. Australia's tariffs on environmental goods range from zero to 15 percent, with an average of 4.5 percent in 2003.

U.S. companies face stiff competition from Japan in air pollution control, and France in water pollution control. Germany competes with the United States in pollution abatement equipment and waste management technologies. The Agreement will

immediately enhance the competitive position of U.S. exporters of all of these types of equipment. Both Australia and the United States will eliminate all tariffs on environmental goods immediately upon implementation of the Agreement.

Other Goods Sectors

U.S. companies export a broad range of other goods including building products, lumber and wood products, non-ferrous and ferrous metals, and fish. Australian duties range from zero to 5 percent. Immediate elimination of duties under the Agreement will both expand the market due to lower consumer prices and provide a competitive advantage to U.S. companies. Notably, even relatively low Australian tariffs have affected U.S. exports of wood products significantly because of the low margins and high shipping costs, according to an industry association.

Pharmaceuticals

Pharmaceuticals accounted for 3.7 percent in total U.S. exports to Australia, totaling $471 million in 2003. The top U.S. pharmaceutical exports are pre-measured medication, sterile dressings and vitamins. Australia's tariffs range between zero and 25 percent with an average of 1.85 percent in 2003.

Under the Agreement, the United States and Australia affirm their commitment to several basic principles related to their shared objective of facilitating high quality healthcare and improvements in public health. The adjacent table describes action taken under the Agreement.

U.S.-Australia FTA Commitments on Pharmaceuticals

- The United States and Australia accepted a set of common principles on facilitating high quality health care and continued improvements in public health for their citizens.
- This statement of principles affirms the important role that innovative pharmaceuticals play in health care, the importance of pharmaceutical research and development and of government support, the need for transparent and efficient procedures for listing new pharmaceuticals, and to appropriately recognize the value of innovative pharmaceuticals.
- The two Parties will also establish a Medicines Working Group that will provide for continued dialogue on emerging health care policy issues.
- Australia also committed to take specific steps to improve the transparency and accountability of the Pharmaceutical Benefits Scheme (PBS) process. Among these are: providing companies further opportunities to consult; establishing a process for independent review of the PBS's listing decision; and introducing steps to expedite the process.

TEXTILES AND APPAREL

The FTA contains a yarn-forward origin rule consistent with other U.S. FTAs. This means that most apparel and fabric must contain yarn spun in either Party to the Agreement in order to qualify for preferential treatment. Also, the Parties agreed to a safeguard mechanism applicable to textiles and apparel and customs cooperation procedures that address fraud and transshipment concerns.

Tariffs will be phased out according to five tariff eliminations categories: Tariffs on a select group of products, plus all products with a base rate of 3 percent or less, will be eliminated upon entry into force of the Agreement. Tariffs on most fibers and yarns will go to 3 percent upon entry into force, and go to zero on January 1, 2010. Tariffs on a group of miscellaneous products will go to 5.5 percent upon entry into force, 3 percent on January 1, 2010, and zero on January 1, 2015. Tariffs on most fabrics and floor coverings will go to 8 percent upon entry into force, 3 percent on January 1, 2010, and zero on January 1, 2015. Tariffs on most apparel and made-up products will go to 15.5 percent upon entry into force, 8 percent on January 1, 2010, and zero on January 1, 2015.

The best prospects for increased U.S. exports are likely to be cotton and man-made fiber yarns and fabrics.

AGRICULTURAL MARKET ACCESS

The United States exported nearly $700 million of live animals, agriculture and food products to Australia in 2003. Key U.S. exports have been live horses, soybean meal, and processed foods. Currently, Australia's average bound tariff on agricultural products is 3.8 percent and the average applied tariff is 0.4 percent. Australia, however, maintains tariffs as high as 30 percent on certain dairy products and tariffs of 4 to 5 percent on fresh and processed fruits and vegetables, processed foods, some grains, oilseeds and other products. Upon entry into force of the FTA, Australia will immediately eliminate all tariffs on food and agricultural products and lock in applied tariffs at zero for U.S. products.

