

# AUSTRALIA

## TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$11.9 billion in 2008, an increase of \$1.3 billion from \$10.6 billion in 2007. U.S. goods exports in 2008 were \$22.5 billion, up 16.9 percent from the previous year. Corresponding U.S. imports from Australia were \$10.6 billion, up 22.9 percent. Australia is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Australia were \$10.4 billion in 2007 (latest data available), and U.S. imports were \$5.9 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$26.6 billion in 2006 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$7.2 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was \$79.0 billion in 2007 (latest data available), up from \$68.5 billion in 2006. U.S. FDI in Australia is concentrated largely in the nonbank holding companies, manufacturing, and mining sectors.

## FREE TRADE AGREEMENT (FTA)

The United States-Australia FTA entered into force on January 1, 2005. Since then, the U.S. and Australian governments have met annually to address issues that have arisen under the FTA. Under the FTA, trade in goods and services as well as foreign direct investment have continued to expand. Under the FTA, more than 99 percent of U.S. exports of manufactured goods are now duty-free. The FTA will also eliminate tariffs within 10 years of entry into force on textiles.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam, intended to serve as a vehicle for Trans-Pacific economic integration. Shortly after the U.S. decision to join the negotiations, Australia, Peru, and Vietnam indicated their interest in participating as well.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

### Sanitary and Phytosanitary Measures

The Australian government maintains a stringent regime for the application of sanitary and phytosanitary (SPS) measures, which restricts imports of many agricultural products. The FTA created a forum for U.S. and Australian SPS authorities which has facilitated scientific cooperation and the resolution of specific bilateral animal and plant health issues between the two countries. The United States is continuing to seek access for a number of products including apples, stone fruit, raspberries, and fresh and frozen poultry meat. On apples, the New Zealand government requested the establishment of a WTO dispute panel in December 2007 to review Australia's import conditions for New Zealand apples, a case that raised many of the same issues as in the outstanding U.S. request to Australia for access of Pacific Northwest apples. Australian quarantine policies also effectively prohibit the importation of whole grain. More recently though, trial shipments of U.S. Dried Distillers Grain have been granted permission for importation.

## FOREIGN TRADE BARRIERS

Australia currently prohibits the importation of bovine products from countries that have reported one or more indigenous cases of Bovine Spongiform Encephalopathy (BSE). Such countries are classified by Australia as "Category D risk countries." In November 2007, Australia reported that, since it deems the United States to be a Category D country, it would not restore market access for U.S. beef products. The United States will continue to press Australia to provide full access for U.S. beef in accordance with the Organization for Animal Health BSE guidelines.

### **Biotechnology**

Australia has a detailed risk assessment-based regulatory framework for dealings with biotechnology. All foods with biotechnology-derived content of more than 1 percent must receive prior approval and be labeled. U.S. manufacturers and others in the supply chain find meeting these biotechnology food labeling requirements can be onerous, particularly for processed food, which accounts for a large share of U.S. agricultural exports. To date, biotechnology-derived cotton, carnations, and canola varieties are the only agricultural crops approved for commercial release into the environment. U.S. export opportunities for other biotechnology crops, especially feed grains such as whole corn and soybeans, are limited.

### **GOVERNMENT PROCUREMENT**

Australia is the only major industrialized country that is not a signatory to the WTO Agreement on Government Procurement. However, under the FTA, the Australian government opened its government procurement market to U.S. suppliers, eliminating discriminatory preferences for domestic suppliers and using fair and transparent procurement procedures.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Australia generally provides for strong IPR protection and enforcement. Australia has also been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA).

#### **Copyrights**

Australia amended its Copyright Act in December 2006 following extensive consultations with stakeholders and the new Act entered into force in 2007. The amended Act also implemented FTA provisions concerning circumvention of technological protection measures used in connection with the exercise of copyright. The United States is reviewing implementation of these new provisions, including exceptions provided for in the law, to ensure consistency with FTA requirements.

Locally replicated recordable DVDs (DVD-Rs), videocassettes copied from video compact discs (VCDs) and DVDs, illegally parallel-imported DVDs, and pirated VCDs continue to be the major threat to Australia's otherwise low rate of piracy of audiovisual materials. Pirated DVDs imported from Asia also are an emerging problem. The United States will continue to raise its concerns over these issues with Australia.

#### **Patent Protection**

Australia maintains a provision in its FTA implementation law that establishes, among other things, severe penalties for a rights holder who is found to provide a false certification regarding a patent enforcement action. Industry representatives claim that this provision, which is specific to the

## **FOREIGN TRADE BARRIERS**

pharmaceutical sector, poses a disincentive for patent holders who are considering whether to defend their patent rights through legal action.

