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## 5 Recent developments in trade policy

Australia is an active participant in trade negotiations and more generally in trade policy reform. Australian governments have reduced barriers to international trade mainly through domestic reforms, reinforced by participation in multilateral trade agreements. Australia has also undertaken other reforms ‘behind the border’ to address impediments to trade and investment and enhance productivity.

In recent years, as well as engaging in the current ‘Doha’ round of multilateral negotiations under the World Trade Organization (WTO), Australia has pursued preferential trade agreements with a number of countries.

This chapter reports on the developments in Australia’s trade policy since mid-2008, including:

- continued efforts to conclude the Doha Round of multilateral trade negotiations;
- ongoing negotiation of preferential trade agreements and the intention to initiate further agreements;
- a Productivity Commission review of bilateral and regional trade agreements;
- recent government announcements in relation to Australia’s tariff concession system; and
- international trade disputes at the WTO that involve Australia.

### 5.1 Trade agreements

Membership of the GATT (and, since 1995, the WTO) has grown from 23 countries in 1947 to more than 150 countries today. Collectively, these countries now account for around 97 per cent of world trade. The WTO provides a multilateral, rules-based system for the conduct of international trade (box 5.1). In all, eight rounds of negotiations have been conducted under the GATT/WTO framework, covering: goods, services, non-tariff trade barriers and certain trade-related issues such as intellectual property protection (table 5.1).

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### Box 5.1 The World Trade Organization

The World Trade Organization (WTO) is an international forum where sovereign governments negotiate agreements on barriers to international trade and related matters which constrain their own subsequent actions, thereby fostering an open trading system.

In broad terms, the WTO agreements require all member governments to apply their trade rules in a consistent, transparent and non-discriminatory way. Once a country's trade commitments have been agreed with other WTO members, the commitments are 'bound' and cannot be broken without risking sanctioned retaliation or other disciplines.

The modern multilateral trading system was established in 1947 when 23 governments — mainly from developed countries including Australia — signed the General Agreement on Tariffs and Trade (GATT). Since the GATT's inception, industrial country tariffs on industrial products have come down from an average of some 20 to 30 per cent to less than 4 per cent, while over the period since 1950, world merchandise trade has increased 27-fold (in volume terms), or three times faster than world output growth.

The WTO was established in 1995, following member countries' agreement to create the organisation as part of the Uruguay Round negotiations. Membership of the GATT, and the WTO since 1995, has steadily increased. There are now over 150 members, the majority of which are developing nations. Governments can apply to join or withdraw from the WTO at any time.

With the creation of the WTO in 1995, the system was also extended with the formation of the General Agreement of Trade in Services (GATS). Like merchandise trade, the objective of the GATS is to remove barriers to trade through multilateral rules and reciprocal 'concessions'. The GATS covers trade in all services, including financial services, telecommunications, air transport services and movement of natural persons.

As an organisation overseeing agreements between nations and the rules of trade, the WTO also has a dispute settlement mechanism and monitors members' trade policies.

The WTO does not administer any specific agreements dealing with the environment, investment or competition policy, though aspects of these issues form a part of the WTO's work program. International labour standards are covered by the International Labour Organization (ILO).

*Source:* WTO (2008a and 2009).

## Doha Round

The latest round of multilateral negotiations (the Doha Round) was launched in 2001. The Round set an ambitious negotiating agenda (table 5.1). The original deadline for the Round's completion was 1 January 2005, but five years later a conclusion has still not been achieved.

**Table 5.1 Coverage of multilateral trade rounds**

<i>Year</i>	<i>Place/Round name</i>	<i>Subjects covered<sup>a</sup></i>	<i>No. of countries</i>
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960–61	Dillon Round	Tariffs	26
1964–67	Kennedy Round	Tariffs & anti-dumping measures	62
1973–79	Tokyo Round	Tariffs and non-tariff measures, 'framework agreements'	102
1986–94	Uruguay Round	Tariffs and non-tariff measures (for services as well as agriculture and non-agricultural products), anti-dumping measures, services, intellectual property, dispute settlement, textiles, agriculture, creation of the WTO.	123
2001–	Doha Round	Tariff and non-tariff measures (for services as well as agriculture and non-agricultural products), intellectual property, investment rules, competition policy, transparency in government procurement, trade facilitation, anti-dumping, regional trade agreements, dispute settlement understanding, environment, e-commerce, small economies, debt & finance, technology transfer, capacity building, least-developed countries, special & different treatment.	153

<sup>a</sup> Not all subjects covered are necessarily included in the final agreement.

