

AUSTRALIA

In 1996, the U.S. trade surplus with Australia was \$8.1 billion, an increase of \$667 million from the U.S. trade surplus of \$7.5 billion in 1995. U.S. merchandise exports to Australia were nearly \$12.0 billion, an increase of over \$1.2 billion (11.2 percent) from the level of U.S. exports to Australia in 1995. Australia was the United States' fourteenth largest export market in 1996. U.S. imports from Australia were nearly \$3.9 billion in 1996, an increase of \$535 million (16.1 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Australia in 1995 was \$24.7 billion, an increase of 24.2 percent from the level of U.S. FDI in 1994. U.S. FDI in Australia is concentrated largely in the manufacturing and petroleum sectors.

The Government of Australia is continuing a policy of economic reform begun in the 1980s to make Australia more competitive in the global economy. This chapter describes areas of specific concern to the United States.

IMPORT POLICIES

Tariffs

As calculated for Australia's WTO trade policy review, the trade-weighted average tariff was 4.1 percent in 1993/94; a projected 2.8 percent in 1996/97; and a projected 2.2 percent in 2000/01. This represents a tariff reduction of 72 percent compared to 1987 duty rates. With the conclusion of the Uruguay Round, Australia bound over 94 percent of its industrial tariff lines. As part of its Asia Pacific Economic Cooperation (APEC) Individual Action Plan (IAP), Australia has committed to further tariff liberalization.

In May 1994, the Government of Australia released a white paper reiterating its commitment to unilateral tariff reform. Following through on its commitment, the government reduced all tariffs (except those on textile, clothing and footwear (TCF), automotive parts, and motor vehicles) in stages to 5 percent by July 1, 1996. This included the reduction of traditionally high-tariff goods of particular interest to U.S. exporters, such as wine, torque wrenches (down from 17 percent), and aluminum screening (16 percent). However, in the Uruguay Round, Australia did not join most other members of the Organization for Economic Cooperation and Development (OECD) in agreeing to phase out tariffs on paper and plasterboard products. Australia also declined to participate in the "zero for zero" agreement for distilled spirits (Australia is the third largest market for U.S. exports of distilled spirits).

The tariff rate on passenger motor vehicles and their original equipment components, currently 22.5 percent (down from 25 percent as of January 1, 1996), will be reduced in stages to 15 percent by January 1, 2000. A recent Australian Industry Commission draft study has recommended that the tariff rate on motor vehicles be reduced to 5 percent by 2004. The Government of Australia has indicated that further unilateral tariff cuts beyond 2000 may be conditioned on reciprocal cuts in automotive-exporting countries. Tariffs

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on light commercial and four-wheel drive vehicles and components were reduced to 5 percent on July 1, 1996. Replacement components for passenger vehicles will remain at 15 percent from July 1, 1996, until the year 2000. Under Australian “automotive arrangements,” automobile manufacturers may import duty-free dutiable components up to a value equal to 15 percent of their automobile production in a given year.

By July 1, 2000, Australia will reduce tariffs on carpets (currently 23 percent) to 15 percent and on TCF items to a maximum of 25 percent. Tariffs on cotton sheeting and woven fabrics will fall to 15 percent from the current maximum rate of 25 percent. Tariffs on apparel and certain finished textiles (now up to 37 percent) will be reduced to 25 percent. Footwear tariffs (now up to 27 percent) will fall to 15 percent and tariffs on footwear parts (now up to 15 percent) to 10 percent.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Government of Australia limits livestock and poultry imports through quarantine and health restrictions, some of which the Australian Government has not scientifically justified as required by their WTO commitments. The federal government has indicated an “in-principle” decision to lift the ban on cooked chicken imports from the United States, Denmark, and Thailand. The decision has been met with strong domestic opposition. The United States believes that the recommended temperature/time requirements applicable to the treatment of processed cooked poultry meat are so extreme as to restrict imports. The Government of Australia has commissioned one final round of testing on the existing proposed time/temperature levels. The Australian Government will not issue import permits for cooked chicken meat until it receives the test results. In general, Australia prohibits poultry imports (not just cooked chicken meat) without having completed the WTO-required risk assessments. Similarly, a WTO-inconsistent ban presently exists on cooked pork (except canned products). The United States has raised these issues at the highest levels of the Australian Government and will continue to do so at all levels and in all appropriate fora.

Prior to 1994, importation of feed grains was restricted, ostensibly due to phytosanitary concerns. During the 1994-95 drought, the United States obtained approval to export feed grains to Australia to supplement domestic production. Since then, Australia’s requirement that all feed grains be steam-treated or processed in an alternative satisfactory manner at the port of entry has made further importation commercially unviable. Australia permits the importation of specified feed grains for processing in metropolitan areas under strict quarantine conditions. Currently, Brisbane is the only port with available processing facilities.

