REGULATION IMPACT STATEMENT (RIS)
[Revised Final 30 April 2004][1]

Australia – United States Free Trade Agreement

ISSUE IDENTIFICATION

Australia and the United States have a long established, close, and well developed trading relationship. The United States is Australia's largest individual trade and investment partner. Total merchandise trade (exports and imports) were worth around $30 billion in 2003. It is our second largest merchandise export market (after Japan) with exports valued at over $9.4 billion in 2003, and our largest export market for services worth over $5 billion in 2003. It is our largest source of imports, with merchandise imports worth $20.5 billion and services imports worth $6 billion in 2003. The United States is our largest destination for foreign direct investment and our largest source of foreign direct investment. The total stock of Australian direct investment in the United States was $65 billion and the total stock of US direct investment in Australia was $66 billion as of 30 June 2003.

Principal exports to the United States include beef (where Australia filled its US tariff rate quota for the first time in late 2001), crude petroleum, alcoholic beverages, aircraft and parts, and motor vehicles. Exports of elaborately transformed manufactures (ETMs) are one of the strongest performers. The United States is now Australia's largest market for exports of ETMs.

Pursuing a Free Trade Agreement (FTA) with the United States has been an Australian Government objective for some years. Given the size and value of the US market to Australia, and the adverse impact of barriers on our ability to export, the United States was a strong candidate for Australia’s first bilateral Free Trade Agreement outside the region.

OBJECTIVES

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 Government also sought an Agreement that would complement and reinforce Australia’s objectives in the Doha Round of World Trade Organization (WTO) negotiations and in Asia Pacific Economic Cooperation forums, and set a high standard for other FTAs in the region and within the WTO. Australia’s shared approach with the United States on many issues in both the WTO and APEC provided a strong foundation for achieving that goal.

Detailed Australian objectives identified by the Government are outlined by sector at **Annex 2**. These include improving market access in specific areas and increasing

[1] Revised in light of the finalisation of a report commissioned by the Department of Foreign Affairs and Trade and conducted by the Centre for International Economics to report on the impacts of the AUSFTA.

transparency and certainty about rules and regulations governing trade and investment between the Parties. The Government also sought to improve cooperative arrangements between government agencies and businesses at all levels to make it easier for exporters and investors to identify opportunities and requirements for doing business in order to facilitate further trade and investment.

The Government also sought to ensure Australia's ability to continue to regulate for health or safety, and essential security, and to preserve the right of Government to regulate for important public policy outcomes. For example, the Government sought to ensure continued access to affordable medicine through the Pharmaceutical Benefits Scheme and local content rules for Australian media to protect Australian culture.

The Government considers that FTAs must comply with relevant WTO agreements, in particular Article XXIV of the General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS), which state that FTAs must cover substantially all trade. This has been an important objective for our negotiations with the United States.

As set out below, the Agreement achieves a large number of the Government's objectives. It is a comprehensive agreement that meets the WTO requirements relating to regional trade agreements such as the requirement that such agreements cover "substantially all the trade" between the parties. Consistent with the fact that it is an FTA between two developed countries, the Agreement sets a very high standard in terms of economic integration and ambition. As such it will complement Australia's efforts to liberalise trade and investment through multilateral, regional and other bilateral trade negotiations.

OPTIONS

This RIS considers two options:

1. Signing the Free Trade Agreement with the United States; and
2. Status quo, with no Australia United States Free Trade Agreement.

The following analysis compares the impacts, pros and cons of these two options.

There are significant strategic reasons supporting negotiation of an FTA with the United States. The Agreement helps to preserve Australia's competitiveness in the US market as the United States embraces bilateral FTAs with other countries, including key competitors, and as key trading partners form separate FTA linkages of their own. It also signals strong support for trade liberalisation to help promote an open global trading environment and has important flow on benefits (including to regional trading partners) by stimulating economic activity and further trade and investment. It will also contribute to strengthening and deepening our relationship with our most important ally and our most important trade and investment partner.

The Agreement will deliver real benefits and opportunities for Australian exporters from the day it comes into force. It will also generate dynamic benefits through even closer economic partnership with the United States. Key negotiated outcomes of the agreement are summarised as follows (and are detailed at length in the Explanatory Guide at **Annex 3**):

Agriculture: Duties on two-thirds of all agricultural tariffs - including on important commodities such as lamb, sheep meat and a range of horticultural products, will be eliminated immediately and duties on a further 9 per cent of tariff lines will be eliminated within four years. There will be greater access for two of Australia's key agricultural export industries, beef and dairy, including immediate elimination of in-quota tariffs. The single desk arrangements for export marketing Australian commodities, and our quarantine and food safety regimes, have been preserved.

Non-agriculture including manufacturing: Duties on more than 97 percent of US non-agricultural tariff lines (excluding textiles and clothing) will be duty free from day one of the Agreement. By 2015, tariffs on textiles, some footwear and a handful of other items will be phased out, with all trade in non-agricultural goods free of duty. A mechanism to address non-tariff barriers will be established. Australian exporters have greater opportunities to understand and meet US requirements dealing with technical regulations and standards and a framework for exporters to work with government in tackling barriers will be established. Both Parties agreed to eliminate customs duties on almost all automotive products from the day the agreement enters into force, including the 25 per cent US customs duty on utes ("light commercial vehicles"). Australian duties on passenger motor vehicles will be phased out by 2010.

