

## AUSTRALIA

### TRADE SUMMARY

The U.S. trade surplus with Australia was \$4.5 billion in 2001, \$1.6 billion lower than in 2000. U.S. goods exports to Australia were \$10.9 billion, down 12.3 percent from 2000. Australia was the United States' 15<sup>th</sup> largest export market in 2001. U.S. imports from Australia totaled \$6.5 billion in 2001, a 0.6 percent increase from 2000.

U.S. exports of private commercial services (i.e., excluding military and government) to Australia were \$5.4 billion in 2000 (latest data available), and U.S. imports were \$3.3 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$13.7 billion in 1999 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$8.1 billion.

The stock of U.S. foreign direct investment in Australia was \$35.3 billion in 2000, 1.6 percent higher than in 1999. U.S. direct investment in Australia is largely concentrated in finance, manufacturing, and petroleum.

### IMPORT POLICIES

#### Tariffs

After a two-decade long program of tariff reduction, almost all of Australia's tariffs stand between zero and five percent, with the exception of textiles, clothing and footwear (25 percent) and passenger motor vehicles and components (15 percent). Although Australia did not support the "zero for zero" agreement on paper and paperboard items in the Uruguay Round, Australia has since supported tariff elimination in the entire forest products sector through the Accelerated Tariff Liberalization initiative in the WTO.

Australia did not adhere to the "zero for zero" agreement for distilled spirits. Approximately 99

percent of the whisky consumed in Australia is imported. Nonetheless, Australia assesses a duty of five percent ad valorem (based on the f.o.b. value) on imports of distilled spirits. With the exception of rum, which is bound at 13 percent, Australia's Uruguay Round bound rate for distilled spirits is five percent. Australia is the third largest market for U.S. exports of distilled spirits, with sales of \$47.7 million in 2000, more than 88 percent of which consisted of Bourbon and other whiskies. The U.S. Government will continue to seek the elimination of Australia's tariffs on imported distilled spirits.

### STANDARDS, TESTING, LABELING AND CERTIFICATION

#### Sanitary and Phytosanitary Measures

The Government of Australia maintains restrictions and prohibitions on some agricultural imports through quarantine and health restrictions. These include restrictions on Florida citrus, stone fruit, chicken (fresh, cooked and frozen), pork, apples, pears and corn. The United States Government continues to insist that the Australian government comply with its obligations under the WTO Agreement on Sanitary and Phytosanitary Measures and conduct timely, science-based, import risk assessments. We are working with Australia to develop a work plan to resolve outstanding issues and manage those that arise.

Industry estimates that Australia's removal of restrictions would increase sales of these products to that country by \$5 million to \$25 million each year.

#### Biotechnology

On December 7, 2000, the Australia-New Zealand Food Authority (ANZFA) approved amendments to Standard 18 of the Food Standards Code that require mandatory labeling requirements for foods produced using gene technology. These labeling requirements went into force on December 7, 2001. With a few exceptions, the amendments

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require labeling if a food in its final form contains detectable DNA or protein or has altered characteristics resulting from the genetic modification (GM). Flavorings derived from modern biotechnology which are present in the final product do not need to be labeled if: (1) the concentration is no more than 1gm/kg (0.1 percent); or (2) an ingredient or processing aid in which the food unintentionally has a GM presence is no more than 10gm/kg (1 percent) per ingredient. A food derived from an animal or other food-producing organism that has been fed on bioengineered feed does not need to be labeled (e.g., meat). Also, highly refined oils, where the processing has eliminated the detectable DNA derived from biotechnology, would not require labeling. Businesses (including importers) must exercise due diligence in meeting the standard, which means keeping a paper or audit trail or, in some cases, testing by an accredited lab (accredited by the state or federal health authority). The importer pays for the testing. The States and Territories are responsible for enforcement. The U.S. Government is seeking to ensure that these programs are implemented in a manner that does not impede trade.

### GOVERNMENT PROCUREMENT

Australia chooses not to join or adhere to the WTO Agreement on Government Procurement. The government has, however, supported multilateral efforts to achieve a WTO transparency agreement.

### EXPORT SUBSIDIES

The government uses export market development grants to encourage Australian exporters to develop overseas markets for goods, services, tourism, industrial property rights and technology of substantially Australian origin. These grants are available only to Australian firms to partially reimburse eligible expenditures (primarily marketing costs) while they are developing

overseas markets. In August 2000, the Government committed to continue the scheme until 2005. Textile, clothing and footwear (TCF) producers benefit from grants and automobile and auto parts producers benefit from import duty credits designed to promote production, investment, and research and development. The grant program that benefits TCF producers and the import duty credit program that benefits automotive producers both replaced schemes that provided export-contingent benefits. The U.S. Government is monitoring the WTO consistency of these new programs. By virtue of the settlement agreement arising from the WTO dispute on automotive leather, the Australian Government has excluded automotive leather from these and any successor, replacement or supplemental programs. The United States monitors Australia's compliance with the settlement agreement.

### INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Australia is a member of the World Intellectual Property Organization (WIPO), and is a party to most multilateral IPR agreements, including: the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works; the Universal Copyright Convention; the Geneva Phonogram Convention; the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations; and the Patent Cooperation Treaty. However, the government has not ratified the 1996 WIPO Copyright and WIPO Performances and Phonograms Treaties. The United States continues to express concern about Australia's removal of restrictions on parallel imports, copyright piracy issues, and with Australia's limitations on its protection of test data for certain chemical entities.

Australia has allowed the parallel importation of sound recordings since 1998, and of branded goods

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(clothing, footwear, toys, and packaged food) since 2000. During July 2000, the Federal Cabinet approved a proposal to remove the restriction on parallel imports for books and computer software, although legislation to enact this decision was blocked in the Australian Senate.

Video cassettes copied from VCDs and DVDs, parallel imported Zone 1 DVDs (DVDs that are programmed for playback and distribution in North America only) and pirated VCDs continue to be the major threat to Australia's otherwise low rate of piracy. Counterfeit DVDs imported from Asia are also an emerging problem.

One form of piracy that is of growing concern to the U.S. motion picture industry is the unauthorized parallel importation of Zone 1 DVDs from the United States. These Zone 1 DVDs are released in Australia three to six months prior to the local Australian video release and frequently coincide with the Australian theatrical release. It is estimated that 20 percent of the DVDs in Australia are parallel imports, adversely affecting the theatrical and video markets in Australia.

The U.S. motion picture industry estimates annual losses due to audiovisual piracy in Australia to be \$21 million in 2001.

A relatively low priority is assigned to intellectual property enforcement at both the State and Federal levels. The Australian Copyright Act, its interpretation by Australian courts in certain instances, and the position taken by the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, have created costly and burdensome obstacles to enforcement. Civil remedies have not proven an effective deterrent to piracy.

During December 2000, the Australian House of Representatives' Standing Committee on Legal and Constitutional Affairs released its report entitled "Cracking Down on Copycats:

Enforcement of Copyright in Australia". The Committee concluded that even though the level of copyright infringement in Australia is low by international standards, it does impose a significant and costly burden to many Australian industries that rely on creative endeavor. The Committee recommended amendments be made to the Copyright Act to make it easier for copyright holders to defend their rights in civil actions and to increase the criminal penalties for commercial infringement. The Australian government did not propose any legislation to implement these recommendations during 2001.

In August 1999, the Australian Parliament enacted legislation permitting limited software decompilation. The U.S. Government continues to monitor the potentially serious impact of this action.

In April 1998, Australia implemented a regime to protect test data submitted to regulatory authorities for marketing approval of pharmaceuticals. In 1999, the Australian Parliament enacted legislation providing five years of protection of test data for the evaluation of a new active constituent for agricultural and veterinary chemical products. However, no protection is provided for data submitted in regard to new uses and formulations.

### SERVICES BARRIERS

#### Broadcast Quota

The Australian Broadcasting Authority's (ABA) Content Standards require that 55 percent of all television programming broadcast between 6:00 a.m. and midnight be of Australian origin. This quota was raised from 50 percent in 1998 and is currently in effect. The United States continues to oppose discriminatory broadcast quotas and maintains that market forces best determine programming allocations.

#### Telecommunications

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Serious concerns have been raised about the apparent inability of Australia's telecommunications regulator to curb alleged anti-competitive conduct by the government-owned Telstra Telecom including delays in access to its network and the inflated pricing of its wholesale services. Such conduct limits U.S. carriers' ability to compete effectively in this market. The United States continues to urge the Australian Government to privatize its 50.1 percent share of Telstra.

### AUDIOVISUAL TRADE BARRIER

Australia's Broadcasting Services Amendment Act requires pay television channels, which include more than 50 percent drama programs in their schedules, to spend 10 percent of their programming budget on new Australian drama programs.

### ELECTRONIC COMMERCE

Australia's Copyright Amendment (Digital Agenda) Act, which brings Australia closer to meeting the WIPO Copyright Treaty requirements, took effect in March 2001. The Act is weak in technological protection measures and Internet service provider (ISP) liability. The WIPO Treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their property from theft and mutilation. This legal framework that permits content owners to provide for the security of their property online is essential for successful electronic commerce. We will continue to urge the Australian government to strengthen its anti-circumvention measures and to ratify the WIPO treaties.

### INVESTMENT BARRIERS

All potential foreign investors in Australia are required to submit to a screening process for investment approval. Application of Australia's

foreign investment law provides discretion for the government to deny specific foreign investment based on "national interest". Australia's commitments under the GATS Agreement of the WTO are limited as a result of Australia's screening program.

### OTHER BARRIERS

#### Commodity Boards and Agricultural Support

The export of almost all wheat, rice, and sugar remains under the exclusive control of commodity boards. The privatization of the Australian Wheat Board (AWB) in July 1999 saw its export controls transferred to the Wheat Export Authority (WEA), with veto rights over bulk export requests retained by the grower-owned former subsidiary of the AWB, AWB (International) Ltd. After review during 2000, the Federal government extended the WEA's export monopoly until 2004.

Having terminated export support payment schemes and internal support programs for dairy producers, the Australian government has made a structural adjustment package available to dairy producers. This package has been available since June 2000.