Sources: WTO (2001, 2008a).

In July 2008, agreement was reached on a number of topics, but the meeting collapsed due to a disagreement over agriculture (WTO 2008b). Since 2008, while there have been some negotiations on technical aspects of the agricultural commitments, no formal agreements or commitments have emerged and despite efforts by the Director General of the WTO, little progress was made during 2009 and early 2010 (WTO 2010a). At this stage, there is also no formal agenda for further ministerial meetings.

### **Preferential trade agreements**

Since the formation of the GATT in 1947, development of Australia's international trading relations has mainly been undertaken on a most-favoured-nation (MFN) basis within the multilateral GATT/WTO framework. In addition, Australia has also negotiated and maintained preferential trade agreements with a relatively small number of countries. These agreements provide preferential market access for

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member countries.<sup>1</sup> In addition to providing tariff preferences on merchandise, these agreements cover, variously, areas such as intellectual property, government procurement and other trade in services.

Australia's preferential agreements include some long-standing arrangements with New Zealand, the South Pacific Forum Island countries, Papua New Guinea and Canada. Only the agreements with New Zealand and Canada were reciprocal agreements, although most of the provisions under the Canadian agreement have been superseded by tariff reductions in both countries conferred on a MFN (that is, non-discriminatory) basis (DFAT 2010a).

More recently, Australia has entered into a number of new preferential trade agreements. These are mostly bilateral, apart from the most recent one, the regional agreement with ASEAN and New Zealand which entered into force on 1 January 2010. Australia's other agreements are with: Singapore, (entered into force on 28 July 2003); Thailand (1 January 2005); the United States (1 January 2005); and Chile (6 March 2009).

Further bilateral agreements are currently being pursued with China, Japan, Malaysia, Korea and the Gulf Cooperation Council, as well as two regional agreements:

- a proposed Pacific Agreement on Closer Economic Relations (PACER) Plus agreement negotiated by the Pacific Islands Forum members; and
- a proposed Trans-Pacific Partnership (TPP) Agreement which would expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore, that entered into force in 2006. Australia, Peru, the United States and Vietnam have joined these negotiations which commenced in March 2010.

In addition, the possibility of a regional agreement between Australia and the Gulf Cooperation Council (which comprises Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) is being explored. Feasibility studies on the potential merits of possible bilateral agreements with India and Indonesia have been concluded and the two governments are considering the findings.

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<sup>1</sup> The Commission uses the generic term 'preferential trade agreement' to refer to those agreements providing for preferential access to goods (and services) from member countries, over goods (and services) sourced from non-member countries.

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## **Other agreements**

Australia has been a member of the Asia-Pacific Economic Cooperation (APEC) forum since its formation in 1989. The objectives of APEC are to promote free and open trade and investment, accelerate regional economic integration, encourage economic and technical cooperation, enhance human security, and facilitate a favourable and sustainable business environment (APEC 2010).

As part of the 1994 Bogor Declaration, APEC members made a (voluntary) commitment to achieving free and open trade and investment by 2020. The pace of implementation would take into account differing levels of economic development among APEC economies, with the industrialised economies achieving free and open trade and investment no later than 2010 and developing countries no later than the year 2020 (APEC 1994).

## **Review of bilateral and regional trade agreements**

In November 2009, the Australian Government asked the Productivity Commission to conduct a review into the impact of bilateral and regional trade agreements on trade and investment barriers and, more generally, Australia's trade and economic performance (Crean and Sherry 2009).

The Commission is required to examine the effectiveness of such agreements in responding to national and global economic and trade developments, and in contributing to efforts to boost Australia's engagement in the region and evolving regional economic architecture. Among other things, the Commission has been asked to examine:

- the contribution of bilateral and regional agreements to reducing trade and investment barriers and safeguarding against the introduction of new barriers;
- the role of such agreements in lending support to the international trading system and the WTO;
- the potential for agreements to facilitate adjustment to global economic developments and to promote regional integration;
- the impact of agreements on Australia's trade and economic performance, in particular any impact on trade flows, behind-the-border barriers, investment returns and productivity growth; and
- the scope for Australia's bilateral and regional trade agreements to reduce trade and investment barriers of trading partners or to promote structural reform and productivity growth in partner countries.

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An Issues Paper for the study was released in December 2009 with a draft report due in July. The Commission is required to submit its final report to the Government by the end of November 2010.