Phytosanitary regulations prohibit or severely limit the entry of many fruits from the United States, including Florida citrus, grapes, blueberries, stone fruit, apples, and pears. After admitting U.S. cherries from California in 1996, the Australian Government decided to revisit the pest risk analysis because of the level of cherries which had to be treated upon arrival (no pests of quarantine significance were found). This review is nearing completion. Whether Australia will allow imports of other U.S. stone fruit will depend upon the results of the cherry review. The United States is waiting for Australia’s assessment with respect to the entry of the other named fruits.

Australia prohibits the importation of all fresh, chilled, and frozen salmon for alleged health-related concerns. The United States joined Canada in consultations with Australia on this matter under Article

XXII of the GATT 1947. In November 1995, the United States requested separate consultations under the WTO. The Government of Australia announced in December 1996 that no changes would be made to its salmon importation prohibition. The United States is currently examining whether Australia's final risk assessment is scientifically justified.

Australia recently completed an independent review of its animal, plant, and human quarantine policies. Among its findings, the review recommended basing Australia's international position on quarantine-related issues on the consistent application of risk analysis based on objective scientific principles and related international standards. It referred specifically to the restrictions placed on seeds (including bulk grains) and horticulture (including fruit, vegetables, and cut flowers). The Government of Australia is expected to respond to the report by mid-1997.

GOVERNMENT PROCUREMENT

Australia has yet to join and adhere to the WTO Agreement on Government Procurement. The United States continues to urge Australia to do so.

Since 1991, foreign information technology (IT) companies with annual sales to the Government of Australia of less than \$40 million have been "invited" to enter into fixed-term arrangements (FTAs), and those with sales greater than \$40 million into partnerships for development (PFDs). Although companies are not required to join, there is strong pressure to join in order to do business. Companies are asked to undertake an agreed-upon level of strategic activities in Australia, including research and development, training, technology transfer, capital investment, and the facilitation of export market opportunities for Australian companies. When the PFD program was first implemented, the main incentive for companies to join was to avoid "offset" obligations. After it abolished offsets in 1992, the Government of Australia prohibited its agencies from purchasing IT-related goods and services from companies that dropped out of the program.

In 1992, the scheme was extended into the telecommunications customer premises equipment sector, replacing, in large measure, the requirement that suppliers of Customer Premises Equipment (standard telephones, PABX, small business systems and cellular mobile telephones) have industrial development arrangements (IDAs) in place before obtaining licenses to connect their equipment to the public switched network. From July 1993, companies participating in PFD or FTA programs were able to seek exemption on a case-by-case basis from the IDA requirement. Australia terminated the IDA scheme in June 1996.

In February 1995, the Bureau of Industry Economics published an evaluation of the PFD and FTA programs. It recommended that both the PFD and FTA programs be continued, but that their "unwarranted emphasis on the information technology and telecommunications sector's trade balance outcome" should cease.

In 1995, the Government of Australia established the "Information Technology Services Common Use Contract Panel" (ITCUCP), to determine which companies will be used as a source for Commonwealth information technology requirements involving systems integration activity (excluding purchases of less than \$1 million). Any information technology company may join upon demonstrating "acceptable levels"

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of Australian product development, investment in capital equipment, skills development and/or services support, and local sourcing. Potential members of the ITCUCP also will be evaluated on their Australian R&D activities, export orientation, and development of relationships with Australian and New Zealand suppliers and consumers. The ITCUCP has a much broader membership than its predecessor, which was limited to 15 private companies.

The Government of Australia's May 1994 employment and industry policy statement strengthens its efforts to use government procurement policy to encourage local industrial development. It requires industry impact statements to be drafted for procurement of \$7.4 million or more, and establishes a two-envelope system for such tenders. Under this system, bidders are required to submit detailed information regarding Australian industrial involvement (AII) separately (in "envelope 2"); bids are judged both on price and product specifications, as well as industrial development grounds. U.S. firms have expressed concern that the two envelope system reduces the transparency of the bidding process by affording the Government of Australia opportunity to increase AII targets during the bidding process. In October 1995, the Industry Commission published a study critical of the two-envelope system.

EXPORT SUBSIDIES

Australia maintains several programs intended to enhance Australian exports. These include the following.

Export Market Development Grants Scheme

The Export Market Development Grants Scheme (EMDG) aims to encourage Australian exporters to seek out and develop overseas markets for goods, services, tourism, industrial property rights, and technology that are substantially of Australian origin. EMDG grants are provided to partially reimburse Australian residents who have incurred eligible expenditures while developing overseas markets for Australian products and services. Grant recipients are reimbursed for 50 percent of their eligible expenditures above A\$15,000, with a general annual grant limit of A\$200,000.