Fruits and Nuts

While most U.S. fruits and nuts enter Australia duty-free, Australia applies a 5 percent tariff on a number of fruit and nut products, including almonds, grapes, raisins, dried apricots, dried apples, dried plums, citrus juices, cranberry juice, fruit jams and jellies, and frozen strawberries. From 2001 to 2003, U.S. suppliers annually shipped on average $50 million worth of fruit and nut products to Australia, and the U.S. share of its import markets was 18 percent. With the FTA, Australia locks in duty-free tariff treatment for all U.S. exports of fruits, fruit products, fruit juices and nuts. The immediate duty-free access resulting from this agreement will serve to preserve and expand the import market that the U.S. supplies.

Vegetables

While most U.S. vegetables enter duty-free, Australia applies a 5 percent tariff on a number of vegetable products, including mushrooms, potatoes (fresh, dried and flakes), sweet corn (frozen and canned), canned olives and spinach. From 2001 through 2003, U.S. suppliers annually shipped on average $21.5 million worth of vegetable and vegetable products to Australia, and the U.S. share of Australia's import markets was 13 percent.

With the FTA, Australia immediately eliminates all duties on U.S. vegetable exports. This will be particularly beneficial to U.S. exporters of processed and canned vegetables. From 2000 through 2003, annual U.S. processed and canned vegetable exports to Australia averaged $5.9 million, accounting for 6 percent of Australia's total processed and canned vegetable import market. With the elimination of the 5 percent import duty, U.S. shippers will enjoy total duty-free access into Australia for this market segment.

Australia's commitment to eliminate duties immediately on all U.S. vegetables will also benefit U.S. exporters of frozen vegetables. From 2001 through 2003, annual U.S. exports of frozen vegetable to Australia averaged $630,000, accounting for 17 percent of Australia's total frozen vegetable import market. With the elimination of the 5 percent import duty, U.S. shippers will enjoy total duty-free access into Australia for this rapidly growing market segment.

Processed Foods and Distilled Spirits

U.S. processed foods and beverages, such as breads, cakes and pastries, wines, distilled spirits, and chocolate bars, face import tariffs of 5 percent, while soups and broths face import tariffs of 4 percent. From 2001 through 2003, U.S. suppliers annually shipped to Australia on average: breads, cakes, and pastries valued at $4.6 million; soups and broths valued at $80,000; wines valued at $1.1 million; distilled spirits valued at $56 million; and chocolate bars valued at $1.3 million. With the Agreement, Australia locks in immediate duty-free tariff treatment for all U.S. processed foods and beverages, including those mentioned above.

Oilseeds

Australia generally applies low tariffs on oilseed and product imports, and in the case of soybean and peanut oils, provides lower applied tariffs than required under its World Trade Organization (WTO) commitments. In recent years, U.S. sunflower seed entered duty-free, while peanuts, peanut oil, and soybean oil faced an import duty of 5 percent. From 2001 to 2003, the United States exported on average $52.2 million of soybean meal, $24.2 million of soy flours and isolates, and $4.4 million of soybeans to Australia. In 2003, the United States exported a total of $134.8 million in oilseeds and products to Australia, making Australia the United States 16th leading export market for oilseeds and products.

Under the FTA, Australia will eliminate immediately tariffs for all oilseeds and products shipped from the United States, thereby improving the competitive position of U.S. exporters of oilseeds and products.

Meat

Under the WTO Agreement, Australia applies zero tariffs on fresh, chilled and frozen beef, pork, poultry, lamb and mutton and 5 percent tariffs on certain processed meat products. Sanitary regulations generally limit Australia's imports of uncooked meats.

From 2001 through 2003, the United States exported on average $3.1 million of these products.

With the FTA, Australia locks in its duty-free tariff treatment for U.S. beef, pork, poultry, lamb and mutton and eliminates immediately the tariffs on certain processed products. With resolution of certain pork sanitary issues, Australia could be an important export market for U.S. pork.

SPS Measures

The FTA affirms obligations under the WTO Sanitary and Phytosanitary (SPS) Agreement. It establishes an SPS Committee to enhance cooperation on SPS matters, including a focus on regulatory processes related to SPS measures, specific implementation issues concerning SPS matters and other consultation procedures.

