

## **II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**

### **(1) OVERVIEW**

1. During the period under review (2007-11), no major changes have been made to Australia's highly transparent trade and investment regime. Regulatory reform has been pursued with a view to removing barriers to improved productivity. Policy makers continue to benefit from abundant high quality economic analysis by government institutions (e.g. the Treasury) and independent advisory bodies (e.g. Productivity Commission).

2. While remaining committed to multilateralism, more emphasis has been placed on exploring prospects for broadening preferential trade relations through the conclusion of comprehensive agreements with trading partners (e.g. Chile) and major regional groups (e.g. the Association of South East Asian Nations (ASEAN), Trans-Pacific Partnership Agreement negotiations) despite their negotiating and administrative costs, and uncertain benefits as found from some submissions to an independent 2010 study by the Productivity Commission. Commitments under these agreements go beyond those under WTO Agreements in a number of areas, including services and investment, and in certain cases appear to be applied to all trading partners (e.g. intellectual property rights).

3. Australia has continued to provide duty-free treatment for imports from least developed countries (LDCs) while preferences to other developing countries are being eroded by MFN and other preferential tariff cuts. It has been an active provider of aid for trade at multilateral, regional and bilateral levels. Australia has been involved as a respondent in one WTO dispute settlement case and participated in several others as a third party.

4. Australia has maintained its open stance towards foreign investment. The foreign investment legislation, which was changed slightly to reduce notification-related compliance costs, continues to screen large investment projects on the basis of vaguely defined but not prescriptive national interest criteria, and restricts foreign ownership in a few sensitive areas, e.g. international aviation and shipping (and perhaps, more recently, natural resources). Screening does not appear to have been a barrier to inward FDI as only 0.1% of applications (real estate only) were rejected in 2008/09.

### **(2) GENERAL CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK<sup>1</sup>**

5. Australia's constitutional and institutional framework remains unchanged since its previous Review.

6. Executive power is vested in the Head of State, represented by the Governor-General, who is appointed by the British monarch. The Governor-General appoints the Prime Minister, who by convention is the leader of the party or coalition of parties that has the majority of seats in the House of Representatives. On the advice of the Prime Minister, the Governor-General appoints Ministers of State. The Prime Minister and Ministers are accountable to Parliament.

7. Legislative power is vested in Parliament, which comprises a 150-member House of Representatives (lower house) and the 76-member Senate (upper house). The latest elections for the House of Representatives and half of the Senate (40 seats) were held on 21 August 2010; the next House of Representatives elections must be held before 21 August 2013. Parliament, *inter alia*, has exclusive power to impose and alter customs duties. The houses of Parliament have equal power to introduce and amend bills except for "money" and taxation bills, which may only be introduced in the

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<sup>1</sup> For further information on Australia's constitutional and institutional framework see WTO documents WT/TPR/S/104, 26 August 2002 and WT/TPR/S/178/Rev.1, 1 May 2007.

House of Representatives. Bills that have been passed by both Houses and received assent from the Governor-General become law.

8. Judicial power is vested in the High Court of Australia, the final court of appeal, and in the Federal Court, the Family Court, the Federal Magistrates' Court of Australia and other courts. Each state and territory has a court hierarchy of its own, with the jurisdictions of each court varying from state to state and territory to territory. All states and territories have a Supreme Court; decisions of the Federal High Court are binding on all Australian courts.

9. Under Australia's federal system, powers are distributed between the Commonwealth and six states; in addition to the states, there are several territories, two of which are self-governing, but over which the Commonwealth retains ultimate power.<sup>2</sup> Each state has its own constitution and government. The states and territories remain responsible for a number of trade-related policies, such as standardization, government procurement, and state-trading. Legislative state powers include agriculture, education, health, law enforcement, and services. States may also provide bounties (subsidies) or impose taxes on mining activities. The Commonwealth has exclusive power concerning all other bounties or support measures. In the case of any inconsistencies between Commonwealth and state legislation, the former prevails to ensure uniformity throughout the Commonwealth. Since 1992, the Council of Australian Governments (COAG) has facilitated consultation, cooperation, and policy coordination between the Commonwealth, states, and territories with a view to avoiding potential inconsistencies in several policy areas (Chapters III and IV); during the review period, it initiated, developed, and monitored the implementation of policy reforms of national significance that require cooperative action by Australian governments. Since March 1993, under the Australian Mutual Recognition Agreement between the Commonwealth, States and Territories goods that are legally saleable in one jurisdiction are satisfactory for sale throughout the country, and people who work in a registered occupation in one jurisdiction may freely enter an equivalent occupation in other jurisdictions.

### **(3) STRUCTURE OF TRADE POLICY FORMULATION**

#### **(i) Executive branches of government**

10. The Minister for Trade and the Department of Foreign Affairs and Trade (DFAT) maintain prime responsibility for bilateral, regional, and multilateral trade policy as well as administrative responsibility for all treaties. Other agencies that have an influence on international trade policy and trade relations include the Department of Agriculture, Fisheries and Forestry, the Department of Broadband, Communications and the Digital Economy, the Department of Finance and Deregulation, the Department of Health and Ageing, the Department of Infrastructure and Transport, the Department of Innovation, Industry, Science and Research, the Department of Resources, Energy and Tourism, and the Treasury.

#### **(ii) Advisory bodies**

11. Australia's highly transparent trade policy formulation and evaluation structure continues to involve interactions between the executive branches of government, advisory bodies, businesses, non-governmental organizations (NGOs), and other stakeholders. The Productivity Commission (PC) remains the Government's principal evaluation and advisory body on microeconomic policy and regulation through government-commissioned projects/public inquiries, performance reporting, and other services to government bodies. In addition to evaluations, the PC's annual Trade and Assistance Review provides quantitative estimates of the assistance granted to industry, an important input into

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<sup>2</sup> The six states are New South Wales, Queensland, Victoria, South Australia, Western Australia, and Tasmania. The two territories are the Northern Territory and the Australian Capital Territory.

the TPR exercise.<sup>3</sup> Several other independent institutes (e.g. Bureau of Transport and Communications Economics) continue to evaluate the impact and effectiveness of government policy and provide advice. The Government also establishes taskforces to carry out inquiries from time to time. The authorities are increasingly using the internet to provide a channel for public consultations on specific topics. 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. However, high quality transparency and policy appraisal is costly; for example, in 2008/09 the PC's budget was \$A 31.8 million.<sup>4</sup>

#### (4) TRADE LAWS AND REGULATIONS

12. Australian trade laws mainly take the form of statutes and implementing regulations. Statutes are printed separately while regulations are published in Commonwealth of Australia gazettes.<sup>5</sup> Ministries, departments, and other agencies issue media releases and other forms of public notice. Similar arrangements hold for state and territory governments. While provisions of legislation implementing certain international treaties have been addressed by Australian courts, it is understood that, during the period under review, those relating to the WTO Agreement have not been an issue in domestic court proceedings.

13. Since its previous Review, Australia has continued to review legislation in several trade and trade-related areas with a view to delivering productivity gains and reducing compliance costs as well as removing inconsistent, duplicative, and costly state and territory legislation. On 29 November 2008, COAG agreed to a National Partnership Agreement to Deliver a Seamless National Economy for improving Australia's productivity by reducing the cost of, and removing regulatory barriers to doing business across jurisdictional borders.<sup>6</sup> The agreement commits the Commonwealth to provide the states and territories with up to \$A 550 million over five years to facilitate and reward the delivery of 27 priority reforms. There are also eight areas of competition reform with no reward payments attached<sup>7</sup>; reward payments are contingent upon meeting the key milestones set out in the agreement's implementation plan. By November 2010, around one third of the regulatory reforms were completed or nearing completion. According to a 2010 study, the OECD principles of efficient regulation for a market-openness friendly regulatory environment are extensively reflected in the Australian regulatory framework<sup>8</sup>, but despite Australia's high ambition to achieve international best practice, further improvements remain both desirable and possible.<sup>9</sup>

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<sup>3</sup> During the period under review, the PC also dealt with, *inter alia*, Australia's urban water sector, education and training workforce, impacts and benefits of COAG reforms, rural research and development corporations, bilateral and regional trade agreements, annual review of regulatory burdens on business, performance benchmarking of Australian business regulation (planning, zoning and development assessments, occupational health and safety), wheat export marketing arrangements, and market mechanisms for recovering water in the Murray-Darling Basin. Viewed at: <http://www.pc.gov.au/projects>.

<sup>4</sup> Productivity Commission (2009).

<sup>5</sup> These gazettes are: the *Government Notices Gazette*; the *Australian Public Service Gazette*; the *Government Purchasing*; the *Business Gazette*; the *Australian Securities and Investments Commission Gazette*; the *Tariff Concessions Gazette*; the *Chemical Gazette*; the *Australian Pesticides & Veterinary Medicines Authority Gazette*; and the *Food Standards Gazette*. Viewed at: <http://www.publications.gov.au/gazettes.html>.

<sup>6</sup> Office of Best Practice Regulation (2009).

<sup>7</sup> Areas of reform covered by the agreement include: uniform occupational health and safety laws; regulation of trustee companies; regulation of consumer credit; personal property securities; environmental assessment and approvals; licensing of trades people; product safety regulation; health workforce; and chemicals and plastics regulation (Office of Best Practice Regulation, 2009).

<sup>8</sup> Australia ranks 3<sup>rd</sup> (4<sup>th</sup> in 2007/08) among 48 economies based on the 2009 *Opacity Index*, which measures the degree to which they lack clear, accurate, easily discernible, and widely accepted practices governing the relationships among governments, businesses, and investors. The Opacity Index consists of

14. In the period under review, Australia has made numerous WTO notifications, including tariff and trade data submissions to the Integrated Database (Table AII.1). Furthermore, Australia's strong commitment to transparency continues to be reflected in the presence of internet websites for most public sector entities, which greatly facilitated the preparation of this TPR.

15. With a view to fighting corruption<sup>10</sup>, Australia is a signatory to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, whose 38 parties are required to make foreign bribery a crime. Australian companies applying for EFIC's export credits (Chapter III) are required to make a no-bribery commitment that extends to conduct by an agent or business partner. The financial penalties for foreign and domestic bribery were increased significantly in February 2010 to dissuasive levels, up to a maximum \$A 1.1 million for individuals and a maximum penalty for corporations of \$A 11 million or three times the value of benefits obtained through bribery, whichever is greater. If the value of benefits obtained through bribery cannot be ascertained, the maximum penalty is \$A 11 million or 10% of the annual turnover of the company and related bodies corporate. Nevertheless, according to a Transparency International Report, in 2010 Australia was among the 27 countries with significant inadequacies in their legal framework for prohibiting foreign bribery; Australia's inadequacies related to its legal framework and enforcement system.<sup>11</sup> The authorities consider that issues relating to auditing standards and to whistleblowers may be inaccurate. Several of the alleged inadequacies appear to be misunderstandings of Australian law; in addition, the OECD Working Group on Bribery does not consider Australia to have inadequacies in its foreign bribery law. Although no domestic bribery cases were reported, four foreign bribery cases involving Australian firms (e.g. wheat, banknote contracts, iron ore) had been under investigation by 2010.

## **(5) TRADE POLICY OBJECTIVES**

16. Australia's trade policy remains based on the understanding that trade openness and economic growth/performance and living standards (employment, welfare gains) are strongly linked; emphasis has been put on improving international competitiveness and market access overseas. To reach these objectives, Australia pursues a combined multilateral, regional, and bilateral approach to trade policy. Despite trade openness and certain policy developments, trade and trade-related policy instruments continue to be used to support the same activities in different ways (e.g. automotive, textiles, clothing and footwear, key infrastructure services), thus distorting resource allocation in the economy (Chapter IV).

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five components that may be thought of as "negative social capital": corruption, legal system inadequacies, economic enforcement policies, accounting standards and corporate governance, and regulation. Australia's scores in accounting standards and corporate governance, and regulation are disproportionately low compared with those obtained in other areas (Milken Institute, 2009).

<sup>9</sup> These improvements include ways to: follow up application of the provisions for specific assessment of trade and investment impacts in the Regulatory Impact Assessment process; pursue and expand efforts to harmonize FTAs signed by Australia; continue reducing and rationalizing government assistance to industry and services; continue and strengthen efforts to harmonize Australian standards with international standards; strengthen transparency in standard-setting; introduce reforms to the quarantine inspection system; and pursue an agenda towards harmonization of product safety standards (OECD, 2010d).

<sup>10</sup> According to the 2009 *Corruption Perceptions Index*, which measures the perceived level of public-sector corruption in 180 countries and territories around the world, Australia ranked 8<sup>th</sup> with a score of 8.7 out of 10 (Transparency International online information. Viewed at: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table)). In 2005, it ranked 11<sup>th</sup> (out of 179) with a score of 8.6 out of 10.

<sup>11</sup> Transparency International (2010).

**(6) TRADE AGREEMENTS AND ARRANGEMENTS**

**(i) WTO**

17. Australia is an original Member of the WTO, and grants at least most-favoured-nation (MFN) treatment to all its trading partners. Australia is not a member of the WTO plurilateral agreements. Australia, a founding member of the Trade Policy Review Mechanism (TPRM), supports the Mechanism as a way to promote transparency in trade policy making.

*Doha Round*

18. Since its previous TPR, Australia has participated actively in the Doha Round of multilateral trade negotiations; its latest submissions relate to trade in services, trade and environment, trade facilitation, TRIPS, and fisheries subsidies. Australia considers that the successful conclusion of the Doha Round offers enormous potential gains to its workers and businesses. In addition to market opportunities for Australian industrial producers and for service providers, Australian farmers are expected to benefit from reductions of between 70%-80% in domestic support in major "subsidizers" markets.<sup>12</sup> In October 2010, the Government considered that although the global gains from the Doha Round deal being contemplated in 2008 were not as good as could reasonably be expected, it could provide a basis for further negotiation, strengthening, and enhancement.<sup>13</sup> New approaches to the negotiations, and concerted political-level attention, are viewed as crucial to making progress in the near future.<sup>14</sup>

*Aid for trade*

19. According to the Australian Government's 2009 Trade and Development Statement, Australia's demand-driven, carefully designed and coordinated aid for trade policy is built on two pillars: improving market access; and building competitive economies.<sup>15</sup> The first pillar involves, *inter alia*, building the capacity of developing countries to negotiate effectively, assisting them to implement trade agreements, helping them to overcome the practical trading challenges, and strengthening their institutional architecture. The second pillar consists of investing in developing countries' trade-related infrastructure, investing in their human resource development, facilitating investment and private sector development, and ensuring that trade contributes to positive development outcomes. Australia's aid for trade activities have increased to \$A 400 million or 10% of Australia's total official development assistance. Australian aid for trade is made through multilateral, regional and bilateral arrangements, with the bulk going to Asia and the Pacific. In addition to several ongoing programmes assisting individual countries (Ethiopia, Indonesia, Papua New Guinea, Viet Nam, Zimbabwe) and regions (ASEAN member States, Pacific region countries, Africa), Australia has provided aid through its WTO-related multilateral programmes. In 2009, Australia contributed \$A 1.75 million to the WTO Global Trust Fund, a one-off \$A 750,000 to the WTO

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<sup>12</sup> Australian Minister for Trade online information, "Trade at the centre of the global recovery", 16 February 2010, Sydney. Viewed at: [http://www.trademinister.gov.au/speeches/2010/100216\\_fca.html](http://www.trademinister.gov.au/speeches/2010/100216_fca.html) [12 September 2010].

<sup>13</sup> Australian Minister for Trade online information, "Trade liberalisation the pathway to growth, jobs and prosperity", 4 October 2010, Parliament House, Canberra. Viewed at: [http://www.trademinister.gov.au/speeches/2010/ce\\_sp\\_101004.html](http://www.trademinister.gov.au/speeches/2010/ce_sp_101004.html) [15 November 2010].

<sup>14</sup> Department of Foreign Affairs and Trade (2010a).

<sup>15</sup> Department of Foreign Affairs and Trade online information, *Trade and Development Statement*. Viewed at: [http://www.dfat.gov.au/trade/trade\\_and\\_development/aid\\_for\\_trade.html](http://www.dfat.gov.au/trade/trade_and_development/aid_for_trade.html).

Standards and Trade Development Facility (STDF), and committed \$A 3 million to the Advisory Centre on WTO Law (ACWL) in 2010.<sup>16</sup>

**(ii) Preferential and regional trade agreements**

20. While Australia's trade policy emphasizes the primacy of the multilateral trading system (section (5)), its network of regional trade arrangements was further expanded during the review period.<sup>17</sup> Australia recognizes the ultimate goal of the complementary relationship between multilateral, regional, and bilateral trade agreements is trade liberalization and economic integration. Nevertheless, it is aware of the danger of being drawn back into preferential trade deals that favour one country, or a group of countries over another, and stifle economic integration and impede the efficient allocation of resources.<sup>18</sup> Australia's commitments in its RTAs go beyond the current WTO Agreements in a number of areas, including services and investment. RTA commitments on intellectual property rights are extended to all trading partners. Australia aims at high quality and comprehensive preferential trade agreements<sup>19</sup>; its strategic approach to bilateral free-trade agreements (FTAs) consists of negotiating or discussing prospects with its top export markets.

21. In November 2009, the Productivity Commission was asked to examine the effectiveness of such trade agreements in: responding to national and global economic and trade developments; contributing to efforts to boost Australia's engagement in the region and evolving regional economic architecture; reducing trade and investment barriers and safeguarding against the introduction of new barriers; and lending support to the international trading system and the WTO.<sup>20</sup> According to some submissions, the benefits depend largely on the subsequent uptake of opportunities by business; in addition, RTAs involve negotiation, administrative, and compliance costs. The Productivity Commission's final report was released in November 2010.<sup>21</sup> In their June 2010 communication Australia and seven other WTO Members proposed the resumption and re-energising of work to improve understanding of the cross-cutting elements of RTAs and of their systemic significance, through descriptive and factual papers without value judgments or legal analysis, prepared by the Secretariat on its own responsibility, on horizontal, cross-cutting issues.<sup>22</sup>

**(a) Plurilateral trade agreements**

*Asia Pacific Economic Cooperation (APEC)*

22. Australia continues to pursue regional trade and investment liberalization through the Asia Pacific Economic Cooperation (APEC) forum established in 1989.<sup>23</sup> Under the 1994 Bogor Declaration, APEC members made a voluntary commitment to achieving free and open trade and

<sup>16</sup> WTO press release, "Technical Assistance: Australia donates CHF 2.1 million to WTO development programmes", 17 July 2009. Viewed at: [http://www.wto.org/english/news\\_e/pres09\\_e/pr563\\_e.htm](http://www.wto.org/english/news_e/pres09_e/pr563_e.htm) [25 November 2010].

<sup>17</sup> Productivity Commission (2010a).

<sup>18</sup> Australian Trade Minister online information, "Trade at the centre of the global recovery", 16 February 2010, Sydney. Viewed at: [http://www.trademinister.gov.au/speeches/2010/100216\\_fca.html](http://www.trademinister.gov.au/speeches/2010/100216_fca.html) [12 September 2010].

<sup>19</sup> The growing importance of Australian and global trade in services and investment means that attention is being focused increasingly on restrictions to services trade that are dealt with at FTA level (Chapter IV).

<sup>20</sup> Productivity Commission (2010a).

<sup>21</sup> Productivity Commission (2010b).

<sup>22</sup> WTO document WT/REG/W/54/Rev.1, 11 June 2010.

<sup>23</sup> APEC members accounted for a large proportion of Australia's trade, as 75.3% of merchandise exports in 2009 (71.7% in 2006) and 69.8% of imports (72.3% in 2006) were directed to or originated in an APEC partner (UNSD, Comtrade database (SITC Rev.3)).

investment by 2020 (2010 for developed economies) through unilateral, regional, and multilateral liberalization; each year member economies present Individual Action Plans (IAPs) that set out the measures they have taken or intend to take to achieve the 2010/2020 goal. Australia's second IAP peer review, held in January 2007, noted, *inter alia*, steady progress in trade liberalization and facilitation; in areas such as tariffs, non-tariff measures, services, and investment, Australia had implemented autonomous liberalization beyond its Uruguay Round commitments.<sup>24</sup> APEC members' progress towards the 2010 Bogor Goals is currently under assessment.

*Association of Southeast Asian Nations (ASEAN) – Australia –New Zealand (AANZFTA)*

23. The AANZFTA between Australia, New Zealand, and most ASEAN countries has been in force since 1 January 2010 (for Australia).<sup>25</sup> It was notified to the WTO under GATT Article XXIV and GATS Article V, on 8 April 2010.<sup>26</sup> AANZFTA is a comprehensive FTA covering goods, services (including temporary movement of business people), investment, intellectual property rights, e-commerce, competition policy, and economic cooperation, with particular emphasis on capacity building.<sup>27</sup> Tariffs will be eliminated through phased reductions. By 2020, between 90% and 100% of tariff lines of the more developed ASEAN countries and Viet Nam should be eliminated; this is to cover 96% of current Australian exports to the region. By 2020, all Australian tariffs on imports from AANZFTA parties should be removed; as of 2010, 96% of Australian tariff lines were subject to tariff-free treatment.<sup>28</sup> For ASEAN countries, exclusions from tariff elimination commitments should not exceed 1% of all tariff lines. Longer transition periods and lower tariff elimination outcomes are in place for Viet Nam and the three least developed countries (Myanmar, Cambodia, and Laos), in recognition of their status as newer ASEAN members with less developed economies. The rules of origin (ROOs) under AANZFTA provide for a high degree of flexibility; for around 83% of tariff sub-headings, the ROOs will be based on a "co-equal" approach where exporters can choose to meet either a CTC-based (change in tariff-classification) rule or an equivalent RVC (regional value content) rule.

(b) Bilateral trade agreements

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

24. Under the ANZCERTA, Australia's longest-standing free-trade agreement, bilateral trade in all products originating in the two countries has remained free of tariffs, quantitative restrictions, contingency measures<sup>29</sup>, and certain subsidies. A 1988 protocol on trade in services provides for

<sup>24</sup> APEC (2007).

<sup>25</sup> AANZFTA entered into force on 1 January 2010 for 8 of the 12 signatories, i.e. Australia, New Zealand, Brunei Darussalam, Myanmar, Malaysia, the Philippines, Singapore, and Viet Nam, and on 12 March 2010 for Thailand. The Agreement entered into force for Laos on 1 January 2011, and for Cambodia on 4 January 2011. Indonesia was working to complete its internal requirements at the earliest possible opportunity in 2011.

<sup>26</sup> WTO document WT/REG284/N/1 S/C/N/545, 9 April 2010, and online information. Viewed at: <http://rtais.wto.org/UI/CRShowRTAIDCard.aspx?enc=PSVt51JwOGE4c3benznAZaPtvbP2Y0W/oSiPelaf13Q=> [12 September 2010].

<sup>27</sup> Australian Minister for Trade online information, "Trade at the centre of the global recovery", 16 February 2010, Sydney. Viewed at: [http://www.trademinister.gov.au/speeches/2010/100216\\_fca.html](http://www.trademinister.gov.au/speeches/2010/100216_fca.html) [12 September 2010].

<sup>28</sup> DFAT online information, "Fact sheet – Overview of Tariff Outcomes". Viewed at: <http://www.dfat.gov.au/trade/fta/asean/aanzfta/factsheets/oto.pdf> [15 November 2010].

<sup>29</sup> Imports from New Zealand are not subject to anti-dumping actions (such actions are handled by competition laws) or safeguard measures (WTO document G/SG/N/1/AUS/2, 2 July 1998).

market liberalization, national and MFN treatment, and access to commercial presence.<sup>30</sup> 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. New ROOs for ANZCERTA entered into effect on 1 January 2007, with product-specific rules replacing the previous minimum 50% factory-cost rules, which were considered to be complex<sup>31</sup>; the new ROOs require a CTC specified at the HS 6-digit level, and in the case of a small but significant minority of tariff lines a secondary regional value confirmation that significant transformation has taken place. A five-year transition period, ending on 1 January 2012, allows importers to claim origin either under these new rules or under the old factory-cost rules.

*Canada–Australia Trade Agreement (CANATA)*

25. Under the CANATA, Australia provides tariff preferences ranging from 1% (certain fruits and vegetables, lumber) to 15% (car batteries) on the MFN rate on over 400 tariff lines (tariff preferences of 5% on 300 lines and 15% on 70 lines). Nevertheless, its significance has declined as a result of unchanged margins of preference since 1960, sweeping reductions in tariff rates in both countries, and changes in patterns of trade; furthermore, most of the CANATA commitments have been superseded by tariff reductions negotiated in the WTO.<sup>32</sup>

*Singapore–Australia Free Trade Agreement (SAFTA)*

26. The SAFTA, which entered into force on 28 July 2003, was notified to the WTO under GATT Article XXIV and GATS Article V on 25 September 2003, and examined by the WTO Committee on Regional Trade Agreements on 8 October 2004 and 28 July 2005.<sup>33</sup> In addition to tariff elimination, SAFTA improves market access for Australian exporters of services, particularly education, environmental, telecommunications, and professional services.<sup>34</sup> It also provides a more open and predictable business environment across a range of areas, including competition policy, government procurement, intellectual property rights, e-commerce, customs procedures and business travel.<sup>35</sup> The second ministerial review of SAFTA was concluded on 27 July 2009; amendments arising from the review relate to government procurement, investment, telecommunications, and intellectual property, and are expected to enter into effect in early 2011.<sup>36</sup>

*Thailand–Australia Free Trade Agreement (TAFTA)*

27. The TAFTA entered into force on 1 January 2005, was notified to the WTO under GATT Article XXIV and GATS Article V on 27 December 2004, and was considered by the WTO

<sup>30</sup> In 2009, 4% of Australian exports were directed to New Zealand, Australia's seventh largest export market for goods and services; New Zealand is Australia's eighth source of import (UNSD, Comtrade database (SITC Rev.3)).

<sup>31</sup> DFAT online information. Viewed at: [http://www.dfat.gov.au/geo/new\\_zealand/roos.html](http://www.dfat.gov.au/geo/new_zealand/roos.html); and the amended ANZCERTA ROOs viewed at: [http://www.dfat.gov.au/geo/new\\_zealand/anz\\_cer/anz\\_cer\\_rules\\_of\\_origin.html](http://www.dfat.gov.au/geo/new_zealand/anz_cer/anz_cer_rules_of_origin.html) [16 September 2010].

<sup>32</sup> DFAT online information. Viewed at: <http://www.dfat.gov.au/geo/canada/brief.html> [13 September 2010].

<sup>33</sup> WTO document WT/REG158/N/1 S/C/N/233, 1 October 2003, and online information. Viewed at: <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?enc=EdyU9OuGnpdPTg3EXz/WP1dozKMHMbe4VrzIXLz+a7Q=> [12 September 2010].

<sup>34</sup> Singapore is Australia's largest trade and investment partner in South-East Asia; in 2009, Singapore was Australia's eighth export market and its fourth source of imports (UNSD, Comtrade database (SITC Rev.3)).

<sup>35</sup> DFAT online information. Viewed at: [http://www.dfat.gov.au/trade/negotiations/australia\\_singapore\\_agreement.html](http://www.dfat.gov.au/trade/negotiations/australia_singapore_agreement.html) [12 September 2010].

<sup>36</sup> Text of SAFTA viewed at: <http://www.dfat.gov.au/trade/negotiations/safta/index.html>.



Committee on Regional Trade Agreements on 14-15 May 2007.<sup>37</sup> Upon the TAFTA's entry into force, Thailand eliminated its tariffs on around 53% of all tariff items, accounting for 78% of current Thai imports from Australia<sup>38</sup>; a further 41% of Thai tariff lines, representing 17% of imports from Australia at the time of entry into force, were phased-out in 2010.<sup>39</sup> All remaining tariffs, including tariff-rate quotas, will be eliminated by/in 2015 or 2020, with the exception of skim milk powder and liquid milk and cream, for which the tariff-rate quotas will be eliminated in 2025. By 2010, Australia had eliminated virtually all tariffs on goods of Thai origin, except for 225 tariff items of apparel and certain finished textiles (4% of trade), which will be phased down to zero in 2015. In addition to issues relating to trade in goods, the TAFTA covers trade in services, investment, movement of natural persons, e-commerce, competition policy, and intellectual property rights.

*Australia–United States Free Trade Agreement (AUSFTA)*

28. The AUSFTA, which entered into force on 1 January 2005, was notified to the WTO under GATT Article XXIV and GATS Article V on 22 December 2004, and considered by the WTO Committee on Regional Trade Agreements on 13 September 2007.<sup>40</sup> The AUSFTA is a comprehensive agreement that covers goods, services (including financial services), investment, government procurement, standards and technical regulations, competition-related matters, e-commerce, intellectual property rights, labour issues, and environmental matters.<sup>41</sup> Upon its entry into force, duties were eliminated on more than 80% of tariff lines for Australian goods entering the United States, with quota volumes for dairy and other agricultural products increasing immediately and into the future. Almost all remaining U.S. tariffs will be removed by 2015, apart from those on beef, which will have duty-free access from 2022, and some dairy goods, where a tariff-rate quota will continue to apply. As from 2005, 86.6% of Australia's tariff lines (97.6% of imports from the United States, period average 2002-04) were free of duty for products originating in the United States; a further 3.1% of tariff lines (0.5% of 2002-04 imports), mainly textile products, have been duty free since 2010.<sup>42</sup> By 2015, all of Australia's tariff lines, are to be fully liberalized, with the exception of eight lines (used passenger motor vehicles), which retain a specific duty (0.1% of imports from the United States). Changes to the relevant annexes of AUSFTA were listed in March 2010 to ensure compliance with HS changes that entered into effect on 1 January 2007.

*Australia – Chile Free Trade Agreement (ACIFTA)*

29. The ACIFTA entered into force on 6 March 2009, was notified to the WTO under GATT Article XXIV and GATS Article V on 3 March 2009, and was examined by the WTO Committee on

<sup>37</sup> The full text of the TAFTA is contained in WTO document WT/REG185/1, 18 February 2005, and online at: [http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta\\_toc.html](http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta_toc.html) [16 September 2010]. See also, WTO document WT/REG185/N/1, S/C/N/311, 5 January 2005, and online information. Viewed at: <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?enc=YYuDN7xlkFIOozLDIR+cDfuijMHIXZpdtLn6hBLfhEM=> [12 September 2010].

<sup>38</sup> In 2009, Thailand was Australia's tenth largest merchandise export market and its seventh source of imports (UNSD, Comtrade database (SITC Rev.3)).

<sup>39</sup> DFAT online information. Viewed at: [http://www.dfat.gov.au/trade/negotiations/aust-thai/goods\\_outcome\\_benefits\\_031003.html](http://www.dfat.gov.au/trade/negotiations/aust-thai/goods_outcome_benefits_031003.html) [12 September 2010].

<sup>40</sup> The full text of AUSFTA is contained in WT/REG184/1, 11 February 2005, and at: [http://www.dfat.gov.au/trade/negotiations/us\\_fta/](http://www.dfat.gov.au/trade/negotiations/us_fta/) [16 September 2010]. See also, WTO document WT/REG184/N/1, S/C/N/310, 23 December 2004, and online information. Viewed at: <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?enc=B94W41tG1vwF/jmx6mkvMDJegT0g5+vvRY2nhziPpBE=> [12 September 2010].

<sup>41</sup> In 2009, the United States was Australia's third most important trading partner.

<sup>42</sup> WTO document WT/REG184/3, 11 June 2007.

Regional Trade Agreements on 14 June 2010.<sup>43</sup> Upon entry into force of the ACFTA, 90.9% of Australia's tariff lines became duty free, corresponding to 99.5% of imports by value from Chile (during the period 2006-08); the remaining 9.2% of tariff lines, covering 0.5% of imports from Chile, are to be reduced progressively and eliminated by 2015.<sup>44</sup> In 2009, 87% of Chile's tariff, corresponding to 98.6% of imports by value from Australia became duty free; the remaining tariffs are to be eliminated by 2015.<sup>45</sup> Similarly to Australia's other FTAs, the ACIFTA is a comprehensive agreement also covering trade in services, investment, government procurement, standards and technical regulations, competition-related matters, e-commerce, and intellectual property rights.

30. The ACIFTA was expected to offer Australian exporters opportunities across the board, including in mining and energy technology and services, engineering and consulting services, franchising and services, education and training, information technology, tourism and infrastructure. Other areas that were to benefit include energy (coal, LNG, renewable energy), agriculture (dairy, meat, ovine and bovine genetics, production technologies) and food and beverages, including wine.<sup>46</sup>

(c) Future agreements

31. Negotiations for further bilateral agreements are under way with China (since 2005), Japan (since 2007), Malaysia (since 2005)<sup>47</sup>, and Korea (Rep.of) (since 2009); early announcements of these negotiations (except those with Korea) have been made to the WTO and are available for consultation on the RTAs database. Negotiations between Indonesia and Australia for a Comprehensive Economic Partnership Agreement were announced on 3 November 2010. Regarding trade agreements at regional level, negotiations are ongoing with the Gulf Cooperation Council (since 2007), also the subject of an early announcement to the WTO; the Pacific Agreement on Closer Economic Relations (PACER) Plus negotiations within the Pacific Islands Forum (since 2009); and the Trans-Pacific Partnership (TPP) Agreement (since 2010), which will expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore, in force since 2006.<sup>48</sup> A feasibility study is currently being conducted on a bilateral agreement with India.

(d) Unilateral preferential arrangements

32. Australia has continued to grant preferential treatment unilaterally to imports from developing and least developed 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). Since 1 July 2003, Australia has provided duty- and

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<sup>43</sup> Full text of ACIFTA viewed at: <http://www.austlii.edu.au/au/other/dfat/treaties/2009/6/>; and for more information see: <http://www.dfat.gov.au/geo/chile/fta/index.html> [16 September 2010]; WTO document WT/REG263/N/1, S/C/N/484, 5 March 2009, and online information. Viewed at: <http://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?enc=p+ShsWILnAcvIvAR037oHks7Y64dKWq/MvC5QRJs9Bg=> [12 September 2010].

<sup>44</sup> WTO document WT/REG263/1, 1 April 2010.

<sup>45</sup> Two-way trade between Australia and Chile is growing fast, rising from \$A 857 million in 2007 to \$A 1.4 billion in 2008. Australia is the 4<sup>th</sup> largest foreign investor in Chile, with around US\$3 billion of direct investment. DFAT online information. Viewed at: [http://www.dfat.gov.au/geo/chile/fta/facts\\_at\\_a\\_glance.html](http://www.dfat.gov.au/geo/chile/fta/facts_at_a_glance.html) [16 September 2010].

<sup>46</sup> DFAT online information. Viewed at: [http://www.dfat.gov.au/geo/chile/fta/facts\\_at\\_a\\_glance.html](http://www.dfat.gov.au/geo/chile/fta/facts_at_a_glance.html) [16 September 2010].

<sup>47</sup> These negotiations were suspended during the AANZFTA negotiations, and the two countries are now discussing the scope to resume the negotiations.

<sup>48</sup> The United States and Peru are also participating in the TPP negotiation (Productivity Commission, 2010a).

quota-free access for all goods originating in the 50 countries designated as LDCs by UNCTAD (Chapter III).

## **(7) TRADE DISPUTES AND CONSULTATIONS**

33. Australia considers that dispute settlement is central to the multilateral trading system, to help make the global trading system more secure and predictable.<sup>49</sup> Since its last Trade Policy Review, Australia has not initiated any disputes in the WTO but in 2007 it was a respondent in a dispute initiated by New Zealand concerning Australia's measures affecting the importation of apples (Chapter III)<sup>50</sup>; a dispute initiated by the EU in 2003<sup>51</sup>, against Australia's quarantine regime, was settled by means of a mutually agreed solution in March 2007. Furthermore, during the review period Australia was involved as a third party in 20 dispute cases, which dealt with various measures affecting, *inter alia*, footwear, fasteners, wine and spirits, cigarettes, tuna, poultry, bovine meat, raw materials, and IT products.<sup>52</sup>

34. Australia seeks to resolve disputes through international agreements that include state-state and/or investor-state dispute settlement provisions.<sup>53</sup> Dispute resolution services are provided by, *inter alia*: the Australian International Disputes Centre; the Australian Centre for International Commercial Arbitration; the Institute of Arbitrators and Mediators Australia; and the Lawyers Engaged in Alternative Dispute Resolution (LEADR) organization. No trade or trade-related inter-governmental dispute has been settled outside the WTO since 2007.

## **(8) FOREIGN INVESTMENT REGIME**

35. Australia continues to encourage foreign investment consistent with its national interest.<sup>54</sup> Its screening regime (see below) allows consideration of, *inter alia*, community concerns about foreign ownership of certain Australian assets.<sup>55</sup> A foreign investment policy objective is to balance these concerns against the strong economic benefits that arise from foreign investment. Australia remains relatively well positioned at the international level in terms of ease of doing business and investment risk.<sup>56</sup>

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<sup>49</sup> Productivity Commission (2010c).

<sup>50</sup> Following the circulation of the panel's report (WT/DS367/R) on 9 August 2010, both parties decided to appeal to the Appellate Body. Viewed at: [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds367\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds367_e.htm).

<sup>51</sup> WTO document WT/DS287/1, 9 April 2003.

<sup>52</sup> Of those 20 disputes, only 14 panels were established, some of them to consider several disputes. WTO information online. Viewed at: [http://www.wto.org/english/thewto\\_e/countries\\_e/australia\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/australia_e.htm) [28 September 2010].

<sup>53</sup> Australia is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the Convention on the Settlement of Investment Disputes Between States and Nationals of other States 2006 (ICSID), and the UNCITRAL Model Law on International Commercial Arbitration with Amendments as Adopted in 2006 (the Model Law). In addition, dispute settlement provisions have been included in FTA agreements and Investment Promotion and Protection Agreements (IPPAs) (sections (6)(ii) and (8)).

<sup>54</sup> The Treasury (2010a).

<sup>55</sup> In 2010, Australia ranked 32<sup>nd</sup> (out of 48 economies) in the OECD's FDI Restrictiveness Index, which consists of indicators on equity restrictions, screening, key personnel, and operational restrictions; screening contributed largely to Australia's overall result, which is below the OECD countries' average. The authorities indicated that the OECD index does not accurately capture Australia's investment barriers because the FDI restrictiveness is based on reservations against the OECD's Codes rather than actual FDI restrictions (Kalinova, Palerm, and Thomsen, 2010).

<sup>56</sup> In 2010, the World Bank ranked Australia 9<sup>th</sup> (out of 183 economies) for overall ease of doing business, the same position as in 2009; nevertheless, its ranking, in terms of protecting investors dropped by

36. Under its Foreign Acquisitions and Takeovers Act 1975, accompanying regulations, and foreign investment policy, Australia maintained its screening process to ensure that foreign investment is not contrary to the "national interest"; foreign investment restrictions are maintained in certain sensitive sectors, such as airports, banking, residential real estate, telecommunications, and transport (civil aviation and shipping)<sup>57</sup>, and possibly, more recently, natural resources.<sup>58</sup> The screening processes, undertaken by the Foreign Investment Review Board (FIRB) affect only major investment applications, defined as any purchase by a foreign entity, and any associates, of more than 15% of an Australian company, or by several foreign entities of more than 40% in aggregate. Investors must notify the Government of their proposal, prior to commencement, if it exceeds a set of monetary thresholds last set in 2009 (see below).<sup>59</sup> Large foreign investment projects are screened in accordance with a 'national interest' test, which is not defined under the Act; in effect, it is determined by the Government based on a range of factors<sup>60</sup>, and is interpreted on a case-by-case basis. The authorities consider that Australia's mode 3 commitments under the GATS are not subject to the national interest test.<sup>61</sup>

37. During the review period, the main changes to Australia's foreign investment regime involved the removal of foreign ownership restrictions in the media sector (April 2007) as well as the re-introduction on 26 June 2010 of screening arrangements for acquisitions of residential real estate by foreign persons, which had been waived temporarily in December 2008.<sup>62</sup> The December 2008 real-estate-related changes reduced the proportion of approvals subject to conditions to 58% of total approvals in 2008/09 compared with 79% in 2007/08. Furthermore, to reduce compliance costs, as from 22 September 2009 proposals by private foreign investors to invest in Australian businesses need to be notified only when they involve acquisitions of 15% or more in a business worth \$A 231 million or more.

4 positions to 57<sup>th</sup>. The authorities indicated that this drop reflects improvements of protection in other economies rather than a decline of protection in Australia (World Bank, 2010).

<sup>57</sup> The Airports Act 1996 stipulates a 49% foreign ownership limit for airports, a 5% airline ownership limit for certain airports, and 15% cross-ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane, and Perth airports. The Shipping Registration Act 1981 requires that, for a ship to be registered in Australia, it must be majority Australian-owned (i.e. owned by an Australian citizen, a body corporate established by or under law of the Commonwealth or of a State or Territory of Australia), unless the ship is designated as chartered by an Australian operator (The Treasury, 2009a).

<sup>58</sup> In 2009, a senior official of the Foreign Investment Review Board (FIRB) made public statements concerning foreign investment in the Australian resources sector, thus providing further insight into FIRB's decision-making process in this regard. Reportedly, the official indicated that the Government's preference was for foreign investments in major Australian resource companies to be less than 15% of their capital, for investment in greenfield projects to be below 50%, and for the listed Australian companies to remain listed. However, FIRB's published policy documents do not refer expressly to informal guidelines discussed by this senior official and so its level of support for his comments remain unclear. In any event, it has been rare for FIRB to reject outright applications for approval of investments in the resource sector (see Crean et al).

<sup>59</sup> Novak (2008); and The Treasury (2009a).

<sup>60</sup> In its assessment of foreign investment proposals the Government typically considers: national security; competition; other government policies (including tax); impact on the economy and the community; and the character of the investor (The Treasury, 2010a).

<sup>61</sup> The authorities indicated that Australia's schedule contains no requirements for economic means tests, joint ventures or to limit foreign exchange or profit repatriation. Moreover, there are no horizontal limitations on foreign equity participation or on the type of commercial presence an investor must use. Australia's GATS mode 3 commitments reflect current market access and draw trading partners' attention to the existence of the policy framework. In addition, the GATS commitments state that "[...] proposals for foreign interests to invest in the services identified in the Schedule [...] are approved unless national interest considerations arise".

<sup>62</sup> Foreign Investment Review Board (2010).

38. Despite the restriction-related concerns discussed above, of the 5,352 applications approved in 2008/09 (32% less than the 7,841 approvals in 2007/08), 3,086 were approved subject to conditions and 2,266 without conditions.<sup>63</sup> Only three proposals, all related to real estate acquisitions, were rejected in 2008/09 (14 in 2007/08), representing less than 0.1% of all proposals considered. Between 2007/08 and 2008/09, there was an overall increase of 8% in approvals in sectors other than real estate; 97% of proposals were decided within 30 days, and cases that took more than 30 days generally reflected delays in receiving sufficient information from the parties or significant complexity or sensitivity.

39. Australia maintains bilateral investment promotion and protection agreements (IPPAs) with 22 economies.<sup>64</sup> The IPPAs grant MFN treatment for foreign investment, provide nationalization/expropriation guarantees, and establish dispute settlement mechanisms (section (7)). Australia, a contracting member of the International Centre for the Settlement of Investment Disputes (ICSID)<sup>65</sup>, has not had any investment-related dispute involving foreign companies over the review period.

40. Double-taxation avoidance (DTA) treaties based on the OECD Model Tax Convention on Income and Capital are in force with several economies.<sup>66</sup> During the period under review, amendments to DTA treaties with Japan, New Zealand, and South Africa entered into force, as well as the DTAs with Finland, France, and Norway. In September 2010, the entry into force of DTAs with Chile (March 2010) and Turkey (April 2010), and of amendment protocols to DTAs with Belgium (June 2009), Malaysia (February 2010), and Singapore (September 2009) were pending, due to Australia's lengthy domestic procedures for giving the force of law to its tax treaties. The DTA with Chile is the only treaty containing MFN provisions; no DTA contains "tax sparing" provisions. Since 2007, Australia has negotiated Tax Info Exchange Agreements with 25 economies, of which 18 are in force.<sup>67</sup>

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<sup>63</sup> Foreign Investment Review Board (2010).

<sup>64</sup> Argentina; Chile; China; the Czech Republic; Egypt; Hong Kong, China; Hungary; India; Indonesia; Laos; Lithuania; Mexico; Pakistan; Papua New Guinea; Peru; the Philippines; Poland; Romania; Sri Lanka; Turkey; Uruguay; and Viet Nam (FIRB online information. Viewed at: [http://www.firb.gov.au/content/international\\_investment/bilateral.asp?NavID=27](http://www.firb.gov.au/content/international_investment/bilateral.asp?NavID=27) [7 September 2010]).

<sup>65</sup> Australia observes the notification and transparency provisions of the OECD Code on Liberalization of Capital Movements, and subscribes to the OECD Declaration on International Investment and Multinational Enterprises (the Declaration), as well as the OECD Guidelines for Multinational Enterprises (the Guidelines).

<sup>66</sup> Argentina, Austria, Belgium, Canada, China, the Czech Republic, Denmark, East Timor, Fiji, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Korea (Rep. of), Malaysia, Malta, Mexico, the Netherlands, New Zealand, Norway, Papua New Guinea, the Philippines, Poland, Romania, Russian Federation, Singapore, the Slovak Republic, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Thailand, the United Kingdom, the United States, and Viet Nam (The Treasury online information. Viewed at: [http://www.treasury.gov.au/documents/625/XLS/Australian\\_Tax\\_Treaty\\_Table\\_September%202010.xls](http://www.treasury.gov.au/documents/625/XLS/Australian_Tax_Treaty_Table_September%202010.xls) [29 September 2010]).

<sup>67</sup> These economies are Anguilla, Antigua & Barbuda, Aruba, the Bahamas, Belize, Bermuda, British Virgin Islands, the Cayman Islands, Cook Islands, Dominica, Gibraltar, Grenada, Guernsey, Isle of Man, Jersey, Marshall Islands, Monaco, Netherlands Antilles, Samoa, San Marino, St Kitts and Nevis, St Lucia, St Vincent & the Grenadines, Turks and Caicos Islands, and Vanuatu (The Treasury online information. Viewed at: [http://www.treasury.gov.au/documents/625/XLS/Australian\\_Tax\\_Treaty\\_Table\\_September%202010.xls](http://www.treasury.gov.au/documents/625/XLS/Australian_Tax_Treaty_Table_September%202010.xls) [29 September 2010]).