

March 12, 2004

The Honorable George W. Bush
President of the United States
1600 Pennsylvania Avenue, NW
Washington D.C. 20500

Dear Mr. President:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) on the U.S. - Australia Free Trade Agreement, reflecting the main and dissenting opinions of the ACTPN on the proposed agreement.

The ACTPN, with one exception, endorses the U.S. – Australia Free Trade Agreement (the FTA). We believe the agreement meets the negotiating objectives laid out in the Trade Act of 2002, and believe it to be strongly in the best economic interest of the United States. We also believe the FTA is a state-of-the-art agreement that not only will benefit the U.S. and Australian economies and employment opportunities, but also will provide a strong base on which to construct additional bilateral or regional agreements. It will eliminate Australian tariffs on virtually all U.S. manufactured goods immediately upon implementation, which is an extremely important achievement given that manufactured goods comprise over 90 percent of U.S. exports to this very important market.

The FTA should be enacted into law as soon as possible, so American farms, factories, services providers, and consumers can begin to receive the benefits of this agreement at the earliest possible date.

All ACTPN members concur with this recommendation and with the report of the ACTPN except for the representative of the International Brotherhood of Teamsters, whose dissenting views are included at the end of the main report.

Sincerely,

Bill Frenzel
Chairman
Advisory Committee for Trade Policy and Negotiations

The U.S. – Australia Free Trade Agreement (FTA)

**The Report of the
Advisory Committee
for Trade Policy and Negotiations
(ACTPN)**

March 12, 2004

**The Advisory Committee
for Trade Policy and Negotiations (ACTPN)**

**Report to the President, the Congress,
and the United States Trade Representative on the**

U.S.- Australia Free Trade Agreement

I. Preface

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(I) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement. Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations must include an advisory opinion as to whether, and to what extent, the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002.

Pursuant to these requirements, the Advisory Committee for Trade Policy and Negotiations hereby submits its report.

II. Executive Summary of Committee Report

The ACTPN, with the exception of the representative of the International Brotherhood of Teamsters, believes the U.S.- Australia Free Trade Agreement (FTA) meets the negotiating principles and objectives laid out in the Trade Act of 2002, and believes the FTA is strongly in the interest of the United States. It will level the playing field and will provide increased market access for American goods and services in Australia. In this regard, it is particularly notable that virtually all Australian tariffs on U.S. manufactured goods, which comprise over 90 percent of U.S. exports to Australia, will be eliminated the instant the agreement goes into effect – an unprecedented negotiating accomplishment.

All U.S. farm exports to Australia will receive immediate duty-free access, though market access gains also depend upon resolution of sanitary and phytosanitary issues. Australia will also provide substantial across the board access for U.S. services providers. Finally, the ACTPN notes that the agreement will provide lower-cost U.S. producer and consumer access to Australian goods and services, and will do so in a manner that does not disrupt the U.S. economy. Significant transition and adjustment times have been built into the agreement for sensitive products.

The agreement builds on and in many ways improves upon the recently-implemented free trade agreements with Chile and Singapore. It will advance the expansion of trade and economic relations between Australia and the United States.

It continues the innovation of including dispute settlement provisions that provide the option of utilizing monetary fines when enforcement is needed, therefore reducing the need to resort to trade restrictions that can cause significant trade dislocations when used as enforcement mechanisms. The agreement provides for new consultation mechanisms to expand possibilities for improving trade cooperation and heading off disputes. These include cooperation in addressing technical barriers to trade.

The FTA incorporates labor and environmental protections into the body of the agreement, requiring both parties to enforce their domestic environmental and labor laws, and these obligations are enforceable through the agreement's dispute settlement procedures.

Additionally, the FTA makes significant advances in protecting intellectual property, expediting the processing of customs, and providing access for U.S. companies to a considerable part of Australia's government procurement market, an important accomplishment since Australia is not a signatory to the WTO Government Procurement Agreement.

The agreement also opens services markets. Using a "negative list" approach, only a few services are not opened to U.S. providers. The agreement is highly advanced in the new technology areas of supplying services through electronic means.

