AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was $13.2 billion in 2010, up $1.6 billion from 2009. U.S. goods exports in 2010 were $21.8 billion, up 11.2 percent from 2009. Corresponding U.S. imports from Australia were $8.6 billion, up 7.1 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 $12.2 billion in 2009 (latest data available), and U.S. imports were $5.7 billion. Sales of services in Australia by majority U.S.-owned affiliates were $39.8 billion in 2008 (latest data available), while sales of services in the United States by majority Australia-owned firms were $12.0 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was $106.4 billion in 2009 (latest data available), up from $94.5 billion in 2008. U.S. FDI in Australia is led by the finance and insurance, mining, manufacturing, and information sectors.

FREE TRADE AGREEMENT (FTA)

The United States-Australia FTA 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. Under the FTA, trade in goods and services and foreign direct investment have continued to expand and more than 99 percent of U.S. exports of manufactured goods are now duty-free.

In March 2010, the United States began negotiations to join a regional Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high-standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high quality jobs in the United States. The TPP negotiating partners currently include Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

GOVERNMENT PROCUREMENT

Australia is the only major industrialized country that is not a signatory to the WTO Agreement on Government Procurement. However, under the United States-Australia FTA, the Australian government opened its government procurement market to U.S. suppliers, eliminating discriminatory preferences for domestic suppliers and agreeing to use fair and transparent procurement procedures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Australia generally provides for strong IPR protection and enforcement. It has legislation criminalizing copyright piracy and trademark counterfeiting. Penalties (including imprisonment) can be combined with confiscation of proceeds of the crime, the infringing goods, and the equipment used to make those goods. The Australian Notice of Objection Scheme provides Customs with the power to seize imported goods which infringe notified trademarks and copyright. IPR rights holders can also prevent the importation and exportation of infringing products through court injunctions.

Under the FTA, Australia must notify the holder of a pharmaceutical patent of a request for marketing approval by a third party for a product claimed by that patent. However, U.S. and Australian pharmaceutical industry representatives have raised concerns that unnecessary delays in this notification process restrict their options for action against third parties that would infringe their patents if granted marketing approval by the Australian Therapeutic Goods Administration.

Australia was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations, which were concluded in November 2010. The ACTA establishes an international framework that will assist the parties to the agreement in their efforts to effectively combat IPR infringement, in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade.

SERVICES BARRIERS

Telecommunications

In February 2007, the Australian government transferred its remaining 17 percent stake in Telstra into an independent Future Fund, reducing concerns about its conflicting roles as regulator and owner of the dominant operator. The United States remains concerned about foreign equity limits in Telstra, which are still capped at 35 percent, and the fact that individual foreign investors are only allowed to own up to 5 percent of the company.

In June 2010, Telstra signed a non-binding Financial Heads of Agreement with NBN Company (NBN Co) to participate in the rollout of the National Broadband Network (NBN). The agreement provides for the decommissioning of Telstra's copper network and cable broadband service and use of Telstra's infrastructure. The transaction would see Telstra progressively migrate its voice and broadband traffic from its copper and cable networks to NBN Co's network. The NBN is intended, by design, to be a neutral provider of broadband services, a structure which could do much to address persistent complaints about the lack of non-discriminatory access to network services, including from U.S. companies. Other telecommunications companies, such as Optus, will also join the NBN. The Australian government passed a bill to split off Telstra's wholesale business and clear the way for the NBN, after making guarantees to the Australian Green Party that any future privatization would first have to be approved by the Parliament. In late November 2010, the Parliament also passed the first of a series of bills that will enable the Australian government to build the NBN. The United States will closely monitor the NBN to ensure that competitors are able to obtain reasonable access to services and customers.

Audiovisual Trade Barriers

Though preexisting Australian-content requirements remain in effect under the FTA, the agreement limits or prohibits their extension to other media or means of transmission. Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend 10 percent of their programming budgets on new Australian drama programs.

The Australian Content Standard of 2005 requires commercial television broadcasters to produce and screen Australian content, including 55 percent of transmission between 6:00 a.m. and midnight. In addition, there are specific minimum annual sub-quotas for Australian (adult) drama, documentary and children's programs. In July 2010, the Australian government provided license fee rebates of 25 percent in FY 2010 and 41.5 percent in FY 2011 to commercial television broadcasters in order to help them maintain Australian content production.

Radio

The Australian commercial radio industry code of practice sets quotas for the broadcast of Australian music on commercial radio. The code requires that up to 25 percent of all music broadcast between 6:00 a.m. and midnight be music performed by Australians. In July 2010, the Australian Communications and Media Authority announced registration of a new code that provides temporary exemption for digital-only commercial radio stations (stations not also simulcast in analog) from the Australian music quotas. The exemption will be reviewed in 2013. Since January 2008, all licensees of regional commercial radio broadcasting licences have been required to broadcast minimum levels of local content.

INVESTMENT BARRIERS

Under Australia's Foreign Investment Law, the Foreign Investment Review Board (FIRB) screens in advance potential foreign investments in Australia above a threshold value of A$231million ($231million). The FIRB may deny approval of particular investments above that threshold on national interest grounds, although it rarely has done so. The FTA, however, exempts all new "greenfield" investments from FIRB screening. The FTA also raised the threshold for screening of most U.S. investments in Australia from A$800 million ($800 million) to A$1.004 billion ($1.004 billion) (indexed annually).

Foreign ownership of Australian media assets is regulated by the *Foreign Acquisitions and Takeovers Act 1975* and Australia's *Foreign Investment Policy*. All foreign persons, including U.S. investors, must notify the Australian government and get prior approval to make investments of 5 percent or more in the media sector, regardless of the value of the investment. The media sector includes daily newspapers, television and radio (including internet sites that broadcast or represent these forms of media).

OTHER BARRIERS

Pharmaceuticals

The FTA addressed transparency and certain regulatory concerns by establishing a Medicines Working Group (MWG) to promote discussion and mutual understanding of issues relating to the Pharmaceuticals Annex of the FTA. These consultations have helped enhance transparency and have improved the dialogue between the U.S. industry and the Australian government in this sector.

Blood Plasma Products and Fractionation

In line with commitments under the FTA, Australia reviewed its plasma fractionation arrangements in 2006. The review determined that fractionation of Australian plasma should continue to be done locally and recommended against public tendering, concluding that the voluntary collection of blood in Australia and self sufficiency in blood products should remain key objectives of Australian policy. Going against the review's recommendation, the then Federal Health Minister proposed the application of the FTA competitive tendering rules. In March 2007, however, state and territory health ministers rejected the federal government's recommendation for tendering.

Without a consensus for change, the Australian government decided to maintain existing arrangements without competitive tendering. In 2010, the National Blood Authority (NBA) negotiated a new eight-year term contract with CSL Limited for the ongoing fractionation of Australian plasma and manufacture of key blood products. While foreign – including U.S. – companies supply a range of blood products to Australia through the NBA, the United States remains concerned that an open and competitive tendering system for blood fractionation is still lacking in Australia.