
The Parliament of the Commonwealth of Australia

Report 61

The Australia – United States Free Trade Agreement

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Contents

Membership of the Committee.....	xi
Resolution of Appointment.....	xiii
List of abbreviations	xiv
List of recommendations.....	xvii
1 Introduction	1
Role of the Committee	2
Conduct of the inquiry	2
Scope and structure of the Report.....	4
Clarification of terms used in the Report.....	5
Other inquiries into the AUSFTA.....	6
2 Background - How did we get here?	9
The 'multilateral vs bilateral' debate.....	10
Regionalism	10
Criticisms of bilateralism	11
Bilateralism won't affect the multilateral process	12
Australia's place in the world trade environment.....	12
ANZCERTA.....	13
Australia's involvement in other trade agreements.....	15
Impact of the AUSFTA on Australia's relations with the rest of the world	15
Australia's approach.....	17
Trade diversion	18

Additional arguments in favour	20
Consultation with the public	20
Concluding observations	21
3 Overview of the Treaty	23
Summary of outcomes.....	24
Obligations	27
Implementation	27
Costs and benefits	31
Types of economic modelling.....	32
Modelling conducted for this Agreement.....	33
Conclusions on economic modelling	35
Consultation	36
States and Territories	37
Economic effects on States and Territories.....	37
Consultation with States and Territories.....	38
Impact on Indigenous interests	43
4 Administrative Framework and Dispute Resolution	47
Introduction	47
Legal and Institutional Framework (Chapters 1, 22 and 23)	48
Chapter 22 (General Provisions and Exceptions).....	48
Chapter 23 (Final Provisions).....	49
Chapter 6 (Customs Administration)	50
Chapter 20 (Transparency)	50
Chapter 21 (Institutional Arrangements and Dispute Settlement)	51
Investor-state dispute resolution mechanism in future?	53
Concluding observations	56
5 National Treatment and Market Access for Goods, Textiles and Apparel and Rules of Origin	57
Introduction	57
Anti-dumping measures	58
National treatment and market access for goods	58

Tariff reductions	61
Rules of Origin (ROOs)	69
Originating goods.....	72
Change in tariff classification approach to ROOs	72
Accumulation	73
Regional value content.....	73
De Minimis	74
Specific products	74
Third country transportation	75
Claims for preferential treatment.....	75
Textiles and Apparel	76
Safeguard Mechanisms.....	76
Rules of Origin – the ‘yarn forward’ rule	78
Customs Cooperation (Article 4.3).....	80
Concluding observations	80
6 Annex on Pharmaceuticals	81
Agreed Principles of the PBS	81
Patents and marketing of generic drugs.....	84
Medicines Working Group.....	85
Review mechanism for PBAC decisions.....	85
Transparency	91
Direct-to-consumer advertising.....	91
Plasma Fractionation Arrangements.....	92
Concluding observations	92
7 Agriculture	95
Introduction	95
Background	96
Beef.....	97
Industry views on goals	97
Outcomes – Access and Safeguards	98
Why weren’t the goals met?	99
Comment on conduct of the negotiations	101

Dairy	101
Sugar	102
A way forward on sugar?.....	104
Other agriculture products.....	105
Tuna	109
Wine	110
Other provisions in respect of Agriculture	111
Concluding observations	112
8 Sanitary and Phytosanitary Measures	113
Introduction	113
Proposed impact of SPS measures	114
Status of quarantine standards	115
Establishment of two Committees	116
SPS Committee	116
Standing Working Group on Animal and Plant Health.....	117
Concerns regarding both Committees	118
Conflict of interest between quarantine and trade?	118
Concerns specific to SPS Committee.....	119
Concerns specific to technical working group	120
Are Australian quarantine standards threatened?	121
Positive responses to SPS and Technical Committees.....	123
Implementation and operation of SPS measures	123
Comments in the US	126
Concluding observations	126
9 Technical Barriers to Trade	129
Introduction	129
Concerns about the US system and implications for Australian system	131
Cooperation between the Parties	133
Recognition and acceptance of assessment procedures	133
Trade Facilitation	139
Article 8.7 Transparency	139
Chapter Coordinators	140