All but one member of the ACTPN believe that the vast bulk of this agreement is outstanding, that it is very strongly in the U.S. economic interest, and that it should be adopted quickly. The dissenting view of the representative of the International Brotherhood of Teamsters is included at the end of the ACTPN's main report.

III. Description of the Committee

The Advisory Committee for Trade Policy and Negotiations (ACTPN) is the U.S. government's senior trade advisory panel. It was established to provide the U.S. Trade Representative with policy advice on: (1) matters concerning objectives and bargaining positions of proposed trade agreements; (2) the implementation of trade agreements once they are in force; and (3) other matters arising in connection with the trade policy of the United States. The ACTPN provides an overview of trade policy and issues. Advice on matters affecting individual sectors or policy areas is expected to be provided by several Policy Advisory Committees in the areas of agriculture, non-Federal governments, labor, environment, and the Industry Sector Advisory Committees (ISACs), and Industry Functional Advisory Committees (IFACs).

In keeping with its broad charter, the membership of the ACTPN is representative of key economic sectors affected by trade. Members are drawn from business, industry, labor, agriculture, small business, service industries, retailers, and consumer interests. The membership of the ACTPN is appended to this report.

IV. Advisory Committee Opinion on Agreement

The ACTPN (or “the committee”), with the exception of one dissenting member, endorses the U.S. – Australia Free Trade Agreement (the FTA or “the agreement”) as negotiated by the President’s U.S. Trade Representative. Our report draws on the views of all ACTPN members, representing a broad spectrum of trade-related industries and interests.

We believe the agreement strongly promotes the economic interests of the United States and meets the negotiating objectives set forth in the Trade Act of 2002. The dissenting view is set forth at the end of this report.

Australia is the 10th largest market for U.S. merchandise exports (counting the European Union as a single market). Two-way annual trade with Australia is about \$28 billion, and Australia provides the largest trade surplus that the United States has with any country in the world. Australia is a high-income country, whose \$27,000 per capita income places it among the world’s leaders. Australia and the United States already have a wide-ranging trade and economic relationship that includes \$36 billion of U.S. investment in Australia and \$24 billion of Australian investment in the United States.

Australia’s largest supplier, however, is not the United States, but the European Union. U.S. companies also face stiff competition in the Australian market from Japanese, Korean, and other suppliers. The virtually complete elimination of Australian tariffs on U.S. industrial production that occurs immediately on implementation of the agreement will give U.S. producers a strong competitive advantage in the Australian market, particularly vis-a-vis third country suppliers to the Australian market.

We believe the FTA will substantially improve market access in Australia for American goods and services, though agricultural access will depend significantly on resolving outstanding sanitary and phytosanitary issues. We believe the agreement will expand two-way trade opportunities and will benefit employment and living standards in both countries. We further believe the agreement will enhance the already extremely strong Australian commitment to economic openness and contribute even further to the already warm and close political and strategic relationship between Australia and the United States, as well as to the breadth of the inter-relationship among the peoples of the two countries.

The committee also believes that the economic interests of the United States are advanced on the import side of the agreement. Consumers will benefit from trade liberalization, and the staging of U.S. liberalization has taken account of the need of sensitive sectors to adjust to the reduction and eventual elimination of trade barriers to Australian goods and services.

The ACTPN’s more detailed views on salient parts of the agreement follow. Our principal concern is timing. We urge the Administration and the Congress to act expeditiously so that the agreement may come into effect as soon as possible.

Consumer and Industrial Products -- Market Access -- The ACTPN believes that the provisions on trade in goods achieve the Trade Act's market access goals. We particularly applaud the fact that over 99 percent of U.S. exports of consumer and industrial goods to Australia will become totally duty free as soon as the agreement goes into effect.

That is an unparalleled accomplishment, and one that serves as a shining example of what is possible. Manufactured goods comprise over 90 percent of U.S. merchandise exports to Australia, making this outstanding achievement particularly important to U.S. market access. These gains are reinforced by improved transparency and efficiency in administering customs procedures, including measures for facilitating express delivery shipments – which are an important means of exporting for smaller and medium-sized firms.

Additionally, the agreement contains provisions for reinforcing the World Trade Organization (WTO) Technical Barriers to Trade (TBT) agreement and for promoting improvements in bilateral implementation of the TBT agreement. The ACTPN also is very pleased that duty drawback and deferral programs were retained in this agreement for the exporters of both countries.

