



An inquiry into the Free Trade Agreement between Australia and the
United States of America

AIIA Submission

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1 INTRODUCTION

The Australian Information Industry Association (AIIA) welcomes the opportunity to make a submission to the Senate: Select Committee on the Free Trade Agreement (FTA) between Australia and the United States of America (US).

This submission comments on outcomes for the Australian Information and Communication Technology (ICT) industry resulting from the completion of free trade negotiations with the US.

Throughout the FTA negotiations, AIIA sought information from its members, the Information Technology Association of America (ITAA) and the World Information Technology and Services Alliance (WITSA) of which AIIA and the ITAA are members.

AIIA is the peak national body representing suppliers of ICT goods and services. AIIA has over 370 member companies that generate combined revenues of more than \$40 billion, employ over 100,000 Australians and have exports of over \$2 billion per annum. Member companies range from small enterprises to multinational companies and represent a significant proportion of the Australian ICT industry.

One of AIIA's key objectives is to influence the creation of a policy and investment environment in Australia that facilitates the growth of an innovative ICT industry sector that is able to compete globally. Gaining improved access to significant global markets such as the US is an important step in Australia becoming a global competitor in the ICT sector.

AIIA in principle believes that trade liberalisation, subject to equitable outcomes being negotiated, increases market access for Australian companies in the global environment and therefore should be pursued at all levels - multilateral, regional and bilateral.

AIIA is pleased with the outcomes of the Australia – United States Agreement, such as it relates to ICT. The Agreement provides the Australian ICT industry access to the enormous US government procurement market, a significant win for Australian ICT companies. The agreement also provides a more stringent IP regime which will result in added IP protection for Australian companies. With regard to the eCommerce and Services chapters, AIIA believes that agreement has delivered a long-term commitment to free and open trade between the countries in both of these areas.

AIIA is disappointed that temporary entry of business personnel was not included in the Agreement. Movement of people does remain an impediment for Australian ICT companies doing business in the US, however it could not be said that it prohibits Australia ICT companies from doing business in the US.

AIIA Chief Executive Officer, Rob Durie would be please to appear before the Committee and answer any questions members of the Committee may have. Due to overseas travel commitments, if the Committee would like an opportunity to question Mr Durie we would ask it be on 10 May 2004.

2 BILATERAL ICT TRADE FLOWS BETWEEN AUSTRALIA AND THE US

According to the 'World Fact Book 2002'¹ the US represents the largest and most technologically powerful economy in the world. GDP estimated in 2001 at US\$10,082 billion (purchasing power parity), with a population of 280 million this equates to a per capita GDP of US\$36,300 and GDP real growth rate estimated at 0.3%.

In contrast Australia's GDP was estimated in 2001 at US\$465.9 billion (purchasing power parity), with a population of 19 million this equates to a per capita GDP of US\$24,000 and real growth rate estimated at 2.3% in 2001.

An FTA with the US would provide the Australian business sector access to a market of enormous potential. It would encompass a market of around one third of the world's GDP. However to put it in relative size, Australia would merely account for 4.4% of the combined GDP of Australia and the US.

According to the CIE report *Economic Impacts of an Australia – United States FTA*, the total trade between Australia and the US was valued as US \$23.3 billion in 1999. Total Australian exports to the US were US \$8.1 billion, while total US imports to Australia were US \$15.2 billion.

The Australian Bureau of Statistics reported that the total income from domestic production of Information Technology and Telecommunication (IT&T) goods and services in Australia was \$50,199m in 2000-01, an increase of 25% since 1998-99. Australian exports including re-exports of IT&T goods and services totalled \$5,973m in 2000-01, increase of 34% since 1998-99.

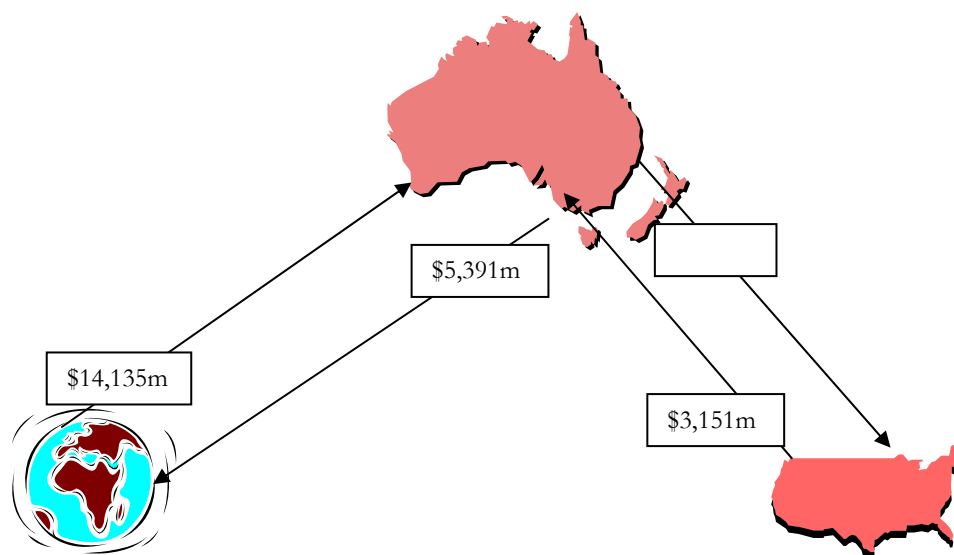
Australian imports of IT&T goods and services were valued at \$17,286m, an increase of 28% since 1998 – 99. Excluding re-exported goods from the IT&T imports and exports details, the value of imports were \$15,629m, equivalent to 31% of the value of income production in 2000 – 01, while exports of \$4,316 were equivalent to 9%.

