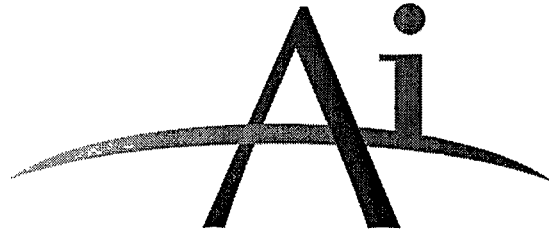


FTA
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AUSTRALIAN INDUSTRY
GROUP

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Submission to the Joint Standing Committee on Treaties (JSCOT)

On

The Australia-United States Free Trade Agreement

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13 April 2004

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Australia-United States Free Trade Agreement

Submission to the Joint Standing Committee on Treaties By Australian Industry Group 13 April 2004

The Australian Industry Group (Ai Group) welcomes the opportunity to respond to the call for submissions made by the Joint Standing Committee on Treaties, on the Australia-US Free Trade Agreement (AUSFTA).

The Ai Group exists to help Australian industry be more competitive, both domestically and internationally, so that Australian industry can be more effective in the global economy.

The Ai Group is Australia's largest national industry body, representing 10,000 large and small manufacturing, construction, engineering and service industries in every state and territory. These member companies form the core of Australia's entire manufacturing sector, which is responsible for more than \$100 billion in output, employ more than 1 million people, and produce exports worth some \$25 billion.

Executive Summary

The Australian Industry Group endorses the Australia-US Free Trade Agreement (AUSFTA). We believe that over time the agreement will prove to be in the best interests of Australian industry and the economy overall. In reaching this conclusion Ai Group consulted deeply and extensively with our member companies on the broad parameters of the Agreement and its technical underpinnings. Ai Group members endorsed the Agreement. As a result of this process Ai Group's governing bodies – our Branch Councils and our National Executive – also endorsed the Agreement.

Ai Group believes AUSFTA will advance the expansion of trade and economic relations between Australia and the US. Ai Group has supported negotiations for an FTA with the US from the outset due to its potential significance.

Ai Group has consistently advocated that an FTA with the US (or any other country) can and should sit within the wider context of the multilateral, sub-regional and bilateral activities simultaneously being pursued by the Australian Government. It is our hope that this agreement, which signals support for trade liberalization, will serve to engender ambitious results within the WTO and APEC.

Key deliverables of the agreement are increased market access for industrial and agricultural goods, improved investment flows and access for service providers. Australian industry and consumers will benefit from lower priced goods and services, and sufficient safeguards are built into the agreement to ensure this occurs in a manner that does not disrupt the Australian economy.

Significant improvements in market access for Australian industrial goods to the US are dependant on meeting a rules of origin approach which differs vastly to that which Australian exporters are familiar. Despite Ai Group's initial opposition to this methodology, following extensive consultation with industry, we find that it is generally acceptable to most industry sectors, except the TCF (textiles, clothing and footwear) sector.

The agreement provides for new consultation mechanisms to improve trade cooperation and head off disputes, including cooperation in addressing technical barriers to trade. While there are no breakthroughs in this crucial area that will be delivered at the time the Agreement comes into force, the apparatus for working groups to produce advancement over time is a critical element.

The agreement also provides Australia access, for the first time, to Federal US Government Procurement, whilst preserving Australia's right to support our SMEs (small and medium sized enterprises).

The benefits to Australia from access to the US Government Procurement market will not be realized however, unless the Government and industry work together actively and continuously.

The AUSFTA should be enacted into law as soon as possible so that Australian industry and consumers can benefit from this agreement at the earliest possible date.

Background

The US is Australia's most important economic partner, when considering both trade and investment. It is our second largest trading partner (Japan represents only slightly higher trade), and by far Australia's largest source of foreign investment.

Exports to the US in 2003 were worth A\$9,451 million, and imports were worth A\$20,529 million. The major Australian exports were bovine meat, alcoholic beverages, crude petroleum, meat (excluding bovine) and aircraft and parts. The major imports from the US were aircraft and parts, measuring and controlling instruments, internal combustion piston engines, medicaments (including veterinary) and computers.

The United States is the largest investor in Australia (A\$235 billion) and the the largest recipient of Australian investment (A\$177 billion) as at 30 June 2001. Australia is the 8th largest provider of foreign direct investment in the United States.

AUSFTA will not only improve Australia's access to the world's largest consumer market and attract further US investment, but will shape the bilateral relationship well beyond the trade context.

