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TRADE SUMMARY

The U.S. trade surplus with Australia was \$6.7 billion in 2003, an increase of \$84 million from \$6.6 billion in 2002. U.S. goods exports in 2003 were \$13.1 billion, up 0.14 percent from the previous year. Corresponding U.S. imports from Australia were \$6.4 billion. Australia is 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 \$5.2 billion in 2002, and U.S. imports were \$2.9 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$14.6 billion in 2001 (latest data available), while sales of services in the U.S. by majority Australia-owned firms were \$10.7 billion.

The stock of U.S. foreign direct investment (FDI) in Australia in 2002 was \$36.3 billion, up from \$32.6 billion in 2001. U.S. FDI in Australia is concentrated largely in manufacturing, mining, and finance.

FREE TRADE AGREEMENT NEGOTIATIONS

The U.S. and Australian Governments launched negotiations for a Free Trade Agreement (FTA) in March 2003 and concluded on February 8, 2004. If Australia and the United States enact the legislation necessary to implement the agreement, this FTA would address many of the issues raised in this report. For example, if the FTA is enacted, more than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon entry into force and all U.S. agricultural exports to Australia, totaling more than \$400 million, would receive immediate duty-free access. The FTA also would address many of the concerns detailed below relating to services, investment, IPR, government procurement, and other issues.

IMPORT POLICIES

Tariffs

Australia has been reducing its tariffs gradually since the 1970s, and its program of gradual tariff reduction has brought 86 percent of tariffs to between zero and five percent, with more than 99 percent of tariff rates applied on an *ad valorem* basis. More than 96 percent of 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 most favored nation (MFN) tariff is 4.3 percent. The average applied MFN rate for industrial products is 4.7 percent, with bound rates generally ranging from zero to 55 percent. The average applied MFN tariff for agricultural products is less than 1 percent, with bound rates generally ranging from zero to 29 percent. Tariff rate quotas are in place for five cheese items and non-manufactured tobacco.

Australia retains two tariff peaks, in the textiles, clothing, and footwear (TCF) (maximum 25 percent) and passenger motor vehicle (maximum 15 percent) sectors. Applied tariffs in both of these sectors are scheduled to be further reduced in 2005. If enacted, the FTA would eliminate tariff barriers over 0 to 4 years in the automotive sector and over 0 to 10 years in the textiles sector. U.S. industry estimates the removal of barriers affecting trade in textiles would lead to increases in U.S. exports to Australia of \$100 to \$500 million in textiles and by \$100 to \$500 million in autos and components. The removal of barriers affecting trade in textiles would lead to increases in U.S. exports to Australia of \$100 million to \$500 million, according to some estimates. U.S. industry estimates that the removal of barriers to trade in autos and components would increase U.S. exports by \$100 million to \$500 million. Australian tariffs in both of these sectors will be phased out under the FTA with the United States.

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Australia assesses a duty of 5 percent *ad valorem* on imports of distilled spirits, with the exception of rum, which is bound at 13 percent. Australia is the third largest market for U.S. exports of distilled spirits, with sales of \$55.9 million in 2002, primarily Bourbon and other whiskies. If enacted, these tariffs would be eliminated immediately.

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 on and prohibitions on imports of many agricultural products. Key U.S. products currently prohibited by Australia's SPS regime include Florida citrus, stone fruit, poultry (fresh, cooked, and frozen), fresh pork, and apples. The U.S. Government continues to underscore the need for Australia to comply with its obligations under the WTO Agreement of SPS Measures by conducting timely, science-based import risk assessments and not applying measures that are more trade restrictive than necessary. The U.S. and Australian Governments have held extensive and detailed consultations on these issues over the past two years, and these discussions have generated progress on specific issues. If enacted, the FTA would create 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 dealings involving 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 forums. Most States and Territories restrict through planting moratoria or bans plantings of food-related biotechnology products licensed by the Commonwealth Office of the Gene Technology Regulator. These actions are not science-based but have been based on marketing and trade concerns. Such actions have held up the commercialization of biotechnology canola.

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 2003, ANZFA had received 26 applications for safety assessments of biotechnology foods. It approved 22; two applications were withdrawn; and two are pending.

