II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) OVERVIEW

1. In Australia, the formulation and evaluation of policy, including trade and related policy, continues to be highly transparent, which enhances government accountability. This transparency has greatly facilitated the advancement of the economic reform agenda, much of it involving unilateral trade liberalization.

2. While the Doha multilateral trade negotiations remain Australia's top priority, increased importance is being attached to the negotiation of regional trade agreements (RTAs). The Government is also making efforts to multilateralize, through WTO negotiations, some progress achieved in regional trade liberalization.

(2) GENERAL CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK

3. Australia's constitutional and institutional framework has not changed since its previous Trade Policy Review (2002).[1] Executive power is vested in the Head of State, represented by the Governor-General. Based on party strength in the House of Representatives, the Governor-General appoints the Prime Minister. On the advice of the Prime Minister, the Governor-General appoints Ministers of State, who, along with the Prime Minister, are accountable to Parliament. Legislative power lies with Parliament, comprising a 150-member House of Representatives (lower house) and a 76-member Senate (upper house); the most recent elections for the House of Representatives and half of the Senate were held in October 2004. All bills, apart from money and taxation bills, can be introduced in either House; money and taxation bills must be introduced in the House of Representatives, and the Senate can request the omission or amendment of any items or provisions. The Senate can amend, accept, or reject all other bills approved by the House of Representatives. Bills that have been passed by both Houses and received assent from the Governor-General become law. Judicial power is vested in the High Court of Australia, the final court of appeal, and in other courts such as the Federal Court, the Family Court, the Industrial Relations Court, and state and territory courts.[2]

4. Australia is a Federation of six states and two territories; each state has its own constitution and government, and territories have their self-government arrangements.[3] The Council of Australian Governments (COAG) was formed in 1992 to facilitate consultation, cooperation, and policy coordination between the Commonwealth, states, and territories with a view to avoiding potential inconsistencies. Its role is to initiate, develop, and monitor the implementation of policy reforms that are of national significance and require cooperative action by Australian governments. COAG meetings have often resulted in the formulation, review or update of intergovernmental agreements.[4]

[1] WTO (2003).

[2] The Federal Court sits in each state and territory. The Family Court deals not only with matrimonial and associated issues, but also bankruptcy, administrative law, and taxation appeals. The Industrial Relations Court handles matters such as the interpretation and enforcement of industrial awards and certified agreements and various matters relating to unions. The Federal Parliament is empowered under the Constitution to invest state courts with Federal jurisdiction.

[3] The six states are: New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia. The two territories are the Australian Capital Territory, and the Northern Territory.

[4] For example, in 2002 the COAG and the New Zealand Government authorized the Productivity Commission (PC) to review the mutual recognition agreement (MRA) between the Commonwealth, states, and territories, and the trans-Tasman mutual recognition arrangement (TTMRA) with New Zealand. The Commission's report was published in December 2004, and concluded that the MRA and the TTMRA had been effective in improving economic integration and international trade between the participants; however, there was room for improvement in some areas. On completion of the review, the Committee on Regulatory Reform

(3) STRUCTURE OF TRADE POLICY FORMULATION

5. Australia has a highly transparent trade policy formulation and evaluation structure, involving the executive branches of government, advisory bodies, and consultations with businesses, non-governmental organizations (NGOs), and other stakeholders.

6. The Department of Foreign Affairs and Trade (DFAT), together with the Australian Trade Commission (Austrade), has administrative responsibilities for all international treaties, including trade agreements; bilateral, regional, and multilateral trade policies; international trade and commodity negotiations; and trade promotion. Other agencies that have trade-related responsibilities include the Australian Customs Service (Table II.1).

Table II.1
Agencies and their trade-related responsibilities

Department/Agency	Main responsibility
Department of Prime Minister and Cabinet	Supporting the Prime Minister and assisting in policy coordination
Department of Foreign Affairs and Trade	International relations and trade policy
Austrade	Trade promotion
AusAID	Management of Australia's overseas aid programme and international development cooperation
EFIC	Australia's export credit agency, export and overseas investment promotion
Australian Customs Service	Customs procedures, anti-dumping and countervailing actions
The Treasury	Economic policy, taxation (including excise tax), international finance, foreign exchange, financial sector policy, foreign investment policy, competition policy, prices surveillance
Australian Competition and Consumer Commission	National competition enforcement and Australian energy regulator
National Competition Council	Policy advisory body on competition policy
Foreign Investment Review Board	Foreign investment
Reserve Bank of Australia	Monetary policy, overall financial system stability and regulation of the payments system.
Australian Taxation Office	Taxation
Department of Finance and Administration	Budget policy, government finance, shareholder advice on government trading enterprises (GTEs)
Department of Agriculture, Fisheries and Forestry	Agriculture, fisheries, and forestry
Australian Quarantine and Inspection Service	Quarantine, health
Department of Health and Aging	Health
Food Standards Australia New Zealand	Food standards
Department of Industry, Tourism and Resources	Investment promotion, innovation, tourism and small business, energy and resources
Invest Australia	Promotion of inward investment
AusIndustry	Supporting industry, research, and innovation
Ministerial Council on Energy	Energy
IP Australia	Intellectual property
Department of Communications, Information Technology and the Arts	Information and communications technology, postal and telecommunications, information economy
Department of Transport and Regional Services	Aviation, maritime, rail, road, and other means of transport, safety and technical requirements
Australian Prudential Regulation Authority	Prudential regulator of the Australian financial services industry
Australian Bureau of Statistics	Provision of statistics on economic and social matters; maintenance of statistical codes used in Australia's export and import classifications
Attorney-General's Department	Provision of advice on international law, copyright, legal services, and e-commerce
Productivity Commission	Independent review and advisory body on microeconomic policy and regulation, including aspects of trade policy

Source: Australian Government online information. Viewed at: http://www.gold.gov.au.