Automotive Export Facilitation Scheme

Under the terms of an export facilitation scheme, manufacturers of automotive vehicles and components receive subsidies based on the level of exports of specified automotive products. The subsidies are in the form of duty rebate "credits" which recipients can, in turn, use to offset their duty liability on imports of specified automotive products. In general, the level of subsidy is determined based on the sales value of the eligible exports, but the calculation is also performed in a way which rewards domestic value-added activities. The greater the value of any qualifying exported product, the greater the import credit granted. Significantly, however, there is no requirement that the imported products be consumed in the production of exported products. Indeed, imports of finished vehicles for consumption on the Australian market are fully eligible for duty rebates under this scheme.

Subsidy benefits are freely transferable and may be sold among participants in the program. The export facilitation scheme is scheduled to remain in force until at least December 31, 2000. Although benefits are progressively reduced each year between 1991 and 2000 in line with the reduction of 2.5 percentage points

in the tariff applicable to passenger motor vehicles, the level of duty rebate will still be significant in the year 2000, when Australia's duty on imported vehicles and components will be at least 15 percent.

Textiles, Clothing and Footwear (TCF) Import Credit Scheme

Similar to the Automotive Export Facilitation scheme, the TCF import credit scheme grants duty rebate credits to Australian exporters of TCF products. These import credits entitle the holder to a reduction in import duties on an equal value of eligible TCF imports. The value of import credits granted is calculated as a share (currently 25 percent) of the domestic value-added in TCF exports. Import credits are freely transferable and may be sold among participants in the program.

LACK OF INTELLECTUAL PROPERTY PROTECTION

With a few exceptions, Australia provides world class intellectual property protection for copyrights, patents, trademarks, designs, integrated circuits, and plant breeders rights. Some specific issues remain of concern.

Software Decompilation

In mid-1995, the Copyright Law Review Committee (CLRC) released its report on computer software protection. The report recommended against changing copyright law to allow the parallel importation of computer software. However, the CLRC's report also contained recommendations which would allow software decompilation for interoperability purposes. As of this writing, the Australian Government has not decided whether to allow decompilation. The U.S. Government has advised the Australians of its serious concerns with decompilation.

Protection of Test Data

The Government of Australia recently announced a new regime governing the protection of test data for pharmaceuticals and agricultural chemicals (effective January 1, 1998). The Australian Government took the narrow approach to this issue by allowing protection for "new chemical entities" for five years from the date of registration of the originator product. It rejected the wider interpretation adopted by other countries. For industry, especially the agricultural chemical industry, this narrow approach offers limited practical protection, since "new uses and formulations" not "new chemical entities" are the areas that require attention. Furthermore, the new regime's five-year period of protection for test data is insufficient in the case of test data submitted for marketing approval of agricultural chemicals.

Parallel Importation

Australia allows parallel importation of books under limited circumstances. When foreign publishers do not make available in Australia editions of new works within 30 days of original publication abroad, or when an Australian edition becomes unavailable and remains so for 90 days, the Australian Government permits parallel importation. The Australian Government is currently reconsidering whether to allow

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parallel importation of sound recordings. Later in 1997, the government will reevaluate its position on parallel importation of books and software.

National Treatment

In September 1995, Australia's Minister for Communications and the Arts announced that the Copyright Act would be amended to, among other things, give artists and copyright owners a technology-neutral electronic transmission right that would not be granted to U.S. right holders on a national treatment basis. This particular item (which would apply to all transmission, including cable, satellite, microwave and existing forms of broadcasting) has since been removed from the amendment bill, but may be included in a separate bill for later consideration by the Parliament.

On all of these issues, the United States has vigorously voiced its concerns. Last year, USTR included Australia on the Special 301 Watch List. Australia's protection of test data represents slight progress, but the United States continues to have serious concerns on the remaining IPR issues.

SERVICES BARRIERS

Local Content Requirements for Broadcasting and Advertising

The Australian Broadcasting Authority (ABA), the broadcasting regulator for radio and television, liberalized rules governing local content in television advertising effective January 1, 1992. Under current rules, up to 20 percent of the time used annually for paid advertisement between the hours of 6:00 a.m. and midnight can be filled with messages produced by non-Australians. At present, those rules do not appear to have a serious effect on trade.

For broadcasts, 50 percent of a commercial television station's average annual broadcasts between the hours of 6:00 a.m. and midnight must be dedicated to Australian programs. Programs are evaluated on a complex point system based on relevancy to Australia (setting, accent, etc., ranging from no Australian content to a 100 percent Australian production). Trade sources indicate that the content regulation does not have a substantial impact on the amount of U.S.-sourced programming sold to Australian broadcasters, since the mix of programming is driven by the market's preference for Australian themes. In 1994, an average of 44 percent of commercial stations' broadcasting time was devoted to imported programming. The U.S. Government has reiterated its opposition to quotas in the context of the ABA's review of the Australian content standard. Nevertheless, the ABA decided at the conclusion of that review in September 1995 to increase the local content quota to 55 percent effective January 1, 1998.