The US was the major contributor of imports of IT&T goods into Australia in 2000 - 01, with a value of \$3,151m or 22% of total Australian imports of IT&T goods. The US was also a major destination of Australian exports of IT&T goods in 2000 – 01 with a value of \$582m or 17% of Australia's IT&T exports.

¹ <http://www.cia.gov/cia/publications/factbook/geos/us.html#Econ>

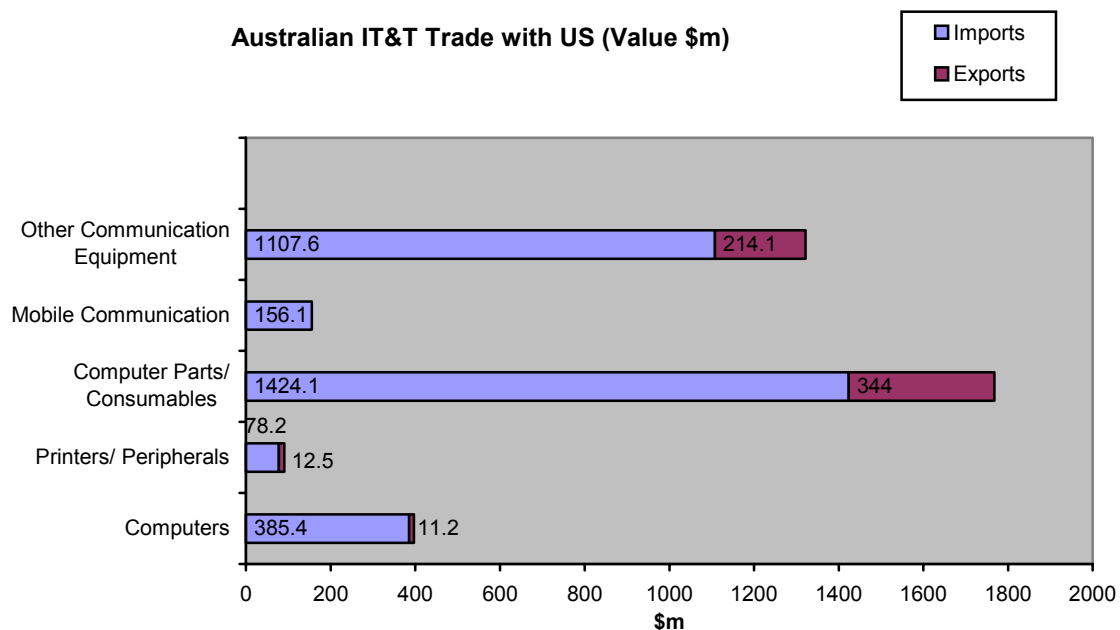
Figure 8 below illustrates the comparison of Australian imports and exports of IT&T Goods and Services with the US, versus the rest of the world.

Figure 8



The Figure 9 below provides a break down of imports and exports of IT&T goods by sector with the US. Note: Services are not included as figures are not available.

Figure 9



Source: ABS 8126.0 2000-01

These figures clearly demonstrate the importance of the US to the growth and prosperity of Australian ICT businesses. An FTA with the US could provide substantial benefits, however any FTA with the US must provide real gains to Australian ICT businesses.

3 ISSUES

3.1 GOVERNMENT PROCUREMENT

AIIA is pleased with the access negotiated in the Government Procurement chapter of the Agreement. The Agreement provides full access to all US Federal Government contracts over \$US58,550 in the enormous US\$52 billion federal IT market. In addition it provides access to a number of the US State Governments.

The agreement affords parties national treatment and non-discrimination, as well as providing open tendering processes, transparent publication of procurement notices, adequate time limits, agreement not to use technical specifications or other procedures to create unnecessary obstacles and transparent tendering procedures.

Australian companies currently undertaking US Government business report that they are finding means of doing business, for example, by partnering with US companies, or manufacturing in the US, among others. However we believe that this Agreement will provide far greater open and transparent access to the US market. This will facilitate greater interest in the market, as more companies report success in the market.

AIIA urges Australian Governments to remove inhibitors to SMEs doing business within the Australian procurement market. This will ensure that SMEs have strong reference sites in order to take advantage of the new and lucrative US market access arrangements.

AIIA does however, have one main concern with the Government Procurement chapter. We believe that the section on domestic review of supplier challenges will introduce inefficiencies into the market which currently exist in the US. The current situation in the US is that the losing supplier challenges all major tender decisions. The result being that suppliers incur additional expenses, time and risk, whether successful or challenging.

