

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$17.3 billion in 2011, up \$4.1 billion from 2010. U.S. goods exports in 2011 were \$27.5 billion, up 26.2 percent from 2010. Corresponding U.S. imports from Australia were \$10.2 billion, up 19.3 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 \$13.2 billion in 2010 (latest data available), and U.S. imports were \$5.6 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$38.3 billion in 2009 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$12.6 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was \$134.0 billion in 2010 (latest data available), up from \$109.8 billion in 2009. U.S. FDI in Australia is led by the finance and insurance, nonbank holding companies and mining sectors.

FREE TRADE AGREEMENT

The United States-Australia Free Trade Agreement (AUSFTA) entered into force on January 1, 2005. Since then, the U.S. and Australian governments have continued to closely monitor FTA implementation and discuss a range of FTA issues. Under the AUSFTA, trade in goods and services and foreign direct investment have continued to expand, and more than 99 percent of U.S. exports of consumer and industrial goods are now duty free.

In December 2009, the United States announced its intention to enter into an Asia-Pacific trade agreement called the Trans-Pacific Partnership (TPP), with the objective of shaping a high standard, broad-based regional agreement. This agreement will create a potential platform for economic integration across the Asia-Pacific region, a means to advance U.S. economic interests with the fastest-growing economies in the world, and a tool to expand U.S. exports, which are critical to U.S. economic recovery and the creation and retention of high-paying, high-quality jobs in the United States. In addition to Australia, the TPP negotiating partners currently include Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. Japan, Canada, and Mexico also have expressed interest in joining the negotiations.

GOVERNMENT PROCUREMENT

Australia is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement. Under the AUSFTA, the Australian government opened its government procurement market to U.S. suppliers, eliminating discriminatory preferences for domestic suppliers and committing to use fair and transparent procurement procedures.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Australia generally provides strong intellectual property rights (IPR) protection and enforcement through legislation that, among other things, criminalizes copyright piracy and trademark counterfeiting.

Under the AUSFTA, Australia must notify the holder of a pharmaceutical patent of a request for marketing approval by a third party for a product claimed by that patent. U.S. and Australian pharmaceutical companies have raised concerns that unnecessary delays in this notification process restrict their options for action against third parties that would infringe their patents if granted marketing approval by the Australian Therapeutic Goods Administration.

Australia was an active participant in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations and signed the ACTA in October 2011. The ACTA establishes an international framework that will assist Parties in their efforts to effectively combat the infringement of intellectual property rights (IPRs), in particular the proliferation of counterfeiting and piracy, which undermines legitimate trade and the sustainable development of the world economy.

SERVICES BARRIERS

Audiovisual Services

The AUSFTA limits or prohibits the extension of preexisting Australian-content requirements to other media or means of transmission. Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend 10 percent of their programming budgets on new Australian drama programs. This local content requirement does not apply to new digital multi-channels.

The Australian Content Standard of 2005 requires commercial television broadcasters to produce and screen Australian content, including 55 percent of transmission between 6:00 a.m. and midnight. In addition, there are specific minimum annual sub-quotas for Australian (adult) drama, documentary, and children's programs. A broadcaster must ensure that Australian-produced advertisements occupy at least 80 percent of the total advertising time screened in a year between the hours of 6:00 am and midnight, other than the time occupied by exempt advertisements, which include advertisements for imported cinema films, videos, recordings and live appearances by overseas entertainers, and community service announcements.

In 2011, the Australian government launched a convergence review on whether local content rules should be extended to convergent media platforms (*e.g.*, computers or smart phones) or replaced with a subsidy model. The Convergence Review Committee will publish a final report in March 2012. USTR will work to ensure that policies implemented in the wake of the review are consistent with Australia's trade obligations.

Radio

The Australian commercial radio industry Code of Practice sets quotas for the broadcast of Australian music on commercial radio. The code requires that up to 25 percent of all music broadcast between 6:00 a.m. and midnight must be performed by Australians. In July 2010, the Australian Communications and Media Authority (ACMA) announced registration of a new code that provides a temporary exemption for digital-only commercial radio stations (stations not also simulcast in analog) from the Australian music quotas. The ACMA will review the exemption in 2013. Since January 2008, all licensees of regional commercial radio broadcasting licenses have been required to broadcast minimum levels of local content.