Services: The Agreement binds liberal access for Australian service suppliers, including for professional, business, education, environmental, financial and transport services. A framework to promote mutual recognition of professional services has been developed

Financial services: The Agreement binds liberal conditions of access for Australian financial services providers to the world's largest financial market. Through a Financial Services Committee, the Parties will consider ways to integrate further their financial sectors such as through access for foreign securities markets and for foreign collective investment schemes. The Financial Services Committee will report on these issues within two years of the Agreement entering into force.

Government procurement: The Agreement will grant access to the large (A$200 billion) US federal government procurement market that is currently closed to Australian firms. The scope of the Government Procurement Chapter may be extended to cover State-level procurement, however this will depend on the interests of the States and Territories on both sides in being covered by the Chapter. This matter must be settled before the agreement is signed. US federal government contracts over US$58,550 (and in construction over US$6,725,000) will be open to Australian firms. Australian preferences for small businesses and indigenous people will be preserved.

Investment: The Agreement creates a stronger framework for investment protection that should continue to promote our largest investment relationship. The Agreement also prohibits a range of trade and investment distorting performance requirements. In recognition of the robust domestic legal systems in both countries, there is no provision for investors to use international arbitration to pursue concerns about government actions. Australia retains screening of foreign investments of major significance.

Preservation of important public policy programs: Including affordable medicines under the PBS and local content on Australian media. Australia has preserved the capacity to regulate new and emerging media, including digital and interactive TV. The Agreement does not impair Australia's ability to deliver fundamental policy objectives in health care and does not change the fundamental architecture of the PBS. Australia will make improvements to the transparency and timeliness of PBS processes and Australians will benefit from faster access to subsidies for new prescription medicines.

Intellectual Property: The Agreement includes commitments to strengthen our protection of intellectual property beyond those provided by multilateral agreements such as the WTO's Trade Related Aspects of Intellectual Property Rights Agreement and World Intellectual Property Organisation Treaties.

Competition: There will be even closer cooperation with the US. Businesses and individuals will be treated fairly in enforcing competition law. Consumer protection agencies will work together in combating illegal activity. Consumers and investors defrauded or deceived will have greater redress.

Telecommunications: There are WTO-plus rules on major suppliers and pro-competitive regulatory frameworks for Australian and US firms. There will be a new high level avenue for Government and industry consultations on market access issues.

E-commerce: There will be no barriers to trade conducted electronically and Australia will still be able to regulate for public policy purposes.

IMPACT ANALYSIS

This section analyses the economy-wide impacts of the Agreement. Firstly, the general macroeconomic impacts are examined. The regulatory impact on business and consumers is then considered before identifying the likely costs and benefits for government of the Agreement. Finally, the broader trade policy considerations of the Agreement are examined. The analysis of impacts of the AUSFTA is based on the text of the Agreement and on the assumption that in the coming decades the Australian and United States Governments will retain a high level of commitment to the Agreement when addressing any outstanding issues which may arise, such as interpreting and applying Rules of Origin, and procurement by state and territory governments.

Macroeconomic Impacts

The Government has commissioned economic analysis, including econometric modelling, of the impact of the FTA, taking into account the outcomes of the final negotiated package. The results of this analysis update the earlier National Interest Analysis and the Regulatory Impact Statement provided to the Joint Standing Committee on Treaties on 24 March and tabled in Parliament on 30 March 2004. The terms of reference for that analysis, conducted by the Centre for International Economics, are set out at **Annex 10**. In addition to estimating the possible impact of the FTA on key economic indicators, using both static and dynamic multi-country computable general equilibrium models, the analysis examines impacts on specific sectors (including the automotive sector, financial services, beef and dairy, and metals), as well as the potential environmental impacts and impacts on the States and Territories.

It seeks to assess the impact on certain outcomes in the negotiations, including changes to intellectual property legislation, such as the impact of extending copyright term protection, and the method of assessing the Rules of Origin for determining which goods will qualify from the more liberal access set out in the Agreement.

Some of the specific findings in the CIE Report are listed in the relevant areas of the impact analysis for business, consumers, Government and regions. The full Report is attached at **Annex 11**. Some of the key conclusions of the CIE report are summarised in the following table.

SUMMARY OF KEY FINDINGS OF THE CIE REPORT

- The Agreement will lift economic growth and welfare in Australia. A decade from now real GDP is expected to rise by $6.1 billion and real GNP by $5.6 billion.
- Immediate adjustment costs outweigh immediate benefits in the first year. Thereafter, benefits grow as represented by the pattern in Charts 1 and 2 of the Report as more tariff cuts are phased in and extra investment occurs over time. Detailed macroeconomic analysis of the adjustment path for growth, the current account, exchange rate and trade is outlined further in table 6.3.
- Dynamic gains are significant over time.
- Investment liberalisation makes the biggest contribution to overall economic growth and welfare.
- Merchandise and services trade liberalisation contribute an extra $1.1 billion to welfare per year and $1.0 billion to real GDP above what it might otherwise be a decade out. Initially this liberalisation causes exports to expand faster than imports, but the effect of the investment liberalisation is to cause the opposite. Overall, the expansion of imports peaks a decade out, but exports continue to expand.
- A slight initial appreciation against the US dollar is followed by a small depreciation of the real exchange rate of less than 10 basis points a decade out.
- The benefits to workers comprise a mix of extra employment and real wage growth over time.
- All states stand to gain. The largest gains are in Victoria and NSW. There are significant localised effects, e.g. in dairy, beef and autos production and significant export opportunities in these sectors and in government procurement.
- The Agreement is not likely to have any material impact on the cost of the Pharmaceutical Benefits Scheme or the price of medicines under the scheme.
- The impact of changes to intellectual property protection and of safeguards for agricultural products will be minimal. It will not have an adverse impact on the environment.
- Whilst current textiles trade is not affected, the rules of origin criteria for textiles and wearing apparel products may preclude over 90 per cent of Australian exports of these items benefiting from increased access to the US.
- Many benefits are positive but difficult to quantify at this stage, such as cooperation to improve recognition of qualifications, harmonise standards or improve consumer protection.
- Increased exports to the US of $3.3 billion associated with $582million diversion from other markets, and increased imports from the US of $6.5billion associated with diversion of $3.7billion from other markets (mainly the EU and Japan).