Consultations.....	140
Benefits of the removal of technical barriers to trade	141
Concluding observations	142
10 Safeguards	143
Introduction.....	143
The imposition of a safeguard measure	144
Conditions and limitations	144
Provisional safeguard measures	145
Compensation.....	145
Global safeguard measures.....	146
Other remedies	146
11 Cross Border Trade in Services	147
Introduction.....	147
Professional and public services.....	148
Background.....	148
Scope and coverage.....	149
Core obligations.....	149
Movement of people.....	155
Mutual Recognition.....	156
Professional Services Working Group.....	158
Public and essential services.....	160
Local content.....	163
Local content and its impact on culture	164
The Australian audiovisual market.....	167
Measures to ensure local content in the audiovisual sector.....	169
Subsidies, grants and tax concessions for the film industry.....	190
Impact on public broadcasters.....	191
Australian film exports to the United States	192
Consultation	193
Concluding observations	194
12 Investment and Financial Services	195

Introduction	195
Investment	196
Good for the economy	196
No discrimination	198
Concerns heard	199
Looks familiar...very different.....	200
Expropriation and the Environment	201
Performance Requirements	202
Is there a director in the house?	203
Cultural investment protected	204
Investor State Dispute Mechanism	205
Financial Services	205
Concluding observations	206
13 Telecommunications	207
Access to and use of public telecommunications services	208
Obligations for Suppliers of Public Telecommunications Services	208
Obligations for Major Suppliers of Public Telecommunications Services	208
Other measures	209
Additional letters – consultation and Telstra	210
Concluding observations	211
14 Competition-Related Matters	213
Competition law and anticompetitive business conduct	214
Cooperation on competition/antitrust	215
Monopolies and government enterprises	215
Cross border consumer protection	216
Recognition and enforcement of monetary judgements.....	216
Transparency, cooperation and consultations	217
Dispute settlement	217
15 Government Procurement	219
Introduction	219
New opportunities	221

Concerns	222
Disappointments	222
Concluding observations	223
16 Intellectual Property Rights and Electronic Commerce	225
IP Rights - Introduction.....	225
Background.....	226
Obligations concerning copyright	226
Extension to the term of copyright protection.....	227
Copyright and competition.....	232
Effective Technological Protection Measures	238
Trade marks, including geographical indications	244
Patents	245
Business as usual.....	246
Measures related to certain Regulated Products	247
Pharmaceutical products.....	248
Agriculture and Veterinary Chemicals	250
Enforcement.....	251
E-Commerce.....	255
17 Labour and Environment.....	257
Introduction.....	257
Labour	258
Background.....	258
Core obligations.....	259
Labour standards.....	259
Environment	264
Background.....	264
Core obligations.....	265
Environmental standards.....	265
Dispute settlement and consultations.....	266
Institutional arrangements.....	268
Environmental impact of the FTA.....	268
Concluding observations	270

18 Conclusions 273

DISSENTING REPORT

**Dissenting Report—Mr Wilkie MP, Senator Kirk, Senator Marshall,
Senator Stephens, Mr Evans MP and the Hon Mr Adams MP 275**

APPENDICES

Appendix A — Submissions..... 277

Appendix B — Witnesses 287

Appendix C — Exhibits 297



Membership of the Committee

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Mr Steven Ciobo MP

Mr Martyn Evans MP

Mr Greg Hunt MP

Mr Peter King MP

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the Committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACCD	Australian Coalition for Cultural Diversity
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AFTINET	Australian Fair Trade and Investment Network
AMA	Australian Medical Association
AMWU	Australian Manufacturing Workers' Union
ANF	Australian Nursing Federation
ANZCERTA	Australia – New Zealand Closer Economic Relations Trade Agreement
ATSIS	Aboriginal and Torres Strait Islander Services
AUSFTA	Australia – United States Free Trade Agreement
AWG	Australian Writers Guild
CAC Act	Commonwealth Authorities and Companies Act
CCA	Cattle Council of Australia
CER	Closer Economic Relations
CIE	Centre for International Economics

