

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

Introduction

The modern history of the world trading system, and in particular international trade agreements, is evidenced by shifts among bilateralism, regionalism and multilateralism. In the late nineteenth century and early twentieth century, bilateralism was clearly dominant. Trade agreements were negotiated on a bilateral basis between individual countries. In the 1860s and 1870s, England initiated much of this activity, pushing its trading partners to sign trade agreements that reciprocally lowered tariff rates. In the 1930s, it was the United States that made a big push in this area, through its Reciprocal Trade Agreements program, although a number of other countries were also active in negotiating bilateral agreements to lower tariff rates.

However, immediately after World War II, multilateralism and regionalism had replaced bilateralism as the dominant approach. From the late 1940s through the mid-1990s, multilateralism grew in strength as more and more nations joined the GATT or its successor the WTO. The GATT, which began with twenty-three countries, unquestionably came to dominate the world trading scene. It did not, however, completely replace regional and bilateral trade agreements. Regionalism remained a competing model, as nations in Europe, North America, South America and elsewhere all formed trading blocs during this period. East Asia was the only region to eschew regionalism, while Western Europe was the clear leader in terms of both the timing and the scope of its economic integration, with other regions following a bit behind. Bilateralism, on the other hand, diminished considerably during this period. Such agreements were extremely rare, and where they did exist could usually be explained mostly by political, rather than economic, factors.

In recent years, though, bilateralism has returned with a vengeance. The initial return to bilateralism can be traced to the breakup of the Soviet Union and the collapse of Communism in the early-1990s. The newly formed nations, along with several Eastern European economies in transition from a centrally planned to a market based economy, led a mini-revival of bilateralism in the mid-to late 1990s. Bilateralism, however, only significantly gained momentum following the failed WTO negotiations at the 1999 Seattle Ministerial Conference. Prior to 1999, it was rare for the major trading powers to negotiate and sign bilateral trade agreements. Following the failed Ministerial, all major trading nations (including the East Asian nations) almost immediately launched multiple negotiations. A large number of

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

such agreements have now been negotiated and signed, and many more are currently being negotiated. The rapid increase in the total number of agreements has created a competitive process among nations, with all of the major trading powers pushing hard to conclude these agreements so as not to lose particular markets to their competitors.

In addition to bilateral agreements, there are also a growing number of what could be termed 'loose' regional trade agreements. These agreements are concluded among several countries in the same 'region', with the term region more loosely defined than in previous eras. These agreements are, in essence, plurilateral agreements among countries which may or may not be in somewhat close proximity to each other, but do not necessarily include all countries from that area. For example, the North American Free Trade Agreement (NAFTA), a more traditional RTA, was signed in 1993 between Canada, the United States and Mexico, three contiguous countries of North America. By contrast, in 2006 the CAFTA-DR agreement was signed between the United States, a few Central American countries, and the Dominican Republic. All are in the same general region, but there are many other countries within that region which were not included. On the other hand, the Trans-Pacific Strategic Economic Partnership Agreement (P4) between Brunei, Chile, New Zealand and Singapore cannot be said to even remotely resemble nations in close proximity to one another (although admittedly all members are linked by the Pacific Ocean).

The result of the proliferation of these agreements is that today's international trade rules now consist of a number of instruments. At the forefront, there is the multilateral WTO Agreement, which includes 151 countries or customs territories. In addition, there are the traditional regional trading blocs, each with their own agreements, some of which provide for deep integration or customs unions among the member countries. Then, there is the complex web of bilateral trade agreements between individual countries. Finally, there are a growing number of 'loose' regional agreements. All of these agreements – over 300 in total – exist together, creating a mish-mash of overlapping, supporting, and possibly conflicting, obligations.

