

Final Environmental Review of the U.S.-Australia FTA
July 2004

**FINAL ENVIRONMENTAL REVIEW OF
THE UNITED STATES - AUSTRALIA FREE TRADE AGREEMENT
July 2004**

Executive Summary

Pursuant to authority delegated by the President in Executive Order 13277 (67 *Fed. Reg.* 70305) and consistent with Executive Order 13141 (64 *Fed. Reg.* 63169) and its guidelines (65 *Fed. Reg.* 79442), the Office of the United States Trade Representative (USTR) submits this Final Environmental Review of the United States-Australia Free Trade Agreement (FTA), as provided for under section 2102(c)(4) of the Trade Act of 2002 (Trade Act).

On October 1, 2002, in accordance with section 2104(a) of the Trade Act, U.S. Trade Representative Robert B. Zoellick notified the Congress of the President's intent to enter into negotiations for a FTA with Australia. The negotiations were successfully concluded on February 8, 2004.

The environmental review process examines possible environmental effects that may be associated with the FTA. This Final Review summarizes the Administration's conclusions regarding the environmental effects of the United States-Australia FTA. In identifying and examining these possible effects, the Administration drew on public comments submitted in response to a notice in the *Federal Register* (68 *Fed. Reg.* 12149), public comments in response to an Interim Review (announced in 68 *Fed. Reg.* 75317), the advice of relevant advisory committees, including the Trade and Environment Policy Advisory Committee (TEPAC), and relevant published economic analysis. The review also draws upon environmental and economic expertise of federal agencies. Consistent with Executive Order 13141 and its Guidelines, the focus of the review is on potential impacts in the United States. Additionally, this review includes consideration of global and transboundary effects.

Findings

1. In this Final Environmental Review, the Administration has concluded that changes in the pattern and magnitude of trade flows attributable to the FTA will not have any significant environmental impacts in the United States. While it is conceivable that there may be instances in which the economic and associated environmental impacts are concentrated regionally or sectorally in the United States, we could not identify any such instances.

2. At an early stage in the negotiations during the course of the environmental review, increased risk of invasive species was identified as a potential environmental concern related to the FTA. Both the United States and Australia face and recognize risks associated with invasive species

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and both countries maintain import regulations designed to minimize the risk of entry of invasive species. The Agreement establishes a new mechanism for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters. The FTA will not alter standards or the ability to enforce U.S. regulations addressing the introduction of invasive species. Therefore, we concluded that the FTA does not significantly increase the risk of invasive species for the United States.

3. The environmental review did not identify any significant transboundary or global environmental effects associated with the FTA.

4. In considering whether provisions of the FTA could affect, positively or negatively, the ability of U.S. federal, state, local, or tribal governments to enact, enforce, or maintain environmental laws and regulations, the Administration focused in particular on the provisions of the FTA's Environment Chapter and related dispute-settlement provisions. We concluded that these and related FTA provisions should have positive implications for the enforcement of environmental laws and the furtherance of environmental protection in both the United States and Australia.

5. Finally, the United States and Australia have a long history of environmental cooperation aimed at addressing regional and global environmental problems. In connection with the FTA, the two countries signed a Joint Statement on Environmental Cooperation which will reinforce existing activities and guide future cooperative efforts.

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I. LEGAL AND POLICY FRAMEWORK

A. The Trade Act of 2002

The Trade Act of 2002 (Trade Act) establishes a number of negotiating objectives and other priorities relating to the environment. As relevant here, the Trade Act contains three sets of objectives: (i) overall trade negotiating objectives; (ii) principal trade negotiating objectives; and (iii) promotion of certain priorities, including associated requirements to report to Congress.

Overall environment-related trade negotiating objectives include:

- (1) to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources (section 2102(a)(5)); and
- (2) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade (section 2102(a)(7)).

