

# AUSTRALIA

## TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$11.6 billion in 2009, down \$47 million from 2008. U.S. goods exports in 2009 were \$19.6 billion, down 11.8 percent from 2008. Corresponding U.S. imports from Australia were \$8.0 billion, down 24.3 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 \$11.8 billion in 2008 (latest data available), and U.S. imports were \$6.1 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$36.6 billion in 2007 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$10.7 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was \$88.5 billion in 2008 (latest data available), up from \$83.3 billion in 2007. U.S. FDI in Australia is led by the mining, nonbank holding companies, information, and manufacturing sectors.

## UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT (FTA)

The United States-Australia FTA entered into force on January 1, 2005. The FTA is a comprehensive agreement that covers goods, services, investment, financial services, government procurement, standards and technical regulations, telecommunications, competition related matters, electronic commerce, intellectual property rights, labor and the environment. More than 99 percent of U.S. exports of manufactured goods are duty free under the FTA. The United States and Australia review implementation of the FTA annually. The fourth FTA review took place in October 2009.

In December 2009, the United States announced its intention to enter into 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, New Zealand, Peru, Singapore, and Vietnam.

## GOVERNMENT PROCUREMENT

Australia is not a signatory to the WTO Agreement on Government Procurement. Under the 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. Australia may still offer preferences for small and medium-sized businesses and indigenous people under the terms of the FTA.

For Australian national government purchases, the FTA does not apply to procurement of goods and services below \$70,079 or to procurement of construction services below \$7,804,000. For provincial government entities covered by the FTA, the agreement does not apply to procurement of goods and services below \$554,000 or to procurement of construction services below \$7,804,000.

Several new procurement policies have emerged recently, both at the national and provincial levels,

which could potentially adversely impact U.S. suppliers or bidders. The United States is closely monitoring these policies to ensure consistency with Australia's obligations under the FTA.

In June 2009, the government of New South Wales introduced measures giving local industry preference in major projects. The Local Jobs First plan requires government agencies and state-owned corporations to give preferential treatment to Australian-made goods. The price preference means locally made content is discounted by 20 percent compared to overseas-sourced material in tender evaluations. Previously, a price preference applied only to businesses with up to 200 workers. It has now been extended to businesses with up to 500 workers. Every tender over A\$4 million (approximately \$3 million) also requires a local industry participation plan. Australia has assured the United States that this policy would be applied consistent with Australia's obligations under the FTA.

In July 2009, the Industry Ministry released the "Boosting Australian Industry Participation" policy that requires tenderers for government work to outline their use of Australian suppliers in every bid. The policy directs all tenderers to disclose their suppliers, whether local or overseas.

The Victorian Industry Participation Policy was also modified in July 2009 to encourage greater local content in procurements in that province. Pursuant to the changes, local content rules may apply to projects designated strategically significant as defined by the Victoria Department of Innovation, Industry and Regional Development.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Australia generally provides strong IPR protection and enforcement. However, some copyright holders complain that convictions for criminal copyright piracy tend to result in insufficient penalties, which undermines the goal of deterrence.

In 2008, Australia began a review of penalties and additional damages in its Trademark Act. An issues paper in February 2009 noted that penalties for criminal trademark offenses are significantly lower than for copyright offenses (two years compared to five years) and recommended that these penalties be brought into alignment with copyright penalties. The report also recommends that additional damages should be provided in civil cases for willful trademark infringement.

## **SERVICES BARRIERS**

### **Telecommunications**

The Australian government has reduced its equity share in Telstra -- Australia's largest telecommunications company which was formerly owned by the Australian government -- to 17 percent, reducing concerns about its conflicting roles as regulator and owner of the dominant telecommunications operator. The 17 percent share was placed in Australia's Future Fund. In August 2009, the Future Fund reduced its share of Telstra to 10.9 percent. Concerns remain, however, about foreign equity limits in Telstra, which are still capped at 35 percent. U.S. industry also remains concerned about the potential for Telstra to abuse its monopoly power and its aggressive use of litigation to delay regulatory outcomes. Alleged abuses include delays in making an acceptable public offer for access to its network and inflated pricing of wholesale services such as leased lines and interconnection with both its fixed and mobile network. There have been numerous disputes with competitors over access to Telstra's network which are subject to ongoing regulatory or judicial proceedings.

In mid-2009, the Australian government announced that it wanted Telstra to voluntarily separate its retail and wholesale arms in order to level the competitive playing field of the telecommunications sector ahead

of the construction of its National Broadband (NBN) project. Failure to do so could result in Telstra being forced to divest its cable network and its half-share in pay television broadcaster Foxtel or face being denied the wireless spectrum it needs to evolve its mobile business and roll out fourth generation mobile technology. Telstra has opposed the draft legislation that would implement structural separation within its telecommunications network. The United States will monitor the planned NBN, particularly with respect to whether, with or without such separation, competitors are able to obtain reasonable access to services and customers to compete with Telstra, one of the goals of the NBN.

## **Media**

Under the FTA, existing requirements on Australian local content remain, but the agreement limited or prohibited their extension to newer media or means of transmission. Australia maintains strict domestic content requirements on all free-to-air television programming broadcast between 6:00 a.m. and midnight. 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 (with the FTA allowing flexibility, under certain circumstances, to increase this up to 20 percent). 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.

## **INVESTMENT BARRIERS**

Pursuant to the Foreign Investment and Takeovers Act (FATA), certain proposed foreign investments into Australia require screening by the Foreign Investment Review Board (FIRB), which makes recommendations to the Treasurer on whether the proposed investments should be approved. Foreign investment proposals subject to the FATA include acquisitions of interest in an Australian business or corporation which is valued above A\$219 million (approximately \$176 million) (a threshold that is indexed annually, and was increased from A\$100 million (approximately \$80 million) in September 2009).

The FTA provides U.S. investors with certain beneficial treatment with respect to these screening requirements. For example, under the FTA, the screening threshold for acquisition of interests in Australian businesses by U.S. investors is A\$953 million (approximately \$765 million) (rather than the A\$219 million applicable to foreign investors generally). Acquisitions by U.S. investors below this threshold are not subject to FIRB screening, except for investments in specified sensitive sectors, in which the general threshold applies. Proposals by U.S. investors to establish new businesses in Australia are entirely exempt from FIRB screening under the FTA.

## **OTHER BARRIERS**

### **Pharmaceuticals**

The FTA addressed transparency, including certain regulatory concerns, and established an independent review process for innovative medicines. The FTA also established a Medicines Working Group that has helped facilitate a constructive dialogue between the United States and Australia on health policy issues. However, the U.S. pharmaceutical industry continues to complain that provisions requiring patent holders receive advance notice to enable them to seek injunctive relief prior to patent infringing products entering the market have not been effectively implemented.

### **Blood Plasma Products and Fractionation**

Foreign companies face substantial barriers to the provision of blood plasma products to the Australian

market. While foreign blood products may be approved for sale in Australia, the monopoly contract granted by the Australian government to an Australian company makes it virtually impossible for foreign firms to sell their products in Australia except to fill shortages or provide products not otherwise available in Australia. In late 2006, Australia completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. The Australian government recommended that states adopt the tendering process prescribed in the Government Procurement chapter of the FTA. However, state health ministers in 2007 decided to retain the current monopoly arrangement. There have been no changes since then.