

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$9.6 billion in 2006, an increase of \$1.1 billion from \$8.5 billion in 2005. U.S. goods exports in 2006 were \$17.8 billion, up 12.3 percent from the previous year. Corresponding U.S. imports from Australia were \$8.2 billion, up 11.8 percent. Australia is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Australia were \$7.4 billion in 2005, and U.S. imports were \$4.7 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$18.4 billion in 2004 (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 in 2005 was \$113.4 billion. U.S. FDI in Australia is concentrated largely in the non-bank holding companies, manufacturing, finance, mining, and banking sectors.

FREE TRADE AGREEMENT (FTA)

The governments of the United States and Australia concluded an FTA in February 2004 that entered into force on January 1, 2005. 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 FTA will also eliminate tariffs within four years in the automotive sector and within 10 years on textiles. U.S. industry estimates the removal of tariffs affecting trade in textiles, automobiles, and automotive components will lead U.S. exports to Australia to increase between \$100 million to \$500 million in textiles and raise exports of automobiles and automotive components between \$100 million to \$500 million. A number of working groups have been established under the FTA to facilitate further liberalization of services trade as well.

Over the past 12 months, progress has been made on a number of outstanding FTA implementation issues, including measures that properly value innovative pharmaceutical products, strengthen copyright protection, and review the market for blood plasma products. These issues are discussed in the relevant sections below.

IMPORT POLICIES

Tariffs

Eighty-six percent of Australia's tariffs are between 0 percent and 5 percent, with more than 99 percent of tariff rates applied on an *ad valorem* basis. Ninety-seven percent of Australia's tariff lines are bound in the World Trade Organization (WTO). Australia's simple average bound tariff rate is 9.9 percent and its average applied tariff is 4.2 percent. The average applied rate for industrial products is 4.6 percent, with most bound rates set between zero percent and 55 percent. The average applied tariff for agricultural products is less than 1 percent, with bound rates generally set between 0 percent and 29 percent. Tariff-rate quotas are in place for some cheese items and non-manufactured tobacco (although the duty rate on tobacco has been 0 percent since 1995). Australia retains high tariff peaks on textiles, clothing, and footwear (maximum 25 percent) and passenger motor vehicles (15 percent).

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STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

The Australian government maintains a stringent regime for the application of sanitary and phytosanitary (SPS) measures. The FTA created a new mechanism for scientific cooperation between U.S. and Australian SPS authorities to resolve specific bilateral animal and plant health issues. This mechanism will facilitate 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 dealing with gene technology and organisms derived by the use of biotechnology, as well as a process for assessment and approval of foods derived by the use of biotechnology. The Gene Technology Act of 2000 established Australia's regulatory scheme for dealing with gene technology and organisms derived by the use of biotechnology. The Gene Technology Regulator serves the key role in assessing, regulating and licensing products of biotechnology and enforcing licensing conditions. A number of states have invoked restrictions on the planting of products of biotechnology in their jurisdictions, which is slowing the commercialization and adoption of the technology. (Biotechnology cotton, however, has been successfully introduced and planting of this product now dominates the cotton industry in Australia.)

Food Approvals: 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 Food Standards Australia New Zealand (FSANZ) and being listed in the Food Standards Code. As of November 2006, there were four biotechnology processing aids and three biotechnology food additives that formed part of approximately 25 products on the FSANZ-approved list of "food produced using gene technology."

Food Labeling: Australia maintains mandatory labeling requirements for foods utilizing biotechnology, required if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. The law allows for a maximum level of 1 percent product of biotechnology. Meeting these biotechnology food labeling regulations can be onerous for manufacturers and others in the supply-chain, particularly for processed food, a large share of U.S. agricultural exports.

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. The FTA also requires the use of 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;

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the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations; and the Patent Cooperation Treaty. Under the FTA, Australia is obliged to accede and become a party to the 1996 WIPO Copyright Treaty and Performances and Phonograms Treaty. Australia is still reviewing the steps necessary for accession.

Australia amended its Copyright Act in December 2006, following extensive consultations with stakeholders. The amended Copyright Act, which includes strengthened enforcement measures, will enter into force in 2007. The December 2006 amendments also implement FTA provisions concerning circumvention of technological protection measures (TPMs) used in connection with the exercise of copyright. The provisions on TPMs are a step forward in protection for copyright owners 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.