The move to create an FTA with the US sits within a global trend extending over the last 15 years to negotiate such agreements, the NAFTA (North American Free Trade Agreement) and ANZCERTA (Australia New Zealand Closer Economic Relationship Trade Agreement) being notable examples.

Trade liberalisation, as represented by FTAs, is a powerful tool in international trade relations. Certainly trade liberalisation is an overriding principle in current multilateral processes, and therefore as a result of this compatibility, Ai Group would hope that the AUSFTA will give momentum to liberalisation processes within the WTO and APEC.

Further, AUSFTA will have best practice benefits for Australia, as a result of being linked to the global leader in research and development and standards for the Information Economy, not to mention benefits in closer exposure and involvement in US business practices.

Finally, the agreement among 34 North- and South- American countries to negotiate an FTA of the Americas (FTAA) by 2005 has significant ramifications for Australia as well. The AUSFTA may be vital in ensuring that Australian competitors, such as Latin American countries, do not secure an advantage over Australian access to the US market.

Australia's Negotiating Objectives

We note from the Department of Foreign Affairs and Trade submission to JSCOT, that –“Australia's broad objectives for the Agreement were to gain improvements in market access for Australian goods and services exports to the United States, and to promote closer economic integration and greater investment between the Parties...the Agreement achieves a large number of the Government's objectives.”

Ai Group would state at the outset that this Agreement is not perfect. Nevertheless, given that two independent economies had to equally satisfy their respective constituencies of the merits of the Agreement, perfection (for either party) was never a realistic outcome. Indeed, the Agreement represents a workable balance of sometimes-conflicting interests and delivers practical outcomes.

To keep a realistic perspective, it must be stressed that no other mechanism, including the WTO, appears likely to come close to matching the gains this FTA has delivered for Australia's industrial and agricultural sectors.

Most importantly, the Agreement delivers the framework, processes and legal impetus to ensure further integration of our economies and improvement of trade and investment flows will ensue over time.

Australian Industry Group Objectives

In the Ai Group submission to the Department of Foreign Affairs and Trade of February 2003, Ai Group outlined the following objectives.

1. *Ai Group welcomes the commencement of negotiations between the two countries and fully supports the conclusion of an equitable Australia / US FTA. A deal at any cost is not acceptable.*
2. *It is important that negotiations start from a stated common philosophy and that it is preferable to have a good agreement, rather than just any agreement, which is finalised within a prescribed timeframe.*
3. *The negotiations can and should be part of a global trade strategy encompassing simultaneously multilateral, sub-regional and bilateral activities.*
4. *The Agreement should be comprehensive, covering all sectors of trade, services and investment.*
5. *The Agreement should aim to be fully operational within a set period of time, say 10 years.*
6. *Phase-in arrangements over this 10-year period should be kept to an absolute minimum and apply to especially sensitive industry sectors only.*
7. *Rules of Origin should be set at 50%, as applies with the Closer Economic Relations Agreement between Australia and New Zealand.*
8. *Appropriate anti-dumping mechanisms be agreed to ensure security of access for both sides, while protecting industry from clear acts of predatory pricing.*
9. *Quantification of any non-tariff barriers and close attention to standards and conformity issues, to ensure equitable treatment.*
10. *Intellectual Property laws should be harmonised to ensure universal protection.*
11. *Equitable access to Government procurement arrangements.*

Ai Group is satisfied that its Objectives have been substantially achieved. Points 5 and 7 above are the only objectives not apparently achieved. Point 5 relates to phase-in periods for market access. The key products whose tariff reduction phase-in periods exceed the 10-year limit suggested by Ai Group are wine (at 11 years) and beef (at 18 years). Point 7 relates to Rules of Origin: while our initial objective of a 50% ex-factory local content rule was not achieved, the alternate methodology has been found, after extensive

consultation with Ai Group member companies, to be acceptable. This point is elaborated in the Section below on "The Content of the FTA".

Australian Industry Group and the consultation process

Ai Group wishes to take this opportunity to commend the Department of Foreign Affairs and Trade (DFAT) for the consultative spirit in which the negotiations for the AUSFTA were conducted with industry. Recognising the sensitive nature of the negotiation process and therefore the inability to expose some details under negotiation, Ai Group was nevertheless kept well informed of the direction and content of negotiations in those areas affecting industrial goods.