In addition, the Trade Act establishes the following environment-related principal trade negotiating objectives:

- (1) ensuring that a party to a trade agreement with the United States does not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties, while recognizing a party's right to exercise discretion with respect to investigatory, prosecutorial, regulatory and compliance matters and to prioritize allocation of resources for environmental law enforcement (sections 2102(b)(11)(A)&(B));
- (2) strengthening the capacity of U.S. trading partners to protect the environment through the promotion of sustainable development (section 2102(b)(11)(D));
- (3) reducing or eliminating government practices or policies that unduly threaten sustainable development (section 2102(b)(11)(E));
- (4) seeking market access, through the elimination of tariffs and non-tariff barriers, for U.S. environmental technologies, goods and services (section 2102(b)(11)(F)); and
- (5) ensuring that environmental, health or safety policies and practices of parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against

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U.S. exports or serve as disguised barriers to trade (section 2102(b)(11)(G)).

The Trade Act also provides for the promotion of certain environment-related priorities and associated reporting requirements, including:

- (1) seeking to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to develop and implement standards for the protection of the environment and human health based on sound science and reporting to the Committee on Ways and Means and the Committee on Finance (“Committees”) on the control and operation of such mechanisms (section 2102(c)(3));
- (2) conducting environmental reviews of future trade and investment agreements consistent with Executive Order 13141 and its relevant guidelines, and reporting to the Committees on the results of such reviews (section 2102(c)(4)); and
- (3) continuing to promote consideration of multilateral environmental agreements and consult with parties to such agreements regarding the consistency of any such agreement that includes trade measures with existing exceptions under Article XX of the GATT 1994 (section 2102(c)(10)).

B. The Environmental Review Process

The framework for conducting environmental reviews of trade agreements under the Trade Act is provided by Executive Order 13141-- *Environmental Review of Trade Agreements* (64 *Fed. Reg.* 63169) and the associated Guidelines (65 *Fed. Reg.* 79442). The Order and Guidelines are available on USTR’s website at <http://www.ustr.gov/environment/environmental.shtml>.

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), identify complementarities between trade and environmental objectives, and help shape appropriate responses if environmental impacts are identified. Section 5(b) of Executive Order 13141 provides that “as a general matter, the focus of environmental reviews will be impacts in the United States,” but “[a]s appropriate and prudent, reviews may also examine global and transboundary impacts.” Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality (CEQ) jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

The environmental review process provides opportunities for public involvement, including an early and open process for determining the scope of the environmental review (“scoping”).

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Through the scoping process, potentially significant issues are identified for in-depth analysis, while issues that are less significant --or that have been adequately addressed in earlier reviews-- are eliminated from detailed study.

The Guidelines recognize that the approach adopted in individual reviews will vary from case to case, given the wide variety of trade agreements and negotiating timetables. Generally, however, reviews address two types of questions: (i) the extent to which positive and negative environmental impacts may flow from economic changes estimated to result from the prospective agreement; and (ii) the extent to which proposed agreement provisions may affect U.S. environmental laws and regulations (including, as appropriate, the ability of state, local and tribal authorities to regulate with respect to environmental matters).

II. BACKGROUND

Australia is a high-income, developed country on an island continent located in the southern hemisphere between the Indian Ocean and the South Pacific Ocean. The land area is slightly smaller than that of the contiguous 48 states of the United States and includes both temperate and tropical regions. Australia has a population of about 20 million.

Australia has well-established institutions and laws for protecting the environment, including procedures for considering the possible environmental consequences of government policies. Environmental issues are also among the topics addressed in the process of Australian Cabinet-level and Parliamentary consideration of proposed trade agreements.

Both the United States and Australia seek to ensure that trade and environmental policies are mutually supportive and contribute to their respective abilities to protect the environment and meet international environmental obligations. In addition, the United States and Australia have a long history of cooperation in achieving environmental objectives (see section VII).

U.S.-Australia Trade

The United States and Australia are among the most open economies in the world. Average tariffs on goods trade are low in both countries, and a high proportion of tariffs for both countries are bound at low rates under the WTO. Nevertheless, at the start of negotiations of the FTA, barriers to trade existed for some commodities, as well as for some services.

