

Summary of Key Outcomes of the Australia-US Free Trade Agreement

This summary is based on the material available on the websites of the Department of Foreign Affairs and Trade (DFAT) and the Office of the United States Trade Representative (USTR). There are important differences in terms of the detail and the emphasis between the two sites. Until the text of the agreement becomes available, which probably won't happen for several months, it is not possible to offer a more comprehensive assessment of the Free Trade Agreement (FTA).

Investment

US investment in new businesses will be exempt from screening. The threshold for national interest screening of proposed US acquisitions has been raised from \$50million to \$800m, except for:

- telecommunications, transport and defence-related industries, where the threshold remains \$50m
- urban land, media, and investment by governments, which will continue to be screened regardless of the value of any particular investment.

The USTR estimates that had the \$800m threshold operated over the last three years, 90% of US investment in Australia would have fallen outside the screening scope of the Foreign Investment Review Board.

While the FTA will have a dispute-settlement mechanism, unlike the North American Free Trade Agreement it will not allow for investor-activated or investor-state disputes.

Agriculture

Australia has made no gains in sugar access.

Quota restrictions on beef will be phased-out over 18 years, though in-quota tariffs disappear from the date the FTA comes into effect. Quota increases won't take effect until US beef production returns to its 2003 (before the mad cow disease scare) level, or three years after the date of agreement, whichever happens first. Over-quota duties remain until year 9 of the FTA and are then phased-out over a further nine years.

However, the USTR states that a price-based safeguards mechanism will be available after the transition period, and the mechanism will be “sensitive to market disruptions for high quality beef.” A safeguard mechanism will also operate in the event of significant price-decreases for certain Australian horticultural imports to the US.

DFAT says there will be a three-fold increase in tariff quota dairy products from year 1, with an ongoing rise in quotas at the average yearly rate of 5%. The deal includes certain cheese, butter, milk, cream, and ice cream products that were previously excluded from the US market.

The USTR states that the increase in Australia dairy imports will be equivalent to about 0.17% of US dairy production, and 2% of the current value of total US dairy imports. The increased imports “are not expected to affect the operation of the Commodity Credit Corporation’s dairy price support program” and there will be no change in over-quota tariffs.

Both DFAT and the USTR hail the outcome of the agreement for the elimination of tariffs on other products such as lamb, oranges, cotton seeds, cut flowers, soybeans, fresh and processed fruits, vegetable and nuts, alcohol and processed food products such as soups. The USTR says all US agricultural exports to Australia, valued at \$400m, will receive duty-free access to Australia as at the date of effect of the FTA.

Manufactured Goods

97% of Australia manufacturing exports to the US will be duty free from the date of effect of the FTA, as will 99% of US manufacturing exports to Australia. Manufactured goods account for 93% of total US exports to Australia. US manufacturers estimate the exports gains to them as a result of the FTA to be \$US2 billion per annum.

DFAT states that tariffs on textiles, some footwear and “a handful of other items” will be phased out by 2015. In addition to each country retaining their anti-dumping and countervailing measures, there will be a special transitional safeguard measure for textiles and clothing.

Tariffs on car components and commercial vehicles will be eliminated from the date of effect of the agreement. Australian passenger vehicle tariffs will be phased out by 2010.

DFAT states that the rules of origin will use a test as to whether products which include imported inputs are substantially transformed in the US or Australia, to the extent that the product changes tariff classification. Where this is difficult to demonstrate, an alternative or additional local content test will apply. Further, USTR says that textile and apparel tariffs will phase-out over a maximum of 15 years for goods that meet the FTA's yarn-forward rule of origin.

Audio-Visual Services

DFAT states the FTA protects local content requirements, including capacity to set requirements for new and emerging media and to go beyond existing measures for subscription television formats, such as drama, children's programming, and documentaries.

Nevertheless, according to the USTR the FTA contains "important and unprecedented provisions to improve market access for US films and TV programs over a variety of media including cable, satellite, and the internet."

Pharmaceuticals

DFAT states that while the PBS procedures will be changed to provide for greater transparency, speedier decision-making, and more opportunities for input from interested companies, the price of prescriptions will not increase as a result of the FTA.

The USTR states that the parties have agreed on the importance of innovation and research and development in pharmaceuticals, and the need to recognize the value of innovative pharmaceuticals and to have procedures that appropriately value the objectively demonstrated therapeutic value of a pharmaceutical. To implement these principles there will be provision for an independent review of PBS determinations of product listings, and other changes to enhance the transparency and accountability of the PBS.

DFAT also advises that the marketing approval process of the Therapeutic Goods Administration will ensure that generic manufacturers do not enter the market before a patent expires, and that notice will be given to a US patent-owner where a generic manufacturer seeks to enter the market on the grounds that the patent is invalid.

Government Procurement

US federal government contracts over \$US6,725, 000 in construction and over \$US 58,550 in other sectors will be open to Australian companies. The US federal procurement market is estimated to be worth \$200 billion and Australia will join a list of over 80 countries able to compete for contracts.

DFAT states that most US state government purchases will also be open to Australian firms, while the USTR says that the extent of access at the state and territory level will be finalised over the next few weeks.

DFAT states that Australian procurement preferences for small business and indigenous people will remain. USTR states that the Commonwealth Government will eliminate industry development programs that require suppliers to meet local content or local manufacturing requirements.

Services

There is little detail about the outcome for a range of service sectors. However, it appears that, at least for education services and legal services, the FTA will require Australia to treat American owned service providers operating in Australia as favourably as Australian providers, except with respect to subsidies and grants.

Labour and Environment Standards

The USTR states that there are statements in the FTA about ILO obligations and the need for high levels of environment protection. However, according to DFAT the only provisions that are enforceable through the agreement's dispute-resolution mechanism are those to the effect that neither party shall fail to enforce domestic labour and environmental laws to achieve a trade advantage.

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