Agriculture -- The trade impact of this agreement on U.S. agriculture is more limited. The ACTPN welcomes the fact that all U.S. agricultural exports to Australia will receive duty-free access immediately upon implementation of the agreement. Gains for U.S. farm products, though, will also depend upon resolving outstanding sanitary and phytosanitary issues, not just on tariff removal. The agreement takes account of sensitive sectors, including permanent tools available for dealing with the possibility of market disruptions.

The agreement addresses sanitary and phytosanitary (SPS) issues and establishes a special working mechanism for bilateral cooperation and closer mutual engagement in regulatory processes with a view toward greater reliance on science-based measures. The agreement calls for an SPS working group that will be established after the agreement comes into force. We are pleased that these mechanisms are included to minimize unnecessary disruptions to trade and provide a means for resolving SPS disputes before further measures are needed. However, the ACTPN remains concerned about the outstanding SPS import risk assessments that are still not completed on a number of important products. Increases in U.S. farm exports to Australia will depend heavily on the use of science-based SPS risk assessments.

U.S. agriculture recognizes that the best gains are to be achieved through the multilateral negotiations. We encourage the Administration to continue its efforts in the World Trade Organization Doha Development Agenda negotiations to advance U.S. agricultural interests.

Services -- The ACTPN is pleased that the services commitments cover both the cross border supply of services and the right to invest and establish a local service presence. The ACTPN is especially pleased with the breadth of the sectors accorded substantial market access under the agreement's "negative list" approach. It is the ACTPN's belief that the agreement will provide substantial opportunities for U.S. business in the services sector.

As Australia's financial services market was already quite open, the agreement's major service industry gains are in other sectors. A major accomplishment was obtaining important provisions for market access for U.S. films and television programs over multiple media.

E-commerce -- The e-commerce and digital products provisions meet the ACTPN's objectives and provide state-of-the-art recognition of the increased importance of this issue with regard to global trade and the principle of avoiding barriers that impede the use of e-commerce. The ACTPN finds the e-commerce provisions and the liberal treatment of services in this agreement especially important for ensuring future U.S. market access in these critical growth areas. The committee draws particular attention to the fact that the FTA establishes guarantees of non-discrimination and a binding prohibition on customs duties on products delivered electronically, and creates a favorable environment for the development of increased e-commerce.

Investment -- The ACTPN believes the investment provisions of the agreement improve the access for U.S. investors. A significant concern has been the Australian government screening provisions that could restrict or prevent U.S. firms from investing in Australia. The agreement excludes all new ("greenfield") investment from screening, and increases the screening threshold for other investments from the previous level of A\$50 million to A\$800 million. The ACTPN notes the absence of investor-state dispute settlement provisions. The agreement does provide for revisiting this issue if circumstances change, and the committee urges that the U.S. government ensure close contact with U.S. industry in this regard.

Intellectual Property Rights (IPR) -- The ACTPN applauds the state-of-the-art IPR provisions in the Australia agreement. The protection of patents, trademarks, geographic indicators, internet domain names and copyrighted works improves on the already impressive levels of protection in earlier FTAs. The ACTPN also commends the strong IPR enforcement mechanisms and penalties' provisions, particularly the criminalization of end-user piracy and Australia's guarantees of authority to seize and destroy not only counterfeit goods but also the equipment used to produce them. The committee wishes to stress the importance of full IPR protections including those for trademarks and stresses its full support for the excellence of the agreement in this respect.

Customs Procedures and Rules of Origin -- The ACTPN endorses the customs chapter of the agreement. The specificity of obligations with regard to customs procedures, coupled with the commitments to information sharing to combat illegal trans-shipment of goods and facilitate express shipment, maintain a high standard. Steps to ensure transparency and efficiency are also included. The agreement also provides that the release of goods should be accomplished quickly -- and within 48 hours to the extent possible. Without commenting specifically on products within individual industry sectors, the ACTPN nevertheless urges that all FTAs include rules of origin that balance the desirability of promoting the sourcing of raw materials within the relevant territory with rules that permit U.S. businesses the flexibility and opportunity to take full advantage of the agreement.