Ai Group worked particularly closely with DFAT on the issue of Rules of Origin (ROO). Using the US-Chile FTA ROO Chapter as the basis of assessment, Ai Group:

- published "All Member Alerts" in our publications (hardcopy and website), and direct mailed all affected member companies, inviting companies to test the ROO for their specific product(s) in April/May 2003;
- supplied details of specific ROO, to satisfy requests from all responding companies as a result of this invitation;
- monitored feedback from these companies on their assessment of the ROO, and provided this to DFAT to steer their negotiations accordingly;
- sought out additional manufacturers of products identified by DFAT, for which the ROO require particular attention, due to their challenging formulae or high local content percentages;
- organised in conjunction with DFAT, briefings on the ROO issues in Sydney (8 July), Adelaide (14 July), Melbourne (15 July) and Brisbane (12 August);
- as a result of the above mentioned activities, established a Special Interest Group of companies on the topic of ROO and kept them apprised of developments in this area; and
- in December 2003, conducted a detailed second round cross-analysis of the draft ROO for AUSFTA against the US-Chile FTA ROO.

The specific issues of ROO aside, Ai Group maintained regular contact with DFAT and our member companies:

- in the first instance, Ai Group produced a submission to DFAT on the proposed FTA with the US in February 2003;
- Ai Group established a Special Interest Group in AUSFTA and sent these companies a monthly newsletter (titled "TradeAccess") on the developments of the negotiations;
- DFAT briefed Ai Group's Trade Policy officers after each Negotiating Round and on an ad hoc basis;

- DFAT briefed Ai Group's Trade Development Committee (Chief Executives of 25 major exporting companies who provide input to Ai Group's trade policy development) and the Ai Group National Executive;
- Ai Group briefed its Branch Councils on a monthly basis and its National Executive on a quarterly basis on the developments of the negotiations;
- DFAT spoke on the FTA at Ai Group's National Forum in August 2003, a topic also covered by the President of the National Association of Manufacturers, whom Ai Group brought out from the United States for the occasion; and
- Ai Group published regular articles in its hardcopy newsletters and produced a series of Fact Sheets, which were also made available via our web site.

As a result of these consultative processes, Ai Group received endorsement of the Agreement from both its member companies and our Governing bodies – namely our Branch Councils and our National Executive.

The content of the AUSFTA

Ai Group welcomes the opportunity to comment on those areas of the agreement that directly effect Ai Group's membership.

Chapter 2: National Treatment and Market Access

Both the US and Australia are among the most open economies in the world. Average tariffs in the US are 2.8%, and 3.8% in Australia. Over a third of US tariff lines are duty free, and in Australia 85% of items apply 0 to 5% tariffs. Notwithstanding, there are some sectors where trade barriers (tariff peaks) are applied. In Australia these are the TCF and automotive sectors and in the US in the automotive, shipping and food sectors.

We applaud the fact that 97% of Australian industrial exports will be duty free from day one of the agreement coming into force. By 2015 all trade in non-agricultural goods will be free of duty. Australia's exports of non-agricultural goods were worth \$6.48 billion in 2003, and of this total elaborately transformed manufactures (ETMs) was, and continues to be, a strongly performing and indeed, a growing market segment. The US is Australia's largest market for exports of ETMs. The market access achievements of the Agreement for Australian industry are therefore highly significant and laudable.

The exceptions to immediate tariff removal are predominantly textile, clothing and footwear (TCF) products, wine and some food products. Tariffs on all minerals and metals will be eliminated immediately, as well as on most automotive components, chemicals, paper products and general machinery.

The Agreement also delivers removal of some significant tariff peaks in the US:

- 50% tariff on ship repair
- 25% tariff on commercial vehicles
- 35% tariff on tinned tuna

The following reinforces these gains:

- Australia will be exempted from safeguard restrictions (for example, US Section 201 tariffs imposed on steel in 2002) almost automatically, as a result of its preferred status as an FTA partner with the US. (The Safeguards Chapter commits each Party to consider the exclusion from the application of global WTO safeguards imports from the other Party where those imports are not a substantial cause of the injury to the domestic industry);
- the US will waive the Merchandise Processing Fee levied on all imports, saving Australian industry around US\$10 million a year (customs import or export processing fees will not be calculated on the value of the goods to be traded);
- Australia will retain its WTO rights to anti-dumping and countervailing action, in the event of unfair trade or injury to particular industries; and
- Duty drawback and deferral programs will be retained for exporters.