(CRR) under the COAG recommended that the COAG and the New Zealand Government endorse 29 of the PC's findings (concerning, *inter alia*, standards, and quarantine). The Australian and New Zealand Governments adopted recommendations in relation to the remaining 45 findings in 2005.

7. The Productivity Commission (PC) remains the Government's principal evaluation and advisory body on microeconomic policy and regulation.[5] In addition, several consultative mechanisms provide advice on the effectiveness of government policies.[6] In particular, the Trade Policy Advisory Council (TPAC) provides the Minister for Trade with a business perspective on international trade and investment issues.[7] In May 2005, an FTA Export Advisory Panel was established to promote the benefits of free-trade agreements, by offering advice on implementation and market access issues, and by identifying specific trade and investment opportunities created by such agreements.[8] The Government also establishes taskforces to carry out inquiries from time to time. The role of transparency, especially the use of independent institutions, such as the PC to evaluate government policy, has greatly facilitated the economic reforms and ensured their continuation (Box II.1).

Box II.1: Institutionalization of transparency and its role in economic reform

During the past two decades, Australia's economic performance has benefited greatly from its structural reforms: a key feature has been unilateral trade liberalization, including tariff reductions (Chapter I). However, while economic reform provides benefits to certain groups of the economy, it also imposes costs on others. Thus, transparency, through institutions such as the Productivity Commission (PC), has played an important role in facilitating economic reforms.

The PC is the Australian Government's principal review and advisory body on microeconomic policy and regulation. Its independence and transparent advice contributes to well-informed policy and decision making. The origin of the PC is an institution that protected domestic industries, while avoiding "excessive" protection. In 1921, a Tariff Board was created as an independent inquiry and advisory body on tariff making, which, reflecting the consensus of the time, made policy recommendations to protect domestic industries. In the mid-1960s, the Board began to question the long-term effects on the wider economy of protecting individual industries, and began to estimate and publish information on the relative industrial protection levels, using the effective rates of protection and costs of the protection.

The Tariff Board evolved into the Industries Assistance Commission (IAC) in 1974, which provided advice about the costs and benefits of not only tariffs, but also other forms of government assistance to industries. Since then, transparency, independence, and the evaluation of economy-wide effect of policies have become three fundamental principles of the IAC and its successors, the Industry Commission (1990-98) and the Productivity Commission (since 1998). Thus, since its establishment in 1998, these principles have been realized in the Productivity Commission by, *inter alia*: subjecting its advice to public scrutiny; operating independently under the protection and guidelines of its own legislation; and reflecting the interests of the community at large.

Box II.1 (cont'd)

[5] Details of the PC's role, functions, and policy guidelines were outlined in its first annual report (Productivity Commission, 1998).

[6] These include, *inter alia*, the Australian Bureau of Agricultural and Resource Economics (ABARE), the Quarantine and Exports Advisory Council (QEAC), the National Alternative Dispute Resolution Advisory Council (NADRAC), the Australian Pharmaceutical Advisory Council (APAC), the Medical Services Advisory Committee (MSAC), the Advisory Council on Intellectual Property (ACIP), and the Corporation and Markets Advisory Committee (CAMAC).

[7] The TPAC is the Minister for Trade's major source of advice from the Australian business community on trade issues. Other trade-related consultative mechanisms include the WTO Advisory Group, Agricultural Trade Consultative Group, Automotive Council, AFTA-CER Business Council (ACBC), APEC Business Advisory Council (ABAC), APEC Australian Business Forum (DFAT online information. Viewed at: http://www.dfat.gov.au/trade/formal_consultative_mechanisms.html [23 February 2006]).

[8] DFAT (2006a), p. 55.

Transparency is an integral part of the PC's operation. Once the PC is authorized to conduct an inquiry, public opinions are collected through hearings, submissions, and feedback on draft reports. Consequently, the PC assists structural reforms in a number of ways. By subjecting the arguments of vested interests to vigorous scrutiny, the PC has provided the Government with advice concerning the long-term interests of the community as a whole. The PC's findings and recommendations have been based on extensive public input and feedback on draft reports; which, in some cases, changed the PC's final findings substantially. The inclusion of public submissions, hearings, and feedback on draft reports to reach final recommendations helps to make the Government aware of the likely reactions of the community and interest groups to different policy approaches. This can reduce the possibility of unexpected responses, which could lead to policy reversals. All the PC's reports are published. These reports and analyses assist the Government in designing reform policies, and contribute to a wider awareness within the community of the costs of existing policies and the benefits from reform. The Government may refer any matters it considers appropriate to the PC, but is not obliged to take its advice.

Other independent advisory bodies (section (3)), as well as various task forces, notably the recent regulation taskforce (section (4)), have contributed to the evaluation, and thus the transparency, of government policies. These bodies, too, have provided impetus to structural reforms. In addition, the National Competition Policy has provided a mechanism for the coordination of pro-competition reforms across the jurisdictions of the Australian federation, and this effort is continuing under the National Reform Agenda agreed by the COAG at its 10 February 2006 meeting. Government departments also conduct their own internal evaluations of policies and policy measures with a view to reform.

Source: Productivity Commission (2003b); and Banks (2005).

(4) TRADE LAWS AND REGULATIONS

8. Australian trade laws essentially take the form of statutes and implementing regulations.[9] Its international treaty obligations, including the WTO Agreements, must be enacted domestically in order to carry the force of law.