In 2002, two-way goods trade between the United States and Australia was nearly \$20 billion; trade with Australia accounted for less than 1 percent of U.S. goods imports and slightly less than 2 percent of U.S. goods exports. U.S. exports to Australia were \$13.1 billion in 2002, an

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increase of nearly 20 percent over 2001. The United States supplies about 18 percent of Australia's total goods imports and is the destination for about 10 percent of Australia's goods exports. Major categories of U.S. exports to Australia include machinery, aircraft, automobiles and manufactured goods. Australian exports to the United States totaled \$6.5 billion in 2002, largely unchanged from 2001. In 2002, the largest categories of U.S. imports from Australia were beef, minerals and machinery. The United States had a goods trade surplus with Australia in 2002 of \$6.6 billion.

U.S. exports of private commercial services to Australia were \$5.2 billion in 2002, and U.S. imports of services were \$2.9 billion. The stock of U.S. foreign direct investment in Australia was \$36.3 billion in 2002, largely concentrated in finance, manufacturing and petroleum. The stock of Australian investment in the United States was \$24.5 billion in 2002, largely concentrated in manufacturing, real estate and finance.

III. The United States-Australia FTA

A. Overview of the FTA

The U.S.-Australia Free Trade Agreement is the first FTA between the United States and a developed country since the U.S.-Canada Free Trade Agreement in 1988. The Agreement takes into account conditions in modern, globalized economies and enables both parties to further open markets and streamline mutual access in intellectual property, services, government procurement, e-commerce and investment.

The FTA consists of a preamble and the following 23 chapters and associated annexes: establishment of a Free Trade Area and definitions; national treatment and market access for goods; agriculture; textiles and apparel; rules of origin; customs administration; sanitary and phytosanitary measures; technical barriers to trade; safeguards; cross-border trade in services; investment; telecommunications; financial services; competition-related matters; government procurement; electronic commerce; intellectual property rights; labor; environment; transparency; institutional arrangements and dispute settlement; general provisions and exceptions; and final provisions. The complete text of the FTA and summary fact sheets are available on USTR's website at <http://www.ustr.gov/new/fta/australia.htm>.

Based on the scoping process and developments since the interim review, the following is a summary of the FTA provisions most relevant to this final environmental review. The provisions of the environment chapter are described in section III.B.

Market Access for Goods

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The FTA establishes the principal of national treatment and provides specific definitions and related industrial goods provisions. Tariff commitments by the United States and Australia provide immediate benefits for both Parties. In addition, the FTA includes provisions on market access for pharmaceuticals. The Parties share a commitment to facilitating high-quality health care. Procedures for listing new pharmaceuticals or indications for reimbursement purposes or for setting the amount of reimbursement must be transparent and timely.

Customs Matters and Rules of Origin

The FTA establishes methods for valuing products used to qualify for preferential treatment, creating obligations related to FTA preferential trade. Product-specific rules of origin are listed and the FTA establishes specific obligations on customs procedures to ensure compliance with laws governing importation. The rules of origin allow remanufactured products to qualify as an originating good, thereby facilitating increased trade. The FTA requires transparency and efficiency in customs administration, with commitments to publishing laws and regulations and ensuring procedural certainty and fairness. The FTA also includes a commitment to share information to combat illegal trans-shipment of goods.

Sanitary and Phytosanitary (SPS) Measures

The Agreement commits the U.S. and Australia to work together to resolve sanitary and phytosanitary barriers to agricultural trade, in particular for pork, citrus, apples and stone fruit. The FTA 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.

Technical Barriers to Trade (TBT)

The FTA reaffirms commitments to the WTO Agreement on Technical Barriers to Trade (TBT) and creates a process for enhanced cooperation and coordination on technical regulations and standards.

Intellectual Property Rights (IPR)

The IPR chapter provides for strong protection of copyrights, patents, trademarks and trade secrets, including enhanced enforcement and non-discrimination obligations for all types of

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intellectual property. Through the copyright provisions, Parties will address the challenge of providing protection in the digital environment of the Internet and provide imported protection for performers and producers of phonograms. Under the FTA, the Parties will provide strong protections for trademarks and will apply the principle of “first-in-time, first-in-right” to trademarks and geographic indicators applied to products. The agreement streamlines trademark filing processes while providing greater protection of owners’ rights.