The Agreement did however contain some disappointing outcomes for Australian manufacturing companies, as it:

- failed to remove the legislative barriers (application of the so called "Jones Act") which prevent the export of Australian fast ferries and other vessels to the United States; and
- did not open market access for our TCF sector in the face of intense US lobbying interests. The TCF sector has been precluded from benefiting from the Agreement as a result of the specific Rules of Origin for that sector, as outlined in the section on Rules of Origin below.

Finally, we point out that the removal of the 50% tariff on ship repair in the US may have a limited application. Ai Group understands that the tariff only applies to commercial ships and is not levied on naval vessels. As a result, the elimination of the 50% tariff on ship repair has no impact on most vessels that may come to Australian ports for repair work. Evidently the only new opportunities for Australian ship repair are limited to four commercial ships that are used for ready reserve, run by the US Department of Transport but activated by the Sealift Command in the US Navy.

Chapter 5: Rules of Origin

The Rules of Origin (ROO) determine whether a traded product qualifies for preferential access under the Agreement. The basic principle that applies in making this determination is that non-originating materials must be

substantially transformed before a resulting good can be considered to originate in the country of export.

Ai Group's initial stance on ROO under the AUSFTA was that the 50% ex-factory test, employed under our CER agreement with New Zealand should be the model employed. The 50% local content level was seen as a fair origin content to ensure only the parties to the agreement benefited from the concessionary tariff rates. Further, the 50% ex-factory test was fairly simple to understand, familiar to Australian exporters and had worked well for 20 years under CER.

Ai Group initially objected to adopting the US product-specific methodology, given its prima facie complexity, unfamiliarity to Australian exporters and potential for manipulation to protect a party's national interests. After months of careful analysis and consultation with Australian industry (see the Section above on "Ai Group and the consultation process") Ai Group changed its position to one of general support for the ROO methodology. The one area remaining that Ai Group does not endorse is the ROO for TCF products, which virtually ensure the Australian TCF sector does not attain open market access.

The upshot for the Australian TCF sector is that while the ROO preclude market access for most products, Australia will only allow a 2 per cent tariff preference for goods imported from the US. The Agreement will also ensure certainty for the local TCF industry by maintaining the key features of the Government's industry adjustment package announced following the Productivity Commission's Inquiry into post-2005 arrangements for the industry.

The ROO methodology adopted in Chapter Five of the Agreement is based on changes in tariff classification (CTC), which are supplemented in some cases by a Regional Value Content (RVC) test. The CTC tests require that inputs sourced outside the territories of the FTA must come from a different section of the International Harmonised System of Tariff Codes to the exported final product. The degree of change is specified for each export product in the annex to the Chapter. RVC tests only apply to around 15% of tariff lines, where substantial transformation cannot be clearly demonstrated through a change in tariff classification alone.

This ROO methodology has some clear advantages:

- Where a simple CTC test is applied, the administrative/documentary aspect of ROO is least burdensome to exporters. One of the key advantages of CTC based tests are that the only information a company (or Customs for that matter) need to keep are the HS codes of the inputs and the final product. This is a significant improvement on the documentation required to prove legitimate calculations of factory costs.
- The advantage of this type of product-specific methodology is that the specific tests, as they relate to specific HS codes, can be adapted to

reflect the particular industrial needs of the countries that are party to the agreement. This flexibility allows the ROO to cater to the particular process of manufacture of any given product.

- Transition costs, ongoing compliance and administration costs are a factor to consider when an RVC test is required. However, RVC tests only apply to around 15% of tariff lines, where substantial transformation cannot be clearly demonstrated through a change in tariff classification alone.

Feedback from Ai Group member companies indicates that the ROO do not act as a trade barrier to exports, with a broad exception for the TCF sector.

In the case of TCF, very stringent ROO tests, which include the so-called "yarn/fibre forward" rule, effectively excludes a significant proportion of Australian produced apparel as not originating in Australia for the purposes of the FTA, given that most yarn used in production would not have originated in Australia. The yarn/fibre forward rule basically states:

- Originating fabrics must be made up of yarns wholly formed in Australia or the US;
- Originating apparel must be made up of fabrics entirely formed in Australia or the US, which in turn must be made of yarns wholly formed in Australia or the US; and
- Cotton and man-made fibre spun yarns and fabrics must also be produced from fibres grown or formed in Australia or the US.