The SPS Committee could benefit U.S. wood packaging material suppliers. Australia's application of SPS measures to forest products imports has been a concern to U.S. industry. Australia's Quarantine and Inspection Service recently implemented a new series of requirements applicable to wood packaging materials that are more restrictive than those regulations outlined in the International Plant Protection Convention Guidelines, according to an industry association.

The Agreement establishes a new mechanism for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters. USDA's Animal and Plant Health Inspection Service and Biosecurity Australia will lead a standing technical working group to cooperate in the development of science-based measures that affect trade between the two countries.

In addition, the United States and Australia will continue to work to resolve SPS barriers to agricultural trade, in particular for apples, corn, citrus, grapes, pork, poultry and stone fruit.

SERVICES SECTORS

Services exports, at roughly $5 billion annually, account for about one-third of U.S. exports of goods and services to Australia. Tens of thousands of American jobs are supported by services exports to Australia. Australian subsidiaries of U.S. firms are also major suppliers of services (roughly $15 billion annually) to the Australian market.

The major categories of service exports are passenger fares, airfreight and port services, financial services, computer software and information services, broadcasting, and telecommunications.

Australia will accord substantial access to U.S. services suppliers, subject to very few exceptions. The FTA uses a "negative-list approach", with any exceptions specifically listed. These exceptions are outlined in the Services and Investment Annexes. Annex I entries include existing measures that are not consistent with the Services and Investment chapters, and Annex II entries provide the flexibility to take future nonconforming measures in specific areas. The commitments in services cover both the cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to invest and establish a local presence. Immigration matters are not part of the FTA.

While the United States provides market access for services at the level of its current commitments under the General Agreement on Trade in Services (GATS), Australia commits to providing increased market access at the Commonwealth level and provides GATS level market access in its states and territories. Commitments on regulatory transparency help ensure meaningful implementation of market access for services and investment. Regulatory authorities are required to use open and transparent administrative procedures, maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding regulations, and provide notice of the requirements of final regulations prior to their effective date.

As a result of the FTA, U.S. service suppliers will get broad access with few exceptions, benefiting nearly all service suppliers. Some highlights, as reported by the Trade Advisory Committees, include:

Advertising: The FTA provides access, for the first time in a trade agreement, for the complete range of advertising services.

Asset Management Services: Affords national and MFN treatment with respect to the provision of services to Australia's civil service pension system.

Computer and Related Services: Ensures, through the negative list approach, that FTA commitments will cover rapidly evolving computer services.

Education & Training: The education sector in Australia continues to grow due to heightened demand both nationally and internationally. Education and training are

viewed as an essential aspect to the growth in Australia productivity and competitiveness. The FTA locks in continued access for competitive U.S. higher education and training firms.

Energy Services: Locks in an open energy services market that will provide U.S. energy services firms with opportunities to compete for and bid on future energy projects (including privatizations, which tend to be large projects).

Entertainment Services (includes Broadcasting & Audiovisual): The FTA contains important and unprecedented provisions related to market access for U.S. films and television programs in Australia over a range of media, including cable, satellite, and the internet. The Entertainment Industry Coalition for Free Trade has noted that this is the first trade agreement in which the United States has obtained disciplines on cultural content quotas. The FTA places disciplines on measures that could limit access in the broadcast and audiovisual sector.

Express Delivery Services: The Agreement includes very substantial benefits to this sector, including recognition of express services as a unique sector and commitments to maintain market access. The Agreement also addresses the issue of "cross-subsidization" of express delivery service suppliers through postal monopoly revenues.

Insurance: The Agreement covers major aspects of insurance investment and cross border products, and provides a right to sell life insurance through branches.

Professional Services (includes management consulting, accounting, architecture, and legal services): Establishes a Professional Services Working Group that will encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers and to provide recommendations on mutual recognition.

Telecommunications: The FTA includes several important new obligations for major suppliers, including resale, provisioning of leased circuits and co-location; ensures access for U.S. firms.

Tourism: Australia is a major source of export earnings for the U.S. travel and tourism sector. The FTA locks in continued access for U.S. firms to compete in this area.