Overall AIIA believes that the Government Procurement chapter provides substantial access to the US government procurement market, and therefore a real benefit to the Australian ICT industry. Unfettered access to this market would undoubtedly provide Australian companies with an opportunity to expand and grow their businesses.

AIIA realises that the FTA will not itself drive the delivery of export outcomes. AIIA believes there needs to be a proactive government/industry strategy aimed at capitalising on our current knowledge in the government market to achieve export sales to US government agencies. AIIA is seeking to work with government departments and agencies such as Austrade, DFAT and DCITA to ensure the negotiated benefits are realised.

3.2 INTELLECTUAL PROPERTY

The Government Procurement chapter provides an increased focus on circumvention of technological protection measures. The current laws as they relate to the software industry cover "copy controls" but not "access controls" and relate to manufacture, import, supply of controls, but not the use of circumvention devices. This Agreement

will address these areas. There will be exceptions in relation to interoperability, error testing, security and government intelligence activities.

The industry is pleased that government agencies must take steps not to use infringing computer software and ensure their use remains consistent with licencing terms, including inventories. This section of the agreement emphasises the need of government to comply with “Best Practices”.

The Agreement provides significant emphasis on enforcement issues. This includes the presumption that a person whose name is on the work is in fact the owner, unless there is evidence to the contrary. It reverses the current very onerous “burden of proof” where the owner had to prove that they were the owner. This can become difficult if time has elapsed, or people have moved on. This is especially prominent in the software development sector where there are often many contributors over a period of time, and the Agreement therefore delivers a good outcome for the ICT industry.

The agreement also introduces pre-determined damages in civil proceedings. These will act as a deterrent to future infringers, as well as compensating for harm. AIIA is pleased with this outcome as it will provide some certainty for rights holders, who previously didn't bring actions because of the unpredictable nature of the outcome.

Further to this, the Agreement introduces more stringent enforcement measures, including the requirement that infringer provide information regarding other entities involved in infringement, destruction of infringing goods etc - and jail for those that don't abide by orders

Overall the Agreement delivers outcomes consistent with those sought by AIIA. The agreement provides steps towards achieving clarity, certainty and effective enforcement of IP.

3.3 ELECTRONIC COMMERCE SERVICES

AIIA fully supports the eCommerce chapter of the Agreement. In particular AIIA supports the commitment to affirm that parties will allow goods and services to be delivered electronically on terms that promote the development and growth of eCommerce.

Further to this, the Agreement provides that neither party shall apply customs duties in connection with digital products or unjustifiably discriminate among products delivered electronically.

Australia has embraced the electronic environment and has been quick to realise the opportunities associated with eCommerce. The Australian business community recognises that eCommerce can open new markets and create unprecedented efficiencies.

This chapter of the Agreement may only reaffirm existing commitments, however it will continue to promote the abilities and applications of eCommerce to the Australian and US business and consumer communities.

3.4 CROSS BORDER TRADE IN SERVICES

AIIA is pleased with the principles outlined in the ‘Cross Border Trade in Services’ chapter of the agreement. The Agreement provides:

- National Treatment
- Most-Favoured-Nation-Treatment
- No requirement to establish local presence

These principles will ensure that an open and transparent trade in services environment remains between the countries. Where a perceived barrier to the service market exists, this chapter will provide a path of recourse for either party.

With regard to supplying services to the US, AIIA members raised the US patriotic culture as the major obstacle to the market. We believe that the Agreement may generate greater interest from the US in the capabilities of Australian companies as providers to the US services sector.

This Chapter applies to the provision of nearly all non-government services. Over the long term the Agreement will promote a stable and therefore confident trading environment between Australia and the US.

3.5 MODE 4 – MOVEMENT OF PEOPLE

AIIA is disappointed that movement of people was not included in the Agreement. We believe that improved conditions for temporary entry of businesspersons would provide enhanced mobility and would greatly benefit Australian companies who choose to pursue business internationally.

We realise that the United States was unable to include commitments on temporary movement for people due to issues which emerged following their negotiations with Singapore and Chile. While at the same time recognising that Singapore and Chile were able to negotiate a Movement of People chapter.

AIIA would like a commitment from the Australian Government that movement of people will be re-negotiated in the future.

4 CONCLUSION

AIIA supports the pursuit of free trade throughout the world as increased globalisation provides larger markets and greater opportunities for business.

This submission clearly identifies the importance of ICT as an economic driver globally and specifically to Australia. If the Australian ICT industry is to continue to grow and prosper into a globally competitive destination for ICT goods and services it is paramount that the industry is able to gain unfettered access to markets where there is a strong demand for these goods and services.

The US is the largest ICT market in the world, uninhibited access to this market alone would provide the Australian ICT industry significant economic benefits. As stated by many commentators, we do live in an uncertain world, by gaining access to robust market such as the US, provides increased stability and certainty.

AIIA and its members support the signing of the FTA with the US.