



# Trade Facts

Office of the United States Trade Representative  
Washington, DC

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February 8, 2004

## **Free Trade “Down Under” Summary of the U.S.-Australia Free Trade Agreement**

### **Expanding U.S. Manufacturing Access to a Key Market**

- More than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free *immediately* upon entry into force of the Agreement. Manufactured goods currently account for 93 percent of total U.S. goods exports to Australia.
- This is the most significant immediate reduction of industrial tariffs ever achieved in a U.S. free trade agreement, and will provide immediate benefits for America's manufacturing workers and companies. U.S. manufacturers estimate that the elimination of tariffs could result in \$2 billion per year in increased U.S. exports of manufactured goods.
- There will be immediate benefits for such key U.S. manufacturing sectors as:
  - Autos and auto parts
  - Chemicals, plastics, and soda ash
  - Construction equipment
  - Electrical equipment and appliances
  - Fabricated metal products
  - Furniture and fixtures
  - Information technology products
  - Medical and scientific equipment
  - Non-electrical machinery
  - Paper and wood products
- Because Australian tariffs are much higher than U.S. average tariffs, American firms today pay 10 times as much in total annual import tariffs to Australia as the U.S. collects from Australian imports. The U.S.-Australia FTA will eliminate this disparity.

*Two-way annual goods and services trade with Australia is about \$28 billion, and the U.S. has a \$9 billion trade surplus with Australia. Australia is America's 9<sup>th</sup> largest goods export market\*.*

### **New Opportunities for U.S. Farmers**

- All U.S. agricultural exports to Australia, totaling more than \$400 million, will receive immediate duty-free access.
- Key agricultural products that will benefit from immediate tariff elimination include:
  - Processed food products such as soups, food preparation and bakery products.
  - Soybeans and oilseeds products.
  - Fresh and processed fruits, vegetables and nuts, including: dried onions, fruit and vegetable juices, dried plums, potatoes, almonds, tomatoes, cherries, raisins, olives, fresh grapes, sweet corn, frozen strawberries, and walnuts.
  - With resolution of technical issues expected in the near future, pork products.
  - Alcoholic beverages, including distilled spirits.

\* Considering the European Union as a single export destination.

- The U.S. and Australia will work to resolve sanitary and phytosanitary barriers to agricultural trade, in particular for pork, citrus, apples and stone fruit.
  - The agreement establishes a new mechanism for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters.
  - USDA's Animal and Plant Health Inspection Service and Biosecurity Australia will operate a standing technical working group, including trade agency representation, to engage at the earliest appropriate point in each country's regulatory process to cooperate in the development of science-based measures that affect trade between the two countries.
- In response to U.S. concerns about Australia's agricultural state trading enterprises, Australia committed to working with the U.S. in the ongoing WTO negotiations on agriculture to develop export competition disciplines that eliminate restrictions on the right of entities to export.
- The FTA is sensitive to concerns that have been expressed by some members of Congress and some U.S. farm sectors, and the agreement uses tariff-rate quotas to respond to these concerns.
  - *Beef*: U.S. above-quota duties will be phased out over an 18-year period. Initial increased imports from Australia under the TRQ quota will amount to about 0.17% of U.S. beef production, and 1.6% of U.S. beef imports. The quota increases will take effect when U.S. beef exports return to their 2003 (pre-BSE) levels, or three years after the effective date of the agreement, whichever comes first. The U.S. and Australia will cooperate in international organizations on BSE standards. After the transition period, a price-based safeguard will be available, designed to be sensitive to market disruptions for high-quality beef.
  - *Dairy*: There will be no change in the U.S. MFN above-quota tariff on dairy products subject to quotas. Increases in imports from Australia under the FTA tariff rate quotas will amount to about 0.17% of the annual value of U.S. dairy production, and about 2% of the current value of total U.S. dairy imports. The additional imports are not expected to affect the operation of the Commodity Credit Corporation's dairy price support program.
  - *Sugar*: Australia's current quota access for sugar is unchanged. Under the Uruguay Round Agreements, Australia's access for sugar in FY 2004 was 87,402 metric tons.
- An agricultural safeguard will be available in the event of significant price decreases in certain imported Australian horticultural products.

#### **Pharmaceuticals: A Shared Commitment On Access to Innovative Medicines**

- The United States and Australia agreed to common principles on facilitating high quality health care and continued improvements in public health for their nationals. The Parties state a shared commitment to:
  - Recognizing the important role played by innovative pharmaceuticals in delivering high quality health care;
  - The importance of research and development in the pharmaceutical industry, and of government support including through intellectual property protection;

- The need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious and accountable procedures; and
- The need to recognize the value of innovative pharmaceuticals through adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical.
- In implementing these principles, Australia will make a number of improvements in its Pharmaceuticals Benefits Scheme (PBS) procedures—including establishment of an independent process to review determinations of product listings—that will enhance transparency and accountability in the operation of the PBS.
- The two sides also agreed to establish a Medicines Working Group that will provide for continued dialogue between the United States and Australia on emerging health care policy issues. In addition, the U.S. Food and Drug Administration and the Australia Therapeutic Goods Administration will work together to make innovative medical products available more quickly.