Previous research already provides strong evidence that the FTA negotiated by Australia will deliver substantial benefits over the medium and longer term. A discussion of the previous economic modelling exercises and the strengths and weaknesses of particular modelling methodologies is outlined in more detail in **Annex 9**.

The key outcomes of the negotiations provide a guide as to the new opportunities that will be created by the Agreement and the following sections on business, consumer, government impacts seek to provide a more qualitative assessment. Where the CIE Report had a relevant finding, this has been included in the analysis of business, consumer, government and regional impacts.

Impact on Business:

1. Trade in Goods

The Agreement will see Australia and the United States eliminate tariffs on all non-agricultural goods imported from each other that meet the Rules of Origin (ROOs) established under the Agreement. The United States will remove tariffs on over 97 percent of non-agricultural tariff lines (excluding textiles and apparel) on the day the Agreement enters into force. Duties on 127 US tariff lines will however be phased out, on goods such as footwear, china, porcelain, glasswear, hand tools, ball and roller bearings, cathode-ray TV and video monitor tubes and cameras, where trade levels are negligible. Around 30 per cent of tariff lines for textiles and apparel will be duty free on entry into force with the remaining tariff lines in this sector to be phased out by 2015. The outcome on textiles and apparel reflected US insistence on maintaining a more restrictive “yarn forward” rule of origin.

Australia will remove duties for all non-agricultural goods imported from the United States on the day the Agreement enters into force except for 17 tariff lines on footwear (where phasing will match US phasing); 16 tariff lines for finished passenger motor vehicles, and one tariff line for an agrochemical product which will be phased out in the same manner as the US phase-out for that product.

Following the implementation of the Agreement, the adjustment effects on Australian business will vary from sector to sector. For example, the automotive industry will need some time to gear production towards taking advantage of the removal of the high 25 per cent tariff applied by the United States on light commercial vehicles. Where scales of production vary significantly between the United States and Australia, such as in plastics, chemicals, and carpets, Australian industry will be afforded some protection and time to adjust to duty free trade through the application of safeguards, which is a key feature of the Agreement.

While the United States is an open market from a tariff perspective, it operates a complex standards and technical regulations regime. Meeting US requirements in this area can significantly increase costs for Australian exporters. The costs of trading goods between the United States and Australia will be reduced over time by virtue of the provisions in the Agreement on standards, technical regulations and conformity assessment procedures. These provisions establish a framework for facilitating the determination of equivalence of each other's regulations and procedures. Through such a framework, the costs associated with duplicative testing requirements, for example, will be lowered or removed.

As tariffs are eliminated, addressing non-tariff barriers (NTBs) becomes more important. With respect to trade in goods, there are two key mechanisms which have been established under the Agreement to address NTBs. Firstly, a committee on trade in goods in which both parties can raise particular issues of concern, and secondly, a chapter coordinator for standards and technical regulations. Under both mechanisms, businesses and other relevant stakeholders can draw to the attention of relevant authorities their concerns and have these addressed.

With regard to trade in agriculture, the United States will eliminate tariffs for Australian exports on two thirds of all agricultural tariff lines - including on important commodities such as lamb, sheep meat and horticultural products. A further 9 per cent of tariffs will be cut to zero within four years.

Under the Agreement, Australia will enjoy an immediate and significant increase in the annual quotas that apply to many important dairy products, with ongoing growth in the quotas at an average yearly rate of 5 per cent thereafter. The Agreement also includes access for dairy products previously excluded from the US market, such as certain cheeses, butter, milk, cream and ice-cream products. Examples include 7.5 million litres of milk, ice-cream and cream, 2000 tonnes of European type cheeses and 4000 tonnes of whole milk powder.

The Agreement also provides greater access for Australian exports of beef to the United States. In addition to the quota that Australia already holds under the WTO (378,214 tonnes), Australia will gain access for an additional 20,000 tonnes of beef in year 3 (at the latest), increasing to 70,000 tonnes in year 18, with trade effectively free thereafter. In-quota tariffs will be eliminated immediately, and over-quota duties will be phased out from years 9 to 18 of the Agreement.

Australia's single-desk arrangements for marketing Australian commodities to the world, (for sugar, rice, wheat and barley), have been preserved under the Agreement.

Tariffs into Australia will be eliminated immediately, but, as they are already very low, the impact in terms of increased competition is not likely to be large and there may be benefits in terms of cheaper inputs.

CIE REPORT: OTHER KEY FINDINGS IN RELATION TO TRADE IN GOODS

- Even if 'dynamic' effects of trade liberalisation are excluded, liberalisation of trade in goods and services deliver appreciable gains. The direct trade gains alone add $1.4 billion to real GDP.
- Expected to produce strong growth in two-way trade. Australia's exports to the US are predicted to increase by more than $3 billion annually. Beef, dairy and autos exports are expected to expand,
- The Report identifies removal of tariff peaks on magnesium and titanium metals could be valuable opportunities for further development of these industries in Australia.