INVESTMENT

U.S. investment in Australia was $36 billion in 2002. U.S. investment has been concentrated in oil and gas extraction; electric power generation, transmission and distribution; coal mining; metals; food processing; chemicals; banking; finance; motor vehicles; and professional services.

Australian investment in the U.S. was $24.5 billion in 2002, with a focus on broadcasting, building materials manufacture, mining, steel, and real estate. Australian firms employ about 85,000 Americans in the United States.

The FTA provides further protection for investments and investors of both Parties. The FTA eliminates the review of most new investments by Australia's Foreign Investment Review Board through use of relatively high thresholds for triggering a review. The thresholds for acquisitions by U.S. investors in nearly all sectors are raised significantly, from A$50 million to A$800 million. Australian officials estimate that this new threshold would have exempted nearly 90 percent of all U.S. investment transactions from screening over the past three years. The Parties also agreed to initiate a work program that will limit the kinds of investment transactions (such as passive investment transactions) that will be subject to review. U.S. exports will benefit as U.S. investors abroad frequently have a supply line anchored in the United States.

In light of the unique circumstances of the Australian legal system, Chapter Eleven of the Agreement does not provide a separate dispute settlement mechanism for an investor of a Party to pursue a claim against the other Party. Australia has an open economic environment and a legal system similar to that of the United States. U.S. investors have confidence in the fairness and integrity of Australia's legal system, and the United States has a long history of close commercial relations with Australia that has flourished largely without disputes of the type addressed by international investment provisions.

If a Party believes, however, that there has been a change in circumstances such that one of its investors should be allowed to bring a claim against the other Party, the Party may request consultations with the other Party with a view towards establishing arbitral or other means of resolving disputes. Government-to-government dispute settlement procedures remain available to resolve investment-related disputes.

INTELLECTUAL PROPERTY RIGHTS

Intellectual property-dependent ventures are playing an ever-larger role in the U.S. economy. Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. According to the International Intellectual Property Alliance, employment in copyright industries has been growing nearly three times as fast as the annual employment growth rate of the economy as a whole. And copyright industries contribute close to $90 billion to the economy through foreign sales and exports.

Intellectual property rights are critical in supporting the industries and services of the future, such as software, entertainment, biotechnology, chemicals, pharmaceuticals, consumer goods, and franchising. U.S. industry is highly competitive in these knowledge-based industries, but must receive effective protection and enforcement of its intellectual property rights.

Under the U.S.-Australia Free Trade Agreement, U.S. producers of creative material will benefit from higher standards for protecting intellectual property rights such as copyrights, patents, trademarks, and trade secrets and enhanced means for enforcing those rights.

Highlights of New IPR Protections

Copyrights

- Ensures extended terms of protection (e.g., life of the author plus seventy years) for copyrighted works.
- Establishes strong anti-circumvention provisions to prohibit tampering with technologies that are designed to prevent piracy and unauthorized distribution over the Internet.
- Provides rules for the liability of Internet Service Providers (ISPs) for copyright infringement, reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

Patents

- Provides for the extension of patent terms to compensate for delays in granting the original patent.
- Clarifies that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.
- Requires measures to prevent the marketing of pharmaceutical products that infringe patents, and to provide notice when the validity of a pharmaceutical patent is to be challenged.

Trademarks

- Requires a system to resolve disputes about trademarks used in Internet domain names, which is important to address trademark cyber-piracy with respect to high-value domain names.
- Applies principle of “first-in-time, first-in-right” to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it.

Enforcement

- Criminalizes end-user piracy, providing strong deterrence against piracy and counterfeiting.
- Requires both Parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. Ex officio action may be taken in border and criminal cases, thus providing more effective enforcement.

Licensing fees and royalties from Australia totaled more than $800 million in 2002, and will continue to grow under the Agreement.

GOVERNMENT PROCUREMENT

The FTA will significantly expand opportunities for sale of goods and services at both the federal level and state level. As Australia is one of the few developed countries that is not a party to the WTO Agreement on Government Procurement, the FTA will give U.S. bidders an advantage over suppliers from other countries.