Telecommunications

The Parliament passed legislation for the National Broadband Network (NBN) in April 2011. The NBN is being implemented by the government-owned NBN Company (NBNCo), which is intended to be a neutral provider of wholesale broadband services nationwide. The NBN structure could improve the non-discriminatory access to network services, including for U.S. companies, since the wholesale provider will not compete in retail markets, as occurs currently with Telstra, the owner of the existing wholesale network. In October 2011, shareholders of Telstra, Australia's dominant telecommunications company, endorsed an agreement to progressively migrate the company's voice and broadband traffic from its copper and cable networks to NBNCo. The Australian Competition and Consumer Commission must also approve the deal. Other telecommunications companies, such as Optus, will also sign with the NBN as retail customers. The United States remains concerned about foreign equity limits in Telstra, which are still capped at 35 percent, and the fact that individual foreign investors are only allowed to own up to 5 percent of the company. The U.S. Government will monitor the development of the NBN to ensure that competitors are able to obtain fair access to services and customers.

Convergence Review

In September 2011, a "Convergence Review Committee" set up by the Department of Broadband, Communications, and the Digital Economy released five discussion papers on issues relevant to the convergence of telecommunications, broadcasting, and computer services (<http://convergencereview.dbcde.gov.au/discussion-papers/>). Topics included media diversity; competition and market structure; layering, licensing, and regulation; spectrum allocation and management; Australian and local content; and community standards.

While the outcome of this review, the timeframe for which remains unclear, may include recommendations to increase competition and enhance market access for foreign suppliers, the review is also looking at measures to extend support of Australian content from traditional platforms (cable TV and free-to-air broadcasting) to new Internet-based platforms. The U.S. Government will closely monitor this review to ensure that any such recommendation is consistent with the AUSFTA, which limits the extent to which Australia can discriminate against foreign content.

INVESTMENT BARRIERS

Inward foreign investment in Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia's Foreign Investment Policy. The Foreign Investment Review Board (FIRB), a division of Australia's Treasury, screens potential foreign investments in Australia above a threshold value of A\$231 million (\$231 million). Based on advice from the FIRB, the Treasurer may deny or place conditions on the approval of particular investments above that threshold on national interest grounds. Under the AUSFTA, all U.S. greenfield investments are exempt from FIRB screening. AUSFTA also raised the threshold for screening of most U.S. investments in Australia, which now stands at A\$1.005 billion (\$1.005 billion) (indexed annually). All foreign persons, including U.S. investors, must notify the Australian government and get prior approval to make investments of five percent or more in the media sector, regardless of the value of the investment.

ELECTRONIC COMMERCE

A number of U.S. companies have voiced concerns that various Australian government departments, such as the Department of Defense, the National Archives of Australia, the Department of Finance and

Deregulation's Australian Government Information Management Office, and the State of Victoria Privacy Commissioner, are sending negative messages about cloud computing services to potential Australian customers in both the public and private sectors, implying that hosting data overseas, including in the United States, by definition entails greater risk and unduly exposes consumers to their data being scrutinized by foreign governments. In the case of the United States, many such concerns appear based on misinterpretation of applicable U.S. law, including the U.S. Patriot Act and regulatory requirements. In November 2011, new draft legislation was introduced into Parliament that would prohibit the overseas storage of any Australian electronic health records. This would pose a significant trade barrier for U.S. information technology companies with data centers located in the United States or anywhere else outside of Australia. The bill has been referred to a Senate committee for inquiry. The U.S. business community has submitted comments recommending a risk-based approach to ensuring the security of sensitive data as opposed to a geographical one.

OTHER BARRIERS

Pharmaceuticals

In February 2011, the Australian government deferred listing some new medicines on its Pharmaceutical Benefits Scheme, even though an independent medical advisory panel had determined these medicines to be clinically effective and recommended listing. In September 2011, it reversed this decision, listing the deferred medicines and agreeing to work with key stakeholders, including the pharmaceutical industry and consumer health advocates, on a process to manage deferrals in the future.

Blood Plasma Products and Fractionation

In 2010, the National Blood Authority negotiated a new eight year contract with Australian company CSL Limited for the ongoing fractionation of Australian plasma and manufacture of key blood products, demonstrating its continued preference for handling fractionation of Australian plasma locally and without public tender. The United States remains concerned about the lack of an open and competitive tendering system for blood fractionation in Australia.