Government Procurement -- The ACTPN is pleased with the provisions on government procurement, which provide U.S. firms competitive entry to Australian central government entities. Australia is not a signatory to the WTO Government Procurement Agreement, meaning these advantages are not available to competitors in the Australian market. Importantly, Australia will no longer apply to U.S. firms provisions for local manufacturing or local content requirements. Australia will also restrict its use of selective tendering provisions, which will improve U.S. suppliers' ability to compete fairly for government contracts.

Labor Provisions -- The ACTPN, with one exception, believes the FTA fully meets the labor objectives in the Trade Act of 2002, and believes the text of the agreement provides an effective and balanced means of implementing the negotiating objectives for labor. The labor provisions meet the Trade Act's requirements while still providing strong assurances that the provisions cannot be used as a means of disguised protectionism. After lengthy debate the Congress decided that dispute settlement in labor matters should be limited to failure to enforce existing laws. The ACTPN believes the FTA faithfully implements that requirement.

The representative of the International Brotherhood of Teamsters disagrees, and opposes the labor language in the agreement. He stresses that he cannot, therefore, support the agreement itself. His complete view is appended to the ACTPN report as a dissenting opinion.

Environmental Provisions -- The ACTPN endorses the environmental provisions of the FTA and believes they provide effective and creative ways of contributing to environmental improvement. The streamlined nature of the environmental provisions of this agreement recognizes that both countries have highly developed economies and a history of significant, positive, environmental regulation. However, given the country-specific conditions that support streamlining, these provisions should not be used as a model for all agreements. We also note that concern has been expressed by some non-government organizations about the environmental impact of the sugar carve-out, given the impact of sugar production on sensitive environmental resources in the United States.

The agreement meets the requirements of the Trade Act of 2002 by requiring in an enforceable manner that neither country shall fail to enforce its environmental laws in a manner that could affect trade. It is important that the agreement extends obligations on environmental laws at the state and territory level, for that is the level at which much environmental regulation takes place.

Dispute Settlement -- The ACTPN believes that effective dispute settlement provisions are essential to ensure that trade agreements are actually implemented and enforced. These provisions must permit timely and effective resolution of disputes and application of enforcement mechanisms to provide an adequate incentive for compliance when needed. Suspension of tariff benefits under the agreement is available for all disputes, including disputes over enforcing labor and environmental laws, as a last resort -- but there is a clear preference that fines be used for all disputes where consultation fails to resolve matters.

The ACTPN views this as a particularly good feature in bilateral trade agreements, since no bilateral agreement can override the parties' World Trade Organization (WTO) commitments – e.g., the maximum U.S. trade retaliation could only be a snap-back to its WTO tariff levels. As the average U.S. WTO tariff world-wide is only 1.6 percent, fines are a potent – and non trade-distorting -- alternative.

The ACTPN wants to stress that trade retaliatory measures should be taken as a last resort, for they have the capability of interfering with trade and causing considerable economic disruption. The committee also believes that the best way to deal with trade disputes is through consultation and mutual understanding, and expresses its support for the excellent provisions in the FTA that seek such amicable resolution of disputes. The agreement also sets high standards of openness and transparency for panel procedures, including provisions allowing interested third parties to provide their views.

The ACTPN, save for the dissenting view included at the end of this report, believes that the dispute resolution provisions fully meet the requirements of the Trade Act of 2002, and that they provide equivalent enforcement for all parts of the agreement – including the new labor and environmental provisions. The committee endorses the dispute settlement provisions and considers them to advance the state-of-the-art in trade agreements.

James P. Hoffa
General President, International Brotherhood of Teamsters
Dissenting Views on the U.S.-Australia Free Trade Agreement

The International Brotherhood of Teamsters opposes the labor language included in the U.S.-Australia Free Trade Agreement (FTA) and, therefore, cannot lend its support for the agreement itself.