The Parties will also provide broad patent protection, including for biotech plants and animals. Both Parties will also extend the term of patents under certain conditions. Enhanced enforcement of IPRs is another important aspect of the FTA. The Parties will build on WTO requirements relating to civil and criminal actions as well as enforcement of IPRs at the border.

Services

Substantial market access across the entire services regimes was achieved, subject to very few exceptions (based on a “negative list” approach); the disciplines of national treatment and MFN are extended to the Parties’ services suppliers. Commitments apply across a wide range of sectors and provide for nondiscriminatory treatment through strong disciplines on both cross-border supply of services and the right to invest and establish a local services presence. Traditional market access to services is supplemented by detailed disciplines on regulatory transparency. The FTA requires regulatory authorities to use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and to publish all regulations.

Investment

The FTA's Investment chapter establishes a more predictable framework for U.S. investors operating in Australia. The FTA includes major obligations pertaining to non-discrimination (national treatment and MFN), expropriation, free transfers related to covered investments, prohibition on use of performance requirements, minimum standard of treatment, and limitations on requirements on senior managers. Australia currently reviews any significant investment to determine if it is in the national interest. In some cases, the government has blocked investments. Except for a few sensitive sectors, Australia will apply a much higher value threshold for determining whether to review a U.S. - proposed investment, thus eliminating this uncertainty from investment decisions.

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 implement procedures in this FTA that would allow investors to arbitrate disputes with governments. Government-to-government dispute settlement procedures remain available to

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resolve investment-related disputes.

Government Procurement

Australia is not a signatory of the WTO Agreement on Government Procurement (GPA). Thus, the commitments in this chapter are new for Australia and represent a significant step in bringing Australia's practices in line with GPA disciplines. U.S. and Australian Government entities will benefit from using open, transparent and non-discriminatory procurement procedures. The Chapter includes requirements for advance public notice of purchases, as well as timely and effective bid review procedures.

Transparency

The Transparency chapter ensures that laws, regulations, procedures and administrative rulings on matters covered by the Agreement are published and made available to the public, requiring notification of proposed measures and providing for a reasonable opportunity for interested parties to comment, whenever possible. Procedures for review and appeal of administrative actions covered by the Agreement are also provided.

Trade Remedies

The FTA establishes provisions for implementing several bilateral safeguards and maintains the Parties' rights under the WTO Safeguards Agreement. A Party may exclude imports from the other Party from a WTO safeguard measure, if imports from the other Party are not a substantial cause or threat of serious injury.

Labor

The FTA's Labor Chapter reaffirms the Parties' obligations as members of the International Labor Organization (ILO), and commits them to strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles. Labor obligations are part of the core text of the trade agreement. The U.S. and Australia agree that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment. Further, the FTA requires the parties to effectively enforce their own domestic labor laws, enforceable through the Agreement's dispute settlement procedures. Procedural guarantees ensure that workers and employers will continue to have fair, equitable and transparent access to labor tribunals/courts. The Parties also establish a process for further cooperation on labor matters.

Dispute Settlement

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The FTA provides for clear dispute panel procedures which set high standards of openness and transparency, calling for open public hearings and the public release of legal submissions by Parties. It provides opportunities for interested third parties to submit views. It promotes compliance through consultation, joint action plans and trade-enhancing remedies. Core obligations of the Agreement, including labor and environment provisions, are subject to the dispute settlement provisions with the use of special labor or environmental expertise for disputes in these areas. The Agreement includes an enforcement mechanism providing for monetary penalties to enforce commercial, labor and environmental obligations of the trade agreement.

Exceptions

The agreement includes general exceptions related to the GATT 1994 Articles XX(b) XX(g) and the GATS Article XIV, including footnotes. The Parties recognize that pursuant to these Articles, environmental measures necessary to protect human, animal or plant life, or health and measures related to the preservation of living or non-living exhaustible natural resources, are excepted from coverage under the Agreement. Nothing in the Agreement shall be construed to compel a Party to reveal information contrary to its essential security interests, or from applying measures that it considers necessary to its essential security interests.

