

The Office of the United States Trade Representative

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U.S.-Australia FTA Summary of the Agreement

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Market Access for Goods

Duties on more than 99 percent of tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Manufactured goods currently account for 93 percent of the total value of U.S. goods exports to Australia. Duties on other manufactured goods will be phased out over periods of up to 10 years. The Agreement will bring immediate benefits to key U.S. manufacturing sectors, including autos and autos parts; chemicals, plastics, and soda ash; construction equipment; electrical equipment and appliances; fabricated metal products; furniture and fixtures; information technology products; medical and scientific equipment; non-electrical machinery; and paper and wood products. The elimination of duties will result in tariff savings for U.S. manufactured goods exporters of about \$300 million in the first year of the agreement. For duties on textiles and apparel to be eliminated, the goods must meet the Agreement's yarn-forward rule of origin. The Agreement also requires the elimination of a variety of non-tariff barriers that restrict or distort trade flows.

Agriculture

The Agreement achieves a balanced approach for agriculture, providing expanded export opportunities for a range of U.S. agricultural goods, while responding to U.S. sensitivities. Duties on all U.S. agricultural exports to Australia, which totaled nearly \$700 million in 2003, will be eliminated immediately upon entry into force of the Agreement. Currently, Australia maintains duties of 5 percent on fresh and processed fruits and vegetables, soups, processed foods, some grains, oilseeds and other products. For some dairy products, Australia's tariffs reach 30 percent. Duties on most imports from Australia will be phased out over periods of between four and 18 years. Duties will be maintained on sugar and certain dairy products. In addition, for certain products, including beef, dairy, cotton, peanuts and certain horticultural products, the Agreement includes other mechanisms, such as preferential tariff rate quotas and safeguards. The United States and Australia agree to work together in WTO agriculture negotiations to improve market access; reduce, with a view to phasing out, all forms of export subsidies; to develop disciplines eliminating state trading enterprises' monopoly export rights; and to substantially reduce trade-distorting domestic support.

The Agreement also establishes a new forum for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters based on science and with a view to facilitating trade. In addition to establishing a bilateral SPS Committee on Sanitary and Phytosanitary Measures to address a range of SPS issues, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service and its counterpart, Biosecurity Australia, will chair a standing technical working group 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.

Pharmaceuticals

The United States and Australia affirm their commitment to several basic principles related to their shared objectives of facilitating high quality health care and improvements in public health.

These principles are: (1) the important role played by innovative pharmaceuticals in delivering high quality health care; (2) the importance of research and development in the pharmaceutical industry and of appropriate government support, including through intellectual property protection and other policies; and (3) the need to promote timely and affordable access to innovative pharmaceuticals through adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical. It requires that federal health care programs apply transparent procedures in listing new pharmaceuticals for reimbursement. The two countries also will establish a Medicines Working Group to promote discussion and understanding of pharmaceutical issues. Government procurement of pharmaceuticals is covered by the Government Procurement chapter rather than by the pharmaceutical-specific provisions of the Agreement. Australia will establish and maintain procedures enhancing transparency and accountability in the listing and pricing of pharmaceuticals under its Pharmaceutical Benefits Scheme, including establishment of an independent review process for listing decisions.

Cross-Border Services

The Agreement requires national treatment and most-favored-nation treatment in all sectors not explicitly excluded and prohibits local presence requirements. Under the Agreement, Australia will accord substantial access to U.S. service suppliers, including in the advertising, asset management, audio visual, computer and related services, education and training, energy, express delivery, financial services, professional services, telecommunications, and tourism sectors.

Audiovisual Services. The Agreement locks in access for U.S. suppliers of films and television programming to the Australian market over a range of media, including cable, satellite and the Internet. The Agreement also limits Australia's ability to implement new measures to limit access in the broadcast and audiovisual sector.

Express Delivery. The Agreement ensures non-discriminatory market access for express delivery firms, including facilitation of customs clearance.

Telecommunications. The Agreement ensures access for U.S. firms and includes several important new obligations for major suppliers, including resale, provisioning of leased circuits and co-location.

Financial Services

Regarding investment, U.S. financial service suppliers (banks, insurance companies, securities companies) already enjoy a significant presence in the Australian market through subsidiaries, joint ventures and branches. Australia agreed to provide new rights for life insurance branching. Australia also agreed to exempt new financial services investments from investment screening and to lock-in existing good practice with regard to review of acquisitions in the banking and insurance sectors. Acquisitions of other financial services companies are exempted from screening if less than A\$800 million.

Regarding cross-border supply (via electronic means), Australia confirmed access for reinsurance, MAT insurance, brokerage of reinsurance and MAT insurance, insurance auxiliary services, financial information and data processing services, and financial advisory services and provided new rights for portfolio management.

In addition, Australia and the United States agreed to high standards for regulatory transparency, including procedures applying to licensing systems. Australia also confirmed aspects of its

regulatory approach that guarantee expedited introduction of insurance products.