2. Government Procurement

Under the Agreement, Australia will become a "designated" country in the United States, allowing Australian companies to bid on US federal government contracts. The six per cent penalty imposed under the Buy America Act for Australian products, above the thresholds agreed in the Agreement, will be waived. Much procurement in the US is conducted off Federal Supply Schedules, and Australian companies will now have the opportunity to be listed on these Schedules.

Both Parties have agreed to work with their respective States/Territories to improve their offers with a final decision to be made before the Agreement is signed.

Strategic defence procurement is not covered by the Chapter and Australia has retained the Australian Industry Involvement program in respect of defence procurement. Access to Defence procurement will continue to be facilitated under the 1995 Australia-United States Memorandum of Understanding on Reciprocal Defence Procurement.

CIE REPORT FINDINGS IN RELATION TO GOVERNMENT PROCUREMENT

- While the commitments in relation to Government Procurement could result in significant impacts, much depends on how business responds to the new challenges and opportunities.
- Australian suppliers will have an improved opportunity to compete for the US Government Procurement market, which could be as large as $500 billion. The likely outcome probably lies somewhere between $50 million and $360 million of supply to the US Government per year.
- On the flip side, while the AUSFTA may not result in much change to the Australian Government procurement competition (as the market is already relatively open), it will have potentially important impacts on processes.

3. Trade in Services and Investment

The Agreement binds the United States' current regulatory regime across most service sectors, including at the state level where services are predominantly regulated. The United States will not be able to introduce more restrictive measures in these areas, at least with respect to Australian service suppliers. For a range of trade-restrictive measures listed by the United States, a "ratchet" mechanism in the chapters on Cross-Border Trade in Services, Financial Services and Investment means that, where the United States unilaterally liberalises these measures, such liberalisation will become automatically bound under the Agreement. These commitments will benefit important Australian services exports, such as financial and legal services, as well as other professional services such as engineering, architecture and accounting, by guaranteeing liberal access to the US market.

These gains were achieved much faster than would have been possible through multilateral negotiations under the WTO. Furthermore, the framework of the Agreement ensures that commitments are more far-reaching than those negotiated under the WTO's General Agreement on Trade in Services (GATS). For example, where GATS follows a "positive list" approach, this Agreement uses a "negative list" under which key obligations like national treatment apply to all services trade, except for measures or sectors specified in annexed lists of reservations. This approach has a liberalising and transparent thrust in that all exceptions must be specifically reserved, or they are deemed to be liberalised. It also ensures that any new services are automatically covered by these obligations.

The establishment of a work program to examine mutually beneficial recognition of qualifications and other requirements for accreditation and licensing of professionals provides an opportunity to improve the ability of Australian professionals to supply services to the US market. Similarly, a Financial Services Committee will consider ways to integrate further the financial services sectors of the Parties including by considering cross-border access for foreign securities markets and for collective investment schemes. It is very unlikely that these outcomes could have been achieved through the WTO in the short or even medium term.

The Agreement is "GATS-plus" in relation to domestic regulation: it respects the right of governments to adopt domestic regulation affecting trade in services, but contains enhanced provisions on transparency and the processes for adopting such regulations. These provisions reflect proposals Australia and other countries have put forward in the WTO services negotiations.

Given these outcomes and the related commitments negotiated to ensure strong protections for investments, the Agreement creates a liberal, transparent and predictable environment for Australian services exporters and investors in the US market. This effectively reduces the risk of doing business in, and with, the United States, and should lead to increased services exports and investment by Australian providers.

Inasmuch as the Agreement will provide similar regulatory transparency and predictability for US service exporters to Australia, it is possible that more US service providers will be encouraged to enter the Australian market, and Australian service suppliers will face increased competition. However, given that regulation of the Australian services sector was already highly transparent and predictable by international standards, it is unlikely that the implementation of the Agreement will result in a major increase of US services providers in any particular sector of the Australian services market.

Similarly, Australia's commitments under the Agreement with regard to screening of foreign investment are unlikely to have a major impact on US investment in Australia given the very few rejections of investment applications outside residential real estate. In particular, it should not affect Australia's ability to screen US investments that could raise national interest concerns, i.e. those in sensitive sectors or involving large businesses. However, these commitments will significantly reduce the number of US investment proposals that will be screened and this reduced screening burden is expected to reduce compliance costs for a significant number of US investors and therefore increase the attractiveness of Australia as a destination for US investment. Applying the changes under the Agreement retrospectively to all US proposals decided over the three year period 2000-2002 would have had the effect of reducing the number of US proposals screened by between 65 and 70 per cent.

CIE REPORT FINDINGS IN RELATION TO SERVICES AND INVESTMENT

- The effect of services trade liberalisation is important, and is estimated to account for around 37 per cent of the welfare improvement. Hence, even though the service liberalisation considered is quite modest, it has large welfare implications.
- Cost savings in the service sectors through improvement in sector productivity improve Australia's competitive position on a multilateral basis.
- Lowering transactions costs, strengthening the security of the investment framework and highlighting the openness of Australia's foreign investment regime in non-sensitive sectors have the potential to reduce a proportion of the risk-related cost of capital in Australia. It is therefore likely that, whatever the impact on actual investment flows, the overall impact of the investment provisions will be positive. The Agreement provides national treatment and MFN treatment for investors and their investments in financial services. The benefits of MFN are not necessarily immediate but will continue to deliver benefits over time as other nations or US nationals negotiate further liberalisations of the US financial system.
- Financial services provisions in the Agreement may present greater opportunities for the Australian financial services sector as US restrictions are removed or greater recognition of Australia regulation is achieved.
- In relation to financial services the Agreement provides greater certainty to the permanency of existing and future liberalisations, and signals a commitment to reduce remaining barriers and costs through ongoing dialogue. Australia has secured stronger commitments in these areas than the US has given in its other free trade agreements. A number of specific improved market access opportunities are identified.