B. The FTA Environment Chapter

Environmental obligations are part of the core text of the trade agreement. The Agreement commits Parties to effectively enforce their own domestic environmental laws, and enforces this obligation through the Agreement's dispute settlement procedures. Under the agreement, the Parties commit to ensure that domestic environmental laws will provide for high levels of environmental protection and encourage efforts to continue to improve such laws, making clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment.

The scope of obligations for Australia extends to environmental laws at the level of the states and territories since much of the significant environmental protection in Australia takes place at the state and territory level. The agreement also promotes a comprehensive approach to environmental protection, as long practiced by the United States and Australia. Procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws are coupled with provisions that promote voluntary, market-based mechanisms to protect the environment.

In addition to environmental obligations contained within the FTA, the Government of the United States and the Government of Australia negotiated a Joint Statement on Environmental Cooperation. In that statement, the Governments recognize their common concerns and

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responsibilities for environmental protection and the sustainable use of natural resources. They reiterate commitments to continued cooperation on environmental issues such as climate change, botanic gardens, endangered and migratory species, Antarctica, meteorological and oceanographic research and management, and whale and ozone protection. Future bilateral cooperation is also anticipated relating to national parks, wetlands, oceans management, conservation of Antarctic and sub-Antarctic ecosystems, biodiversity conservation, invasive species, and natural heritage management. Recognizing their shared goals in advancing science and technology initiatives to address environmental challenges, the United States and Australia reaffirm their commitment to negotiate a bilateral agreement on science and technology cooperation.

The Joint Statement outlines existing and anticipated multilateral environmental activities in which both Governments participate, and identifies opportunities for future regional cooperation in the Asia Pacific Region. The Australian and U.S. Governments announce their intention to consult regularly to review ongoing cooperative activities and to identify priority areas for potential future cooperative activities. They also agree to continue to promote public participation and cooperation between governments and the community as a means of enhancing environmental stewardship and sustainable natural resource management.

IV. Public and Advisory Committee Comments

To determine the scope of the review, the Administration considered information provided by the public and solicited comments through notices in the *Federal Register* and at a public hearing. Section IV.A summarizes public comments. In addition to providing guidance on the scope of the environmental review, any information, analysis and insights available from these sources were taken into account throughout the negotiating process and were considered in developing U.S. negotiating positions.

Pursuant to Trade Act requirements (section 2104(e)), advisory committees, including the TEPAC, submitted reports on the U.S.-Australia FTA to the President, USTR and Congress within 30 days after the President notified Congress of his intent to enter into the agreement. The TEPAC report is summarized in section IV.B.

A. Public Comments

The review was formally initiated by publication of a notice in the *Federal Register*, which requested public comment on the scope of the review (*see* 68 *Fed. Reg.* 12149; March 13, 2003). The Administration also requested public comments on all aspects of the negotiations and held a public hearing to discuss issues raised in connection with the FTA, including environmental issues (*see* 67 *Fed. Reg.* 76431; December 12, 2002). Comments and testimony

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addressing environmental issues received in response to that notice were taken into account in the preparation of the Interim Review. The availability of an Interim Review was also announced in the *Federal Register* (see 68 *Fed. Reg.* 753171; December 30, 2003). This notice provided a further opportunity to provide comments.

Public comments on the scope for the environmental review identified a number of topics to be considered in connection with the proposed FTA. These included: invasive species and associated sanitary and phytosanitary measures; cooperation to protect endangered species; cooperation to promote ecotourism and sustainable tourism; the benefits of animal-friendly and environmentally friendly agriculture; and the possible effects of investment provisions on environmental policy and regulation. A list of organizations that provided comments on scope is included in the annex.

Public comments on the Interim Review drew attention to remanufacturing as an environmentally friendly process and urged high levels of protection for intellectual property rights with respect to crop protection, pest control and biotechnology products. One commentator raised the issue of invasive species and the need not to relax SPS requirements including quarantine regulations. A list of organizations that provided comments on the Interim Review is included in the annex.