Opportunities abound as estimates put total federal procurement at $43 billion annually, and state/territory procurement at $35 billion. The Agreement will provide U.S. suppliers with meaningful, predictable and transparent access to much of this market.

Central Government

Under the FTA, U.S. suppliers are granted rights to bid on contracts to supply specified Australian government ministries, agencies and departments free of discrimination. The Australian central government will eliminate its industry development programs, under which suppliers have had to provide various types of offsets; e.g., local content or local manufacturing requirements, as a condition of their contracts.

Australia has covered all major procuring entities such as Department of Defense, Department of Transport and Regional Services, Department of Communications, Information Technology and the Arts, and Department of Prime Minister and Cabinet.

Australia has also covered 31 administrative and public bodies including important agencies such as the Reserve Bank of Australia, Australian Broadcasting Authority, and Australian Nuclear Science and Technology Organization.

U.S.-Australia FTA Commitments on Government Procurement

- U.S. suppliers are granted rights to bid on contracts to supply specified Australian government ministries, agencies and departments. Covers the purchases of 80 Australian central government entities, including key ministries and government enterprises. Low-value contracts are excluded.
- These commitments are particularly significant and commercially important, because Australia is one of the only developed countries that is not a party to the WTO Agreement on Government Procurement.
- Requires the use of tendering procedures that will ensure that procurements are conducted in a transparent, predictable and fair manner.
- Australia gains non-discriminatory access to the procurement of most U.S. federal agencies as well as certain government enterprises.
- Australia's central government will eliminate its industry development programs, under which suppliers have had to provide various types of offsets, e.g., local content or local manufacturing requirements, as a condition of their contracts.
- Both countries are also committed to extending non-discriminatory coverage of the agreement to state entities.
- Disciplines Australia's use of selective tendering to ensure that U.S. suppliers have a fair opportunity to compete for government contracts.
- Confirms that bribery in government procurement is specified as a criminal offense under Australian and U.S. laws.

State Entities

Both governments are also committed to extending non-discriminatory coverage of the Agreement to entities in their respective states and territories and are working with their respective states and territories to refine the extent of that coverage. Many states and territories in Australia apply preference margins of up to 20 percent for Australian and New Zealand products when those products compete with imports from other countries, so liberalization of procurement by Australian states and territories will be increasingly valuable. It is estimated that the states' and territories' procurements exceed those of the federal level when defense items are subtracted. Importantly, Australia has offered to cover procurement by five of its eight states/territories.

Goods

All goods other than motor vehicles will be covered by Australia, except where noted for specific entities. Australia's current preference program on motor vehicles favors U.S. producers.

Services

Australia covered all services with the narrow exceptions of plasma fractionation and government advertising. Australian states and territories have taken additional exclusions on education services, and health and welfare services. U.S. companies offering information technology related services are expected to benefit from the new openness, in particular because Australia's restrictive industry development program, specifically targeting this sector, will be eliminated upon entry into force of the agreement.

Construction Services

All construction services are covered. Since Australia has a high GDP it is expected that a majority of the country's construction services will be above the threshold and thus open to U.S. bidders. This will be especially important at the level of states/territories.

Thresholds

The United States negotiated thresholds for federal and state level procurement that match the lowest thresholds found in the North American Free Trade Agreement and the WTO Government Procurement Agreement. These low thresholds mean access to a wider variety of Australian procurements for U.S. suppliers. U.S. SMEs especially will benefit from these low thresholds.

ELECTRONIC COMMERCE

Australia is a leader in the area of electronic commerce, ranked ninth in the world in e-readiness and eighth in the world in Internet penetration. Ninety-five percent of Australian businesses and 66 percent of households are connected to the Internet. Additionally, Australia's electronic commerce economy was $27.5 billion and

represented 6.3 percent of GDP in 2003, according to estimates from IDC, a global IT research firm. By 2007, the Australian electronic commerce economy is projected to reach $133.3 billion, nearly five times its current level, with a 28.9 percent share of GDP.

