



A Summary of the Australia – United States Free Trade Agreement

A courtesy guide prepared by Swaab Attorneys

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The Australia-United States Free Trade Agreement (*AUSFTA*) came into force on January 1, 2005.

Some of the benefits and opportunities that have been created for Australian companies under the provisions of this new FTA are outlined below.

Overview of trade and investment relations

Current trade ties between the two countries are very strong.

- The United States is Australia's largest individual trade and investment partner, with total exports and imports valued at approximately \$30 billion in 2003.
- The United States is Australia's second largest export market (after Japan), with exports of goods and services worth over \$14 billion in 2003.
- Principal exports to the United States include beef and other meat products, crude petroleum, alcoholic beverages, aircraft and parts, and motor vehicles.
- Exports of elaborately transformed manufactures (*ETMs*) are one of the strongest performers. The United States is now Australia's largest market for ETM exports.
- The United States is Australia's largest source of imports, with merchandise and services imports worth more than \$26 billion in 2003.
- The US is also Australia's largest partner for both outbound and inbound foreign direct investment. The total stock of Australian direct investment in the United States was \$65 billion and the total stock of US direct investment in Australia was \$66 billion as at 30 June 2003.

For Australia, the largest gains will be in Victoria and NSW, as well as for beef and sugar producers in Queensland. The FTA should also bring localised benefits and increased export opportunities for a number of key product sectors, including dairy, beef, meat, sugar, and automotive production.

For the Australian beef industry alone, for example, removal of the U.S. tariff quota restrictions is expected to be worth several hundred million dollars annually in gross beef production.

Key benefits of the AUSFTA on a sector basis¹

Agriculture

- Under the terms of the FTA, duties on two-thirds of all agricultural tariffs (including many important commodities such as lamb, sheep meat and a range of horticultural products) were eliminated immediately upon entry into force of the FTA.
- Duties on a further 9 per cent of agricultural tariff lines will be eliminated by the end of 2008.
- There is significantly greater access to the United States for Australia's beef and dairy export industries, including immediate elimination of in-quota tariffs.
- The single desk arrangements for export marketing Australian commodities, and the Australian quarantine and food safety regimes, have been preserved.

Non-agricultural products (including manufactured goods)

- Duties on more than 97 percent of US non-agricultural tariff lines (excluding textiles and clothing) became duty free on 1 January 2005. By 2015, tariffs on sensitive textile products, some footwear, and a handful of other items will be phased out, making trade in non-agricultural goods free of duty.
- The FTA provides that a mechanism to address non-tariff barriers will be established. Australian exporters will have greater opportunities to understand and meet US technical regulations and standards, and a framework for exporters to work with government in tackling barriers will be established.

Motor vehicles

- Both countries agreed to eliminate customs duties on almost all automotive products from 1 January 2005, including the 25 per cent US customs duty on sport utilities/light trucks (light commercial vehicles). Australian duties on passenger motor vehicles will be phased out by 2010.

Services

- The FTA binds liberalised access for Australian service suppliers, including for professional, business, education, environmental, financial and transport services.
- A framework to promote mutual recognition of professional services has been developed.

¹ For a more detailed discussion of the economic and trade related benefits of the AUSFTA, please see the detailed cost-benefit analyses and studies regarding the likely economic effects of entering into the FTA commissioned by the Australian government. The National Interest Analysis and Regulation Impact Statement published by the Australian government summarise the major practical and economic benefits for Australian business on both a subject matter and sectoral basis. http://www.dfat.gov.au/trade/negotiations/us_fta/ris/nia.html and http://www.dfat.gov.au/trade/negotiations/us_fta/ris/ris.html

Financial services

- The FTA also secures liberal conditions of access for Australian financial services providers to the United States, which is the world's largest financial market.
- Through a Financial Services Committee, the countries will consider ways to integrate further their financial sectors, such as through access for foreign securities markets and for foreign collective investment schemes.
- The Financial Services Committee will report on these issues within two years of the FTA entering into force.

Investment

- The FTA creates a stronger framework for investment protection that should continue to promote investment relationships.
- The FTA also prohibits a range of trade and investment distorting performance requirements.
- In recognition of the robust domestic legal systems in both countries, there is no provision for investors to use international arbitration to pursue concerns about government actions. This is an unusual concession that the United States provided to Australia, as investor-state dispute settlement mechanisms have been mandated by the United States in virtually all other recent bilateral FTAs.
- Australia retains the power to screen foreign investments of major significance.

Government procurement

- The FTA provides Australian firms with access to the large (A\$200 billion) US federal government procurement market, which was previously closed to Australian contractors.
- The scope of the Government Procurement Chapter may be extended to cover State-level procurement, however this will depend on the interests of some individual States and Territories on both and if they opted-in to being covered by the Government Procurement Chapter of the FTA.
- US federal government contracts worth over US\$58,550 (and in construction worth over US\$6,725,000) will be open to Australian firms. Australian preferences for small businesses and indigenous people also will be preserved.

Preservation of key public health and policy programs

- The FTA specifically allows Australia to retain affordable medicine programs under the Pharmaceutical Benefits Scheme (*PBS*), and local content requirements for Australian media.
- The FTA does not impair Australia's ability to deliver fundamental policy objectives in health care and does not change the fundamental architecture of the PBS.
- Australia will make improvements to the transparency and timeliness of PBS processes, which should allow Australians to benefit from faster access to subsidies for new prescription medicines.

Competition law and policy

- There will be even closer cooperation with the US on antitrust and competition laws and enforcement.
- Under the FTA, businesses and individuals must be treated fairly in enforcing competition law.
- Consumer protection agencies will work together in combating illegal activity, and consumers or investors defrauded or deceived will have greater redress in the other country

Telecommunications

- The FTA provides for additional rules on major suppliers and pro-competitive regulatory frameworks for Australian and US firms.
- There will also be a new high level avenue for Government and industry consultations on market access issues.

Intellectual property

- The FTA includes commitments to strengthen protection of intellectual property beyond those provided by multilateral agreements such as the WTO's Trade Related Aspects of Intellectual Property Rights Agreement and World Intellectual Property Organisation Treaties.
- Australia has also preserved the capacity to regulate new and emerging media, including digital and interactive TV.

E-commerce

- Both nations commit that there will be no barriers to trade conducted electronically, while Australia retains full authority to regulate its e-commerce market for public policy purposes.

The team at Swaab Attorneys is committed to working with companies to help them meet their ambitions. For more information regarding opportunities and benefits available under the new AUSFTA, please contact either Fred Swaab or Alistair Jaque. We would be very pleased to discuss any issues with you. We have excellent colleagues in the United States to whom we can refer you in the event that further information is required from the United States perspective.

Contact Us

Swaab Attorneys is located in the Sydney CBD at:

Level 21, Angel Place

123 Pitt Street

Sydney NSW 2000

You can contact Fred Swaab by:

- mail at **GPO Box 35, Sydney NSW 2001**
- phone on **+61 2 9777 8338**
- fax on **+ 61 2 9233 5400**
- email at fxs@swaab.com.au

You can contact Alistair Jaque by:

- mail at **GPO Box 35, Sydney NSW 2001**
- phone on **+61 2 9777 8363**
- fax on **+ 61 2 9233 5400**
- email at afj@swaab.com.au

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