9. As part of the National Competition Policy (NCP), the Commonwealth and state and territory governments agreed to a legislative review programme (LRP), under which governments committed to review and change legislation that may restrict competition. It was agreed that, in principle, legislation should not restrict competition unless it can be demonstrated that: (i) the benefits of the restriction to the community as a whole outweigh the costs, and (ii) the objectives of the legislation can be achieved only by restricting competition (Chapter III(4)(iii)(a)). An inquiry into the NCP, completed by the Productivity Commission in April 2005, concluded that the legislative review programme had been important in reducing barriers to competition and promoting efficiency across a wide range of economic activities. It was suggested that the LRP be completed, and followed by ad hoc reviews focusing on areas where reform of anti-competitive legislation is likely to be of benefit to the wider community, i.e. anti-dumping, pharmaceuticals, grain marketing, and insurance services.[10] Taking into account the findings of the Productivity Commission, the COAG also reviewed the NCP and agreed to complete outstanding priority legislative reviews. In February 2006, the COAG endorsed a new National Reform Agenda, which included competition and regulation reforms (Chapter III(4)(iii)(a)).

10. The number of newly issued regulations has increased substantially in recent years, triggering concerns in Australia that they were overwhelming Parliament's ability to consider them properly, and

[9] WTO document G/TRIMS/N/2/Rev.9, 28 September 2001, and WTO (2003).
[10] Productivity Commission (2005c), Chapter 9.

generating compliance burdens on business.[11] In response, on 12 October 2005, the Government appointed a taskforce (the Banks Taskforce) to address these issues.[12] The taskforce made 178 recommendations on reducing red tape; priority actions include reducing inter-jurisdictional overlaps and inconsistencies, removing redundant or unjustified regulations, and improving regulation-making processes. The taskforce also identified priorities for further review, covering anti-dumping regulations, and the single-desk export arrangement for wheat.[13] The Government published its final response in August 2006, agreeing fully or partly to 158 of the 178 recommendations. It considers that a key step in reducing regulatory burden is to avoid introducing unnecessary regulations and to improve the quality of existing ones, by, *inter alia*, requiring cost-benefit analysis on existing regulation and before issuing new ones, and screening all regulations at least every five years.[14] In addition, the Government agreed to an annual review process by the Productivity Commission to examine the cumulative stock of regulations and identify an annual red tape reduction agenda. As cooperation between governments facilitates regulatory reform and helps to reduce red tape, governments agreed under the COAG to, *inter alia*, maximize the efficiency of new and amended regulations and avoid unnecessary compliance costs and restrictions on competition.[15]

(5) TRADE POLICY OBJECTIVES

11. Based on the understanding that trade openness, economic performance, and living standards are strongly interlinked, Australia's trade policy agenda continues to focus on improving market access for its exports of goods and services, and to create jobs and opportunities for business in Australia. The Government pursues market opening through a combined multilateral, regional, and bilateral approach.

12. Successful completion of the Doha Round remains Australia's highest trade policy priority. Australia believes that the Round is crucial for providing its exporters with improved access to international markets. Australia also pursues bilateral and regional trade agreements where it feels that these would yield more significant and faster market access than through the multilateral framework. The authorities consider that comprehensive and high-quality regional trade agreements can complement the multilateral system.

[11] Productivity Commission (2005b), p. 3. From 2001/02 to 2004/05, the number of newly-issued regulations increased from 1,918 to 2,552. The Business Council of Australia (BCA) considered that new regulations generated significant compliance burdens on business and the community and higher administrative costs for the Government, in addition to any unintended and undesirable impacts.

[12] Regulation Taskforce (2006).

[13] Banks (2006). Other priority areas for further review include superannuation tax provisions, directors' liability provisions under the Corporations Act, privacy laws, and private health insurance regulations.

[14] Treasury (2006b).

[15] Furthermore, in February 2006 the COAG agreed to address six priority areas where cross-jurisdictional overlap is impeding economic activity: rail safety regulation, occupational health and safety, national trade measurement, chemicals and plastics, assessment arrangement, and building regulation. The COAG agreed to address an additional four areas of cross-jurisdictional overlap in July 2006: environmental agreements, product safety, personal property securities registration, and business registration processes. Moreover, under the Trade Modernization Amendments to the Customs Act 1901, a number of regulations on cargo reporting practices were enacted, to improve the standard and consistency of many cargo reports required. Most of these regulations did not impose additional burden on industry; some have been introduced because of increased security concerns since 2001.

(6) TRADE AGREEMENTS AND ARRANGEMENTS

(i) WTO

13. As an original Member, Australia supports the WTO as the forum for global trade liberalization, and grants at least most-favoured-nation (MFN) treatment to all its trading partners. Australia is not a member of any of the WTO plurilateral agreements. During the period under review, Australia has made numerous WTO notifications (Table AII.1), as well as tariff and trade data submissions to the Integrated Database.

(a) The Doha Round

14. Currently, Australia's highest trade priority is to secure an ambitious outcome from the Doha Round of trade negotiations.[16] Its key objectives in the Round are to secure improved market access in agriculture, industrial goods, and services, and to reduce domestic support in agriculture. As the chair of the Cairns Group of Fair Agricultural Traders, Australia participated actively in the agriculture negotiations that produced the July 2004 Framework Agreement.[17] It is estimated that a relatively ambitious, market-oriented outcome to the Doha Round could increase the value of Australia's major agricultural exports by 15% in 2011 (compared to the value if the existing trade barriers were maintained).[18]

15. Australia is pursuing further reductions in tariff and non-tariff barriers to non-agricultural products and services. In addition to pushing for an ambitious result in the NAMA negotiations, Australia has made market access requests in financial, telecommunications, and professional services, as well as in mining, education, and freight logistics. Following consultations with state and territory governments as well as industry and community groups, Australia revised its offer in the services negotiations with a view to expanding the scope of its initial offer, while retaining the right to regulate public services, such as water supply, public health, and education.[19]

16. Australia believes that improving disciplines on regional trade agreements (RTAs) in the WTO will deliver tangible benefits for the parties involved, and will encourage further global liberalization in the long run.[20] It also encourages transparency in and clarification of anti-dumping practices and has been an active proponent for clarifying rules on subsidies in the rules negotiations, supports enhanced disciplines on fisheries subsidies, and attaches great importance to intellectual property issues. Australia is of the view that trade and environmental obligations can be implemented in mutually supportive ways, and that environmental measures should not be used for protectionist purposes. In addition, it considers that the interests and needs of developing countries are central to the Doha Round and that an ambitious conclusion of the Round would contribute to sustained economic growth in the developing world.[21]

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[16] DFAT (2006a), p. 45.