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

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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 U.S. agricultural exports, of which a large share consist of 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. At both the Commonwealth and State/Territory level, requirements for offsets and similar GPA-inconsistent arrangements are systemic. Domestic supplier price preferences are common at the State/Territory level. Under the Australia and New Zealand Government Procurement Agreement, New Zealand suppliers are afforded domestic supplier treatment. The Australian Government has participated in the WTO Working Group on Transparency in Government Procurement and negotiation of an Agreement on Transparency in Government Procurement. If enacted, the FTA would commit Australia to open its government procurement market to U.S. suppliers, giving U.S. suppliers an important advantage over other foreign competitors.

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. However, Australia has not yet fully enacted the legislation necessary to accede and become a party to the 1996 WIPO Copyright Treaty and Performances and Phonograms Treaty. The Australia-Singapore FTA calls for the Australian Government to ratify the WIPO treaties within four years (mid-2007).

Australia passed legislation in 2003 that permitted the parallel importation of computer software and electronic versions of books, periodicals, and sheet music. Australia continues to permit parallel importation of sound recordings, branded goods (clothing, footwear, toys, and packaged food), and some electronic games. The Australian government continues to prohibit 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. industry has expressed concerns about the unauthorized sale and use of decrypting technology in DVD players. This enables playback of parallel imported Zone 1 DVDs from the United States. These Zone 1 DVDs are released in Australia three to six months prior to the local Australian video release and frequently coincide with the Australian theatrical release.

U.S. copyright holders remain concerned over past decisions by the Australian Competition and Consumer Commission (ACCC) that equate the holding of a copyright with "market power."

Australia does not yet have a system to provide protection for agricultural chemicals but is expected to implement one shortly. The Australian government also has considered relaxing restrictions on "springboarding," potentially allowing generic pharmaceutical manufacturers to begin trials, production, and export of pharmaceuticals that are still under patent in Australia.

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Australia's Copyright Amendment (Digital Agenda) Act, which took effect in 2001, brought Australia closer to meeting the WIPO Copyright Treaty requirements. However, the Act is weak in its treatment of technological protection measures (TPMs) and Internet service provider (ISP) liability. Specifically, it permits the sale and use of TPM-defeating devices and fails to provide an effective "takedown" mechanism that encourages ISP cooperation in the event of web-based infringements. The WIPO Treaties require effective legal remedies against the circumvention of TPMs used by content owners to protect their property from theft and mutilation.

If enacted, the FTA would set high standards for protecting IPR, including copyrights, patents, trademarks, and trade secrets, and would provide enhanced means for enforcing those rights. For example, the FTA would provide broad protections for digital works and establish strong anti-circumvention provisions. It also would extend the term of copyright protection, consistent with emerging international trends. The FTA also would provide stronger protections for patents and trade secrets, including providing for the extension of patent terms to compensate for delays in granting the original patent and limiting the grounds for revoking a patent. It would enhance enforcement, including by establishing tough penalties for piracy and counterfeiting.

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. The regulator has made significant progress in addressing some of these issues: approving a reference interconnection offer and instituting a review of mobile termination rates that is expected to 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. If enacted, the FTA would confirm the Australian government's public commitment to the full privatization of Telstra.

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. If enacted, the FTA would improve market access for U.S. films and television programs over a variety of media, including cable, satellite, and the Internet.

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INVESTMENT BARRIERS

The Foreign Investment Review Board (FIRB) screens in advance potential foreign investments in Australia above a set value. Australia's foreign investment law provides discretion for the government to deny specific foreign investment on the grounds of a broad and undefined "national interest." Proposals are evaluated according to their consistency with existing government policy and law, where these are taken to define important aspects of national interest. Australia's commitments under the General Agreement on Trade in Services Agreement of the WTO are limited as a result of Australia's screening regime. If enacted, the FTA would exempt all new U.S. investments from screening. It also significantly would raise thresholds for acquisitions by U.S. investors of existing businesses, which would have exempted nearly 90 percent of U.S. investments from screening over the past three years.

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), with veto rights over containerized export requests retained by the AWB. 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. Both programs support regional adjustment, diversification and industry restructuring. Assistance includes 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. 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. If Australia and the United States enact the legislation necessary to implement the FTA, it would address these transparency concerns and would establish an independent appeals process. The two governments also would establish a Medicines Working Group that will provide for continued dialogue between the two governments on emerging health care policy issues. If enacted, the FTA would address these transparency concerns and would establish an independent appeals process. The two governments also would establish a Medicines

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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. If enacted, the FTA would commit 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 will be conducted through an open tender process.