B. Advisory Committee Report

Under Section 135(e) of the Trade Act of 1974, as amended, Advisory Committee reports must include advisory opinions as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002. The reports must also include advisory opinions as to whether the agreement provides for equity and reciprocity within the sectoral or functional area of the particular committee. The advisory committee reports are available at: <http://www.ustr.gov/new/fta/Australia/advisor/index.htm>.

A majority of TEPAC members supported the conclusion that the FTA provides adequate safeguards to ensure that Congress's environmental negotiating objectives will be met. This conclusion is based, in large measure, on the strong, historically positive, record that Australia has with regard to environmental regulation. A similar majority of the committee raised some questions about the adequacy of the procedures used to resolve disputes in environmental matters in the agreement in light of the comparative wealth of the trading partner. While concluding that the approach to environmental provisions appears to strike a proper balance between the extensive commitments to cooperate on environmental matters and the need to ensure that both countries commit the requisite resources to enforce domestic environmental laws and regulations, the committee drew attention to the size of the maximum penalty available for enforcing violations of the environmental provisions (\$15 million, adjusted for inflation).

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A majority of the Committee raised concerns about the failure of the FTA to address reductions in sugar, beef and dairy tariffs. The report notes particular concern with regard to sugar, drawing attention to significant stress on delicate and endangered ecosystems like Florida's Everglades resulting from overproduction of sugar caused by domestic subsidies.

A majority of TEPAC expressed concern about potential ambiguity in the scope of Australian environmental laws covered by the FTA and urged USTR to provide Congress with a written explanation of its understanding.

A majority of the Committee expressed the view that trade agreements can create opportunities to enhance environmental protection. They noted that trade opens markets, creates business and employment opportunities, and can increase economic growth, leading to increased wealth and providing opportunities to enhance environmental protection, including the creation of a political will in favor of such protection. However, they also noted that trade can create and amplify adverse externalities that require enhanced regulatory oversight.

Several differing viewpoints exist among committee members on a number of topics. These include minority views that the investment protection provisions are too broad (and, conversely, that they are too narrow); concern that the agreement reduces consumers' access to lower cost pharmaceuticals; a view that public participation provisions should be strengthened; a view that provisions ensuring effective enforcement are lacking; a view that the agreement is sufficient with respect to the "core" environmental provisions; and a view that the agreement is one of several that contains disparate investment and dispute resolution procedures.

With respect to investment, a majority of TEPAC argued that the FTA's investment protection and dispute resolution provisions represented an improvement over corresponding provisions in the North American Free Trade Agreement (NAFTA). They believed that these provisions reduce the possibility that there will be successful challenges to attempts to implement more stringent *bona fide* environmental regulations while simultaneously protecting investment. This conclusion rested in part on the absence in this FTA of an investor-state provision. In addition, a majority of TEPAC took comfort in specific language clarifying the relationship between investment and environmental obligations.

While a minority argued that the Agreement's investment provisions are too broad, largely due to insufficiently specific or standard legal concepts, that same minority states that "there is no publicly available information that would suggest Australia has mistreated U.S. investors in recent years. Equally, there has been no showing that Australia's judicial system is not capable of resolving complaints against U.S. investors."¹

¹ Page 12. See the full report at: <http://www.ustr.gov/new/fta/Australia/advisor/index.htm>

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Finally, the majority of TEPAC noted that Australia's record on the environment is not necessarily typical of the other countries with which the United States has negotiated, is negotiating or will negotiate, and therefore stresses that the Agreement's environmental provisions should not serve as a model for future agreements. The majority stressed that one size does not fit all in FTAs, and the scope and nature of the environmental provisions in this FTA may not be and probably would not be adequate in an Agreement with a trading partner with a different environmental history.

V. Potential Economically-driven Environmental Effects

Section V.A discusses the possible direct impacts of the FTA on the U.S. environment resulting from changes in the U.S. economy. Section V.B describes environmental issues associated with possible transboundary effects of the FTA. Although possible domestic impacts are the primary concern of this environmental review, global and transboundary impacts are to be considered as appropriate and prudent.