With most Australian SMEs in the early phase of electronic-commerce development, and over 60 percent of products currently sold in the Australian IT market coming from foreign producers, Australia promises to continue to be a good market for U.S. IT hardware and services suppliers.

The FTA ensures that digital products (e.g., software, music, video, and text) will receive non-discriminatory treatment and will not be subject to customs duties. This provision makes permanent the moratorium on placing duties on online transactions that is now only voluntary or temporary in the WTO. The FTA also affirms that any commitments made related to services in this Agreement will also extend to the electronic delivery of such services.

Additionally, under the FTA the two governments will recognize the legal validity of electronic signatures, and will maintain a technology neutral approach to their use. Also, the FTA sets out a willingness on the part of both Parties to undertake discussion on the recognition of digital certificates issued by or on behalf of the other Party. This will make it possible for government contractors of both countries to more fully participate in the government procurement regimes of the other. Finally, the FTA recognizes the importance of effective online consumer protection, and reiterates the commitment of both governments to paperless trade administration. U.S. industry has indicated a strong support for the Electronic Commerce Chapter, as it will further its goals in the WTO and will assist in establishing a barrier-free global approach to the trade of digital products.

APPENDIX 1 – Interests of the U.S. States

The United States exported $13.1 billion in merchandise to Australia in 2003. Australia was the 14th largest market for U.S goods in 2003. U.S. exports of goods to Australia rose $1.3 billion, from $11.8 billion in 1999 to $13.1 billion in 2003. Over this period, Australia was the eighth largest U.S. growth market in dollar terms.

U.S. exports to Australia are growing significantly faster than overall U.S. exports. Merchandise exports to the world increased 4.5 percent, from $693 billion in 1999 to $724 billion in 2003. Over the same period, exports to Australia expanded by more than 11 percent – the tenth largest percentage gain among the 30 largest U.S. markets.

While Australia accounted for 1.8 percent of total U.S. merchandise exports in 2003, the Australian market was substantially more important to some states. For example, 5.8 percent of Washington's exports of goods went to Australia in 2003. Australia is also an important market for North Dakota (accounting for 5.5 percent of the state's exports), Kentucky (3.7 percent), Illinois (3.5 percent), and Iowa (2.8 percent).

Thirty states exported more than $100 million in goods to Australia in 2003. Five of these states exported more than $500 million, and two exported merchandise worth more than $1 billion. Washington and California were the top state exporters to Australia in 2003. Washington recorded merchandise exports of $2.0 billion to Australia, while California recorded $1.9 billion. Together, these two states accounted for 30 percent of total U.S. goods exported to Australia in 2003.

Other states that posted large export totals to Australia in 2003 were Illinois ($925 million), Texas ($749 million), Michigan ($524 million), Pennsylvania ($430 million), Kentucky ($394 million), New York ($392 million), Ohio ($389 million), and Florida ($319 million).

Thirty-four – more than two-thirds – of the states increased their merchandise exports to Australia from 1999 to 2003. Washington recorded the largest dollar growth among the states. Exports of merchandise from Washington to Australia increased by $1.4 billion from $602 million in 1999 to $2.0 billion in 2003.

Other states posting large increases in export value to Australia over the 1999–2003 period were Kentucky (exports up $235 million), Pennsylvania (up $167 million), South Carolina (up $131 million), and Illinois (up $98 million).

Six states more than doubled their exports of goods to Australia from 1999 to 2003. Nevada registered the fastest growth, rising 266 percent, from $14 million in 1999 to $52 million in 2003. Nevada was followed by Washington (exports up 227 percent), Wyoming (up 225 percent), North Dakota (up 153 percent), Kentucky (up 148 percent), and South Carolina (up 135 percent).

Source: Origin of Movement Series, Bureau of the Census, U.S. Department of Commerce. The Origin of Movement (OM) series allocates exports to states based on transportation origin, i.e., the state from which goods begin their

journey to the port (or other point of exit) from the United States. The transportation origin of exports is not always the same as the location where the goods were produced. Thus, conclusions about “export production” in a state should not be made solely on the basis of the Origin of Movement state export figures.

Prepared by the Office of Trade & Economic Analysis, Trade Development, International Trade Administration, U.S. Department of Commerce.