Electronic Commerce

The Agreement ensures that digital products, including software, music, video, and text, will receive non-discriminatory treatment and makes permanent the current practice of not subjecting such transmissions to customs duties. This is the first Agreement to include provisions on facilitating authentication of electronic signatures, encouraging paperless trading, and maintaining and adopting online consumer protection measures.

Investment

The Agreement establishes a secure, predictable legal framework for U.S. investors operating in Australia. All forms of investment in Australia are covered under the Agreement, including enterprises, debt, concessions, contracts, and intellectual property. All U.S. investment in new businesses is exempted from screening under Australia's Foreign Investment Review Board. Thresholds for acquisitions by U.S. investors in nearly all sectors are raised significantly, from A\$50 million to A\$800 million, exempting the vast majority of transactions from screening. A work program will be initiated to limit the kinds of investment transactions, such as passive investments, that may be subject to review.

In recognition of the unique circumstances of this Agreement – including, for example, the longstanding 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 adopt procedures in the Agreement that would allow investors to arbitrate disputes with governments. This issue will be revisited if circumstances change. Government-to-government dispute settlement procedures remain available to resolve investment-related disputes.

Intellectual Property Rights (IPR)

The Agreement complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

In the copyright area, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Agreement clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Agreement includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, the Agreement sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. To curb copyright piracy, the Agreement requires the governments to use only legitimate computer software, setting an example for the private sector.

On patents, the Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Agreement requires patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result

of the marketing approval process for pharmaceutical products. The Agreement protects test data that a company submits in seeking marketing approval for pharmaceutical and agricultural chemical products by precluding other firms from relying on the data. It also requires measures to prevent the marketing of pharmaceutical products that infringe patents.

On trademarks and geographical indications, the Agreement establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. Each Party must provide protection for marks and geographical indications, as well as efficient and transparent procedures governing the application for protection of marks and geographical indications. The Agreement also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

The FTA establishes strong penalties for piracy and counterfeiting. The Agreement criminalizes end-user piracy and requires both the United States and Australia to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. Each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy. The Agreement specifies that each Party must empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint.

Government Procurement

Under the Agreement, U.S. suppliers are granted non-discriminatory rights to bid on contracts to supply Australian Government entities, including all major procuring entities and administrative and public bodies. The Agreement requires the use of tendering procedures that will ensure that procurements are conducted in a transparent, predictable and fair manner. The Australian Government will eliminate its industry development programs, under which suppliers have had to meet various types of local content or local manufacturing requirements as conditions of their contracts. The Australian Government also will restrict its use of selective tendering, which will ensure that U.S. suppliers have a fair opportunity to compete for government contracts. The Agreement provides integrity in procurement practices, including by requiring laws that make bribery of procurement officials a criminal or administrative offense.

Competition Policy

The Agreement proscribes anticompetitive business conduct and requires appropriate action with respect to such conduct. It sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering state enterprises so that they do not abuse their official status to harm the interests of U.S. companies or discriminate in the sale of goods and services. The Agreement also facilitates cooperation between the United States and Australia on cross-border consumer protection and the recognition and enforcement of supporting the mutual recognition and enforcement of certain monetary judgments to provide restitution to consumers, investors or customers who suffered economic harm as a result of being deceived, defrauded or misled.

Labor

Under the Agreement, Australia and the United States reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and agree to strive to ensure that their laws protect the fundamental labor principles embodied in the ILO Declaration and listed in the Agreement. The Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to

encourage trade or investment and includes procedural guarantees to ensure that workers and employers have fair, equitable and transparent access in the enforcement of labor laws. The Parties also will cooperate on labor standards on bilateral, regional, and multilateral bases. The core commitment, that a Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties is subject to dispute settlement under the Agreement. For Australia, this commitment covers relevant federal and state laws since responsibility for these matters is shared.

Environment

Under the Agreement, Australia and the United States commit to ensure that their domestic environmental laws provide for high levels of environmental protection and shall strive to continue to improve such laws. The Agreement makes clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment. These obligations are enforceable through the Agreement's dispute settlement procedures. In view of the fact that much of Australia's environmental legislation and regulation is at the state level, the chapter's obligations extend to Australian states and territories. In addition, the Agreement includes a commitment to cooperate on environment issues and to consult in the WTO regarding multilateral environmental agreements. The core commitment, that a Party shall 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 is subject to dispute settlement under the Agreement. For Australia, this commitment covers relevant federal and state laws since responsibility for these matters is shared.

Dispute Settlement

The Agreement sets out detailed procedures for the resolution of disputes over compliance with the Agreement. The procedures for dispute settlement set high standards of openness and transparency, including open public hearings, public release of legal submissions by the parties, special labor or environmental expertise for disputes in those areas, and opportunities for interested third parties to submit their views to dispute settlement panels.

Dispute settlement procedures in the Agreement promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The Agreement dispute settlement procedures also provide for "equivalent" remedies for commercial and labor or environmental disputes. The Agreement achieves this through an innovative enforcement mechanism that provides the parties the option of using monetary assessments to enforce commercial, labor and environmental obligations of the Agreement. Suspension of preferential tariff benefits under the Agreement may also be available for all disputes, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade.

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