[17] The Framework included a commitment to abolish agricultural export subsidies. In addition, Members agreed to pursue reductions in domestic support so that higher levels of domestic support would be subject to deeper cuts; they also agreed to negotiate a "tiered approach" to tariff reductions with the highest tariffs being cut the most (WTO document WT/GC/W/535 Annex A, 31 July 2004).

[18] Ash (2006).

[19] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/wto_public_discussion_paper_0905.html [02 March 2006].

[20] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/wto_public_discussion_paper_0905.html [02 March 2006].

[21] Australia continues to advance the interests of developing countries in a broad range of trade and trade-related areas, such as technical assistance, capacity building, market access, food security, and governance

(b) Dispute settlement

17. Australia considers the WTO dispute settlement system essential to ensuring an open, equitable, and enforceable international trading regime.[22] During the period under review, Australia's measures on imports of fresh fruit and vegetables, and its quarantine regime were subject to consultations under the WTO dispute settlement mechanism. Australia was the complainant in a case against the United States involving the Byrd Amendment, and in cases against the European Communities on export subsidies on sugar and trade marks and geographical indications. It has also been an active third-party participant in other disputes (Table AII.2).

18. Australia also seeks to resolve disputes through international agreements that include dispute settlement provisions.[23] Dispute resolution services are provided by, *inter alia*: the Institute of Arbitrators and Mediators Australia; the Australian Commercial Disputes Centre, which aims to resolve disputes outside of the court system through negotiation and conciliation; and the Lawyers Engaged in Alternative Dispute Resolution (LEADR) organization.

(ii) Preferential and regional agreements

(a) Unilateral preferential arrangements

19. Australia provides unilateral preferences for goods originating in: least developed countries (LDCs) and developing countries under the Australian System of Tariff Preferences (ASTP); Forum Island countries under the South Pacific Region Trade and Economic Cooperation Agreement (SPARTECA); Papua New Guinea under the Papua New Guinea and Australia Trade and Commercial Relations Agreement (PATCRA). In addition to Papua New Guinea, as of 1 July 2003, Australia has provided duty-free and quota-free access for all goods originating in the 50 countries designated as LDCs (Chapter III(2)(ii)).[24]

(b) Regional trade agreements (RTAs)

20. Australia considers that "high quality", ambitious and comprehensive RTAs can complement and provide momentum to its multilateral trade objectives; it also believes that when RTAs provide genuine liberalization, they are likely to be trade creating rather than trade diverting. It has proposed in the WTO Negotiating Group on Rules that, when negotiating RTAs, duties must be eliminated on

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issues. Its trade-related technical assistance (TRTA) reached over $A 32 million in 2004/05. Since the commencement of the Doha Round, Australia has committed around $A 275 million to multi-year TRTA programmes. In December 2005, Australia committed another $A 4 million for Aid For Trade activities arising from the Doha Round negotiations. It also provided $A 500,000 to the WTO Global Trust Fund, and nearly $A 2 million to finance technical assistance activities and to ensure that developing countries are fully engaged in the negotiations.

[22] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/wto_disputes.html [02 March 2006]. Reflecting its importance, a WTO Trade Law Branch was established in the DFAT in early 2001. The Branch, with legal expertise and trade policy knowledge, functions as a specialized centre on WTO Agreements.

[23] Australia is a party to: the New York Convention, the Convention on the Settlement of Investment Disputes, and the UNCITRAL Model Law on International Commercial Arbitration (the Model Law) (APEC, 2004). In addition, dispute settlement provisions have been included in IPPAs between Australia and Argentina, Chile, China, the Czech Republic, Hong Kong, China, Hungary, India, Indonesia, Laos, Lithuania, Pakistan, Papua New Guinea, Peru, the Philippines, Poland, Romania, Sri Lanka, and Viet Nam, as well as in the regional trade agreements with Singapore, Thailand, and the United States.

[24] WTO document WT/COMTD/N/18, 21 January 2004. The list of the 50 LDCs is available at: http://www.un.org/special-rep/ohrlls/ldc/list.htm [11 July 2006].

at least 70% of all tariff lines at the six-digit level when the agreement enters into force, and on at least 95% of all tariff lines at the six-digit level ten years after the agreement's entry into force.[25]

Asia Pacific Economic Cooperation (APEC)

21. Australia continues to pursue regional trade and investment liberalization through the Asia Pacific Economic Cooperation (APEC) forum, and is to host the APEC Leaders' meeting in 2007 in Sydney.[26] APEC members accounted for 73.6% of Australia's merchandise exports in 2005 (72.5% in 2002).[27] Like other members, Australia submits an annual Individual Action Plan (IAP), which sets out the measures it has taken or intends to take to achieve the Bogor goals. Australia was reviewed most recently under APEC's peer review process in 2003. The review found that in tariffs, non-tariff measures, services, and investment, Australia had liberalized unilaterally beyond its Uruguay Round commitments, and was far ahead of many APEC economies in developing competition policy and deregulation.[28]