A. Potential Impacts in the United States

Although Australia represents an important market for some U.S. producers and exporters, the impact of the FTA on total U.S. production resulting from changes in U.S. exports appears likely to be very small. Exports to Australia currently account for less than 2 percent of total U.S. exports and a very small portion of total U.S. production. The FTA is expected to provide improved market access for some products, but substantial increases in U.S. exports and production are not expected. Model-based analysis of the possible economic effects of the U.S.-Australia FTA provided estimates of the impact on U.S. GDP that range from an increase of 0.02 percent to an increase of 0.2 percent.² Although small changes in production and exports in environmentally sensitive sectors could have implications for the FTA's direct environmental effects in the United States, no such implications were identified in public comments or in interagency analysis. Therefore, we concluded that the FTA will not have any significant economically driven environmental effects in the United States.

B. Transboundary and Global Issues

While the environmental impacts of expected economic changes in the United States attributable

² See: D. Brown, K. Kiyota and R. Stern, "Computational Analysis of the Economic Effects on the United States of the U.S. Bilateral Free Trade Agreements with Central America, Australia and Morocco," April, 2004 (available at: <http://www.dol.gov>) and two studies prepared by the Centre for International Economics: "Economic Impacts of an Australia-United States Free Trade Area," June 2001 and "Economic analysis of the AUSFTA, impacts of the bilateral free trade agreement with the United States," April 2004 (both are available at <http://www.intecon.com.au>).

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to the FTA are expected to be minimal, the Administration examined a variety of environmental issues with potential global and transboundary impacts in the course of this review. Some of these issues were raised through public comments (see section IV.A); other issues were identified through an open-ended scoping process among agencies with environment, trade and economic expertise. Although the scope of the review is initially broad and open ended, we subsequently eliminated topics from further analysis when there was no identifiable link to the FTA. The following issues were examined for potential environmental consequences (positive or negative) related to the FTA.

Invasive Species³

Without appropriate mitigation measures, commodity trade may provide pathways for invasive species, and the introduction of exotic species may result in harmful effects on the environment and economy of the importing country. Both the United States and Australia face and recognize risks associated with invasive species.⁴ The United States and Australia contain areas with similar ecological conditions in which species from one country can thrive in and have impacts on the other.

Pathways for invasive species include commodity trade as well as the movement of people (migration and tourism) and present varying degrees of risk of environmental impact. Trade-related pathways that involve a risk of invasive introductions include the movement of vessels used in transporting commodities (e.g., ballast water in ships), or the transport of products and packaging that contain potentially invasive organisms (e.g., grains that contains weed seeds). Some invasive species also may be introduced on ornamental plants, fruits, aquarium fish and through other commonly traded products.

Both the United States and Australia maintain import regulations designed to minimize the risk of entry of invasive species. As two examples, Animal and Plant Health Inspection Service (APHIS) regulations protect U.S. agricultural commodities from invasive species and Coast Guard regulations provide standards for management of ballast water from ships to reduce risks associated with aquatic invasive species. The FTA does not alter these standards or the ability to enforce U.S. regulations addressing the introduction of invasive species. The FTA provides for further cooperation and consultation to enhance each Party's implementation of the SPS Agreement (see the summary of SPS measures in section III.A). In addition, the FTA is

³ An "invasive species" is defined as a species that is 1) non-native (or alien) to the ecosystem under consideration and 2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health (for further information, see: <http://www.invasivespecies.gov>).

⁴ For the United States, Executive Order 13112 (February 3, 1999) established the Invasive Species Council and commits federal agencies to conduct research on invasive species issues, take reasonable actions to discourage the introduction of these species into the United States and elsewhere and to undertake international cooperation aimed at addressing this issue.

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expected to result in relatively small changes in the volume of trade (see section V.A). Therefore, we concluded that the FTA does not significantly increase the risk of invasive species for the United States. Nevertheless, in keeping with their shared desire to minimize the risk of environmental and economic damage, in the Joint Statement on Environmental Cooperation (see section VII) the United States and Australia identified invasive species as an area for focus in future cooperative activities.