### **Trademarks and Geographical Indications**

In 2008, Australia began a review of penalties and additional damages in its Trademark Act. The United States will monitor these deliberations to ensure that proposed amendments are consistent with FTA obligations.

## **SERVICES BARRIERS**

### **Telecommunications**

The Australian government has reduced its equity share in Telstra to 17 percent, reducing concerns about its conflicting roles as regulator and owner of the dominant operator. The United States remains concerned, however, about foreign equity limits in Telstra, which are still capped at 35 percent. U.S. industry remains concerned about the ability of Telstra to abuse its monopoly power and its aggressive use of litigation to delay regulatory outcomes. Alleged abuses include delays in making an acceptable public offer for access to its network and inflated pricing of wholesale services such as leased lines and interconnection with both its fixed and mobile network. Up to 40 disputes with competitors over access to Telstra's network are reportedly subject to ongoing regulatory or judicial proceedings.

In 2006, the Australian government rejected a proposal by Telstra to raise significantly certain network access rates. Final decisions remain to be taken on such rates and the access Telstra will provide when it introduces its "Next Generation Network" over the next three years to five years. The United States will continue monitoring developments to ensure that Telstra's introduction of a new network architecture does not undermine the ability of competitors to obtain reasonable access to services and customers where Telstra is dominant. The United States also will monitor the planned National Broadband Network to ensure that competitors are able to obtain reasonable access to services and customers.

### **Audiovisual Trade Barriers**

Under the FTA, existing requirements on Australian local content remained, but the agreement limited or prohibited their extension to other media or means of transmission. Australia maintains strict domestic content requirements on all free-to-air television programming broadcast between 6:00 a.m. and midnight. Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend 10 percent (with the FTA allowing flexibility, under certain circumstances, to increase this up to 20 percent) of their programming budgets on new Australian drama programs. Australian radio industry quotas require that up to 25 percent of all music broadcast between 6:00 a.m. and midnight be "predominantly" Australian in origin/performance.

### **Media**

Foreign investment in the media sector, irrespective of the share, is subject to prior approval by the Treasurer. A 2006 law opened up two reserved digital channels for new digital services such as mobile television or new in-home services, permitted commercial free-to-air television stations to broadcast one standard definition multi-channel from 2009, and allowed full multi-channeling no later than the time of the digital switchover (2010-2012). It also relaxed restrictions on cross-media ownership, with some restrictions in smaller media markets.

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## **INVESTMENT BARRIERS**

Pursuant to Australia's Foreign Investment Law, its Foreign Investment Review Board (FIRB) screens in advance potential foreign investments in Australia above a threshold value of A\$50 million (\$34 million). The FIRB may deny approval of particular investments above that threshold on national interest grounds, although it rarely has done so. The FTA, however, exempts all new "greenfield" U.S. investments from FIRB screening. The FTA also raised the threshold for screening of most U.S. acquisitions of existing investments in Australia from A\$50 million (\$34 million) to A\$800 million (\$540 million) (indexed annually).

## **OTHER BARRIERS**

### **Commodity Boards and Agricultural Support**

The Australian government recently liberalized exports of bulk wheat, having previously liberalized exports of containerized wheat. The Australian Wheat Board (AWB) traditionally held the monopoly export rights for all bulk wheat exported from Australia. The export of bulk wheat from Australia is now monitored by a new government body called Wheat Exports Australia. Bulk exports, although now liberalized, must obtain a license from this body prior to shipment. Numerous grain exporters, including AWB, are now licensed to export under the new system.

### **Pharmaceuticals**

The FTA addressed transparency and certain regulatory concerns and established an independent review process for innovative medicines. The FTA also established a Medicines Working Group that has helped facilitate a constructive dialogue between the United States and Australia on health policy issues. U.S. industry continues to seek the right to submit for review drugs that have been accepted for some indications but rejected for others.

### **Blood Plasma Products and Fractionation**

Foreign companies face substantial barriers to the provision of blood plasma products in the Australian market. While foreign blood products may be approved for sale in Australia, the monopoly contract granted by the Australian government to an Australian company makes it virtually impossible for foreign firms to sell their products in Australia except to fill shortages or provide products not otherwise available in Australia. In late 2006 Australia completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. Although the Australian government recommended that states adopt the tendering process prescribed in the Government Procurement chapter of the FTA, state health ministers in March 2007 decided to retain the current monopoly arrangement.

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