The language in the U.S.-Australia FTA, modeled after the workers' rights provisions contained in the Chile and Singapore FTAs, is insufficient to ensure that core labor standards will be respected in Australia. The agreement only requires the Australian government to enforce the labor laws they have, no matter how inadequate those laws may be. While Australia is a developed country with a relatively high standard of living and a vibrant, independent labor movement, it has an imbalanced, inadequate system of labor laws that fail to fully protect workers' core rights. Like the U.S., Australia has a federal legal system with various laws covering labor issues at the national and sub-national levels. But Australia's federal labor laws are far from comprehensive, leaving significant gaps in legal guarantees for workers' rights that are filled only partially, if at all, by the labor laws of Australia's states and territories and by common law.

There are, for example, no federal laws in Australia prohibiting forced labor, setting a minimum age for employment, or prohibiting forced or bonded labor by children. Australia has not ratified ILO Convention 138 establishing a Minimum Age for Employment, nor Convention 182 on the worst forms of child labor. While technical discussions are continuing between the Federal Government and the State and Territory Governments, there is no timetable for ratification of either of these Conventions. In terms of the issues covered in ILO Convention 182, the Australian Government has refused to make any commitments to ensuring effective collection, monitoring and analysis of data related to the "worst forms of child labor."

In addition, the federal laws that do exist on labor relations have been criticized by the U.S. State Department, the International Confederation of Free Trade Unions (ICFTU), and the International Labor Organization (ILO) for failing to fully protect workers' freedom of association and their right to organize and bargain collectively.

Australia's Labor Laws Fail to Protect Workers' Right to Join a Union -- The fact is that Australia's Federal Workplace Relations Act (WRA) allows employers to choose a union to bargain with before it has even employed any workers, through "greenfield" agreements. These agreements can last for up to three years, effectively denying workers the right to choose their own bargaining representative for that length of time.

The ILO criticized this provision in 1998 and again in 2000, and requested that the Australian government review and amend their labor laws to eliminate this problem. According to the ICFTU, the WRA also makes it much harder for unions to get into workplaces to organize workers, further depriving workers of their ability to freely join the union of their choosing.

In addition, the WRA undermines the ability of a majority-supported union to represent all of the members in a bargaining unit by abolishing closed shops and union demarcations. These provisions deprive majority-supported unions of the ability to reach closed-shop agreements or use demarcation tools to maintain bargaining power on behalf of their members, and could foster the proliferation of small, competing unions within the workplace. The State Department calls these provisions “the primary curb on union power” in Australia.

Australia’s Labor Laws Fail to Protect Against Anti-Union Discrimination -- The WRA also provides workers only partial protection from anti-union discrimination, in violation of ILO Convention 98. The Act gives regulators wide latitude to exclude whole categories of workers – including contract workers, casual workers, or workers paid above a specified salary – from the Act’s most comprehensive protections against dismissal based on trade union activities. These excluded workers may enjoy some more limited protections against anti-union discrimination in other sections of the Act, but these protections fall short of those required by the ILO.

Australia’s Labor Laws Undermine Collective Bargaining -- Separately, the WRA law allows employers to conclude individual “Australian Workplace Agreements” (AWAs) with their employees, and privileges these agreements over collective bargaining agreements. AWAs are less regulated than collective agreements and easier to file, yet they can cover all of the conditions of employment and are fully enforceable. The AWAs take primacy over federal awards and over any subsequent collective agreement in the workplace. This creates an incentive for employers to conclude AWAs with their workers in order to avoid being bound by a collective agreement, and the ICFTU reports that employers are using the law to undermine collective bargaining. In 2000, the ILO found that these AWA provisions “do not promote collective bargaining as required under Article 4 of [ILO] Convention [98],” and recommended amendments to the WRA to bring Australia into compliance with international standards on the right to bargain collectively.

While AWAs are supposed to meet working condition standards comparable to those in their sectors, the content of AWAs is in fact confidential, making it very difficult for unions to ensure this requirement is met. The ICFTU reports that Australian Bureau of Statistics figures show most AWA workers being paid \$100 - \$193 (Australian dollars) less a week than workers doing similar work under collective bargaining agreements. The State Department reports that 290,029 AWAs have been approved since the new labor law came into effect in 1997.

Australian law also impermissibly restricts the subjects of collective negotiation by not allowing parties to bargain over strike pay. The ICFTU has criticized this provision, and in 1998 and 2000 the ILO recommended amendments to this provision in order to bring Australia up to international standards on the right to bargain collectively.