4. Telecommunications, Competition Policy and Intellectual Property

The Agreement's provisions on telecommunications provide greater certainty for Australian telecommunications firms in the US market. It establishes a framework for regular consultation in relation in the communications and IT sector, which will give both government and industry an avenue to consult with US policy makers on issues of concern and consider developments affecting evolution of this rapidly evolving sector. The telecommunications chapter establishes WTO-plus rules on transparency and on major supplier.

The Agreement reinforces and builds upon existing bilateral agreements with the United States on cooperation and mutual assistance in competition policy and antitrust law enforcement, which will contribute to the strengthening of a pro-competitive regulatory environment in both countries that will benefit Australian business and consumers. The Agreement provides a vehicle for addressing competition-related issues of particular concern to Australian companies in the US market. It also establishes pro-competitive disciplines on monopolies and state enterprises in both countries.

The Chapter on Intellectual Property will reinforce Australia's reputation as one of the world's leading countries in protecting and enforcing intellectual property rights. The harmonisation of our laws with the world's largest intellectual property market will provide Australian exporters with a more familiar environment and certain legal environment for the export of value-added goods to the United States. In turn, US investors will be attracted to the Australian market because of greater familiarity and confidence in our legal system.

CIE REPORT FINDINGS IN RELATION TO INTELLECTUAL PROPERTY PROTECTION

- Extending copyright term does not seem likely to provide additional incentives to create new works, but may in some cases impose costs on consumers. In many cases the increased cost faced by consumers is not likely to be significant. This is because the demand for most creative works is likely to become very small, if not non-existent, well before the current copyright term expires.
- As education institutions are large purchasers of copyright material, there is concern that they will face higher costs for books that are necessary for education. . . In the case of textbooks, there is greater evidence that their economic life falls well within the current copyright term. Therefore, the increased protection period will likely not increase the cost of textbooks.
- Some minor legislative change may be required to trademark (DFAT notes this should read 'geographical') cancellation procedures and grounds for refusing an application for geographical indication . . . These changes are not likely to have any significant impacts.
- For technological protection measures, protection of encrypted program-carrying satellite signals and ISP liability commitments, the CIE report found it difficult to quantify the extent of any costs. In relation to ISP liability, however, the Report says compliance with the safe harbours commitment is likely to result in cost increases for ISPs due to the additional obligations placed upon them. If these costs work out to be significant, then ISPs would need to pass them on.
- In relation to generic pharmaceuticals, if generic versions of products under patent were reaching consumers prior to patents expiring, the required changes to the marketing approval process would be expected to increase the price of pharmaceutical products – as the generic versions, which cost less than their patented equivalents, would be prevented from entering the market. However, it appears to be extremely rare for a generic version of a product under current patent to enter the Australian market. It therefore seems unlikely that the changes will have any significant impacts.

Impact on Consumers

Consumers will benefit from the Agreement through the removal of substantially all tariffs on goods imported from the United States. Consumers will also benefit from increased cooperation between consumer protection enforcement agencies agreed under the Competition-Related Matters chapter. There will be greater redress in instances of fraud and deceptive practices through improved recognition of monetary judgements. This will increase the ability of consumers who have been defrauded or deceived to seek monetary compensation.

A number of provisions in the Agreement relating to the transparency of conducting business and government administration will benefit consumers. Consumers will continue to benefit from important public policies which are preserved in the Agreement, such as retention of our science-based quarantine procedures designed, in part, to protect human health and safety, access to affordable medicines in the Pharmaceutical Benefits Scheme, and the ability to maintain or enhance local content requirements for audiovisual services.

CIE REPORT FINDINGS IN RELATION TO IMPACT ON CONSUMERS

- The effect on prices of goods and services in Australia is marginal, but typically positive nonetheless (three areas, autos, transport and electrical equipment experience price falls) – as export demand on prices outweighs the effect of cheaper US imports.
- The impact of the competition chapter's commitments in relation to consumer welfare protection and prevention of anticompetitive practices is expected to provide greater certainty, but the benefits are difficult to quantify.

Impact on Government

1. Commonwealth Government

Broadly speaking the FTA will have two major impacts on the Commonwealth Government:

(i) Tariff revenue collection forgone:
The Treasury has estimated that the financial cost of the Agreement to the Commonwealth Government will amount to $190 million in the first year (2004/05), $400million in the second year (2005/06), $420million in the third year (2006/07) and $450million in the fourth year (2007/08). This estimate is based on the expected loss of tariff revenue from imports from the United States, which are assumed to grow steadily in line with the

economy. It is also assumed that the Agreement will enter into force on 1 January 2005. The estimates do not take account of the scope for additional lost tariff revenue that could arise if imports from the United States displace imports from other countries. Nor, however, do the estimates take into account the potential economic growth that the Agreement may generate and any additional taxation revenue resulting from this growth.
[Note: to put tariff revenue in context, total customs revenue collection from all sources for 2002/2003 was reported as $7383million]

(ii) Reduced regulatory flexibility in some areas through commitments that go beyond existing WTO obligations:
Legislative and regulatory changes that will be necessary to implement the Agreement are listed in Annex 8. The chapters on Cross-Border Trade in Services, Financial Services and Investment do not in any way affect the right of either Party to regulate for public policy reasons, such as for health and safety, consumer protection or environmental reasons. These chapters do, however, contain disciplines with regard to trade-related measures, principally the obligations to provide "national treatment" to the services, service suppliers, investors and investments of the other Party and to provide "market access" by not imposing certain kinds of quantitative limitations on trade in services.