### **Textiles and Apparel**

- Textile and apparel tariffs will phase out over a maximum of 15 years for goods that meet the Agreement's yarn-forward rule of origin, promoting new opportunities for U.S. and Australian fiber, yarn, fabric and apparel manufacturing.

### **Open Services Markets**

- Australia will accord substantial access across to U.S. services suppliers, subject to very few exceptions, based on the so-called “negative list” approach. Australia’s commitments apply across a wide range of sectors, including but not limited to:
  - Telecommunications services
  - Financial services, including banking, insurance and securities
  - Distribution services, such as wholesaling, retailing and franchising
  - Express delivery services
  - Computer and related services
  - Audiovisual and entertainment services
  - Energy services
  - Construction and engineering services
  - Tourism
  - Advertising services
  - Professional services (architects, engineers, accountants, etc.)
  - Environmental services
  - Education and training services
- In the area of broadcasting and audiovisual services, the FTA contains important and unprecedented provisions to improve market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet.
- The commitments in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to invest and establish a local services presence.

*Australian firms in the U.S. employ about 85,000 Americans, and it is estimated that U.S. exports to Australia support more than 150,000 U.S. jobs.*

- **Financial services:** U.S. financial service suppliers (banks, insurance companies, securities companies) already enjoy a significant presence in the Australian market through subsidiaries, joint ventures and branches.
  - The FTA locks in Australia's good practice with regard to new investment and acquisitions, and grants new rights for life insurance branches.
  - For cross-border supply (electronic supply), Australia confirms access for reinsurance, MAT insurance, brokerage of reinsurance and MAT insurance, insurance auxiliary services, financial information and data processing services, financial advisory services and portfolio management.
  - In addition, Australia and the U.S. have agreed to high standards for regulatory transparency, including procedures applying to licensing systems. Australia also confirms aspects of its regulatory approach that guarantee expedited introduction of insurance products.

### Important New Protections for U.S. Investors

- The agreement will establish a predictable framework for U.S. investors operating in Australia. All forms of investment are protected under the Agreement, including enterprises, debt, concessions, contracts and intellectual property.
- U.S. investors enjoy in most circumstances the right to establish, acquire and operate investments in Australia on an equal footing with local investors, and with investors of other countries.
- All U.S. investment in new businesses is exempted from screening under Australia's Foreign Investment Promotion Board (FIRB). Thresholds for acquisitions by U.S. investors in nearly all sectors are raised significantly, from A\$50 million to \$800 million. This higher threshold would have exempted nearly 90 percent of U.S. investment transactions from screening over the past three years. A work program will be initiated to limit the kinds of investment transactions, such as passive investment, that would be subject to review.
- In recognition of the unique circumstances of this Agreement – including, for example, the long-standing economic ties between the United States and Australia, their shared legal traditions, and the confidence of their investors in operating in each others' markets – the two countries agreed not to adopt procedures in this FTA that would allow investors to arbitrate disputes with governments. This issue will be revisited if circumstances change. Government-to-government dispute settlement procedures remain available to resolve investment-related disputes.

*U.S. foreign direct investment in Australia was \$36.3 billion in 2002. Australian investment in the United States was \$24.5 billion in 2002.*

### Significant New Access to Government Procurement Contracts

- U.S. suppliers are granted rights to bid on contracts to supply Australian government ministries, agencies and departments. Covers the purchases of 80 Australian central government entities, including key ministries and government enterprises. Low-value contracts are excluded.

- These commitments are particularly significant and commercially important, because Australia is one of the only developed countries that is not a party to the WTO Agreement on Government Procurement.
- Requires the use of tendering procedures that will ensure that procurements are conducted in a transparent, predictable and fair manner.
- Australia gains non-discriminatory access to the procurement of most U.S. federal agencies as well as certain government enterprises.
- Australian central government will eliminate its industry development programs, under which suppliers have had to provide various types of offsets, e.g., local content or local manufacturing requirements, as a condition of their contracts.
- Both countries are also committed to extending non-discriminatory coverage of the agreement to sub-central entities and will be working with their respective states and territories to refine the extent of that coverage in the next few weeks.
- Restricts Australia's use of selective tendering to ensure that U.S. suppliers have a fair opportunity to compete for government contracts.
- Confirms that bribery in government procurement is specified as a criminal offense under Australian and U.S. laws.

#### **E-Commerce: Free Trade in the Digital Age**

- Australia and the United States agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying products and services by electronic means as a key part of a vibrant e-commerce environment.
- Digital products will receive non-discriminatory treatment and will not be subject to customs duties.
- First-time commitments will facilitate the ability of businesses to use electronic means to authenticate a business transaction (e.g., digital signatures) in both markets.
- The United States and Australia will be cooperating on other e-commerce issues including on work towards mutual recognition of digital certificates used for electronic transactions with each other's government (e.g., in government procurement).