Australia's Labor Laws Undermine Workers' Right to Strike -- In Australia, a worker can be subject to common law court claims and onerous personal damages for strike activities unless Australian law explicitly protects those activities. The WRA only protects some categories of strike activity, thus penalizing workers engaging in other industrial actions and undermining workers' right to strike as it the ILO has defined it. Workers striking over a multi-employer agreement, strike pay, demarcation issues, or economic and social interests outside of the direct employer-employee relationship enjoy no protection from common law liability. This lack of protection effectively limits the permissible subjects of strike activity, a violation of workers' rights under ILO Conventions 87 and 98. In 2003, the ILO recommended Australia fix this violation by amending its laws on the right to strike.

In addition, Australia's Crimes Act forbids strikes in services that are declared by the government to be "prejudicing or threatening trade or commerce." Boycotts that obstruct government delivery of services or the transport of goods or persons in international trade are also prohibited. The WRA also allows the Industrial Relations Commission to suspend a strike that threatens to cause significant damage to the economy. These prohibitions go far beyond the limited exception to the right to strike for essential services recognized by the ILO, and the ILO recommended amending these provisions in 2003. These provisions, by protecting employers engaged in international trade from legal industrial actions, undermine Australian workers' right to strike for better wages and working conditions in precisely those sectors where American workers will face more direct competition under the U.S.-Australia FTA.

The USTR Failed to Protect U.S. and Australian Workers -- The U.S. Trade Representative had the ability to include meaningful and enforceable commitments to the core workers' rights outlined in the International Labor Organization 1998 Declaration on Fundamental Principles and Rights at Work in the U.S.-Australia Free Trade Agreement, but failed to do so.

Without a binding obligation to meet these core labor standards, this Free Trade Agreement will only allow the serious flaws in Australia's labor law system to continue to go unremedied, to the detriment of both American and Australian workers, and to the credit of the USTR. The International Brotherhood of Teamsters, on behalf of its 1.4 million members, will therefore refrain from supporting the U.S.-Australia Free Trade Agreement.

Membership:

Advisory Committee for Trade Policy and Negotiations (ACTPN)

Name	Organization
Bernard W. Aronson	ACON Investments, LLC
Paul Norman Beckner	Citizens for a Sound Economy
JoAnn Brouillette	Demeter
Melinda S. Johnson Bush	HRW Holdings, LLC
Jill M. Considine	The Depository Trust and Clearing Corp.
Edward C. Emma	Jockey International, Inc.
George B. Fitch	Mayor, City of Warrenton, VA
William E. Frenzel	The Brookings Institute
Robert E. Grady	The Caryle Group
Michael Goldstein	Toys R@Us Children's Fund
Frank H. Habicht	Global Environment & Technology Foundation
Peter Hanna	Hanna Steel Corporation
Walter B. D. Hickey Jr.	Hickey Freeman Company, Inc.
James Philip Hoffa	International Brotherhood of Teamsters
Jerome J. Jasinowski	National Association of Manufacturers
Fisk Herbert Johnson	SC Johnson & Son, Inc.
Hersh Kozlov	Wolf, Block, Schorr and Solis-Cohen LLP
Charles E. Kruse	Missouri Farm Bureau
Luis A. Lauredo	Hunton & Williams, LLC
Larry A. Liebenow	Quaker Fabric
James W. Morrison	Small Business Exporters Association
Thomas D. Mottola	Sony Music Entertainment
Grace E. Andrews Nichols	Victoria's Secret Stores
Samuel J. Palmisano	IBM Corporation
Edward J. Perkins	University of Oklahoma
Kevin B. Rollins	Dell Computer Corporations
Steven R. Rogel	Weyerhaeuser
Jean-Pierre C. Rosso	CNH Global
John G. Rowland	Governor, State of Connecticut
Hector Ruiz	Advanced Micro Devices
Rodolphe M Vallee	R.L. Valle, Inc.
Morgan Y. Wang	Angeles Optics, Inc.
Margaret C. Whitman	eBay, Inc.
Wythe W. Willey	National Cattlemen's Beef Association