These obligations will not apply to the sectors and activities Australia has listed under Annex II of the Agreement (and Annex IV in the case of Financial Services) and therefore Australia retains the right in these areas to maintain existing measures that do not comply with these obligations as well as to introduce new non-conforming measures. These obligations will also not apply to those existing measures Australia has specified in Annex I of the Agreement (Annex III in the case of Financial Services). However, Australia will not be able to increase the non-conformity of these measures or introduce new non-conforming measurers in these areas in the future.

The chapters on Cross-Border Trade in Services, Financial Services and Investment contain additional disciplines on the transparency of regulations affecting these areas as well as on the process of applying new regulations. While these disciplines do in some respects go beyond Australia's commitments under the WTO they are in line with Australia's existing regulatory practices and will not necessitate any changes to those practices.

There are additional commitments to bind our existing standards of regulation in certain aspects of intellectual property protection, telecommunications, monopolies and state-owned enterprises, and customs procedures. These are outlined in detail in the Explanatory Guide at **Annex 3.**

(iii) Under the Government Procurement Chapter the Australian Government has committed to changing procurement management arrangements. The specific rules and procedures required by the Government Procurement Chapter will impose costs both in terms of central administration and in the conduct of tender processes. Special provisions in the Chapter that allow significant flexibility to be retained in Australian Government procurement arrangements have moderated these costs.

2. State and Territory Governments

The proposed action will have an impact on the States and Territories. The Chapters on Cross Border Trade in Services, Government Procurement and Competition Policy will be the most significant to State and Territory Governments. The commitment to review Australia's plasma fractionation arrangements will also be important for the States and Territories. A number of trade-restrictive measures will be bound at existing levels in the list of reservations to the Cross-Border Trade in Services and Investment Chapters. As is the case with the Commonwealth Government (as described above), this will mean less regulatory flexibility for State and Territory Governments to impose new trade-restrictive measures in those areas or to make existing measures more trade-restrictive.

CIE REPORT FINDINGS IN RELATION TO IMPACT ON GOVERNMENT

- The Report points to administrative and procedural costs associated with amendments to existing practices to comply with some of the commitments in the Agreement. However, many of these are hard to quantify, for example, the administrative cost of changes to government procurement processes and specific intellectual property protection commitments.
- In relation to some key public policies the Report says:
  - The Agreement has not resulted in any changes to Australia's quarantine laws or procedures.
  - The Agreement is unlikely to affect the PBS or the price of medicines under the scheme.
  - The right of each Party to establish its own levels of domestic environmental protection and priorities, and to adapt or modify accordingly its environmental laws and policies is not affected by the Agreement. The Agreement is consistent with existing international commitments and to not prevent Australia from meeting any of its international environmental obligations.

Regional Impact

Regions will be benefit from the opportunities created by the Agreement depending on the ability of regional exporters of goods and services to respond to these opportunities, and the contribution of tariff elimination to lower input costs, for example on agricultural machinery and fertiliser. Regions should also benefit from the impact of the Agreement in attracting additional investment from the United States, including in industries that will gain additional market access opportunities, for example, in the agricultural, mining and metals sectors.

Regional impacts may to some degree be inferred from sectoral impacts of the Agreement to the extent that particular industries are concentrated in regional and rural areas, or in particular states or regions.

Regions are also likely to benefit from the opportunities created by the open access to the United States government procurement market.   Under the Agreement, Australia will have a waiver from United States programs favouring US firms and products. However, Australian procurement preferences for small businesses and indigenous people, which are important for certain regional communities, will remain. Both Parties have agreed to work with their respective States and Territories to improve their Government Procurement offers, with a final decision to be made before the Agreement is signed. State and Territory Governments will take regional impacts into account when examining the value of signing on to the Government Procurement Chapter.

The CIE analysis helps to identify possible regional impacts of the Agreement. Some of the key results of the study are detailed in the table below.