Remanufacturing

Public comments drew attention to the environmental benefits of remanufacturing and to the opportunity for the FTA to produce environmental benefits by facilitating trade in remanufactured goods. Remanufacturing provides two positive environmental benefits: First, it reduces the volume of material entering the waste stream by redirecting retired products to the remanufacturing process. Remanufacturing thereby reduces the amount of raw materials being consumed. Second, as compared to manufacturing products from all new materials, the remanufacturing process itself generates significantly smaller impacts on natural resources and the environment (for example, through lower energy consumption and fewer waste materials). Of the products that are imported into the United States for remanufacturing, roughly 70 percent of the material goes back into remanufactured products and 30 percent is recycled into raw material.

The FTA's provisions to facilitate greater production and use of remanufactured products (see the description of rules of origin in section III.A.) are expected to provide environmental benefits to both the United States and Australia.

VI. Potential Regulatory Impacts

Consistent with EO 13141 and its Guidelines, this review included consideration of the extent to which the FTA might affect U.S. environmental laws, regulations, policies and/or international commitments. Within the range of FTA obligations, those related to investment, services, SPS measures and TBT can have particular significance for domestic regulatory practices concerning the environment, health and safety. Previous environmental reviews, including the preliminary and final reviews for the Jordan, Chile and Singapore FTAs, have considered potential impacts on the U.S. regulatory regime with respect to all of these obligations and have found that the respective trade agreements were not anticipated to have a negative impact on U.S. legal or regulatory authority or practices. Further, the reviews noted the potentially positive impact that the FTAs could have on the U.S. environmental regulatory regime as a result of FTA commitments to effectively enforce U.S. environmental laws, not to weaken U.S. environmental laws to attract trade or investment and to ensure that U.S. environmental laws and policies provide for high levels of environmental protection.

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Based on this previous analysis, and assuming that the core obligations in these areas will be similar to those undertaken in the previous FTAs⁵, the Administration concluded that the FTA will not have a negative impact on the ability of U.S. government authorities to enforce or maintain U.S. environmental laws or regulations.

For a more in-depth analysis of general FTA commitments and their potential regulatory impacts in the United States, see the preliminary and final reviews for the Jordan, Chile and Singapore FTAs at <http://www.ustr.gov/environment/environmental.shtml>.

VII. ENVIRONMENTAL COOPERATION

The Trade Act of 2002 establishes that a principal negotiating objective of the United States is to strengthen the capacity of our trading partners to protect the environment through the promotion of sustainable development. In addition, the Trade Act instructs negotiators to seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to develop and implement standards for the protection of the environment and human health based on sound science. A Joint Statement on Environmental Cooperation was developed as a complement to the environmental provisions of the FTA.

The United States and Australia share common concerns and similar responsibilities for protecting and conserving the environment in their respective territory. The two governments have a common interest in promoting global environmental improvement and protection and in using science and technology to address environmental challenges. Australia and the United States have a long and productive history of bilateral cooperation, for example through the U.S.-Australia Climate Action Partnership and in areas such as botanic gardens, endangered species, meteorological and oceanographic research and management, whaling and ozone protection. The United States and Australia also have contributed to regional environmental cooperation in the South Pacific region in an effort to build capacity in the region to protect the environment. Both governments are members of the South Pacific Regional Environmental Program, the Asia-Pacific Economic Cooperation Forum and the Secretariat of the Pacific Community.

Through the Joint Statement on Environmental Cooperation, the United States and Australia express their recognition of the importance of recent and ongoing bilateral, regional and multilateral efforts and their intent to consult regularly both on the direction of ongoing cooperative activities and on areas for future cooperative efforts. Areas specifically identified for future bilateral cooperation include: national parks, wetlands, ocean management, conservation of Antarctic and sub-Antarctic ecosystems, biodiversity conservation, invasive

⁵ For information on FTAs, see the USTR website at <http://www.ustr.gov/new/fta/>.

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species and natural heritage management.

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ANNEX —Organizations Providing Comments

Comments on Scope for the Environmental Review (in response to 68 *Fed. Reg.* 12149)

Humane Society of the United States
Consumer Alert

Public Comments on the Interim Review (in response to 68 *Fed. Reg.* 75317)

CropLife America
Australian Conservation Foundation
Caterpillar Inc.