State Merchandise Export Totals To Australia, 1999–2003, Ranked By 2003 Export Value

(Thousands of Dollars)

Rank	State	1999	2000	2001	2002	2003	$ Change 1999–2003	$ Change 2002–2003	% Change 1999–2003	% Change 2002–2003
1	Washington	601,939	510,984	575,735	2,627,030	1,966,879	1,364,940	-660,151	227	-25
2	California	2,185,205	2,442,013	2,084,531	1,910,109	1,899,408	-285,797	-10,702	-13	-1
3	Illinois	827,155	804,643	933,857	909,728	924,660	97,505	14,933	12	2
4	Texas	685,236	798,451	739,870	713,046	749,232	63,996	36,186	9	5
5	Michigan	453,389	582,564	437,255	552,883	524,481	71,092	-28,402	16	-5
6	Pennsylvania	262,736	327,050	254,443	291,160	430,196	167,460	139,036	64	48
7	Kentucky	158,637	168,547	218,400	187,657	393,532	234,896	205,876	148	110
8	New York	705,965	583,400	403,112	365,497	392,417	-313,548	26,919	-44	7
9	Ohio	323,439	354,893	349,412	338,964	388,929	65,490	49,965	20	15
10	Florida	389,524	350,031	339,908	284,902	318,714	-70,810	33,812	-18	12
11	New Jersey	241,629	505,952	272,025	274,339	306,812	65,184	32,473	27	12
12	Georgia	544,863	439,898	249,282	252,374	287,603	-257,260	35,230	-47	14
13	Wisconsin	254,386	207,506	241,564	255,158	279,937	25,550	24,779	10	10
14	North Carolina	234,461	247,041	222,539	215,904	262,362	27,900	46,458	12	22
15	Oregon	172,169	184,807	160,376	220,231	257,178	85,009	36,947	49	17
16	Massachusetts	268,111	256,463	237,576	250,848	253,761	-14,350	2,914	-5	1
17	Indiana	203,349	262,765	235,429	227,750	238,900	35,551	11,149	17	5
18	South Carolina	97,134	103,638	150,477	171,711	228,264	131,129	56,553	135	33
19	Tennessee	203,503	174,098	189,033	223,456	224,842	21,339	1,386	10	1
20	Minnesota	206,425	197,284	191,776	182,482	215,507	9,082	33,024	4	18
21	Louisiana	133,437	150,259	151,608	164,179	199,201	65,765	35,022	49	21
22	Arizona	131,835	150,826	124,158	195,437	158,380	26,545	-37,057	20	-19
23	Virginia	198,979	147,202	122,575	160,919	149,524	-49,454	-11,395	-25	-7
24	Iowa	120,244	115,313	114,926	115,330	144,110	23,866	28,780	20	25
25	Connecticut	81,125	99,202	210,145	207,315	140,152	59,027	-67,163	73	-32
26	Missouri	161,421	170,731	128,584	126,063	137,208	-24,213	11,145	-15	9
27	Alabama	113,624	134,112	143,765	122,874	125,227	11,604	2,354	10	2
28	Colorado	135,237	133,864	118,584	117,466	112,719	-22,518	-4,747	-17	-4
29	Maryland	81,937	113,292	122,082	94,920	110,729	28,792	15,809	35	17
30	Kansas	105,388	69,054	72,010	99,325	108,429	3,041	9,104	3	9
31	Utah	44,858	59,677	54,083	51,632	67,257	22,399	15,626	50	30
32	Nebraska	36,865	38,333	41,699	50,779	62,034	25,169	11,256	68	22
33	Arkansas	40,698	45,201	47,237	60,379	52,517	11,819	-7,862	29	-13
34	Nevada	14,265	43,915	38,665	49,529	52,277	38,013	2,749	266	6
35	Oklahoma	48,190	44,433	36,802	41,474	48,787	597	7,313	1	18
36	North Dakota	18,627	24,264	25,125	46,489	47,047	28,420	558	153	1
37	West Virginia	31,183	32,769	29,796	30,405	37,504	6,321	7,099	20	23
38	New Hampshire	20,324	29,947	23,651	20,059	32,651	12,327	12,592	61	63
39	Maine	17,319	40,085	42,005	37,586	28,878	11,559	-8,709	67	-23
40	Idaho	28,935	31,293	19,562	21,335	24,145	-4,790	2,810	-17	13
41	Mississippi	32,900	123,591	17,454	22,184	22,477	-10,423	293	-32	1
42	Alaska	17,229	15,198	30,893	21,767	16,621	-608	-5,146	-4	-24
43	Wyoming	4,568	7,682	5,684	5,765	14,836	10,268	9,071	225	157
44	Vermont	8,574	10,699	11,412	10,702	12,779	4,205	2,077	49	19
45	Delaware	14,926	11,838	12,623	14,288	11,683	-3,243	-2,605	-22	-18
46	Rhode Island	11,158	12,311	19,318	11,300	10,172	-986	-1,128	-9	-10
47	New Mexico	14,278	4,407	10,046	5,680	6,498	-7,780	818	-54	14
48	South Dakota	11,090	5,930	8,275	3,682	3,474	-7,616	-208	-69	-6
49	Montana	3,377	3,207	2,963	2,039	3,396	19	1,357	1	67
50	Hawaii	2,679	6,153	2,135	54,750	1,548	-1,131	-53,201	-42	-97
	District of Columbia	8,119	28,707	8,014	17,122	5,302	-2,817	-11,821	-35	-69
	Puerto Rico	76,179	140,153	110,498	142,903	92,599	16,420	-50,304	22	-35
	Virgin Islands	226	82	109	0	193	-32	193	-14	
	Unallocated	1,021,683	913,983	551,740	503,043	519,871	-501,812	16,828	-49	3
	UNITED STATES	11,810,729	12,459,740	10,944,827	13,083,949	13,103,840	1,293,111	19,891	11	0