Perhaps even more important than the sheer quantity of trade agreements is the scope of their coverage. While the 19th century and early 20th century bilateral agreements were often narrowly focused on reducing tariffs, the more recent ones contain obligations that are wide-ranging and controversial, from investment provisions to intellectual property rights affecting access to medicines to protections for labour/human rights and the environment. While the full impact that these agreements will have on domestic policy-making is uncertain, it is clear that a number of agreements are going beyond the coverage of the WTO as well as the regional and bilateral agreements negotiated prior to 1999 and reaching a new level of international policy-making.

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)*The structure of the book*

This volume consists of case studies of various free trade agreements (FTAs). At this stage, we are not offering a complete set of case studies of all trade agreements. Rather, we have tried to select a group that includes a good sampling in terms of countries and regions covered, and also a sampling of agreements that address key issues (such as intellectual property and agriculture). Authored by leading scholars, practitioners and governmental officials, each case study provides a comprehensive review of the selected agreement. The first case study, authored by Andrew Mitchell and Tania Voon, both of the Melbourne Law School, is the Australia–United States FTA. Mauricio Salas, of the law firm BLP Abogados in San Jose, Costa Rica, next reviews the CAFTA–DR–US FTA before Luz Sosa of the Agricultural Office in the Mission of Chile to the EU outlines the China–Chile FTA. Bradley Condon of the Instituto Tecnológico Autónomo de Mexico (ITAM) then provides a review of the EU–Mexico FTA. Next Peter Draper and Nkululeko Khumal, both of the South African Institute of International Affairs, review the EFTA–SACU. The México–Japan EPA is then reviewed by Bryan Mercurio of the Chinese University of Hong Kong, School of Law, before Jason Kearns of the US House of Representatives Committee on Ways and Means outlines the US–Morocco FTA. The book concludes with a review of the China–ASEAN FTA, authored by Jiangyu Wang of the Chinese University of Hong Kong, School of Law.

In future editions of the book, we plan to supplement this work by providing case studies of additional agreements, eventually compiling a comprehensive resource providing case studies of as many FTAs as is practicable. Such a resource should be useful in a number of ways. For example, each study can serve as an in-depth study of a particular FTA. Moreover, the group of case studies can be used to compare and contrast the coverage of different FTAs, or to examine the FTAs signed by a particular country.

The editors have also recently completed another collection, entitled ‘Bilateral and Regional Trade Agreements’ which is a companion to the ‘Case Studies’ series. In that volume, the contributors attempt to provide some preliminary answers to a number of interesting questions (in terms of politics, international relations, international law, economics and global governance) raised as a result of the spread of FTAs, including:

- What are the reasons for the recent interest in and growth of these agreements?
- How do the benefits of bilateral trade liberalization compare with those of multilateral trade liberalization?
- How do these new agreements relate to existing multilateral and regional trade agreements, and to international law more generally?

- What is the substantive scope of these agreements? That is, what policies do they promote and what obligations do they contain?
- How are these agreements negotiated among the various governments, and what is the role of non-State actors who have an interest in the agreements?

The term ‘preliminary’ is used intentionally, as the development of these agreements is still ongoing. The end does not appear to be in sight yet, especially as the Doha Round continues on (and on) with no set timetable for completion. Thus, the analysis offered here is necessarily limited to what has occurred so far.

The ‘Commentary and Analysis’ volume is structured as follows. Sections II and III will put these issues in context by providing some general background on the economics, politics, international relations and international law aspects of FTAs. For instance, Section II contains a chapter by Pravin Krishna of Johns Hopkins University, School of Advanced International Studies, evaluating the economics of FTAs. More specifically, Professor Krishna expands upon existing literature to find that the welfare effects of FTAs are ambiguous at best. The chapter also provides, *inter alia*, an interesting analysis on the design of FTAs with welfare-improving effects. Section II also contains a chapter on the political and international relations considerations of FTAs. Written by Olivier Cattaneo of the International Trade Department at the World Bank, the chapter asks the question ‘why do countries conclude FTAs?’ and provides a unique assessment of both the historical and present situation, ultimately concluding that the political economy of FTAs revolves more around politics than economics. The final chapter in Section II is a practical analysis of some of the differences between bilateral FTAs and multi-party ones. In the chapter, David Evans of the New Zealand Ministry of Foreign Affairs and Trade demonstrates how the ‘new generation’ of plurilateral FTAs are a break from traditional bilateral FTAs and offer some challenging issues, such as how are such agreements to be negotiated and structured to meet the needs (and ambitions) of all parties?