#### **State-of-the-Art Protection for U.S. Trademarks**

- Requires a system to resolve disputes about trademarks used in Internet domain names, which is important to prevent "cyber-squatting" with respect to high-value domain names.
- Applies principle of "first-in-time, first-in-right" to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it.
- Encourages the development of an on-line system for the registration and maintenance of trademarks, as well as a searchable database.
- Requires transparent procedures for the registration of trademarks, including geographical indications.

## Protection for Copyrighted Works in a Digital Economy

- Copyright owners maintain rights over temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread unauthorized sharing via the Internet.
- Establishes that only authors, composers and other copyright owners have the right to make their work available on-line.
- Ensures extended terms of protection (e.g., life of the author plus seventy years) for copyrighted works, including phonograms, consistent with emerging international trends.
- Establishes strong anti-circumvention provisions to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.
- Ensures that governments use only legitimate computer software, thus setting a positive example for private users.
- Requires rules to prohibit the unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming.
- Provides rules for the liability of Internet Service Providers (ISPs) for copyright infringement, reflecting the balance struck in the U.S. Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

*The leading U.S. states exporting to Australia are Washington, California, Illinois, Texas, Michigan, New York, Ohio, Pennsylvania and Florida.*

## Patents & Trade Secrets: Stronger Protections

- Provides for the extension of patent terms to compensate for delays in granting the original patent, consistent with U.S. practice.
- Limits the grounds for revoking a patent, thus protecting against arbitrary revocation.
- Clarifies that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Closes potential loopholes to these provisions.
- Requires measures to prevent the marketing of pharmaceutical products that infringe patents, and to provide notice when the validity of a pharmaceutical patent is to be challenged.
- Assures protection for newly developed plant varieties and animals.

## Tough Penalties for Piracy and Counterfeiting

- Criminalizes end-user piracy, providing strong deterrence against piracy and counterfeiting.
- Requires both Parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. Also provides for enforcement against goods-in-transit, to deter violators from using ports or free trade

zones to traffic in pirated products. Ex officio action may be taken in border and criminal cases, thus providing more effective enforcement.

### **Groundbreaking Customs Procedures and Rules of Origin**

- Comprehensive rules of origin will ensure that only U.S. and Australian goods benefit from the Agreement. Rules are designed to be easier to administer.
- Agreement requires transparency and efficiency in administering customs procedures, including the Australia FTA rules of origin. Australia commits to publish laws and regulations on the Internet, and will ensure procedural certainty and fairness.
- Both parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains language designed to facilitate the rapid clearance through customs of express delivery shipments.

### **Protection and Promotion of Worker Rights**

- Agreement fully meets the labor objectives set out by Congress in TPA. Labor obligations are part of the core text of the trade agreement.
- Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles. Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment between the Parties.
- Agreement requires that Australia and the United States effectively enforce their own domestic labor laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.
- Procedural guarantees in the Agreement will ensure that workers and employers will continue to have fair, equitable and transparent access to labor tribunals/courts.
- Parties established a process for further cooperation on labor matters, including possible joint cooperative activities to advance common objectives and work on labor law and practice in the context of the ILO Declaration on Fundamental Principles and Rights at Work.

*Each of the fifty U.S. states exports to Australia, and Australia is among the top 25 export destinations for 48 of the 50 states.*

### **Commitments and Cooperation to Protect the Environment**

- Agreement fully meets the environmental objectives set out by Congress in TPA. Environmental obligations are part of the core text of the trade agreement.
- Agreement commits parties to effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.
- Scope of obligations for Australia extends to environmental laws at the level of the states and territories. Much of the significant environmental protection in Australia takes place at the state and territory level.

- Both parties commit to establish high levels of environmental protection, and to not weaken or reduce environmental laws to attract trade and investment.
- Agreement also promotes a comprehensive approach to environmental protection, as long practiced by the U.S. and Australia. Reflecting their existing robust regulatory approaches, procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws are married with provisions that promote voluntary, market-based mechanisms to protect the environment.
- The Parties will also build on their long history of collaboration and cooperation on international environmental matters through a Joint Statement on Environmental Cooperation.

**Dispute Settlement: Tools to Enforce the Agreement**

- Core obligations of the Agreement, including labor and environment provisions, are subject to the dispute settlement provisions of the Agreement.
- Dispute panel procedures set high standards of openness and transparency:
  - Open public hearings;
  - Public release of legal submissions by parties;
  - Special labor or environment expertise for disputes in these areas;
  - Opportunities for interested third parties to submit views.
- Emphasis is on promoting compliance through consultation, joint action plans and trade-enhancing remedies.
- An innovative enforcement mechanism includes monetary penalties to enforce commercial, labor and environmental obligations of the trade agreement.

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