Association of Southeast Asian Nations (ASEAN)

22. Australia is one of ASEAN's ten dialogue partners.[29] Merchandise trade with ASEAN has grown faster than with any of Australia's leading trade partners, except India and China. The 20th ASEAN-Australia Forum was held in Canberra on 16 September 2004, and agreed that more effort should be made to enhance trade, and particularly investment, between ASEAN and Australia. In December 2005, Australia participated in the first East Asia Summit (EAS) along with ASEAN, as well as China, India, Japan, the Republic of Korea, and New Zealand. Australia acceded to the ASEAN Treaty of Amity and Cooperation in December 2005.[30]

The Australia–New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)

23. The ANZCERTA is Australia's longest-standing free-trade agreement (the provisions on trade in goods entered into force in 1983 and those on trade in services in 1989). The agreement is supported by a network of bilateral arrangements on various issues, including the movement of people, mutual recognition of standards, government procurement, and aviation. In addition, imports from New Zealand are not subject to anti-dumping actions (such actions are handled by competition laws) or safeguard measures[31]; however, countervailing actions may be applied (Chapter III(2)(vi)(a)).[32] It is estimated that between 1983 and 2005, two-way trade in goods increased at an annual average rate of around 9%[33], and New Zealand is currently Australia's fifth largest market for goods and services.

[25] WTO document TN/RL/W/180, 13 May 2005.

[26] Australia accepted the Investment Experts Group (IEG) chair's position in 2005, preliminary work under way included cooperation with the UNCTAD in the area of dispute settlement. (FIRB online information. Viewed at: http://www.firb.gov.au/content/international/apec.asp?pf=1 [10 March 2006]).

[27] UNSD, Comtrade database (SITC Rev.3).

[28] APEC online information. Viewed at: http://www.apec-iap.org/document/AUS_2003_Annex_1_-_Summary_Peer_Review.pdf [6 February 2006].

[29] The ten dialogue partners are: Australia, Canada, China, EU, India, Japan, New Zealand, Republic of Korea, Russia, and the United States.

[30] DFAT online information. Viewed at: http://www.dfat.gov.au/asean/ [7 June 2006].

[31] WTO document G/SG/N/1/AUS/2, 2 July 1998.

[32] During the period under review, there were four countervailing initiations, making initiations six overall. No countervailing action has been adopted against imports from New Zealand.

[33] UNSD, Comtrade database (SITC Rev.3).

24. ANZCERTA provides for duty-free access for goods originating in New Zealand. Under current rules of origin, duty-free access for a product is available as long as the last manufacturing process took place in New Zealand, and that process involved at least 50% of the product's factory cost. This method is, however, considered to be complex, as companies have to keep comprehensive records to ensure that they do not fall short of the 50% requirement.[34] Thus, new rules of origin, to be adopted from 1 January 2007, will be based on a change to the tariff classification at the HS 6-digit level.

25. Trade in services is covered by the Services Protocol to the ANZCERTA; exceptions are contained in the "negative inscription list".[35] Australia's current inscription list includes air transport, coastal shipping (cabotage), broadcasting and television, third-party insurance, and postal services.[36] Although the ANZCERTA does not have a specific chapter on investment, it has facilitated bilateral cooperation in this regard; two-way investment increased at an annual average rate of 18.6% between 1983 and 2003.[37] An ANZCERTA Investment Protocol is currently under negotiation; Australia is the third largest investor in New Zealand and New Zealand ranks seventh as an investor in Australia.

Singapore–Australia Free Trade Agreement (SAFTA)[38]

26. Singapore is Australia's largest trade and investment partner in South-East Asia.[39] When the SAFTA entered into force on 28 July 2003, tariffs on all goods imported from the other party were eliminated. The two countries also agreed not to use export subsidies or apply safeguard measures against each other.

27. The SAFTA commits both countries to applying national treatment and to removing quantitative and other market access restrictions on services and investment. SAFTA uses a negative list containing exemptions to these commitments, and no changes are required under the SAFTA to Australia's foreign investment screening processes, nor the current restrictions on foreign equity restrictions including on companies such as Telstra and Qantas.

28. According to the Australian Government, the SAFTA does, nonetheless, provide a more open and predictable business environment (for the partner) across a range of areas through transparency provisions on trade in goods, services, investment, government procurement, competition policy, and electronic commerce.[40] Since SAFTA's entry into force in 2003, Australia's merchandise exports to Singapore have increased by 27.3% (in 2005)[41], and its services exports by 11% (in 2004/05).[42] Both governments agreed to regularly explore the possibility for further integration of the two economies.[43]

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[34] DFAT (2006a), p. 62.

[35] WTO (1998).

[36] DFAT online information. Viewed at: http://www.dfat.gov.au/geo/new_zealand/anz_cer/annex_990309.html [24 July 2006].

[37] FTA online information. Viewed at: http://www.fta.gov.au/default.aspx?FolderID=283&ArticleID=229 [6 March 2006].

[38] The full text of SAFTA is included in WT/REG158/1, 7 October 2003, and is available at: http://www.dfat.gov.au/trade/negotiations/safta/index.html [6 March 2006].

[39] FTA online information. Viewed at: http://www.fta.gov.au/default.aspx?FolderID=271&ArticleID=217 [3 March 2006].

[40] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/australia_singapore_agreement.html [6 March 2006]. According to the authorities, SAFTA contains provisions that provide a consistent, rules-based approach to trade. In addition, the investment chapter contains provisions on investor-state dispute settlement, which provide investors with the right to challenge the Government of the partner country for breaching obligations under the agreement.