CIE REPORT FINDINGS IN RELATION TO REGIONAL AND SECTORAL IMPACTS: OUTPUT AND EMPLOYMENT

- All major sectors of the economy and all States and Territories gain. Parts of rural and regional Australia – for example, dairy producing and processing areas in Victoria, Tasmania and other states will benefit strongly, and autos production concentrated in Victoria and South Australia and a significant industry employer in regional areas, with a number of individual component parts manufacturers being the larges employer within a region. Both total exports and total imports of automotive vehicles and components are expected to increase.
- Under the GTAP simulation, output is expected to increase by a total of $373 million within the Australian economy. Of this, NSW is expected to experience the greatest increase due to the relative size of its economy, followed by Victoria and Queensland.
- The GTAP model concludes for the majority of sectors, employment moves in the same direction and by a similar magnitude as the change in industry output (see table 7.2). Across sectors, manufacturing and construction are the two largest beneficiaries in dollar terms. Employment in both sectors is expected to increase. The additional labour is sourced primarily from the service sectors that experience a decrease in output such as finance and insurance services and retail trade. This is because it is assumed within the GTAP model that, in the long run, the Australian economy is at its natural rate of unemployment and there is perfect mobility of labour. Consequently, the economy cannot employ any more people so those sectors that demand extra labour are required to source their supply from other sectors.
- The G-cubed model concludes that the Agreement will have a positive impact on employment. As chart 6.7 shows, after an immediate small decline due to adjustment, employment in Australia gradually peaks at nearly 0.3 per cent higher than the baseline level in 2012 and then gradually returns back to the baseline level – the natural rate of unemployment.
- Table 7.2 provides a breakdown of the impacts of the Agreement by State and by sector. It does not provide a detailed regional breakdown within sectoral or industry groupings, that is, it does not assess more specific ‘spatial’ impacts within sectors or states, as such.

Environmental impact

CIE REPORT: SOME ADDITIONAL FINDINGS IN RELATION TO THE ENVIRONMENTAL IMPACT MENTIONED ABOVE

- The right of each Party to establish its own levels of domestic environmental protection and priorities, and to adapt or modify accordingly its environmental laws and policies is not affected by the Agreement.
  - Concerns about environmental laws being challenged through investor state dispute settlement provisions in the Agreement are unwarranted because the Agreement does not include such provisions.
  - The Agreement has not resulted in any changes to Australia's quarantine laws or procedures
  - The ability of governments to pursue environmental objectives through requirements placed on government suppliers through government procurement processes does not appear to be impeded.
- If changed production levels in some sectors resulted in negative environmental impacts, then such impacts could be prevented or mitigated by introducing appropriate environmental policies.
- The Agreement is consistent with existing international commitments and to not prevent Australia from meeting any of its international environmental obligations.
- Impact on land and greenhouse gas emissions is difficult to quantify:
  - Land: The modelling concludes that not all primary industries expand output. As output expands so does the use of factors of production of which land is one. However, in the modelling land is a fixed factor of production (i.e. the total amount does not change). As such the sectoral results to not rely on or imply additional land use or clearing.
  - Greenhouse gas emissions: The Report says that the effect of AUSFTA on global net CO_2 emissions would need to be considered before its effect on CO_2 emissions could be determined. It says that a 'best guess' would say that Australia experiences a marginal increase in CO_2 emission but without the global context this is only half the story.

Case studies

CIE REPORT: SOME ADDITIONAL FINDINGS IN RELATION TO THE SPECIFIC CASE STUDIES

- Autos: there are opportunities for Australian motor vehicle and component manufacturers through better access to the largest automotive market in the world. Reduction of tariffs makes Australian exporters more cost competitive. Threats to the Australian passenger vehicle market as a result of the AUSFTA are limited. The modelling points to an increase in output and employment, and an increase in two-way trade.
- Beef: greater access for Australia's largest single export item to the US.
- Dairy: AUSFTA falls short of the preferred outcome for the dairy industry. It does not allow for a transition to free access to the US market. However, new access commitments will create significant new opportunities for growth in bilateral trade and improve trading arrangements on existing export sales. The US liberalisation is a significant step in what is a highly protected world market. It offers gains across the industry, for farmers and processors alike and over all regions with benefits concentrated in south-eastern Australia. Gains will increase over time as the TQ continues to expand.
- Financial Services: AUSFTA will provide new opportunities, such as: a forum to further liberalise trade with scope to discuss access for Australian foreign securities trading screens and collective investment schemes to the US; expediting the availability of insurance services; allowing access to cross-border portfolio managers; and allowing scope to recognise each others prudential measures, including providing the opportunity to negotiate a comparable arrangement made with another party.
- Light metals: Improved access for light metals. Immediate removal of tariffs on aluminium alloy commodities may not have a substantial impact and industry players consider the tariffs are not a major obstacle. Potential opportunities to expand the titanium and magnesium industry in Australia.

CONSULTATIONS

The Government undertook extensive consultations with State and Territory Governments, industry and other stakeholders in developing its approach to the negotiations. The Department of Foreign Affairs and Trade (DFAT) in November 2002 invited public submissions on Australia's approach to the negotiations. The Government received some 200 submissions, including 69 from industry and professional bodies and companies, 32 from NGOs and 8 from trade unions.

These submissions helped to inform the development of the Government's negotiating objectives. In particular, the Government's negotiating objectives took into account concerns expressed in relation to potential negative effects or risks of agreeing in the negotiations to changes to specific domestic policy programs or settings. The Government delivered on the commitment expressed in those objectives by ensuring that the outcomes of the FTA do not undermine Australia's ability to deliver important policy objectives in such areas as health, education, culture, quarantine and environmental policy.

The Government paid particular attention to concerns expressed by professional, community and industry groups and members of the public in relation to the possible treatment of the Pharmaceutical Benefits Scheme, and local content rules and other support mechanisms for broadcasting and audiovisual services. Officials from DFAT and Department of Health and Ageing undertook a wide range of consultations with stakeholders on the pharmaceutical benefits issue. DFAT and the Department of Communications, IT and the Arts also held regular meetings with representatives of the cultural and audiovisual industries on the treatment of culture and audiovisual services in the negotiations.

Many stakeholders, including the State and Territory governments, also expressed concern about the possible inclusion of a mechanism allowing foreign investors to initiate dispute settlement proceedings against governments. Reflecting the fact that both countries have robust, developed legal systems for resolving disputes between foreign investors and governments, the final draft Agreement does not include any provisions for investor-state dispute settlement.