In Section III, we try to situate FTAs in the larger context in which they exist. There are two aspects to this: (1) how do FTAs fit with the WTO, which prohibits discrimination among WTO Members but has an exception for free trade agreements and customs unions? and (2) how do FTAs fit within international law more generally? The Section begins with a chapter by Andrew Mitchell of the Melbourne Law School, and Nicholas Lockhart of the law firm of Sidley Austin, examining the nature of the exception for FTAs under WTO rules. It outlines, in substantial detail, the conditions of the exception and concludes with an assessment of the likelihood of legal challenge to a FTA if it did not meet all of the conditions of the exception. In the following chapter, Andrew Mitchell and Tania Voon, also of the Melbourne Law School, provide a comprehensive analysis of the under-explored and often murky relationship of FTAs to international law. More specifically, Mitchell and Voon provide examples of difficult and unsettled issues surrounding the overlap between

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

FTAs and public international law, including the particularly thorny issues of conflicting norms between two treaties/agreements and multiple dispute settlement systems that are capable of hearing the same dispute.

Section IV provides a detailed look at specific subject areas that are part of FTAs. In essence, this section offers a comparison across the various agreements, examining the scope of the law that is being created in seven important policy areas. First, Tim Josling of the Stanford University, Food Research Institute, analyses the contentious area of agriculture with reference to historical data as well as differences between bilateral and regional FTAs. Next, Federico Ortino of King's College London provides a review of services in the multilateral forum before comprehensively detailing how certain FTAs are creating GATS-Plus obligations. Joshua Meltzer from the Australia Department of Foreign Affairs and Trade then contributes a thorough and detailed chapter on investment which particularly focuses on both the wide-ranging obligations undertaken in the area as well as specific areas which have caused much disagreement and dispute. Arwel Davies of University of Wales Swansea, Faculty of Law, next provides a chapter on government procurement which illustrates how many agreements are hesitant to move substantially beyond the WTO model. Michael Handler of the University of New South Wales, Faculty of Law and Bryan Mercurio next provide a chapter on intellectual property which looks at three TRIPS-Plus areas of intellectual property: copyright, geographical indications and patents. Lorand Bartels of Cambridge University then contributes an interesting article detailing the inclusion of social issues, such as labour, environment and human rights, into FTAs. Finally, Simon Lester of WorldTradeLaw.net and Victoria Donaldson of the WTO Secretariat conclude the Section with a detailed review of various dispute settlement provisions in FTAs, finding a general, but not perfect, correlation to the WTO model set out in the Dispute Settlement Understanding.

As mentioned above, the expansion of FTAs as a key part of the world trading system is a fairly recent development. As things continue to evolve, we will expand this study through future editions. For the chapters covering specific substantive areas, we will update these to take into account new agreements as they are signed. In addition, as noted, we will add more case studies with each new edition. In this way, we hope this book and its future editions will serve as a comprehensive and essential resource for understanding the role of FTAs in the international trade regime.

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

1

Australia–United States Free Trade Agreement

ANDREW D. MITCHELL AND TANIA VOON*

I. Introduction

Former Deputy Director-General of the World Trade Organization (WTO), Andrew Stoler has described the Australia–United States Free Trade Agreement (AUSFTA)¹ as a ‘third wave’ free trade agreement² (FTA) that goes ‘beyond the envelope of the WTO’,³ in the sense that it ventures into areas barely covered in the WTO agreements, like competition, and expands on WTO disciplines in other areas, like services and intellectual property. Going beyond the existing WTO rules does not, of course, necessarily constitute progress, or even greater trade liberalization. In this chapter, we consider the extent to which the AUSFTA represents an improvement on the WTO bargain from the perspective of the two parties as well as the broader WTO membership.