[41] UNSD, Comtrade database (SITC Rev.3).

The Thailand–Australia Free Trade Agreement (TAFTA)[44]

29. When the TAFTA entered into force on 1 January 2005, Australia bound its current zero tariffs on 3,080 tariff items for goods of Thai origin, and eliminated tariffs on 2,003 tariff items. Tariffs on a further 786 tariff items are to be eliminated by 2010; tariffs on the remaining 239 tariff items of apparel and certain finished textiles, currently at 17.5%, are to be eliminated in 2015.[45] Following the entry into force of the TAFTA, two-way merchandise trade grew by 33.7% (in 2005), with Australia's exports to Thailand growing by 39.6% and Thailand's exports to Australia by 28.4%.[46] Thailand now ranks as Australia's tenth largest merchandise trading partner.

30. The TAFTA also contains provisions on services. By and large, Australia's commitments in services sectors are not as comprehensive as those offered under SAFTA[47], although commitments on the movement of natural persons and e-commerce go beyond those under GATS. Another difference from the SAFTA is that the TAFTA takes a positive list approach to scheduling commitments on services and investment. TAFTA contains special safeguard provisions, covering prepared or preserved tunas, skipjack and bonito, as well as pineapples and pineapple juices, from 2005 to 2008.[48] In addition, the TAFTA includes a commitment to further negotiations within three years on services, investment, government procurement, and business mobility.

The Australia–United States Free Trade Agreement (AUSFTA)[49]

31. The AUSFTA also came into force on 1 January 2005, as a result of which all agricultural imports, and more than 99% of all non-TCF tariff lines for imports from the United States enter duty free into Australia.[50]

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[42] DFAT (2006b).

[43] Accordingly, a "forward" work programme was endorsed by Ministers at their first review meeting. Issues to be considered in the programme, and to be discussed in the second review meeting, include: ongoing cooperation on e-commerce and telecommunications; regulatory reforms covering competition, education, industry, and other government policies; improvement to the rules in SAFTA, particularly in relation to investment, and the rules of origin; commitments under government procurement; and ways to promote closer business links through SAFTA.

[44] The full text of TAFTA is included in WT/REG185/1, 18 February 2005, and is available at: http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta_toc.html [6 March 2006].

[45] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/aust-thai/goods_tariff_commitments.html [11 July 2006].

[46] UNSD, Comtrade database (SITC Rev.3).

[47] CIE (2004).

[48] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta_annex_5.html [21 Sept 2006].

[49] The full text of AUSFTA is included in WT/REG184/1, 11 February 2005, and is available at: http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html [7 March 2006].

[50] Under the AUSFTA, goods are grouped into categories A, B, C, D, E. Duties on goods in category A were eliminated entirely on 1 January 2005, and goods in category E remain duty free. Duties on goods in the other three categories are to be removed gradually, and fully eliminated as of 1 January 2009, 2013, and 2015, respectively (DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/chapter_2.html [19 July 2006]). The list of products that do not enter Australia duty free is available online at: http://www.customs.gov.au/webdata/resources/files/TarSch5_AUSFTArates.pdf. [15 September 2006]. For lines up to HS 5007.1010, excise duties rather than tariff duties are listed; these are applied to both domestic products and imports from the United States. The remaining 826 tariff lines (13.5% of total tariff lines), covering mainly TCF products, as well as PMV, some glass and glassware, and some furniture, would be phased out under the AUSFTA, and all tariffs on U.S. imports are due to be eliminated by 1 January 2015.

32. The agreement requires both parties to provide national treatment and MFN treatment to investors from the other party, and eliminated local commercial presence requirements for services suppliers. However, it contains a negative list, under which Australia took out limited sectoral restrictions and could continue to screen investment from the United States above certain thresholds, which are higher than for investment from other countries (section (7)). In particular, AUSFTA establishes a Professional Services Working Group to investigate ways to promote mutual recognition and other issues related to professional services. AUSFTA also contains comprehensive provisions on government procurement. In addition, some of Australia's intellectual property legislation had to be changed owing to the signing of the AUSFTA, and some further amendments to the Copyright Act 1968 are to be made (Chapter III(4)(v)). Under the AUSFTA, Australia and the United States have also agreed to cooperate in the enforcement of competition laws through the Australian Competition and Consumer Commission (ACCC) and the U.S. Federal Trade Commission.

Other actual and potential bilateral arrangements

33. Australia has bilateral trade agreements with Canada and Malaysia. The Canada–Australia Trade Agreement (CANATA) was negotiated in 1960 and amended in 1973. The Malaysia–Australia Trade and Economic Cooperation Agreement entered into force in 1998. Australia is also pursuing new opportunities for its exports at the regional and bilateral levels. Negotiations have commenced with key trading partners, including Chile, China, Japan and Malaysia, and negotiations on an ASEAN–Australia–New Zealand trade agreement are also under way. Discussions with Egypt have commenced on a trade and investment framework, as well as studies on how to strengthen economic relations with the Gulf Cooperation Council (GCC) countries and the Republic of Korea.[51]

34. Although Australia's active participation in regional trade agreements affects many aspects of its trade policy, including tariffs, contingency measures, rules of origin, investment, services, and government procurement, the Government believes it is important that RTAs contribute to the multilateral trading system, and thus ensures that its RTAs meet WTO rules and procedures. The authorities state that Australia's commitments in its RTAs go beyond the current WTO agreements in a number of areas, including services and investment. The Government hopes that any progress in regional trade liberalization could be multilateralized through WTO negotiations. For example, Australia applies the rules on government procurement agreed under the AUSFTA to suppliers from all countries.

(7) FOREIGN INVESTMENT REGIME

(i) Overview

35. Australia encourages foreign investment. Its foreign investment regime is generally transparent and liberal, although it contains foreign equity restrictions in certain "sensitive" sectors, and a screening process to ensure that foreign investment is not contrary to the "national interest". Its foreign investment policy operates under the presumption that foreign investment proposals are generally in the "national interest" and should be approved. The Foreign Investment Review Board (FIRB) screens and provides advice on investment proposals. However, where the Treasurer considers the proposal is "contrary to the national interest", he may reject it under the Foreign

[51] In addition, the Government is advancing Australia's trade interests in many countries through various agreements, including a Trade and Economic Framework with India, a Trade and Investment Framework with Indonesia, a Pacific Plan endorsed at the 2005 Pacific Islands Forum in Papua New Guinea, investment protection and promotion agreements as well as air services agreements with some South American countries, such as Mexico and Brazil (DFAT, 2006a).

Acquisition and Takeover Act 1975 (FATA).[52] "National interest" concerns seem to include consistency with existing government policies and laws (for example, environmental regulations and competition policy), as well as national security interests and economic development.[53] In 2004/05, decisions on 4,927 foreign investment proposals were taken (5,112 in 2002/03 and 4,830 in 2003/04); 88.5% were approved, down from 92.1% in 2003/04. Rejections related to residential real estate rather than business proposals; no business proposals have been rejected since 2001. The time limit for reaching a decision is 30 days, with up to a further ten days to advise the parties. 88% of cases were decided within the 30-day statutory period; for cases that took more than 30 days, the Government stated that "this generally reflected delays in receiving sufficient information from the parties or because the case involved significant complexity or sensitivity".[54]

36. Since its establishment in 1997, Invest Australia has functioned as a national inward investment agency. It provides a wide range of services to companies seeking to invest in Australia, and supports the Strategic Investment Coordinator, who advises the Prime Minister and the Cabinet on investment promotion and facilitation. A strategic investment project is one involving an investment of more than $A 50 million, or one providing benefits in terms of employment, technology transfer, R&D, cluster development or significant benefits to Australian regions.[55]

(ii) Changes in the policy framework

37. Since 2002, changes in Australia's foreign investment policy have been primarily the result of the Australia–United States Free Trade Agreement (AUSFTA), which provides preferential treatment to U.S. investors vis-à-vis other trading partners.[56] Following the implementation of the AUSFTA, thresholds for notification and prior approval, apart from those in prescribed sensitive sectors, are higher for U.S. investors than for others; as of 2006, the thresholds are indexed annually to Australia's GDP deflator (Table II.2). Prescribed sensitive sectors for investors from the United States include: media, telecommunications, transport, defence, goods and technology that have military applications, encryption and security technologies, the extraction of uranium, and the operation of nuclear facilities; they also correspond to areas that are more likely to raise "national interest" concerns and where there are statutory restrictions on foreign investment. Acquisitions by U.S. private investors of Australian financial institutions covered by the Financial Sector (Shareholdings) Act 1998 are exempted from FATA screening.

38. On 13 July 2006, the Government announced that foreign media ownership restrictions would be reformed and the current media-specific and newspaper-specific restrictions would be removed.

[52] Responsibility for foreign investment policy rests with the Commonwealth Government. The country's foreign investment legislation comprises the Foreign Acquisitions and Takeovers Act 1975 (FATA), regulations made under the FATA, ministerial statements, and sector- or company-specific legislation.

[53] Economic development may be relevant to "national interest" concerns, for example, in relation to resource or land, if it is believed that a foreign investor may intend to "lock-up" resources rather than develop them. Resource development was a consideration in the decision in April 2001 to reject Shell's bid to acquire exclusive control over the North West Shelf LNG project.

[54] FIRB (2005), pp. 5, 8.

[55] APEC (2004).

[56] Both the SAFTA and the TAFTA contain an investment chapter, which ensures national treatment for investment that does not require foreign investment screening, and investment that has been approved. Essentially, no changes are required for Australia's foreign investment screening processes, or for current restrictions on foreign ownership control on, *inter alia*, institutions such as Telstra and Qantas (DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/safta/safta_background.html) [12 July 2006].

However, the media would remain a sensitive sector, and foreign investment proposals in the media sector, irrespective of size, will remain subject to prior approval by the Treasurer.[57]