Consultations with the States and Territories were an important priority throughout the course of the negotiations, including at the National Trade Consultations involving the Minister for Trade and his State and Territory counterparts responsible for trade issues. The Government held meetings or teleconferences with representatives from all the State and Territory Governments both before and after each of the six negotiating rounds, involving representatives of Premiers' and Chief Ministers' departments and departments responsible for industry and trade. There were also regular meetings with State and Territory agencies responsible for government procurement.

The obligations in the chapters of the Agreement on Cross-Border Trade in Services, Investment and Government Procurement, in particular, cover areas of regulation for which the States and Territories carry sole or shared responsibility. The States were closely consulted on the approach taken to regional (i.e. sub-federal) measures in the Annexes of Non-Conforming Measures to the chapters on Cross-Border Trade in Services and Investment. They continue to be consulted in the process of finalising the lists of entities covered by the Government Procurement chapter. Other provisions in the Agreement with potential relevance to the States' and Territories' regulatory responsibilities include those on technical standards and competition-related matters, including provisions relating to monopolies and government enterprises.

State and Territory representatives also joined the Australian delegation to the negotiations as observers. One State and Territory representative attended the third round of negotiations, three attended the fourth round, two attended the fifth round, and one attended the sixth and final round. The inclusion of State and Territory representation was consistent with the Principles and Procedures for Commonwealth-State Consultation on Treaties agreed by the Council of Australian Governments (COAG) in June 1996. The COAG Principles provide that "in appropriate cases, a representative or representatives of the States and Territories may be included in delegations to international conferences which deal with State and Territory subject matters."

The Minister for Trade and members of the negotiating team discussed the Agreement with over 500 peak industry and business groups, companies, professional associations and unions, and non-governmental organisations during the course of the negotiations.

The Agreement was an item for discussion at policy advisory bodies such as the Trade Policy Advisory Council, the Agricultural Trade Consultative Group and the Automotive Council, attended by the Minister for Trade. The negotiating team held a number of consultations at important stages of the negotiations with manufacturing industry, service industry and peak business bodies, as well as regular separate briefings and consultations with a range of agricultural sector bodies.

The overwhelming majority of business, manufacturing, agricultural and services organisations was very supportive of the Government's pursuit of an FTA with the United States. Strong industry preferences in relation to a number of priorities and issues were reflected in the Government's approach to the negotiations. These included the need to ensure that the Agreement cover agricultural market access in a substantial fashion. The rules of origin (ROO) proposed for the agreement, which represented a departure from the existing models used for preferential tariff arrangements by Australia, were the subject of an extensive separate consultation process with all interested industry sectors. The Government's decision to proceed with the proposed system reflected the fact that virtually all sectoral organisations were either positively disposed towards, or prepared to accept, a general rule of origin approach based on change of tariff classification. With the support of Australian industry, the Government also sought to have the latter approach applied to the textiles and clothing sector rather than the special "yarn-forward" rule proposed by the US side, but was unable to persuade the US to move from this position.

There was also close consultation with key industry groups likely to be affected by the Agreement during the final stage of negotiations. A number of agricultural sector organisations had representatives in Washington during the final round of negotiations who were briefed regularly by the negotiating team. Their views in relation to a number of specific aspects of the final provisions of the Agreement were taken into account. The automotive and textiles and fashion industries were also consulted in the final stages as industries likely to be most directly affected by tariff reductions. Their preferences for phasing of tariff elimination under the Agreement were reflected in the final outcome.

The Government sought to make extensive information available about the negotiations on the DFAT website, including media transcripts, background documents and answers to frequently asked questions. DFAT also issued a newsletter, "AUSFTA Briefing", providing updates after each of the first four negotiating rounds, which was distributed to over 1,000 e-mail subscribers, and Federal and State MPs. The Minister for Trade and the Minister for Foreign Affairs have received and responded to more than 1270 letters from interested Parties.

Annex 1 provides a full list of organisations consulted before and during the negotiations; a list of meetings and events such as public meetings and briefings or seminars for larger groups of companies; and a list of organisations contributing written submissions to the Government that agreed to have their names published.

IMPLEMENTATION AND REVIEW

The Agreement is being tabled prior to signature with the agreement of both Parties. The scheduled date for forwarding the National Interest Analysis to JSCOT is 24 March. It will be tabled on 30 March 2004. The text of the Agreement that was tabled in the House of Representatives on 8 March is a draft and subject to legal review of accuracy, clarity and consistency. Due to its own domestic requirements, the earliest date on which the United States Government can sign the Agreement is 13 May 2004.

The Agreement was referred to the Joint Standing Committee on Treaties (JSCOT) on 9 March. The JSCOT has up to twenty parliamentary sitting days to call for submissions, make its analysis and report its recommendations to Parliament. The twenty sitting days will expire on 24 June. Soon after JSCOT tables its report, the Government is expected to table complying legislation and make a recommendation to Parliament on approval of the Agreement.

In accordance with Article 23.4 of Chapter 23 (Final Provisions), the Agreement will enter into force sixty days after an exchange of notes confirming completion of the Parties' respective domestic procedures, or at such other date as the Parties may agree. The Governments of Australia and United States are working towards entry into force on 1 January 2005, which would require an exchange of notes on, or before, 2 November 2004.

The legislative and regulatory amendments required to implement the Agreement are detailed in Annex 8: