

The Senate

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Select Committee on the Free Trade  
Agreement between Australia and the United  
States of America

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## Interim Report

**June 2004**

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Senator the Hon Peter Cook, Chair	ALP, Western Australia
Senator George Brandis, Deputy Chair	LP, Queensland
Senator Stephen Conroy	ALP, Victoria
Senator Jeannie Ferris	LP, South Australia
Senator Kerry O'Brien	ALP, Queensland
Senator the Hon Ron Boswell	NATS, Queensland
Senator Len Harris	PHON, Queensland
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## List of Acronyms

AUS-US FTA	Australia and the United States Free Trade Agreement
AUSFTA	Australia and the United States Free Trade Agreement
CIE	Centre for International Economics
DFAT	Department of Foreign Affairs and Trade
ETM	Elaborately Transformed Manufactures
FIRB	Foreign Investment Review Board
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IP	Intellectual Property
ISP	Internet Service Provider
MFN	Most Favoured Nation
NIEIR	National Institute of Economic and Industry Research
PBAC	Pharmaceutical Benefits Advisory Committee
PBPA	Pharmaceutical Benefits Pricing Authority
PBS	Pharmaceutical Benefits Scheme
PC	Productivity Commission
PTA	Preferential Trade Agreements
RTA	Regional Trade Agreement
SPS	Sanitary and Phytosanitary
TRIPs	Trade Related Aspects of Intellectual Property Rights
TPMs	Technological Protection Measures
US	United States (of America)
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation



## CHAIR'S PREFACE

The Senate has invested a significant responsibility in the Select Committee inquiring into the Australia-US Free Trade Agreement (AUSFTA).

The Agreement itself runs to well over 1000 pages including the annexes and side letters. It examines in some detail every aspect of the Australia/US investment and trade relationship. There is also the accompanying explanatory documentation, national interest statements, and the results of economic modelling on the impact of the Agreement.

Well over 500 submissions were received by the Committee from various organisations and individuals. There were oral presentations and specialist roundtable discussions on the Pharmaceutical Benefits Scheme, intellectual property and the economic and trade impacts. Clearly, there is a wealth of material that has to be considered in order for the Committee to frame its recommendations.

But while mastering all this information is essential to the discharging of our obligations under the Senate's Terms of Reference, the true weight of responsibility cannot simply be measured by the volume of material before us and the effort necessary to render it intelligible to the Senate. When the Senate votes on the legislation implementing this Agreement that is soon to be put to the Chamber by the Government the Senate is, in effect, voting on whether the Agreement as a whole comes into force or not.

A vote which gives all the relevant bills passage without amendment triggers the Agreement. Any amendment to or rejection of a bill will have the effect of abrogating the whole Agreement.

The Select Committee, mindful of this responsibility, has taken considerable care to seek input from a wide range of stakeholders and to question witnesses in detail about their views. As well, we have commissioned independent economic research from Dr Philippa Dee, an eminent expert in the field. Her report and all the relevant submissions and the proceedings of the Select Committee thus far are on the public record, enabling members of the public to follow our inquiry in detail. This is important.

Since the riots in Seattle at the 1999 WTO Ministerial Meeting, trade issues have almost always attracted controversy. Some groups have demanded a direct say in government-to-government negotiations. In its report *Voting on Trade* the Senate Foreign Affairs, Defence and Trade References Committee considered that argument and a number of the other points frequently made by those protesting about globalisation and trade issues.

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It was the view of that Committee, a view that I trust is shared by this Select Committee, that the Parliament is the appropriate venue for scrutinising the activities of the government and is the only institution accountable to the nation as a whole for the decisions it takes. And while governments engaged in the making of international agreements are encouraged to be as transparent as possible in their deliberations, consistent with the need for confidentiality of negotiations, governments are ultimately accountable to the Parliament of which the Senate Select Committee process is part.

A notable feature of the Agreement is the absence of a provision requiring a deadline for the consideration by the Parliament of its terms. Notwithstanding, the parties to the Agreement, Australia and the US, have declared that they have targeted the 1st January 2005 as the date by which the Agreement should come into force. Subject to the ability of the Select Committee to complete its processes, that date appears to be a reasonable target.

The lack of a binding deadline, however, does enable the Senate to clarify issues and test the Government's understanding of the implications of this Agreement. As many of the parties appearing before us have said, and as the Government itself proudly acknowledges, this Agreement was completed in near-record time. That fact alone requires the Select Committee to exercise care in satisfying itself about the terms of the Agreement and in framing recommendations with respect to it because, should the Agreement come into force, it will then be too late to correct any unanticipated anomalies.

Another reason for care is that trade agreements per se are a form of economic legislation. Removing barriers to exports obviously increases the competitiveness of Australian firms in foreign markets and often leads to an increase in the goods and services we can sell overseas and the jobs we create in Australia.

Conversely, allowing foreign firms to compete in the Australian market increases domestic competition applying downward pressure on prices and upward pressure on quality and efficiency. This has obvious benefits for the nation as a whole. However, greater foreign competition in Australia means market forces shape the economy, moving it in the direction of greatest efficiency, that is, where it is more competitive. Inefficient firms may lose market share or even go under.

The adjustment mechanisms to cushion the transitional effects of a shift to a more efficient economy are one of the most important issues in gaining public acceptance for trade agreements. The Centre for International Economics has published a list of where additional jobs will be created and where existing jobs will be lost if this Agreement goes ahead. Both individuals and industry sectors can be adversely affected by the market restructuring an FTA causes. The adjustments required to deal with these adverse effects are appropriate matters for the Select Committee to take into account in arriving at a balanced assessment of whether the FTA, overall, is in the national interest.

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In November 2003, the Senate Foreign Affairs, Defence and Trade Committee tabled its report *Voting on Trade*, which included a substantial investigation of the issues and likely effects of the (then being negotiated) Australia-US Free Trade Agreement. This Committee included several members of the current Select Committee. A major purpose of that inquiry was to bring before the government those issues that were considered critical with respect to the negotiating of that Agreement. It was intended to serve both as a reference point and guide for the way Australia might approach the development of the proposed FTA.

*Voting on Trade* not only identified a series of key issues to be considered, but made recommendations as to how they should be handled. The report also made some substantial recommendations about the kind of process that would best deliver a free trade agreement that could expect the support of the Parliament and the public. Unfortunately, the government did not respond to those recommendations, nor, it seems, did it even to take into account the concerns that the Committee had clearly identified.

As a consequence, the issues that *Voting on Trade* pointed to as significant matters requiring urgent and forthright attention have again surfaced in this present inquiry as matters about which there remains considerable public disquiet. These include the PBS, the use of a negative list approach to market liberalisation, the compromising of cultural objectives (especially in media), the regulation of foreign investment, 'rules of origin' mechanisms, and so on.

*Voting on Trade* also recommended that the government seek a thorough and independent assessment of the proposed agreement via the Productivity Commission. This was ignored. Instead the public has been presented with a series of modelling exercises that are in conflict with each other, generating in both the public and professional realms more heat than light.

The Senate, through the both Foreign Affairs and Trade Committee and the Select Committee, has consistently sought to play a constructive and educational role to ensure that the free trade agreement with the United States was pursued in an optimal fashion in terms of process, and that negotiators attended to the key concerns of the Australian public so that the national interest might be preserved and enhanced.

As this Interim Report is tabled, the government has introduced the domestic legislation by which it hopes to effect the implementation of the Australia-US Free Trade Agreement. Therefore the Select Committee is only now in a position to turn its attention to that implementing legislation. This will be an important task, because it is only by scrutinising this legislation that the Select Committee will be able to assess whether the issues and concerns that have persisted throughout both Senate inquiries will be satisfactorily resolved.

**Senator Peter Cook (Chair)**



# Chapter 1

1.1 In mid-2001, the Prime Minister signalled Australia's interest in negotiating a free trade agreement with the United States. At the time, the United States administration was seeking renewal of its Trade Promotion Authority. This Authority allows it to negotiate trade agreements, which can then be accepted or rejected by the Congress but not amended.

1.2 In November 2002, the United States formally announced its intention to enter into negotiations with Australia. United States legislative requirements required a ninety day period after announcement to allow consultation with Congress, before formal negotiations could begin.

1.3 Each country produced a statement of objectives for the negotiations and these can be found at Appendices 3 and 4 of the Senate Foreign Affairs, Defence and Trade References Committee's report *Voting on Trade* of November 2003.

1.4 The first formal round of negotiations was held in Canberra in March 2003 and the second and third rounds in Hawaii in May and July 2003. These discussions focussed on developing the broad framework and the legal text and also reaching agreement on the Chapter structure.

1.5 Negotiations on market access did not begin until the third round. United States legislation required the completion of an economic assessment of the Free Trade Agreement by the United States International Trade Commission before commencement of that part of the negotiations.

1.6 A meeting between the Prime Minister and President Bush, in Texas in May 2003, sealed the urgency of the process. The leaders announced that their intention was to complete negotiations by December 2003.

1.7 A further negotiating round took place in October 2003, followed by the final sessions in December 2003 and January 2004. On 8 February 2004, the Minister for Trade and the US Trade Representative announced the completion of negotiations. The formal process of signing the Agreement took place in Washington on 18 May 2004. The draft AUSFTA was tabled in both Houses of Parliament on 4 March 2004.

1.8 The negotiation of the AUSFTA is the latest and possibly most significant event in the history of trade between the two countries. A chronology of key events of Australia's trading relationships with the United States has been appended<sup>1</sup>.

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1 A. Rann, 'Chronology of events leading to the Australia United States free trade agreement, *Unpublished memo*, Foreign Affairs Defence and Trade Section, Parliamentary Library, Department of Parliamentary Services, Canberra, 2004.

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## The Senate Select Committee

1.9 On 11 February 2004, the Senate established a Select Committee on the Free Trade Agreement between Australia and the United States of America, to report to the Senate within three months of the text of the agreement becoming publicly available, or on such later date as determined by the Committee<sup>2</sup>. The Select Committee was asked to:

- determine whether the Agreement as a whole is in Australia's national interest; and
- examine its impact on Australia's economic, trade, investment, social and environment policies.

1.10 The government made the draft text of the AUSFTA publicly available on 4 March 2004, under the provision that it still needed to be 'legally scrubbed'. The Senate Select Committee held its first meeting on the 11 March 2004. At this meeting, Senator Peter Cook was elected chair, and the Senator George Brandis deputy chair. The other Committee members are Senators Conroy, Ferris, O'Brien, Boswell, Ridgeway and Harris.

1.11 The Committee wrote to over 200 key stakeholders, organisations and industries bodies inviting submissions, and advertised in the press. At the time of writing this report there have been 530 submissions made to the Committee. A copy of each submission can be viewed at [www.aph.gov.au/senate\\_freetrade](http://www.aph.gov.au/senate_freetrade)

1.12 The first public hearing was held in Sydney on 4 May 2004 - a list of hearing dates<sup>3</sup> and locations can also be viewed at the above mentioned website. The Committee has heard from a cross section of witnesses and will be holding several more public hearing after this interim report is presented to the Senate.

1.13 The Committee has also held several round table discussions on key aspects of the Agreement. These roundtables brought together leading economists and trade specialists<sup>4</sup>, experts in intellectual property and copyright issues<sup>5</sup>, and organisations and specialists with a keen interest in the Agreement's possible ramifications for the Pharmaceutical Benefits Scheme<sup>6</sup>.

1.14 As well, the Committee engaged a private consultant (Dr Philippa Dee) to assist in its assessment of the AUSFTA. The Committee has released Dr Dee's report, which will inform the Committee's judgement on the overall impact of the AUSFTA.

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2 Journal of the Senate, No.126 dated 11 February 2004

3 Although the Committee Chair proposed numerous hearing dates in the month of April while the Senate was not sitting, agreement could not be reached to hold hearings on those days as a number of senators were not available.

4 Committee Hansard, 5 May 2004, p18 - 67 [www.aph.gov.au/senate\\_freetrade](http://www.aph.gov.au/senate_freetrade)

5 Committee Hansard, 17 May 2004, 1-42 [www.aph.gov.au/senate\\_freetrade](http://www.aph.gov.au/senate_freetrade)

6 the proposed date for the PBS round table discussion is 21 June 2004 –a program will be available on [www.aph.gov.au/senate\\_freetrade](http://www.aph.gov.au/senate_freetrade)

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1.15 It should be noted that while the Senate has been holding its inquiry so has the Joint Standing Committee on Treaties. This Committee's report on the AUSFTA is expected to be tabled during the parliamentary sitting week 21-24 June 2004.

### **What is a free trade agreement?**

1.16 A free trade agreement is typically a bilateral, preferential<sup>7</sup> agreement between two countries aimed at securing maximum access to each other's domestic markets in order to facilitate trade in goods and services. It commits the parties to policies of non-intervention by the state in trade between their nations. Such an agreement usually entails:

- removing or lowering explicit trade barriers, including import taxes (tariffs) and import quotas.
- softening or eliminating non-tariff or 'hidden' trade barriers – for example, quarantine laws, production and export subsidies, local content requirements, foreign ownership limits, and domestic monopolies.

1.17 Free Trade Agreements necessarily involve an exception to the Most Favoured Nation (MFN) principle, the fundamental rule guiding trade in goods among members of the World Trade Organisation. Under the MFN rule, members of the WTO must give fellow WTO members no less favourable treatment in terms of tariff rates and other trade measures than they afford to any other country. However, WTO rules allow individual countries to afford preferential treatment to partners in an FTA, provided that the FTA conforms to certain strict conditions.

1.18 The rationale for allowing this exception is set out in Article XXIV of the General Agreement on Tariffs and Trade (GATT) of 1947, which recognises the desirability of increasing freedom of trade by the development of closer integration between member countries through agreements establishing free-trade areas. At the same time, strict conditions apply to FTAs to ensure that they serve a liberalising purpose in international trade and do not encourage the establishment of new barriers. Nor should FTAs provide an occasion to introduce new measures discriminating between trading partners.

1.19 The crucial test of an FTA is that it must eliminate all tariffs and other restrictions on substantially all trade in goods between its member countries. Although WTO members have differed over how precisely to define 'substantially all trade', few would disagree that this means, at the very least, that a high proportion of trade between the parties - whether measured by trade volumes or tariff lines - should be covered by the elimination of tariffs and other restrictive trade regulations. Australia

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7 Some economists contend that a 'preferential' agreement is, by its very nature, also 'discriminatory' – that is, discriminatory against all those countries that are not included in the FTA.

considers that this must be a very high percentage, and that no major sector should be excluded from tariff elimination.<sup>8</sup>

1.20 The WTO also provides for bilateral or regional agreements liberalising trade in services. While an FTA as defined under the WTO does not have to include trade in services, most contemporary agreements that are labelled 'Free Trade Agreements' cover both goods and services, reflecting the growing importance of the services in the global economy.

1.21 In addition to trade in goods and services, FTA frequently cover such issues as investment protection and promotion, government procurement and competition policy, which are either not yet encompassed by WTO rules or only partially covered.

1.22 FTAs often also contain practical provisions in areas such as harmonisation or mutual recognition of technical standards, customs cooperation, application of subsidies or anti-dumping policies, electronic commerce, and protection of intellectual property rights.

### **Multilateral v bilateral trade agreements**

1.23 A prominent concern among critics of free trade deals is that Australia's negotiation of a free trade agreement with the United States of America would be detrimental to current multilateral trade and service negotiations by undermining the principles of the multilateral trading system through the WTO. For example, the negotiation of a bilateral trade agreement with the United States might undermine Australia's policy support for, and credibility in, multilateral negotiations.

1.24 The suggestion that negotiation of an FTA with the United States will undermine the multilateral trading system or signal a lessening of Australia's commitment to the WTO and multilateral liberalisation has always been strongly contested by DFAT.

- FTAs are sanctioned by the WTO ... if they are comprehensive and trade creating...;
- FTAs can help the WTO system to generate momentum by liberalising difficult sectors among a few countries...<sup>9</sup>

1.25 The Committee notes the arguments made by DFAT above, but notes also that some of these points have been contested, and some clarification may be required. For example, FTAs are sanctioned by the WTO only if they are compliant with the WTO constitution. A better example of FTAs generating momentum for the multilateral round may be the North American Free Trade Agreement and the Uruguay Round.

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8 Department of Foreign Affairs and Trade at [http://www.dfat.gov.au/trade/negotiations/us\\_bkg.html](http://www.dfat.gov.au/trade/negotiations/us_bkg.html)

9 *Submission 54 to Voting on Trade Inquiry*, pp. 39-40 (DFAT)

1.26 The Australian Government is pursuing a combined multilateral, regional and bilateral approach to trade policy suggesting that Australia may be ‘left behind’ if it does not negotiate free trade agreements in tandem with multilateral negotiations:

Many other countries are in the process of negotiating or seeking free trade agreements with our trading partners. This could pose risks to our interests if our competitors were to gain preferential access to our export markets. It is possible, too, that investment might be diverted from Australia to other countries that have negotiated preferential access with each other. Inaction as others negotiate free trade agreements could risk an erosion of our competitive position in those markets.<sup>10</sup>

1.27 DFAT considers free trade agreements that are comprehensive in scope and coverage can complement and provide momentum to Australia’s wider multilateral trade objectives. DFAT stated that one of the best ways of ensuring this occurs is for agreements to meet the criteria in the WTO agreements.<sup>11</sup>

1.28 However, free trade agreements are contrary to the fundamental ‘most favoured nation’ principle that underpins the WTO.

The most favoured nation principle became the first article of the GATT. A shared understanding that trade relations should be on a most favoured nation basis is really the first vehicle for carrying forward this idea. Institutionally, the idea is embodied in Article I of the World Trade Organisation, the most favoured nation clause, which is based on the old GATT. Of course the GATT included Article XXIV, which was to provide an exception to the most favoured nation clause. That exception was introduced to keep open the possibility of developments in Europe that were desirable for political reasons—the developments that became the European Union. But the founding fathers—I think they were all fathers, not mothers—of the GATT and the WTO never envisaged that Article XXIV would become the main game.<sup>12</sup>

1.29 The Committee also notes arguments that suggest that, with the more recent focus on regional and bilateral trade agreements, there is a risk that Australia and the world may see the emergence of the same global tensions that applied prior to the Bretton Woods Agreement. Such a situation may see deepening political divisions and Australia being excluded from certain trade blocs with enormous economic consequences.

[If] trade discrimination becomes the norm and if one decides who to favour and who to exclude, partly on political grounds—countries that seem to be political friends at a point in time—there is a danger that political

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10 Department of Foreign Affairs and Trade, *Advancing the National Interest*, p. 59

11 See DFAT website: [www.dfat.gov.au/trade/negotiations/australias\\_approach.html](http://www.dfat.gov.au/trade/negotiations/australias_approach.html). See also, Department of Foreign Affairs and Trade, *Advancing the National Interest*, pp. 58–63

12 *Committee Hansard ( Voting on Trade Inquiry)* 22 July 2003, p. 198 (Garnaut). See also, *Submission 70 (Capling)* to the *Voting on Trade Inquiry*

divisions will be entrenched and deepened. There is a danger that at this time, when more than ever we need trust and cooperation across the civilisations of the world to defeat the scourges of terrorism, we will entrench some important divisions in the international community. In our region there is a danger that we will end up over time—not tomorrow but over time—with a division down the Pacific, with us being part of a block with the United States and most of East Asia having discriminatory arrangements amongst themselves that leave us out. That would obviously have horrific economic consequences for us. The economic consequences would be much smaller for the United States and Europe, but they would be huge for us, because they are our main export markets. In addition, there is a danger that that would make cooperation more difficult on the many things that we have to co-operate on at this difficult time in the world.<sup>13</sup>

1.30 The Committee acknowledges that it is inherent in bilateral and regional free trade agreements that the MFN principle is not followed. However, the Committee notes that APEC, a regional economic forum that Australia helped establish, is based on the principle of ‘open regionalism’. In other words, what progress APEC makes in opening up markets in member economies is then automatically shared with the world on an MFN basis. This approach strengthens the multilateral system and prevents the Asia Pacific region from becoming an exclusive economic club.

### **Australia’s economic relationship with the United States**

1.31 The United States is Australia’s most significant economic partner when measured in terms of combined trade and investment activity. However, of all its trading partners, Australia carries the largest trade deficit with the United States, which distorts the economic relationship.

1.32 The United States is Australia’s second most important destination for merchandise exports after Japan, and our most important market for services and investment. Two way trade in goods and services in 2002 was valued at over A\$45 billion, accounting for nearly 15% of Australia’s total trade. The United States was the single most important destination for Australian services exports in 2002, accounting for nearly 15% of total services exports and has grown by A\$363 million over the last five years to A\$4.6 billion. Overall, however, Australia only ranks 28 on America’s list of import sources. In 2002, for example, United States drew only 0.6 per cent of its global imports from Australia.<sup>14</sup>

1.33 Australia is currently the United States’ 24<sup>th</sup> largest trading partner (total trade) and 15<sup>th</sup> largest export market. The United States is among Australia’s highest growth export markets, with 5-year trend growth at 16 per cent. Australia’s merchandise exports to the United States represent nearly 10 per cent of total

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13 *Committee Hansard (Voting on Trade Inquiry)* 22 July 2003, p. 202 (Garnaut)

14 *DFAT Fact Sheet: United States of America* available at <http://www.dfat.gov.au/geo/fs/usa.pdf>

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Australian exports. However given the firming of the Australian dollar against the US currency, this trend can be expected to plateau.

1.34 Principal exports to the United States in 2002 included beef - where Australia filled its United States tariff rate quota for the first time in late 2001 and again in 2002 - crude petroleum, alcoholic beverages, aircraft and parts, and motor vehicles. Exports of elaborately transformed manufactures (ETMs) are one of the strongest performers increasing by 63 per cent over the last five years – albeit from a relatively small base. The United States is now Australia's largest market for exports of ETMs.

1.35 The United States remains the largest source of Australian merchandise and services imports. Merchandise imports accounted for 18 per cent of total imports - major items being aircraft and parts, computers and parts, telecommunications equipment and measuring instruments. In 2002, services imports from the United States accounted for 20 per cent of total Australian services imports.

1.36 As is clear from the above, Australia continues to carry a substantial merchandise trade deficit with the United States - the largest of any trading partner. Whilst the deficit doubled over 1990-95, the bilateral balance on merchandise trade then stabilised, remaining within an A\$11-A\$13 billion range in favour of the United States. The trade deficit with the United States was A\$12.8 billion in 2002. The merchandise trade deficit is in large part the result of Australia's manufactured and high tech import requirements being sourced from competitive United States suppliers. This should all be seen in the context of Australia's overall trade deficit, which in September 2003 was running at \$2.3 billion – the fourth highest deficit on record, and the 22<sup>nd</sup> consecutive month in which imports outstripped exports.

1.37 As at 30 June 2001, the United States was the largest recipient of Australian investment (A\$177 billion) and Australia's largest source of investment (A\$235 billion, or around 30% share of total level of foreign investment in Australia). Flows of Australian investment in the United States over the last five years have been increasing from around \$18 billion in 1995 to around \$97 billion in 2001, although dropping off in 2002 to \$75 billion. In 2001-2002, the United States share of foreign investment in Australia was 28.7 per cent.

1.38 Australia's economy is small in comparison to the United States, being about 4 per cent the size of the United States economy – roughly equivalent to the size of the economy of Pennsylvania. Both the Australian and United States economies are already relatively open, Australia being one of the most open economies in the world. The United States maintains a protectionist regime in agriculture – an area in which Australia's highly efficient rural producers have a comparative advantage.

1.39 In the Committee's view, Australia's pursuit of a free trade agreement with America has as much, if not more, to do with Australia's broader foreign policy objectives as it does with pure trade and investment goals. Certainly for the United States administration, free trade agreements can only be situated within a particular foreign policy and security setting. This was made clear in a widely-reported speech (May 2003) to the Institute for International Economics by USTR Zoellick:

U.S. Trade Representative Robert Zoellick late last week said countries that seek free-trade agreements with the United States must pass muster on more than trade and economic criteria in order to be eligible. At a minimum, these countries must cooperate with the United States on its foreign policy and national security goals... The U.S. seeks “cooperation - or better- on foreign policy and security issues,” Zoellick said... Given that the U.S. has international interests beyond trade, “why not try to urge people to support our overall policies?” he asked.

Zoellick said that he uses a set of 13 criteria to evaluate potential negotiating partners, but he insisted that there are no formal rules for the selection or any guarantees. “It's not automatic,” Zoellick said. Negotiating an FTA with the U.S. “is not something one has a right to. It's a privilege.”<sup>15</sup>

1.40 During the Senate's earlier inquiry into the FTA, entitled *Voting on Trade*, some witnesses regarded these sorts of remarks as signalling America's desire to ‘cement a network of countries into a pact which will bind them to comply with United States foreign policy ambitions.’<sup>16</sup> Others expressed concern that Australia's national interests may be compromised by being seen as inextricably bound to the United States.

Australia has built up positive trade and cultural relationships with many countries in our region. This is in part because we are not seen as an economic or cultural appendage of the United States, but as an independent country with its own trade and foreign policy, which has in the past differed with the United States on some key issues. Australia's role within the Cairns Group could be compromised if a United States-Australia FTA goes ahead.<sup>17</sup>

1.41 The Australian Government has been unequivocal in this respect. In particular, its views are declared strongly in Australia's latest foreign policy White Paper *Advancing the National Interest*.

Australia's links with the United States are fundamental for our security and prosperity... Australia has a vital interest in supporting long-term United States strategic engagement in East Asia, because of its fundamental contribution to regional stability and prosperity. The government's pursuit of a free trade agreement with the United States is a powerful opportunity to put our economic relationship on a parallel footing with our political relationship, which is manifested so clearly in the United States alliance.<sup>18</sup>

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15 Quoted in *Inside US Trade*, 16 May 2003.

16 *Submission 53*, p. 20 (Edwards) to *Voting on Trade* Inquiry

17 *Submission 42*, p. 34 (AFTINET) to *Voting on Trade* Inquiry

18 Australian Foreign and Trade Policy White Paper *Advancing the National Interest* Canberra (2003) p.(xvi)

1.42 The Committee agrees that Australia's relationship with the United States is its most vital strategic and political alliance. However, that the linking of trade and investment agreements so closely to issues of security and strategic political interest is not without its tensions.

As a trade economist, I get very nervous about links between trade and security or trade and defence or other things which are not closely related to trade, because they can distort the kind of agreement that comes out of it.<sup>19</sup>

1.43 The linking of trade and security relationships is clearly regarded as desirable and appropriate by both the United States and Australian governments, but the Committee notes that the role of the United States Congress in trade matters introduces a distinctive dynamic into that linkage.

The United States trade policy is not made by the administration; it is made in the Congress. There is a long tradition—and not a very elegant tradition—of United States trade policy being bought and sold in the United States Congress, and administration views on security priorities do not always hold sway in the United States Congress. So people who give high priority to a good political relationship and to the ANZUS alliance have always taken pains to **separate** the alliance relationship from the trade relationship<sup>20</sup>.

1.44 As Australia becomes more deeply engaged in trade with its regional neighbours, and especially with emerging economic powers like China, any tensions between, say, the United States and China, could place Australia in an invidious position if the Australia-United States relationship is predicated on closely entwined security and trade interests that verge on the symbiotic.

1.45 A strong political relationship between Australia and the United States is important but this does not mean that Australia can not objectively consider the costs and benefits of a trade agreement with the United States. The eminent economist Professor Ross Garnaut, in evidence to the Select Committee stated:

There will always be tensions and disappointments in the trade policy area, rather more than in Australia's relations with a lot of other countries, because Australia and the United States in many rural commodity markets are fierce competitors. That is just a fact of life. So if you want to preserve the alliance [ANZUS], not just through this government but into the long-term future, if you want to preserve a good political relationship, you will take care to separate the strategic and political relationship from the trade relationship. If ever you get them mixed up over this issue, they will be mixed up in future. In the end, that is going to be corrosive of the political relationship<sup>21</sup>.

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19 Committee Hansard (Voting on Trade Inquiry), 9 May 2003, p:161 (Lloyd)

20 Committee Hansard (Voting on Trade Inquiry), 22 July 2003, p:203 (Garnaut)

21 *Transcript of Evidence* 15 June 2004, p22 (Garnaut)



## Chapter 2

### Mathematical Modelling of AUSFTA Economic Effects

2.1 This Chapter broadly looks at several econometric assessments of the likely effects of the AUSFTA that have been prepared, as well as other reports that address at a broader level the costs and benefits of bilateral trade agreements.

2.2 The Centre for International Economics (CIE) has prepared two econometric studies for the Australian government<sup>1</sup> - 2001 and again in 2004<sup>2</sup>. The APEC Study Centre, Monash University also produced a study in 2001.<sup>3</sup>

2.3 A report by ACIL Consulting was commissioned by the Australian Government's Rural Industries Research and Development Corporation. This report (*A Bridge Too Far? An Australian Agricultural Perspective on the Australia/United States Free Trade Area Idea*), released in February 2003, was at odds with the findings of the DFAT-commissioned studies. It proved to be the catalyst for some academic and political disputation.

2.4 In March 2003, the Centre for International Economics published a critical rejoinder to the ACIL Report. In May 2003, a Productivity Commission Staff Working Paper was published entitled *The Trade and Investment Effects of Preferential Trading Arrangements – Old and New Evidence*. The Working Paper examined 18 existing preferential trade agreements (PTAs), and not those in prospect – such as the AUSFTA.

2.5 The Select Committee itself commissioned Dr Philippa Dee, an extremely experienced trade economist and Visiting Fellow at ANU, to carry out a further analytical and econometric study of the proposed Agreement. Dr Dee's substantial career in trade economics has included senior roles at the Productivity Commission and as a Director with the Industries Assistance Commission during the mid-late eighties.

2.6 Another assessment of the current AUSFTA, prepared by the National Institute for Economic and Industrial Research (NIEIR), was lodged with the Select Committee as part of a submission by the Australian Manufacturing Workers Union. The results produced by these studies have varied considerably and disagreements have arisen over the accuracy and validity of the various methodologies, and of the assumptions used by the modellers.

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1 CIE 2001, *Economic Impacts of an Australia-United States Free Trade Area*

2 CIE 2004, *Economic Analysis of AUSFTA: Impact of the bilateral free trade agreement with the United States*

3 APEC 2001, *An Australia-United States Free Trade Agreement - Issues and Implications*

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**Centre for International Economics Study 2001*****Economic Impacts of an Australia-United States Free Trade Area***

2.7 The first CIE study ( 2001) estimated that, over 20 years, the net gain for Australia would be \$US 10.9 billion and for the United States \$US 16.9 billion. By 2010, Gross Domestic Product (GDP) gains for Australia were estimated at 0.4%, representing an increase in monetary terms of \$US2.0 billion. The study estimated that in terms of GDP Australia would benefit more than the United States - but that estimate assumed that sugar would be included in the Agreement and would contribute to the projected gain.

2.8 This 2001 study used the APG-Cubed model of the Australian economy and a base assumption that full implementation of the Agreement would occur within five years. On this basis, Australian welfare gains were estimated at 0.3% by 2006, 0.4% by 2010 and 0.5% by 2020.

2.9 The model predicted that both countries would benefit from increased exports and that Australia's current account balance would improve by 0.9%. It also showed that trade creation would be greater than trade diversion and that New Zealand would also be a net beneficiary.

**The APEC Study Centre, Monash University*****An Australia-USA Free Trade Agreement: Issues and Implications***

2.10 The APEC Study Centre assessment, commissioned by the Department of Foreign Affairs and Trade, was released in August 2001. No pattern had been established for the agreement at that time and the study was therefore based on an estimate of what sectors would be included.

2.11 The APEC Study Centre employed three approaches:

- examine other trade agreements to see what was included and assess what precedents had been established;
- identify issues where either barriers were in place or where a dispute had occurred; and
- identify common interests which could be advanced by an FTA, to mutual benefit.

2.12 The APEC Centre's assessment concluded that an FTA would revitalise the trade liberalisation process in each country, increase Australia's competitiveness and increase GDP. Australia, as the smaller economy with lower income levels and smaller economies of scale in cost structures, would derive greater benefit than the United States, due to market liberalisation and more competition in the market.

2.13 Over the medium term of twenty years, it concluded that the net increase in economic welfare could be nearly \$US 10 billion for Australia. This estimate,

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however, was based on the anticipated removal of all trade barriers. The APEC Centre study noted that the earlier CIE study did not include any allowance for indirect and dynamic effects of an FTA. It commented that these effects could be as important as the direct impact for Australia, albeit harder to quantify.

2.14 The predicted increase in two-way investment would provide Australia with additional support for consumption, income growth and improved living standards. Investment, it was argued, also brings with it, management and technical skills that often are not available locally.

### **ACIL Consulting, A Bridge Too Far?**

#### ***An Australian Agricultural Perspective on the Australia/United States Free Trade Area Idea***

2.15 The ACIL Report assessed that the economic benefits of the FTA as a whole would be at best very finely balanced, with the impact on Australia's farmers likely to be negative. In ACIL's view, the case for the FTA had to rest on broader strategic assumptions, but the articulation of these had not been made clear.

2.16 Trade diversion was also a serious issue that threatened any presumed benefits of the FTAs with America. The modelling conducted by ACIL showed that over a 5 year phase in period of complete free trade with the United States, the outcome would be slightly detrimental to the Australian economy.

2.17 Ironically, some of the biggest gains suggested by ACIL included large increases in the volume of trade in sugar in particular, and to a lesser extent dairy products and meat.

2.18 ACIL contested the argument that any gains from the AUSFTA would simply add to the gains Australia might enjoy through the Doha round within the WTO or from unilateral cuts in protection at home. The domestic protection given by the United States government to its agricultural producers, enshrined in the so-called Farm Bill of May 2002, cast an even bigger shadow on the feasibility of Australia making gains in agricultural exports.

2.19 ACIL emphasised throughout its report the primacy of the multilateral trade option in terms of advancing Australia's national interest.

### **Centre for International Economics, 2004**

#### ***Economic Analysis of AUSFTA: Impact of the bilateral free trade agreement with the United States***

2.20 This latest study updates the earlier scoping study carried out by CIE in 2001. CIE commented that availability of the final range of commodities and services to be included, along with the timing of the liberalisation process, enabled it to evaluate the likely economic effects of the Agreement. Similarly, the commitments agreed upon

for sectors such as intellectual property, rules of origin and investment assisted in refining that assessment.

2.21 CIE acknowledged the ongoing debate over the methodologies used in the various mathematical studies of the effects of the Agreement. It explained in some detail the nature of the two modelling frameworks it used in making the assessment in this report. One model used, the so-called G-Cubed, is a dynamic model used to estimate the path of changes over time. The other, the Global Trade Analysis Project (or GTAP), is a comparative static model. That is, it can supply snap-shots of the economy at a given point but cannot trace the progress of dynamic effects continuously.

2.22 The dynamic effects of this AUSFTA take on special significance because of the long phasing period being applied to some of the arrangements. The use of two separate models enabled CIE to assess the likely progressive results of the AUSFTA and also to take advantage of the greater level of detail available through the GTAP model.

2.23 Because of the disagreements over methodologies, particularly over the size of dynamic gains, CIE also employed a sensitivity analysis covering the most probable range of estimates. That analysis predicts a 95% chance that welfare in Australia will be improved by between \$1.1 billion and \$7.4 billion per year after 20 years, when all of the liberalisation commitments will have worked through the economy.

2.24 CIE's analysis indicates that in the first year immediate benefits will be partly offset by adjustment costs. Thereafter, the benefits will increase, as tariffs are reduced and new investment takes effect. CIE estimates that investment liberalisation will make the biggest contribution to economic growth and welfare.

2.25 This study differs in several ways from the first study by CIE. It takes into account factors which were either unknown or unclear in 2001, namely that:

- full liberalisation has not been achieved;
- not all services trade barriers will be removed;
- investment liberalisation has this time been explicitly considered; and
- quantitative effects have been analysed.

2.26 The study uses a discounted present value approach to quantify the benefits of the Agreement. It estimates that over 20 years, Australia will receive a net welfare benefit of \$52.5 billion if measured as real GNP or \$57.5 billion if real GDP is used.

2.27 The largest contribution to economic growth and welfare is expected to come from investment liberalisation. Reduction of barriers to investment is expected to reduce the equity risk premium and lower the cost of capital, leading, in turn, to a rise in investment.

2.28 Trade liberalisation is expected to increase welfare and GDP by about \$1 billion per year. It should reach this level within ten years. There is also potential for

future additional gains, which are not quantifiable at this early stage. There will be some offsetting losses through trade diversion. CIE commented, however, that trade diversion in services trade should be minimal.

2.29 Export gains deriving from trade liberalisation will initially be offset by import increases associated with increased investment. After the first ten years, however, CIE's projections indicate that exports will grow faster than imports.

2.30 The exchange rate is expected to appreciate slightly against the \$US initially, then ease to end the decade in a small depreciation. Labour effects are also expected to change direction, an initial rise in employment to 0.3% of total jobs by 2012, then easing to the 'natural rate of full employment'. At that time benefits will be in the form of an increase in real wages of about 1.4%.

2.31 CIE also assessed the likely effects of agreements reached in other sectors of the Agreement. In summary, its findings were:

- the commitment relating to the PBS is not likely to have a material effect on the cost of the scheme itself, or of medicines supplied under it;
- the incremental cost of the extension of copyright could not be accurately determined. The study estimated that it would be marginal;
- safeguard provisions on beef and horticulture products are not expected to have any material effect;
- commitments on services will allow foreign-owned subsidiaries or branches in Australia to benefit from the Agreement. Any concessions on services given by either country to third countries must be passed on to the other. In effect, this will minimise the possibility of trade diversion in services.
- the Agreement should not have an adverse impact on the Australian environment. It does not prevent Australia from meeting its international environment obligations and should lead to an expansion in energy efficient industries.

### **National Institute of Economic and Industry Research Study**

2.32 This study compares the estimated effects of the AUSFTA with the situation if present arrangements were to continue. It assumes economic growth rates of 2.5% a year for the US and 2.8% for Australia. These are lower growth rates than those achieved in the nineties and are based on an assessment that neither country is now able to afford the debt increases which supported those higher growth rates.

2.33 In its overall assessment, NIEIR rejects the positive findings of the CIE study and estimates the Agreement will result in an overall loss of \$46.9 billion (0.39% of GDP) in net present value terms. NIEIR also estimates an average annual loss of employment of 57,700, with a 2.5% chance that the loss will exceed 195,400. It suggests the downside risks involved in the AUSFTA could cause the estimated losses to accelerate dramatically. It concludes that on average manufacturing employment

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will be 17,300 per annum less as a result of AUSFTA. By 2025 manufacturing employment will be almost 40,000 less as a result of AUSFTA<sup>4</sup>.

2.34 The NIEIR study is critical of several aspects of the CIE study. One main criticism refers to the weight CIE has given to gains from services trade (37% of the gains from trade liberalisation). NIEIR preferred instead to exclude services trade from its calculation of direct effects, although it says that the effects are partially captured in other calculations. NIEIR also criticises what it regarded as CIE's refusal to acknowledge the possibility of negative economic outcomes from foreign investment.

2.35 The main focus of the NIEIR study is on what it describes as a "considerable loss of sovereignty", caused by the terms of the AUSFTA. It claims that the result will be constraints on the freedom of future Australian governments to control domestic economic activity and employment and to stop the drain of economic assets, such as intellectual property and technology, to overseas companies.

2.36 The study concludes that this loss of sovereignty will remove a government economic tool which is essential if the Australian economy is to make the transition to a knowledge-based economy.

### **Dr Philippa Dee – Report, June 2004**

2.37 This Committee commissioned Dr Philippa Dee to carry out an assessment of the AUSFTA. The final paper was recently received by the Senate Committee and was publicly released on 16 June 2004.

2.38 The Dee Report identifies the substantive chapters of the AUSFTA (in the sense of offering more than the status quo), describes some of the likely economic effects of those chapters, and concludes with a critique of the DFAT/CIE modelling assessment of the AUSFTA.

2.39 Dr Dee argues that the specified new promises to abstain from trade barriers in Services and Investment will not cost either party commercially and could be easily multilateralised.

2.40 While some chapters define the market opening for goods, services and investment, other chapters circumscribe the extent of market opening. Many of the substantive chapters establish new consultation mechanisms or require additional administrative measures. In some cases these oversee the market opening elements of the AUSFTA, while others facilitate enforcement of customs or other regulations, or aid transparency.

2.41 Aspects of the substantive chapters also establish precedents that may affect Australia's options in future bilateral or multilateral forums. Such precedents include the omission of sugar, the acceptance of tailor-made rules of origin, and widespread safeguard provisions.

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4 NIEIR, response to question on notice, 22 June 2004

2.42 The chapter dealing with intellectual property is precedent setting in many respects. Essentially, argues Dee, Australia has been required to adopt US standards, but only when it broadens rather than narrows the scope of IP protection. The asymmetric adoption of United States standards in a way that overrides Australia's domestic copyright and digital law reform processes has also set another important precedent.

2.43 In terms of the economic effects of the FTA, Dr Dee identifies some potential for trade diversion in a manner detrimental to Australia, but even more so for the United States. There are also question marks over whether Australian businesses will be able to take advantage of opportunities in the United States government procurement market. Dr Dee argues that the CIE estimate of Australians achieving about 30% of Canada's level of United States market penetration is more likely to be only 4% - a function of Australia's smaller size and being 30 times further away from the US.

2.44 While the CIE claims it is difficult to estimate the economic impact of copyright extension, Dr Dee calculates, on the basis of ABS statistics about Australia's payments for royalties and license fees, that Australia's net royalty payments could be up to \$88 million higher per year under the AUSFTA.

2.45 Dr Dee also argues that the AUSFTA's tighter rules or origin regime, and the associated compliance costs, will reduce the proportion of preferential trade substantially below what the CIE model suggests. The omission of sugar, and the government's \$440 million package to the sugar industry, means a net welfare cost to the Australian taxpayer of \$70 million. This translates to an annual equivalent annuity value of \$5 million per year.

2.46 Examples of what Dr Dee identifies as shortcomings in the CIE study include:

- (i) No assessment of the possible effects of the non-agricultural safeguards;
- (ii) Inappropriate treatment, in the services trade area, of the issue of licensing restrictions; and
- (iii) Inappropriate modelling, in the investment area, of the relaxation of FIRB screening. FIRB screening is an *ex ante* factor in investment decisions, while equity risk premiums capture the effects of events that happen *ex post*. It is highly doubtful, therefore, that FIRB screening has any general effect on Australia's risk premium.

2.47 Dr Dee provides an alternative assessment of the economic benefits by amending the assumptions and inputs along the lines indicated above. On Dee's calculations, the annual gains to Australia from the AUSFTA would amount to around \$53 million.

2.48 Dr Dee also provides comprehensive tables comparing the AUSFTA with Australia's position under WTO agreements and under GATS, and also a table comparing the AUSFTA with the Australia-Singapore, US-Singapore and US-Chile agreements.

2.49 At a June 2004 seminar on the FTA held at Parliament House, one of Australia's leading economic and trade specialists Professor Ross Garnaut made the following comments about reports by different economic modellers. He observed:

I have made some comments to [the Joint Standing Committee on Treaties] about the CIE report. I don't think it's a credible bit of work and you're not seeing support from independent professional economists for it. Before the Senate Committee I understand that a Treasury official asked to comment on it talked about it being an interesting piece of imaginative economics, words of that kind. We can check the Hansard for the exact words.

But in any case it was put forward and commissioned by a participant in the debate. I think the response to Dr Dee's report for the Senate Committee really underlines the need for independent and transparent analysis. Before it had been released, before we had seen it, and I understand before Minister Vaile had seen it, Minister Vaile criticised it and said he will have DFAT answer it. Well, that demonstrates that we're not getting an objective, independent, transparent analysis as a basis of a good public discussion. And we won't unless we step back and go through proper processes.

... There's a big literature about the political economy of trade policy which explains why it's so easy to go down a path that is not in the national interest. So I myself having lived through the debates of the '60s and the '70s am not greatly challenged by a strong weight of opinion from interested parties in favour of a particular style of trade policy. If a lot of us had been daunted by that we wouldn't have had the liberalisation and the strong growth in recent times in Australia.<sup>5</sup> ..

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5 Professor Ross Garnaut, Vital Issues Seminar "Australia – United States Free Trade Agreement" Parliament House, 17 June 2004

## Chapter 3

3.1 The following Chapter is a 'snap shot' of the key topics that were raised during the Senate Committee's inquiry. Each topic is briefly described in the context of the AUSFTA and, when relevant, Australia's policy and/or legislative framework.

3.2 The Senate Committee is still considering evidence and there are still several key witnesses to be interviewed. As a consequence each topic's key issues are still under discussion but some of the main concerns raised to date have been broadly outlined in this Chapter.

3.3 It has been made clear to the Select Committee that the AUSFTA is very much a 'living' document. Throughout the text there are clauses and letters that provide for the ongoing review of certain aspects of the Agreement – usually by way of committees and working groups, and occasionally by discussions at the level of government officials. The extent and nature of the power bestowed on these in-built review mechanisms varies. It will be important for the government to manage these mechanisms carefully. A list of the relevant provisions is included as an appendix to this Interim Report (Appendix B).

3.4 Once all the evidence and submissions have been considered, the arguments will be expanded and the findings presented, when the Committee presents its Final Report to the Senate.

## Key Topics

### Pharmaceuticals

#### *General - AUSFTA Chapter 2 – Annex 2C*

3.5 Chapter 2, National Treatment and Market Access for Goods, Annex 2-C Pharmaceuticals covers the principles and commitments relating to the treatment of pharmaceuticals. Annex 2-C sets out agreed principles recognising the value of innovative pharmaceuticals; contains requirements for transparency of process for listing and pricing of pharmaceuticals; establishes a Medicines Working Group to promote 'mutual understanding' of issues, including the importance of pharmaceutical research and development; seeks greater regulatory cooperation; and permits manufacturers to use the internet to disseminate information.

3.6 An exchange of side letters to the AUSFTA clarifies Australia's understanding of the commitments made in relation to the Pharmaceutical Benefits Scheme (PBS). It reaffirms Australia's commitment to increase transparency of the PBS listing process and provides the opportunity of an 'independent review' for decisions not to list a drug.

3.7 Chapter 17 contains a number of commitments relating to patent law for pharmaceutical products. They include: offering the possibility of extending the term of patent where there has been a delay in the marketing approval process (Article 17.10.2); providing measures to prevent marketing approval of a generic drug before a

patent covering the product has expired (Article 17.10.4(a)); and requiring a patent owner to be notified of an application for marketing approval of a generic version of a patented product before the patent expires (Article 17.10.4(b)).

3.8 In addition, Chapter 21, Institutional Arrangements and Dispute Settlement, is applicable to the chapters relating to pharmaceuticals, namely Chapter 2 (including Annex 2-C on pharmaceuticals) and Chapter 17 (which contains commitments relating to pharmaceutical patents). The dispute resolution provisions under Chapter 21, Article 21.7, require that a panel of three people with experience in law, international trade, or international trade-related dispute resolution be set up to resolve matters of dispute.

3.9 Australia is widely regarded as having one of the most equitable, accessible and efficient pharmaceutical benefits schemes in the world. Currently, the Australian Government subsidises the cost of listed drugs so that consumers pay less for medicines. Around 80% of all prescription medicines available at pharmacies are subsidised through the PBS. The PBS covers more than 158 million prescriptions each year at a cost of over \$4.5 billion per year.<sup>1</sup>

3.10 The established process for listing medicines on the PBS involves assessment by the Pharmaceutical Benefits Advisory Committee (PBAC), an independent expert body whose membership includes doctors, other health professionals and a consumer representative. When considering an application for listing, the PBAC takes into account the medical conditions for which the medicine has been approved for use in Australia; its clinical effectiveness, safety and cost-effectiveness (value for money) compared with other treatments.<sup>2</sup>

3.11 If a drug is recommended for listing on the PBS, and the Minister accepts that recommendation, the drug is referred to the Pharmaceutical Benefits Pricing Authority (PBPA), which negotiates with the manufacturer on the price at which the drug will be listed on the PBS and advises the Minister accordingly.<sup>3</sup> The cost of listed medicines has generally been kept relatively low because the PBS is effectively the single buyer in a market with a number of competing pharmaceutical sellers.<sup>4</sup>

### ***Issues under consideration***

3.12 The sustainability of the PBS and future of drug prices in Australia is an issue of interest not just to one sector of the Australian economy or community, but one that directly impacts on all Australians. Should the AUSFTA result in higher prices for pharmaceuticals, Australians would bear this cost either indirectly, as increasing tax

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1 [www.health.gov.au/pbs/general/aboutus.htm](http://www.health.gov.au/pbs/general/aboutus.htm), 26 May 04

2 [www.health.gov.au/pbs.general/list\\_on\\_pbac.htm](http://www.health.gov.au/pbs.general/list_on_pbac.htm), 26 May 04

3 Department of the Parliamentary Library, "The Pharmaceutical Benefits Scheme: Options for Cost Control", Current Issues Brief no. 12, 2001-02, p.2

4 Department of the Parliamentary Library, "The Pharmaceutical Benefits Scheme: Options for Cost Control", Current Issues Brief no. 12, 2001-02, p.8

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revenue is need to support the PBS, or directly through higher out-of-pocket expenses for non listed drugs.

3.13 Under the AUSFTA, Australia has made a number of commitments to 'increase transparency' of the PBS listing process, including making available an independent review process that can be invoked by an applicant after an adverse decision of the PBAC. It has been argued that these changes will open the PBS listing process to increased lobbying from pharmaceutical companies, and possibly compromise the principles on which the PBAC decision making process is based. In particular, it is asserted that the 'independent review' process is likely to take more account of the principles set down in Annex 2-C (recognising the value of 'innovative pharmaceuticals' and 'research and development'), than the PBS principles of cost-effectiveness and equity of access to affordable medications.

3.14 In response to these concerns, the government has issued press releases assuring Australians that nothing in the AUSFTA with the United States will lead to an increase in pharmaceutical prices, and that the fundamental architecture of the PBS, including the pricing and listing policies, remain unchanged by the Agreement.<sup>5</sup> However, to date the government has not been able to back up these assurances with detail on how the changes that are required will be implemented, thus the actual effect of the changes cannot be conclusively determined. The AMA has stated in its submission that the Australia government assurance that the draft AUSFTA will not lead to overall increase in the price of drugs in the PBS is basic to the AMA support<sup>6</sup>. However, they do remain concerned at suggestions by the United States Finance Committee, that the PBS process for patented drugs would increase as the of the AUSFTA.<sup>7</sup> The AMA also stated that the PBS is not simply about pharmaceutical products, it is about health outcomes<sup>8</sup>.

3.15 Likewise, concerns have been raised about the potential impact of the Medicines Working Group on the Australian government's capacity to set its own pharmaceutical policies. Critics have argued that the Medicines Working Group will simply be a forum for the US pharmaceutical lobby, through the United States government, to put pressure on the Australian government's policies of providing equitable access to affordable medicines with a view to seeking higher prices for drugs.

3.16 The terms of the AUSFTA provide scant detail about the exact composition and role of the Medicines Working Group, save that it will comprise appropriate federal officials and its objective is: "to promote discussion and mutual understanding of issues relating to this Annex..., including the importance of pharmaceutical

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5 The Hon Mark Vaile, MP, Media Release, 16 June 1004, accessed at: [http://www.trademinister.gov.au/releases/2004/mvt046\\_04.html](http://www.trademinister.gov.au/releases/2004/mvt046_04.html), and 21 May, accessed at: [http://www.trademinister.gov.au/releases/2004/mvt036\\_04.html](http://www.trademinister.gov.au/releases/2004/mvt036_04.html)

6 submission 105, p:1 (AMA)

7 submission 105, p:1 (AMA)

8 submission 105, p:1 (AMA)

research and development to continued improvement of healthcare outcomes." DFAT's Guide to the Agreement simply states that: "the details of how the Working Group will operating and the frequency of meetings are yet to be decided."<sup>9</sup> Recently at the PBS round table discussion, the government provided some further information about the role of the Medicines Working Group.<sup>10</sup>

3.17 The Select Committee believes that it is imperative that any implementing legislation introduced to give effect to the AUSFTA contains appropriate clauses setting out the structure and powers of the Medicines Working Group and specifying the manner in which that Working Group shall interact with the decision-making processes and powers of the PBAC and the PBPA.

3.18 It may be that the Australian government takes a different view of the future role of the group to the United States government, which clearly believes that it will be a forum for furthering its stated trade agenda on pharmaceuticals. The possibility that this working group will create a form of institutionalised pressure that will undermine key elements of Australian public health policies is one that the Committee cannot dismiss lightly without further consideration.

3.19 Pharmaceutical patents are a key area of concern for the Committee is the possible impact of the changes to patent law required by Chapter 17 of the AUSFTA. Several witnesses have argued that these changes will provide scope for United States pharmaceutical companies to seek to extend the life of pharmaceutical patents and delay the introduction of more cost-effective generic medicines which typically reduce drug prices overall.

3.20 The net result would be that Australians would pay more for certain medicines than they would otherwise have done without this AUSFTA. Some weight is given to these concerns in statements included in the United States International Trade Commission report on the effects of the AUSFTA. It notes that the AUSFTA "extends patent and trade secret protections beyond *TRIPS* and other applicable international agreements"<sup>11</sup>, and lists the pharmaceutical industry as one beneficiary of these changes.

3.21 The pharmaceutical patents aspect of the AUSFTA is yet another area where, without seeing the implementing legislation, it is difficult to assess the likely impact of the changes agreed to by the Australian government. Even then, the Senate Committee would want to know what steps the government will take to ensure that the patent system is not open to abuse by pharmaceutical companies seeking to extend their monopoly over a particular medication beyond a fair period as set out in current patent law.

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9 Department of Foreign Affairs and Trade, *Australia-United States Free Trade Agreement: Guide to the Agreement*, March 2004.

10 Committee Hansard (AUSFTA Inquiry), PBS round table, 21 June 2004, (Lopert & Deady)

11 United States International Trade Commission, *U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects*, USITC Publication 3697, May 2004, p.115

3.22 If the enabling legislation does indeed open the way for pharmaceutical companies to effectively extend the term of their patent monopoly, thus delaying the introduction of generic drugs, it would seem that the government's claim that drug prices will not rise as a result of the AUSFTA is not sustainable. This is an important matter for the future of the public health system in Australia, and not one that should be skimmed over for the sake of potential gains in other areas of the economy.

3.23 Regarding the issues concerning blood, an exchange of letters (attached to Chapter 15 dealing with Government Procurement) deals with trade in blood plasma products and blood fractionation services. Should a current review (in Australia) of arrangements for plasma fractionation services result in suppliers of such services being selected through tender processes, these services will fall under the AUSFTA provisions. While Australia's TGA will continue to regulate blood products, wherever they are produced, and while Australia can preserve its policy on using plasma collected from Australian donors, concerns have been expressed about our capacity to ensure the implementation of such policies and regulations.

## **Intellectual Property**

### ***General -AUSFTA Chapter 17***

3.24 Chapter 17 of the AUSFTA, the Intellectual Property (IP) Chapter, consists of 29 Articles and 3 Exchanges of Letters. It is the largest chapter in the AUSFTA and includes the following subject matter: copyright; trademarks; domain names; industrial designs; patents; regulated products; and IP enforcement.

3.25 One of the key obligations in Chapter 17 requires Australia to extend its term of copyright protection by an additional 20 years. Article 17.4.4 provides for an extension of the term of copyright protection in Australia from 50 years from the death of the author to 70 years after the death of the author, in line with United States law. There is no obligation on Australia to enact retrospective protection of copyright material that has already fallen into the public domain.

3.26 Chapter 17 also commits Australia to ratifying certain international IP agreements such as the World IP Organisation (WIPO) Copyright Treaty 1996. Australia has already implemented most of its obligations under the WIPO Copyright Treaty, however the AUSFTA requires Australia to go further in some respects, to more closely align with United States law. For example, Article 17.4.7 requires a ban on devices for circumventing technological protection measures (TPMs) and extends the scope of criminal offences relating to the manufacture and sale of circumvention devices. Australia will have a two year period from date of entry into force of the AUSFTA to implement its obligations in relation to TPMs.

3.27 Article 17.11.29 and Side Letter 1 cover Internet Service Provider (ISP) liability obligations. These obligations establish a system for dealing with allegedly infringing material on ISP systems and networks. An ISP will receive 'safe harbour' immunity when dealing with alleged copyright infringements on their system or networks if they comply with certain conditions.

3.28 The implementation of some of Australia's obligations under the IP chapter will require amendment to current IP legislation.

***Issues under consideration***

3.29 With the inclusion of IP in the AUSFTA, there is some debate in evidence received by the Committee about whether it is appropriate to include IP in an agreement that has the aim of advancing free trade. IP rights are generally seen as a restraint on commerce since they can be used to preserve monopoly power and to inhibit technological developments. The adoption of United States standards of IP protection in a way that overrides domestic law reform processes is a precedent-setting step for Australia.

3.30 Several submissions argued that negotiation of Chapter 17 was a failure of proper policy making and that the level of detail and lack of flexibility in the AUSFTA is inappropriate. This may restrict future development of IP law and policy in Australia by making Australia's position irreversible regardless of success or failure of measures under the AUSFTA, unless the United States consents to any future changes.

3.31 Australia's lead negotiator, Ms Toni Harmer from DFAT, has disagreed with these assertions, arguing that the IP chapter strengthens Australia's IP protection at the same time as providing flexibility to create appropriate exceptions.<sup>12</sup>

3.32 Chapter 17 is selective in the way that it requires Australia to bring its IP laws into line with the United States. Australia is generally only required to adopt United States standards where they broaden the scope of IP protection. Concern has been expressed about the lack of consultation and evaluation throughout the AUSFTA negotiation process in relation to Chapter 17 and the significant legislative and policy changes to Australian IP law which it requires.

3.33 Some parts of Chapter 17 are at odds with previous assurances by the Commonwealth Government that they would not be included in the agreement. For example, Trade Minister Mark Vaile is reported as saying that the copyright term extension was one of the 'standout issues' where Australia and the United States remained at odds in the IP part of negotiations. Specifically, he is quoted as saying that '(t)here is a whole constituency out there with a strong view against copyright term extension and we are arguing that case'.<sup>13</sup>

3.34 Ms Harmer has told the Committee that the Commonwealth Government consulted widely about the impact of the AUSFTA on IP law in Australia, and will continue to do so.<sup>14</sup>

3.35 On matters relating to extension of copyright protection term, including: Harmonisation of Australian and United States IP law; and costs/benefits to

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<sup>12</sup> *Transcript of Evidence*, 18 May 2004, p. 101 (Harmer, DFAT).

<sup>13</sup> Australian Financial Review, *'Mickey Mouse holds key to the future'*, 8 December 2003.

<sup>14</sup> *ibid*, p. 102.

authors/owners versus costs/benefits to users, many submitters have argued that the extension of the copyright protection term in Australia will come at a cost to the Australian economy since Australia is a net importer of IP. Further, any increased copyright protection would tend to benefit foreign copyright owners at the expense of local consumers. The AUSFTA will require Australia to extend its copyright term. However a comprehensive independent analysis of the costs and benefits of the extension has not yet been undertaken.

3.36 The extension of copyright comes despite a recommendation in 2000 by the Australian Intellectual Property and Competition Review Committee that the current copyright protection term should not be extended and that no extension of the copyright term should be introduced in the future 'without a prior thorough and independent review of the resulting costs and benefits.'<sup>15</sup> In 2001, the Commonwealth Government accepted that recommendation, stating that it had 'no plans to extend the general term for works'.<sup>16</sup>

3.37 The inclusion of the copyright extension in the AUSFTA also contradicts assurances by the Commonwealth Government throughout the negotiation process that it was resistant to such an inclusion.

3.38 Despite the Commonwealth Government's claims that harmonisation with United States law will be economically beneficial through increased trade and investment,<sup>17</sup> the Committee has received evidence that the AUSFTA will not result in a complete harmonisation of Australian copyright laws with those of many of Australia's major trading partners, including the United States. There will remain important areas in which there is a lack of harmonisation.

3.39 Further, while the Committee received evidence from groups who strongly support the copyright extension, concern was repeatedly expressed that Chapter 17 is protective of the interests of copyright owners at the expense of users. This would significantly alter the current balance in favour of owners and may be exacerbated because the AUSFTA does not harmonise aspects of United States law which are protective of the interests of members of the public. The result of introducing these provisions in Australia without making appropriate adjustments to strengthen the interests of users may result in copyright law in Australia being even more protective of owners than United States law.

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<sup>15</sup> IP and Competition Review Committee, *Review of IP legislation under the Competition Principles Agreement*, September 2000, p. 13.

<sup>16</sup> *Government Response to IP and Competition Review Recommendations - Information Package*, at <http://www.ag.gov.au/www/securitylawHome.nsf/Web+Pages/A6C3825011D8A8B1CA256C33000CF9A?OpenDocument>, p. 1 (accessed 7 June 2004).

<sup>17</sup> See, for example, Attorney General, Philip Ruddock, "Opening Address – Australian Centre for IP and Agriculture Conference: Copyright: Unlucky for Some", <http://www.ag.gov.au/www/ministerruddockhome.nsf/Alldocs/RWP21E60A98ACC4ECE2CA256E3B0080AA84?OpenDocument&highlight=unlucky%20for%20some> (accessed 16 June 2004).

3.40 For example, Australia's standard of originality for copyright is much lower than the threshold in the United States. Further, the 'fair use' defence to copyright infringement in the United States operates more broadly than the Australian 'fair dealing' defences. In 1998, the Copyright Law Review Committee recommended 'the expansion of fair dealing to an open-ended model' in Australia.<sup>18</sup> However, this recommendation has not been implemented in Australian law and the Commonwealth Government has shown no intention of adopting a flexible 'fair use' exception in the future.

3.41 Regarding the issues of 'contracting out' of exceptions to copyright infringement the AUSFTA allows copyright owners to transfer their copyright rights by contract which would mean that contracts could prevail over exceptions to copyright infringement such as 'fair use'. There are some doubts as to whether the relevant provision in the AUSFTA actually achieves this intention. The Commonwealth Government has indicated that this provision is consistent with the current law in Australia,<sup>19</sup> but this directly contradicts a recommendation of the Copyright Law Review Committee in its 2002 report, *Copyright and Contract*, that parties should not be allowed to contract out of exceptions.

3.42 There have been issues raised regarding anti-circumvention of TPMs, including geographical coding; impact on open source software, and impact on parallel importation. Chapter 17 requires Australia to ban devices for circumventing TPMs and extends the scope of criminal offences relating to the manufacture and sale of circumvention devices. The AUSFTA takes a much more expansive definition of 'controlling access' to a work than is embodied in current legislation. This is despite the fact that the Phillips Fox report of the Digital Agenda Review (January 2004), commissioned by the Attorney-General's Department, recommended that TPMs should be limited to devices that prevent or inhibit the infringement of copyright.

3.43 Further, litigation is still taking place through the Australian courts to decide whether regional coding on DVDs is an effective TPM. If the final decision is that it is, then the more stringent provisions in the AUSFTA could effectively reintroduce restrictions on parallel importing of DVDs (and other works), only a few years after Australia has relaxed such restrictions. The Australian Competition and Consumer Commission has repeatedly expressed its opposition to the concept of regional coding.

3.44 The open source software industry is particularly concerned with the TPM provisions of the AUSFTA, arguing that the provisions will severely limit the industry's ability to function and develop.

3.45 Regarding the matter of increased burden on ISP, including obligations relating to 'safe harbours', the AUSFTA requires Australia to introduce a more

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<sup>18</sup> Copyright Law Review Committee, *Simplification of the Copyright Act 1968 Part 1: Exceptions to the Exclusive Rights of Copyright Owners*, September 1998, Recommendation 2.03.

<sup>19</sup> *Australia-United States Free Trade Agreement, Guide to the Agreement*.

prescriptive regime than it currently has for creating 'safe harbours' for ISPs. The Phillips Fox Digital Agenda Review recommended that changes should be made to Australia's procedures to provide greater certainty, however it did not recommend such a detailed approach as that taken in the AUSFTA. The level of detail may not allow sufficient flexibility in the implementation process for Australia.

3.46 The AUSFTA differs from current laws in Australia in relation to the process of temporary reproduction (caching) of material as part of a telecommunications process. In Australia, the caching exemption under the *Copyright Act 1968* does not distinguish between automatic and non-automatic caching. The AUSFTA gives ISPs 'safe harbour' immunity only if caching is carried out through an automatic process. Educational institutions have also expressed concerns about issues relating to temporary copying.

3.47 Regrading software and patents, the AUSFTA extends patents to 'all fields of technology'. This is arguably very damaging to the software industry, as well as consumers, as it limits development opportunities and decreases competition. Note that issues relating to pharmaceutical patents are addressed above in the Pharmaceutical section.

3.48 There have been concerns raised about enforcement measures. The AUSFTA introduces into Australia increased civil and criminal penalties and procedures for breaches of IP law. This includes the introduction of criminal penalties where currently only civil remedies exist.

3.49 The United States approach to IP law is quite different to the approach in Australia and has been widely criticised, even within the United States. Australian copyright law is more pragmatic and regulated, depending less on litigation and the development of case law than in the United States. Submissions pointed out that it may not be appropriate for Australia to adopt features of, for example, the United States *Digital Millennium Copyright Act 1998* (DMCA). However, Ms Harmer from DFAT told the Committee that the AUSFTA does not require Australia to replicate the DMCA word-for-word.<sup>20</sup>

3.50 Concerns have been expressed about disputes that may arise because of Australia's chosen form of implementation of its AUSFTA obligations. The Australian negotiators have downplayed the significance of the dispute resolution chapter (Chapter 21) of the AUSFTA.<sup>21</sup> However, since Chapter 17 is based largely on United States law, it might be argued that the United States has certain expectations about what it means and will insist that its provisions be interpreted in accordance with United States law. This may be regardless of Australia's views of its legal effect and interpretation.

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<sup>20</sup> *Transcript of Evidence*, 18 May 2004, p. 102 (Harmer, DFAT).

<sup>21</sup> *Transcript of Evidence*, 10 May 2004, pp. 15-16 (Deady, DFAT).

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## Sanitary and Phytosanitary Measures

### *General - AUSFTA chapter 7*

3.51 To understand the complexity of the Sanitary and Phytosanitary (SPS) provision under Chapter 7 of the AUSFTA, it is important to understand its relationship with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and the GATT Settlement of Dispute provisions.

3.52 The AUSFTA reaffirms existing commitments to the WTO SPS Agreement and consequently the AUSFTA does not contain a separate provision for dispute settlement on SPS matters because the WTO dispute mechanisms apply.

3.53 Currently there are a number of regulatory agencies in Australia and the United States with the responsibility for SPS matters. The Australian government's quarantine policies are delivered through Biosecurity Australia under the following legislative frameworks: the *Quarantine Act (1908)* and subordinate legislation, the requirements of the *SPS Agreement* and with the standards for import risk analysis developed by the Office International des Epizooties (OIE) and under the International Plant Protection Convention (IPPC)<sup>22</sup>.

3.54 Within Australia, risk analysis is considered to be the foundation stone on which all quarantine policies and actions are built. Biosecurity Australia undertakes import risk analysis as a process to identify, assess and manage the risks associated with the importation of animals and animal-derived products, and plants and plant-derived products. Any major policy changes to date in relation to Australia's quarantine framework have been made in a manner consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and current Government policy. Biosecurity Australia has enormous responsibility to ensure that the integrity of the scientific rigour which forms the basis of the import risk analysis, policies and regulations of sanitary measures is maintained.

3.55 The Animal and Plant Health Inspection Service (APHIS) is one of the main agencies responsible for protecting and promoting United States agricultural health, administering the Animal Welfare Act, and carrying out wildlife damage management activities.<sup>23</sup> Like Australia, the United States operates in a manner consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

3.56 The continuation of both Australia and the United States commitment to the WTO SPS Agreement is clearly stated in Chapter 7 Article 7.3.1 of the AUSFTA. This bilateral agreement goes further by allowing, under Article 7.4.5, the establishment of a bilateral SPS committee, which will consist of representatives from both Australia and the United States who have the responsibility for SPS matters.

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22 [www.affa.gov.au/docs/market\\_access/biosecurity/index.html](http://www.affa.gov.au/docs/market_access/biosecurity/index.html) viewed on 25 May04

23 [www.aphis.usda.gov/ipa/about/welcome.html](http://www.aphis.usda.gov/ipa/about/welcome.html) viewed on 25 May04

3.57 One aim of this committee is to increase the mutual understanding of SPS measures and regulatory processes of each country. This committee will also provide a forum where the various countries can interact and exchange information on technical matters. It can establish additional working groups in addition to the Standing Technical Working Group on Animal and Plant Health Measure – the provisions are set out under Annex 7.

### ***Issues under consideration***

3.58 There is a considerable amount of concern about the need to establish an SPS Committee and a Technical Working Group, and what their role and influence will actually be. Some of these concerns are underpinned by the perception that Australia and the United States, at times, use SPS measures as a trade barrier. In the Australian context, particularly as we are an island nation, the integrity of our scientifically based import risk assessment is of paramount importance to the well-being of our environmental, agricultural and aqua-cultural sectors.

3.59 There have been some assurances<sup>24</sup> that the SPS committee and the technical working group will provide a forum for dissemination of information and discussion on technical and scientific interest. Challenges to the decision-making process are allowable but only on the basis of science<sup>25</sup>.

3.60 Many have argued that Australia's scientifically based quarantine regime will be compromised under the influences of an SPS committee and Technical Working Group. This perception is reinforced by statements made in the United States<sup>26</sup> that under the AUSFTA certain SPS restrictions will be addressed through that group. The United States is one of the more frequent users of WTO dispute settlement provisions on sanitary and phytosanitary restrictions<sup>27</sup>.

3.61 Mutual recognition, awareness and discussion as a result of interaction between each country's quarantine regulations regimes is desirable. However, it will not take much for Australia to lose its 'clean and green' status if an invasive disease or pest enters the agricultural and aquacultural industries. There is no room for Biosecurity Australia to be pressured to compromise its robust scientifically based import risk assessment regime. To do so would see Australia lose its competitive advantages as a nation with relatively low disease status.

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24 Transcript, The Hon. Mark Vaile MP, Minister for Trade, Australia "Transcript of doorstep interview following Australia-US FTA signing" 18 May 2004 and *Transcript of Evidence* 18 May 2004, p:5, (Greville, DAFF)

25 *Transcript of Evidence* 18 May 2004, p:4, (Greville, DAFF)

26 United States International Trade Commission, "US-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects", May 2004, p: 54, 56, 59

27 *Transcript of Evidence* 18 May 2004, p:25, (Gosper, DFAT)

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## **Agriculture**

### ***General – AUSFTA Chapters 2 and 3, Annex 3-A; Tariff Schedules – Annex 2-B***

3.62 Chapter 2 sets out the tariff elimination schedule for agricultural products and Chapter 3 (Agriculture) establishes a Committee on Agriculture, institutional provisions and safeguard measures. Procedures for the elimination of tariffs and the establishment of duty-free tariff rate quotas on some agricultural products are set out in the Tariff Schedules.

3.63 With respect to United States Tariffs, five main categories will be established: existing zero tariff, immediate tariff elimination, and elimination of tariffs in equal annual instalments over 4, 10 and 18 years. A few products are covered by additional staging categories (e.g. beef, avocados and wine).

3.64 No provision is included for changes to tariffs on sugar or sugar products, nor for a change to the above-quota duty rate for dairy products. For dairy, there is an increase in the volume of the duty-free quota available. Agricultural tariffs will be eliminated over time except for these two industries.

3.65 Most Australian tariff rates on agricultural products are already zero. The remainder will be eliminated immediately the Agreement enters into force.

3.66 United States Tariff Rate Quotas will apply to beef, dairy, tobacco cotton, peanuts and avocados. The Agreement provides for the quota limits to be progressively increased during the tariff elimination period.

3.67 For beef, in year 1 the duty rate within the quota will be reduced to free and in subsequent years the quota level will be progressively increased. From years 9-18 the above-quota duty rate will be progressively reduced to zero.

3.68 A safeguard arrangement will apply to imports exceeding 110% of the additional AUSFTA quota during the 18-year tariff elimination period. After that the level of duty-free imports will be unlimited but a price based safeguard will apply. This mechanism can only apply to imports exceeding the year 18 quota level plus an additional 420 tonnes per year from year 19. However, unlike the WTO agreements on safeguards, AUSFTA does not require that there be a causal link between the surge in imports and the injury.

3.69 A number of dairy products will be subject to quota; some of these already have an agreed WTO quota. An additional quota volume will be allocated for each product and the in-quota duty rate reduced to zero immediately. The additional quota amounts will then be increased by 3-6% per year after year 1. The duty rates on all non-quota dairy products will be reduced to zero over the 18-year tariff elimination period. The quota and duty on Goya cheese will also be eliminated over this period.

3.70 New quotas will apply to tobacco, cotton, peanuts and avocados. For tobacco, cotton and peanuts, the year 1 quota will be increased by 3% per year and the outside quota tariff will be eliminated over 18 years. Avocados will have two seasonal quotas from year 2. A base quota of 1500 tonnes will apply between 1

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February and 15 September and a further amount of 2500 tonnes may enter duty-free between 16 September and 31 January. The outside quota tariff will be eliminated over 18 years.

3.71 A horticulture price-based safeguard applies to a limited number of horticulture products listed in Section A of Annex3-A. It will apply if the FOB price of Australian products is lower than the specified trigger price for that product. The trigger price is the average of the prices applying in the two lowest years of the previous five years. The safeguard is assessed for each shipment individually. After the 18 year tariff elimination period these products will be duty free and safeguard free.

3.72 The AUSFTA also declares that the two countries will co-operate on seeking the reform of international agricultural products in the WTO and other forums. A Committee on Agriculture will be established and will meet annually.

3.73 Both countries have agreed not to use export subsidies on agricultural products traded into the other's market. The two countries have agreed to co-operate to remedy the effects of export subsidies applied by third parties.

#### ***Issues under consideration***

3.74 The complete exclusion of the sugar industry from the Agreement has provoked considerable discussion. The public debate has resulted in the announcement of a \$440 million compensation package for the industry. This, in turn, has raised the question of whether other industries adversely affected by the Agreement will receive similar assistance packages. It has also been suggested that Australia's acceptance of this omission will weaken our negotiating position when seeking an ambitious reform package for agricultural products in the WTO.

3.75 The need for an 18 year phase-in period before some tariffs and quotas are completely eliminated has been questioned. This seems to be an unnecessarily long period for industries to adjust to the new level of competition.

3.76 There has been considerable disquiet among commentators that the Doha Round negotiations have been neglected during the negotiation of the AUSFTA. There is concern, also, that so much time and so many resources have been applied to this Agreement, that Australia and the United States will be unable to regain the necessary momentum to achieve a satisfactory outcome in the WTO negotiations.

3.77 As mentioned above, there is already concern in Australia over the need for an 18 year phase-in period, which seems unreasonably long. The extension of safeguards beyond that time seems to be completely against the spirit of the Agreement.

3.78 There is an absence of a most favoured nation clause. Such a clause would require the United States to extend to Australia treatment no less favourable than that accorded to agricultural products from a third country. Such a clause would require the United States to pass on to Australia any concessions it negotiates on agricultural products in a trade agreement with any third country, e.g. Chile or NAFTA. This may become extremely important if the United States is successful in negotiating the

proposed Free Trade Area of the Americas, which would include several of Australia's main competitors in agricultural exports.

3.79 The National Farmers Federation<sup>28</sup> while expressing disappointment on the deal with agriculture stated that they do recognise that there are some benefits for agricultural producers and therefore support the deal. The NFF also indicated in its evidence that the AUSFTA would be enhanced with the inclusion (through an exchange of letters) of a most favoured nation provision.<sup>29</sup> This raises the issues as to why a most favoured nation provision has not been included for agriculture while it has been included in the Chapters applying to Services (Article 10.3) and Investment (Article 11.4). A most favoured nation provision would allow Australia equal treatment with any market access opening the US may grant on agriculture to other countries in other FTAs they may negotiate.

## **Manufacturing and Labour**

### ***General - AUSFTA including chapters 2, 4, 5 & 18***

3.80 Chapters of the AUSFTA affecting the manufacturing sector include Chapter 2 (National Treatment and Market Access for Goods), Chapter 4 (Textiles and Apparel) and Chapter 5 (Rules of Origin).

3.81 Chapter 2 applies to trade in all goods and commits both Australia and the United States to non-discriminatory treatment in trade in goods. Only those goods substantially made or transformed in Australia or the United States, which qualify under the rules of origin in Chapter 5, benefit from the commitments contained in Chapter 2. Chapter 2 consists of 13 Articles, 3 Annexes and an exchange of letters. It includes the following subject matter: national treatment; elimination of customs duties (tariffs); temporary admission; waiver of customs duties; import and export restrictions; and export taxes.

3.82 Under Article 2.2 of Chapter 2, Australia and the United States have agreed to abide by their WTO commitments to provide National Treatment. Essentially this means that Australia and the United States will provide the same treatment to imported goods from each other as they do to domestically produced goods. Under Article 2.3, tariffs on originating goods of the other party will be eliminated. The AUSFTA specifies whether the particular category of good will be duty free from the date the agreement comes into force, or will be subject to removal over a specified period.

3.83 Chapter 5 sets out the rules for determining which goods are originating and therefore eligible for preferential tariff treatment under the AUSFTA. The chapter consists of 17 Articles and an Annex.

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28 Committee Hansard, (AUSFTA Inquiry), 5 May 2004, p133 (Corish, NFF)

29 Committee Hansard, (AUSFTA Inquiry), 5 May 2004, p147 (Corish, NFF)

3.84 Chapter 4 deals with issues affecting the trade in textiles and apparel. The chapter includes emergency safeguard mechanisms, rules of origin and customs cooperation. An Annex to Chapter 4 sets out the product-specific rules of origin applying to textiles and apparel which vary considerably depending on the particular product. The rules of origin which apply to textiles and apparel are based on a change in tariff classification approach and apply the stringent 'yarn forward' test. However, there are some exceptions to these rules of origin.

3.85 Chapter 18 (Labour) of the AUSFTA reaffirms both countries' obligations as members of the International Labour Organisation (ILO) and strives to ensure that the labour principles and rights stated in Article 18.7 are recognised and protected in domestic law.

3.86 The AUSFTA requires that each country effectively enforces its own domestic labour laws and that there be fair, equitable and transparent access to labour tribunals and courts. The AUSFTA recognises that it is inappropriate to encourage trade or investment that may weaken or reduce the protection afforded in each other's domestic laws.

3.87 There is a significant difference between Australia and the United States regarding the enforcement of labour laws. In the United States, labour laws are Acts of the United States Congress and are enforceable by actions of the federal government. Article 18.8.1 of the AUSFTA contains a definition of labour laws. The Australian Government is not able to enforce state labour laws. Therefore the AUSFTA has defined labour laws to mean Act/s of a parliament of Australia or regulation/s promulgated pursuant to such Act/s, directly related to the internationally recognised principles and rights set forth in Article 18.7. This means that the Australian Government would be responsible for a failure to enforce effectively either state or Federal laws. The Australian Government would be required to consult with the relevant state government should a dispute arise.

3.88 The dispute settlement procedures set out under Chapter 21 of the AUSFTA apply to the Labour Chapter in that the members of the panel chosen to determine the dispute are required have expertise or experience in the matter under dispute. Penalties are applied in the form of fines up to US\$15 million p.a. paid to the Party complained against. Within Chapter 21, dispute provisions in relation to labour only apply to domestic labour laws which have not been effectively enforced. It should be noted that conformity to the ILO obligations are not subject to dispute settlement under Chapter 21.

### ***Issues under discussion***

3.89 Under the AUSFTA, the vast majority of tariffs on manufactured goods in both the United States and Australia will fall to zero on commencement. However, since United States manufacturing tariffs are generally lower than Australian manufacturing tariffs, Australian tariffs will have further to fall. This will eliminate an obvious benefit to the Australian economy. Concern was expressed that if Australia loses its tariff advantage it will be necessary for increasing numbers of employers to

either cease production or move offshore to the extent to which they will be unable to pass on their losses.

3.90 Evidence expressed concern that the rules of origin are complex and overly detailed and may not be sufficient to ensure that only products which are substantially produced in Australia or the United States will obtain concessional entry under the AUSFTA. The 'yarn forward' rule for textiles and apparel is said to significantly disadvantage Australia. Since up to 80% of Australia's textile and clothing industry sources its yarn from Asia the majority of the industry's goods will not qualify for tariff-free United States market access.

3.91 Australia has a significant trade imbalance with the United States and in 2002/2003 recorded the highest merchandise trade deficit with the United States than it has with any other trading partner. Since the trade imbalance is most acute in manufactured goods, it was argued that the AUSFTA will result in a worsening of the bilateral trade imbalance. It was pointed out that the potential for increased exports under the agreement needs to be offset with the likelihood of increased imports.

3.92 The Committee received evidence arguing that the AUSFTA will have a significant adverse impact on the manufacturing sector in Australia, including considerable exacerbation of job losses, particularly in the textile, clothing and footwear and the automotive components industries.

3.93 The Committee is concerned about the potential impact on domestic manufacturing industries and urges the Commonwealth Government to devise a structural adjustment package equivalent to the sugar package to assist affected industries.

3.94 The Committee also notes that the AUSFTA will have a considerable impact on state/territory governments and their responsibilities to assist small business to meet United States quality standards. The Commonwealth Government should engage in discussions with the states/territories with a view to assisting them in meeting these obligations.

3.95 Evidence suggested that there are a large number of non-tariff barriers which will also have the effect of limiting any increase in Australian exports to the United States. These include: United States product liability insurance costs; different United States technical standards; United States national security restrictions; and tax implications.

3.96 The Committee received evidence expressing concern that the Labour Chapter does not provide any enforceable mechanisms to address domestic laws in Australia and the United States which are not consistent with core labour standards under the ILO.

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## **Cross-border Trade in Services**

### ***General– AUSFTA chapter 10***

3.97 Chapter 10 of the AUSFTA relates to the cross-border trade in services, that is, services provided under specified conditions.

3.98 The chapter does *not* include service delivery where an entity in one Party has established a commercial presence in the territory of the other Party. Such an enterprise would fall under the investment provisions in Chapter 11.

3.99 The services sector includes a large number of relatively small enterprises engaged in a wide variety of activities. Consequently, it is difficult to point to a single regime of policies affecting the freedom of trade in this sector. Furthermore, because the trade in services usually does not require the movement of goods across borders, trade restrictions do not tend to occur in the form of tariffs. Two separate forms of trade restriction can generally be identified: policies artificially restricting the supply of services, and policies which increase the real resource cost of services.

3.100 In both Australia and the USA, there are currently relatively low barriers to trade in the services sector. Both countries, for instance, have under the General Agreement on Trade in Services (GATS) a range of obligations in relation to reducing barriers to trade in services.

3.101 Under chapter 10, each Party will accord the other Party national or most-favoured-nation treatment, whichever is more favourable for the service supplier. Neither Party may limit the number of service providers or require those providers to have an office in its territory. There is a range of exceptions specified in Annexes 1 and 2 of the AUSFTA.

### ***Issues under consideration***

3.102 A substantial number of submissions have raised concerns regarding the protection of local content requirements in the entertainment industry. Under the AUSFTA, the Australian government would lose its ability to negotiate or impose higher local content requirements for broadcasting. This is a particular concern in relation to subscription television and new media services, where the current local content and expenditure requirements are much lower than for free to air television. This may effectively shut the Australian entertainment industry out of subscription broadcasting and new media, as they compete with inexpensive, readily available American programming.

3.103 The services chapter of the AUSFTA operates on the basis of a 'negative list'. That is, a service falls under the AUSFTA if it is not specifically excluded in an Annex. This model may be contrasted with the GATS, which operates on the basis of a "positive list", where the GATS applies only to those services listed. A number of submissions expressed the view that Chapter 10 of the AUSFTA should operate on the basis of a positive listing of services to be affected. This would provide greater clarity and be consistent with the GATS agreement.

3.104 Under the AUSFTA, newly developed services automatically fall under the agreement. Australia would lose the ability to protect new, innovative services from full competition under 'infant industry' arrangements. Even if, in Australia's view, it is clearly in our national interest for a new service to be excluded from the AUSFTA, we will be unable to do so.

3.105 A number of submissions have called attention to the failure of the AUSFTA to allow for greater temporary movement of professional and business people across borders. The cross-border trade in the services industry, in particular, relies on the ability of the people delivering those services to travel freely between Australia and the USA. This may in fact be one of the most substantial impediments to free trade in cross-border delivery of services –yet it is untouched by the AUSFTA.

3.106 Substantial concern was raised about the treatment of government services offered on a commercial basis. Such services would not be exempt from American competition under the AUSFTA. Given the contraction of direct government services in recent years, and its replacement by outsourced services delivered privately on a competitive basis, substantial elements of Australian government service delivery may fall under the AUSFTA. Submitters expressed concerns about the suitability of arrangements which may see Australian government services delivered by outsourced companies not even operating in Australia.

3.107 It has also been raised that raised that Australia may not benefit from commercialisation of publicly funded Research and Development (R&D)<sup>30</sup>. The concern is related to the threat that the AUSFTA will result in job, production and R&D capacity and export opportunities being taken offshore<sup>31</sup>. The transfer of technology and domestic content requirements for R&D grants constrain the 'national benefits test' and may limit any future Governments capacity to implement national benefits criteria.

## **Financial Services**

### ***General– AUSFTA chapter 13***

3.108 Under chapter 13 of the AUSFTA, cross border financial services are treated separately from other cross-border services. Financial services, in this context, include banking, insurance, and similar incidental or auxiliary services. The separate treatment of financial services recognises the particular need for regulation in this sector.

3.109 Chapter 13 requires each Party to accord the other Party national or most-favoured-nation treatment, whatever is more favourable for the financial service supplier. It requires each Party to allow its nationals to freely purchase financial services from the other Party, and prevents Parties from artificially limiting the

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30 Federation of Australian Scientific and Technological Societies, media release, 15 June 2004

31 submission 528, p:1

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number or size of financial service providers. There is a range of exceptions to these general obligations, specified in Annexes 3 and 4 of the AUSFTA.

3.110 The AUSFTA sets out requirements for increased transparency in the administration and development of financial services regulations. The AUSFTA also provides for the establishment of a 'Financial Services Committee' with the task of examining ways to further integrate the financial services sectors of the two Parties, and discussing issues which arise in the implementation of this chapter.

3.111 Both the Australian and United States Financial Services markets are currently relatively open, although schemes for prudential regulation operate in both nations.

### ***Issues under consideration***

3.112 Australia and the USA both have sophisticated systems of prudential regulation to ensure that financial services are only undertaken by appropriate service providers, and to ensure that the industry handles clients' funds with probity. Concerns have been raised asserting that the AUSFTA must not become a means by which Australia's prudential regulatory regime is undermined.

3.113 The membership, role, and manner of operation of the Financial Services Committee (created under article 13.16, with further information in an exchange of letters) is not currently clear. For instance, the extent of industry involvement or consultation in the Committee's deliberations, and the extent of Parliamentary oversight of the Committee's outcomes, is not specified.

3.114 The impact of providing United States investors with direct access to trading screens on the Australian stock exchange (ASX). This proposal is not directly included in the AUSFTA, but is one of the items slated for progression by the Financial Services Committee. Currently, Australian investors can invest directly in securities on the New York Stock Exchange, but United States investors must pay intermediaries in Australia to trade on their behalf on the ASX. The extent to which this direct access would provide benefits to listed Australian companies is not yet clear.

## **Government Procurement**

### ***General – AUSFTA chapter 15***

3.115 Chapter 15 of the AUSFTA covers government procurement. It requires each government to afford the suppliers, goods and services of the other country the same treatment that applies to domestic suppliers, goods and services.

3.116 Australia's government procurement process is already largely unrestrained. The United States, however, has two pieces of legislation which currently impact upon Australian companies' ability to supply goods and services to the United States government: The *Trade Agreements Act* of 1979 (which prevents United States Federal Government agencies from accepting bids from Australian companies because Australia is not exempt under the Act); and the *Buy America Act* of 1933, which

imposes a 6% penalty on the supply of foreign goods to the United States Federal Government. The AUSFTA would remove the impact of these two Acts on Australian suppliers.

3.117 There are, however, a range of exceptions included in the AUSFTA, particularly in the areas of defence, and in policies designed to favour procurement from small and medium firms, and from minority groups in each nation.

3.118 In practice, the most significant impact on Australian government purchasing will be the imposition of new tender requirements, as set out in Articles 15.7 and 15.8 of the AUSFTA. Under these requirements, there is likely to be a larger number of open tenders (as opposed to selective or invited tenders) for Australian government procurement. The AUSFTA will also impose standards for the advertising of tenders, and requirements for the time between the announcement and the close of tenders.

### ***Issues under consideration***

3.119 While the size of the United States government procurement market is massive, submissions expressed some doubt about the likelihood of Australian companies substantially penetrating those markets. Submissions pointed, for instance, to the limited success Canadian companies have had in securing United States government contracts, despite their obvious advantage of proximity. As a result, the expected benefits from this chapter may be overstated.

3.120 Concern was expressed about the greater reliance on open tendering processes. Currently, limited tenders are used by government agencies where such a tender would be more efficient or less time consuming than full open tendering. The loss of this flexibility may result in increased costs to government without delivering a better outcome in terms of the final contract signed.

3.121 Concern was expressed that the AUSFTA may limit or remove the Australian government's capacity to implement policies to prefer services delivered by local companies, particularly in regional areas.

3.122 The extent to which State governments in both nations will be bound by this chapter of the AUSFTA is still extremely unclear, which means that the potential United States market available to Australian companies is also unclear.

3.123 The new process of 'supplier challenges' to government procurement decisions has the potential to increase the time taken to conduct procurement, decreasing the efficiency of those procurement operations without delivering a better outcome in terms of the final contract signed.

3.124 Some submissions argued that, either instead of or as well as concluding the AUSFTA, Australia should accede to the WTO's 'Agreement on Government Procurement'.

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## **Investment**

### ***General– AUSFTA chapter 11***

3.125 Chapter 11 of the AUSFTA relates to investment, which is defined very broadly to include not just investment in equity, debt, derivatives or similar financial instruments, but also activities including construction, management, revenue-sharing, the conduct of an enterprise, or the possession of property. Any activity which involves the commitment of capital or assumption of risk in return for the expectation of profit, may be considered investment for the purposes of the AUSFTA.

3.126 Under chapter 11, each Party will accord the other Party national or most-favoured-nation treatment, whichever is more favourable for the investor. In particular, parties will be unable to impose performance requirements (such as a requirement to export certain proportions of goods or services, or requirements for local content or technology transfer) on investments. Parties will also be unable to require that their nationals be appointed to senior management positions. Finally, parties will be required to allow the free transfer of funds relating to covered investments, into and out of their territory. There are a range of exceptions specified in Annexes 1 and 2 of the AUSFTA.

3.127 The AUSFTA will have a particular impact on the operation of the Foreign Investment Review Board, which is currently notified of acquisitions exceeding \$50 million for existing businesses or \$10 million for new businesses. The threshold in both cases will rise under the AUSFTA to \$800 million.

### ***Issues under consideration***

3.128 A significant number of submitters expressed concern about the proposal to relax the FIRB notification thresholds by several orders of magnitude. An 8-fold rise in the threshold in the case of new businesses is extremely significant, and it seems inevitable that this would result in a reduction of the FIRB's capacity to protect Australian national interests.

3.129 Like the chapter on Services, this chapter operates on the basis of a 'negative list'. That is, a service falls under the AUSFTA if it is not specifically excluded in an Annex. Submissions raised concerns about the appropriateness of this model, and expressed a preference for a "positive list" where the AUSFTA would only apply to investment fields specifically listed.

3.130 It has been claimed that the impact of the liberalisation of investment will be the single biggest factor in determining the overall economic impact of the AUSFTA on Australia. However, the impact of this chapter depends substantially on second and third order 'dynamic' impacts, which are almost impossible to quantify using current modelling techniques. Moreover, the United States International Trade Commission has assessed that, while the AUSFTA will add transparency, it is not expected to generate significant amounts of new investment between the two countries. It is therefore difficult to arrive at a view about the overall economic impact.

3.131 Concern was expressed about the impact of investment liberalisation on labour laws and the environment, notwithstanding provisions such as Article 11.11 (relating to the environment). Submissions argue that the AUSFTA must not result in Australia losing the capacity to appropriately regulate for the protection of the environment, and the protection of workers' conditions.

3.132 The impact of the AUSFTA on research and development appears to be mixed. On the one hand, the investment provisions may increase Australian firms' access to venture capital. On the other hand, the decreased restrictions on foreign investment may result in large United States corporations taking over Australian companies which have received public R&D funding, thereby appropriating for the USA the benefits of research and development funded by Australia.

## **Environment**

### ***General – AUSFTA chapter 19***

3.133 An important provision under Chapter 19 Environment is the recognition of the rights of each Party to establish its own levels of domestic environmental protection. Each Party retains its right to exercise discretion with regard to investigatory, prosecutorial, regulatory, compliance and resource allocations decisions.

3.134 The Australian government has constitutional responsibility for implementing environmental international treaties and agreements and has particularly strong international commitments regarding oceans, endanger and migratory species and climatic change. However, most land based environmental issues are national rather than internationally focused.

3.135 In Australia, many environmental regulations fall under the administration of state governments - for example, land clearing. The Australian government is responsible for the administration of the *Environmental Protection and Biodiversity Act 1999*. This Commonwealth legislation provides a national framework for environment protection through a focus on protecting matters of national environmental significance and on the conservation of Australia's biodiversity<sup>32</sup>.

3.136 Under both Chapters 19 and 18 (Labour), each Party recognises that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Article 19.6 also recognises the right to strengthen capacity to protect the environment and to promote sustainable development in concert with strengthening of bilateral trade and investment relations. Parties will also explore ways to support further activities in relation to the Joint Statement on Environmental Cooperation.

3.137 It is well recognised within Australia that strong community ownership, involvement and appropriate enforceable legislation helps to protect Australia's

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32 Department of Environment and Heritage website – [www.deh.gov.au/epbc/](http://www.deh.gov.au/epbc/) viewed 17 June 04

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environment from the potential effects of mobile capital or other short-term profit objectives. While trade and the environment can be complimentary there is also the matter in which increases in GDP may lead to increases in the use of natural resources such as water, energy and land; so therefore what is gained in the short term, in a monetary sense, may be lost in the longer term if Australia's valuable but limited natural resources are degraded.

3.138 Under the Article 19.1 each Party shall ensure that its laws provide for and encourage high levels of environmental protections and shall strive to continue to improve their respective levels of environmental protection.

3.139 Under Chapter 11 Article 11.11 Investment and Environment, the provision is designed to protect the environment and the rights of each Party to regulate so that investment activities as it relates to Chapter 11 are carried out in a manner sensitive to environmental concerns. Furthermore, investor-state dispute provisions which have been included in other bilateral trade agreements with the United States do not apply to the environment provision under this AUSFTA. This means that private investors can not directly challenge government decisions<sup>33</sup>.

3.140 However, Article 19.7.5 does allow for dispute settlement provisions outlined in Chapter 21 to be applied to Article 19.2.1(a). This Article relates to the failure of either Party to effectively enforce their respective environmental laws. As in the case of the 'Labour' Chapter, Chapter 21 allows for the establishment of a panel, where the members chosen to determine the dispute are required have expertise or experience in the matter under dispute. The Joint Committee established under Chapter 21 will discuss environmental matters and offer opportunities for input from public and private parties. A key aim is to work towards environmental cooperation and collaborative consultation while enhancing international agreements on environmental matters.

### ***Issues under consideration***

3.141 There are some concerns that an assessment of the potential environmental impacts as a result of this AUSFTA has not been undertaken. The potential consequence both financially and environmental are yet to be explored, particular when considering the concerns raised about the provisions under Chapter 7 (SPS) and Australia's quarantine regime.

3.142 Even though there is not an explicit provision for investor-state dispute there are some concerns that private investor/s may, through their respective governments, raise a matter of concern. In that event, the governments must consult. Many of the concerns are due to unknown factors about how disputes will be handled and / or how the dispute results will impact financially and on Australia's natural resources.

3.143 There have been concerns raised regarding the provision relating to 'expropriation' under Chapter 11 and Chapter 22.3. These concerns relate to how these articles apply to taxation and potential claims for compensation, and the potential

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33 See dispute settlement section below for more information.

impact upon any future environmental levies, or taxes, and thus prohibiting the introduction of new taxes and levies to encourage environmental sustainability, including activities to reduce global warming impacts.

3.144 Concerns have been raised regarding the United States lack of disclosure of labelling of genetically modified food, as well as its challenging of EU labelling laws through the WTO. Given this history, there is a likelihood of the US bringing pressure to bear on Australia's labelling laws. These concerns persist even though under Article 8.5.3 there is not any recourse to dispute settlement regarding the acceptability of technical regulations of other Party.

3.145 The inclusion of water and water services (by not excluding them through any reservations) has the potential to limit or bring to a 'standstill' future state and local government regulation. This could have enormous implications any future government water reform agendas - particularly public water services that are delivered on a commercial basis.

## **Local Media Content**

### ***General – AUSFTA Annex I & II***

3.146 Under the AUSFTA, there are a series of Schedules contained within the Annexes that deal with non-conforming measures. Annex I-14 & I-15 and Annex II-6 to 8 & II- 9 relate to the following sectors: broadcasting, broadcasting and audiovisual services and advertising services. The obligations relevant for these sectors are national treatment, most-favoured nation treatment (although Annex II-6 to 8 also includes market access, while II-9 obligation is only most-favoured nation treatment) and performance rights. The measures relevant to those sectors are: *Broadcasting Services Act 1992* and *Radiocommunications Act 1992*.

3.147 The relationship between 'obligations' and 'measures' as they apply to the above-mentioned sectors are important because Annex I sets out, in accordance with Articles 11.13<sup>34</sup> and 10.6<sup>35</sup>, a Party's existing measures that are not subject to some or all of the obligations imposed by the following Articles:

- 10.2 or 11.3 (National Treatment);
- 10.3 or 11.4 (Most-Favoured-Nation Treatment);
- 10.4 (Market Access);
- 10.5 (Local Presence);
- 11.9 (Performance Requirements); or
- 11.10 (Senior Management and Boards of Directors).

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34 FTA Chapter 11 Investment, Article 11.3 - Investment Non-Conforming Measures

35 FTA Chapter 10 Cross-boarder Trade in Services, Article 10.6 – Services Non-Conforming Measures

3.148 Annex II sets out, in accordance with Articles 10.6 and 11.13, the specific sectors, sub-sectors or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by the following Articles: 10.2 or 11.3; 10.3 or 11.4; 10.4; 10.5; 11.9; or 11.10. (Note that these Articles are the same Articles listed above for Annex I.)

3.149 Under Annex I and Annex II, a Party reserves the right to maintain existing non-conforming measures<sup>36</sup> that are specifically identified in its Schedule. One difference between these two annexes is that Annex I cannot make the measures more restrictive whereas Annex II can; and it can adopt new non-conforming measures as long as the measures have been identified in the relevant schedule.

3.150 Importantly, measures under Annex I are subject to a 'ratchet mechanism', which means if a Party liberalises a measure, making it less inconsistent with the obligations of the relevant Chapter, it cannot then become more restrictive. (i.e. the liberalised measure becomes bound as part of the AUSFTA commitments). For example, if the existing level of the mandated Australian television local content is reduced, say from 15% down to 10%, it cannot be returned to the former level (15%) in the future.

3.151 In Australia, programming content is regulated by compulsory standards determined by the Australian Broadcasting Authority. Pay TV drama channels are also regulated by a compulsory standard requiring expenditure on minimum amounts of Australian drama programs. Furthermore, an additional licence condition on some regional commercial television licensees specifies that licensees broadcast minimum amounts of local content within their local broadcast areas<sup>37</sup>.

3.152 The Australian Film Commission is the Australian Government's agency responsible for supporting the development of film, television and interactive media projects and their creators. It focuses its efforts on the independent production sector, namely companies and individuals who are not affiliated with broadcasters or major distribution and exhibition companies<sup>38</sup>.

3.153 The Film Finance Corporation Australia is the Government's primary agency for funding screen production. It invests in a diverse range of feature films, adult television drama, children's television drama and documentary. It aims to strengthen cultural identity by providing opportunities for Australians to make and view their own screen stories. It invests only in projects with high levels of creative and technical contribution by Australians<sup>39</sup>.

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36 Non-conforming measures are those that are identified in the relevant schedule that do not conform with the obligations on national treatment, most-favoured nation treatment, performance rights, market access, local presence and senior management and boards of directors.

37 <http://www.aba.gov.au/tv/content/index.htm>, viewed on 8 June 2004

38 Australian Film Commission, Annual Report 2002-2003, [http://www.afc.gov.au/archive/annrep/ar02\\_03/ar001.html](http://www.afc.gov.au/archive/annrep/ar02_03/ar001.html), viewed on 10 June 2004.

39 <http://www.ffc.gov.au/about/> viewed on 10 June 2004.

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**Issues under consideration**

3.154 The key issue for media and broadcasting is whether the AUSFTA allows sufficient flexibility for the Australian government to pursue cultural objectives through local content regulations now and into the future. The government has made assurances that its right to ensure local content in Australian broadcasting and audiovisual services, including in new media formats, is retained under the deal.<sup>40</sup> However, significant question marks remain.

3.155 While existing local content quotas for free to air television are unaffected, witnesses to this inquiry have raised concerns about the 'ratcheting' provisions that will prevent a government from increasing local content requirement back to these levels should they be lowered in future. The agreement also prevents any future increases in local content requirement that a government may wish to institute. In addition, the Committee has heard conflicting views about the government's ability to change existing sub-quotas or institute new sub-quota requirements for specific program types within the 55% local content requirement.

3.156 The AUSFTA provisions on local content on subscription television place caps on expenditure requirements for local content that a government may institute in the future. This is important as pay-TV may well become the dominant television market. It has been pointed out to this committee that the 10% expenditure requirement currently in place for local drama content results in only 3.8% of total transmission time.<sup>41</sup> Under the agreement, the government may raise the expenditure requirement to a maximum of 20% only after a process that includes consultations with affected parties including the United States. As the AUSFTA appears to limit the government's ability to institute other forms of local content regulations, this Committee is concerned to know how the government can back up its assurances that it will be able to ensure local content on this form of media into the future.

3.157 In Annex II, Australia has reserved the right to adopt or maintain certain local content requirements for various forms of media, including "interactive audio and/or video services. However, the Annex appears to place limitations on the extent of government regulation allowable. For example, while Australia maintains the right to take measures to ensure access to Australian audiovisual content, the agreement stipulates that such measures would, *inter alia*, be implemented only after consultation with affected parties, be the minimum necessary, be no more trade restrictive than necessary, and not be unreasonably burdensome.

3.158 It is unclear to the Committee at this stage just how much flexibility these stipulations allow for a future government to regulate local content in new media to achieve cultural objectives. It would seem that much depends on the interpretation of this wording in future negotiations, and, potentially, in the dispute resolution process should this be invoked.

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40 The Hon Mark Vaile, MP, Media Release, 8 February 2004, accessed at: [http://www.trademinister.gov.au/releases/2004/mvt008\\_04.html](http://www.trademinister.gov.au/releases/2004/mvt008_04.html)

41 Screen Producers Association of Australia, Submission no 163, p.11

3.159 While the AUSFTA was not intended to affect the ability of either government to control public services, including public broadcasting, concerns have been raised that the actual text of the agreement leaves some uncertainty about whether Australia public broadcasters would fit the definition of government supplied services in Chapter 10, which stipulates that they are "any service which is supplied neither on a commercial basis, nor in competition with one or more major services providers".<sup>42</sup> This committee would like some assurance that the exemption for government services will indeed cover all activities of Australia's public broadcasters.

## **Institutional Arrangements and Dispute Settlement**

### ***General – AUSFTA Chapter 21***

3.160 Chapter 21 deals with both the administrative arrangements and any dispute matters that may arise under the AUSFTA. Fundamental to the AUSFTA is Article 21.1.1 as it requires a Joint Committee to be established to supervise the implementation of the AUSFTA. Importantly the Joint Committee plays a predominant role in interpreting the AUSFTA to the Australian and United States governments<sup>43</sup>.

3.161 The Joint Committee will be central to the ongoing evolution of the AUSFTA and will comprise of each country's government officials and chaired by the United States Trade Representative and the Australian Minister for Trade or their respective designees. It will meet annually and consider proposed improvements, amendments, interpret and review the functioning of the AUSFTA.

3.162 The Joint Committee is pivotal to the dispute settlement procedures. Article 21.5 emphasises that disputes should try to be settled through consultation and should be fully examined as to how the matter might affect the operations of the AUSFTA. The dispute mechanisms adopted under Chapter 21 are built on the WTO dispute settlement model.

3.163 The Joint Committee can establish subcommittees, technical working groups and arbitral panels to consider matter of dispute, when and if, consultations have not been effective. Each Party is responsible for designating a respective office when a panel is established and for providing administrative assistance, cost and operations for that panel<sup>44</sup>.

3.164 Under Article 21.2 either Party may request consultation on any matter it considers may affect the operations of the AUSFTA. An important aspect to this Article is that it is only possible to bring nullification and impairment cases for commitments made in the following six chapters: Chapter 2 (National Treatment and Market Access for Goods); Chapter 3 (Agriculture); Chapter 5 (Rules of Origin);

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42 Australian Broadcasting Corporation, Submission no 371, p.2

43 Department of Foreign Affairs and Trade, March 2004, "Australia – United States Free Trade Agreement - A Guide to the Agreement", p.121.

44 FTA - Article 21.3 and Article 21.7 and 21.8

chapter 10 (Cross-Border Trade in Services) Chapter 15 (Government Procurement) or Chapter 17 (Intellectual Property Rights). Either Party under Article 21.5 may request consultation to any matter it considers might affect the operations of the AUSFTA.

3.165 In the event of a breach of the AUSFTA Article 21.10 – 21.14 provide a range of solutions which include compensation. Article 21.14 allows the Joint Committee to review the operations and effectiveness of Article 21.11<sup>45</sup> and 21.12<sup>46</sup> within a five year timeframe after the AUSFTA has entered into force, or within six months after benefits have been suspended or monetary assessment have been imposed.

3.166 An investor state dispute settlement mechanism is not established under Chapter 11-Investment. However, Article 11.16 does allow an investor of a Party to submit to arbitration, with the other Party, a claim within the scope of the Chapter 11, although it must be permitted under that Party's law. Subsequently, consultation between the Parties may occur in accordance with the provisions under Chapter 21. Moreover, under Article 21.15 neither Party may provide for a right of actions under its domestic law against the other Party on the grounds that a measure of the other Party is inconsistent with the AUSFTA.

### ***Issues under consideration***

3.167 There have been some concerns regarding the power and influence of the Joint Committee established under Chapter 21 on Australia's domestic decision making processes. This is especially the case given that the Joint Committee is responsible for the interpretation and operations of the AUSFTA. Evidence<sup>47</sup> has been at the peak of a hierarchical structure under which fall committees such as the Standing Technical Working Group report and the SPS Committee. More importantly, the Joint Committee reserves the power to interpret the AUSFTA to the Australian and United States governments operating together<sup>48</sup>.

3.168 It is difficult to determine the costs and benefits for the proposed Joint Committee and its subcommittees, panels and working groups as the detail regarding the administrative and ongoing operations costs are yet to be provided. The impact of another level of bureaucracy, and of extended timelines as a result of the Joint Committee's deliberations, has yet to be assessed. Australia is making commitments in

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45 Article 21.11 Non-Implementation – this relates to a panel determining that a Party is not conforming with its obligations or causing nullification or impairment (as in Article 21.10) and can not reach an agreement, it can enter into negotiations on developing mutually acceptable compensation.

46 Article 21.12 Non Implementation with Certain Disputes – this relates a panel determining that a Party not conforming with its obligations under the Chapter 18 Labour Article 18.2.1(a) and Chapter 19 Environment Article 19.2.1(a)

47 *Transcript of Evidence*, 18 May 2004, p:31 (Greville, DAFF)

48 Department of Foreign Affairs and Trade, 'Australia-United States Free Trade Agreement, A Guide to the Agreement' March 2004, p:121

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which some of the critical detail, particularly in relation to the Joint Committee, is yet to be understood or explained to the Senate Select Committee's satisfaction.



# Government Senators Response

## Introduction

4.1 This Interim Report is being presented to the Senate before critical evidence to the Committee has been heard; before the Committee has had the opportunity to consider the Report of the Joint Standing Committee on Treaties (which was tabled in the House of Representatives on the morning that this Interim Report went to print); before the Committee has had the opportunity to consider the domestic Australian legislation which will give effect to the Free Trade Agreement ("FTA")(which was to be introduced in the House of Representatives after this Report has gone to print); and before the economic modelling commissioned by the Committee has been considered and critiqued. In those circumstances, the Interim Report is not merely premature; it is a useless and wasteful exercise, whose recommendations, although expressed in a preliminary way, must be regarded as wholly lacking in substance.

4.2 The Chairman's draft report was prepared with no consultation whatever with Government Senators, thereby entirely foreclosing the possibility of the Committee seeking to come to a consensus view on any issue. The draft was, in fact, first circulated at a time obviously calculated to prevent careful analysis or criticism. In those circumstances, the Government Senators' Report has been prepared with ridiculously little time to deal with the matters raised in the Chairman's Report. This is consistent with the evident tactic of the Chairman in persistently refusing to give Government Senators equal opportunity to question witnesses.

4.3 One striking feature of the Chairman's Report is the uncritical treatment of evidence which "raises concerns", while remaining entirely silent on the answers which were given to relieve such concerns. Most of those concerns, when scrutinized, amounted to nothing more than a failure to understand the language of the FTA (or, in the case of some witnesses, it must be said, failure even to read the relevant sections before essaying criticisms.) The FTA is a long and complex legal document, proper understanding of which requires a level of knowledge of international trade law and the law of treaties. It is not likely to be readily understood by those without appropriate expertise. However, the Committee had the advantage of having evidence from members of the team which negotiated the agreement, led by the Chief Negotiator, Mr. Stephen Deady. The commanding expertise of Mr. Deady is undeniable. Mr. Deady was able to give a detailed, informed, specific and convincing response to each of the many "doubts" expressed by witnesses who, in some cases, simply did not understand the technical language used in the FTA. It is a matter of gravest concern to Government Senators that the Chairman's Report, while choosing to ventilate those concerns, consistently omits to set out the explanations given by Mr Deady, the other negotiators and other officials. There can be few more disappointing examples of scaremongering than the approach which the Chairman's Report has decided to adopt.

4.4 The gravest omission of all has been the failure to give any serious treatment to the large number of witnesses who spoke with enthusiasm about the benefits to their particular industries or sectors which would result from the FTA, and the unique opportunity which it will present for Australia. Typical of many such witnesses was the evidence on 5 May of Mr. Alan Oxley, a trade analyst with extensive experience of international trade negotiations:

You asked, Chair, what would be the downside for Australia if we rejected the agreement. We would probably be regarded as the most bizarre country in the world for having rejected a free trade agreement with the world's biggest economy – an agreement that would actually give us access in agriculture, which is one of the most difficult areas, notwithstanding the fact that it is not perfect – when many other countries are lining up to have an agreement with them. I honestly do not know how any serious Australian government could justify that to the world at large.

4.5 Government Senators incorporate in their Report a series of Annexures, which explain the real meaning and effect of particular provisions of the FTA, and record the reactions of a wide variety of industry groups.

### **Economic modelling of the FTA**

4.6 There have been several modelling exercises and reports undertaken in relation to the proposed FTA seeking to determine the costs and benefits of the agreement. While there is some disagreement among the reports that have been published, the vast majority have identified an overall benefit to the Australian economy arising from the Agreement.

4.7 The most substantial studies – those carried out by the Centre for International Economics – demonstrate unequivocally the enormous benefit of Australia entering a Free Trade Agreement with the world's most powerful economy. It will deliver access by Australian companies and exporters to the world's largest market, encourage enhanced investment flows between the two countries, and enable Australia to benefit from the technological, managerial and financial know-how and resources of the world's leading companies.

4.8 Government senators are satisfied that the rigour and comprehensiveness of the CIE modelling justifies the conclusion that the benefit to Australia is an average annual equivalent of \$2½ billion – with the range between \$1 billion and \$7 billion, and with the most frequent observation delivered by the various CIE modelling scenarios to be \$3 billion per annum additional gain.

4.9 In any event, the success of the FTA is not predicted solely by, nor dependent wholly on, the outcomes of economic models. It is probably even more important to look at what are the opportunities created by the agreement and what are the risks created by the agreement. The evidence is clearly in favour of the opportunities.

4.10 Australian businesses overwhelmingly regard this agreement as one that will significantly help the transition of trade and investment between Australia and the United States. The United States will remain the world's most competitive economy. Australia's close engagement with it will further enhance the competitiveness of Australian companies.

4.11 This agreement opens up investment and reduces trade barriers. Government senators agree that wherever possible investment liberalisation and the liberalisation of trade barriers should be multilateral. The Australia-US FTA sets standards to which multilateral processes through the WTO can aspire.

## Key Topics

4.12 The majority report has addressed a number of the key areas in the FTA that have been the subject of extensive discussion and debate in hearings and more broadly in the public domain.

4.13 However, the so-called *Issues for consideration* put forward in the majority report are profoundly misleading to the extent that there has been no account taken of the assurances – let alone actual facts – that government officials have provided to the Committee in response to many of the concerns raised. These facts and assurances demonstrate clearly that the fears that have been expressed in some quarters – and somewhat mischievously promoted in others – are completely without foundation.

4.14 The following sets out briefly the important considerations and rejoinders that the majority report has simply failed to include in its characterisation of the evidence surrounding the various *Issues*.

### Pharmaceuticals

4.15 A constant claim by critics has been that the FTA will result in increases in the prices of drugs in Australia. Not only are the Trade Minister and the Prime Minister on the record as declaring that drug prices will not rise as a result of the FTA. The officials negotiating the agreement (from both DFAT and the Department of Health) have painstakingly explained to the Committee why that will not be the case.

4.16 Critics have argued that the FTA will open Australia's PBS up to institutionalised pressure from the US government (on behalf of the US pharmaceutical lobby) to recognise "the value of innovative pharmaceuticals" in the PBS listing and pricing system. It has also been argued that establishment of Medicines Working Group could result in, over time, more expensive patented medicines being listed on the PBS due to continued pressure on Australia to recognise the value of "innovative pharmaceuticals", and that this would increase the overall cost of maintaining the PBS.

4.17 It has been explained thoroughly to the Committee that these fears are unfounded. It will remain the case, after the implementation of the FTA, that the Pharmaceutical Benefits Advisory Committee (PBAC) will remain the sole authority

in terms of recommending to the government which drugs shall be listed on the PBS, and that cost-effectiveness will continue to be a key criterion that PBAC considers. The PBAC always takes into account 'comparators' when assessing the merits of a proposed new drug. Indeed, PBAC is **required** to consider both the effectiveness and the cost of therapy involving the use of the proposed new drug.

4.18 The Committee has been assured that the Medicines Working Group is simply an arena for discussion between health officials. It has **no** operative or decision making power and is therefore not in a position to bring any pressure to bear on PBAC.

4.19 There have also been allegations that the Independent Review Mechanism will also act as a pressure on PBAC to list more expensive pharmaceuticals, and that somehow this mechanism will undermine the operation of PBAC. This is simply not so.

4.20 It has been pointed out to the Committee, and the FTA text makes it clear, that the independent review mechanism is only available where PBAC has made a decision **not** to list a proposed drug on the PBS. The independent review mechanism will report its findings to PBAC, but it is PBAC that remains the authority that will decide whether a drug is listed or not. If the PBAC refuses to list a drug, under Australian law it is not open for anyone, even for the minister, to require that the drug be listed.

4.21 The assertion that the FTA may lead to higher pharmaceutical prices is untenable. That is particularly so in view of the facts that:

- (a) there are no changes to the PBS in the legislation to give domestic effect to the FTA. In particular, there are no amendments proposed to Part VII of the National Health Act 1953 (which establishes and regulates the PBS);
- (b) the review mechanisms created by the FTA do not provide for price review.

4.22 The assertion by some witnesses that the review mechanisms established by the FTA could expose pharmaceutical prices to upward pressure does not bear scrutiny when the text of the FTA is examined. In that regard, Government Senators point out that those witnesses who chose to make that case were unable, when challenged, to explain how it could be that a review mechanism which could only review listing (as opposed to pricing) decisions, could have the effect of altering prices. The evidence of the Chief FTA Negotiator, Mr. Stephen Deady, was firm and unequivocal on this issue.

4.23 The provisions of the FTA to which critics pointed were (a) cl. 2 (f) on Annexure 2-C (which creates an "independent review process" specific to pharmaceuticals); and (b) Article 21, the overall dispute settlement procedure. Properly understood, neither provision allows for price reviews.

4.24 Cl 2(f) of Annexure 2-C provides:

To the extent that a Party's federal healthcare authorities operate or maintain procedures for listing new pharmaceuticals or indications for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its federal healthcare programs, it shall:

- (f) make available an independent review process that may be invoked at the request of an applicant directly affected by a recommendation or determination.

4.25 The meaning of those words was refined by a "side letter" dated 18 May 2004 from the American Minister (Mr. Zoellick) to the Australian Minister (Mr. Vaile). That side letter (which has the same status, for the purposes of interpreting the treaty, as provisions of the treaty text themselves), confirms that the only decisions which may be the subject of the "independent review process" established by cl. 2 (f) are "PBAC determinations, where an application has not resulted in a PBAC recommendation to list." [Side letter, para. 2; emphasis added].

4.26 The jurisdiction of the PBAC to list new pharmaceuticals is set out in s. 101(3) of the National Health Act 1953. Neither that provision, nor any other section of the National Health Act, gives the PBAC any jurisdiction to make recommendations in relation to prices. The provision states:

The Pharmaceutical Benefits Advisory Committee shall make recommendations to the Minister from time to time as to the drugs and medicinal preparations which it considers should be made available as pharmaceutical benefits under this Part and shall advise the Minister upon any other matter concerning the operation of this Part referred to it by the Minister.

4.27 As the section does not enable the PBAC to make any recommendation other than as to listing, and since the side letter makes clear that the only reviewable decisions upon which the independent review mechanism established by cl. 2(f) may operate are refusals by the PBAC of a listing application, it is simply not possible for the independent review process to be seized with issues of pricing. Dr. Ruth Lopert of the Health Department, in her evidence to the Committee on 21 June, made it abundantly clear that PBAC recommendations are limited to listing, not pricing.

4.28 Government Senators note that witnesses who suggested otherwise made their submissions in evident ignorance of the clarifying provisions of the side letter and of the jurisdictional limitation upon PBAC recommendations by s. 101 of the National Health Act.

4.29 The other basis upon which it was suggested the review mechanisms established by the FTA could result in pressure upon pharmaceutical prices was the operation of the dispute resolution Chapter (Article 21). However, as Mr. Dedy pointed out to the Committee, such a provision is a commonplace one in trade treaties. What it is directed to is the compliance by parties with their obligations established under the FTA; not to the review of particular decisions taken within the framework

of those obligations. As Mr Deady (whose commanding expertise in this field is acknowledged at least by Government Senators although not, disappointingly, by Opposition members of the Committee) said in evidence on 21 June:

Senator Brandis – So in your opinion it is wrong that a provision like article 21.2 could be used to collaterally attack review mechanism set up by this agreement.

Mr Deady – Absolutely wrong. If Australia did not set up an independent review mechanism then we would be in reach and the Americans may challenge it. That would be the breach.

4.30 Another concern related to what has been described as the 'patent evergreening' provisions of changes to patent law required by FTA Chapter 17 – especially clause 17.10.4. The argument goes that the introduction of generic drugs in competition with patented medicines almost invariably lowers the cost of treatment for users of the drug (or for governments, in the case of drugs subsidised through the PBS or in hospitals). If changes to patent laws do delay the introduction of generic drugs, as has been argued before this Committee, then the line that 'drug prices in Australia will not rise as a result of the FTA' would be difficult to sustain.

4.31 This matter was explored at considerable length with government officials from both Health and DFAT. The particular focus of the discussion related to clause 17.10.4, especially the provision that there shall be measures provided in Australia's marketing approvals process (through the Therapeutic Goods Administration) to prevent a person from marketing a product where that product is claimed in a patent by someone else.

4.32 Critics argue that the experience in other countries is that pharmaceutical patent holders will persist in claiming patents beyond the original patent period that will automatically result in injunctions and hence delays in generic medicine producers being able to get on with introducing to the market a generic version of the 'patent claimed' pharmaceutical.

4.33 Officials have assured the Committee that the change in the marketing approval process is simply an extra step to ensure the approvals process is thorough and transparent. The modified process makes it clear that a generic medicine can enter the market if it will not infringe a patent. It has also been agreed that in those **limited** cases where a generic manufacturer considers a patent to be invalid and intends to enter the market before a patent expires, that the patent owner will be notified.. The TGA will only grant marketing approval if it is satisfied that the generic sponsor has notified the patent owner.

4.34 All this is entirely consistent with Australia's existing intellectual property regime. The Committee has been assured by officials that the measure does not add any additional protection to the patent holder. Officials have also advised the Committee that they have been in constant consultation with the generic medicines industry. The Agreement does not compromise the generic medicines industry and reinforces Australia's existing framework for intellectual property of pharmaceuticals.

4.35 Regarding the issues concerning blood, an exchange of letters (attached to Chapter 15 dealing with Government Procurement) deals with trade in blood plasma products and blood fractionation services. Should a current review (in Australia) of arrangements for plasma fractionation services result in suppliers of such services being selected through tender processes, these services will fall under the FTA provisions. While Australia's TGA will continue to regulate blood products, wherever they are produced, and while Australia can preserve its policy on using plasma collected from Australian donors, concerns have been expressed about our capacity to ensure the implementation of such policies and regulations.

4.36 Procurement of Plasma Fractionation Services has been excluded from coverage of the Government Procurement Chapter (See Annex 15-E Services). If the review of plasma fractionation arrangements results in agreement to move to tender processes consistent with the Government Procurement Chapter, Australia has undertaken to remove this exception to the provisions of the Government Procurement Chapter.

4.37 The government Senators draw attention to 7.4. Regulatory Requirements (Paragraph 4). This paragraph acknowledges the importance of each party maintaining regulatory requirements for ensuring the safety, quality and efficacy of blood plasma products and supply of blood fractionation services. In the case of Australia, the Therapeutic Goods Administration (TGA) will continue to regulate blood products. The TGA will keep regulatory control of standards, wherever the fractionation process takes place, and who ever is the fractionator

4.38 As well, Australia has ensured under 7.5. its Policy on Self-Sufficiency (Paragraph 5). This paragraph acknowledges the right of governments to have policies that blood plasma products are derived from blood plasma collected in their own territory. This allows Australia to preserve its policy on using plasma collected from Australian blood donors.

## **Intellectual property**

4.39 There has been some debate about whether it is appropriate to include IP in an agreement that has the aim of advancing free trade. This seems a somewhat odd debate given that IP issues have been an important focus of WTO considerations for several years, and that the *TRIPS Agreement* has been established to address precisely the trade dimensions of such issues.

4.40 Moreover, in what is generally regarded as a global 'knowledge economy', issues of intellectual property lie at the heart of any trade in services in particular. Robust intellectual property regimes are imperative if innovation is to be encouraged and rewarded.

4.41 Critics have argued that Chapter 17 represents a failure of proper policy making and that the level of detail and lack of flexibility in the FTA is inappropriate.

They have also argued that this may restrict future development of IP law and policy in Australia by making Australia's position irreversible regardless of success or failure of measures under the FTA, unless the United States consents to any future changes.

4.42 Australia's lead negotiator, Ms Toni Harmer from DFAT, has disagreed with these assertions, arguing that the IP chapter strengthens Australia's IP protection at the same time as providing flexibility to create appropriate exceptions.<sup>1</sup>

4.43 Intellectual property is a very important sector of Australia's economy, particularly in developing value added exports. The government Senators cannot see how strengthening our IP protection at the same time as providing the ability to make exceptions where they are appropriate in the national interest is a bad policy outcome for Australia.

### ***Copyright extension***

4.44 The key benefit of copyright term extension is in the benefit that that will provide to Australian artists and musicians for the protection of their works, in terms of an extended term of copyright protection and therefore royalties for a further 20 years. Australia has not agreed to claw back information which has already entered the public domain.. If things are in the public domain, it is not proposed to bring those back into copyright.

4.45 As well, the sorts of exceptions we have within our system in Australia, or exceptions that we may put in place in the future—for example, with respect to educational use—will continue to apply throughout that extended copyright term.

### ***Harmonisation of laws***

4.46 Some concerns have been expressed that Chapter 17 will require Australian laws to move closer to the systems and practice that applies in the US – so-called harmonisation. The benefits here significantly outweigh any perceived costs.

4.47 In relation to both copyright and intellectual property laws, there is an advantage to industry to the extent that similarity of laws creates a more familiar legal environment and certainty the ability not only to protect rights but to enforce them. To the extent that it creates confidence in the Australian system about the similarity of those laws to those in the US, such harmonisation will encourage investment in Australia.

4.48 The government Senators appreciate that the IP chapter does contain elements of the US Digital Millennium Copyright Act, but Chapter 17 also contains flexibility for Australia to implement that in a way that is appropriate for Australia. Government Senators believe it is an incorrect reading of the IP chapter to think that it

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<sup>1</sup> *Transcript of Evidence*, 18 May 2004, p. 101 (Harmer, DFAT).

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requires Australia to implement US law word for word in our system. Whilst we have treaty level obligations, we will be implementing those within our own legal context.

### ***Anti-circumvention provisions***

4.49 There have been issues raised regarding anti-circumvention measures (or TPMs). Chapter 17 requires Australia to ban devices for circumventing TPMs and extends the scope of criminal offences relating to the manufacture and sale of circumvention devices. The open source software industry is arguing that the provisions will severely limit the industry's ability to function and develop.

4.50 The government Senators note that with respect to TPMs, there is a two-year transition period to implement those obligations. The reason the FTA provides for the prohibition on anticircumvention is that they are seen to assist copyright owners to enforce their rights.

4.51 Open source software developers have argued that the FTA will require Australia to extend Australia's patent laws to a small extent—that is, to all fields of technology—and that this will effectively stifle the open source software industry.

4.52 Government Senators sought advice on this matter during the Committee's hearings and was told unequivocally by officials that the free trade agreement does not change in any way the scope of what is currently considered to be patentable or what would be patented in Australia. Australia currently allows patents for software, and there will be no change to that. Australia is not being required to take a US approach in relation to that type of patent. It will be 'business as usual' for IP Australia in terms of granting patents.

### ***ISPs and 'safe harbours'***

4.53 Evidence provided to the Committee outlined that a very significant gain provided by the FTA will be through the creation of enhanced legal tools to tackle piracy and associated criminal activities conducted via the Internet. These measures would equip Australian companies with far stronger means to more effectively tackle this criminal activity that harms Australian companies and consumers, and threatens Australian jobs. This was made clear in evidence before the Committee.

The interactive entertainment industry, which has been in a high-growth phase for quite some time, relies somewhat on the technology that we are debating in terms of copyright and the ISP area. We have seen that the growth of the industry could be stronger with a stronger intellectual property protection regime, so we are very supportive of the outcomes of the FTA in bringing our copyright laws to the levels of those in the European Union and the United States of America. We were basically after two particular elements of the FTA, and we think it is excellent that they are there: the expeditious process to allow for copyright owners to engage with ISPs and to deal with allegedly infringing copyright material on the Internet. We understand from our counterparts overseas that ISPs overseas are able to accommodate this and do not see it as an imposition. They have

the technology. We do not think that that technology changes because it comes to Australia. We believe the ISPs have that technology available to them.

..... Also, we are very much in favour of the tighter controls in circumventing the technological protection of copyright material.<sup>2</sup>

4.54 The Allen Consulting Group has also produced a detailed report on copyright and the cost of counterfeiting and piracy in this area. The report states that:

The maintenance of a strong intellectual property regime (i.e. with an emphasis on enforcement) is particularly important in attracting foreign investment. This is because Australia competes in a world with increasingly mobile capital and that the strength of a country's intellectual property laws is a key determinant in attracting foreign investment across many sectors of the economy. Indeed, the Department of Foreign Affairs and Trade has noted that 'It is generally accepted that maintenance of such a regime has served to attract state-of-the-art technology and overseas copyright works to Australia.'<sup>3</sup>

4.55 Regarding the matter of increased burden on ISPs, including obligations relating to 'safe harbours', the FTA requires Australia to introduce a more prescriptive regime than it currently has for creating 'safe harbours' for ISPs. It has been argued that the level of detail may not allow sufficient flexibility in the implementation process for Australia.

4.56 As well, the FTA differs from current laws in Australia in relation to the process of temporary reproduction (caching) of material as part of a telecommunications process. In Australia, the 'caching' exemption under the Copyright Act 1968 does not distinguish between automatic and non-automatic caching. The FTA gives ISPs 'safe harbour' immunity only if caching is carried out through an automatic process. Educational institutions have also expressed concerns about issues relating to temporary copying.

4.57 The government Senators are satisfied that the balance achieved through the FTA is appropriate to both protect copyright holders, while ensuring adequate access to copyright material for users. What the agreement does is put in place a set of rules so that Internet service providers, copyright owners and users are clear about their rights and obligations.

4.58 Chapter 17 puts in place a 'take-down notice regime and provides Internet service providers with certain safe harbours. If they comply with those safe harbours then that assists them to limit their potential liability for copyright infringements.

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2 *Transcript of Evidence*, 8 June 2004, p6-7 (Jenkin, IEAA)

3 The Allen Consulting Group *Counterfeiting of Toys, Business Software and Computer and Video Games* November 2003 p(ix)

4.59 Government Senators believe that this is very much of benefit to ISPs in providing certainty, and of benefit to copyright owners in providing the ability for a take-down and notice regime. It would also assist users to have certainty about how the system works.

4.60 In short, the ISP provisions will assist copyright owners to enforce their copyright at the same time as introducing appropriate safeguards for users and ISPs.

### **Sanitary and Phytosanitary Measures**

4.61 First and foremost, the AUS-USFTA reaffirms existing commitments to the WTO SPS Agreement. There is not a separate provision for dispute settlement on SPS matters within the AUS-US FTA as the WTO dispute mechanisms will apply. The Government is committed to the WTO processes and supportive of the approach outlined in the AUS-US FTA with regard to SPS matters. Evidence heard by the Select Committee from the Australian negotiation team stated that:

"We are absolutely committed to and more than capable of defending our standards, but we are also willing—as WTO members and upholders of the SPS agreement to consider alternative approaches which achieve the same level of protection. What this agreement [AUS\_USFTA] does—rather than characterising it as institutionalising pressure on us—is to provide a regular forum for ongoing dialogue on matters of bilateral interest. This does not mean that the parties will always agree with each other's decisions, but it will hopefully prevent a situation where the United States or Australia is presented with a quarantine decision at the end of a process for which it does not understand the basis."<sup>4</sup>

4.62 Critics of the Agreement are wrong in their assumptions that Australia's quarantine measures will be eroded under the proposed arrangements with the establishment of a SPS Committee and Standing Technical Working Group. The Government is aware that there may be challenges to decisions but is firmly committed to a science based assessment processes on quarantine matters. Members for the negotiation team have repeatedly stated to the Select Committee that decisions on quarantine matters will continue to be based on science. -

The "decision-making process is challengeable, but it can only be challengeable on the basis of science."<sup>5</sup>

"The FTA agreement does not change the rights or obligations or expectations that we each have and, in determining our own appropriate

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4 Committee Hansard, (AUSFTA Inquiry), 18 May2004, p:8 (Greville, DFAT)

5 Answers to Question on Notice, received on 3 June 2004 (DFAT)

level of protection, will apply in accordance with the rules and obligations of the SPS agreement".<sup>6</sup>

4.63 The point of the SPS Committee and the Standing Technical Working Group is to build on the cooperative relationship that already exists between Australia and the United States. They will help to facilitate better understanding and provide a forum to exchange of information on scientifically based decision made by either Party. The integrity of Australia's quarantine regime will not be affected by the AUS-USFTA.<sup>7</sup>

The whole objective is to allow countries to achieve the level of protection that they determine as a sovereign right but to do so in a way that does not provide merely a tool for trade protection. So countries logically work through the approach to these sorts of issues.<sup>8</sup>

## **Agriculture**

4.64 It has been suggested that Australia's acceptance of the omission of sugar from the FTA will weaken Australia's negotiating position when seeking an ambitious reform package for agricultural products in the WTO.

4.65 This matter was discussed in hearings with the DFAT officials most immediately concerned with WTO negotiations. They have absolutely no concerns about Australia's capacity to continue to play an ongoing leadership role in efforts to improve agricultural trade multilaterally.

4.66 According to these senior officials the Cairns Group continues to operate very effectively. It had a very successful meeting in February 2004 in Costa Rica and continues to operate in Geneva and at ministerial level with focus on the WTO. Australia continues to put in as much effort as ever—arguably more than ever—to restore some momentum in these negotiations.

4.67 The Committee was also advised that Trade Minister Vaile had been attending meetings in Paris, including a series of ministerial meetings and informal negotiations on parts of the agricultural text that is being addressed as part of the Doha round.

4.68 The government Senators are of the view that the specific initiatives that have been put forward, the breadth of Australia's coverage and interest in the Doha round and the energy and activity Australia has put into the Cairns Group and into the

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6 Committee Hansard (AUS-USFTA Inquiry), 18 May 2004, p:8 (Gosper, DFAT)

7 Answers to Question on Notice, received on 3 June 2004 (DFAT)

8 Committee Hansard, (AUS-USFTA Inquiry), 18 May 2004, p:7 (Gosper, DFAT)

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overall negotiations, belies any suggestion that Australia is being denied a leadership role in agriculture.

4.69 There has been some concern expressed over the need for an 18 year phase-in period for beef, and also extension of safeguards beyond that time. It is recognised that the immediate removal of the tariff and increased quota over the 18 year period is of significant benefit to the development of the beef industry. In any event, quotas thus far have seldom been met. The phase in period will allow the beef industry time to build up its capacity to supply.

4.70 The government Senators agree that there are aspects of the FTA in agriculture where the government wanted even better outcomes. But even in agriculture the FTA remains a big deal. It is a balanced package and one that both governments believe is a substantial outcome for both their economies. That is what the governments have taken the decision on. There has been overall support from the agricultural industries on the outcome of the FTA.

4.71 The government Senators wish to emphasise the fact that small access gains to the US market deliver potentially very substantial benefits for industries the size of those in Australia's agricultural sector. The dairy industry is a good example. Having come back and reviewed the deal, that industry has made it clear to the Committee that they regard the access gains as significant for the scale of the Australian dairy industry as it looks forward to taking investment decisions and other things over time.

4.72 Government senators note that the single desk arrangement for export marketing of Australian commodities has been preserved under the FTA.

### **Manufacturing and Labour**

4.73 Concerns have been expressed that the rules of origin are complex and overly detailed and may not be sufficient to ensure that only products which are substantially produced in Australia or the United States will obtain concessional entry under the FTA. It has also been argued that the FTA will have a significant adverse impact on the manufacturing sector in Australia, including considerable exacerbation of job losses, particularly in the textile, clothing and footwear and the automotive components industries.

4.74 The government Senators are in no doubt that, as a result of the FTA, there will be some adjustments in the distribution and scale of various industries. This is part of the ongoing experience of remaining competitive in global markets and would be the case regardless of whether an FTA was operative or not.

4.75 In the context of Australia's manufacturing sector, government Senators note that liberalisation measures with respect to foreign investment are an important component of AUSFTA and have the potential to improve the resources, productivity

and skills base of firms across many sectors and industries. This should not be underestimated.

4.76 The government Senators note that the impact of the rules of origin established under AUSFTA have been considered through adopting a ‘common sense’ approach and, where the rules of origin are more restrictive, discussing the possible ramifications with government and industry representatives.

4.77 The CIE report states that for primary products and processed foods, the required change in tariff classification is unlikely to prove difficult to meet. Furthermore, primary products and processed foods predominantly use domestically sourced inputs, with imports typically accounting for only around 5 per cent of production inputs: any RVC requirement should therefore not pose a problem.

4.78 The government Senators concede that in terms of manufactures, the rules of origin may be more restrictive. Some of the potentially restrictive rules of origin requirements include the yarn forward rule as it applies to textiles and clothing exports and, on first cut, the requirement for automotive exports to have 50 per cent RVC (by the Net Cost Method).

4.79 Also noted is the CIE assessment that it will be difficult to say whether it will make commercial sense for Australian producers to switch the sources of production inputs to US suppliers (and thereby satisfy the rule of origin). Some producers will be able to change the source of their inputs to US suppliers in order to meet the yarn forward rule while others will not be able to do so. Local production of inputs may also commence.

4.80 The CIE report also advises that discussions with the Federal Chamber of Automotive Industries (FCAI) and the Federation of Automotive Products Manufacturers (FAPM) indicate that the local automotive sector is not overly concerned about the ability of Australian automotive exports to meet the rules of origin requirements. Indeed, FCAI and FAPM representatives believed that all Australian produced passenger motor vehicles and component parts would meet the change in tariff classification and/or RVC requirement.

4.81 One of the case studies undertaken by CIE related to the light metals industry. It is a notable exemplar of the benefits that will accrue under the FTA.

4.82 Under AUSFTA, virtually all tariffs on metals will be eliminated immediately. This will lead to improved opportunities for exports of Australian light metals to the US. Scheduled tariff reductions in downstream industries using light metals as production inputs, such as the automotive sector, are expected to have positive flow-on effects for all three light metals industries as a result of increased (downstream) demand for their products

4.83 AUSFTA measures on investment may also benefit the light metals industries. Initial capital costs in these industries are typically high. Lifting the threshold for notification and objection procedures for foreign investment in Australia

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could increase the attractiveness of investing in the Australian light metals industries to potential investors by reducing some of the administrative costs associated with the regulatory process.

### **Cross-border trade in services**

4.84 The main issue arising in relation to cross-border trade in services arose in the context of the protection of local content requirements in the entertainment industry. It is alleged that under the FTA, the Australian government would lose its ability to negotiate or impose higher local content requirements for broadcasting. This is a particular concern in relation to subscription television and new media services, where the current local content and expenditure requirements are much lower than for free to air television. This, it is claimed, may effectively shut the Australian entertainment industry out of subscription broadcasting and new media, as they compete with inexpensive, readily available American programming.

4.85 DFAT has made it clear that the outcome of the negotiations on audiovisual and broadcasting services preserves Australia's existing local content requirements and other measures and ensures Australia's right to intervene in response to new media developments, subject to a number of commitments on the degree or level of any new or additional local content requirements.

4.86 It does this through three reservations in Australia's schedules to Annex I and Annex II. An Annex I reservation allowing Australia to maintain the existing 55% local content transmission quota on programming, and the 80% local content transmission quota on advertising, on free-to-air commercial TV on analogue and digital (other than multichannelling) platforms. Subquotas may also be applied within the 55% programming quota.

4.87 An Annex II reservation allows Australia to both maintain existing measures and introduce new measures, subject to a number of conditions, in relation to:

- transmission quotas for multichannelled free-to-air commercial TV;
- expenditure requirements for subscription TV;
- transmission quotas for free-to-air commercial radio broadcasting;
- ensuring that Australian content on interactive audio and/or video services is not unreasonably denied to Australian consumers;
- broadcasting licensing and spectrum management; and
- taxation concessions for investment in Australian film and television production.

4.88 An Annex II reservation allows Australia to maintain existing co-production arrangements with other countries and to introduce new ones.

4.89 Some concerns were also raised about government services, especially those delivered on a commercial basis, being 'caught' by the FTA.

4.90 The government Senators are satisfied that here is nothing in the Agreement that affects the ability of either Party to provide public services, and subsidies and grants are explicitly excluded from the scope of the Chapter. Therefore, reservations are not required in Australia's schedules in relation to publicly provided cultural activities, such as the public broadcasters (ABC and SBS), public libraries or archives, or in relation to Government funding available to Australian artists, writers and performers.

4.91 Government Senators also note that Australia and the United States also have obligations on trade in services under the World Trade Organization's General Agreement on Trade in Services (GATS). This has its own obligations in respect of domestic regulation, and it requires the future development of new obligations in respect of authorisation requirements for the supply of services. Under Article 10.7.3, if any such new obligations enter into effect (either through the GATS or through other international negotiations that Australia and the United States participate in) then the Article will be amended, as appropriate, so that it reflects these results.

### **Financial Services**

4.92 Australia and the USA both have sophisticated systems of prudential regulation to ensure that financial services are only undertaken by appropriate service providers, and to ensure that the industry handles clients' funds with probity. Concerns have been raised asserting that the FTA must not become a means by which Australia's prudential regulatory regime is undermined.

4.93 The Chapter sets up a Financial Services Committee which, amongst other things, is charged with considering ways to further integrate the countries' financial services sectors (Article 13.16 and Annex 13-C).

4.94 An exchange of side-letters to the Chapter records the agreement of the Parties that the Committee provides an appropriate forum to discuss certain cross-border issues pertaining to securities, and that the Committee should report on its work on these issues within two years of the entry into force of the Agreement. The side-letter also records Australia's proposal that these issues that the Committee should discuss include cross-border access for foreign securities markets and foreign collective investment schemes.

4.95 There is nothing in the operation or powers of the Financial Services Committee that can oblige Australia to change its laws or regulations in relation to financial services. It merely provides an arena for discussion of matters of mutual interest in trade in financial services.

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4.96 In particular, government Senators draw attention to Article 13.7 which provides that nothing in the Chapter requires that a Party furnish or allow access to:

- (i) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (ii) confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice the legitimate commercial interests of particular businesses.
- (iii) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (iv) confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice the legitimate commercial interests of particular businesses.

4.97 In addition, Article 13.10 provides that the Chapter does not prevent a Party from taking actions for prudential reasons (e.g. to protect people who deposit money in banks or who take out insurance policies). As well, the Chapter does not prevent a Party's public entities from taking non-discriminatory actions of general application in pursuit of monetary and related credit policies or exchange rate policies. The Chapter does not prevent a Party from taking actions needed to secure compliance with laws or regulations that are not inconsistent with the Chapter (e.g. those dealing with deceptive conduct or default on financial services contracts).

## **Government Procurement**

4.98 Concern was expressed that the FTA may limit or remove the Australian government's capacity to implement policies to prefer services delivered by local companies, particularly in regional areas.

4.99 The Government Procurement Chapter consists of 15 Articles, eight Annexes and a side letter dealing with blood plasma. The annexes determine which government entities are covered by the Chapter and the specific types of procurements and procurement arrangements that each Party has specified for exemption from application of the Chapter.

4.100 By virtue of the non-discrimination provisions in Article 15.2, Australia will become a 'designated' country under the US Trade Agreements Act. The US will provide Australia with a waiver from the Buy America Act for contracts to which the Chapter applies. The Buy America Act imposes a 6% penalty on foreign goods (not services). The waiver will enable Australian suppliers, for the first time, to compete

in the US procurement market on equal terms with suppliers from the US and from over 60 other designated countries.

4.101 In return, Australia has agreed to tender procedures and transparency arrangements that will require some changes to the way procurement is conducted in Australia and the adoption of regulations to ensure compliance by procuring entities.

**4.102** However, Australia is still able to undertake support for local small to medium enterprises. In Annex 15-G, the US has reserved their preference policies in respect of small and minority businesses. Australia has similarly specifically reserved in Annex 15-G **a right to continue with procurement policies that assist small and medium enterprises and those which provide economic and social assistance to indigenous persons.**

4.103 Article 15.2.5 specifically bans offsets, defined broadly to cover any requirement built into a procurement, for such things as local content, technology transfer or export performance. However, this ban is itself **subject to the Chapter exclusions mentioned above and therefore does not apply to Australian policies supporting small and medium enterprises.**

## **Investment**

4.104 Some submitters expressed concern about the proposal to relax the FIRB notification thresholds by several orders of magnitude. They argued that an 8-fold rise in the threshold in the case of new businesses is extremely significant, and that it was inevitable that this would result in a reduction of the FIRB's capacity to protect Australian national interests.

4.105 The Investment Chapter provides investors with an open and secure environment for investment. It ensures that investors from each Party and their investments receive national treatment or most-favoured-nation treatment (whichever is better) in the other Party. It also provides protection for investors and their investments through prohibitions on a range of distorting performance requirements and on restrictions on transfers, and through requiring compensation equivalent to fair market value for any expropriated investment.

4.106 The Investment Chapter does not impose any obligation on a Party to privatise.

4.107 The Schedules to Annex I and II represent a carefully negotiated balance of commitments between the Parties. The outcome of the negotiations liberalises Australia's foreign investment policy while retaining the right for the Government to examine all investment of major significance.

4.108 An Annex II reservation allows Australia to continue to examine all foreign investments in urban land (including residential properties), other than developed non-

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residential commercial real estate. An Annex I reservation allows Australia to examine investment in other sectors including the right to screen, in defined circumstances: direct and portfolio investment of 5 per cent or more in media; investment in Australian businesses in telecommunications, transport and defence related industries valued at \$50 million or more; investments representing stakes in financial sector companies of 15 per cent or more; and investments in Australian businesses in other sectors valued at \$800 million or more.

4.109 Separate reservations preserving Australian foreign investment limits relating to the media, Telstra, CSL, Qantas and other Australian international airlines, federal leased airports and shipping.

4.110 The government Senators regard the Investment chapter as a key element of the Australia-US FTA and one which will underpin an investment regime that is secure, transparent and attractive.

## **Environment**

4.111 There are some concerns that:

- an assessment of the potential environmental impacts as a result of this FTA has not been undertaken;
- even though there is not an explicit provision for investor-state dispute there are some concerns that private investor/s may, through their respective governments, raise a matter of concern;
- the United States lack of disclosure of labelling of genetically modified food, as well as its challenging of EU labelling laws through the WTO suggests a likelihood of the US bringing pressure to bear on Australia's labelling laws; and
- the inclusion of water and water services (by not excluding them through any reservations) has the potential to limit or bring to a 'standstill' future state and local government regulation.

4.112 There is no basis whatsoever for any of the concerns raised above. In fact, the environment Chapter sets out a number of provisions designed **to ensure that neither Party fails to enforce its own environment laws** in a way that affects trade between the Parties.

4.113 The Chapter also provides for environmental cooperation, including through the signing of a Joint Statement on Environmental Cooperation, and by seeking means to enhance the mutual supportiveness of multilateral environmental agreements and international trade agreements to which Australia and the United States are both parties, in particular in the negotiations in the WTO regarding multilateral environmental agreements.

4.114 Nor will there be any inhibition on government's capacity to enforce environmental laws. The Parties recognise that 'each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priority' (Article 19.2.1(b)).

4.115 The governments of both countries are deeply committed to preserving environmental benefit. That commitment is reflected in the fact that under the Institutional Arrangements (Chapter 21) the Joint Committee will, at its first meeting, consider reviews by each Party of the environmental effects of the Agreement and afford the public an opportunity to provide views on those effects (Article 21.1.7). The Australian Government will be preparing an environmental assessment of the Agreement in the context of an overall analysis of the Agreement. The US Government has already prepared a draft review (December 2003) available on the USTR website

### **Institutional Arrangements and Dispute Settlement**

4.116 There have been some concerns regarding the power and influence of the Joint Committee established under Chapter 21 on Australia's domestic decision making processes. This is especially the case given that the Joint Committee is responsible for the interpretation and operations of the FTA.

4.117 The government Senators wish to emphasise that the Chapter on institutional arrangements and dispute settlement establishes a fair, transparent, timely and effective procedure for settling disputes arising under the Agreement. Importantly, it does not allow private investors to directly challenge government decisions under the Agreement. It provides high standards of openness and transparency in the resolution of disputes between the Australian and United States Governments, and provides for flexible compensation arrangements for resolving disputes.

4.118 The Joint Committee is central to the ongoing evolution of this Agreement and the early identification and settlement of disputes through consultation. At its annual meetings, it will review the current functioning of the Agreement, consider any improvements or amendments that either country may wish to propose and, where further clarity is required, issue interpretations of the Agreement.

4.119 Contrary to the implications of some of the critics, this is entirely appropriate and in Australia's interests because this last function clearly reserves the power to interpret the Agreement **to the Australian and United States governments** operating together.

4.120 The government Senators also draw attention to the fact that the Agreement emphasises settlement of disputes through consultation and gives the predominant role

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to the Parties in interpreting the Agreement. As well, the Article notes the continuing importance of soliciting and considering the views of members of the public on matters under dispute.

4.121 The Chapter requires high standards of openness and transparency through open public hearings, public release of legal submissions by both governments and opportunities for interested third parties to submit written views to the panel.

4.122 Consistent with the Agreement's commitment to maintaining the prominence of the two governments in resolving disputes between them, this Chapter:

- (a) restricts panels to making findings of fact and determinations regarding consistency of a government's action with the Agreement. Panels may only make recommendations for the resolution of disputes where specifically requested to do so by the two governments; and
- (b) panels must base their report only on the relevant provisions of the Agreement and the submissions and arguments of the Parties

4.123 Clearly there is no basis for any concerns that Australia's sovereignty is threatened with respect to decision making. The level of transparency at all levels will ensure that there is easy scrutiny of all the operations of the Joint Committee.

**Senator George Brandis**

**Senator Jeannie Ferris**

**Senator Ron Boswell**



## Chapter 4 Annexures

- A. Department of Foreign Affairs and Trade  
Australia-United States Free Trade Agreement  
*Background Paper*
  
- B. Department of Foreign Affairs and Trade  
Australia-United States Free Trade Agreement  
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## Australia-United States Free Trade Agreement

### Background Paper

#### A. What are Free Trade Agreements?

Free Trade Agreements (FTAs) and Customs Unions, such as the European Union, together comprise the main exception to the Most-Favoured-Nation (MFN) principle, the fundamental rule guiding trade in goods among members of the World Trade Organization. Under the MFN rule, members of the WTO must give fellow WTO members no less favourable treatment in terms of tariff rates and other trade measures than they afford to any other country.

FTAs and Customs Unions (together defined as Regional Trade Agreements or RTAs in WTO terminology) are exceptions to this rule. WTO rules allow individual countries to afford preferential treatment to partners in an RTA, provided that the RTA conforms to certain strict conditions.

The rationale for allowing this exception is set out in Article XXIV of the General Agreement on Tariffs and Trade (GATT) of 1947, which provided the foundation for the later WTO agreements. Article XXIV recognised the desirability of increasing freedom of trade by the development of closer integration between member countries through agreements establishing customs union or free-trade areas. At the same time, strict conditions apply to RTAs to ensure that they perform a truly liberalising function in international trade and do not encourage the establishment of new barriers, or provide an easy route to introduce new measures discriminating between trading partners.

The crucial test of an FTA or Customs Union is that it must **eliminate all tariffs** and other restrictions on **substantially all trade** in goods between its member countries. Although WTO members have differed over how precisely to define "substantially all trade", few would disagree that this means, at the very least, that a high proportion of trade between the parties - whether measured by trade volumes or tariff lines - should be covered by the elimination of tariffs and other restrictive trade regulations. Australia considers that this must be a very high percentage, and that no major sector should be excluded from tariff elimination.

While free trade in goods has been the focus of virtually all FTAs concluded to date,

the WTO also provides for bilateral or regional agreements liberalising trade in services. Technically, these are called "economic integration agreements" (EIAs), sometimes described as "services FTAs". The conditions for concluding EIAs as exceptions to the Most Favoured Nation principle are set out in Article V of the General Agreement on Trade in Services (GATS). EIAs are allowed so long as they (a) have substantial sectoral coverage, and (b) provide for the absence or elimination of substantially all discrimination between parties, through (i) elimination of existing discriminatory measures, and/or (ii) prohibition of new or more discriminatory measures. To date, no EIA covering services has been concluded separately from an FTA covering trade in goods as well.

While an FTA as defined under the WTO does not have to include trade in services, most contemporary agreements that are labelled "Free Trade Agreements" cover both goods and services, reflecting the growing importance of the services in the global economy. Such agreements are effectively a combination of FTAs and EIAs. In fact, FTAs together with EIAs provide a framework under which countries can negotiate a range of other bilateral undertakings governing their economic relations. In addition to trade in goods and services, Free Trade Agreements frequently cover such issues as investment protection and promotion, government procurement and competition policy, which are either not yet encompassed by WTO rules or only partially covered.

FTAs often also contain practical provisions in areas such as harmonisation or mutual recognition of technical standards, customs cooperation, application of subsidies or anti-dumping policies, electronic commerce, and protection of intellectual property rights. Such provisions do not have to be included in FTAs under WTO rules, but they can play an important role in facilitating trade between the parties and in a broader regional context.

Such bilateral or plurilateral economic agreements are often given titles such as "Closer Economic Agreements" or "Partnerships" to reflect their broad scope, even if FTA provisions eliminating restrictions on trade in goods form the core element.

## **B. What would be the scope of an FTA with the United States?**

As explained above, there is no predetermined definition of what an FTA between Australia and the United States would cover, beyond the core requirement to eliminate tariffs and other restrictions on substantially all merchandise trade between the parties. Beyond that core, the parameters of a bilateral economic agreement creating a Free Trade Area between Australia and the United States will be guided by the interests, practices and policies of both countries, and determined in the course of negotiations. Both governments have agreed that an agreement should be comprehensive in scope,

should aim to complement our respective efforts in the WTO negotiations, and set a high standard for FTA agreements between other countries.

The type of issues that the Australian and US Governments have previously been prepared to address in an FTA can be deduced from other FTA negotiations they have completed, such as the North American Free Trade Agreement (NAFTA) or the recently concluded Singapore-Australia Free Trade Agreement (SAFTA). Those agreements includes provisions on such matters as trade in goods; rules of origin; technical standards and regulations; trade remedies (such as anti-dumping and safeguards measures); agricultural trade; customs procedures; government procurement; services; investment; telecommunications; competition policy; intellectual property rights; and electronic commerce. Both Governments have preferred in the past to deal separately with certain economic issues, notably taxation and air services, rather than including them in broader trade agreements.

### **C. Bilateral Trade and Investment with the United States**

Preliminary data for 2001-02 indicates that the United States is Australia's largest individual trading partner, being the second most important destination for merchandise exports (after Japan) and our most important market for services and investment. Two way trade for that period was valued at over A\$44 billion, accounting for nearly 15% of total trade. Australia is currently the United States' 24<sup>th</sup> largest trading partner (total trade) and 15<sup>th</sup> largest export market. The United States is among Australia's highest growth export markets, with 5-year trend growth currently at 16%.

Australia's merchandise exports to the United States represent nearly 10% of total exports. Principal exports to the United States in 2001-02 included 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. The United States was the single most important destination for Australian services exports in 2001-02, accounting for 15% of total services exports.

The United States remains the largest source of Australian merchandise and services imports. Merchandise imports accounted for 18% of total imports - major items being aircraft and parts, computers and parts, telecommunications equipment and measuring instruments. In 2001-02 services imports from the United States accounted for 20% of total Australian services imports.

Australia continues to carry a substantial merchandise trade deficit with the United

States - the largest of any trading partner. Whilst the deficit doubled over 1990-95, the bilateral balance on merchandise trade then stabilised, remaining within an A\$11-A\$13 billion range in favour of the US. Since 2000-01, the deficit has decreased, reaching A\$9.5 billion in 2001-02. The merchandise trade deficit is in large part the result of Australia's manufactured and high tech import requirements being sourced from competitive US suppliers.

Australia's investment relationship with the United States is strong and growing. The United States was the largest recipient of Australian investment (A\$177 billion) and Australia's largest source of investment (A\$235 billion) as at 30 June 2001. Investment linkages should be enhanced by the new Protocol amending the Australia-US Double Taxation Agreement, which was signed in September 2001. The Protocol, which is expected to come into effect in 2003, is an important addition to the architecture of the bilateral trade and investment relationship, and will facilitate two-way investment with Australia's most significant investment partner.

#### **D. Why an FTA with the United States?**

An FTA with the US offers substantial benefits for Australia. The US has the world's largest economy. As noted above, it is Australia's second largest trading partner, the number one source of foreign investment and is now the largest destination for Australian direct investment overseas.

DFAT has commissioned two studies on the economic and wider implications of an FTA. The first, entitled "Economic impacts of an Australian - United States Free Trade Area" by the Centre for International Economics, showed that liberalisation of bilateral trade and investment could boost Australia's GDP by as much as \$4billion annually within 10 years. This figure is based on modelling that assumes the removal of all tariffs and other barriers for which it was possible to estimate the quantifiable impact of their removal. If the final agreement were not to eliminate all barriers immediately upon entry into force then the impact would accordingly be proportionately less and spread over a longer time frame.

The second study, *An Australia-USA Free Trade Agreement - Issues and Implication*", was carried out by the APEC Study Centre. It showed that, in addition to the direct benefits of increased access for our goods and services to the US market, an FTA could play an important role in attracting US investment to Australia and would improve ties with US business practice in areas such as e-commerce. In addition, it would help to protect Australia's market access interests in the context of the US' other FTA initiatives, such as the Free Trade Area of the Americas.

There is widespread support from business groups and leading companies in both Australia and the United States. Business coalitions have been formed in both countries- the **Australia United States Free Trade Agreement Business Group** in Australia and the **American Australian Free Trade Agreement Coalition** in the United States.

### **E. Barriers to trade and investment in the United States**

There is a wide range of tariffs and regulatory barriers to Australian goods and services exports and investment in the United States. An illustrative list of barriers and other issues that could be addressed in FTA negotiations is set out below.

#### **Agriculture:**

- tariff rate quotas on dairy products (cheese, butter, skim milk powder, butteroil), sugar (raw and refined), beef (frozen, fresh and chilled), cotton and peanuts
- tariffs on wool, a range of fruit, vegetables and nuts, certain cut flowers, wheat gluten, rice, vegetable oils
- high levels of domestic support

#### **Processed food and beverages**

- tariffs on wine, margarine, chocolate & cocoa preparations, canned and preserved fruits, ice cream

#### **Textiles, clothing, footwear and leather**

- average tariffs for sector exceed 10%.
- tariffs on Australian exports including bovine leathers, textile floor coverings, knitted or crocheted fabrics, cotton blouses and shirts, cotton jerseys and pullovers.

#### **Chemicals**

- tariffs on manganese dioxide, copper oxides and hydroxides, carboxylic acids, insecticides and herbicides.

#### **Shipbuilding**

- the **1920 US Merchant Marine Act**, the **1886 Passenger Services Act**, and related laws (collectively referred to as the **Jones Act**), which prevent direct access to the US market for Australian built high speed ferries

#### **Automotive**

- 25% tariff on light commercial vehicles (<5 tonnes, e.g. "utes"):

#### **Other industrial products**

- tariffs on magnesium and magnesium alloys, processed zinc and aluminium, some steel items, precious and semi-precious stones, articles of jewellery, ceramic tiles, certain machinery items and parts, optical fibres and cables, parts and accessories for optical & measuring instruments.

### **Investment**

- a range of foreign investment limitations applying to such sectors as land, shipping, shipbuilding, fisheries, deep-water ports, supply of offshore drilling rigs, and licenses for cable landings.
- treatment of foreign firms on a less favourable basis than domestic firms in some sectors and programs

### **Financial services**

- investment restrictions, such as commercial establishment limitations and/or citizenship requirements pertaining to depository institutions
- requirement for insurers to obtain reinsurance from state-licensed companies in some states, before permitting insurance premiums to be invested outside the state
- regulations affecting foreign mutual funds, foreign securities equity exchanges operating in the US through remote access facilities, and foreign broker-dealers who offer or sell securities to persons in the US

### **Professional services**

- nationality and citizenship requirements for the legal profession
- residency requirements for accounting and architecture in some states and nationality requirements in others (Australia has mutual recognition agreements with the US in accounting and engineering education)

### **Telecommunications**

- specific rules on entry of foreign-affiliated carriers
- variations in telecoms regulatory practice among different states, including interconnection pricing and universal service obligations
- application of pro-competitive regulation to the transport layer of the internet

### **Satellite launch services**

- requirement for Federal agencies must buy these services from US providers

### **Government procurement**

- a range of domestic preference legislation covering the United States government procurement market, in particular the **Buy American Act of 1933**, which stipulates that Federal Agencies buy only goods produced or made in the US
- the **Trade Agreements Act of 1979**, which prohibits certain government agencies from sourcing any goods or services from countries, such as Australia, that are not signatories to the WTO Government Procurement Agreement.

A more detailed description of many of these barriers and issues is contained in Appendix A to the study by the Centre for International Economics referred to above. DFAT would welcome further advice from industry and interested parties about other barriers or that could be addressed in FTA negotiations, as well as industry views on relative priorities on particular issues or sectors.

#### **F. Issues of interest to the United States**

In notifying the US Congress of the Administration's intention to commence FTA negotiations with Australia, US Trade Representative Bob Zoellick outlined the Administration's approach to the negotiations and its specific negotiating objectives. The **Trade Act of 2002**, which gives the President so-called "fast-track" authority to negotiate trade agreements which the Congress can approve or reject, but not amend, formally requires the Administration to set out its proposed objectives for any new trade negotiations. Ambassador Zoellick's letter to Congress of 13 November can be found on the [website of the Office of the United States Trade Representative \(USTR\)](#).

USTR also publishes annual **National Trade Estimates** reports on a wide range of countries, including Australia, commenting on the trade policies and market access issues of interest to the United States. These reports can be found on the [USTR website](#).

[[More information on the Australia-United States Free Trade Agreement](#)]

Australian Government

Department of Foreign Affairs and Trade



## **Australia-United States Free Trade Agreement**

### **AUSFTA - Frequently Asked Questions**

Additional information on some aspects of the AUSFTA.

#### **What are the benefits of the AUSFTA for Australia?**

The Agreement will immediately extend Australia's trade relationship with the world's largest merchandise and services exporter and importer. It will deliver real benefits and opportunities for Australian exporters from the day it comes into force, and the dynamic gains from the Agreement promise to yield enormous long-term benefits to the Australian economy.

More than 97 per cent of United States tariff lines on Australia's non-agricultural exports (excluding textiles and clothing) will be duty free from day one of the Agreement. Industry sectors that will particularly benefit include autos, metals, minerals, seafood, paper and chemicals. All trade in non-agricultural goods will be duty free by 2015, ensuring Australia's competitiveness against other suppliers from Canada, Mexico and other countries which enjoy preferential access to the US market. As a result of the Agreement Australia will gain immediate access to the \$200 billion market in US federal government purchases of goods and services.

On agriculture, the Agreement gives Australian producers a significant boost in the US market. Two thirds of all agricultural tariffs, including on lamb, sheep meat and a range of horticultural products, will be eliminated immediately, and a further 9 per cent cut to zero within four years. Australia's beef and dairy producers will gain significantly improved access to the United States market.

The Agreement offers strong legal protections to underpin services trade and Australian investment in the United States, principally through a US commitment not to discriminate against Australian firms. The Agreement therefore ensures that Australian companies can compete on equal terms with US companies in the biggest services economy in the world. The Agreement will also improve our access to US innovation, which drives the global information economy and the information age.

The Agreement is a balanced set of undertakings between two of the most sophisticated and open economies. Reaching agreement meant that the Australian government was not able to advance some of our industry interests to the extent we hoped. The outcome on sugar was a particular disappointment in this regard. Similarly, compromises were made by the United States that affected their preferred outcomes, allowing Australia to protect critical elements of public policy where we are recognised as having international best practice. This includes our quarantine regime, the Pharmaceutical Benefits Scheme and the right to ensure local content in Australian broadcasting and audiovisual services.

### **Has the Government commissioned independent economic modelling of the benefits of the AUSFTA?**

Yes. A Centre for International Economics study, commissioned by the Department of Foreign Affairs and Trade, on the impact of the Australia-United States Free Trade Agreement has confirmed it will deliver substantial benefits to Australia.

According to the CIE's modelling, Australia's annual GDP could be up by around \$6 billion (about 0.7 per cent of GDP) as a result of the AUSFTA a decade after the Agreement's entry into force. Total GDP increase over 20 years is expected to amount to almost \$60 billion in today's dollars.

Much of this growth will be generated by the dynamic gains expected from the deeper links the Agreement establishes between Australia and the US, with the CIE finding investment liberalisation the biggest contributor to the projected increase in Australia's GDP. But even if these benefits and other "dynamic" effects of trade liberalisation are excluded, liberalisation of trade in goods and services alone would contribute about \$1 billion to real GDP.

The study expects the AUSFTA to bring about strong growth in two-way trade. Australia's exports to the US are predicted to increase by more than \$3 billion annually. Beef and dairy exports are expected to expand as a result of the access gains negotiated, and big increases in exports of automobiles and parts are predicted.

The CIE study shows all major sectors of the economy and all States and Territories gaining. Parts of rural and regional Australia - for example, dairy producing and processing areas in Victoria, Tasmania and other states - will benefit strongly.

The industry case studies in the report show the FTA could also yield significant benefits

not captured fully by modelling. These include frameworks for regulatory harmonisation in financial services and the removal of tariff peaks for light metals such as magnesium and titanium.

Less quantifiable benefits include greater certainty for Australian investors and service providers in the US, possible further integration in standards and mutual recognitions, and protecting Australia's competitive position as other countries negotiate FTAs with the US.

The CIE was commissioned to undertake the study by the Department of Foreign Affairs and Trade (DFAT) in March 2004 to provide an independent assessment of the impact of the AUSFTA on Australia and to assist public discussion and the work of the Parliament's Joint Standing Committee on Treaties.

The CIE study is a detailed economic analysis, which uses two highly sophisticated models to attempt to measure the complex and comprehensive outcomes of the AUSFTA. While modelling has its limitations and, as the CIE itself acknowledges, some of the sectoral results, in particular, should be regarded with caution, the overwhelming outcome of the modelling work is that the AUSFTA delivers significant gains to Australia and will lift economic growth and welfare.

### **Does AUSFTA offer real benefits for Australian agriculture?**

Yes. AUSFTA will give Australian agriculture a significant boost into the US market – 66 per cent of all agricultural tariffs will be eliminated immediately, and a further 9 per cent within four years.

For dairy products, our quota access immediately increases nearly threefold in volume, with ongoing growth in the quota at an average 5 per cent. This increase is across the board for all categories of dairy products, and should be worth US\$41 million of additional exports in the first year. Moreover, the agreement grants access for some dairy products where Australia has been previously excluded from the US market, such as cheeses, butter, milk, cream and ice-cream products.

On beef, AUSFTA provides greater access for Australia's number one export to the United States. In-quota tariffs will be eliminated immediately, and over-quota duties will be phased out from years 9 to 18 of the Agreement. In addition, Australia will gain an 18.5 per cent increase in quota volumes over 18 years, valued at \$245 million in the final year at current prices.

The elimination of tariffs will mean that sectors such as horticulture can look to the US market as a serious commercial prospect. Horticulture is a fast growing export industry and will benefit from new access opportunities to the US market. Products that will benefit include avocados, peanuts, oranges, mangoes, mandarins, fresh tomatoes, cut flowers, macadamias and other nuts.

The bulk of our lamb and sheep meat exports will benefit from immediate tariff-free access, clearing the way for continued success in a market where Australian producers see great prospects.

This deal also ensures that Australia exporters to the US do not lose market share to other countries queuing up to do FTAs deal with the US, and brings our comparative access into line with countries that already have FTA with the US. For example, in the absence of AUSFTA, exports of Australian wine to the US would be disadvantaged compared to Chilean wines as tariffs faced by the latter will be phased out under the Chile-US FTA. Canadian and Mexican exports to the US now face zero tariffs on most products. Beef from Argentina and Brazil could well benefit from better access to the US under the proposed Free Trade Area of the Americas.

### **Why was sugar left out of the deal?**

Australia's sugar access to the United States remains unchanged at 87,402 tonnes per annum. The government fought hard to increase this quota during the negotiations. This was a sensitive issue for the United States, however, and it did not prove possible for the United States to offer to increase current access. Faced with a decision of whether to walk away from the negotiations, the Government decided that the potential benefits from AUSFTA as a whole did not justify denying those benefits to the rest of the Australian community for the sake of one – albeit very important – agricultural sub-sector.

The Government preserved Australia's single desk arrangements for sugar exports in the negotiations and will continue to pursue trade reform for the sugar industry in the World Trade Organisation. Moreover, the Government has announced a substantial package of measures to assist the industry in the current difficult circumstances.

### **Does the FTA abolish or weaken Australian agricultural 'single desks'?**

No. Australia's single-desk arrangements for marketing Australian commodities to the world, such as for sugar, rice, wheat and barley, will not be affected by the AUSFTA.

### **Why does it take 18 years to eliminate the US quota on beef?**

The 18-year timeframe for tariff elimination reflects the fact that beef is a sensitive industry in the United States. Nevertheless, during this period Australian beef producers will enjoy additional and growing duty free access into the US from year 3 of the agreement, in addition to our already large existing quota. (Beef exports are, in fact, Australia's largest single export by value to the United States).

Australia's existing annual beef quota to the US is 378,214 tonnes. The in-quota tariff on this tonnage is US4.4c/kg. There is a 26.40 per cent out-of-quota tariff for any imports over this quota. Under the agreement the US4.4c/kg in-quota tariff will be immediately eliminated meaning that 378,214 tonnes of beef may be imported free of tariff - the removal of the in-quota tariff alone will mean increased returns to the Australian beef industry of around \$20 million annually. The out-of-quota tariff will be phased down to zero over 18 years, beginning in year 9. At the same time the volume of the quota will be expanded over 18 years, from an additional 20,000 tonnes in year 3 to an additional 70,000 tonnes in year 18 (or a total of 448,214 tonnes in year 18, including the existing annual quota).

### **Will AUSFTA FTA affect Australian labelling requirements for genetically modified (GM) foods?**

No. Australian labelling requirements for GM foods are not affected by the FTA.

### **Does the FTA tarnish Australia's credentials in promoting free agricultural trade?**

The AUSFTA in no way diminishes Australia's commitment to agricultural trade reform, nor does it diminish our credentials as an advocate for global reform. Indeed, the FTA serves to highlight that the only way to address agriculture subsidies in the US, the EU and other countries is through the WTO as part of a global agreement on agriculture reform under the Doha round. For this reason, the WTO continues to be Australia's highest trade policy priority and Australia will remain an influential player in the WTO agriculture negotiations, including through our ongoing leadership of the Cairns Group.

### **Will the FTA affect Australia's quarantine regime?**

The integrity of Australia's quarantine regime and our right to protect animal, plant and human health will not be affected. Decisions on matters affecting quarantine will continue

to be based on science. Moreover, quarantine disputes are exempted from the dispute mechanism established under the agreement.

The establishment of a Committee on Sanitary and Phytosanitary Matters under AUSFTA and a Standing Working Group on Animal and Plant Health reflects an approach common to many bilateral agreements in providing a forum for discussing specific trade-related issues. Because Australia and the United States enjoy a significant trading relationship in agricultural products, it is likely that there will, at any point in time, be an agenda of market access issues for which quarantine risk assessments are underway or pending, and which may benefit from scientific and technical discussion.

The Working Group builds on the cooperative relationship that already exists between the Australian and United States agencies with major responsibility for technical market access issues relating to animal and plant health (Biosecurity Australia and the US Animal and Plant Health Inspection Service (APHIS)). Its stated objective is to resolve specific bilateral animal and plant health matters with a view to facilitating trade and, where possible, achieving consensus on scientific issues. This does not necessarily mean that it will be possible to reach scientific consensus in every instance.

### **Is the FTA compatible with Australian obligations under the WTO?**

Yes. The AUSFTA complies with the requirements for FTAs set out in Article XXIV of the General Agreement on Tariffs and Trade (GATT). A key requirement is that tariffs be removed on "substantially all the trade" in goods between FTA partners. In this regard, under the AUSFTA, Australian and US tariffs on all non-agricultural products will be eliminated within 10 years of entry into force. The AUSFTA also amply meets Article XXIV requirements with regard to agricultural products: all the limited Australian tariffs on US agricultural products will be removed from day one, while all United States tariffs on agricultural products imported from Australia will be eliminated over time, with only two exceptions (dairy and sugar). However, the Agreement does provide for a significant increase in the volumes of duty free quota access for dairy products, and Australia will continue to have access to the US market for sugar under WTO arrangements. By contrast, many existing FTA's would not meet the standards set by the AUSFTA. A further requirement of GATT Article XXIV is that a free trade agreement should not raise barriers against third parties to the Australian or US markets. The AUSFTA complies with this. AUSFTA also complies with standards under the WTO General Agreement on Trade in Services (GATS) through its substantial coverage in the services sector. Moreover, the

AUSFTA achieves 'WTO plus' standards by extending its scope beyond traditional FTAs to include provisions on investment, competition policy, consumer protection, government procurement, intellectual property and e-commerce.

**Will AUSFTA increase the cost of medicines under the Pharmaceutical Benefits Scheme (PBS)?**

No. The price of prescription medicines will not increase as a result of AUSFTA. Access by Australians to affordable medicines and the long term sustainability of the PBS will not be affected by the Agreement. Australians will benefit from faster access to subsidies for new prescription medicines.

**Will the FTA undermine government control of the PBS system?**

No. The Government has delivered on its commitment that the FTA would only lead to changes in PBS processes. As a result of AUSFTA more information will be made publicly available about the reasons for recommendations by the Pharmaceutical Benefits Advisory Committee (PBAC) to add medicines to the PBS. Also, a 'review' mechanism for medicines that have been rejected for listing on the PBS will be established. However, the review will not have the power to override the authority of the PBAC as the recommending body or of the Health Minister as the final decision-maker. Nor will it have the capacity to compromise the scientific integrity and independence of the PBAC.

**Will the FTA allow (foreign) private companies to challenge the Australian Government?**

No. The dispute settlement mechanism established under the agreement only allows the Parties, that is, the two governments, to initiate dispute settlement procedures if they believe the other Party is not complying with its obligations under the Agreement. Unlike many FTAs and other agreements covering investment, AUSFTA does not include provision for "Investor-State Dispute Settlement". This outcome recognises the fact that both countries have robust and sophisticated domestic legal systems that provide adequate scope for investors, both domestic and foreign, to pursue concerns about government actions.

**Will Australia still be able to screen foreign investments?**

Yes. The Government has retained the right to examine significant foreign investment proposals in all sectors to ensure they are in the national interest. Foreign investment in

urban land (including residential properties) and in existing media businesses will continue to be screened regardless of value. Foreign investment in existing businesses in the telecommunication, transport and defence-related sectors will be screened if above \$A50 million. All other foreign investment in existing businesses in non-sensitive sectors will still be screened if above \$A800 million. In addition, all existing foreign investment limits relating to the media, Telstra, CSL, Qantas, and other Australian international airlines, federal leased airports and shipping have been preserved.

### **Will the FTA damage the Australian TV and film industry?**

No. The agreement ensures there can be Australian voices and stories on audiovisual and broadcasting services now and in the future. Reservations to the chapters on Cross-Border Trade in Services and Investment allow Australia to maintain existing requirements for Australian content in both existing and new forms of media, whether analogue or digital, including in relation to free-to-air commercial TV, subscription TV, radio broadcasting, and subsidies (such as taxation concessions) for investment in Australian film and television production.

Under the Agreement, the existing requirement that drama channels on subscription TV allocate 10 per cent of their program expenditure to Australian content may be increased up to 20 per cent. Furthermore, Australia will be able to introduce new expenditure requirements of up to 10 per cent in the following additional formats: the arts, children's, documentary and educational.

The reservations also ensure that Australia maintains sufficient freedom to introduce new or additional local content requirements in the future in relation to possible digital multichannelling on free-to-air commercial TV and on interactive audio and/or video services.

Finally, nothing in the Agreement will affect in any way the Government's right to support the cultural sector through the allocation of public funding. Nor will it affect public broadcasting via the ABC or SBS, including the amount of Australian programming on their channels.

Our background paper on audiovisual local content provisions in AUSFTA provides a more detailed explanation.

### **Will the copyright clauses of the FTA harm Australian artists and musicians?**

No. The FTA simply aligns our copyright term more closely with the United States, the European Union and a number of other trading partners. Our creative sectors will benefit through increased rewards for the work they create.

**How does AUSFTA affect public services (eg Australia Post), state and territory government programs (including subsidies)?**

There is nothing in AUSFTA that would undermine the right of governments to adopt appropriate regulations that are in the public interest, for example, to achieve health, safety or environmental objectives. Nor does it require the privatisation of government services. Public services provided in the exercise of governmental authority will also be excluded from the scope of the services chapter.

**Will the AUSFTA prevent State and governments from effectively managing water resources?**

No. There is nothing in AUSFTA that would undermine the right of governments, at any level, to adopt measures for the management of water or for the sustainable management of any other natural resource. There is no obligation to privatise such services, nor anything in AUSFTA inhibiting proper regulation of water services for health or environmental reasons. AUSFTA would require any company with monopoly rights to supply a particular service, such as water, in a particular market to treat companies from the other country on a non-discriminatory basis, and that it should not abuse its monopoly position. That is fully consistent with the approach taken in Australia's current legislation, e.g. under the Trade Practices Act.

**How will the FTA affect indigenous Australians?**

Nothing in the agreement will adversely affect Aboriginal and Torres Strait Islander people. Policies giving preferences to indigenous persons or organisations are carved-out from the obligations of the chapters on Cross-Border Trade in Services and Investment. Moreover, the chapter on Government Procurement does not apply to measures adopted by the Parties for the health and welfare of indigenous people, and their economic and social advancement. AUSFTA includes a general exception for measures imposed for the protection of national treasures of artistic, historic and archaeological value.

**Does AUSFTA address problems in obtaining recognition of professional qualifications in the US?**

Acknowledging that recognition and licensing procedures can hinder the export of professional services, the agreement establishes a program to look at ways to promote the mutual recognition of qualifications and other issues of interest to providers of professional services. The Government will be working with professional bodies to identify sectors in which such mutual recognition agreements would be beneficial. At the same time, AUSFTA does not in any way diminish the ability of governments and their competent authorities to maintain rules with regard to the recognition of qualifications and the licensing of overseas-trained professionals.

### **Does AUSFTA improve arrangements for business people to visit or work in the US?**

Nothing in the agreement will affect the Parties' respective immigration regimes. Australia and the United States already maintain relatively open regimes with respect to entry of each others' business people.

The Australian Government did pursue outcomes in the AUSFTA negotiations that would further facilitate the conditions for the temporary entry of Australian business persons and professionals to the US. While it did not prove possible to include a chapter on temporary entry in the AUSFTA, there was recognition by both countries that liberal temporary entry arrangements are important if we are to benefit fully from the commitments contained in the FTA. Australia and the US therefore agreed to look at issues related to the temporary entry of business persons as part of a separate, but parallel, process to the AUSFTA. This will provide an opportunity to pursue issues of concern to Australia about temporary entry into the United States.

### **How will FTA provisions affect Australian government procurement arrangements such as "buy local" policies?**

Under AUSFTA neither country may apply local preference arrangements, including price preferences, for procurements to which the government procurement chapter applies. In Australia these cover all Australian Government (Commonwealth) central departments plus a range of agencies, statutory authorities and government authorities. The question of State and Territory Government participation in the Government Procurement chapter has still to be settled.

The FTA specifically bans offsets, defined broadly to cover any requirement built into

procurement for such things as local content, technology transfer or export performance. However, this ban is subject to a number of significant exclusions, in particular policies that assist small and medium enterprises, overseas development assistance, and procurement of research and development services. For Australia, there are also exclusions for programs assisting indigenous people; defence procurement; procurement of motor vehicles; blood plasma fractionation; and government advertising.

The government procurement arrangements only apply to tenders above specified threshold levels (adjustable for inflation). Separate thresholds exist for Federal government departments and agencies, independent government authorities and (subject to inclusion) State Government departments and agencies. For the Australian (Federal) Government the thresholds are \$A81,800 for goods and services with the exception of construction services where the threshold is \$A9,396,000.

The ban on offsets will require modification to the Australian Endorsed Government Supplier Arrangement assessment procedure and to general Australian Government policies such as the Model Industry Development Criteria (which currently may apply to contracts of \$5 million or more).

### **Does an Australian company have to have a branch in the US to tender for US government business?**

No. The agreement will mean that Australia becomes a “designated” country thereby allowing US federal agencies to consider offers of Australian manufactured goods and services. At present, Australian companies must operate in the US or in a designated country to be considered.

### **Will an FTA with the US hurt our relations with Asia-Pacific countries?**

The AUSFTA does not detract from the high priority the Government accords to trade relations with Asia. This is demonstrated by the recent conclusion of comprehensive FTAs with Singapore and Thailand, the recently signed Australia-Japan Trade and Economic Framework, the Closer Economic Partnership we are developing between the Association of South-East Asia Nations (ASEAN) and Australia and New Zealand. Australia and China are also undertaking a study into the feasibility of a bilateral FTA. Australia continues to play an active role in multilateral regional fora, including APEC (Asia-Pacific Economic Cooperation), the United Nations Economic and Social Commission for Asia and the

Pacific, and the Asian Development Bank.

The US is an important economic partner for most Asian countries. Many Asian countries are themselves involved in FTA discussions with the US. Singapore has recently signed an FTA with the US and Thailand and the US have announced bilateral FTA negotiations. Under the Enterprise for ASEAN framework announced in October 2002, the US and individual ASEAN countries will jointly determine if and when they are ready to launch FTA negotiations and individual ASEAN countries will jointly determine if and when they are ready to launch FTA negotiations.

Australia's FTA with the US is only one of over 40 FTA initiatives in the Asia-Pacific region that have been proposed or explored publicly since 1997. Around half of these, including a number involving the US, were announced well before Australia started exploring this proposal with the Bush Administration in early 2001. Asian governments have not raised AUSFTA as a point of concern with Australia.

### **How widely did the Government consult stakeholders about the FTA?**

Australia's positions in the negotiations were developed through consultation with State and Territory Governments, business and professional groups, non-government organisations and the general public. In November 2002 the Department of Foreign Affairs and Trade (DFAT) invited public submissions on Australia's approach to the negotiations. The Government received some 200 submissions from a wide range of organisations and individuals which helped to inform the development of the Government's negotiating objectives. During the course of the negotiations, Ministers and the negotiating team met with over 400 industry groups, professional organisations, businesses, state governments, consumer groups, unions and NGOs. State and Territory governments were consulted before and after each negotiating round and sent representatives as observers to a number of negotiating rounds.

### **How have Australian business and industry groups reacted to AUSFTA?**

The conclusion of the FTA has been welcomed by the major peak business bodies and a wide range of sectoral industry associations.

The Australian Chamber of Commerce and Industry described AUSFTA as "a high quality agreement which benefits the whole Australian economy, including the manufacturing, services, agricultural, mining and investment sectors", and which "will give Australian

business substantial new market access opportunities in one of the world's most dynamic and innovative economies."

The Business Council of Australia said the agreement "will provide massive opportunities for Australian companies of all sizes to gain access to the world's largest market."

The Chief Executive of Australian Industry Group, the manufacturing peak body stated that "we cannot underestimate the potential benefits of better access to our second largest export market after Japan and the primary source of Australia's foreign direct investment".

The Minerals Council said that the FTA "is just the fillip the Australian minerals industry was looking for from these trade negotiations".

While the National Farmers Federation, like the Government, is disappointed with the US' unwillingness to provide early open access for all of the agricultural sector, its President, Mr Peter Corish, has pointed out that the FTA achieves market access gains for a range of agricultural industries - including dairy, beef, horticulture, sheep meat and wool.

The Australian Seafood Industry Council has said benefits of the deal will be felt right across the Australian seafood industry with the abolition of tariffs, and the industry is confident it will be able to boost its current exports into America, which are currently around \$150 million a year.

### **How does AUSFTA interact with the North American Free Trade Agreement? Will Australia be importing cheap products from Mexico?**

The AUSFTA rules of origin are designed to ensure that sufficient transformation of raw materials or inputs from third countries has occurred within the US or Australia to justify a claim that the good is a legitimate product of the US or of Australia. The rules of origin treat raw materials and inputs imported from either country's free trade partners under agreements such as NAFTA or CER exactly same way as raw materials or inputs from any other third countries. Transshipment of a product of Mexican or Canadian origin through the US to Australia will not qualify it for preferential treatment under AUSFTA.

### **Will the FTA relax Australian environmental and labour regulations?**

No. In the FTA, Australia and the US recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective

environmental and labour laws. Under AUSFTA Australia retains the right to establish its own domestic environmental and labour standards, and to adapt or modify them.

Furthermore, in the agreement Australia and the US have agreed to explore ways to support ongoing bilateral, regional and multilateral activities, in particular in the negotiations in the WTO regarding the environment.

### **Will the Australian Parliament review the FTA?**

The draft text of the Agreement has been tabled in both Houses of Parliament, and referred to the Joint Standing Committee on Treaties (JSCOT). JSCOT reviews all proposed treaty actions by Australia and, where appropriate, makes recommendations to the Government. JSCOT is holding public hearings and has received public submissions on the FTA. Before the FTA can come into force, the Parliament would need to approve the legislation necessary for Australia to comply with the agreement, such as changes to the Customs Tariff Act.

### **When will AUSFTA be signed and when will it enter into force?**

Once the Agreement has been signed (scheduled for 18 May, 2004 in Washington) and both countries have completed necessary Parliamentary/Congressional processes, including passage of legislation necessary to give effect to the provisions of the agreement, the two governments can decide on a date for entry into force, which would occur 60 days after an exchange of diplomatic notes agreeing to enter the agreement into force. The target date for the agreement to enter into force is 1 January 2005.

### **Can I make a submission to the Government on AUSFTA?**

The Government consulted extensively prior to, and during, the negotiations, including by inviting public submissions. It has decided that it should proceed to sign the draft treaty as negotiated with the US, which it considers to be strongly in the national interest. The key focus for public scrutiny and review is now in the Parliament. Public Hearings by the Joint Standing Committee on Treaties (JSCOT) have been scheduled from 19 April to 14 May in State and Territory capitals.

Australian Government

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## **Australia-United States Free Trade Agreement**

### **Fact Sheets**

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2. **Key Outcomes**
3. **Agriculture**
4. **Manufactured Goods**
5. **Services**
6. **Financial Services**
7. **Government Procurement**
8. **Intellectual Property**
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  - **Backgrounder: Pharmaceutical benefits Scheme (PBS) Outcomes**
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18. **Technical Regulations and Standards**
19. **Environment and labour**
20. **Public Consultation**
21. **Domestic Approval Processes**
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### **See also:**

- **Full Text of the Agreement**
- **Guide to the Agreement**

- [Australia - US Free Trade Agreement home page](#)

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## **Australia-United States Free Trade Agreement**

### **OVERVIEW**

This agreement represents a landmark in improving Australia's trade relationship with the world's most dynamic and richest economy, a third of the world's GDP, and the world's largest merchandise and services exporter and importer.

This agreement will very significantly enhance Australia's attractiveness as a destination for US investment, important for our efforts to maintain Australia at the leading edge of growth and competitiveness.

For our export industries the agreement will provide some important advances in liberalising access to a key market - in many cases the increased export opportunities will help to underpin the prosperity of our export sectors

At the same time, we have secured important Australian interests in areas such as health, in particular the PBS, foreign investment screening, the audio-visual sector and our quarantine and food safety regimes.

#### **For our manufacturers ...**

- Duties on more than 97 per cent of US non-agricultural tariff lines (excluding textiles and clothing), worth \$6.48 billion in 2003, will be duty free from day one of the Agreement.
- We will now have access for the first time to the US Federal Government procurement market of \$200 billion a year.
- The 25 percent tariff on light commercial vehicles that previously kept the Australian ute's out of the US market will be removed immediately.
- The US auto market, worth \$254 million for passenger motor vehicles for Australian exporters in 2003, is now set to grow further.
- Our auto parts industry exports to the United States, worth \$495 million in

2003, will be boosted by the immediate elimination of tariffs.

- The 50 percent tariff on merchant ship repairs and maintenance, part of the maritime protection known as the Jones Act, will be removed.

### **For our farmers and our food processors ...**

- About 66 per cent of agriculture tariffs will go to zero immediately, with a further 9 percent going to zero in four years
- Our beef quota, currently 378,000 tonnes, will be substantially increased - growing by 18.5 per cent over 18 years, then effectively becoming free trade.
- Our lamb and sheep meat producers will have most tariffs reduced to zero immediately, and the rest within four years - a high priority for this industry in its biggest and fastest growing market.
- Our exports of quota constrained dairy to the US - currently worth around \$50.5 million - will likely increase by around \$55 million in the first year and build from there into a lucrative trade for our industry.
- Australia will get immediate zero tariff treatment for horticulture products such as oranges, mangoes, mandarins, strawberries, tomatoes, cut flowers, and fresh macadamias.
- For the first time, avocados from Australia will have access to the US market, up to 4000 tonnes (subject to SPS restrictions).
- For cereals, we will get immediate zero tariffs for wheat and cereal flour mixes.
- For processed foods we will get zero tariffs within four years for a range of fruit juices and for baby foods.
- For our wool industry, an industry priority of zero tariff for greasy wool, a premier Australian export industry, will be achieved within four years, and for other wool items within 10 years.
- Our wine producers will have the benefit, in what is already an almost billion dollar market, of all tariffs reducing to zero over 11 years.
- Our peanut industry, which currently has no access to the US market, will get a quota of 500 tonnes in year one, expanding over time.
- Australian seafood exports, currently worth around \$140 million, will enter the market duty free immediately.
- Immediate removal of a 35 per cent tariff on canned tuna will provide duty free access to the \$878.5 million US market.

### **For our service providers ...**

- Australian services exports to the United States, worth over \$5 billion a year, will have enhanced legal protections that guarantee market access and non-discriminatory treatment.
- We have important commitments ensuring non-discrimination against Australian service suppliers in a market of almost 300 million people - a valuable improvement on the commitments we had from the United States in the WTO.
- We have secured a robust framework that should promote the mutual recognition of qualifications in professional services. Problems with recognition of qualifications can be a major hindrance for the export of professional services.
- Education will particularly benefit from the greater recognition of Australian degrees and other aspects of the Agreement promoting more liberal services trade.
- Australia is a net exporter of education services to the United States, which benefits not only our universities, but all businesses that provide services to US students when they live in Australia.
- We now have a framework for cooperation in financial services (worth over \$362 million 2002/2003 in exports to the United States), linking us into the largest financial services market in the world.
- We have agreement on the value of pursuing more liberal air services arrangements.
- In telecommunications, we have commitments on market access and a solid framework for pro-competitive regulation, as well as a mechanism for continuing engagement.

#### **For our miners and metal producers ...**

- All metals and minerals will be immediately duty free - particularly valuable for our aluminium industry, currently exporting \$134 million to the United States.

#### **For our creative industries ...**

- Closer harmonisation of Australian and US intellectual property laws will benefit Australian exporters, by creating a more familiar and certain legal environment, and Australian innovators, and by helping them to attract US investment.

- Australian copyright industries (including publishing, filmmaking and music) will benefit from an extended term of copyright protection, an expeditious process that allows for copyright owners, Internet Service Providers and subscribers to deal with allegedly infringing copyright material on the Internet, and agreed criminal standards for copyright infringement.
- Australia and the United States will work to further reduce differences in laws and practices relating to patents, trademarks and designs, to further assist our right holders to protect their intellectual property in the US market
- The AUSFTA demonstrates to our trading partners the benefits of strong intellectual property laws and reinforces Australia's reputation as one of the world's leading countries in protecting and enforcing intellectual property rights.
- Australia retains the flexibility to implement the Agreement in a way that meets our domestic circumstances, for example, providing a mechanism to introduce public interest exceptions in relation to technological protection measures

#### **And for all our exporters ...**

- Australia will now gain the benefit of preferred status as an FTA partner with regard to any future global safeguard actions - that is, we will be exempted from safeguard restrictions almost automatically, just as Canada was for steel and lamb.
- The US will waive the Merchandise Processing Fee levied on all imports, a saving to Australian industry of about US\$10 million a year.

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## Australia-United States Free Trade Agreement

### KEY OUTCOMES

#### Overview

Australia now has the opportunity to more closely integrate its economy with the United States. The agreement offers Australia greater economic growth and prosperity, through increased trade and investment links with the largest and most dynamic economy in the world.

#### Agriculture

- The AUSFTA will give Australian agriculture a significant boost in the US market.
- Two thirds of all agricultural tariffs - including in important commodities such as lamb, sheep meat and horticultural products, will be eliminated immediately
  - a further 9 per cent of tariffs will be cut to zero within four years.

The AUSFTA provides greater access to the US market for two of Australia's key agricultural export industries, beef and dairy.

- Australia's sugar access remains unchanged at 87,000 tonnes per annum.
- Australia's single-desk arrangements for marketing Australian commodities to the world, such as for sugar, rice, wheat and barley, have been preserved.
- Australia's quarantine and food safety regimes, which ensure our health and our environment are protected, are not affected by the Agreement.
  - this includes labelling requirements for products such as GM foods

#### Manufacturing

- Duties on more than 97 per cent of US non-agricultural tariff lines (excluding textiles and clothing), worth \$6.48 billion in 2003, will be duty free from day

one of the Agreement.

- Tariffs on textiles, some footwear and a handful of other items will be phased out, with all trade in goods free of duty by 2015.
- A mechanism to address non-tariff barriers will be established.

### **Services**

- Access to US markets has been enhanced for Australian service suppliers such as providers of professional, business, education, environmental, financial and transport services
- A framework to promote mutual recognition of professional services has been developed - a big gain for Australian professionals doing business in the United States.

### **Financial services**

- Australia's financial sector will reap the benefits associated with financing the increased trade in goods and services flowing from the Agreement.
- Future access for Australian financial services providers to the world's largest financial market is assured. In addition, the Agreement guarantees that any future US liberalisation in this sector cannot be reversed.
- Australia and the US have agreed to jointly consider a number of issues regarding the closer integration of our two financial sectors and report within two years of the Agreement entering into force.

### **Government procurement**

- The A\$200 billion market in US federal and most state government purchases of goods and services will now be open to Australia.
- Australia will have a waiver from US programs favouring US firms and products.
- All 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 remain.

### **Intellectual property**

- Australia's IP laws will be substantially harmonised with the largest intellectual

- property market, and a global leader in innovation and creative products.
- Australia's international reputation as one of the world's leading countries in protecting and enforcing intellectual property rights has been reinforced.
  - Standards of intellectual property protection will be beyond those provided by multilateral agreements such as the WTO TRIPS agreement and WIPO Treaties.

### **Investment**

- Australia has secured an agreement that should provide a strong framework for continuing to promote high levels of two-way investment between Australia and the US.
- There is no investor-state dispute settlement provision in the Agreement.
- The Agreement preserves Australia's foreign investment policy, but with a range of changes that maintain our ability to screen all investment of major significance.

### **Health**

- Access by Australians to affordable medicines under the PBS will be maintained under the AUSFTA.
- The Agreement reinforces Australia's existing framework for intellectual property protection of pharmaceuticals.

### **Audio-visual**

- The Government has protected our right to ensure local content on Australian media, and retains the capacity to regulate new and emerging media, including digital and interactive TV.
- The agreement ensures that there can be Australian voices and stories on audiovisual and broadcasting services, now and in the future.

### **Automotive**

- Australia and the United States have 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 ("pick-up trucks").
- Australian duties on passenger motor vehicles will be phased out, to zero in

2010.

### **Competition**

- Australia and the United States will cooperate on competition law and policy.
- 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**

- Pro-competitive regulatory frameworks for Australian and US companies
- High standards of transparency and WTO-plus rules on major suppliers
- New avenue for consultations with the US on market access issues
- Embraces market-based regulatory approach where markets function effectively

### **E-commerce**

- There will be no barriers to trade conducted electronically
- Australia will still be able to regulate for public policy purposes
- Trade and investment is encouraged by further facilitating electronic commerce

### **Rules of origin**

- Simple and objective tests apply to "rules of origin" for manufactured products, which must be "substantially transformed" in either Australia or the United States before they can benefit from the Agreement.

### **Sanitary and Phyto-sanitary measures**

- The integrity of Australia's quarantine regime and our right to protect animal, plant, and human health and life are preserved.
- Decisions about market access on quarantine or food safety grounds will continue to be made on the basis of science.
- A framework for discussions on specific products has been established.

### **Technical Regulations and Standards**

- Australian exporters have greater opportunities to understand and meet US requirements dealing with technical regulations and standards.
- Requirements for food and manufactured goods, such as labelling, packaging, testing and certification that products conform to regulations, are covered.
- A framework for exporters to work with government in tackling barriers has been established.

### **Environment & labour**

- The Parties have agreed not to fail to enforce their own environmental and labour laws in a manner affecting trade between the Parties.
- Both Parties retain the right to establish their own domestic environmental and labour standards, and to adapt or modify their own laws.

### **Public consultation**

- The Government has consulted business, state and territory governments, non-government organisations and the public right through the negotiations.
- Ministers, negotiators and departments will hold public information sessions.
- The Joint Standing Committee on Treaties (JSCOT) will examine the text.

### **Approval processes**

The AUSFTA will not be in effect until both Parties have:

- Completed their respective domestic approval processes;
- Amended and/or passed any necessary legislation, and;
- Agreed on a date for entry into force.

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## Australia-United States Free Trade Agreement

### AGRICULTURE

- The AUSFTA will give Australian agriculture a significant boost in the US market.
- Two thirds of all agricultural tariffs - including in important commodities such as lamb, sheep meat and horticultural products, will be eliminated immediately
- a further 9 per cent of tariffs will be cut to zero within four years.
- The AUSFTA provides greater access to the US market for two of Australia's key agricultural export industries, beef and dairy.
- Australia's sugar access remains unchanged at 87,000 tonnes per annum.
- Australia's single-desk arrangements for marketing Australian commodities to the world, such as for sugar, rice, wheat and barley, have been preserved.
- Australia's quarantine and food safety regimes, which ensure our health and our environment are protected, are not affected by the Agreement.
- This includes labelling requirements for products such as GM foods

### Summary

The agriculture deal in the AUSFTA delivers substantial market access gains for the majority of Australia's agricultural producers - including for the beef and dairy industries - who have faced restrictive barriers in the US market.

### Dairy

Under the AUSFTA, the Australian dairy industry can send nearly three times as much of current tariff quota products from year one, with ongoing growth in the quotas at an average yearly rate of 5 per cent.

The increase - worth \$55 million in the first year of the Agreement - is across the board for all dairy products constrained by quotas, providing significant new market opportunities for

dairy processors and producers.

The biggest market access gains are in products where the Australian dairy industry is most competitive and sees great prospects for substantial growth. The deal 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, and 2000 tonnes of European type cheeses.

In addition, Australia has gained significant increases in quota access for whole-milk powder (used primarily in bakery and confectionary products), from 0 to 4,000 metric tonnes.

## **Beef**

The AUSFTA provides greater access for Australia's number one export to the United States.

In addition to the substantial WTO quota that Australia already holds, our beef producers will have access for an additional 15,000 tonnes of beef in year 2, increasing to 70,000 tonnes in year 18, and then effectively free trade.

In-quota tariffs will be eliminated immediately, and over-quota duties will be phased out from years 9 to 18 of the Agreement.

## **Tariff-only products**

Tariffs on the majority of agricultural products, including most lamb and sheepmeat, and products such as oranges, cut flowers and cotton seeds, will be zero from day 1 of the Agreement. Further elimination of other tariffs will take place over periods of 4, 10 and 18 years.

The bulk of our lamb and sheep meat exports will benefit from immediate tariff-free access, clearing the way for continued success in a market where Australian producers see great prospects over the long term.

The elimination of tariffs will mean that agricultural sectors such as horticulture can look to the US market as a serious commercial prospect. Horticulture is a fast growing export industry and should benefit from new access opportunities in the AUSFTA.

- Zero tariffs on oranges will provide the citrus industry with savings in the order of \$670,000 in duties alone.
- Quota access for the first time, for avocados will help the burgeoning avocado industry in Australia, currently growing at 10 percent.
- Zero tariff access for olives and fresh macadamia nuts will also benefit two other fast growing horticulture industries.

### **Single export desks**

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

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## Australia-United States Free Trade Agreement

### MANUFACTURED GOODS

- More than 97 percent of Australia's non-agricultural exports to the United States (excluding textiles and clothing), worth \$6.48 billion in 2003, will be duty free from day one of the Agreement.
- Remaining tariffs on textiles, some footwear and a handful of other items will be phased out, with all trade in goods free of duty by 2015.
- A mechanism to address non-tariff barriers will be established.

#### Summary of chapter

Australia and the United States have agreed to eliminate customs duties on all goods from the other Party. Duties will be zero for more than 97 percent of Australia's non-agricultural exports to the United States (excluding textiles and clothing) from day one of the Agreement. All tariffs will be zero by 2015.

Australia and the United States retain their WTO rights to anti-dumping and countervailing action, in the event of unfair trade or injury to particular industries. There will also be a special transitional safeguard measure for textiles and clothing to address any undue interruption to the industry in either country.

A Committee on Trade in Goods will be established to consider any issues on tariffs, non-tariff measures, rules of origin and customs administration. Both countries have retained the right to regulate the import and export of certain items, in particular forest products as well as retain marketing arrangements for wheat, barley, rice, sugar and export arrangements for horticulture and livestock.

#### Gains for Australia

Australia's trade in non-agricultural and manufactured goods with the US was valued at approximately \$6.48 billion in 2003. Duty free entry will allow this to grow across all sectors, but in particular in autos, metals, minerals, seafood paper and chemicals.

Australia is already competitive in these areas but has been prevented from deeper levels of market penetration because of high US tariffs in key products.

For example, Australian manufacturers will be able to export light commercial vehicles (utes) to the United States once the high 25 percent duty has gone. Australia's canned tuna industry will be able to export to the \$878.5 million US import market following the removal of a prohibitive 35 per cent tariff.

Even in sectors where existing tariffs were modest, Australian manufacturers and exporters will now enjoy an advantage over competitors in US import markets. The removal of US tariffs on aluminium for example, will allow Australian exporters to have a competitive edge against overseas competitors. This will allow aluminium exporters to build on their trade with the United States, currently valued at \$134 million.

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## **Australia-United States Free Trade Agreement**

### **SERVICES**

- Access to US markets has been enhanced for Australian service suppliers such as providers of professional, business, education, environmental, financial and transport services
- A framework to promote mutual recognition of professional services has been developed - a big gain for Australian professionals doing business in the United States.

#### **Summary**

The services chapter of the agreement offers strong legal protections to underpin services trade and Australian investment in the United States - principally through a US commitment to not discriminate, and strong provisions on the transparency and development of regulations relevant to services trade.

If, for example, a law is passed in the United States to treat American education or legal service providers better than foreigners, Australian companies would have the right to be treated the same as US companies.

The AUSFTA therefore ensures that Australian companies can compete on equal terms with US companies in most services sectors in the biggest services economy in the world. The Agreement contains commitments ensuring a liberal services trade environment that go beyond the commitments Australia enjoys in the WTO in a wide range of sectors, including educational, financial and professional services. It also ensures the transparency of regulations in this area, and will automatically make future unilateral liberalisation of many measures a binding part of the Agreement.

Importantly, the services chapter establishes a robust framework that should promote the mutual recognition of qualifications in relation to professional services. Problems with

recognition of qualifications can be a major hindrance for the export of professional services.

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## **Australia-United States Free Trade Agreement**

### **FINANCIAL SERVICES**

- Future access for Australian financial services providers to the world's largest financial market is guaranteed. In addition, the Agreement guarantees that any future US liberalisation in this sector cannot be reversed.
- Australia and the US have agreed to jointly consider a number of issues regarding the closer integration of our two financial sectors and report within two years of the Agreement entering into force.
- Australia's financial sector will reap the benefits associated with financing the increased trade in goods and services flowing from the Agreement.

#### **Summary**

The relatively few restrictions that apply to Australian access to the US financial services sector will now be bound.

The Agreement establishes a joint Financial Services Committee (FSC) between Australia and the US to consider any issue referred to by either party.

It has been agreed that the FSC will examine regulatory issues affecting access for Australian foreign securities trading screens and collective investment schemes to the US and report back within two years of the Agreement coming into effect

#### **Gains for Australia**

Australia's financial sector, one of the most open and efficient in the world, will be well placed to participate fully in supporting the increased trade in goods and services expected to flow from the closer integration of the US and Australian economies.

A dialogue aimed at strengthening cooperation on regulatory issues offers the prospect of Australian Stock Exchange trading screens being accessible in the US.

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## **Australia-United States Free Trade Agreement**

### **GOVERNMENT PROCUREMENT**

- The A\$200 billion market in US federal government purchases of goods and services will now be open to Australia.
- Australia will have a waiver from US programs favouring US firms and products.
- 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 remain.

#### **Summary**

Australia becomes a "designated" country in US law, allowing Australian companies to bid on federal government contracts. The six per cent penalty imposed under the Buy America Act for Australian products, above agreed thresholds, 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 sides 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-US MOA on Reciprocal Defence Procurement.

#### **Gains to Australia**

Australian companies will now be able to compete in the \$A200 billion US Federal procurement market with firms from over 80 countries already designated under US law,

such as the EU, Japan, Korea, Canada and Mexico.

Codan, an Australian company manufacturing high frequency radio and satellite communication equipment, will now be able to market its products more effectively to police, fire brigades, civil aviation organisations and emergency services across the United States. ResMed, a NSW-based manufacturer specialising in products for the diagnosis and treatment of sleep disordered breathing, will be able to manufacture products for the US Government market at its new factory north west of Sydney.

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## Australia-United States Free Trade Agreement

### INTELLECTUAL PROPERTY

- Reinforces Australia's reputation as one of the world's leading countries in protecting and enforcing intellectual property rights.
- Harmonises our intellectual property laws more closely with the largest intellectual property market in the world, which is recognised as a global leader in innovation and creative products.
  - At the same time it allows Australia considerable flexibility to implement the Agreement in a way that reflects the interests of our domestic interest groups and Australia's legal and regulatory environment.
- Demonstrates to our trading partners our commitment to strong intellectual property laws.

#### Summary

The inclusion of the Intellectual Property Chapter recognises the importance of a strong intellectual property regime to economic growth through trade and investment. Australians will benefit through closer harmonisation of our already strong intellectual property regime with that of the largest intellectual property market in the world.

Closer alignment in intellectual property laws and practices will provide Australian exporters with a more familiar and certain legal environment for the export of value-added goods to the US. Likewise, the ability of Australian innovators to attract investment from the US will be enhanced through greater familiarity and confidence of those investors with our legal system.

#### Key Points

Key Points in the Intellectual Property Chapter include:

- Stronger protection for copyright owners, including:
  - Agreement to implement the WIPO Internet Treaties by entry into force of

the Free Trade Agreement: these being world intellectual property standards on treatment of digital copyright material

- An expeditious process that allows for copyright owners to engage with Internet Service Providers and subscribers to deal with allegedly infringing copyright material on the Internet.
- Tighter controls on circumventing technological protection of copyright material together with a mechanism for examining and as necessary introducing public interest exceptions in relation to technological protection measures, along with a transition period to provide the opportunity for public submissions in this area, as well as other measures in relation to circumvention tools
- Agreement on standards of copyright protection
- An increased term of protection for copyright material
- Enhanced intellectual property enforcement, including:
  - increased criminal and civil protection against the unlawful decoding of encrypted program carrying satellite TV signals - which will assist the Pay TV industry enforce its rights
  - agreed criminal standards for copyright infringement and on remedies and penalties
- Reinforcement of Australia's existing framework for industrial property protection,

In addition the Agreement includes:

- Agreement to work to reduce differences in law and practices, in the area of patents, trademarks and designs, and to promote bilateral and regional cooperation with respect to enforcement of border measures
- Introduction of transparent procedures into the marketing approval process for pharmaceuticals products coming off patents.

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## **Australia-United States Free Trade Agreement**

### **INVESTMENT**

- Australia has secured an agreement that should provide a strong framework for continuing to promote high levels of two-way investment between Australia and the US.
- There is no investor-state dispute settlement provision in the Agreement.
- The Agreement preserves Australia's foreign investment policy, but with a range of changes that maintain our ability to screen all investment of major significance.

#### **Summary**

The Agreement successfully preserves the main features of Australia's foreign investment policy.

The Government has retained the right to examine significant foreign investment proposals in all sectors to ensure they do not raise issues contrary to the national interest.

- Foreign investments in urban land (including residential properties) and the media, and by foreign governments, will continue to be screened regardless of value.
- Foreign investments in the telecommunications, transport and defence related industries will continue to be subject to screening above the existing threshold of \$50 million.
- The threshold for screening in all other, non-sensitive sectors will be increased to \$800 million.
- Existing foreign investment limits relating to the media, Telstra, CSL, Qantas and other Australian international airlines, federal leased airports and shipping have all been preserved.

The Agreement includes strong investor protection provisions, which will benefit Australian investors in the US, as well as affirming Australia's attractiveness to US investors. The liberal provisions of the Agreement on trade in goods and services should also strengthen Australia's ability to attract foreign investment in many areas of the economy.

Reflecting the fact that both countries have robust, developed legal systems for resolving disputes between foreign investors and government, the Agreement does not include any provisions for investor-state dispute settlement.

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## **Australia-United States Free Trade Agreement**

### **HEALTH**

#### **Pharmaceutical Benefits Scheme [PBS]**

- Australia will make improvements to the transparency and timeliness of PBS processes and provide more opportunities for companies seeking listing of new medicines on the PBS to have input to the process.
  - Australians will gain a better understanding of decisions about adding new medicines to the PBS and will benefit from faster access to subsidies for new prescription medicines.
- Access by Australians to affordable medicines under the PBS will be maintained under the AUSFTA.
  - The Government has delivered on its commitment that the price of prescription medicines will not increase as a result of this Agreement.

#### **Pharmaceutical Intellectual Property**

- The Agreement reinforces Australia's existing framework for intellectual property protection of pharmaceuticals.
- Agreed measures include:
  - preserving existing arrangements under which generic medicines manufacturers can obtain marketing approval overseas once a patent extension has been granted for the patented product; and
  - retaining the current five years of protection for test data submitted with an application for marketing approval.
- The Therapeutic Goods Administration (TGA) marketing approval process will ensure that a generic manufacturer is not able to enter the market with a generic version of a medicine before a patent covering that product has expired.
  - in those limited cases where a generic manufacturer considers a patent to

be invalid, and intends to enter the market before that patent expires, the patent owner will be notified when the generic manufacturer applies to the TGA for marketing approval of the generic version of the patented product.

### **Plasma Fractionation Arrangements**

- Australia will review Australian blood plasma fractionation arrangements by 1 January 2007.
  - The review will be undertaken by Commonwealth, State and Territory governments and will include examining whether, in the future, suppliers of fractionation services should be selected through competitive tender processes.
- All decisions will continue to be based on delivering the safest and most clinically effective treatments for Australians.
- Australia's policy on self sufficiency in blood products will not be affected and blood plasma products for use in Australia will continue to be derived from plasma collected from Australian blood donors.

### **Who to Contact**

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## **Australia-United States Free Trade Agreement Backgrounders**

### **The Australia-United States Free Trade Agreement: Pharmaceutical benefits Scheme (PBS) Outcomes**

#### Summary

- The Australia - United States Free Trade Agreement (AUSFTA) will not impair Australia's ability to deliver fundamental policy objectives in health care.
- The fundamental architecture of the PBS remains unchanged by the AUSFTA.
- The Australian Government has ensured access to affordable medicines through a sustainable Pharmaceutical Benefits Scheme.
- 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.

#### **Pricing**

- The price of medicines on the PBS will not increase as a result of the AUSFTA.
- The text of the AUSFTA makes no changes to the methods used to set prices. All changes are process related.
- The Agreement is consistent with existing practices and we will always consider fairly the cost of producing medicines.

#### **Common principles**

- Australia and the United States have agreed on some common principles and objectives that are important in managing their respective federal healthcare programs. We recognise:
  - the importance of innovative products in delivering quality health care;
  - the importance of government support for pharmaceutical industry research and development including patent protection;
  - the need to promote efficient and transparent processes for the public to gain access to those innovative products; and

- the need to ensure that those processes recognise the health benefits of innovative products.
- These are statements of general principle which do not require Australia to change the PBS.

## **Transparency and Process**

- Under the AUSFTA Australia has agreed to some improvements in process and transparency in relation to the PBS.
- In practice, for Australia, most of the provisions of the text reflect standards and practices that already apply when the Pharmaceutical Benefits Advisory Committee (PBAC) considers applications for new medicines to be added to the PBS. These are such things as:
  - ensuring that applications from companies seeking to have products added to the PBS are considered by the PBAC within a specified timeframe;
  - publishing the procedural rules and guiding principles that govern the PBAC's consideration of those applications;
  - providing applicants with an opportunities to discuss their application with technical staff of the Department of Health and Ageing prior to lodging it and to consult with the PBAC during its consideration of applications; and
  - providing companies with detailed explanations of the PBAC's consideration of their application.
- In addition Australia will provide more detailed information about the outcomes of the process will be made available to the public.
  - this is an important step forward in transparency for both the Government and the pharmaceutical industry.
  - for the public this will mean an opportunity to gain a better understanding of the process by which medicines are added to the PBS and the reasons why some medicines are recommended by the PBAC and others are not.
- The other key transparency provision is the establishment of a review mechanism for PBAC outcomes.
  - This review mechanism will be made available in cases where PBAC recommends that a drug not be added to the PBS.
  - This mechanism will not have the authority to overturn a

recommendation of the PBAC and the PBAC will remain the "gate-keeper" to the PBS

- Currently the Minister for Health and Ageing is bound by law to take advice from the PBAC and cannot list a medicine on the PBS that has not been recommended by the PBAC.
- This will not change with the introduction of this review mechanism.
- The details of how the review process will operate are yet to be worked out, but stakeholders will be consulted as part of the process.
- Australia has also agreed to streamline some of the administrative steps that are required before a drug is added to the PBS - this will save time and make new drugs more quickly available to the public.

### **Closer cooperation**

- Australia and the United States have agreed to establish a Medicines Working Group, comprising appropriate Government officials, as a forum for further discussion of the Pharmaceuticals Annex of the AUSFTA.
  - This will be similar to Working Groups that will be set up to discuss other aspects of the Agreement.
  - The details of how the Working Group will operate and the frequency of meetings is to be decided.

Agreement to promote closer cooperation between the Therapeutic Goods Administration (TGA) and the US Food and Drug Administration (FDA) will serve to strengthen the existing relationship between these two organisations.

### **Dissemination of information**

- The agreed text contains a statement about information pharmaceutical companies are permitted to place on their internet websites about the medicines that they manufacture and sell.
  - The text reflects the status quo, in that there are no changes required to the current arrangements in relation to the advertising of medicines in Australia.

Who to contact

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## **Australia-United States Free Trade Agreement**

### **AUDIO-VISUAL**

- The Government has protected our right to ensure local content on Australian media, and retains the capacity to regulate new and emerging media, including digital and interactive TV.
- The agreement ensures that there can be Australian voices and stories on audiovisual and broadcasting services, now and in the future.

### **Summary**

Australia has successfully negotiated a reservation to the services chapter that ensures the Government's capacity to regulate for Australian content so that it remains available to Australian consumers.

This capacity extends to both existing and new forms of media, whether analogue or digital, including free-to-air and subscription television, radio, and other media.

For free-to-air television, provision has been made for regulation in a possible multi-channelled environment and if television channels move to other delivery platforms.

The capacity to regulate beyond existing measures for important formats on subscription television, such as drama, documentaries or children's programming, has been guaranteed.

The Government will also be able to take measures to ensure that Australian content on new media platforms is not unreasonably denied to Australian consumers, should it determine that Australian material is not readily available to them.

Full capacity for subsidy and taxation incentive programs for cultural purposes has also been preserved.

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## **Australia-United States Free Trade Agreement Backgrounders**

### **The Australia-United States Free Trade Agreement: the outcome on local content requirements in the audiovisual sector**

#### Summary

- Australian policy in relation to the use of local content requirements in the audiovisual sector was a prominent issue in the Australia-US Free Trade Agreement (AUSFTA) negotiations. The final outcome on audiovisual:
  - Allows Australia to maintain existing local content requirements in relation to:
    - Free-to-air commercial TV.
    - Subscription TV.
    - Radio broadcasting.
    - Taxation concessions.
    - The co-production arrangements with other countries (including any future agreements).
  - Ensures that Australia maintains sufficient freedom to introduce new or additional local content requirements in relation to:
    - Possible digital multichannelling on free-to-air commercial TV.
    - Subscription TV.
    - Interactive audio and/or video services.
- This outcome was a carefully negotiated one. Its key aspect was the maintenance of Australia's right to intervene in response to new media developments, subject to a number of commitments on the degree or level of any new or additional local content requirements.
  - These commitments essentially mean that Australia will maintain an open audiovisual market, while preserving a modest range of possible policy interventions to ensure that Australian audiences have access to Australian voices.
  - In this sense the outcome provides benefits to the US, in the form of

guarantees that Australia will not, at some time in the future, become a market that is closed to foreign audiovisual material.

- But it also safeguards Australia's right to intervene in response to new developments in media platforms, including the right to introduce new local content requirements.

#### The outcome in detail

- The outcome on audiovisual takes the form of three reservations to the AUSFTA's Chapters on Cross-Border Trade in Services (CBTS) and Investment. These reservations, included in two Annexes to the Agreement, allow Australia to maintain or adopt measures that are inconsistent with certain obligations of the CBTS and Investment Chapters (i.e. "non-conforming measures").
  - Under the AUSFTA, Annex I can be used to reserve the right to maintain existing non-conforming measures that are specifically identified in that Annex.
  - Annex II can be used to identify certain sectors, sub-sectors or activities where a Party reserves the right to maintain existing non-conforming measures, to make these measures more restrictive, or to introduce new non-conforming measures.
- The three reservations addressing the use of local content requirements in the audiovisual sector:
  - An Annex I reservation allowing Australia to maintain the existing 55% local content transmission quota on programming, and the 80% transmission quota on advertising, on free-to-air commercial TV on analogue and digital (other than multichannelling) platforms. Subquotas may also be applied within the 55% programming quota.
  - A general Annex II reservation allowing Australia to both maintain existing and introduce new measures in relation to:
    - Multichannelled free-to-air commercial TV.<sup>[1]</sup>
    - Subscription TV.
    - Free-to-air commercial radio broadcasting.
    - Interactive audio and/or video services.
    - Broadcasting planning, licensing and spectrum management.
    - Taxation concessions for investment in Australian film and television

production.

- An Annex II reservation allowing Australia to both maintain the existing co-production arrangements with other countries and to introduce new ones.
- The general Annex II reservation preserves Australia's right to take the following interventions:
  - Multichannelled free-to-air commercial TV:
    - A 55% transmission quota on programming may be imposed on no more than 2 channels, or 20% of the total number of channels (whichever is greater), made available by an individual broadcaster. The quota cannot be imposed on more than three channels of any individual broadcaster. Subquotas may be applied within the 55% quota in a manner consistent with existing standards.
    - An 80% transmission quota on advertising may be imposed on no more than three channels made available by an individual broadcaster.
  - Subscription TV:
    - Expenditure requirements of up to 10% of program expenditure may be imposed on services providers making available services in the following formats: the arts, children's, documentary, drama, and educational.
    - The expenditure requirement on drama channels may be increased up to 20% upon a finding by the Australian Government that the 10% requirement is insufficient to meet its stated goal for such expenditure. This finding will be made through a transparent process including consultations with affected parties. The increase will be non-discriminatory and no more burdensome than necessary.
  - Free-to-air commercial radio: transmission quotas of up to 25% can be imposed on individual stations.
  - Interactive audio and/or video services:
    - Measures can be imposed to ensure that Australian content on such services is not unreasonably denied to Australian consumers, upon a finding by the Australian Government that Australian content is not readily available to consumers through such services.
    - Any measures adopted will be implemented through a transparent process, be based on objective criteria, be the minimum necessary,

be no more trade restrictive than necessary, and be applied only to enterprises carrying on a business in Australia.

- Market access restrictions can be imposed on planning, licensing and spectrum management.
- Taxation concessions for investment in Australian film and television production will remain unaffected.

#### Implications of the outcome

- This outcome:
  - Preserves all existing local content requirements on free-to-air and subscription TV. The agreement ensures that there can be Australian voices and stories on audiovisual and broadcasting, now and in the future.
  - Allows Australia the flexibility to not only maintain the existing amount of local content on free-to-air TV if it moves to digital multichannelling, but to actually increase this amount significantly. In particular, the Government can extend the existing transmission quotas on each of the free-to-air channels to an extra channel provided by each broadcaster, effectively doubling the amount of local content being transmitted. Depending on the number of channels offered by a broadcaster, there is the potential for transmission quotas to apply to three of these channels.
  - Allows Australia to increase the existing 10% expenditure requirement on drama channels on Subscription TV up to 20% if necessary, and to introduce similar expenditure requirements of up to 10% on four additional program formats (the arts, childrens' programming, documentaries, and educational programming).
  - Includes provisions allowing the Government to intervene in the future on interactive media services, if Australian content is not readily available on those services.
- These commitments, through the limits involved, give some certainty about the nature of future Australian policy interventions. But they also give Australia sufficient flexibility to not only maintain the current amounts of local content available to Australian audiences as new platforms become more important, but to actually increase these amounts.
- These commitments represent a carefully negotiated set of provisions aimed at addressing Australia's interests in retaining sufficient policy flexibility, while

also giving the US reasonable certainty about the continuing openness of our audiovisual market

- The US has consistently recognized the fact that Australia is already a very open audiovisual market. The binding commitments that Australia is making will give the US certainty that we will not close our market in the future, or introduce significantly trade restrictive measures.
- But, importantly, these commitments will also guarantee that Australia retains the ability to ensure that Australian audiences will continue to have access to Australian voices whatever directions the media takes in the future due to new technology.
- This outcome is consistent with the Government's stated objectives for the negotiations, in particular that they should take account of the need for appropriate regulation and support measures to achieve our social and cultural policy objectives in an area like the audiovisual sector.
- The AUSFTA will not affect the ability of either Party to provide public services, including in relation to cultural activities, such as the public broadcasters (ABC and SBS), public libraries or archives. Furthermore, subsidies and grants are explicitly excluded from the scope of the CBTS Chapter. This means that Government funding available to Australian artists, writers and performers will not be affected, nor will US service providers be entitled to receive any such funding from the Australian Government.
- The AUSFTA outcome involves a different approach to that included in the outcome to the Singapore-Australia Free Trade Agreement (SAFTA). The AUSFTA reservation does not include the broad reservation to adopt measures in relation to our cultural industries that was included in SAFTA.
  - The final AUSFTA outcome was carefully negotiated, and was one of the last issues to be resolved, with the US expressing concern at what it saw as an unnecessarily broad power to regulate the audiovisual sector.
  - The principal outcomes for the cultural sector will, however, be unaffected, as the Government retains the capacity to continue to support the cultural sector, including cultural institutions, through grants, subsidies and tax incentives.
  - The regulatory capacity provided by the Agreement will allow the Government sufficient freedom to respond to changes in media technology. Specifically, it gives Australia freedom to both retain our existing local content requirements and to extend these, or introduce new

ones, in specified circumstances to address the impact of changing technologies.

- The AUSFTA outcome clearly contains greater specificity than the SAFTA outcome –in short, it is more targetted than the broad SAFTA reservation. The negotiated outcome addresses Australia’s genuine concerns, while also meeting the US’s legitimate interests in having some certainty about the future openness of the Australian market. In particular, the key reservation is still in Annex II, giving Australia the right to introduce new as well as maintain existing measures.

#### Who to contact

For further information, please contact DFAT’s AUSFTA Taskforce:

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For media enquiries please call DFAT Media Liaison Section (02) 6261 1555.

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[1] The Government will consider the issue of whether to introduce free-to-air commercial TV digital multichannelling in the context of the review required under Schedule 4 to the Broadcasting Services Act to be conducted this year.

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More information about the Australia-United States Free Trade Agreement

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## **Australia-United States Free Trade Agreement**

### **AUTOMOTIVE**

- Australia and the United States have 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 ("pick-up trucks").
- Australian duties on passenger motor vehicles will be phased out, to zero in 2010.

#### **Summary**

The United States has agreed to remove, from day one, all tariffs on automotive products. For most automotive products, US tariffs are already quite low. Included amongst these, however, is the elimination of the 25 percent tariff on pick-up trucks that has prevented Australian manufacturers exporting utes to the United States.

Australian tariffs on finished passenger motor vehicles will be phased out gradually between entry into force of the agreement and 2010, in response to concerns expressed by local manufacturers about the impact of removing tariffs immediately.

Australia's tariffs on all other automotive goods, in particular car parts and commercial vehicles, will be eliminated from day one of the Agreement.

#### **Gains for Australia**

The United States is the largest market in the world for autos and auto parts. The AUSFTA will enhance the integration of Australian manufacturers into the US market. Removing the high US tariff on light commercial vehicles, in particular, provides a real opportunity and challenge for Australian ute manufacturers. Auto parts exports of \$495 million in 2003 will also be boosted by the immediate removal of tariffs.

Though US tariffs on automotive parts are relatively low, their removal will provide Australian manufacturers with an edge against competitors from other US import markets

in an industry where margins are slim.

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## **Australia-United States Free Trade Agreement**

### **COMPETITION ISSUES**

- Australia and the United States will cooperate on competition law and policy.
- 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.

#### **Summary**

Australia and the United States have agreed to uphold laws against anti-competitive business practices, and ensure that monopolies and government enterprises do not engage in anti-competitive practices.

The ACCC and the US Federal Trade Commission will cooperate further in detecting and notifying breaches, investigating cases, and coordinating enforcement of consumer protection laws.

Australian and US government agencies may take action to recover money owed to consumers and investors who are defrauded, deceived or misled. The Parties will examine the scope for greater recognition of judgments in cases by the courts.

Australia and the United States have agreed to consult and inform each other of competition matters that may affect bilateral trade and investment.

#### **Gains for Australia**

- A stronger basis for pursuing companies based in the United States.
- Cooperation in combating breaches of consumer protection laws.
- Ability to recover money for consumers or investors defrauded or deceived.
- Stronger US commitment to non-discriminatory enforcement of competition law.

- Disciplines on US monopolies and state enterprises
- Consultations and a joint working group to examine competition laws and policies.

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## **Australia-United States Free Trade Agreement**

### **TELECOMMUNICATIONS**

- Pro-competitive regulatory frameworks for Australian and US companies.
- High standards of transparency and WTO-plus rules on major suppliers.
- New avenue for consultations with the US on market access issues.
- Embraces market-based regulatory approach where markets function effectively.

#### **Summary**

The chapter builds on WTO rules in relation to major suppliers of telecommunications that control essential facilities or have a dominant position in a market. The Parties must prevent anti-competitive conduct and ensure that major suppliers provide interconnection, resale of services, leased circuit services and co-location of equipment on reasonable, non-discriminatory terms and conditions.

There are strong provisions on transparency and review for regulatory decisions. Regulators must be independent and impartial and properly explain decisions, such as determining which services are subject to regulation and licensing decisions. Australia and the US have also embraced a hands-off regulatory approach where markets are functioning competitively.

There will be two side letters. The first letter establishes regular consultation on issues and developments in the communications and IT sectors. This will give government and industry greater understanding of these dynamic sectors. The second letter outlines the Government's policy in relation to government ownership of Telstra.

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## **Australia-United States Free Trade Agreement**

### **E-COMMERCE**

- There will be no barriers to trade conducted electronically
- Australia will still be able to regulate for public policy purposes
- Trade and investment is encouraged by further facilitating electronic commerce

### **Summary**

Australia and the United States have agreed not to impose customs duties on digital products (products digitised, or electronic, form), or to discriminate in favour of one form of the same digital product over another. An online soundtrack, for example, will not be taxed differently to the same soundtrack on a compact disc.

Both countries have reaffirmed that products should not be discriminated against just because they are traded electronically. For example, an architectural plan delivered by email should be treated just the same as if it is delivered in the regular mail.

Australia and the United States will recognise digital certificates issued by each government (so that an Australian business can deal directly online with a US government entity). Online versions of customs documents will be made available and accepted as the equivalent of paper versions.

### **Gains for Australia**

- Trade and investment with the United States will be easier and more convenient for Australian businesses and consumers.
- Importantly, none of what we have agreed undermines our capacity to ensure that Australian stories and voices are heard and seen in Australian media.
- Both countries retain the right to regulate electronic commerce for other legitimate public policy reasons, such as public morals, health, welfare, and education.
- In addition, there is no bar to either country introducing new measures to

tackle problems unique to electronic commerce, such as online gambling and email spam.

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## **Australia-United States Free Trade Agreement**

### **RULES OF ORIGIN**

- Simple and objective tests apply to "rules of origin" for manufactured products, which must be "substantially transformed" in either Australia or the United States before they can benefit from the Agreement.

#### **Summary of chapter**

Any manufactured product that includes imported inputs must be substantially transformed in Australia or the United States before it can benefit from the Agreement. Technically, the rules of origin for the Agreement mean that there must be a change in tariff classification i.e. the inputs move the product from one tariff code to another.

Where it is difficult to demonstrate that a product has been "substantially transformed" through the tariff change rule, an additional or alternative local content threshold test will be applied, under which domestic materials and processes will need to form a set proportion of the final value of the product.

#### **Gains for Australia**

The Rules of Origin agreed with the United States provide a simple and objective test of origin, which is easy to administer. Manufacturers need only be aware of the tariff codes for imported inputs and final products.

The rules of origin agreed in the AUSFTA will particularly benefit Australian manufacturers that rely on imported petrochemical products and other goods with fluctuating world prices.

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## **Australia-United States Free Trade Agreement**

### **SANITARY & PHYTOSANITARY MEASURES**

- The integrity of Australia's quarantine regime and our right to protect animal, plant, and human health and life are preserved.
- Decisions about market access on quarantine or food safety grounds will continue to be made on the basis of science.
- A framework for discussions on specific products has been established.

#### **Summary**

The SPS Chapter covers market access issues affecting quarantine and food safety, consistent with World Trade Organisation rules. Two committees have been established:

- an SPS Committee to discuss general matters and enhance the understanding of each Party's SPS measures and associated regulatory processes.
- a Standing Technical Working Group on Animal and Plant Health Measures to focus on quarantine matters relating to trade in specific animal and plant products.

Both countries have reaffirmed that decisions on matters affecting quarantine and food safety will be based on science. The agreement preserves the rights of both countries to protect animal, plant and human health and life in their respective territories. Australia's regulatory systems, risk assessment and policy development processes are not affected, and the AUSFTA does not compromise Australia's quarantine regime.

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## **Australia-United States Free Trade Agreement**

### **TECHNICAL REGULATIONS AND STANDARDS**

- Australian exporters have greater opportunities to understand and meet US requirements dealing with technical regulations and standards.
- Requirements for food and manufactured goods, such as labelling, packaging, testing and certification that products conform to regulations, are covered.
- A framework for exporters to work with government in tackling barriers has been established.

#### **Summary of chapter**

The AUSFTA builds on existing rights and obligations under the WTO Agreement on Technical Barriers to Trade.

A mechanism to address issues raised by either Party related to the development, adoption, application or enforcement of standards, technical regulations or conformity assessment procedures will be established.

#### **Gains for Australia**

In Australia, technical regulations for food and manufactured goods are co-ordinated between the Commonwealth and State and Territory Governments. In the US, standard setting bodies are far more numerous and operate in governmental and private spheres and at federal and sub-federal levels.

A better understanding of respective technical regulations and standards should lead to reduced production costs for exports of food and manufactures. In turn, the savings can be passed on to consumers and allow for greater choice of products without diminishing their safety or reliability.

#### **Who to Contact**

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## **Australia-United States Free Trade Agreement**

### **ENVIRONMENT & LABOUR**

- The Parties have agreed not to fail to enforce their own environmental and labour laws in a manner affecting trade between the Parties.
- Both Parties retain the right to establish their own domestic environmental and labour standards, and to adapt or modify their own laws.

#### **Summary**

Under US trade promotion authority, environment and labour are considered non-commercial issues. The obligations of the Parties therefore differ in significant respects to other issues treated in the agreed text of the AUSFTA.

The key obligation of each of the Parties is to not fail to enforce effectively its own environmental and labour laws, through a sustained or recurring course of action, in a manner affecting trade between the Parties. These are the only provisions of the environment and labour chapters to which dispute settlement provisions in the FTA will apply.

The Parties recognise that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory and compliance matters, and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities.

The agreed text recognises the importance and value of cooperation and consultation on environmental and labour issues.

No changes to Australian environment or labour laws or regulations will be required.

#### **Who to Contact**

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## **Australia-United States Free Trade Agreement**

### **PUBLIC CONSULTATION**

- The Government has consulted business, state and territory governments, non-government organisations and the public right through the negotiations.
- Ministers, negotiators and departments will hold public information sessions.
- The Joint Standing Committee on Treaties (JSCOT) will examine the text.

### **The Consultation Process**

The government consulted State and Territory Governments, business and the general public extensively in developing and negotiating the AUSFTA.

Nearly 200 submissions were received, including 69 from industry, 32 from NGOs and 8 from trade unions. The DFAT website (<http://www.dfat.gov.au>) included media transcripts, background documents and answers to frequently asked questions, as well as a newsletter distributed to Federal and State MPs and over 1,000 e-mail subscribers.

The negotiating team had meetings with over 200 industry groups, businesses, state government departments, consumer groups, unions and NGOs. State and territory governments were briefed before and after each negotiating round.

The Minister for Trade, Mark Vaile, discussed the AUSFTA with his Trade Policy Advisory Committee and WTO Advisory and Agricultural Trade Consultative Groups.

### **What Next**

Mr Vaile, his Parliamentary Secretary, De-Anne Kelly, the negotiating team, government departments, Austrade and Invest Australia will hold further public meetings and sessions with business and State and Territory governments.

Later in the year the Joint Standing Committee on Treaties (JSCOT) will examine the

AUSFTA, and may hold public hearings before reporting to the Parliament.

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## **Australia-United States Free Trade Agreement**

### **Domestic Approval Processes for an Australia-United States Free Trade Agreement (AUSFTA)**

Negotiations on the Australia-United States Free Trade Agreement (the Agreement) were concluded on 8 February 2004 by the Minister for Trade, the Hon Mark Vaile MP and his US counterpart, Trade Representative Ambassador Robert Zoellick.

The draft text of the Agreement was released publicly in Australia and the United States on 4 March 2004. Such early publication is a departure from Australia's normal practice which has been to release the text of a treaty only *after* signature. For the United States, the draft text of a treaty is required to be published at least 90 days before signature.

The final text of the Agreement is expected to be signed by Trade Minister, the Hon Mark Vaile, and US Trade Representative, Ambassador Robert Zoellick, in Washington on 18 May. While the signature of a treaty establishes an obligation to refrain from acts which would defeat the object and purpose of that treaty, Australia only becomes bound by the particular and exact terms of the treaty upon entry into force of the agreement.

The Agreement will not enter into force until both Parties have:

- successfully concluded their respective domestic approval processes, and
- passed any legislation necessary at Federal or State/Territory level for compliance with the agreement.

Once the required domestic processes have been completed in both Australia and the United States, the two governments can agree, via an exchange of diplomatic notes, on a date for entry into force. The target date for entry into force is 1 January 2005.

#### **Domestic Approval Process - Australia**

The draft text of the Agreement was tabled in both Houses of Parliament on 4 March 2004. The Agreement was referred to the Joint Standing Committee on Treaties (JSCOT), along

with a National Impact Analysis (NIA) and a Regulatory Impact Statement (RIS). The NIA describes the Agreement's obligations and outlines its costs and benefits for Australia. A RIS is a report on how a treaty could affect business regulation or restrict competition. JSCOT is currently conducting public hearings throughout Australia and is expected to finalise its report by 23 June. JSCOT reports may contain recommendations which require a formal Government response.

In accordance with Australian treaty practice, the Australian Parliament will not vote on the AUSFTA itself. Rather, both Houses of the Australian Parliament will approve or not approve the legislation required to implement the obligations under the Agreement.

The Senate has also established a Senate Select Committee to review the Agreement, which is due to report in July.

It is expected that the reports by JSCOT and the Senate Select Committee will be considered by Parliament ahead of the tabling of legislative amendments necessary for Australia to implement the Agreement early in the Spring Session (early August).

Once implementing legislation for the AUSFTA has passed through both Houses of Parliament, an entry into force date can be sought.

### **Domestic Approval Process - USA**

Under the US Trade Act 2002, the US President can be given Trade Promotion Authority (TPA) to negotiate trade agreements on a so-called 'fast-track' schedule, under which Congress is allowed to approve or reject, but not amend, implementing legislation for trade agreements. The Trade Act also requires the President to follow certain domestic processes, set out below, in order to retain TPA.

The President is required to submit a report to the House Ways and Means and Senate Finance Committees on proposals on trade remedies at least 180 calendar days before a trade agreement could be initialled by the US Trade Representative. For the AUSFTA, this report was submitted on 24 October 2003.

The President is required to provide Congress at least 90 calendar days notice of his intention to have the agreement signed and provide the US International Trade Commission (ITC) with details of the agreement at that point. This notice was made by the President for the AUSFTA on 13 February 2004. The earliest possible date for signature is

therefore 13 May. Australia's Trade Minister, Mr Mark Vaile, and USTR Ambassador Robert Zoellick, are scheduled to sign the Agreement in Washington on 18 May.

The US ITC provides trade expertise to both the legislative and executive branches of government, determines the impact of imports on U.S. industries, and directs actions against certain unfair trade practices, such as patent, trademark, and copyright infringement. It is due to report on the AUSFTA on 21 May.

Implementing legislation needs to be introduced and passed through Congress by achieving a simple majority vote in both the House and the Senate. A rough timeline for this process in the US is as follows:

- Within 60 days after signing (expected to be 18 May), the President must submit a brief description of the changes to existing law required to bring the US into compliance with the agreement to Congress.
- Within 90 days after signing, the ITC must submit an assessment report on the proposed agreement to the President and Congress.
- Once the President introduces the implementing legislation to Congress, there is a 90 legislative day window for Congressional consideration.

Once implementing legislation for the AUSFTA has passed through Congress, an entry into force date can be sought.

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## **Australia-United States Free Trade Agreement**

### **FREE TRADE AGREEMENTS AND MULTILATERAL NEGOTIATIONS**

- Free trade agreements (FTAs) are building blocks to multilateral trade liberalisation.
- Australia's FTA with the United States will add momentum to the objectives we are pursuing through the World Trade Organisation (WTO) aimed at ensuring more open and transparent international trading arrangements.
- The Australia-United States FTA is part of the Government's commitment to a strategy of competitive liberalisation - maximising our trade opportunities with individual countries, in our wider region, and globally, to ensure our exporters achieve greater access to overseas markets as quickly, as broadly and as deeply as possible.

#### **Free Trade Agreements complement Australia's multilateral objectives**

The principle underlining Australia's trade policy is the creation of new and more open markets for Australian exports which will in turn contribute to growth in Australia's economy and the provision of employment for Australians. Australia's overall trade strategy is aimed at pursuing every opportunity, whether it is at the global level, on a regional basis or through bilateral agreements with individual trading partners.

Australia is a strong supporter of achieving fair international trading rules and more open global markets through the WTO. We pursue opportunities that complement and support the global trade negotiations now under way at the WTO. We remain fully committed to the WTO negotiations, as the best way of pursuing global trade liberalisation. We want significant improvements in market access - in agriculture, services and industrial products - as quickly as possible.

#### **FTAs within the multilateral system**

Free trade agreements are sanctioned by the WTO. FTAs are accepted as consistent with

the WTO if they are comprehensive and don't raise barriers to others. The Government is confident that the Australia-United States FTA is fully consistent with WTO objectives.

FTAs can help the WTO system to generate momentum by liberalising difficult sectors among a few countries - and help with the adjustments necessary under global liberalisation negotiations. A comprehensive FTA between two or more countries that can be seen to deliver real benefits and promote growth can help to demonstrate to the wider WTO community the advantages of wide-ranging trade liberalisation.

### **Australia's approach to free trade agreements**

Australia's objectives in the WTO and FTAs are not mutually exclusive. Trade liberalisation within the WTO is a necessarily slow-paced process with 148 members, with vastly different interests and capacities, all trying to make consensus-based decisions. FTAs can provide opportunities to achieve ends that may take longer through the multilateral system. For example, there is scope to address specific market access constraints in a particular market in a way that is almost impossible to do through the WTO.

Although an FTA can assist with addressing specific market access issues, broader trade liberalisation issues such as subsidies are much more effectively pursued within the multilateral framework of the WTO.

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**Press Releases in Support of the  
Australian-United States Free Trade Agreement**

<b>No.</b>	<b>Organisation</b>	<b>Date</b>
1	Federation of Automotive Products Manufacturers (FAPM)	9.2.04
2	Federal Chamber of Automotive Industries (FCAI)	9.2.04
3	Holden	9.2.04
4	Ford Australia	9.2.04
5	Horticulture Australia	9.2.04
6	Australian Seafood Industry Council	9.2.04
7	Grains Council of Australia	10.2.04
8	Victorian Farmers Federation - Horticulture Group	12.2.04
9	Victorian Farmers Federation - United Dairy Farmers	12.2.04
10	Port Lincoln Tuna Processors	
11	Australian Business Limited	9.2.04
12	Australian Business Limited	3.5.04
13	Australian Industry Group	9.2.04
14	Australian Chamber of Commerce and Industry	9.2.04
15	Business Council of Australia	4.3.04
16	Business Council of Australia	9.3.04
17	Medicines Australia	11.2.04
18	Medicines Australia	5.3.04
19	Medicines Australia	15.2.04
20	Medicines Australia	3.5.04
21	Australian Shipbuilders Association	20.2.04
22	Australian Medical Association Limited	9.2.04

23	Pharmacy Guild Welcomes Trade Agreement	
24	Tenix	11.2.04
25	Raytheon Australia	11.2.04
26	Minerals Council of Australia	
27	Symex	10.2.04
28	Association of Consulting Engineers Australia (ACEA)	12.2.04
29	Winemakers Federation of Australia	10.2.04
30	NZ Government	



Federation of Automotive  
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## MEDIA RELEASE

### Component Manufacturers Welcome FTA

Agreement by the US to immediately reduce to zero all tariffs on vehicles and components for Australian manufacturers is a very positive outcome for the Australian automotive industry, according to the Federation of Automotive Products Manufacturers (FAPM), the peak body for automotive component manufacturers.

The USA is already the single largest export destination for Australian component manufacturers – some \$550 million annually – and this agreement yields opportunities to improve on that performance.

The possibility that the automotive vehicle manufacturers can increase direct vehicle exports to the US in new categories following the dropping of the 25% US “truck tariff” also holds prospects of increased local sales to them, for our component manufacturing sector.

FAPM has been closely consulted in developing this agreement, since early last year.

We look forward to continuing close involvement with Government and Parliament as we move to the implementation phase and the development of necessary legislation.

9 February 2004

For further information contact: Peter Upton, Chief Executive, FAPM  
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For additional background about member companies, products, policies and more, see our website at <[www.fapm.com.au](http://www.fapm.com.au)>

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# FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES

## MEDIA RELEASE



Monday, 9 February 2004

## FTA OPPORTUNITY FOR CAR INDUSTRY

The outcome of negotiations for a free trade agreement with the United States will yield significant opportunities for the Australian car industry to increase exports over the next few years, according to industry peak body the Federal Chamber of Automotive Industries.

FCAI President, Geoff Polites said the agreement by the United States to immediately eliminate all tariffs on all vehicles and automotive components was a significant win for the Australian industry.

“Several Australian manufacturers are already exporting passenger cars and components to the US. We hope that this agreement will further underpin the success these companies have had in establishing a foothold in the world’s largest automotive market”, said Mr Polites.

According to Mr Polites “the agreement also opens up the possibility that Australian manufacturers will be able to take advantage of new opportunities for exports of utility vehicles to the United States. Until now, the US 25 per cent tariff has been a prohibitive barrier to exports of this type of vehicle from Australia to the United States”.

Mr Polites said that the outcome is likely to result in some additional competitive challenges for the Australian industry. “The Australian vehicle market is intensely competitive with a wide selection of brands and model types competing at very strong levels of affordability. We can be confident the industry will positively respond to ensure that Australian new vehicle buyers will get even better deals”.

“Australian car producers have been working in an environment of declining assistance for many years. As a result, they have a proven track record of innovation in design and flexible, cost effective manufacture, so Australia will remain a very attractive location for future international automotive investment”, he said.

Mr Polites said “the agreement provides for a gradual phase in of lower tariffs on passenger cars imported from the United States, giving the local industry some time to adjust to the new arrangements in this segment of the market”.

“The industry has been closely consulted during the development of this agreement. We have had extensive opportunity to ensure our views have been put to Government since early last year. We expect to continue to work closely with the Government and the Australian Parliament to successfully finalise the process for implementation of this agreement”.

*For any further comment please contact:*

*Peter Sturrock, Chief Executive*

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MONDAY 09 FEBRUARY 2004:

#### **HOLDEN WELCOMES US-AUSTRALIA FREE TRADE AGREEMENT**

Holden today welcomed the new free trade agreement between the United States and Australia, a positive outcome for the Australian economy.

Holden Chairman and Managing Director, Denny Mooney, said the agreement would strengthen significant automotive trade between the US and Australia.

Mr Mooney said the agreement would provide increased opportunities for both countries to trade vehicles and components.

He said the flow-on effects from stronger economic growth would benefit the entire automotive industry through drive competition in the marketplace.

"This agreement was a sensible outcome for both markets, offering opportunities for Australia and the United States," Mr Mooney said.

"It will foster closer business relations with the United States and provide overall benefit for the Australian economy. From the Australian perspective, we believe it will provide the best possible opportunity for Australian carmakers and component manufacturers seeking to export to the United States market."

"It is also a positive outcome from an import perspective because Holden is the industry's largest manufacturer of engine components and transmissions from the United States."

"It is a great boost for any manufacturer or supplier sourcing components from the US because their products are more competitive for Australian buyers."

Department of Foreign Affairs and Trade figures showed the United States was the second largest destination for Australian automotive products in the 2002-03 financial year, at about \$900 million, behind Saudi Arabia. The United States was the second largest automotive product importer to Australia, totalling \$2.5 billion, behind Japan.

Holden last year exported more than 36,000 vehicles around the world, the company's second highest record behind 1973. This included the start of 18,000 Pontiac GTO coupe exports, based in Australia, to the United States.

Holden has a long-term objective to achieve 70,000 export sales worldwide. A new program has been investigated to China, Korea and parts of the ASEAN region.

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## NEWS RELEASE

*For immediate release:  
Monday, February 9, 2004*

### FORD AUSTRALIA SUPPORTS FTA

**Ford Australia today welcomed the announcement of a Free Trade Agreement (FTA) with the USA, saying it would provide significant opportunities for Australia's vehicle industry.**

Ford Australia President, Mr Geoff Polites, said the new agreement has the potential to boost the Australian economy.

"Australia has enjoyed two successive years of record new car sales. A stronger economy, combined with a more competitive market, will increase these sales even further. This result is good news for customers and for Australia's car manufacturing industry."

Mr Polites said the agreement by the United States to immediately eliminate all tariffs on all vehicles and automotive components has the potential to bring new opportunities for the company.

"It is too early to determine any future plans, but the FTA will allow Ford to examine new market possibilities that were previously not available due to prohibitive import duties to the US."

Mr Polites said the phased reduction of tariffs on US passenger cars imported into Australia would result in some additional competitive challenges for the Australian industry.

"Ford Australia has a proven track record of developing award-winning vehicles within a flexible and cost-effective manufacturing environment. We believe that Ford Australia is well placed to meet these new challenges while also looking for the opportunities that come from the opening of the US market," said Mr Polites.

Page 2.

Ford's vehicle range covers most segments of the Australian vehicle market and includes the new Fiesta (on sale April 1), BA Falcon passenger and utility range, BA Falcon long wheelbase range, Explorer, Escape, Focus, Courier, F-Series, and Transit.

Ford Australia will launch the all-new Territory on June 1.

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*For further information, please contact  
Ford Australia Communications Ph: (03) 9359 8491 Fax: (03) 9359 8900*



9 February 2004

## Media Release

# Horticulture delighted with US FTA

Today's announcement of a free trade agreement between Australia and the USA is expected to provide substantial benefit to Australian horticulture growers.

Horticulture Australia Limited (HAL) managing director, John Webster said the industry was extremely pleased with the deal that had been struck.

"Before the negotiations began, only 2 per cent in value of fresh Australian horticulture exports entered the US tariff free. Now 100 per cent of all major current fresh exports will have zero tariffs," he said.

Horticulture is the second largest agriculture industry in Australia with a gross value of production of \$6.5 billion. It is also the fastest growing agriculture industry with a 21 per cent increase in its GVP over the last five years.

"Industries that already have a strong export focus will experience the benefits first. For example, the new arrangements will provide citrus with annual savings of almost \$670,000 in duties."

"For other industries looking to move into export, it opens the US market up as a serious commercial option," he said.

For the first time avocados will have quota access to the US market, commencing at 4000 tonnes and rising at 10 per cent annually, with zero tariffs on the in quota amount and an eventual free trade outcome. This is expected to have a major impact for the avocado industry which is currently growing at 10 per cent.

Mr Webster said that the efforts of the Horticulture Market Access Committee (HMAC) put the industry in a very good position to enter into the trade negotiation process.

"Providing a single voice for horticulture on major issues like exports is a priority for HAL. As such, we have worked in partnership with industry to put resources behind HMAC, including appointing a full time coordinator, to maximise opportunities for improved trade access for Australian horticulture producers into new and existing markets."

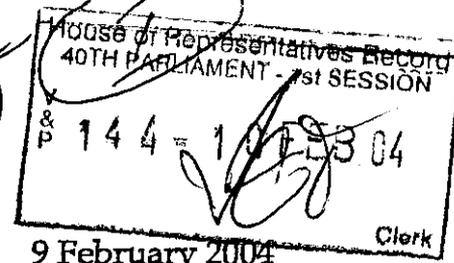
HAL extends its thanks to the Australian negotiating team, particularly Trade Minister, Mark Vaile and DFAT staff, chief negotiator Stephen Deady and agriculture special negotiator Allan McKinnon for their expertise and tireless efforts during this process. HAL is also grateful to the National Farmers' Federation (NFF) and its president, Peter Corish for their leadership during negotiations.

The Australian horticulture industry is extremely diverse and comprises fruits, vegetables, nuts, nursery products, extractive crops, sports turf and cut flowers. HAL is an industry owned company and works in partnership with over 30 different horticulture industries.

- ends -

For more information or to arrange an interview with JOHN WEBSTER please contact:

Karen Hellwig, Communications Manager  
02 8295 2319 or 0407 332 447



**MEDIA RELEASE**

## **US TRADE DEAL TO ENHANCE SEAFOOD EARNINGS**

The seafood industry will receive an immediate multi-million dollar boost to its export earnings under the Free Trade Agreement struck with America.

All Australian exports of seafood to the USA - currently \$140 million a year - now enter the USA market duty-free, effective immediately.

Australian Seafood Industry Council CEO, Russ Neal, said this meant 48 separate rates of duty on various seafood products were now abolished.

"For example, the Federal Government has struck a deal which includes abolition of the 35 per cent tariff on canned tuna into USA," Mr Neal said.

"Removal of this tariff alone is worth \$20 million in the first year.

"This has come at a time of great pressure on the seafood industry, not only from the exchange rate revaluation but from easing commodity prices and intensive competition in many of our key global markets, and from high domestic production costs including fuel.

"It means these tariff cuts will bring significant relief to our seafood industry.

"The cuts will also accelerate the take-up of opportunities outlined in the recently-released DAFF/ASIC marketing guide for seafood into the USA."

Mr Neal said the abolition of tariffs gave the unsubsidised Australian seafood industry a level playing field into America for the first time.

"Industry is actively exploring not only new markets within the US, but also flow-on markets such as the cruise liner trade out of New York.

"This trade deal offers a way forward which can only enhance the seafood trade," Mr Neal said.

*(ends) Contact: ASIC CEO Russ Neal 02 6281 0383 or 0412 108 616*

**AUSTRALIAN SEAFOOD INDUSTRY COUNCIL**

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# NEWS RELEASE

Released 10 February 2004



## GCA Supports FTA Wheat Marketing Assurance

Grains Council President Keith Perrett today applauded a significant outcome for the Australian wheat industry from the recently completed Free Trade Agreement discussions between Australian and US negotiators – the retention of the single desk export arrangements.

"We are extremely pleased to see the proposed agreement doesn't erode the current wheat marketing arrangements. We fully expected to see the US take a hard line on our current wheat marketing arrangements. Congratulations are due to the Trade Minister Mr. Vaile for his commitment and the work of his staff during this phase of developing and FTA."

"While Australia is a significant player in the world wheat export market, we have a small industry by global standards. Australia has to compete against massive multinational corporations and farmers who derive much of their income through government support programs. The current wheat export marketing arrangement is the only way we can compete against them on anything like an even footing." Mr. Perrett said.

"The main game is to ensure that Australia can deliver service, value and quality to our export customers. We also have to ensure marketing structures that can have a global presence, compete fairly on the world market and deliver competitive returns to Australian growers.

The Australian wheat sector is reliant on exports for prosperity, so rather than seeking to weaken the current arrangements, we need to take a global market view of our wheat industry and decide what can strengthen our position – not water it down".

In this debate we have to remember the Australian domestic grain sector has, for all intents, been deregulated and privatized. This has brought a range of benefits to growers, new investment into handling, storage and logistics and greater supply chain integration.

But operating in the world market is different and requires global scale and expertise; something that AWB and the current exporting arrangements provide. We can't afford to weaken arrangements that allow us to maximize returns for growers and benefits the Australian economy.

---

**Mr Keith Perrett**  
President  
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**Mr David Ginns**  
Director  
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**Victorian Farmers Federation**

9 February 2004

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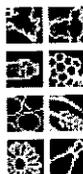
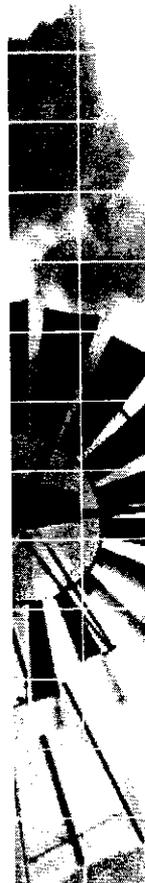
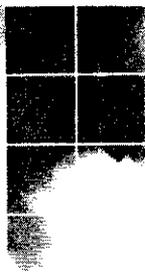
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## + What's News - Media Releases

### Trade Agreement positive for horticultural industry

9 February 2004

The announcement today of the Australia/United States Trade Agreement is a positive result for the horticultural industry.

Victorian Farmers Federation Horticulture Group Treasurer and President of the Sunraysia Citrus Growers Inc, Peter Crisp, said the announcement of two thirds of all agricultural tariffs being eliminated effective immediately was good news for horticulture. The announcement also included zero tariffs on oranges, bringing some good news to the citrus industry.

"Although we already have a good market for oranges in the US, zero tariffs will mean more money in the pockets of Australian citrus growers," Mr Crisp said.

"Just when we thought we would have marginal results this year, due to the rise of the Australian dollar, zero tariffs will save the citrus industry nearly \$670,000."

Mr Crisp said the avocado and olive industries will also benefit highly from the agreement.

"The announcement of market access for avocados is good news as it will give this growing industry a chance to take up position in the US," Mr Crisp said.

"And with the zero tariff on olives, this will also give growers an opportunity to expand more into the US market."



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## + What's News - Media Releases

### Trade Agreement good news for dairymen

9 February 2004

Following today's announcement of the Australia/United States Trade Agreement, United Dairymen of Victoria President, Peter Owen, said it appears the Australian dairy industry has gained a significant boost in access to the US market.

"Details of the agreement are still coming through, however having said that, the trade agreement is a positive step in our industry's drive to capture improved benefits for dairymen," Mr Owen said.



Initial estimates of the benefits for the dairy industry include:

- + Delivery of an extra \$A56 million in its first year, growing by five per cent per annum.
- + The deal is likely to treble our quota access into the world's second biggest dairy market.

Increased access for all dairy products currently restricted by quotas providing new market opportunities for the Australian dairy industry.

'In-quota' tariffs will be reduced to zero immediately.

"With more than half of Victoria's dairy production being exported, reform in world trade is critical," Mr Owen said.



## **PORT LINCOLN TUNA PROCESSORS PTY LTD**

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### **AUSTRALIA'S TUNA CANNERY -**

### **Why the US/Australian Free Trade Agreement is so important**

Australia's only tuna cannery - Port Lincoln Tuna Processors (PLTP) - looks forward to telling any Parliamentary Committee why the FTA is so important to South Australia and regional areas.

PLTP is Australia's only tuna cannery, and is the largest employer on the Eyre Peninsula region. It has proven it can compete against cheap imports, which do not have to meet Australia's high standards.

Australia can be globally competitive in value added canned tuna. The barrier to export has simply been the very high tariff levels in the big overseas markets especially the US (35%) and the European Union (24%).

In the last two decades PLTP has waited and waited for multilateral agreements to break down those tariff barriers. Nothing has changed.

What has happened is that the US has negotiated bilateral free trade agreements with canned tuna exporters in South America. In the case of the European Union, they have special low tariff agreements with African countries, and as from 2003, with PLTP's major competitors in Thailand, Indonesia and the Philippines.

The irony is that under the recently concluded Australia/Thailand Free Trade Agreement, Thailand will have free access to the Australian market.

PLTP did not whinge about this, or ask for assistance from the Government. Instead it focused on getting the best outcome from the FTA with the United States.

# NEWS RELEASE

9 February 2003



## SMALL BUSINESS WELCOMES CONCLUSION OF TRADE TALKS

Australian Business Limited has welcomed the conclusion of Free Trade negotiations with the United States, but awaits the detail.

"The proposed reduction in tariffs, enhanced legal protection and mutual recognition of qualifications will deliver improved access for Australian manufacturers, service providers and farmers into the world's largest market", said Mr Mark Bethwaite, Managing Director, Australian Business Limited.

"Whilst non tariff-barriers are often the more prohibitive constraint, improved harmonisation of regulation and standards will be particularly beneficial to Australia's small to medium enterprises, which in the past have found access difficult due to the prohibitive cost of compliance", he said.

"It is disappointing that the US will not provide access for Australian sugar and has negotiated long phase in periods on increased beef and wine access", he said.

"Despite these drawbacks, we congratulate the Australian Government for completing difficult negotiations, and for choosing the national interest over one sector of the economy", he said.

"With business services continuing to grow, improved access, protection and recognition is vital, particularly for small to medium enterprises", he said.

"Access to US Government procurement is particularly welcomed given its size. Success here will be realised for particularly innovative and specialist products, for example health devices", said Mr Bethwaite.

"However, a signed Free Trade Agreement will not automatically mean improved business for Australian exporters as the American market is extremely competitive and crowded."

"The targeting of specific niche markets within the US, the development of strategic relationships with distributors and following innovative marketing strategies, together with the benefits from the FTA will deliver real rewards to Australian businesses", said Mr Bethwaite.

*Australian Business Limited represents over 19,000 businesses and is one of the largest private export consultancies in Australia.*

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# NEWS RELEASE



## Economic Gain Shown in Study is Conservative

The release last Friday of findings by the Centre for International Economics (CIE) reporting that the Australia-US Free Trade Agreement will deliver big benefits to Australia was welcomed by Australian Business Limited, one of Australia's leading international trade facilitation organisations.

"The findings are further evidence that Australia will gain under the agreement and it is time that we focus on realising these future gains", said Mr Mark Bethwaite, Managing Director, Australian Business Limited.

The CIE findings forecast in the tenth year an increase of \$6.1 billion per year an increase of nearly 0.7 percent.

With the report focusing primarily on the value of the reduction in tariffs the projected benefits are likely to be conservative according to Mr Bethwaite.

Other benefits not to be ignored, but difficult to quantify include the reduction of "commercial barriers", those regulations and standards to which an Australian exporter must comply and are usually costly and time consuming to achieve.

"These non-tariff barriers, coupled with distance from market, add complexity and cost for foreign firms competing in US domestic markets", said Mr Bethwaite.

The AUSFTA will help to reduce some of these commercial barriers as it seeks to harmonise rules, regulations and technical standards, thereby reducing costs for Australian exporters and making their products more competitive.

"While the study shows that investment will deliver the biggest contribution to economic growth, exports are set to increase and this rise may help to close the current trade deficit which Australia has with the US, particularly in merchandise exports", he said.

With the potential A-China FTA we may also see US firms investing in Australia to initially take advantage of the AUSFTA, but in the longer term trying to position themselves to take advantage of our relationship with China.

Companies across many sectors are already planning for the opening of the US market and putting in place strategies to capture new opportunities, according to Mr Bethwaite.

For further information contact:

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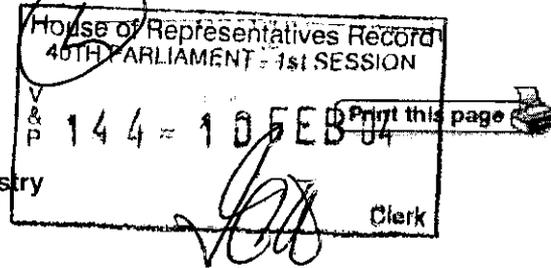
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**Australia - U.S. FTA important for Australian Industry**

9 February 2004



The Federal Government is to be commended for finalising a free trade agreement with the United States, which opens up more opportunities for Australian industry.

The Australian Industry Group Deputy Chief Executive, Heather Ridout, said the deal would allow Australia to become more deeply engaged with the world's largest economy which currently accounts for \$5.84 billion of our manufactured exports.

"For manufacturing there are some tangible gains such as the elimination of the 25 per cent duty on exported utilities to the US, the abolition of duties for automotive components and access to US government commercial procurement.

"In the sensitive tariff sectors, such as Passenger Motor Vehicles and Textiles Clothing and Footwear, phase down arrangements of 5 years and 10 years respectively will apply and provide these industries with continuing adjustment assistance.

"There are disappointments in some parts of agriculture and with ship building in the manufacturing sector where no increased access has been achieved.

"But while not everyone will emerge winners from the deal we cannot underestimate the potential benefits of better access to our second largest export market after Japan and the primary source of Australia's Foreign Direct Investment," Mrs Ridout said.

"Another important outcome from the agreement is that there will be more clarity in the trade based rules environment.

"Had the agreement been in place two years ago, for example, Australia would not have been caught up in the punitive tariffs imposed on steel imports into the US.

"At the same time, it should be recognised that the FTA will add to the pressure for Australian industry to be more competitive.

"There are risks as well as opportunities from any agreement. To balance these effectively in our favour, Federal and State Governments must act aggressively to address competitiveness issues through taxation reform, improved Research and Development, skills enhancement and improved infrastructure.

"Now that the deal has been announced the Australian Industry Group will immediately begin another round of consultations with our members to provide them with the full details of the Agreement and we will continue to work closely with the Australian Government on its implementation," Mrs Ridout said.

**Further Comment:**

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AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

# MEDIA RELEASE

Monday, 9 February 2004

## ACCI WELCOMES US FREE TRADE AGREEMENT

Statement by Peter Hendy, Chief Executive

The Australian Chamber of Commerce and Industry (ACCI), Australia's largest and most representative businesses organisation, warmly welcomes the announcement that the Australian and United States Governments have concluded a Free Trade Agreement (FTA).

The Australian Trade Minister, Mark Vaile, should be congratulated for doing the hard yards to bring these very difficult negotiations to a productive conclusion, given that for much of the past two weeks, it appeared the outcome of the FTA negotiations was delicately balanced, indeed at some points in time hanging by a thread.

This is a high quality Agreement which benefits the whole Australian economy, including the manufacturing, services, agricultural, mining and investment sectors.

While it may not have delivered everything Australia wanted, the FTA will give Australian business substantial new market access opportunities in one of the world's most dynamic and innovative economies.

Mr Peter Hendy	Chief Executive	02 6273 2311 (B/H)	0419 422 650 (mobile)
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[www.acci.asn.au](http://www.acci.asn.au)

MR 09/04

L E A D I N G   A U S T R A L I A N   B U S I N E S S



## BCA welcomes details of US Trade Agreement

THURSDAY 4 MARCH 2004

Details of the Free Trade Agreement with the United States released today underlined the potential for the Agreement to provide long-term growth opportunities for Australia's export economy.

BCA President, Mr Hugh Morgan said the full text of the Agreement detailed the extent to which Australian companies, large and small, would benefit through increased trade, investment and closer links with the world's richest economy, producing a third of the world's GDP.

Mr Morgan said the Agreement in itself was not a guarantee of economic growth being handed to us on a platter.

"It requires individuals and companies to actively seek out the enormous opportunities available from being able to compete on a level playing field in United States markets, particularly in respect to the US Government's annual purchasing program of some \$200 billion each year," he said.

"At the same time, the benefits cannot simply be reduced to numbers. The real reward is participating as an equal partner in the most technologically advanced economy in the world."

As the detail of the Agreement released today outlined, it will mean:

- Most non-agricultural exports to the United States will be duty free from day one;
- Australian services exports to the United States will have enhanced legal protections that guarantee market access - a significant increase on the commitments Australian had gained from the United States as part of the World Trade Organisation trade talks; and
- All metals and minerals will be immediately duty free.

"This Agreement is one of the most far reaching undertaken by the United States, and provide opportunities that could not have been achieved through multilateral trade talks," Mr Morgan said.

"Should the Agreement be rejected, it could be decades before Australia has this opportunity again," he said.

Mr Morgan said the release of the Negotiating Text highlighted not only the immediate opportunities for businesses but also frameworks that would promote even greater access to US markets in the future.

They include:

- Promoting the mutual recognition of qualifications in professional services. This is a crucial future gain for the export of professional services and is not an area which has been previously provided by the US under any agreement;
- Joint consideration of a number of issues regarding the closer integration of our two financial sectors and report within two years of the Agreement entering

into force.

- Tackling barriers created through technical regulations and standards. This will particularly assist those that deal with areas where technical regulations and standards such as labeling, packaging, testing and certification are prevalent.

"The FTA provides an important platform for Australia in terms of future export growth, as well as ensuring our economy remains closely connected with the world's largest economy."

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**Business  
Council of  
Australia**



## **Business Council hails US Free Trade Agreement**

Business Council of Australia President, Mr Hugh Morgan, today described the signing of a Free Trade Agreement (FTA) with the United States as an historic moment for Australia.

"The Agreement will provide massive opportunities for Australian companies of all sizes to gain access to the world's largest market," Mr Morgan said.

"It will deepen Australia's economic and investment relationships with the US beyond what we might reasonably expect from WTO arrangements to improve access for Australian business in key markets.

"The Agreement should be welcomed by everyone with an interest in Australia's long-term economic growth."

Mr Morgan said the benefits would be felt in almost every part of our economy, particularly export areas which were vital to Australia's future, including financial and professional services, manufacturing and IT.

He said the BCA would continue to give vigorous support to multi-lateral trade negotiations involving Australia.

But at the same time it recognised the major importance and benefits for business of concurrently pursuing bi-lateral trade agreements such as the US FTA, as a legitimate strategy in our national interests and similar to that pursued by many other countries.

"The Agreement will lower the cost of market entry, lower the costs of doing business in the US and largely remove the threat of protectionist action that many of our efficient and successful companies currently face in the United States," he said.

"These are important competitive advantages that Australian business will be able to leverage as a result of this path-finding Agreement."

For further information contact:

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Tel: (03) 8664 2664  
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# HealthVine

VOLUME 4 ISSUE 2

AN ELECTRONIC NEWS SERVICE OF MEDICINES AUSTRALIA

11 February 2004

## Medicines Australia News

### Howard and Vaile get the script right

Trade Minister **Mark Vaile** concluded that an agreed text for the Australia-United States Free Trade Agreement with his US counterpart, Trade Representative **Bob Zoellick**.

*"This historic deal offers enormous opportunities to all Australian companies interested in profiting in the world's largest and most dynamic economy,"* Mr Vaile said after a final negotiating session in Washington DC lasting more than two weeks.

*"The FTA between Australia and the United States is overwhelmingly in the Australian national interest,"* Mr Vaile said. *"This deal will further intergrate the Australian economy with the largest and most dynamic economy in the world, delivering lasting benefits for generations of Australians."*

Medicines Australia has congratulated the Federal Government for its success in securing billions of dollars worth of benefits in a Free Trade Agreement with the United States. This is a great result for Australia, offering big gains for local manufacturers, investors and professional services.

*"Today's announcement is a win for Australian patients, the medical community and industry on several fronts,"* Medicines Australia Chief Executive **Kieran Schneemann** said.

*"The Government has consistently promised Australians that the Pharmaceutical Benefits Scheme (PBS) will remain in tact, with no change in the cost of medicines. This commitment has been honoured."*

*"The innovations to PBS systems and processes will ensure life-saving and life-enhancing medicines continue to be made available to all Australians."*

Mr Schneemann said these innovations will bring about a more transparent, improved PBS system, better equipped to assess the value of medicines and to ensure they are made available to Australians when they are most needed.

He said one of the most important improvements is the agreement to an appeals system that would act as an important safe-guard to ensure Australians have the best chance of accessing a range of new generation medicines for diseases and illnesses such as cancer, diabetes and mental health problems.

*"We are pleased that industry, consumers and medical specialists can now rest assured there is a system of review to ensure the best decisions are made for all Australians, with access to the best therapies to treat and cure illness,"* he said. *"This can allow patients, medical professionals and industry to be better informed and understand the importance of a new therapy or life saving medicine, while at the same time introducing greater transparency and certainty to important PBS processes."*

The FTA will open up the US market to Australia's investment in research and medicines, which means Australia's medicines and biotech industry can better reach a market of 350 million people: critical for jobs, exports, investment and the economy.

Australian Medical Association (AMA) President, **Dr Bill Glasson**, also welcomed the Government's assurance that under the Australia-United States Free Trade Agreement the PBS is safe.

*"Access to affordable medicine through the PBS keeps people out of hospital and frees up resources in other areas of the health system,"* he said.

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**MEDIA RELEASE MEDIA RELEASE MEDIA RELEASE**

**Australian Medical Association Limited**

ABN 37 008 426 793

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 Telephone: (02) 6270 5400 Facsimile (02) 6270 5499  
 Website: <http://www.ama.com.au/>

President: Dr William Glasson  
 Secretary General: Dr Robert Bain



**AMA**

**AMA OPTIMISTIC ABOUT PBS**

AMA President, Dr Bill Glasson, today welcomes the Government's assurance that under the Australia-United States Free Trade Agreement (AUSFTA) the PBS is safe.

Dr Glasson said the PBS price and listing arrangements ensure that all Australians get access to essential medicines at an affordable price.

"Had the PBS been included in the Agreement, Australians would have been forced to pay American-style prices for their medicines.

"The last thing we want is an American system where many people can't afford essential healthcare.

"Access to affordable medicine through the PBS keeps people out of hospital and frees up resources in other areas of the health system.

"The AMA acknowledges the Government's efforts over the past months to protect the PBS, a key component of our affordable health care system.

"The AMA looks forward to a detailed briefing on the Agreement," Dr Glasson said.

---

9 February 2004

CONTACT: Judith Tokley (02) 6270 5471 / (0408) 824 306

## **Pharmacy Guild Welcomes Trade Agreement -- The Pharmacy Guild of Australia**

### Pharmacy Guild Welcomes Trade Agreement

The Pharmacy Guild of Australia has welcomed the signing of the Australia-US Free Trade Agreement, and in particular the commitment by both countries to keep the Pharmaceutical Benefits Scheme intact.

The National President of the Guild, John Bronger, said the first impression of the agreement is that it ensures the access Australians enjoy to quality, affordable medicines will continue.

"I welcome the commitment by both Governments to a set of common principles to facilitate high-quality health care and continued improvements in public health for the people of both countries," Mr Bronger said.

"I also welcome the commitment to greater transparency and I look forward to being able to examine the details of these commitments when they become available."

Mr Bronger said that during the FTA negotiations, the Guild had been concerned that the PBS price-setting mechanism might be undermined following intense lobbying from US interests.

"But the commitment to greater transparency means the Government will ensure the pricing system of the PBS is maintained," he said.

"This is crucial to the future of a sustainable PBS."

Mr Bronger said it was also a step forward to see both Government agree to the formation of a Medicines Working Group to provide a forum for discussion between Australia and the US on emerging health issues.

"I look forward to the Guild being closely involved in this process to give voice to the 5000 community pharmacists across Australia who are at the frontline of health care in this country," Mr Bronger said.

"I congratulate Trade Minister Mark Vaile and all the negotiating committee on their work and on their commitment to ensuring continued access by all Australians to what is recognised throughout the world as one of the best universal prescription subsidy schemes there is."

Contact: John Bronger 0418 643 200

Source: The Pharmacy Guild of Australia

### **Original Fax Release**



### **Attachments**

(None)

# **MEDIA RELEASE**

## **Six billion reasons to support Australia-US FTA**

The Australian medicines industry said there are now 6 billion reasons to rally behind an Australia-US Free Trade Agreement (FTA), with research showing the negotiated FTA will lead to an annual boost of \$6 billion to the economy.

The economic analysis released today by the Centre of International Economics (CIE) suggests that a decade from now the Australian-US FTA will deliver an annual boost to the Australian economy of approximately \$6.1 billion.

Medicines Australia chief executive Kieran Schneemann said the Australian Government should be congratulated for securing such a prosperous deal for the nation. He said he had total confidence the deal would secure such massive annual increases in GDP and appealed to all Parliamentarians to now support this agreement in a bipartisan way, for the benefit of the nation and take politics out of this issue.

The analysis predicts a \$60 billion increase over 20 years in Australia's Gross Domestic Product (GDP) if the FTA is passed in both countries.

The CIE study made clear that prescription medicines prices would not rise as a result of the FTA.

"The study finally puts to bed the scaremongering and misinformation by some individuals and organisations that the prices of medicines will rise as much as 400 per cent," Mr Schneemann said.

"The Australian Government consistently stated during FTA negotiations and since the release of the FTA text that prices of medicines would not increase. This commitment has now clearly been honoured.

"What we will see is an investment of \$1 billion in research and development as a result of more partnership programs between Australian research institutions and the pharmaceutical industry in Australia and the US."

**3 May 2004**

**CONTACT**

**Steve Haynes**

**Kieran Schneemann**

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**(02) 6282 6888**

EMBARGO: Mon Feb 16: 12:01am

## **MEDIA RELEASE**

### **US-AUS Free Trade Agreement A billion dollar investment injection for Australia**

The US-Australia Free Trade Agreement has the capacity to attract \$1billion of research activity to Australia.

Medicines Australia said that the greater transparency and improved understanding of the way the Pharmaceutical Benefits Scheme operates, following the FTA, will act as an incentive and provide a greater level of certainty, which underpins investment decisions by the global pharmaceutical industry.

The global spend on pharmaceutical research is \$60 billion: \$40 billion in the USA.

"If the Australian biotech-medicines industry attracts just 2% of that research expenditure, it will be worth more than \$1 billion," the Chief Executive of Medicines Australia Mr Kieran Schneemann said.

"And we will see more partnership programs between Australian research institutions and the pharmaceutical industry in the US and Australia, similar to the US-Australia partnership, that is developing a vaccine for cervical cancer."

The FTA will also be another string in the promotional bow of State Premiers.

Last year Premiers Beattie, Carr and Bracks formed the Australian Biotech Alliance to promote the competitive advantages of the Australian biotech-pharma industry in the world market. Their lobbying in Washington targeted the big investors and celebrated the very significant investment past and present governments have made towards building a highly respected R&D base in this country.

"It is the pharmaceutical industry, not venture capitalists that have shown the preparedness to make the high risk investment so critical to develop new cures and badly needed innovative medicines," Mr Schneemann said.

"We have many advantages in Australia that can make us a major medicinal hub: an excellent medical research infra structure, high quality clinical research capability, innovative biotech companies and a highly skilled, high-tech, knowledge based workforce.

"The FTA is a vital catalyst that synthesises these ingredients into greater investment, the creation of skilled jobs, an increase in exports and the development of life saving medicines for Australia."

**15 February 2004**

#### **CONTACT**

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**Kieran Schneemann**

**(02) 6282 6888**

## **MEDIA RELEASE**

### **Medicines industry says time to separate fact from fiction**

The release of the final text of the FTA is an opportune moment to separate fact from fiction about how the PBS will be affected, according to Medicines Australia.

Medicines Australia Chief Executive Kieran Schneemann said he was officially calling on groups propagating fear about the FTA text to articulate where in the text their claims could be supported.

"The release of the final FTA text confirms Australians will benefit from a more transparent, accessible and efficient Pharmaceutical Benefits Scheme," he said. "It is important Australians have an appreciation of the benefits this will afford them, rather than start to fear the agreement due to scaremongering by people who have either misinterpreted the text or have motives in opposing it."

To assist in separating fact from fiction on the PBS and FTA, Medicines Australia provides the following clarification on myths put forward about PBS changes.

Myth number one: The FTA will allow pharmaceutical companies to advertise directly to the public:

**Fact:** The FTA text articulates that any marketing and advertising to consumers must comply with existing laws. Current Australian law stands that advertising direct to consumers by industry is prohibited. The prescription medicines industry accepts and supports this Government legislation. It is not seeking to have this law overturned.

Myth number two: There is a new element to the PBS where prescription medicines companies can demand price increases for their products:

**Fact:** There is no new process whereby companies can ask for higher prices for medicines. The FTA text affirms an existing process whereby companies can ask the Government to consider the value of their medicines.

Myth number three: The prescription medicines industry will be able to force the listing of medicines through an independent review system:

**Fact:** The independent review system will not be able to overturn listing decisions or force decisions as the final say and decision making on whether a medicine achieves PBS listing remains in the hands of the executive Government and Health Minister. Whatever the PBAC or an independent review system concludes the ultimate authority still lies with the Government.

We will not support frivolous applications for the independent review of medicines.

**5 March 2004**

#### **CONTACT**

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**Kieran Schneemann**

**0413 432 103 or (02) 6282 6888**

**(02) 6282 6888**

Rowe ; LHMU ; MEAA ; Mercury ; MUA ; NUW ; Old min for state development ; RTBU ; SDA ; Tas min for eco development

**Sent:** Friday, February 20, 2004 11:24 AM

**Subject:** Re: Media Release - Senator Kim Carr

Senator Kim Carr

Labor Senator for Victoria

Shadow Minister for Innovation, Industry, Science & Research

Dear Senator Carr,

Re: Media Release - Industry Department

I write in response to the above media release to advise that the Australian Shipbuilders Association and the Australian Ship Repairers Group have been directly involved through the writer with many meetings over some years and the past year in particular, in relation to negotiations for an Australia-US Free Trade Agreement at which industry has been consulted considerably at both round-table meetings as well as discussions between sector representatives and the Australian FTA negotiating team.

Officers from the Department of Industry Tourism & Resources have attended DFAT's FTA negotiating team round table meetings with industry in Canberra and had provided the Australian negotiating team with extensive statistical data and background information relating to the Australian shipbuilding and repair industries to so that they were well briefed to negotiate on our behalf.

Minister Macfarlane called for a round table meeting of industry representatives to ensure that industry was sufficiently represented in the negotiations. This meeting was held on Wednesday 18th June, 2003 in Canberra and was chaired by Joe Hockey in Ian Macfarlane's absence on sick leave. Consultations have continued between officers of DITR and shipbuilding and repair industry representatives throughout the negotiation processes in addition to consultations between DFAT and industry.

The Australian Shipbuilders Association and the Australian Ship Repairers Group welcome the reported removal of the 50% tariff imposed on US companies who have ship repair and maintenance carried out overseas however we cannot provide further comment on any impact to the Jones Act until we are provided with full details of the FTA and the ramifications for our sector. We remain optimistic as to the outcome of the FTA and continue to host visiting US Congressional delegations to discuss benefits which can be achieved for the shipbuilding and repair industries both in Australia and the US.

Liz Hay  
Executive Director  
Australian Shipbuilders Association

## **Tenix welcomes Free Trade Agreement**

**The largest Australian-owned defence and technology contractor, Tenix Pty Limited, today welcomed the Australia-United States Free Trade Agreement (AUSFTA).**

Tenix Group Managing Director Paul Salteri said the agreement would help Australian companies sell goods and services into the US, and significantly assist Australian shipbuilders with repairs and maintenance in Australia for US ships.

"Abolition of the 50% US tariff on work of this kind done in Australia is an important gain for Australian industry and jobs in Australia," he said.

"So is the free access to the immense US government contracts market for Australian companies.

"AUSFTA will help high technology industries such as defence maintain growth in Australia, delivering important technologies, skills and capabilities to the Australian economy.

"Equally significant are the long-term opportunities for our economy through an agreement that enables Australian business to access US economic growth.

"AUSFTA provides a basis for greater economic activity which will benefit all Australians," Mr Salteri said.

RA 03/04

11 February 2004

## **FREE TRADE AGREEMENT GOOD FOR JOBS**

The free trade agreement between Australia and the United States could mean more jobs for Australians in currently restricted ship maintenance for US flagged vessels.

Raytheon Australia's Managing Director Ron Fisher said, 'our recently announced agreement with FORGACS in Newcastle, NSW for shipbuilding, repair and maintenance could not have come at a more important time, just ahead of the free trade agreement'.

Under the free trade agreement announced by the Commonwealth Government the 50 percent tariff on ship repairs and maintenance, part of the maritime protection known as the Jones Act, will be eliminated.

'This tariff removal is good for business in Australia and it makes Australian based ship repair and maintenance activities far more economically viable for the US Navy', said Mr Fisher

Mr Fisher said that the Government should be congratulated on its long-term vision and 'with our Naval Systems division headquarters in Henderson, Western Australia the Company, and local industry is in a very good position to bid for work on visiting US Navy ships and submarines.'

Raytheon Australia is currently contracted to provide in-service support to the Collins Class Submarines, including critical component maintenance during full cycle dockings, as well as test and trials.

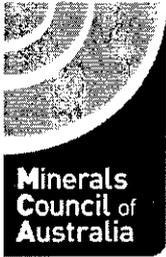
Many of the systems onboard visiting US Navy ships are of Raytheon origin although the Company is able to provide through life support and logistic services to a range of equipment made by other companies.

Raytheon Australia is a wholly owned subsidiary of Raytheon Company (NYSE: RTN). With 2003 sales of \$18.1 billion, Raytheon is an industry leader in defence and government electronics, space, information technology, technical services, and business and special mission aircraft. With headquarters in Waltham, Mass., Raytheon employs 78,000 people worldwide.

**-End-**

**Further information:**

Nigel Catchlove - 0407 180 170



## **MEDIA STATEMENT**

*Statement by MCA Chief Executive, Mr Mitchell H. Hooke*

### **AUST/US FREE TRADE AGREEMENT FILLIP TO MINERALS INDUSTRY GROWTH AND AUSTRALIANS' PROSPERITY**

The Minerals Council of Australia is buoyed by the successful conclusion of negotiations on an Australia/US Free Trade Agreement.

This is just the fillip the Australian minerals industry was looking for from these trade negotiations.

If ratified, the FTA formalises and deepens Australia's economic relationship with the largest economy in the world and stands to further strengthen Australia's terms of trade, which were at their highest level in 13 years in mid 2003.

Australians are vastly better off for Australia's commitment to free trade and the continued growth of Australia's minerals and energy exports: Australia's national income is \$30 billion or 3.8% of national income more than had we retained the terms of trade between minerals and manufactures that Australia faced a decade ago. This greatly improves the annual purchasing power of Australian families, corporates and taxpayers.

Further, the Australian minerals industry is well positioned to continue to underpin Australia's wealth creation capitalising on the economic and industrial growth of China, India and other rapidly developing Asian economies emulating Australia's past as a major exporter of minerals to Japan and other industrialising economies.

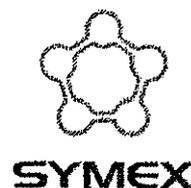
If the minerals industry is to continue to underpin Australia's wealth creation, it needs unfettered access to global markets to sell its products and buy its inputs, capital to support development of Australia's natural geological wealth, and it needs access to global professional expertise and leading edge technology for continued international competitiveness.

Specific to the Australian minerals industry's interests, the Agreement:

- removes tariffs from manufactured goods, increasing market access for Australian metals eg. aluminium, and removing duties on imported capital equipment and other industrial inputs to production in Australia;
- provides a legal right for investments from each party to receive treatment no less favourable to that given to national investors (the national treatment rule);
- increases the threshold to \$800 million over which prior Foreign Investment Review Board (Australia) approval is required removing unnecessary impediments to the flow of capital, but significantly, retains the right to review foreign investments in the "national interest";
- does not introduce measures to restrict trade for environmental, labour, or other non-trade objectives, but does include an agreement not to fail to enforce domestic environmental and labour laws in a manner affecting trade between the parties;
- establishes cross-recognition (or mutual recognition) for technical regulations and standards for products and processes; and
- provides for further cooperation on competition law and policy.

Australia will be unambiguously better off for this agreement than if it had not been reached. It will deepen the integration of our two economies. It will strengthen the trade and investment relationship and will emphasise Australia's standing in international trade negotiations and the global economy. We have already seen renewed interest in Australia's trading arrangements from other countries on account of these negotiations, and we can expect more.

Australia's trade negotiators, led by Minister Vaile and supported by Chief Negotiator, Stephen Deady and team, have served Australia's interests extremely well.



## **MARKET RELEASE – PRESS RELEASE CONCERNING US FTA**

**10 February 2004**

Symex Holdings (SYM) today released the following press release concerning the affects of the proposed US Free Trade Agreement.

Symex is a manufacturer and marketer of glycerine, stearine, oleine and distilled fatty acids. These products are derived from naturally occurring fats and oils such as tallow and coconut oil. More than 70 per cent of Symex's oleo products production is exported. Symex is also Australia's largest manufacturer of soap, supplying the brands Country Life and Natural Selections.

Mr Mike Newton, managing director of Symex, said the free trade agreement will allow the company to gain greater access to the US market for fatty acids.

"Currently over 20 per cent of Symex's exports of glycerin are to the US. This is due in part to the import duty being fairly insignificant at \$US5 per metric tonne," he said.

"However, we export virtually no fatty acids to the US. This is primarily because of the significant import duties. The import duty for stearic acid is approximately \$US44 per metric tonne and the import duty for oleic acid is approximately \$US50 per metric tonne.

"We anticipate that with these barriers removed we will have much greater success in marketing our fatty acids to the US. The market there for fatty acids is almost a quarter of a billion dollars, so even a small share of that market would increase our exports by between 5 and 10 million dollars annually," Mr Newton added.

### **ABOUT SYMEX HOLDINGS LIMITED**

Symex is a manufacturer and supplier of Glycerine, Stearine, Oleine and DFA to the Global Market. Symex products are derived from naturally occurring fats and oils such as tallow and coconut oil. In excess of 70% of Symex production is exported.

Pental is Australia's largest manufacturer of soap supplying the Australian market under its own brands which include Country Life, Natural Selections and Pental as a contract manufacturer for a number of other well known consumer brands and businesses.

For more information contact:

Wendy McWilliams  
WMC Public Relations  
9803 2588

Mike Newton  
MANAGING DIRECTOR  
0417 541 347  
9251234



## **News Release**

Immediate: 12 February 2004

(02/04)

# **AUSFTA and Engineering Services: The Devil is in the Detail**

The ACEA welcomes the AUSFTA signed over the weekend as a potential first step to opening up markets for Australian consulting engineers in the US.

"We welcome the prospect of direct access to US government contracting for Australian engineering and technical service firms" said ACEA Chief Executive Therese Charles.

"However for our industry it is critical that the Agreement is satisfied by the majority of US states, as most engineering construction contracts are let at state level."

Similarly, better recognition of Australian qualifications under the Agreement in the US is a plus for the industry.

"But the requirement that engineering service suppliers be licensed in every US state to work has been a major barrier to trade for Australian firms looking to work, so again, state participation is important if the Agreement is to have any real teeth" said Ms Charles.

Consulting engineers were also pleased to see reports of easier living and working arrangements, and some easing of visa restrictions.

"However as usual the devil is in the detail" said Ms Charles. "It will be in the content and terms of implementation that follows the signing of the Agreement that free and improved trading conditions will flow for consulting engineering firms."

*The ACEA represents Australian consulting engineering firms which provide technology-based consulting services to government and private sector clients in Australia and in more than 40 countries worldwide. Services are provided in the fields of building, infrastructure, oil and gas, transportation, mining, communications and information technology, agriculture, food processing and manufacturing.*

For further information, please contact:

**Therese Charles, Chief Executive Tel: 02 9922 4711 Mob: 0413 046 616**  
**John Ridgway, Policy Consultant Tel: 02 9922 4711 Mob: 0407 924 256**

# PRESS RELEASE

10 February 2004

## IMPACT OF US FREE TRADE AGREEMENT ON WINE INDUSTRY

The Australian wine industry has given in principle support for the finalisation of the Australia-United States Free Trade Agreement.

Stephen Strachan, Chief Executive of the Winemakers' Federation of Australia (WFA) expressed the industry's general support for the free trade agreement.

"The wine industry has been pushing for tariff reductions and improved wine labelling requirements", he said.

"Although full details are not yet known, US wine tariffs will be eliminated after 11 years."

"Most of the benefits will accrue at the end of this period, although for some products, such as bulk wine, tariff reductions should begin to flow through in the form of lower costs once the agreement comes into force", said Mr Strachan.

Tariffs into the US are around (US) 6 cents per litre for bottled wine, 20 cents per litre for sparkling wine and 14 cents per litre for bulk wine. Bottled wine accounts for around two thirds of the industry's exports to the United States.

"The US is our largest and fastest growing market, with exports running at almost \$870 million in the last twelve months", Mr Strachan said.

"The full benefit of the tariff reductions in 11 years will represent cost savings of around US\$30 million per annum to the Australian industry, however there will be some immediate, but minor, benefits from the agreement through reduced costs for Australian producers with the removal of Australian tariffs on inputs", he said.

"Importantly, the Free Trade Agreement will ensure that the Australian wine industry does not fall behind the liberalisation achieved by its major competitors South Africa and Chile in their deals with the US", said Mr Strachan.

"However, Australia's wine industry is the highest taxed major producer in the world, and many winemakers cannot currently afford to exploit export opportunities", he said.

WFA will tomorrow announce details of a strategy aimed to relieve the impact of the Wine Equalisation Tax.

### ***For Further Information:***

Tony Battaglione  
Director, International & Regulatory Affairs  
Winemakers' Federation of Australia  
Phone: 02 6239 8300 / 0413 014 807

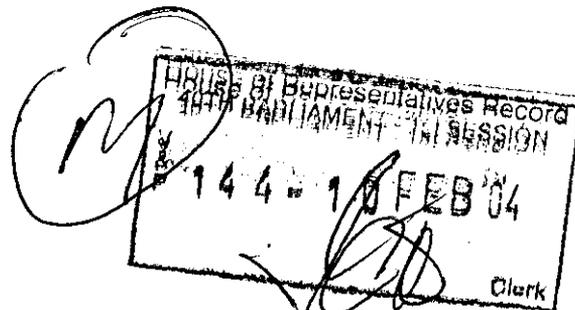
Stephen Strachan  
Chief Executive  
Winemakers' Federation of Australia  
Phone: 0438 847 418

*The Winemakers' Federation of Australia is the peak industry body representing the interests of winemakers across all issues*

**WINEMAKERS' FEDERATION OF AUSTRALIA  
INCORPORATED**

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National Wine Centre, Botanic Road, Adelaide SA 5000 (PO Box 2414, Kent Town SA 5071)  
Telephone: 08 8222 9255, Facsimile: 08 8222 9250, Email: [wfa@wfa.org.au](mailto:wfa@wfa.org.au)  
ABN 38 359 406 467



## **NZ congratulates Australia, US on FTA**

Foreign Minister Phil Goff today congratulated Australian and United States negotiators for concluding a bilateral free trade agreement.

Mr Goff said New Zealand had always supported the idea of an AUSFTA.

"While this was obviously a long and difficult negotiating process, I am pleased that the two sides have been able to reach a deal which satisfies their national interests.

Mr Goff said the New Zealand government would be studying the final text closely once it was released.

"Even though both Australia and the US may not have been able to get everything they wanted in this agreement, nonetheless every step towards greater trade liberalisation is to be welcomed.

"Australia is our largest trading partner and the US our third largest. Anything that strengthens either economy creates opportunity for New Zealand. Diversion of Australian trade from other markets to the US also potentially opens up opportunities for New Zealand.

"Conversely, as a CER partner, there is in the reduction of trade barriers between Australia and the US some risk of investment and trade diversion from New Zealand.

"As far as New Zealand is concerned, we remain interested in the possibility of a bilateral free trade agreement of our own with the United States, and we will continue to raise this with the US administration.

"We believe that the integration of the Australian and New Zealand economies means that negotiations with New Zealand in due course would be a logical step.

Mr Goff said that as well as continuing to pursue an FTA with the United States, New Zealand would be working closely with Australia, the US and other partners interested in pushing ahead with the Doha Development Round for global trade liberalisation.

The Hon Phil Goff mailing list operated by OneSquared Limited.

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# Appendix A

## Chronology of Events Leading to the Australia United States Free Trade Agreement.

Milestones	Details	Source Documents
22 May 1936	<p>The Minister for Trade and Customs announces in Parliament that certain imports would be restricted with a view to their manufacture in Australia. Certain other imports it was intended to change the present sources of supply to other countries which were great customers of Australia .....and would become greater customers if Australia increased purchases from them.</p> <p>This would be done by the 'adoption of a special licensing system over a limited range of imports' (imports were prohibited, except under special license, of 84 classified groups of goods) and 'the imposition of higher duties'.<sup>i</sup></p>	J. G. Crawford, <i>Australian Trade Policy 1942-1966</i> , ANU Press, Canberra, 1968, p. 393.
1 August 1936	<p>The 'trade diversion policy' of the Australian Government results in the United States Government withdrawing most-favoured-nation treatment hitherto accorded to Australian goods including certain trade benefits extended to Australia equally with a number of countries with which the US had concluded trade agreements.<sup>ii</sup></p>	J. G. Crawford, <i>Australian Trade Policy 1942-1966</i> , ANU Press, Canberra, 1968, p. 394.
7 December 1937	<p>The Minister announces modifications of the licensing system - to protect Australian industries established under the licensing system, duties would be imposed and all licensing restrictions on the 84 groups of goods would be removed.</p>	J. G. Crawford, <i>Australian Trade Policy 1942-1966</i> , ANU Press, Canberra, 1968, p. 394.
1 February 1938	<p>The US restores most-favoured-nation status to Australian goods.</p>	J. G. Crawford, <i>Australian Trade Policy 1942-1966</i> , ANU Press, Canberra, 1968, p. 394.
18 November 1938	<p>The Minister for Commerce, Sir Earle Page, makes a statement to the House on an Anglo-American Trade Agreement.</p> <p>...As was indicated when Ministers returned from abroad early this year, the possibility of Australia commencing commercial negotiations with the United States of America has been discussed informally. The study by both Governments of the problems involved, initiated some months back, is still proceeding and will, of course, now be continued in the light of the contents and the probable effects of the Anglo-American Agreement.</p>	Commonwealth Parliamentary Debates, vol. 158, p. 1713.
1941	<p>The US issues an invitation for exploratory talks on a trade treaty during an overseas tour by the Prime Minister of Australia.</p>	J. G. Crawford, <i>Australian Trade Policy 1942-1966</i> , ANU Press, Canberra, 1968, p. 395.

Milestones	Details	Source Documents
17 February 1943	Australia includes the US in the list of 'Proclaimed Countries' and gives the US intermediate Customs Tariff rates and primary duty concessions.	J. G. Crawford, <i>Australian Trade Policy 1942-1966</i> , ANU Press, Canberra, 1968, p. 394.
1947	Provisional entry into Force of the General Agreement on Tariffs and Trade (GATT). Through the GATT, Australia negotiates with the US, reductions in customs duties on a number of products - beef, veal, mutton, lamb, butter and wool. <sup>iii</sup>	J. G. Crawford, <i>Australian Trade Policy 1942-1966</i> , ANU Press, Canberra, 1968, p. 390.
1947	<p>The US proposes a treaty of commerce and friendship with Australia, a policy of the State Department 'to further good relations between the US and other countries'. The aim of the treaty was to obtain 'reciprocal unconditional most-favoured-nation treatment'.</p> <p>The draft has been the subject of informal exchanges of views at intervals over several years. Difficulties associated with the reconciliation of existing Australian obligations with those proposed to be undertaken under the treaty, and difficulties arising from the limitation in the constitutional powers of the Commonwealth to implement a treaty covering some matters within the purview of the Australian States, have yet to be resolved before a test satisfactory to both parties can be arrived at.</p>	D. F. Nicholson, <i>Australia's trade relations: an outline history of Australia's overseas trading arrangements</i> , F. W. Cheshire, Melbourne, 1955, pp. 116-117.
1965	<p>The Vernon Committee<sup>iv</sup>, in its report, says</p> <p>there is scope for a treaty dealing more specifically with trade, such as those with the United Kingdom and Japan.</p> <p>and</p> <p>Should the Kennedy Round come to nothing, the Committee repeats its suggestion for a bilateral trade treaty.</p>	Vernon Report, vol I, ch.12, paras 76 & 82, p. 329 & p. 331.
1979	Under the multilateral trade negotiations (Tokyo Round) the Minister for Trade and Resources, Doug Anthony announces a bilateral agreement with the US. Australia would bind tariffs on a number of agricultural and industrial products.	R. H. Snape, L. Gropp & T. Luttrell, <i>Australian Trade Policy 1965-1997</i> , Allen & Unwin, St Leonards, 1998, p. 396 & p. 399.
1985	The Prime Minister's Office is approached by the USTR Mike Smith, through the Department of Trade, about the possibility of a bilateral free trade agreement with the US.	R. Garnaut, 'An Australia-United States free trade agreement', <i>Australian Journal of International Affairs</i> , vol. 56, no. 1, p.123.
1986	The Government commissions a study through the Department of Trade and the Economic Planning Advisory Council (EPAC), to look at the possibility of Australia seeking a trade agreement with the US. <sup>v</sup> The study concluded that Australia should pursue trade liberalisation on a multilateral basis.	R. H. Snape, L. Gropp & T. Luttrell, <i>Australian Trade Policy 1965-1997</i> , Allen & Unwin, St Leonards, 1998, p.458.

Milestones	Details	Source Documents
January 1989	Canada-US Free Trade Agreement enters into force (this is superseded by NAFTA)	<a href="http://en.wikipedia.org/wiki/Canada-U.S._Free_Trade_Agreement">http://en.wikipedia.org/wiki/Canada-U.S. Free Trade Agreement</a>
10 September 1992	<p>President Bush (Snr) details his economic plans during a campaign speech in Detroit. A compilation of his plan is issued called '<i>Agenda for American Renewal</i>'. Its aim was to convince the nation</p> <p style="padding-left: 40px;">that its future lay within a web of free trade agreements with like-minded countries.</p> <p>Australia was one of these countries.</p> <p style="padding-left: 40px;">The speech was the brainchild of Bob Zoellick, a free trade guru and long-time aide to the White House chief-of-staff, James Baker. Zoellick was convinced an array of bilateral agreements was the best way to lock in progress on the multilateral front.</p>	G. Hywood, 'Trade deal that could finally smash our tyranny of size', <i>Sydney Morning Herald</i> , 7 August 2003.
13 October 1992	<p>Prime Minister Paul Keating reports to the House on his trip to Japan, Singapore and Cambodia:</p> <p style="padding-left: 40px;">I told the Japanese Government that Australia would not be party to a trade arrangement which was directed against Japan.</p>	Ministerial Statement, House of Representatives, <i>Debates</i> , 13 October 1992, p. 2002.
1993	A second study is commissioned by the Department of Foreign Affairs and Trade, <sup>vi</sup> but this finds Australia should opt for multilateral agreements.	R. H. Snape, L. Groppe & T. Luttrell, <i>Australian Trade Policy 1965-1997</i> , Allen & Unwin, 1998, p.458.
1993	The North American Free Trade Agreement (NAFTA), between the US, Canada and Mexico, is ratified by the Congress, after vigorous national debates. NAFTA enters into force 1 January 1994.	M. Shifter, ' <a href="#">United States-Latin American Relations: Shunted to the Slow Track</a> ', <i>Current History</i> , February 1998.
6 March 1997	<p>The USTR-designate Charlene Barshefsky releases 'The President's [Clinton] Trade Policy Agenda' report:</p> <p style="padding-left: 40px;">...the United States will continue to negotiate reciprocal free trade agreements with individual nations in the Asia- Pacific. Australia, New Zealand, and Singapore are a few of the possible partners in this respect<sup>vii</sup>.</p>	A. Oxley, 'US ties Advance Free Trade', <i>Australian Financial Review</i> , 3 April 1997, p. 16.
20 June 1997	President Clinton is expected to discuss the possibility of an FTA with Prime Minister John Howard when they meet in Washington on the 27 June but the agreement is dependant on Congress granting the President 'fast-track' trade negotiating authority.	C. Ryan & M. Dwyer, 'US urges free trade pact', <i>Australian Financial Review</i> , 20 June 1997, p. 1.
28 August 1997	<p>The Minister for Foreign Affairs Alexander Downer and Trade Minister Tim Fischer release Australia's first White Paper on Foreign and Trade Policy. A key element includes:</p> <p style="padding-left: 40px;">...an emphasis on bilateral relationships as a means of advancing Australian interests. Strong bilateral relationships are</p>	<a href="#">Joint Statement</a> The Minister For Foreign Affairs And The Deputy Prime Minister And Minister For Trade,

Milestones	Details	Source Documents
	not an alternative to regional and global efforts, but they form the basic building block of the Government's foreign and trade policy strategies.	<i>Foreign And Trade Policy White Paper</i> , media release, 28 August 1997.
November 1997	Congress does not give President Clinton fast-track authority for negotiating major agreements. Issues of labor and the environment generate considerable controversy.	L. Sek., <a href="#">Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107th Congress</a> , CRS, 15 February 2002, pp. 3-4
4 August 1999	<p>Prime Minister John Howard and the Prime Minister of New Zealand Jenny Shipley issue a joint communiqué as a result of a task force set up to examine the Australian New Zealand bilateral economic relationship.</p> <p>New Zealand and Australia are willing to consider free trade arrangements with other significant individual economies or regional groupings, where they would deliver faster and deeper liberalisation than the multilateral process.....</p>	Joint Prime Ministerial Task Force on Australia New Zealand Bilateral Economic Relations, <a href="#">Joint Prime Ministerial Communiqué</a> , 4 August 1999.
December 2000	Michael Thawley, Australia's Ambassador to the US, makes a speech to the American Australian Association in New York on the mutual benefits of an Australian free trade agreement with the US.	P. Kelly, 'Change in US sharpens our dilemma' <i>The Australian</i> , 20 December 2000.
March 2001	Minister for Foreign Affairs Alexander Downer travels to the US and meets Secretary of State Colin Powell and USTR Bob Zoellick for discussions on a free trade agreement between Australia and the US.	<i>Alexander Downer holds talks in Washington</i> , ABC Radio <a href="#">AM</a> , Reporter A. Cusack, 23 March 2001.
5 April 2001	Trade Minister Mark Vaile visits Washington for talks with USTR Bob Zoellick on the possibility of a free trade agreement with the US.	M. Vaile (Minister for Trade), <a href="#">Doorstop Interview</a> : US Capitol Grounds, Washington, DC, 5 April 2001.
5 April 2001	The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Australian Council of Trade Unions (ACTU) issue a joint statement to oppose any deal that does not meet a number of key objectives including workers rights, environmental standards, transparency and accountability.	American Federation of Labor and Congress of Industrial Organizations and the Australian Council of Trade Unions, <a href="#">Joint Statement on a Possible U.S. - Australia Trade Agreement</a> , 5 April 2001.
10 May 2001	President Bush places trade promotion authority (TPA) as a priority in his agenda for international trade.	L. Sek., <i>Trade Promotion Authority (Fast-Track Authority for Trade</i>

Milestones	Details	Source Documents
21 June 2001	<p>Trade minister Mark Vaile releases the results of a study by the Centre for International Economics (CIE) on a possible Australia-US FTA. The study finds that a “Free Trade Agreement (FTA) with the United States could increase Australia’s real GDP by almost \$US2 billion by 2010”.</p> <p><i>(Economic impacts of an Australia–United States Free Trade Area</i>, Prepared for Department of Foreign Affairs and Trade, Centre for International Economics, Canberra &amp; Sydney, June 2001.)</p>	<p><i>Agreements): Background and Developments in the 107<sup>th</sup> Congress</i>, CRS, 2003.</p> <p>M. Vaile (Minister for Trade, <i>US Free Trade Agreement Study finds benefits exist</i>, <a href="#">media release</a>, 21 June 2001.</p>
29 August 2001	<p>The APEC Study Centre, Monash University, release the report, <i>An Australia-USA Free Trade Agreement: Issues and Implications</i>:</p> <p>Australian business would gain from improved access to the world’s largest economy, and there would also be a number of important flow-on effects, particularly in attracting US investment to Australia and expanding linkages with the dynamic US new economy and leading edge US business practices.</p>	<p>M. Vaile (Minister for Trade), <i>New Study Supports US Free Trade Agreement</i>, 29 August 2001.</p>
August 2001	<p>John Howard confirms the government’s intention of pursuing a free trade agreement with the USA.</p>	<p>Question without Notice, <i>Hansard</i>, 30 August 2001, p.30678.</p>
6 December 2001	<p>US House of Representatives passes the trade promotion authority (TPA) bill (H.R. 3005) by a narrow margin.</p> <p>An important issue was the designation of labor and the environment as negotiating objectives.</p>	<p>L. Sek, <i>Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107<sup>th</sup> Congress</i>, CRS, 2003.</p>
23 May 2002	<p>The US Senate includes the TPA into a comprehensive trade bill (H.R. 3009) ‘Trade Act 2002’. “The bill included TPA (in title XXI), reauthorization of Andean trade preferences, extension of the Generalized System of Preferences, and trade adjustment assistance (TAA). Two controversial differences with the House were: (1) the so-called Dayton-Craig amendment, which would allow the removal from an implementing bill any provisions to amend U.S. trade remedy laws, and (2) the level of tax credits for displaced workers to cover their health”</p>	<p>L. Sek, <i>Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107<sup>th</sup> Congress</i>, CRS, 2003.</p>
June 2002	<p>John Howard reports to the House that the US administration requires trade promotion authority from the American Congress to enable further negotiations to take place.</p>	<p><i>Question without notice</i>, House Hansard, 17 June 2002, p. 3430.</p>
12 June 2002	<p>John Howard addresses the US Congress:</p> <p>May I respectfully express the hope that Congress gives the</p>	<p>Transcript of the Prime Minister The Hon John Howard</p>

Milestones	Details	Source Documents
27 July 2002 / 1 August 2002	<p>President full authority to negotiate new trade agreements.</p> <p>At the same time, we in America and Australia have an historic opportunity to give even greater momentum to our bilateral economic relationship. And that is why Australia has proposed the negotiation of a free trade agreement between our two countries. A comprehensive free trade agreement, by boosting trade and investment between us, would add a stronger economic dimension to the very deep bilateral ties that are already there.</p> <p>The Bush administration is given “fast-track” permission by Congress to negotiate trade agreements.</p>	<p><a href="#">Address</a> to Joint Meeting Of The US Congress.</p>
6 August 2002	<p>After some delays President Bush signs the trade bill into law (P.L. 107-210).</p>	<p>S. Marris, &amp; R. Dalton, ‘US paves way for free trade’, <i>The Australian</i>, 29 July 2002.</p> <p>L. Sek, <a href="#">Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107<sup>th</sup> Congress</a>, CRS, 2003.</p>
13 November 2002	<p>President Bush authorises the USTR Bob Zoellick, to send a letter to Congress of the intention of the administration to begin negotiations with Australia on a free trade agreement.</p>	<p>Question without notice: Trade: United States, <i>House Hansard</i>, 14 November 2002, p.9079.</p>
14 November 2002	<p>Prime Minister John Howard, and USTR Bob Zoellick announce that Australia and the United States would start negotiations on an FTA.</p> <p>Trade Minister Mark Vaile announces the Department would invite public submissions.</p>	<p>Transcript of the Prime Minister The Hon John Howard and Robert B. Zoellick, United States Trade Representative, <a href="#">Press Conference</a>, Parliament House, Canberra.</p> <p>M. Vaile (Minister for Trade), <i>Vaile Hails Breakthrough for Australia-US Trade Relations</i>, <a href="#">media release</a>, 14 November 2002.</p>
21 November 2002	<p>The Government invites public submissions on the proposed free trade agreement.</p> <p>The Office of Trade Negotiations will lead and coordinate the Government's approach to the negotiations with the United States. The Government will give high priority to the views and expertise of different groups on issues to be covered by the negotiations. It will consult widely, including with business, interested organisations and the general public, as it develops Australia's negotiating position.</p>	<p>Department of Foreign Affairs and Trade, <a href="#">Australia-United States Free Trade Agreement: Call for Submissions</a>, media release, 21 November 2002.</p>
15 January	<p>Deadline for public submissions on the proposed Australia</p>	<p>Department of</p>

Milestones	Details	Source Documents
2003	United States FTA.	Foreign Affairs and Trade, <i>Australia-United States Free Trade Agreement Call For Submissions, Background Paper and Submissions</i>
3 March 2003	<p>Australia releases its formal list of objectives for negotiations on the FTA.</p> <p>We will ensure outcomes from the FTA negotiations do not impair Australia's ability to deliver fundamental objectives in health care, education, consumer protection and supporting Australian culture and identity. The Government remains committed to preserving its ability to regulate in relation to social and cultural objectives, and will ensure the FTA is consistent with that goal.</p>	M. Vaile (Minister for Trade), <i>Vaile Announces Objectives for Australia - US FTA</i> , <a href="#">media release</a> , 3 March 2003.
17-21 March 2003	The <b>first</b> round of talks is held in Canberra. Australia's chief negotiator is Stephen Deady and for the US Ralph Ives.	<p>M. Wade, 'Free-trade dealers keep cards close to the chest', <i>Sydney Morning Herald</i>, 19 March 2003, p. 8.</p> <p>And <a href="#">Media briefing on the first round</a>, USTR,</p> <p>And <a href="#">AUSFTA Briefing Paper No. 1, 2003</a>, DFAT</p>
24 April 2003	<p>Trade Minister Mark Vaile, addresses the Australian Citrus Growers Conference and says that:</p> <p>the FTA with the United States, and our other regional trade initiatives, are part of the most ambitious ever trade agenda for Australia.</p>	<a href="#">Speech</a> , Leeton, NSW, 7 April 2003, Citrus Growers' Annual Conference.
2 May 2003	<p>After a visit to the US, Trade Minister Mark Vaile, says:</p> <p>.... Australia's role as a member of the Coalition of the Willing was praised and appreciated at every level. But we also received overwhelming support for an FTA with the US,....</p> <p>We were consistently urged to complete the negotiations as quickly as possible and there was a wide recognition that an FTA would and should become a key element of our bilateral relationship.</p>	M. Vaile (Minister for Trade), <a href="#">Vaile cites positive outcomes of US visit</a> , media release, 2 May 2003.
3 May 2003	<p>President Bush says of the prospect of the FTA:</p> <p>We discussed the matter. I asked the Prime Minister, are we making, from the U.S. side, a strong enough effort to move the process along? Is Ambassador Zoellick doing what he's supposed to be doing, in terms of getting this trade agreement done? And the Prime Minister assured me that was the case. And so that made me feel good. The idea is to try to get this thing done by the end of the year, and then, of course, get it to our Congress in '04. It's -- I believe we can get it done, and I think it's an important -- will be an important step in our</p>	Whitehouse Press release, <i>President Bush, P.M. Howard Discuss Operation Iraqi Freedom - Remarks by President Bush</i> and Prime Minister Howard of Australia, The Bush Ranch Crawford, Texas, 3 May 2003.

Milestones	Details	Source Documents
	relationship.	
16 May 2003	Stephen Deady gives a media briefing on the work that has occurred since the last meeting and a preview of the discussions to be held next week in Hawaii.	<a href="#">Media briefing</a> by Australia's chief negotiator for the Australia United States Free Trade Agreement, 16 May 2003.
19-23 May 2003	The <b>second</b> round of negotiations takes place in Hawaii.	<a href="#">AUSFTA Briefing No. 2, 2003</a> , DFAT.
23 May 2003	Stephen Deady and Ralph Ives discuss the progress of the second round of negotiations playing down reports that there was a threat to the PBS and Australian film industries.	<a href="#">Media briefing</a> conducted by Australia's chief negotiator Stephen Deady and the United States' chief negotiator Ralph Ives, 23 May 2003.  PBS, Television content safe in trade deal: Vaile, <i>Canberra Times</i> , 24 May 2003, p. 13.
21-25 July 2003	The <b>third</b> round of talks held in Hawaii. Initial market access offers were put on the table. Trade Minister, Mark Vaile rates the deal as a better than 50% chance of success.  The initial US offer on agriculture was not as forward-looking as we had hoped, although the industrials offer had more positive elements. We have underlined to the US the importance of providing a credible market access offer if we are to stay on course for completing negotiations by the end of 2003.	<a href="#">AUSFTA Briefing No. 3, 2003</a> , DFAT.  P. Karvelas, 'Vaile rates US trade deal', <i>The Australian</i> , 21 July 2003, p.4.
25 July 2003	The 2 chief negotiators update the progress of the talks.  Stephen Deady  We have made good progress in a number of areas across all of the negotiating groups this week and we are on track to have, to a large extent, a broad consolidated text by the end of this round.  Ralph Ives  ...we had a very positive and constructive round of negotiations. I think both the United States and Australia share a strong commitment to work hard to try to achieve a world-class agreement within the timeframe that our leaders have given us.	<a href="#">Media briefing</a> on the third round of Free Trade Agreement negotiations between Australia and the United States, 21-25 July in Hawaii, 25 July 2003.
27 July 2003	Trade Minister, Mark Vaile meets US Trade Representative Bob Zoellick in Washington.  As a result of our frank discussions on Friday, Bob Zoellick and I agreed on a timetable for the next five months - outlining the	M. Vaile (Minister for Trade), <i>Australia-US FTA on track to conclude this year</i> , <a href="#">Media Release</a> .

Milestones	Details	Source Documents
	key steps needed to get this deal done.	27 July 2003.
10-14 September 2003	The Fifth WTO Ministerial Conference is held in Cancún, Mexico. The main task was to set parameters for further negotiations under the Doha Development Agenda. Australia is represented by Trade Minister Mark Vaile. Talks collapse and the President of the American Farm Bureau, Bob Stallman says the prospects of an FTA would be damaged by the failure.	<a href="#">The Fifth WTO Ministerial Conference</a> R. Eccleston,, ‘Collapse a setback for deal with US’, <i>The Australian</i> , 16 September 2003, p.8.
14 September 2003	Trade Minister Mark Vaile meets with the Bob Stallman, head of the Farm Bureau and US Trade Representative Bob Zoellick while in Mexico. He comments there is still a lot of work to do but “my confidence is growing”.	‘Vaile claims Australia is close on US trade Pact’, <i>Canberra Times</i> , 15 September 2003, p.3.
20 October 2003	While in Thailand for the APEC Ministerial meeting, Mark Vaile meets Bob Zoellick to map out a schedule for talks to the end of the year.	M. McGuire, US Trade Deal can be done on time says Vaile’, <i>The Australian</i> , 22 October 2003, p. 9.
21 October 2003	The Labor Premiers, Bob Carr (NSW) Peter Beattie (Queensland) Steve Bracks (Victoria) Dr Geoff Gallop (WA); Jim Bacon (Tasmania); Mike Rann (SA); and Chief Minister, Ms Clare Martin (NT) issue a statement urging the  United States Government to conclude swiftly a Free Trade Agreement with Australia.	<a href="#">Media Release &amp; Statement</a> by the Labor Premiers and Chief Minister of the Northern Territory, 21 October 2003.
23 October 2003	US President George Bush and Prime Minister John Howard hold talks in Canberra. Mr Howard expressed the need to get the agreement finalised by the end of the year and the need for concessions in agriculture. Both leaders reaffirmed their commitment to the end of year target for completion.	T. Allard, ‘Fears grow over free-trade del concessions’, <i>Sydney Morning Herald</i> , 24 October 2003, p.6.
27-31 October 2003	The <b>fourth</b> Round of Negotiations takes place in Canberra.	<a href="#">AUSFTA Briefing No. 4, 2003</a> , DFAT.
27 October 2003	The chief negotiators Stephen Deady and Ralph Ives update the progress of the negotiations to this point.  Stephen Deady For Australia's part we will continue to be pressing for a truly comprehensive and big market access deal on agriculture as well as pursuing our objectives in a number of other areas. The Australian Government remains committed to an ambitious outcome across the board.	Transcript of <a href="#">Media briefing</a> in Canberra on the start of the fourth round of Free Trade Agreement negotiations between Australia and the United States.
	Ralph Ives	
	During this Fourth session, we'll be addressing the full range of issues. Between sessions we've been working very hard..... So we've been continuing the work even in between sessions.	

Milestones	Details	Source Documents
31 October 2003	<p>Update of the fourth round of talks.</p> <p>Stephen Deady We had three solid days of negotiations on agriculture. We talked through our market access priorities.....</p> <p>At officials' level, we will be following up this week's meetings with Australian industry, with State and Territory Governments and other stakeholders as we further refine our approaches for the final round of negotiations ....</p> <p>Ralph Ives</p> <p>Unfortunately we don't yet agree on everything in the package, but I agree with everything Steve has said about the very productive week we've had here. We've covered a full range of issues. We've considerably narrowed the differences on many issues.</p>	<p><a href="#">Media briefing</a> in Canberra following the fourth round of Free Trade Agreement negotiations.</p>
21 November 2003	<p>Trade minister Mark Vaile urges the film and television industry to 'take a deep breath and calm down' over what might happen to the industry under the free trade agreement.</p>	<p>M. Cole, Vaile urges actors lobby to cool it on free trade', <i>Courier Mail</i>, 22 November 2003, p. 5.</p> <p><a href="#">Transcript</a>, Minister for Trade, Mark Vaile, 774 ABC Melbourne, Free Trade Agreement</p>
23 November 2003	<p>Trade Minister Mark Vaile leaves for Washington to hold further talks with USTR Bob Zoellick.</p> <p>I spoke to Bob Zoellick on the phone a week or so ago and we agreed it would be useful for us to meet again prior to the fifth round of talks between our two negotiating teams starting on 1 December</p> <p>Our discussions on a number of the key outstanding issues will be important in setting the scene and providing further guidance for our negotiators to enable them to achieve maximum progress in their discussions.</p>	<p>M. Vaile (Minister for Trade), <a href="#">Media Release</a>, <i>Vaile Heads to Washington for Further Talk</i>, 23 November 2003.</p>
27 November 2003	<p><i>Voting on trade - Inquiry into the General Agreement on Trade in Services and an Australia-US Free Trade Agreement</i> is tabled in the Australian Parliament.</p>	<p><a href="http://www.aph.gov.au/Senate/committee/adt_ctte/gats/report/index.htm">http://www.aph.gov.au/Senate/committee/adt_ctte/gats/report/index.htm</a></p>
1-5 December 2003	<p>The <b>fifth</b> round of negotiations are held in Washington.</p>	<p><a href="#">Transcript</a>, US-Australia Free Trade</p>
5 December 2003	<p>The chief negotiators update the progress.</p>	<p><a href="#">Transcript</a>, US-Australia Free Trade</p>

Milestones	Details	Source Documents
6 December 2003	<p>Ralph Ives</p> <p>We made considerable progress this round, we've covered a wide range of issues, we've covered every chapter in the agreement, and the text of many chapters is very close to completion. We're now in...the home stretch of the negotiations towards constructing a world class free trade agreement which is of course the objectives of both Australia and the United States and our leaders. And this FTA will provide mutual benefits to our consumers, to our farmers, to our ranchers, to business people across both countries.</p> <p>Trade Minister Mark Vaile says that the agreement would not be completed by the end of the year and that there were still outstanding differences, including agriculture.</p>	<p>Agreement Negotiation Press Conference Embassy of Australia, Mr Ralph Ives - US lead negotiator and Mr Stephen Deady - Australian lead negotiator, 5 December 2003.</p> <p>Free trade deal with US bound for failure, <i>Courier Mail</i>, 6 December 2003, p. 5.</p> <p>And</p> <p>Trade deal hinges on key issues, <i>Canberra Times</i>, 6 December 2003, p.9.</p>
15 January 2004	<p>Trade Minister Mark Vaile and chief negotiator Stephen Deady say that if agreement is not reached in the next few weeks then it will not happen until after the Presidential elections in November.</p>	<p>M. Cole, 'Tight deadline for trade deal', <i>The Courier-Mail</i>, 16 January 2004, p.9.</p>
19 January 2004	<p>Resumption of the fifth round of talks in Washington. Mr Howard says:</p> <p>I think we have got a slightly better than 50-50 chance of getting it.</p>	<p><a href="#">Transcript</a>, Media briefing by Trade Minister Mark Vaile and US FTA chief negotiator Stephen Deady</p> <p>M. Davis, &amp; A. Fabro, US free-trade deal a 50-50 chance, says Howard, <i>Australian Financial Review</i>, 19 January 2004, p.3.</p>
26 January 2004	<p>Trade Minister Mark Vaile and USTR Bob Zoellick meet in Washington to discuss the difficult issues 'not agreed by the negotiating teams'.</p> <p>After 7 days of negotiations, Australian officials say that the US will not give significant access to Australian sugar and improved access for beef and dairy products would be minimal. They are 'battling to save the agreement'.</p>	<p>M. Davis, &amp; A. Fabro, 'US free-trade deal a 50-50 chance, says Howard', <i>Australian Financial Review</i>, 19 January 2004, p.3.</p> <p>M. Wilkinson, 'US not sweet on sugar as talks flag', <i>Age</i>, 26 January 2004, p.1.</p>
8 February 2004	<p>USTR Bob Zoellick and Trade Minister Mark Vaile announce they have reached agreement.</p> <p>Sugar was excluded from the deal.</p>	<p><a href="#">Transcript</a> of press conference with US Trade Representative, Ambassador Bob Zoellick, and</p>

Milestones	Details	Source Documents
9 February 2004	Prime Minister John Howard defends the decision to sign the free trade agreement excluding sugar. The 'historic agreement' is a 'once-in-a-generation opportunity'. Cabinet gives in principle, broad approval of the agreement.	Australian Minister for Trade, Mark Vaile, on conclusion of FTA negotiations in Washington, DC.  <a href="#">Transcript</a> of the Prime Minister The Hon John Howard, Press Conference, Parliament House, Canberra.
20 February 2004	Trade Minister Mark Vaile addresses a business breakfast and outlines the benefits of the deal.  Our FTA with the United States is a once in a life-time deal.  It is a deal that will improve market access for Australian goods and services across the board into the largest and most dynamic economy in the world.	<a href="#">Speech</a> to the Business Breakfast Roundtable on the USFTA.
4 March 2004	Draft text of the agreement is released.	<a href="#">Transcript</a> Background Briefing on the draft text of the Australia - United States Free Trade Agreement.  <a href="#">Transcript</a> Doorstop, Canberra: Australia's Chief Negotiator for the Australia United States Free Trade Agreement, Stephen Dedy, on today's release of the AUSFTA draft text.
5 March 2004	The USTR Trade Advisory Groups reports are released. The reports cover different sectors and topics and are broadly in support of the FTA, except for the Labor Advisory Committee.	<a href="http://www.ustr.gov/news/fta/Australia/advisory/index.htm">http://www.ustr.gov/news/fta/Australia/advisory/index.htm</a>
6 March 2004	DFAT releases a <a href="#">guide</a> and a series of <a href="#">fact</a> sheets on the agreement.	
8 March 2004	Trade Minister Mark Vaile refers the proposed Free Trade Agreement between Australia and the United States to the Joint Standing Committee on Treaties for inquiry and report.	<a href="http://www.aph.gov.au/house/committee/jst/usafa/index.htm">http://www.aph.gov.au/house/committee/jst/usafa/index.htm</a>
30 March 2004	The Joint Standing Committee on Treaties tables the <a href="#">National Interest Analysis and Regulation Impact Statement</a> in the Australian Parliament.	<a href="http://www.dfat.gov.au/trade/negotiations/us_fta/ris/index.html">http://www.dfat.gov.au/trade/negotiations/us_fta/ris/index.html</a>
31 March 2004	The US Department of Agriculture releases fact sheets for agricultural commodities.	<a href="http://www.fas.usda.gov/itp/Australia/usauscommodityfactsheets.html">http://www.fas.usda.gov/itp/Australia/usauscommodityfactsheets.html</a>
30 April 2004	The Centre for International Economics releases the report commissioned by DFAT, <a href="#">Economic Analysis of AUSFTA: Impact of the bilateral free trade agreement with the United States</a> . This confirms there will be economic benefits for	Department of Foreign Affairs and Trade, CIE <a href="#">Study</a> Confirms Gains from an Australia-US Free

Milestones	Details	Source Documents
	Australia in the FTA.	Trade Agreement, media release, 30 April 2004.
13 May 2004	The Australian Senate sets up a Select Committee on the Free Trade Agreement between Australia and the United States of America.	<a href="http://www.aph.gov.au/Senate/committee/ree-trade_ctte/index.htm">http://www.aph.gov.au/Senate/committee/ree-trade_ctte/index.htm</a>
18 May 2004	Trade Minister Mark Vaile and USTR Bob Zoellick sign the AUSFTA in Washington. This will allow the US Congress to consider the agreement by July. Final text of the agreement is released. <sup>viii</sup>	M. Vaile, (Minister for Trade), <i>Vaile and Zoellick Sign Free Trade Agreement</i> , <a href="#">media release</a> , 18 May 2004.
24 May 2004	The U.S. International Trade Commission (ITC) releases its report assessing the FTA. The investigation, <a href="#">U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects</a> , was requested by the USTR Bob Zoellick. The report found a small net economic benefit to the US.	<i>ITC Releases Report Concerning the Impact of the U.S.-Australia Free Trade Agreement</i> , <a href="#">News Release</a> , 24 May 2004.

<sup>i</sup> *Official Year Book of the Commonwealth of Australia*, no. 36, 1944-45, pp. 320-321.

<sup>ii</sup> *ibid*

<sup>iii</sup> *Australian Trade with the United States*, Question on Notice, 29 August 1962, Mr Fraser to the Minister for Trade (J. McEwen), Commonwealth Parliamentary Debates, (H. of R.) vol. 36, p. 852.

<sup>iv</sup> *Report of the Committee of Economic Enquiry*, Chairman J. Vernon, Commonwealth Government Printer, Canberra, 1965.

<sup>v</sup> R. H. Snape, *Should Australia Seek a trade Agreement with the United States?*, Discussion Paper no. 86/01, EPAC, Canberra, 1986.

<sup>vi</sup> R. H. Snape, J. Adams, & D. Morgan, *Regional Trade Agreements: Implications and Options for Australia*, (Report commissioned by DFAT), AGPS, Canberra, 1993.

<sup>vii</sup> *1997 Trade Policy Agenda and 1996 Annual Report of the President of the United States on the Trade Agreements Program* [http://www.ustr.gov/html/1997tpa\\_part2.html](http://www.ustr.gov/html/1997tpa_part2.html)

<sup>viii</sup> <http://www.ustr.gov/new/fta/Australia/final/index.htm> or [http://www.dfat.gov.au/trade/negotiations/us\\_fta/final-text/index.html](http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html)



## Appendix B

### Items to be reviewed under the AUSFTA

<b>Location</b>	<b>Description</b>	<b>Relevant text from FTA</b>
<p><b>Ch Two- National Treatment and Market Access for Goods</b>  <b>Section E Institutional Provisions</b>  <b>Article 2.13</b>  <i>Committee on Trade in Goods</i></p>	<p>Comprises representatives from each party and may meet to consider any matter arising from Ch 2 (<i>National Treatment and Market Access for Goods</i>), Ch 5 (<i>Rules of Origin</i>), or Ch 6 (<i>Customs Administration</i>).</p>	<p><b>Section E : Institutional Provisions</b>  <b>Article 2.13 : Committee on Trade in Goods</b></p> <ol style="list-style-type: none"> <li>1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.</li> <li>2. The Committee shall meet on the request of either Party or the Joint Committee established in Chapter 21 (Institutional Arrangements and Dispute Settlement) to consider any matter arising under this Chapter, Chapter Five (Rules of Origin), or Chapter Six (Customs Administration).</li> <li>3. The Committee's functions shall include:               <ol style="list-style-type: none"> <li>(a) promoting trade in goods between the Parties; and</li> <li>(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Joint Committee for its consideration.</li> </ol> </li> </ol>
<p><b>Annex 2-C- Pharmaceuticals</b>  <b>Paragraph 3</b>  <i>Medicines Working Group</i></p>	<p>To promote discussion and mutual understanding of issues relating to this annex (except those issues covered in paragraph 4).             Paragraph 4.            Regulatory</p>	<ol style="list-style-type: none"> <li>3. Medicines Working Group               <ol style="list-style-type: none"> <li>(a) The Parties hereby establish a Medicines Working Group.</li> <li>(b) The objective of the Working Group shall be to promote discussion and mutual understanding of issues relating to this Annex (except those issues covered in paragraph 4), including the importance of pharmaceutical research and development to continued improvement of healthcare outcomes.<sup>2C-2</sup></li> <li>(c) The Working Group shall comprise officials of federal government agencies responsible for federal healthcare programs and other appropriate federal government officials.</li> </ol> </li> </ol>

	<p>Cooperation The Parties shall seek to advance the existing dialogue between the Australian Therapeutic Goods Administration and the U.S. Food and Drug Administration with a view to making innovative medical products more quickly available to their nationals.</p>	
<p><b>Ch Three- Agriculture Article 3.2 Committee on Agriculture</b></p>	<p>Committee to meet at least once a year unless agreed otherwise by the parties and report the results of each meeting to the Joint Committee.</p>	<p><b>Article 3.2 : Committee on Agriculture</b> 1. The Parties hereby establish a Committee on Agriculture, comprising representatives of each Party. 2. The Committee shall provide a forum for: (a) promoting trade in agricultural goods between the Parties; (b) addressing barriers to trade in agricultural goods; (c) conducting consultations between the Parties on agricultural export competition issues; and (d) considering any matters arising under this Chapter. 3. The Committee shall meet at least once a year unless the Parties otherwise agree. 4. The Committee shall report the results of each meeting to the Joint Committee.</p>
<p><b>Annex 3-A- Agricultural</b></p>		<p><b>Section C: Price-Based Safeguard for Beef</b> 1. The United States shall apply an agricultural safeguard measure, pursuant to</p>

*Safeguard Measures*  
**Section C Price-**  
*based Safeguard for*  
*Beef*  
**Paragraph 6 Review**  
*operation of this*  
*section every five*  
*years.*

Article 3.4, on a good entered under subheadings 02011050, 02012080, 02013080, 02021050, 02022080, or 02023080 of the Harmonized Tariff Schedule of the United States starting in year 19 of the Agreement.

2. For the purposes of Article 3.4.2, the additional customs duty shall equal 65 percent of the MFN rate of duty for the good as described in Article 3.4.1.

3. The United States shall apply the measure as follows:

(a) if the monthly average index price falls below the 24-month trigger price in any two months during the previous quarter of any calendar year, the United States shall apply the measure during the current quarter of the calendar year; or

(b) if the monthly average index price falls below the 24-month trigger price in any month of the fourth quarter of any calendar year, or in the month immediately preceding the fourth quarter, the United States shall apply the measure during the remainder of the fourth quarter of the calendar year.

4. The measure shall apply to goods that enter the United States in any calendar year in aggregate quantities greater than the sum of:

(a) the quantity of goods eligible to be entered under Additional Note 3 to Chapter 2 of the Harmonized Tariff Schedule of the United States, identified by certificates issued by the Government of Australia; and

(b) 70,000 metric tons, which quantity shall grow at a compound annual rate of 0.6 percent starting in year 19 of the Agreement, identified by certificates issued by the Government of Australia.

5. The United States shall have the discretion not to apply an agricultural safeguard measure under this Section.

**6. The Parties shall review the operation of this Section every five years after the date of entry into force of this Agreement.**

7. For the purposes of this Section:

		<p>(a) <b>monthly average index price</b> means the monthly average index price for Wholesale Boxed Beef Cut-Out Value Select 1-3 Central U.S. 600-750 lbs., or its equivalent, as reported by the United States Department of Agriculture’s Agricultural Marketing Service; and</p> <p>(b) <b>24-month trigger price</b> means the price that is 6.5 percent less than the average of the previous 24 monthly average index prices.</p>
<p><b>Ch Five- Rules of Origin</b>  <b>Section C</b>  <i>Consultation and Modifications</i>  <b>Article 5.16</b>  <i>Consultation and Modifications</i></p>	<p>The Parties shall consult within 6 months of the date of entry into force of this agreement regarding this chapter.</p>	<p><b>Section C : Consultation And Modifications</b>  <b>Article 5.16 : Consultation And Modifications</b></p> <ol style="list-style-type: none"> <li>1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner. Unless the Parties otherwise agree, the Parties shall consult within six months of the date of entry into force of this Agreement regarding the implementation and application of this Chapter.</li> <li>2. The Parties shall consult regularly pursuant to Article 21.5 (Consultations) to discuss necessary amendments to this Chapter and its Annexes, taking into account developments in technology, production processes, and other related matters.</li> </ol>
<p><b>Ch Seven- Sanitary and Phytosanitary Measures</b>  <b>Article 7.4</b>  <i>Committee on Sanitary and Phytosanitary Matters</i></p>		<p><b>Article 7.4 : Committee on Sanitary and Phytosanitary Matters</b></p> <ol style="list-style-type: none"> <li>1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters (“Committee”), comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.</li> <li>2. Each Party shall identify its primary representative on the Committee and the Parties shall establish the Committee’s operating procedures not later than 30 days after the date of entry into force of this Agreement.</li> <li>3. The objectives of the Committee shall be to enhance each Party’s implementation of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation between the Parties on sanitary and phytosanitary matters, and facilitate trade between the Parties.</li> <li>4. The Committee shall seek to enhance and complement existing and future relationships between the Parties’ agencies responsible for sanitary and</li> </ol>

phytosanitary matters.

5. The mandate of the Committee shall be to:

- (a) enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
- (b) improve mutual understanding of specific issues relating to the implementation of the SPS Agreement;
- (c) review progress on and, as appropriate, resolve through mutual consent, sanitary and phytosanitary matters that may arise between the Parties' agencies responsible for such matters; and
- (d) consult on:
  - (i) matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;
  - (ii) issues, positions, and agendas for meetings of the WTO SPS Committee, the *Codex Alimentarius Commission* and its subsidiary bodies, the *International Plant Protection Convention*, the *International Office of Epizootics*, and other international and regional fora on food safety and human, animal, or plant health; and
  - (iii) technical cooperation activities on sanitary and phytosanitary matters.

6. Each Party shall ensure that the appropriate representatives responsible for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies participate in meetings of the Committee.

7. The Committee shall meet within 45 days after the date of entry into force of this Agreement, and at least once a year thereafter, unless the Parties otherwise agree. The Committee shall inform the Joint Committee established under Article 21.1 (Joint Committee) of the results of each meeting.

8. The Committee shall perform its work in accordance with its operating

<p><b>Annex 7-A- Standing Technical Working Group on Animal and Plant Health Measures</b>  <b>Section A</b>  <i>Establishment of the Standing Technical Working Group on Animal and Plant Health Measures.</i></p>	<p>Rules for working group outlined in paragraphs 1-9.</p>	<p>procedures, which it may revise at any time.            9. The Parties hereby establish a Standing Technical Working Group on Animal and Plant Health Measures, as set out in Annex 7-A.            10. The Committee may establish additional technical working groups in accordance with its mandate.</p>
<p><b>Annex 7-A</b>            Standing Technical Working Group on Animal and Plant Health Measures  <b>Section A : Establishment of the Standing Technical Working Group on Animal and Plant Health Measures</b></p>	<p>1. The Parties establish a Standing Technical Working Group on Animal and Plant Health Measures (“Working Group”), with a view to facilitating trade between the Parties to the greatest extent possible while preserving each Party’s right to protect animal or plant life or health in its territory and respecting each Party’s regulatory systems and risk assessment and policy development processes.            2. The Working Group shall be co-chaired by the chief administrators of the Australian Government Department of Agriculture, Fisheries and Forestry’s Biosecurity Australia and the United States Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”), or the respective successor organizations with comparable responsibilities.            3. Members of the Working Group shall include each Party’s primary representative on the Committee on Sanitary and Phytosanitary Matters established under Article 7.4 and representatives of appropriate regulatory agencies of each Party.            4. The Working Group shall provide a forum for:</p>	<p>(a) resolving specific bilateral animal and plant health matters with a view to facilitating trade between the Parties and, whenever possible, achieving consensus on scientific issues;            (b) engaging, at the earliest appropriate point in each Party’s risk assessment</p>

and regulatory processes, in scientific and technical exchange and cooperation regarding animal and plant health matters that may, directly or indirectly, affect the trade of either Party; and

(c) considering specific measures or sets of measures likely to affect, directly or indirectly, trade between the Parties that are designed to protect animal or plant life or health within the territory of the importing Party from risks arising from the entry, establishment, or spread of pests, diseases, disease-carrying organisms or disease-causing organisms.

5. The Working Group shall recognise that each Party's agencies responsible for sanitary and phytosanitary matters are undertaking, at any particular time, a range of risk analyses and policy development work on matters relating to animal and plant health that may be of mutual interest to the Parties. The Working Group shall undertake, as part of its regular agenda, to update its members on the progress of work related to bilateral trade, complementing and without prejudice to exchanges in other fora, including the annual bilateral dialogues between APHIS and Biosecurity Australia on plant and animal health matters.

6. The Working Group shall establish a work program, including issues that shall be the subject of specific work plans, in accordance with Section B of this Annex, taking into account the resource constraints of each Party and the need to develop an agenda that balances the needs of both Parties, including through identifying and addressing the priority needs of each Party.

7. The Working Group shall establish operating procedures within 45 days of the date of entry into force of this Agreement.

8. The co-chairs may agree to appoint sub-groups that include, if necessary, subject area specialists from within or outside their respective agencies to consider particular technical issues.

9. The co-chairs shall confer every two months (unless otherwise agreed) on the progress of matters on the Working Group's agenda, including specific work plans

<p><b>Ch Eight- Technical Barriers to Trade Article 8.9 Chapter coordinators</b></p>	<p>The coordinators role outlined in paragraphs 1-3</p>	<p>established in accordance with Section B, by telephone, electronic mail, or in person. The co-chairs shall submit annual reports to the Committee on Sanitary and Phytosanitary Matters summarising the Working Group’s progress.</p>
<p><b>Article 8.9 : Chapter Coordinators</b></p> <p>1. In order to facilitate implementation of this Chapter and cooperation between the Parties, each Party shall designate a Chapter Coordinator who shall be responsible for coordinating with interested persons in the Party’s territory and communicating with the other Party’s Coordinator in all matters pertaining to this Chapter. The Coordinators’ functions shall include:</p> <ul style="list-style-type: none"> <li>(a) monitoring the implementation and administration of this Chapter;</li> <li>(b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;</li> <li>(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;</li> <li>(d) exchanging information on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from a Party;</li> <li>(e) facilitating the consideration of any sector-specific proposal a Party makes for further cooperation between conformity assessment bodies, both governmental and nongovernmental, in the territories of the Parties;</li> <li>(f) facilitating the consideration of a request that a Party recognise the results of conformity assessment procedures conducted by bodies in the other Party’s territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;</li> <li>(g) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;</li> <li>(h) on request of a Party, consulting on any matter arising under this</li> </ul>		

		<p>Chapter; and</p> <p>(i) reviewing this Chapter in light of any developments under the TBT Agreement and developing recommendations for amendments to this Chapter in light of those developments.</p> <p>2. The Coordinators shall communicate with one another by any agreed method that is appropriate for the efficient and effective discharge of their functions.</p> <p>3. Where a matter covered under this Chapter cannot be clarified or resolved through the Chapter Coordinators, the Parties may establish an <i>ad hoc</i> technical working group with a view to identifying a workable and practical solution that would facilitate trade. A working group shall comprise representatives of the Parties and may include regional government representatives, where appropriate, with responsibility for the standards, technical regulations, or conformity assessment procedures in question. Where a Party declines a request from the other Party to establish a working group, it shall, on request, explain the reasons for its decision.</p>
<p><b>Annex 10-A-</b> <i>Professional Services Working Group on Professional Services</i></p>	<p>Working Group's role outlined in paragraphs 5-9.</p> <p><b>Paragraph 1</b> The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services</p>	<p>Working Group on Professional Services</p> <p>5. The Parties shall establish a Professional Services Working Group, comprising representatives of each Party, to facilitate the activities listed in paragraph 1.</p> <p>6. In pursuing this objective, the Working Group shall consider, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional services.</p> <p>7. The issues that the Working Group should consider, for professional services generally and, as appropriate, for individual professional services, include:</p> <p>(a) procedures for fostering the development of mutual recognition arrangements between their relevant professional bodies;</p> <p>(b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers; and</p> <p>(c) other issues of mutual interest relating to the supply of professional</p>

	suppliers and to provide recommendations on mutual recognition to the Joint Committee.	<p>services.</p> <p>8. To facilitate the efforts of the Working Group, each Party shall consult with the relevant bodies in its territory to seek to identify professional services to which the Working Group should give consideration.</p> <p>9. The Working Group shall report to the Joint Committee on its progress, including with respect to any recommendations for initiatives to promote mutual recognition of standards and criteria, and on the further direction of its work, within two years of the entry into force of the Agreement.</p>
<p><b>Ch Thirteen-</b> <i>Financial Services</i> <b>Article 13.16</b> <i>Financial Services Committee</i></p>	<p>Outlined in paragraphs 1-3.</p>	<p><b>Article 13.16 : Financial Services Committee</b></p> <p>1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 13-C.</p> <p>2. The Committee shall:</p> <p>(a) supervise the implementation of this Chapter and its further elaboration; and</p> <p>(b) consider issues regarding financial services that are referred to it by a Party, including ways to further integrate financial services sectors between the Parties.</p> <p>3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Committee established under Article 21.1 (Joint Committee) of the results of each meeting.</p>
<p><b>Ch Fourteen-</b> <i>Competition Related Matters</i> <b>Article 14.2</b> <i>Competition Law and anticompetitive</i></p>	<p>Paragraph 4: Establish a joint working group to enhance their respective legal and regulatory regimes.</p>	<p>4. To further advance their cooperation, the Parties shall examine the scope for strengthening support for, and minimizing legal impediments to, the effective enforcement of each other's competition laws and policies. The Parties shall establish a joint working group with the goal of seeking to reach a common view, by the first meeting of the Joint Committee established pursuant to Chapter 21 (Institutional Arrangements and Dispute Settlement), of appropriate steps to</p>

<p><i>Business Conduct</i></p> <p><b>Ch Fifteen-</b>  <i>Government Procurement</i>  <b>Article 15.11</b>  <i>Domestic Review of Supplier Challenges</i></p>		<p>enhance their respective legal and regulatory regimes in that regard.</p> <p><b>Article 15.11 : Domestic Review of Supplier Challenges</b></p> <p>1. In the event of a complaint by a supplier of a Party that there has been a breach of the other Party’s measures implementing this Chapter in the context of a covered procurement in which the supplier has or had an interest, the Party of the procuring entity shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord timely and impartial consideration to any such complaint.</p> <p>2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review challenges that suppliers submit, in accordance with the Party’s law, relating to a covered procurement. Each Party shall ensure that any such challenge not prejudice the supplier’s participation in ongoing or future procurement activities.</p> <p>3. Where a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.</p> <p>4. Each Party shall ensure that the authorities referred to in paragraph 2 have the power to take prompt interim measures, pending the resolution of a challenge, to preserve the supplier’s opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter. Such interim measures may include, where appropriate, suspending the contract award or the performance of a contract that has already been awarded.</p> <p>5. Each Party shall ensure that its review procedures are conducted in accordance with the following:</p> <p>(a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than ten days from the time when the basis of the complaint became known or reasonably should have become</p>
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<p><b>Chapter Twenty-One- Institutional arrangements and dispute settlement</b>  <b>Section A</b>  <i>Institutional arrangements and administration</i>  <b>Article 21.1 Joint Committee</b></p>	<p>Paragraphs 1-7 outline the rules for the joint committee to review the trade relationship between the Parties.</p>	<p>known to the supplier;</p> <p>(b) a procuring entity shall respond in writing to a supplier's complaint and provide all relevant documents to the review authority;</p> <p>(c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and</p> <p>(d) the review authority shall provide its decision on a supplier's challenge in a timely fashion, in writing, with an explanation of the basis for the decision.</p>
		<p><b>Section A : Institutional Arrangements and Administration</b>  <b>Article 21.1 : Joint Committee</b></p> <p>1. The Parties hereby establish a Joint Committee to supervise the implementation of this Agreement and to review the trade relationship between the Parties.</p> <p>(a) The Joint Committee shall be composed of government officials of each Party and shall be co-chaired by (i) the United States Trade Representative for the United States and (ii) the Minister for Trade for Australia, or their respective designees.</p> <p>(b) The Joint Committee may establish and delegate responsibilities to <i>ad hoc</i> and standing committees, working groups, or other bodies, and seek the advice of non-governmental persons or groups.</p> <p>2. The Joint Committee shall:</p> <p>(a) review the general functioning of this Agreement;</p> <p>(b) review and consider specific matters related to the operation and implementation of this Agreement in the light of its objectives;</p> <p>(c) facilitate the avoidance and settlement of disputes arising under this Agreement, including through consultations pursuant to Articles 21.5 and</p>

21.6;

(d) consider and adopt any amendment to this Agreement or other modification to the commitments therein, subject to completion of necessary legal procedures by each Party;

(e) as appropriate, issue interpretations of the Agreement;

(f) consider ways to further enhance trade relations between the Parties and to further the objectives of this Agreement; and

(g) take such other action as the Parties may agree.

3. Unless the Parties agree otherwise, the Joint Committee shall convene:

(a) in regular session every year to review the general functioning of the Agreement and such other issues as the Parties may agree, with such sessions to be held alternately in the territory of each Party; and

(b) in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as may be agreed by the Parties.

4. The Joint Committee shall adopt its own rules of procedure.

5. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee or any body created under Article 21.1.1(b) on the same basis as the Party providing the information.

6. Recognizing the importance of transparency and openness, the Parties affirm their respective practices of considering the views of members of the public in order to draw on a broad range of perspectives in the implementation of this Agreement.

7. At its first meeting, the Joint Committee shall consider each Party's review of the environmental effects of this Agreement and shall provide the public an opportunity

		to provide views on those effects.
		<p><b><i>Article Headings - NOT full text:</i></b>  <b><i>Section B: Dispute Settlement Proceedings</i></b>  <b>Article 21.2 : Scope of Application</b>  <b>Article 21.3 : Administration of Dispute Settlement Proceedings</b>  <b>Article 21.4 : Choice of Forum</b>  <b>Article 21.5 : Consultations</b>  <b>Article 21.6 : Referral of Matters to the Joint Committee</b>  <b>Article 21.7 : Establishment of Panel</b>  <b>Article 21.8 : Rules of Procedure</b>  <b>Article 21.9 : Panel Report</b>  <b>Article 21.10 : Implementation of the Final Report</b>  <b>Article 21.11 : Non-Implementation</b>  <b>Article 21.12 : Non-Implementation in Certain Disputes</b>  <b>Article 21.13 : Compliance Review</b>  <b>Article 21.14 : Five-Year Review</b>  <b>Article 21.15 : Private Rights</b></p>

**Correspondence between the US and Australia that requests reviews of information:**

<b>Date</b>	<b>Relevant Chapter</b>	<b>Letter To</b>	<b>Letter From</b>	<b>Description</b>
18 May 2004		Peter Yuile Deputy Secretary Dept Transport and Regional Services	John Byerly Deputy Assistant Secretary Transportation Affairs	Australia wishes to review the use of ownership and control criteria for international air carriers (bilateral air transport agreements).
18 May 2004		Ambassador Zoellick US Trade Rep.	Mark Vaile Minister for Trade	Meet annually to review relevant elements of information technology and communications industries.
18 May 2004	<b>Ch Two- National Treatment and Market Access for Goods</b>	Ambassador Zoellick US Trade Rep.	Mark Vaile Minister for Trade	OIE presently reviewing BSE standards as they relate to animal and public health.
18 May 04	<b>Ch Ten- Services (Education US)</b>	Mark Vaile Minister for Trade	Ambassador Zoellick US Trade Rep.	US will review measures affecting cross- border trade in the higher education sub sector.
18 May 2004	<b>Ch Eleven- Investment FIRB Review</b>	Ambassador Zoellick US Trade Rep.	Mark Vaile Minister for Trade	Aust to review the treatment under the <i>Foreign Acquisitions and Takeovers Act 1975 (FATA)</i> .
18 May 2004	<b>Ch Thirteen- Financial Services (Insurance)</b>	Mark Vaile Minister for Trade	Ambassador Zoellick US Trade Rep.	Further updates on the matter of supplying insurance services (financial services committee)
18 May 2004	<b>Ch Thirteen- Financial Services (Securities)</b>	Mr Quarles Assist Sec for Int Affairs US Dpt of Treasury	Mark Vaile Minister for Trade	Financial Services Committee to report to Joint Committee within two years of enforcement of the FTA.
18 May 2004	<b>Ch Thirteen- Financial Services (Guarantees)</b>	Ambassador Zoellick US Trade Rep.	Mark Vaile Minister for Trade	Aust shall provide the US info under which guarantees can be provided at regional govt level and associated authorisation processes before 30 June 2004.