Table II.2
Foreign investment requirements and limitations

For all foreign investors	For U.S. investors
Prior approval/notification requirement for all activities	
Acquisitions of substantial interests in existing Australian businesses with total assets over $A 50 million, or where the proposal values the business at over $A50 million; takeovers of offshore companies whose Australian subsidiaries or assets are valued at over $A 50 million	Acquisitions of substantial interests in existing Australian businesses with total assets over $A800 million in 2005 (annually adjusted and increased to $A831 million in 2006) (except for businesses within prescribed sensitive sectors)
	Acquisitions of substantial interests in existing Australian businesses within the following prescribed sensitive sectors: media, telecommunications, transportation, supply of goods and services to the Australian Defence Force or other defence forces, goods or technology that has military applications, encryption and security technologies, the extraction of uranium or plutonium, and the operation of nuclear facilities with total assets of more than $A50 million (increased to $A52 million in 2006)
	Acquisitions of substantial interests in existing Australian financial institutions subject to screening under the Financial Sector (Shareholdings) Act 1998 (FSSA) are exempt from screening under the FATA
New businesses involving a total investment of $A 10 million or more	New business proposals by U.S. investors, except an entity controlled by the U.S. Government, do not require notification, but remain subject to other relevant policy requirements
Direct investment by foreign governments or their agencies irrespective of size	Same as for all other foreign governments and their agencies
Acquisitions of interests in urban land (including interests that arise via leases, financing and profit-sharing arrangements, and the acquisition of interests in urban land corporations and trusts) that involve: developed non-residential commercial real estate, where the property is subject to heritage listing, valued at $A 5 million or more; developed non-residential commercial real estate, where the property is not subject to heritage listing, valued at $A50 million or more; accommodation facilities irrespective of value; vacant real estate irrespective of value; residential real estate irrespective of value	Same as for all foreign investors, except that a threshold of $A800 million (annually adjusted to $A831 million in 2006) applies to U.S. acquisitions of developed non-residential commercial real estate (other than acquisitions by entities controlled by the U.S. Government)
Proposals where any doubt exists as to whether they need to be notified	Same as for all foreign investors
Sector-specific foreign investment restrictions	
Banking	
Foreign investment to be consistent with the Banking Act 1959, the Financial Sector (Shareholdings) Act 1998 (FSSA), and banking policy, including prudential requirements. Foreign takeover or acquisition of Australian banks considered on a case-by-case basis	U.S. investments in authorized deposit-taking institutions (as well as authorized insurers and their respective holding companies) are exempt from FATA screening where they are screened under the FSSA
	Banking policy, including prudential requirements, continues to apply
Civil aviation	
Up to 100% equity in an Australian domestic airline (other than Qantas), and up to 49% in an Australian international carrier (other than Qantas). Aggregate foreign ownership in Qantas restricted to 49%, aggregate ownership by foreign airlines restricted to 35%, and individual foreign ownership restricted to 25%. National interest criteria apply (relating to the nationality of Board members and operational location of the enterprise).	Same as for all foreign investors

Table II.2 (cont'd)

[57] DCITA media release. Viewed at: http://www.minister.dcita.gov.au/media/media_releases/new_media_framework_for_australia [15 September 2006].

For all foreign investors	For U.S. investors
Airports	
Aggregate foreign ownership limited to 49%, with a 5% limit on airlines (regardless of nationality) and 15% cross-ownership limits between Sydney Airport (together with Sydney West) and Melbourne, Brisbane and Perth airports	Same as for all foreign investors
Shipping	
For a ship to be registered in Australia, it must be majority Australian owned, unless it is designated as chartered by an Australian operator	Same as for all foreign investors
Media	
Prior approval required for portfolio investment in the media of 5% or more, and all non-portfolio investment, irrespective of size	Same as for all foreign investors
Foreign persons may not have control for a commercial television licence, or have company interests in such a licence exceeding 15%, or 20% in aggregate held by two or more foreign persons. Up to 20% of directors may be foreign persons	
Up to 20% individual share, and 35% aggregate share, of any subscription TV broadcaster	
Limited ownership in mass circulation newspapers. Case-by-case examination of foreign acquisition of more than 5% in an existing newspaper or to establish a new newspaper. Up to 30% aggregate foreign investment in national and metropolitan newspapers, with any individual foreign shareholder limited to a maximum 25% (in which case unrelated foreign interests may hold a further 5%). Up to 50% aggregate foreign investment in provincial and suburban newspapers	Same as for all foreign investors
Telecommunications	
51.8% of Telstra owned by the Government (this share was reduced to 17% in November 2006). Of the privatized equity, up to 35% aggregate foreign ownership is permitted, and up to 5% individual foreign ownership	Same as for all foreign investors

Source: FIRB (2006), and USTR (2004).

(iii) International investment agreements

39. Australia has bilateral investment promotion and protection agreements (IPPAs) with a number of countries.[58] Since 2002, agreements have been signed with Mexico, Sri Lanka, and Turkey, but are not yet in force.[59] Australia is currently negotiating a range of IPPAs. The IPPAs grant MFN treatment for foreign investment, provide nationalization/expropriation guarantees, and establish dispute settlement mechanisms (section (6)(i)(b)). A typical IPPA gives foreign investors the same access to courts and tribunals as domestic investors, provided that jurisdiction over the dispute can be established. The authorities state that there have not been any investment disputes involving foreign companies since 2002. Australia is a member of the International Centre for the Settlement of Investment Disputes (ICSID).[60]

[58] WTO (2003), p.26.

[59] FIRB online information. Viewed at: http://www.firb.gov.au/content/international/bilateral.asp?NavID=27 [9 March 2006].

[60] WTO (2003). Australia also observes the notification and transparency provisions of the OECD Code on Liberalization of Capital Movements, subscribes to the OECD Declaration on International Investment and Multinational Enterprises (the Declaration), as well as the OECD Guidelines for Multinational Enterprises (the Guidelines). The latter includes standards of behaviour supplemental to Australian law, but does not override or contradict Australian laws. In addition, Australia pursues its interests in international investment through the WTO Working Group on the Relationship between Trade and Investment (WGTI), and it has complied with its TRIMs commitments.

40. Australia negotiates double taxation avoidance (DTA) treaties on a case-by-case basis, reflecting the needs of particular markets. During the period under review, new DTA treaties with Mexico and Russia entered into force. Treaties with France, Malaysia, New Zealand, Norway, the United Kingdom, United States, and Viet Nam have been updated.[61] Currently, the tax treaty with the Philippines is Australia's only treaty that contains a "tax sparing" provision.[62]

[61] The list of Australia's DTA agreements is available at: http://www.treasury.gov.au/documents/625/XLS/Australian_Tax_treaty_table.xls [9 March 2006]. Australia also entered into a bilateral tax arrangement with East Timor with respect to the Timor Sea Joint Petroleum Development Area.

[62] Historically, a number of Australia's tax treaties contained "tax sparing" provisions, which are now either discontinued or have been removed from the treaty. Australia's treaty with the Philippines is the only one that now contains such a provision. It is no longer Australia's policy to agree to "tax sparing" in its tax treaties.