COAG	Council of Australian Governments
CoPS	Centre of Policy Studies (Monash University)
CTC	Change in Tariff Classification
DFAT	Department of Foreign Affairs and Trade
FCAI	Federal Chamber of Automotive Industries
FIRB	Foreign Investment Review Board
FMA Act	Financial Management and Accountability Act
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
ISP	Internet Service Providers
MEAA	Media, Entertainment and Arts Alliance
NAFTA	North America Free Trade Agreement
NIA	National Interest Analysis
NFF	National Farmers' Federation
NTEU	National Tertiary Education Union
R&D	Research and development
PBAC	Pharmaceutical Benefits Advisory Committee
PBPA	Pharmaceutical Benefits Pricing Authority
PBS	Pharmaceutical Benefits Scheme
PMV	Passenger motor vehicles
RIS	Regulation Impact Statement
ROOs	Rules of Origin

RVC	Regional Value Content
SAFTA	Singapore – Australia Free Trade Agreement
SPS	Sanitary and Phytosanitary
TCF	Textile, clothing, footwear
TCFU	Textile, Clothing and Footwear Union
TFIA	Textiles and Fashion Industries of Australia
TRIPS	Trade-Related Aspects of Intellectual Property Rights
US FTC	United States Federal Trade Commissioner
USTR	United States Trade Representative
WTO	World Trade Organisation



List of recommendations

3 Overview of the Treaty

Recommendation 1

To enable the Australian Parliament to assess the economic impact of the AUSFTA, the Committee recommends that a review of its implementation be conducted by the Productivity Commission five years after the Agreement enters into force.

Recommendation 2

The Committee recommends that there be more consultation with State and Territory Governments in the final stages of negotiations of Free Trade Agreements.

The Committee further recommends that the outcomes of any Agreements be made available to State and Territory Governments at the conclusion of negotiations.

4 Administrative Framework and Dispute Resolution

Recommendation 3

The Committee recommends that, before binding treaty action is taken, Australia gives serious consideration to the negotiation and issue of a further side letter to clarify obligations made under Article 11.16 of the Agreement, such that 'change of circumstances' is defined and able to be clearly understood by both Parties.

Recommendation 4

Should the Agreement enter into force without amendment or issue of side letters to clarify understanding of Parties' obligations at Article 11.16, Australia should ensure that such clarification is sought by requesting the Joint Committee established under Article 11.12(e) to issue an interpretation with regard to Article 11.16.

6 Annex on Pharmaceuticals

Recommendation 5

In establishing the independent review of PBAC processes (for PBS listing under Annex 2-C of the Agreement), the Committee recommends that, in order to ensure that the fundamental integrity of the PBS is retained, the following principles be taken into account:

- the review should focus on the issues of concern rather than re-opening the whole application
- the review should be undertaken by a specialised subcommittee comprising experts relevant to the subject of the requested review
- the subcommittee should consider only that information provided to the PBAC, and relevant to the requested review
- the subcommittee should report back to PBAC, and not directly to government
- the review process should be pragmatic, and facilitate, not delay, the PBAC approval processes for PBS listing of pharmaceuticals
- the review process be transparent and the findings and reasons for decisions made publicly available.

Recommendation 6

The Committee recommends that Australia's policy of self-sufficiency in blood products continue to be maintained.

7 Agriculture

Recommendation 7

The Committee notes with interest the opening statement of the Honorable Bill Thomas, Chairman of the US Ways and Means Committee, that the exclusion of sugar from the AUSFTA was a mistake. Noting this, the Committee recommends that the Australian Government

actively pursue after ratification through all available channels and in all available fora including the Doha Round, increased market access for Australian sugar into the United States.

8 Sanitary and Phytosanitary Measures

Recommendation 8

The Committee recommends that the Department of Agriculture, Fisheries and Forestry Australia and Biosecurity Australia undertake widespread consultations with stakeholders during the initial implementation phase of the AUSFTA, with a view to maintaining a high level of confidence in Australia's quarantine standards and their preservation.

9 Technical Barriers to Trade

Recommendation 9

The Committee recommends that the Australian Government, in consultation with the wine industry, actively pursues the issue of blending and labelling through the Chapter Coordinators or other working groups.

11 Cross Border Trade in Services

Recommendation 10

The Committee recommends that the issues of mutual recognition of qualifications and movement of business people be made a priority within the Professional Services Working Group.

Recommendation 11

Notwithstanding the operation of the Professional Services Working Group, the Committee recommends that the Australian Government pursue through all other available diplomatic channels the issues of the mutual recognition of qualifications and the movement of business people between Australia and the United States.

Recommendation 12

The Committee recommends that the Government take immediate action to incorporate the current quota levels for local content under the *Broadcasting Services Act 1992* which are subject to the 'ratchet' provisions of the Treaty as schedules under the Act so that they can only be changed by a deliberative decision of the Parliament.

Recommendation 13

The Committee acknowledges the need for flexibility in the AUSFTA given the new and emerging technologies at the intersection of e-commerce, telecommunications and multimedia. The Committee recommends that the Australian Government be responsive to the need to ensure that future domestic legislation is consistent with the AUSFTA and the requirements of innovators and consumers and in particular that future regulation of such technologies will have to be more carefully targeted as a consequence.

Recommendation 14

The Committee, noting evidence that terminology regarding audio and/or video services is ambiguous, recommends that future reviews of the AUSFTA need to ensure that terminology can encompass emerging technology.

15 Government Procurement**Recommendation 15**

That DFAT uses its US mission to encourage remaining States to sign on to the AUSFTA.

16 Intellectual Property Rights and Electronic Commerce**Recommendation 16**

The Committee recommends that the Government enshrine in copyright legislation the rights of universities, libraries, educational and research institutions to readily and cost effectively access material for academic and related purposes.

Recommendation 17

The Committee recommends that the changes being made in respect of the *Copyright Act 1968* replace the Australian doctrine of fair dealing for a doctrine that resembles the United States' open-ended defence of fair-use, to counter the effects of the extension of copyright protection and to correct the legal anomaly of time shifting and space shifting that is currently absent.

Recommendation 18

The Committee recommends that the Attorney General's Department and the Department of Communication, Information Technology and the Arts review the standard of originality applied to copyrighted material

with a view to adopting a higher standard such as that in the United States.

Recommendation 19

The Committee recommends that the Attorney General's Department and the Department of Communications, Information Technology and the Arts ensure that exceptions will be available to provide for the legitimate use and application of all legally purchased or acquired audio, video and software items on components, equipment and hardware, regardless of the place of acquisition.

Recommendation 20

The Committee recommends that in respect of the changes to the *Therapeutic Goods Administration Act 1989* and with respect to the valuable input of the innovator companies, care is to be taken in the implementation to recognise the unique position that generic pharmaceutical companies provide to the Australian community through health programs.

And, accordingly it is essential that in drafting the legislation, there should be no mechanism that will cause undue delay of the entry to the market of generic pharmaceuticals.

Recommendation 21

The Committee recommends that a scheme that allows for copyright owners to engage with Internet Service Providers and subscribers to deal with allegedly infringing copyright material on the Internet be introduced in Australia that is consistent with the requirements of the AUSFTA. In doing so, the Attorney-General's Department and the Department of Communications, Information Technology and the Arts should

- take note of the issues encountered by the US as outlined in this Report
- tailor a scheme to the Australian legal and social environment
- monitor the issue of peer to peer file sharing.

17 Labour and Environment

Recommendation 22

The Committee recommends that the Government undertake a review of the environmental impact of the Agreement and that legislation be introduced which will ensure that all future free trade agreements

contain results of an environmental impact assessment prior to final agreement.

18 Conclusions

Recommendation 23

The Committee recommends that binding treaty action be taken with respect to the Australia - United States Free Trade Agreement.