## **5.2 Dispute settlement in the global trading system**

Dispute settlement is central to the multilateral trading system under the WTO, to help make the global trading system more secure and predictable. The dispute settlement arrangements are the responsibility of the Dispute Settlement Body (DSB) and are based on clearly-defined rules, with specified timetables for completing a case. The first rulings of a case are made by a panel. Appeals are heard by three members of a permanent seven-member Appellate Body set up by the DSB. An appeal can uphold, modify or reverse the panel's legal findings and conclusions (box 5.2). A panel's rulings, as varied through an appeal, are endorsed (or rejected) by the WTO's full membership. Since the WTO's inception in 1995, 405 disputes have been initiated under the dispute settlement system (WTO 2010b).

### **Complaints against Australia**

Ten complaints have been lodged against Australia since the commencement of the WTO in 1995 (table 5.2). Six cases, relate to agricultural and food products — salmon, beef, pineapples, fresh fruit and vegetables and apples. The United States has made the most complaints (four cases), of which three related to leather products (DFAT 2010b).

Seven of the ten cases have been resolved — two were upheld by the WTO, and the others resolved by mutual agreement. Of the three cases outstanding, the two complaints by the Philippines relating to imports of fresh food, vegetable and pineapples date from 2002. The remaining case, brought by New Zealand in 2007, relates to apples.<sup>2</sup>

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<sup>2</sup> On 31 August 2007, New Zealand requested consultations with Australia concerning measures imposed by Australia on 27 March 2007 on the importation of apples from New Zealand. New Zealand considers that these restrictions are inconsistent with Australia's obligations under the SPS Agreement. The Dispute Settlement Body (DSB) established a panel on 21 January 2008. Chile, the European Community, Japan, Chinese Taipei, the United States of America and Pakistan have each reserved their third-party rights. On 20 January 2010 the Panel advised the Parties that its final report is expected in May 2010 (DFAT 2010c).

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### **Box 5.2 Dispute settlement within the WTO framework**

When a trade dispute occurs, the countries involved are initially required to consult each other to see if they are able to settle their differences.

Where such consultations fail, the complaining country can ask for a panel to be appointed. The respondent country can block the creation of a panel only once.

The official role of the panel is to help the Dispute Settlement Body (DSB) make rulings or recommendations, based on the (articles of) agreements cited in the complaint. Because the panel's report can only be rejected by consensus in the DSB, its conclusions are difficult to overturn.

Either side in the dispute can appeal a panel's ruling. Appeals are required to be on points of law such as legal interpretation; they cannot re-examine existing evidence or examine new issues. Appeals are heard by three members of a permanent seven-member Appellate Body set up by the DSB and broadly representing the range of WTO membership. The appeal can uphold, modify or reverse the panel's legal findings and conclusions.

The DSB is required to accept or reject (by consensus) the appeals report within 30 days.

*Source:* WTO (2008a).

### **Complaints by Australia and third party involvement**

Australia has made seven complaints to the WTO (table 5.2), the most recent being in 2003. All complaints have been upheld by the WTO or mutually resolved.

Australia has also reserved its right to be a third party in 64 cases — cases where Australia has commercial and/or legal interest in the matters in question (DFAT 2010b). This provides an opportunity for Australia to present its views to the panel or, after an appeal to an initial ruling, to the Appellate Body. Appendix C lists the cases in which Australia has reserved the right to be a third party.

**Table 5.2 Australia's trade disputes within the WTO framework**

<i>Case no.</i>	<i>Year</i>	<i>Product</i>	<i>Country</i>	<i>Outcome</i>
<b>Australia as the defending party (respondent)</b>				
DS18	1995	Salmon	Canada	Complaint upheld 2000
DS21	1995	Salmonoids	United States	Mutually agreed solution 2000
DS57	1996	Subsidies on leather products under the TCF scheme	United States	Mutually agreed solution
DS106	1997	Automotive leather (I)	United States	Withdrawn by USA in 1998
DS119	1998	Anti-dumping measures on coated woodfree paper sheets	Switzerland	Mutually agreed solution 1998
DS126	1998	Automotive Leather (II)	United States	Complaint upheld 2000
DS270	2002	Fresh Fruit and Vegetables	Philippines	Panel established but not composed
DS271	2002	Certain measures affecting the importation of fresh pineapple	Philippines	Consultations requested — no panel established
DS287	2003	Quarantine Regime	European Communities	Mutually agreed solution 2007
DS367	2007	Measures Affecting the importation of apples from New Zealand	New Zealand	Panel established. Yet to report
<b>Australia as the initiating party (complainant)</b>				
DS35	1996	Export subsidies for agricultural products	Hungary	Mutually agreed solution 1997
DS91	1997	Agricultural, textile and industrial products	India	Mutually agreed solution 1998
DS169	1999	Various measures on beef	Korea	Complaint upheld 2001
DS178	1999	Imports of lamb meat from New Zealand	United States	Complaint upheld 2001
DS217	2000	Offset Act (Byrd Amendment)	United States	Complaint upheld 2004
DS265	2002	Export subsidies on Sugar	European Communities	Most of complaint upheld 2005
DS290	2003	Trademarks and Geographical Indications	European Communities	Most of complaint upheld 2005