Source: U.S. Census Bureau, Origin of Movement Series.
Prepared by the Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

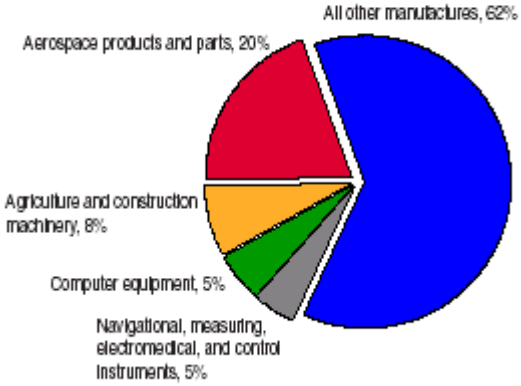
APPENDIX 2 – U.S. – Australia Trade

World Trade Atlas
U.S.-Australia Goods Trade
Millions of US Dollars

	Exports to Australia	Imports from Australia
1994	9,781	3,202
1995	10,789	3,323
1996	12,008	3,869
1997	12,063	4,620
1998	11,918	5,387
1999	11,818	5,280
2000	12,482	6,438
2001	10,931	6,478
2002	13,085	6,479
2003	13,104	6,414

U.S. EXPORTS TO AUSTRALIA

Shares of $12 Billion in Manufactured Exports, 2003



World Trade Atlas
Top Ten U.S. Exports to Australia
Millions of US Dollars

Description	2003
Machinery	2,710
Aircraft	2,229
Vehicles	1,254
Electrical Machinery	1,074
Optical, Medical Instruments	906
Pharmaceutical Products	449
Plastic	360
Organic Chemicals	252
Misc. Chemical Products	221
Live Animals	203
Total, including all other	13,104

Source of Data: U.S. Dept. of Commerce, Bureau of Census

APPENDIX 3 – Australia's Trade with the World

World Trade Atlas
Australia - Imports by Country
2003

Country	Million US$	% Share
United States	13,376	15.76
Japan	10,602	12.49
China	9,343	11.01
Germany	5,193	6.12
United Kingdom	3,551	4.18
New Zealand	3,274	3.86
Rest of World	39,544	46.58
Total	84,884	100

Source of Data: Australian Bureau of Statistics