Before considering how the AUSFTA came about, we now provide an introductory snapshot of the trading and broader relationship between these two countries. United States (US) trade data indicate that the value of US exports of goods to Australia in 2006 totalled around US\$17.8 billion and the value of US imports of goods from Australia amounted to US\$8.2 billion.⁴ This put Australia

* This chapter was finalized in May 2007. An earlier version of this chapter was presented at the conference on ‘Free Trade Agreements: Where is the World Heading?’ hosted by the Bond University Faculty of Law and the Tim Fischer Centre for Global Trade and Finance, Gold Coast, Australia, 10 March 2007. We are grateful for the helpful comments made by participants at that conference. For valuable comments on an earlier draft of this chapter we also thank Ann Capling, Jürgen Kurtz, Simon Lester, Donald MacLaren, Bryan Mercurio and Matthew Rimmer. All opinions expressed here and any errors are ours.

¹ Signed 18 May 2004, in force 1 January 2005.

² We use the term ‘free trade agreements’ to refer to bilateral and regional agreements between States or customs territories that focus at least in part on liberalizing trade between the parties, as distinct from the multilateral system established under the WTO. ‘FTAs’ therefore include free trade areas and customs unions within the meaning of Article XXIV of the General Agreement on Tariffs and Trade 1994.

³ Andrew L. Stoler, ‘The Australia–United States FTA as a “Third Wave” Trade Agreement: Beyond the WTO Envelope’ in Andrew D. Mitchell (ed.), *Challenges and Prospects for the WTO* (London: Cameron May, 2005), pp. 253–68 at p. 256.

⁴ US Census Bureau, ‘Foreign Trade Statistics: Trade in Goods (Imports, Exports and Trade Balance) with Australia’, 2006, available at www.census.gov/foreign-trade/balance/c6021.html#2007 (last accessed 4 April 2007).

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

within the top 15 countries for US exports in 2006.⁵ Services trade appears more balanced, with the Australian government reporting exports to the US at approximately AU\$5.4 billion for 2005–6 and imports from the US at around AU\$7.1 billion for the same period. The Australian government includes as Australia's 'major exports' to the US bovine meat, alcoholic beverages, personal travel, and 'other business services', and as 'major imports' from the US aircraft, motor vehicles for transporting goods, personal travel, and royalties and licence fees.⁶

In the WTO, Australia has complained against the US in two cases formally commenced in the dispute settlement system. Both proceeded to a Panel and then the Appellate Body, which found the US in violation of its WTO obligations,⁷ and they were ultimately resolved when the US implemented the recommendations and rulings of the Dispute Settlement Body (DSB).⁸ The US has complained against Australia in four cases, three of which were resolved before reaching the Panel stage,⁹ and one of which was the subject of a mutually agreed solution¹⁰ after a Panel had ruled against Australia.¹¹

Why did Australia so vigorously pursue an FTA with the US?¹² Entry into the AUSFTA was consistent with Australia's general embrace of FTAs across the world in recent years, which is based on a perception that Australia relies on bilateral links

⁵ US Census Bureau, 'Foreign Trade Statistics: Top Trading Partners – Total Trade, Exports, Imports', December 2006, available at www.census.gov/foreign-trade/statistics/highlights/top/top0612.html (last accessed 4 April 2007).

⁶ Australian Department of Foreign Affairs and Trade (DFAT), 'United States Fact Sheet', available at www.dfat.gov.au/geo/fs/usa.pdf (last accessed 4 April 2007). For further historical discussion of the Australia–US trade and investment relationship, see Australian APEC Study Centre, Monash University, *An Australia–USA Free Trade Agreement: Issues and Implications: A Report for the Department of Foreign Affairs and Trade* (Canberra: Commonwealth of Australia, 2001), at pp. 9–18.

⁷ Appellate Body Report, *US–Lamb*, paras. 1.97 and 1.98; and Appellate Body Report, *US–Offset Act (Byrd Amendment)*, paras. 318–19.

⁸ WTO, *US–Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia: Communication from the United States*, WT/DS177/12, WT/DS178/13, 2 October 2001; and WTO, *US–Continued Dumping and Subsidy Offset Act of 2000: Status Report by the US – Addendum*, WT/DS217/16/Add.24, WT/DS234/24/Add.24, 7 February 2006.

⁹ WTO, *Australia–Measures Affecting the Importation of Salmonids: Notification of Mutually Agreed Solution*, WT/DS21/10, G/L/39/Add.1, G/SPS/W/40/Add.1, 1 November 2000; WTO, *Australia–Textile, Clothing and Footwear Import Credit Scheme: Request for Consultations by the United States*, WT/DS57/1, G/SCM/D7/1, 9 October 1996; US, *Subsidies Enforcement Annual Report to the Congress: Joint Report of the Office of the United States Trade Representative and the U.S. Department of Commerce* (February 1999), available at <http://ia.ita.doc.gov/esel/se099.htm> (last accessed 4 April 2007); and WTO, *Australia–Subsidies Provided to Producers and Exporters of Automotive Leather: Request for the Establishment of a Panel*, WT/DS126/2, 11 June 1998 (the US withdrew its earlier request for establishment of a Panel while at the same time requesting the establishment of a new Panel regarding the same subsidies).

¹⁰ WTO, *Australia–Subsidies Provided to Producers and Exporters of Automotive Leather: Notification of Mutually Agreed Solution*, WT/DS126/11, G/SCM/D20/2, 31 July 2000.

¹¹ Panel Report, *Australia–Automotive Leather II*, paras. 10.1–10.7; and Panel Report, *Australia–Automotive Leather II (Article 21.5–US)*, para. 7.1.

¹² Ann Capling, *All the Way with the USA: Australia, the US and Free Trade* (Sydney: University of New South Wales Press, 2005), at pp. 41–2 and 50–5.

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

to protect the national interest in international trade and investment as well as security.¹³ Australia's Department of Foreign Affairs and Trade (DFAT) maintained that an FTA with the US was crucial in protecting national interests, given that the US 'is our largest single trade and investment partner and second-largest export market'.¹⁴ DFAT also expressed the hope that the AUSFTA might prevent or mitigate harmful US policies such as 'Washington's past decisions to protect its lamb and steel industries' and increased subsidies to farmers,¹⁵ and it indicated that the AUSFTA was particularly important given difficulties in the Doha Round of negotiations in the WTO.¹⁶ However, according to the Australian Senate's Select Committee on the AUSFTA, 'Australia's pursuit of a free trade agreement with America ha[d] as much, if not more, to do with Australia's broader foreign policy objectives as it d[id] with pure trade and investment goals'.¹⁷

Why, then, did the US want the AUSFTA? Officially, among other things, the US was concerned with improving access to the Australian market for its agricultural exports, including by limiting Australia's use of sanitary and phytosanitary measures to restrict trade. It also sought to strengthen the US–Australia alliance for the purpose of the WTO's Doha Round negotiations, especially on agriculture. Like Australia, the US also linked the AUSFTA to its national security interests.¹⁸ An unofficial suggestion is that the AUSFTA was 'payback' for Australia's support of the Iraq war:¹⁹ September 11 may have been what finally led the US to agree to the AUSFTA.²⁰

In this chapter we explain and evaluate the AUSFTA primarily from an Australian perspective, given that most countries will be in a more or less analogous position to Australia when negotiating an FTA with the US. The AUSFTA provides an illustration of the outcomes that countries with relatively little bargaining and economic power can expect from such an FTA. It also serves as a warning of how even an

¹³ DFAT, *Advancing the National Interest: Australia's Foreign and Trade Policy White Paper* (Canberra: Commonwealth of Australia, 2003), at pp. 7, 9.

¹⁴ *Ibid.*, at p. 89. ¹⁵ *Ibid.*

¹⁶ See, e.g., Parliament of the Commonwealth of Australia, Joint Standing Committee on Treaties, *Report 61: The Australia – United States Free Trade Agreement* (June 2004), at para. 2.31 (quoting DFAT).

¹⁷ Commonwealth of Australia, *Senate Select Committee on the Free Trade Agreement between Australia and the United States of America: Final Report* (Canberra, August 2004), at para. 1.24. See also Gavin Goh, *Regional Trade Agreements and Australia: A National Interest Perspective*, Australian APEC Study Centre, Monash University (May 2006), at p. 20; and Australian APEC Study Centre, Monash University, *An Australia – USA Free Trade Agreement: Issues and Implications: A Report for the Department of Foreign Affairs and Trade* (Canberra: Commonwealth of Australia, 2001), at pp. 72–7.

¹⁸ Letters from Robert Zoellick, USTR, to Senator Robert Byrd and Dennis Hastert, Speaker, United States House of Representatives, 13 November 2002.

¹⁹ M. Rafiqul Islam, 'The Australian Policy and Practice of Preferential Bilateral Trade: A Benign or Malign Alternative to the WTO Multilateral Free Trading System?' (2003) 2(2) *Journal of International Trade Law & Policy* 43–61 at 57. See also Linda Weiss, Elizabeth Thurbon and John Mathews, *How to Kill a Country: Australia's Devastating Trade Deal with the United States* (Crows Nest: Allen & Unwin, 2004), at pp. 141–2.

²⁰ Capling, above note 12, at pp. 53–4.

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

economically successful developed country may end up sacrificing its welfare, public policies and democratic processes in a dogged pursuit to cement relations with the US, in a manner that would be unlikely in the vigorous negotiating environment of the WTO. We begin by examining the way in which the AUSFTA was negotiated, before turning to some of the substantive outcomes of those negotiations in key areas such as goods, services, investment, and intellectual property.²¹ Finally, we consider the impact of the AUSFTA to date and its future implications.

II. The negotiating process

The AUSFTA began with an announcement by Australia's Prime Minister, John Howard, then Trade Minister, Mark Vaile, and then United States Trade Representative (USTR), Robert Zoellick, on 14 November 2002, that negotiations on an FTA were commencing.²² DFAT then invited public submissions on the proposed AUSFTA by 15 January 2003.²³ It received around 200 submissions from a range of individuals and bodies.²⁴ Negotiations then took place in five rounds: 17–21 March 2003 (Canberra), 19–21 May 2003 and 21–25 July 2003 (Honolulu), 27–31 October 2003 (Canberra), and from 1 December 2003 to 8 February 2004 (Washington, DC).²⁵

The first round of negotiations covered framework issues and the scope of the negotiations, with working groups meeting on the following four broad areas: 'industrial products, agriculture, rules of origin, sanitary and phyto-sanitary measures; standards and technical barriers to trade, trade remedies; services, investment, intellectual property, competition policy; legal and institutional arrangements, including dispute settlement, environment and labour issues'.²⁶ In addition to the lead negotiators from the USTR and DFAT, officials involved in the negotiations included (for the US) 'representatives of the Departments of State, Commerce, Treasury, Agriculture, Justice and Labour, along with the US Customs Administration, the US Patents and Trademarks Office, the Federal Trade Commission, and the Environmental Protection Authority' and (for Australia) representatives from the Department of 'Agriculture, Fisheries and Forestry; Attorney-General's Department; the [Australian Competition and Consumer Commission]; Communications, Information, Technology and the

²¹ Given space constraints, we are unable to consider all the most important or controversial issues raised by the AUSFTA.

²² John Howard, Australian Prime Minister, 'Address to the Australian Chamber of Commerce and Industry', 14 November 2002; and Mark Vaile, Australian Minister for Trade, Media Release: 'Vaile Hails Breakthrough for Australia – US Trade Relations', 14 November 2002.

²³ DFAT, *Australia–United States Free Trade Agreement: Guide to the Agreement* (Canberra, March 2004), at p. 1; and DFAT, 'Australia–United States Free Trade Agreement: Call for Submissions', available at www.dfat.gov.au/trade/negotiations/us_aus_fta_public_submission.pdf (last accessed 4 April 2007).

²⁴ See www.dfat.gov.au/trade/negotiations/us_public_submissions.html (last accessed 4 April 2007).

²⁵ DFAT, *Guide to the Agreement*, above note 23, at p. 1.

²⁶ DFAT, *AUSFTA Briefing No. 1* (2003), at p. 1.

Cambridge University Press

978-0-521-87828-9 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester and Bryan Mercurio

Excerpt

[More information](#)

Arts (DCITA); Customs; Environment Australia; Health and Ageing (DOHA); Industry, Tourism and Resources (DITR); Intellectual Property Australia (IPA) and Treasury'.²⁷

The second negotiating round took place in seventeen working groups and led to agreement on 'a broad working framework for the agreement, setting out its possible chapters'.²⁸ At a media briefing, chief negotiators from both sides expressed their desire for a comprehensive agreement by the end of 2003 and emphasized that the AUSFTA would not change the framework of Australia's Pharmaceutical Benefits Scheme²⁹ (discussed further below).³⁰ The third round focused on the provision by each side of market access offers for goods, services and investment and also achieved a 'composite text capturing the views of both parties on nearly all chapters'.³¹ DFAT revealed that '[t]he initial US offer on agriculture was not as forward-looking as we had hoped, although the industrials offer had more positive elements'.³² Following the fourth round of negotiations, which included three days on agriculture, DFAT indicated:

Improved access for Australian beef, sugar and dairy will be essential elements of the agriculture package. . . .

[T]he outcomes of an AUSFTA must not undermine Australia's capacity to continue to meet its social and cultural policy objectives, including maintaining local content rules and funding for Australian film production. . . .

The issue of whether to include an investor-state dispute settlement (ISDS) mechanism in the chapter on investment in the FTA is still being discussed. The US has proposed that such a mechanism be included in the Agreement, but has not yet tabled draft text.³³

During the fourth round of negotiations, the parties were somewhat more reluctant to reveal details of discussions on particular issues, although they indicated their confidence in reaching agreement and reiterated that they were making considerable progress.³⁴ The text of the AUSFTA was agreed on 8 February 2004 and then, in 'a departure from Australia's normal practice', released to the public before editing and signature.³⁵ This was an unusually fast negotiation – around one year from the

²⁷ *Ibid.*, at p. 4. ²⁸ DFAT, *AUSFTA Briefing No. 2* (2003), at p. 2.

²⁹ DFAT, 'Media briefing on the second round of Free Trade Agreement negotiations between Australia and the United States, 19–23 May in Hawaii. Briefing conducted by Australia's chief negotiator Stephen Deady and the United States' chief negotiator Ralph Ives', 23 May 2003.

³⁰ See below section on 'Pharmaceuticals' under section IIIA.

³¹ DFAT, *AUSFTA Briefing No. 3* (2003), at p. 2. ³² *Ibid.*, at p. 1.

³³ DFAT, *AUSFTA Briefing No. 4* (2003).

³⁴ DFAT, 'US–Australia Free Trade Agreement Negotiation Press Conference Embassy of Australia. Mr Ralph Ives – US lead negotiator and Mr Stephen Deady – Australian lead negotiator', 5 December 2003.

³⁵ DFAT, *Guide to the Agreement*, above note 23, at pp. 1–2.