Australia permits the parallel importation of computer software, electronic versions of books, periodicals, sheet music, sound recordings, branded goods (clothing, footwear, toys, and packaged food), and some electronic games. The Australian government continues to prohibit the parallel importation of films, but an estimated 20 percent of the DVDs in Australia are illegal parallel imports. Locally replicated DVD-Rs, videocassettes copied from video compact discs (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. Pirate DVDs imported from Asia also are an emerging problem.

Due to implementing commitments it made in the FTA, Australia now provides copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). 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 the grounds 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 if there are unreasonable delays that occur while granting the patent, or if there is unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products. 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, and that geographical indications are eligible for protection as marks. Australia is implementing its commitment to provide protection for marks and geographical indications, as well as 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.

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SERVICES BARRIERS

Telecommunications

The Australian government has recently reduced its 51 percent stake in Telstra and is now a minority shareholder with a 17 percent share, helping reduce concerns about the government's conflicting roles as both regulator and owner of the dominant operator. Australia has not addressed continuing concerns about foreign equity limits in Telstra, still capped at 35 percent. U.S. industry remains concerned about the ability of Telstra to abuse its monopoly power. 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 its mobile network. 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.

Audiovisual Trade Barriers

The Australian Communications and Media Authority Content Standards require that 55 percent of all free-to-air television programming broadcast between 6:00a.m. and midnight be of Australian origin with specific minimum annual sub-quotas for Australian (adult) drama, documentary and children's programs. 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 (with a requirement of 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 6:00a.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.

Media

There was considerable movement in 2006 in Australia's media regulations. In October 2006, Parliament passed legislation enacting changes to Australia's media laws relating to digital television including multi-channeling, foreign ownership and cross-media ownership. However, media remains a sensitive sector, and foreign investment proposals in the media sector, irrespective of size, will remain subject to prior approval by the Treasurer.

Other changes include opening up two reserved digital channels for new digital services such as mobile television or new in-home services, and permitting commercial free-to-air television stations to broadcast one standard definition multi-channel from 2009, and to allow full multi-channeling no later than the time of the digital switchover (2010-2012). The law relaxes current 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. The FTA, however, exempts all new "greenfield" U.S. investments from FIRB screening entirely. The FTA also raises the threshold for screening of most U.S. acquisitions of existing investments in Australia from A\$50 million to A\$800 million (indexed annually).

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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 is relatively unprotected based on other traditional measures of assistance as well, such as producer subsidy equivalents and effective rates of assistance, 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 through strict import measures. As a result, there is low-to-zero import penetration for many of Australia's agricultural sub-sectors. The U.S. is continuing to seek to resolve long standing issues with its market access for table grapes and access for a number of products including apples, stone fruit, raspberries, and fresh, frozen and cooked poultry meat.

Commodity Boards and Agricultural Support

While Australian government intervention in the agricultural production sector is limited, a few selected commodities are exported through statutory marketing arrangements, including wheat and barley in South Australia, and rice in New South Wales. The Australian Wheat Board (AWB) 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 the payments. In response, in December 2006, the government of Australia removed the AWB's veto authority over all exporting firms submitting contracts to export wheat from Australia until June 2007. The veto authority has been given to the Agriculture Minister as an interim measure and the Australian government has proposed intensive consultation with the industry over the future of wheat export marketing.

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. Previously scheduled tariff reductions for these industries came into effect on January 1, 2005.

For TCF products, 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.

These reductions were provided for in the Customs Tariff Amendment (Textile, Clothing and Footwear post-2005 Arrangements) Act 2004. Under the Act, TCF tariffs will 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.

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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 process addressed transparency and regulatory concerns and established an independent review process for innovative medicines. The FTA also established a Medicines Working Group, which has helped facilitate a constructive dialogue between the United States and Australia on health policy issues.

In the past, the U.S. pharmaceutical industry has raised concerns over the Australian government's policies and their support of the research and development of innovative pharmaceutical products. 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, from August 1, 2007, different pricing arrangements would 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 will 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. The U.S. pharmaceutical industry is cautiously optimistic regarding these reforms, although many details about its implementation still remain unclear.

Blood Plasma Products and Fractionation

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 Australian 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. Australia recently completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. The review's recommendation that Australia not pursue overseas fractionation of blood plasma products did not adequately consider the significant potential cost savings from introducing competition in the provision of blood fractionation services. The Australia government has recommended that its states adopt the tendering process prescribed in the Government Procurement chapter of the FTA. Australia's states will vote in early 2007 on whether or not to change existing arrangements.