Chapter 6: Customs Administration

The Customs chapter maintains high standards in obligations with relations to customs procedures, coupled with commitments to information sharing to combat illegal trans-shipment of goods and facilitate express shipment. The requirement of publication of laws, regulations, guidelines, procedures and administrative rulings governing customs matters on the Internet is a welcome development. The concept of written advance rulings is also desirable.

Chapter 8: Technical Barriers to Trade

Ai Group is pleased that AUSFTA will establish a mechanism to address Technical Barriers to Trade – barriers which occur as a result of technical regulations and standards.

Technical Barriers can be a severe threat to free and fair trade, and as such this Agreement's commitment to reciprocity and transparency is very important. The establishment of Chapter Coordinators to facilitate communication and the exchange of information on technical standards and regulations is also welcome, particularly as it provides a framework for exporters to work with government on tackling barriers.

The Agreement contains provisions for reinforcing the WTO Technical Barriers to Trade (TBT) agreement and for improving bilateral implementation of the TBT agreement.

This very important chapter sets a high standard in terms of establishing the framework, process and impetus to achieve harmonisation, mutual recognition of standards and conformance testing. It provides the best mechanism Australia has ever had at its disposal to tackle these crucial issues. The achievements in this area are yet to be realised and to some extent rest on the will of the parties concerned. Ai Group was disappointed that no initial breakthroughs were made at the commencement of the Agreement in this important area, and will work closely with DFAT to ensure it assists industry in making progression on these issues wherever possible.

Ai Group will seek to have formal annual reports from Government on this critical area affecting market access.

Chapter 11: Investment

We are pleased to see that this chapter:

- mandates “National Treatment” or “Most Favoured Nations Treatment” of investments, whichever is better (meaning that treatment can be no less favourable than that accorded, in like circumstances, to a Party's own investors or their investments);
- does not require senior management or a majority of boards of directors be from one particular country;
- bans performance incentives; and
- facilitates free transfer of capital and profits in and out of either country.

The Agreement increases the investment screening threshold for US investments in Australia from the previous level of A\$50 million to A\$800 million, but importantly, preserves existing foreign investment limits in certain investment categories (the media, Telstra, CSL, Qantas and other Australian international airlines, federal leased airports and shipping).

Also, foreign investments in urban land (including residential properties) and the media, and by foreign governments, will continue to be screened regardless of value.

The Agreement will serve to promote our largest investment relationship.

Chapter 15: Government Procurement

Australia has achieved access, for the first time, to the US Federal Government Procurement market, worth A\$200 billion per annum. We note

that State-level Government Procurement has not yet been confirmed and urge the utmost efforts to gain sign on from the 37 American States that are party to the US-Chile FTA.

Australian companies will benefit from non-discriminatory treatment, which gives Australian goods and services a waiver (above agreed thresholds) from the 6% penalty the 'Buy America' Program currently imposes. All contracts over AUD\$81,000 (and in construction over AUD\$9,396,000) will be open to Australian firms.

Ai Group notes that strategic defence items are excluded from the Government Procurement agreement, and that the Australian Industry Involvement (All) Program is also excluded, retaining it for Australian industry.

We also note the banning of offsets and price preferences, and endorse the arrangements allowing preferences for our SMEs to be preserved.

Strong provisions on national treatment should ensure companies are treated fairly.

Since the commencement of negotiations between Australia and the US for an FTA, Ai Group has consistently stressed the potential business opportunities for Australian companies in accessing US Government procurement. While the US procurement market of A\$200 billion per annum is now open to Australian companies, this is merely the first step in removing the barriers. The benefits to Australia will not be realised however, unless the Government and industry work together on an ongoing basis to aggressively seek out and secure those opportunities.

Conclusion

The Australian Industry Group (Ai Group) endorses the Australia-US Free Trade Agreement (AUSFTA). As indicated during the course of this submission, there are a number of areas where Australia has the potential to make important gains. These benefits will not be attained however, unless there is very close cooperation between the Australian Government and industry.

Ai Group is committed to ensuring this cooperative effort is maintained. Apart from regular consultations with the Australian Government on these issues, Ai Group will be focusing attention on the annual Ministerial Meetings to ensure we get a full account of progress, and use this mechanism to formally address any problem areas. In addition, Ai Group and its counterpart organization, the National Association of Manufacturers in Washington, will be working closely to maximize the benefits for our combined membership. This will include joint meetings and facilitation of liaison between our respective industry members.

We look forward to the AUSFTA being enacted into law at the earliest possible date so that Australian industry can benefit from this agreement.