The regulatory framework for pay television also contains a local content provision which mandates that channels carrying mostly drama programs (not sports or music channels) must allocate 10 percent of their program acquisition expenditures on new Australian dramas. A 1995 amendment to the Broadcasting Services Act 1992 provides for a ministerial review of Australian content on pay television by July 1, 1997, including consideration of the feasibility of increasing the Australian drama expenditure requirement to 20 percent. The United States has provided formal comments to Australia taking issue with such an increase.

Telecommunications

In recent years, the Government of Australia has significantly liberalized its telecommunications sector -- a program which will culminate on June 30, 1997, with the removal of the current restriction on the number of licensed carriers. However, the Australian Government has restricted total foreign investment in the upcoming one-third privatization of the state-owned telecommunications carrier Telstra to 35 percent of the one-third (5 percent of the one-third for individuals). Until June 30, 1997, Telstra's sole competitor in fixed services (except for resale and value-added services, which are already open to competition) is Optus Communications, which is also a mobile carrier. License conditions applying to foreign investment in Optus require that while the two current foreign investors hold more than 15 percent of Optus (they are also restricted to no more than their current holdings of 24.5 percent each), other foreign investments must be passive, portfolio investments, and must be less than 5 percent each. The directors of Optus must be Australian citizens, other than those appointed by the two major foreign investors, who must comprise the minority. A third cellular carrier, Vodafone, was licensed in 1993 with majority British ownership; it must become majority Australian-owned by July 2003. There are no industry-specific foreign investment limitations on resellers and value-added services providers.

Draft legislation to liberalize the Australian telecommunications market from July 1, 1997, was introduced into the Parliament in December 1996. All telecommunications services will be liberalized. The legislation will not impose any specific foreign investment restrictions on new carriers and services providers entering the market after July 1, 1997, although general investment screening processes will apply.

In the recently concluded WTO negotiations on basic telecommunications, Australia made commitments on all basic telecom services, based on the outcome of the legislative process, and adopted the reference paper on regulatory commitments. Australia retained foreign ownership restrictions on Telstra, Vodafone, and Optus.

INVESTMENT BARRIERS

In Australia, all potential foreign investors 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 WTO General Agreement on Trade in Services (GATS) are limited as a result of Australia's screening requirements.

Foreign ownership of commercial television stations is limited. A foreign person may not be in a position to exercise control over a commercial television license or have company interest in such a license exceeding 15 percent. The aggregate foreign ownership that may be held in television stations is limited to 20 percent. Legislation stipulates that no more than 20 percent of the directors of a broadcasting licensee company may be foreign nationals. Foreigners are also restricted to 20 percent ownership interest in any single subscription television license. Aggregate foreign ownership in a subscription television license is limited to 35 percent.

Foreign airlines flying to Australia may acquire up to 25 percent of the equity in an Australian domestic carrier individually, or up to 40 percent in aggregate. All other foreign investors (including those that do

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not operate an airline service to Australia) may acquire up to 100 percent of a domestic carrier, or establish a new aviation business. Australia completed the privatization of Qantas in August 1995. Foreign ownership is capped at 49 percent, and no single entity is allowed to own more than 25 percent.

The purchase of urban real estate by foreign interests is regulated closely. All proposals by foreign investors to acquire developed real estate are examined. Such applications are normally not approved except in the cases of foreign companies buying temporary residences for company executives and other foreign nationals temporarily resident in Australia.

OTHER BARRIERS

Bounties

Bounties in some product sectors were originally provided in lieu of tariff protection to assist domestic manufacturers to compete with foreign suppliers. Bounties are now in place on the following products (scheduled expiration dates are indicated in parentheses): computers and circuit boards (June 30, 1997); books (June 30, 1997); and shipbuilding (December 31, 1997). Bounties may be reviewed before expiration and some possibly extended or converted to tariffs. Bounties for machine tools, robots, and fuel ethanol were abolished in 1996.

Commodity Boards

Several national and state commodity boards control the marketing and export of certain Australian agricultural products. Activities for these marketing authorities are financed by the producers, but some boards enjoy export monopoly powers conferred by the federal or state government.

While some of the boards' domestic activities have been deregulated, the export of wheat and rice remains under the exclusive control of commodity boards. The Government of Australia has indicated that the Australian Wheat Board (which strictly regulates wheat marketing abroad) will retain its export monopoly until at least 1999. The export of barley from certain states likewise remains strictly regulated.

Approximately 95 percent of dairy exports are made by the private sector and about 5 percent by an arm of the Australian Dairy Corporation. Australia terminated its dairy market support payments, which were classified as an export subsidy, on June 30, 1995, in accordance with Australia's Uruguay Round implementing legislation, but instituted a new internal support program on July 1, 1995.