Source: DFAT (2010b), WTO (2010b).

During 2009, Australia was involved as a third party in eleven separate disputes. This involvement ranged from the simple procedural step of reserving third party rights, the initial step in the process, to, in three cases, making a substantive oral or written statement to the WTO. For example, in a long running complaint by the United States against the European Community concerning beef hormones and beef quotas (case D26), dating back to 1996, the European Community and the United States notified the WTO in 2009 that they had reached agreement on a new tariff rate quota for high quality beef to commence in August 2009. In a statement at the

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regular WTO meeting of the Dispute Settlement Body in October 2009, Australia noted that, to that time, only the United States had secured access to the quota and had started exporting. New Zealand, Brazil, Argentina, Paraguay and Uruguay raised similar concerns in their statements. In response, the European Community reassured members that the quota was based on a definition that could be used by all on a non-discriminatory basis. The United States added that it was of the view that any beef satisfying the definition of ‘high quality beef’ covering the cattle's diet, age and quality, could be eligible for the quota — regardless of the product's country of origin. Subsequently, on 20 January 2010, Australia was granted access to this quota (DFAT 2010c).

### **5.3 Proposed changes to import duty concessions schemes**

In July 2009, the Australian Government announced plans to tighten existing guidelines for two tariff concession schemes, namely the Enhanced Project By-law Scheme (EPBS) and Tariff Concession System (TCS) (box 5.3) (Carr 2009i).

#### **Box 5.3 Enhanced Project By-law Scheme and Tariff Concession Orders**

The Enhanced Project By-law Scheme (EPBS) was introduced in 2002, based on the Project By-law Scheme, which it replaced. The EPBS provides tariff duty concessions on eligible capital goods for major investment projects in the mining, resource processing, food processing, food packaging, manufacturing, agriculture and the gas power, and water supply industries. Estimated tariff costs avoided by using the EPBS in 2008-09 was \$60 million.

The Tariff Concession System (TCS), provides access to duty-free entry for certain goods where there is no local industry that produces those goods. Certain classes of goods are ineligible including foodstuffs, clothing, cosmetics, furniture, jewellery and passenger motor vehicles. Importers can apply to the Australian Customs and Border Protection Service for a Tariff Concession Order (TCO) which provides access to the duty-free concession.. A TCO will be granted if substitutable goods are not produced in Australia. Substitutable goods are Australian-made goods that have a use corresponding to a use of the imported goods. Once granted for particular goods the TCO is available to all importers of those goods. A local manufacturer of substitutable goods can object to the making of a TCO and can request an existing TCO be revoked. Estimated tariff costs avoided by using the scheme in 2008-09 was \$1.6 billion.

*Source:* Carr and O'Connor (2009), ACS (2009a), AusIndustry (2009b).

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Under the new guidelines, firms will be required to assess Australian industry capabilities for supplying relevant goods before they apply for tariff concessions. The Government has indicated that it expects that this requirement will lead to an increase in business opportunities for local suppliers (Carr and O'Connor 2009). The proposed changes to the guidelines are outlined in chapter 3.

A broader evaluation of both the EPBS and TCS was also signalled by the Government to take place later in 2009-10. The Australian Government subsequently announced in March 2010 that it would conduct a review of Australia's tariff concession system, that is Schedule 4 of the *Customs Tariff Act 1995* including the Enhanced Project By-law Scheme and Tariff Concession System discussed above. The review is to address options to identify and remove unnecessary complexity within the current system. The review will not examine new, or expand the scope of existing, tariff concessions. The review will be undertaken within Government as part of a Better Regulation Ministerial Partnership between the Innovation Minister, Home Affairs Minister and Finance Minister (Tanner 2010).